Making referrals to the Protection of Vulnerable Adults (POVA) list

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Foreword

The task of caring for our most vulnerable citizens is a rewarding and fulfilling career for staff and managers alike. The job of caring can also be very challenging and occasionally carers do not meet the standards we have the right to expect. In some instances the standards of care are unacceptable and staff need to be disciplined or in the cases of managers, have their registration removed. In those instances, a new duty has been placed on providers – to make a referral to the POVA list where misconduct has caused harm or placed people at risk of harm.

I recognise that employers face a difficult set of decisions when vulnerable people have been harmed or placed at risk by those who are responsible for providing the care. This guidance is intended to help employers through the referral process when they have decided that disciplinary action is needed. It builds on what we have learnt about operating the scheme since its introduction in July 2004 and it clarifies when referrals should be made. The guidance makes a distinction between very serious cases of abuse where action is needed swiftly to protect vulnerable adults – and those of less serious cases where the employers own disciplinary procedures should precede a referral.

Our analysis shows that around one third of POVA referrals do not result in people being placed on the list. This is because either the evidence to place a person on the list is not being provided, or that the criteria for provisional listing has not been met. The aim of the guidance is to give employers better information about when and who to refer. More effective and better evidenced referrals will increase the protection of vulnerable people by removing those who are clearly unsuitable to work in regulated social care.

I would like to take this opportunity to thank all the members of the POVA Advisory Group, the POVA team in Darlington and also Julie Barnes at SCIE, for drawing together the experiences of operating the POVA scheme and procuring this guidance which I commend to you.

Ivan Lewis
Department of Health
Parliamentary Under Secretary of State for Care Services
Preface

The Protection of Vulnerable Adults (POVA) scheme was introduced on 26 July 2004 under the Care Standards Act 2000 to protect vulnerable adults aged 18 years and over in care settings in both England and Wales. At its heart is the POVA list operated by the Department for Education and Skills (DfES) on behalf of the Secretary of State for Health (DH). Through referrals to and checks against the list, care workers who have harmed, or who have risked harm to, a vulnerable adult are banned from working in a care position with vulnerable adults. In addition, links are made by the Secretary of State to the Protection of Children Act (POCA) list, also administered by DfES.

In addition to the Criminal Records Bureau check, employers — including voluntary and adult placement managers — are required to check the POVA list when recruiting workers, carers or volunteers in regular contact with vulnerable adults.

They are also required to make a referral to the list whenever they have decided that, in their view, a worker, carer or volunteer is reasonably considered to be guilty of misconduct that has harmed or placed a vulnerable adult at risk of harm (DH, 2004) and they have suspended, dismissed or moved that person to a non-care position. When an individual’s name is placed on the POVA list, that person is not able to work with vulnerable adults until his or her name is removed from the list.

At the request of the DH, SCIE has produced this practice guide for people making referrals to the POVA list. Easy to use, it translates what is known from policy and experience into ideas for good practice. It is designed to answer any questions on making referrals in practice, as well as providing food for thought for future development.
Contributors to this practice guide

We would like to thank all those who contributed to this guide, particularly advisory group members, participants of the specially convened discussion group and individuals who contributed either directly or by giving us access to their networks and members. Special thanks also go to those who provided us with practice examples.

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1. About this guide

The good practice guidance on this website does not replace previous guidance but builds further on the experience of those who have made referrals in the Protection of Vulnerable Adults (POVA) scheme’s first year of operation and who have been able to suggest what works best in these important, and often sensitive, procedures. Using practice examples, the guidance aims to clarify the referral process and support people making referrals to the POVA list. There are also links to relevant sources and websites.

Aim of the guide

This guide aims to support people making referrals to the POVA list under the Care Standards Act 2000. It will help employers and managers to make effective referrals that can be processed efficiently, leading to accurate and timely decisions on POVA listing by the Secretary of State for Health.

The guide does this by:

- addressing practice issues relating to referrals to the POVA list
- providing practice points
- giving examples and illustrations from practice
- providing references
- referring to relevant legislation, guidance and standards
- providing further information and useful web links.

Who the guide is for

This guide is designed for people making referrals to the POVA list. This will usually be social care employers and providers of care in residential, domiciliary and adult placement services, including employment agencies and businesses that supply individuals to these care providers. While the guide refers to ‘employers’ throughout, it should be noted that this includes those providing voluntary services, and self-employed adult placement carers. While the employment circumstances for adult placement carers may differ from those of other care workers, the process for making referrals to the POVA list is the same, and the same principles of good practice apply.

Exceptionally, the Commission for Social Care Inspection (CSCI) and the Care Standards Inspectorate for Wales (CSIW) may refer individuals to the POVA list if they find evidence of misconduct that has not been referred to the Secretary of State by the employer, including some circumstances where the employer is the subject of the referral.

The guide will be useful for local adult protection teams and staff who are responsible for implementing local policies for vulnerable adults. It may also be of interest to staff, commissioners, carers and people who use social care services, and professionals from other organisations concerned about the well-being of vulnerable adults.
Guide topics – service user organisations

The guide topics have been developed with stakeholders including individual care providers, representatives of care providers’ associations and service-users’ organisations, CSCI and CSIW officers and officials from the Department of Health (DH) and Department for Education and Skills (DfES). Discussions with a wide range of stakeholders have shown that, while existing guidance is clear, its implementation can be challenging, with complex decisions having to be made at various stages of the referral process. This guidance is intended to support the referral process by addressing topics in the order in which they are likely to be undertaken in making a referral.

What the guide does not cover

The guide does not cover employment law for the conduct of disciplinary procedures and investigations. References and links to the ACAS website are included for further information about employment practice, and particularly to the ACAS code of practice in relation to disciplinary and grievance procedures.

The guide relates specifically to the process involved in making referrals to the POVA list. It does not cover procedures relating to checks against the POVA list, the Criminal Records Bureau (CRB) or List 99. Existing legislation and related guidance can be found at the DH website. Information about the pending Safeguarding Vulnerable Groups Bill will also be posted there as it becomes available.

Guide structure

Topics are divided into the following sections:

• **Key questions for employer** Key questions to consider under each section
• **Expectations** A brief statement of the expected procedure in existing guidance
• **Practice overview** A brief statement about the key issues in implementing this procedure
• **Practice points under key headings** Specific practice points to follow when implementing this part of the procedure.

Examples from practice

Where available, practice ideas and examples are included that show how agencies have tried to improve practice and solve problems. These have been self-reported and remain unevaluated. Many of the examples are provided by the POVA team at the DfES from their experience of working with referrals in the first year of the POVA list’s existence. We are grateful to individuals and agencies for their contributions, acknowledge that other agencies may also be doing similar work and welcome other practice ideas for inclusion.
Working with you

SCIE welcomes email or written comments on any aspect of this guide, which will inform future updates, and is keen to collect examples that translate key research findings and practice points into practice.
1a. Overview of POVA list referral process

Who can refer?

- Employers and managers of registered care homes, domiciliary care agencies and adult placement schemes
- Regulators: CSCI/CSIW
- Secretary of State for Health

Who can be referred?

Care workers and adult placement carers who are reasonably considered guilty of causing harm to a vulnerable adult and who have been suspended, dismissed or moved to a non-care position or would have been if they had not left their post before these actions could be taken.

When to make referrals?

- Usually when the person is dismissed, following a clear and properly documented dismissal and disciplinary process.
- When the person is suspended pending investigation, if the offences are very serious and there is reasonable evidence that harm has been caused.
- Retrospectively, for former employees you are concerned about.

How do I make a referral?

By completing the standard form and attaching the required supporting documents. Send this by post to the POVA team at:

The Manager
Protection of Vulnerable Adults List
Ground Floor E, Mowden Hall
Staindrop Road
Darlington
Co Durham DL3 9BG

For advice from the POVA team, you can email them at POVA.mail@dfes.gsi.gov.uk or ring them on their advice line: 01325 391 328.

Who do I tell?

You will have already told the local adult protection team and CSCI/CSIW when the alleged misconduct took place, and you must keep them informed of the outcome of the referral. You can ask them or the POVA team for advice at any time.
2. Understanding the POVA list

The Protection of Vulnerable Adults (POVA) scheme consists of a list of people who are banned from working with vulnerable adults in registered care services in England and Wales. These people have been dismissed from care work because they have been found guilty of harming or risking harm to a vulnerable adult and are judged to be unsuitable to work with any other social care users.

It is an offence for people confirmed on the list knowingly to apply for, offer to do, accept or do any work in a paid or unpaid caring position. Anyone employing them will be in breach of regulations relating to fitness of staff.

The list covers care workers, including volunteers and adult placement carers, who are working with vulnerable adults aged 18 years or over in:

- registered care homes
- registered domiciliary care agencies
- registered adult placement schemes.

It does not cover NHS or other independent services or direct payments users unless they employ carers through an agency.

The list is run by the Department for Education and Skills (DfES) for the Secretary of State for Health; the DfES also operates the POCA list for the protection of children. Officials in the POVA Team in Darlington review POVA referrals and make recommendations to the Secretary of State for Health, who takes the final decision about listing any individual. Referral does not automatically lead to listing.

Employers and managers must make a referral to the POVA list whenever they reasonably consider that a worker is guilty of misconduct that has harmed vulnerable adults or placed them at risk of harm.

A referral is usually made only when the employer’s own disciplinary procedures have been concluded. Where the offence is very serious, a referral can be made after a worker or carer has been suspended, in which case they may be provisionally listed until the outcome is clear. POVA referrals are quite separate from the employer’s own disciplinary procedures; they flow from the process but do not influence it.

There are some differences for adult placement services because scheme managers are not the employers of the carers. In cases of misconduct when vulnerable adults have been harmed, the managers are -- after appropriate investigations -- responsible for withdrawing approval of the adult placement carers and making POVA referrals.

See POVA referral for adult placement for good practice for these sorts of referrals.

The POVA team are available to support anyone wishing to make or to discuss making a referral. They can be contacted via the POVA email helpline, and by telephone on the advice line: 01325 391 328.
Understanding POVA definitions

How decisions to list individuals under POVA are made

What it means when someone is POVA listed
2a. Understanding POVA definitions

Who are ‘vulnerable adults’?

What is 'harm'?

Who are ‘care workers’?

Who is not covered?

What does ‘employment’ mean?

Who are ‘employers’?

The Care Standards Act 2000 and Department of Health Practical Guidance contain definitions for POVA, which are summarised below. The section numbers below refer to the Care Standards Act 2000. Further guidance can also be found in No secrets: Guidance on policies and procedures to protect vulnerable adults from abuse and In Safe Hands: Implementing adult procedures in Wales.

Who are ‘vulnerable adults’? (Section 80[6])

A ‘vulnerable adult’ is someone aged 18 years and over who is:

• receiving accommodation and nursing or personal care in a care home
• receiving personal care in their own home under arrangements made by a domiciliary care agency, or
• placed with an adult placement carer by a registered adult placement service.

What is ‘harm’?

‘Harm’ is defined as ‘ill treatment or the impairment of health or (for those with conditions relating to mental health) impairment of development’ (section 121).

Those making referrals to the POVA list must demonstrate the impact of the harm caused to vulnerable adults. For example, this definition of ‘harm’ does not include theft, yet this betrayal of trust can cause deep distress to vulnerable service users. ‘Harm’ also includes placing vulnerable adults at risk of harm through non-action or neglect.

No secrets (paragraph 2.5) defines abuse as ‘a violation of an individual's human and civil rights by any other person or persons'. This may consist of a single act or repeated acts. Paragraph 2.7 describes different forms of abuse under the following headings:

• physical abuse
• sexual abuse
• psychological abuse
• financial or material abuse
• neglect and acts of omission
• discriminatory abuse.

Who are ‘care workers’? (Section 80[2])

The POVA scheme currently covers any worker in a care position who has regular contact with a vulnerable adult in the course of his or her duties in a registered care home, domiciliary care agency or adult placement scheme. This means:

• care workers employed by registered (and registering) providers of care homes, including care workers supplied by employment agencies and businesses, as well as volunteers, all of whom have regular contact with care home residents
• care workers employed by registered (and registering) providers who run domiciliary care agencies, including workers supplied by employment agencies and businesses. These workers are employed to provide personal care in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance. Agencies providing both a personal-care service (assisting with washing, feeding and dressing) and a home-help service (assisting with cleaning, ironing and shopping) must decide, in cases of misconduct, whether the POVA scheme applies to their workers, especially if the individual is cleaning for some clients and providing intimate care for others
• adult placement carers and anyone in the registered placement scheme who sees clients.

The definition of ‘care worker’ is very wide and includes managers, visiting practitioners such as chiropodists and hairdressers, voluntary workers and ancillary workers such as cooks or cleaners where they have regular contact with vulnerable adults. Further guidance and examples are included in Who can be referred to the POVA list.

Who is not covered?

At present, the POVA scheme does not apply to those who work with vulnerable adults in NHS or independent hospitals, clinics and other facilities, or through an independent medical agency. Other workers currently excluded are those working in supported accommodation, daycare and housing associations, and those providing services under direct payments. Vulnerable adults obtaining help from these services will continue to be protected by rigorous employment practices.

What does ‘employment’ mean? (Section 80[4])

‘Employment’ is defined as:

any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract.

The definition of employment is intentionally wide and includes both paid and unpaid work, including volunteer workers and self-employed adult placement carers. It also
includes supply workers, where individuals are supplied by an employment agency or business.

**Who are ‘employers’?**

An ‘employer’ is anyone who employs staff in the specified care services or who directs and supports self-employed care workers or adult placement carers. This may be a manager or owner of a single home, agency or scheme, or a manager of a home or service that is a part of larger organisation. In the latter case, the responsibility for making referrals to the POVA list lies with both the manager and the larger organisation.
2b. How decisions to list individuals under POVA are made

Referrals are received by the POVA team based at the DfES at Darlington. They consider the evidence provided and make recommendations to the Secretary of State for Health.

Two conditions must be met for confirmation on the list:

• The provider must reasonably consider the worker guilty of misconduct that has harmed or placed at risk of harm a vulnerable adult.
• The worker must be considered unsuitable to work with vulnerable adults in the future.

'Reasonably considered guilty of misconduct'

Unlike the legal standard that applies to other regulatory bodies, the POVA listing is based on a civil standard of proof or 'balance of probabilities' – that is, that the employer 'reasonably considers' the individual to be guilty. The referral information relating to the allegations, investigations and decisions will inform the POVA team about this and is rigorously reviewed.

'Unsuitable to work with vulnerable adults in the future'

The judgement here relates to the risk that this person will offend again in the same way or more seriously. Casework is revealing what needs to be taken into account, and this will continue to be informed by experience. The judgement is based on the following considerations:

• the vulnerability of and impact on the individual victim(s)
• the nature (gravity) and extent of the abuse
• the number of incidents and victims involved
• how long the abuse has been occurring
• the length of time since the misconduct
• the timing and degree of recognition by the abuser, including any steps they have taken to avoid it recurring
• any other extenuating or mitigating circumstances
• the abuser’s past record and experience, including evidence of their character, disposition, capacity and ability, and training received.
• admission or denial of guilt.

The POVA team base their recommendation about unsuitability on the information provided by employers and any subsequent correspondence. Employers are not asked to comment on the individual's suitability directly, but do need to provide information that will enable officials to make this decision.
Relevant information includes:

- the individual’s employment history – for example, initial application form, record of previous warnings
- references at time of recruitment
- personal development plan
- training record
- performance appraisals
- adult placement carer reviews and placement reviews.

This is not an exhaustive list but indicates the kind of information that will be considered to make this judgement.
2c. What it means when someone is POVA listed

What listing means for individuals

An individual who is included on the POVA list either as a confirmed or provisional listing may not be offered work in a care position.

When people are listed provisionally, they will be informed by the POVA team and given the opportunity to comment on the referral and the incident that led to it. They will be informed about the outcome of the referral.

It is an offence for anyone confirmed on the POVA list to knowingly apply for, offer to do, accept or do any work in a care position.

It is not an offence for an individual who is provisionally listed to seek employment in such a position. Nevertheless a provider of care must not employ anyone in a care position who is either provisionally listed or confirmed on the list.

Individuals who are charged with an offence of applying to work in a care position while on the POVA list can defend themselves if they can prove that they did not know that they had been confirmed on the POVA list.

What listing means for care employers and managers

The Act requires employers and managers to check the POVA list before offering any individual employment in a care position. If they discover that the person is included on the list, they must not offer to employ that person in such a position.

Where employers and managers discover that an individual already occupying a care position is on the POVA list, they must cease to employ him or her in that capacity. In such cases, that person can be moved to a non-care position, if this does not continue to place vulnerable adults at risk of harm. If there are no such positions, employers are advised to take legal advice if the only option is to dismiss the worker.
3. Preparing for POVA list referral

Key questions

Expectations

Practice overview

Practice points

Key questions for employers and adult placement organisers

• Do you know about your statutory responsibilities for working with the POVA scheme?
• Have you familiarised yourself with the requirements for making referrals?
• Have you informed your staff about your and their responsibilities?
• Are you familiar with local policies and procedures for protecting vulnerable adults?
  Have you developed your local policy? Have you made contact with key people locally?

Expectations

• Employers and managers will be familiar with their statutory responsibilities under the POVA scheme and know what to do when they need to make a referral.
• They will have set up the necessary policies, procedures and systems so that they can make effective referrals when the need arises. This includes robust and efficient use of employment procedures for disciplining and dismissal, and the recording of this information, as well as having well-developed local policies in relation to the protection of vulnerable adults. Advice is available from local adult protection coordinators, from local offices of the Commission for Social Care Inspection and the Care Standards Inspectorate (Wales) and from the Department of Health website.
• For adult placement schemes, there must be clear procedures for investigating and terminating adult placement carers’ approval in cases of misconduct relating to the harm of vulnerable adults. These may involve agreements with local adult protection teams.

Practice overview

Good practice in making referrals is achieved where employers and managers:

• are fully prepared to make referrals
• know what to do and how to do it
• make appropriate use of local contacts
• confidently implement their employment procedures
• provide the POVA team with clear evidence and supporting material.

The key to making an effective referral to the POVA list is to have robust employment and recording practices so that employers and managers can provide clear evidence about individuals who are referred.
The POVA referral itself does not require the provision of any new information. Rather, it consists of the collation of material that flows from normal employment disciplinary procedures where an individual has been considered to have caused harm to a vulnerable adult.

With regard to adult placements, carers are not dismissed but will have their approval as an adult placement carer terminated. The decision to terminate approval is made by an independent panel, based on reports from scheme workers. For more information, see POVA referral for adult placement.

Practice points

Developing local policies

Developing robust procedures and recording practice

Increasing staff awareness

Working with others
3a. Practice points: Developing local policies

Employers and managers should have developed their own local policy about protecting from harm the vulnerable adults in their care.

This may be a policy for their service, one for their whole organisation or one that is developed in the local area by the local multi-agency adult protection framework, committee and/or team under the No secrets/In safe hands guidance.

Local arrangements differ across the country so it is essential for each employer to find out about their local arrangements and ensure that their policy is written in line with these.

Example
Under No secrets/In safe hands, commissioned providers are required to adopt the local authority adult protection policy. The adult protection teams provide advice and support to providers working with these policies and procedures.

The Adult Protection Committee in Hull and the East Riding of Yorkshire includes an outline of the POVA scheme in all its adult protection awareness courses and prepares updates for statutory and independent providers. Its revised local Adult Protection Guidelines and Procedures also contain guidance on the POVA scheme plus a copy of the referral form. The committee hosted a local event when POVA was first implemented, and provides a consultancy service for local agencies with queries.

Where a service is part of a large organisation, managers must ensure that they have read the organisation’s policy and considered how it fits with the adult protection policies within their local area.

Example
Southern Cross Healthcare expects its homes managers to be familiar with the national organisational protection policy and to implement it appropriately within their local context, recognising that homes in different local authorities may have to follow different local procedures.

Employers and managers should clearly understand the difference between their local responsibilities to protect vulnerable adults in their care and the requirements of the POVA scheme – that is, to inform the Secretary of State for Health when they have dismissed a worker:

• Local adult protection policies and procedures are available from the local lead agency, which in most cases, will be the social services department of the local council.
• The requirements of the POVA scheme are set and operated nationally by the Department for Education and Skills on behalf of the Department of Health (DH). Details of the scheme are available on the DH website.

Examples
In writing the local adult protection policy for St Andrew’s Care Services, the managing director included making referrals to the POVA list and working with the local adult protection team. Through this process, his staff are clear about their roles and responsibilities and those of the adult protection team. When they needed to make a referral to the POVA list, they knew what to do, what information was required, where to get the forms, how to complete them and where to send them. The whole process was carried out efficiently and speedily.

BUPA has a national system for adult protection that includes the use of standard documentation for all employment processes and central decision-making and processing of POVA referrals.
3b. Practice points: Developing robust procedures and recording practice

Employers should ensure that they are familiar with the POVA referral procedure, the POVA referral form and the information that is required when a referral is made. This material is available on the DH website.

**Example**
Some of the greatest difficulties in making referrals arose when employers did not know how to make a referral, could not find the form or guidance and did not know where to obtain this information. Where this was to hand, they were able to start making the referral immediately with greater confidence in the process.

Employers should ensure that they are in the best possible position to make an effective POVA referral when the need arises. Referrals must be supported by robust evidence to assist the POVA team in making recommendations about POVA listing and to support the decision in the event of an appeal to the Care Standards Tribunal. The better the disciplinary procedures on which the referral is based, the more robust the referral will be.

An effective POVA referral relies on excellent information and record-keeping throughout the disciplinary or review process that led up to the referral. Employers must ensure that they adopt and carry out efficient employment practice such as investigation and disciplinary proceedings, and have robust recording systems of this practice. Training for managers in these areas should be up to date.

Employers dealing with this kind of misconduct for the first time can find the whole process daunting, particularly where they have little experience of undertaking disciplinary action. This can be addressed by ensuring that managers are trained and that relevant employment procedures are in place and working effectively.

**Example**
ACAS provides details of employment procedures and processes and codes of practice for disciplinary and grievance procedures.

Employers should build POVA referral into their disciplinary procedures – for example, by making it clear to staff that if they are suspended, they may be subject to a POVA referral. This makes the procedures very transparent, ensures there are no surprises and encourages suspended workers to participate in the disciplinary process. Experience shows that non-attendance at disciplinary hearings will lead to an assumption at the Care Standards Tribunal that the facts of the case are not disputed by the worker.
Example
BUPA tells people that they may be referred to the POVA list at each stage in the investigation and disciplinary process, that is:

- when they are first suspended
- when they are invited to a disciplinary hearing
- when they are dismissed.

BUPA has found that informing suspended staff that they are at risk of being referred to the POVA list has increased attendance rates at disciplinary hearings dramatically and ensures that individuals are informed about the implications of a POVA referral.

Employers should review their recording systems to ensure that they can provide all the information required for POVA referral. This will support their general employment practice and will assist them in making successful referrals.

The POVA team will use the evidence provided to make recommendations to the Secretary of State for Health about the referred individual’s future suitability to work with vulnerable adults. As well as detailed information about the particular allegation, they require a picture of the individual’s entire employment record, including start dates, chronology and full history, a record of staff training provided, competencies, supervision, warnings and performance appraisals – all of which should be routinely held as part of good registration practice under the Care Standards Act 2000. Particular note is taken of training in awareness and prevention of harm to vulnerable adults.

For adult placements, managers should provide evidence of access to learning and training, records of support and monitoring visits, adult placement carer reviews and placement reviews.

Employers should operate the highest standards of record-keeping and information collection, making sure that information is clearly recorded and securely kept. If a listed individual exercises their right of appeal to the Care Standards Tribunal, the information provided in the referral will be examined as part of this process.

In this preparation stage, employers are advised to consult with their liability insurers with regard to the POVA scheme. Some employers have received contradictory advice from liability insurers, and it is good practice to clarify the position with them. Employers have a statutory responsibility to refer individuals that they have dismissed for misconduct that led to the harm of a vulnerable adult.
3c. Practice points: Increasing staff awareness

Employers and managers should make sure that their staff are familiar with their own and their employers’ responsibilities in relation to POVA referral. Increasing staff awareness helps to make this a transparent process in which no one is taken by surprise when action is required.

This might be done as part of staff training in recognising abuse and in what to do if abuse is witnessed by another member of staff. Awareness-raising should be ongoing.

Example
Sheffield City Council has produced an accessible leaflet called *POVA: The Protection of Vulnerable Adults list – making services safe for vulnerable people*. This explains about the list and is available for staff and service users. Copies can be obtained from the Adult Protection Team or by e-mailing adult.protection@sheffield.gov.uk.
3d. Working with others

Employers should make contact with their local adult protection coordinators, find out about local procedures and develop good connections by getting involved in local activities and initiatives.

Where employers have good relationships with the local adult protection coordinators, they have found them to be an important source of support, information and advice throughout the POVA referral process.

Examples
Access HomeCare reported receiving first-rate support from its local authority. Everyone is clear about their respective roles and responsibilities and they have worked successfully, as mutual partners, in investigating and making POVA referrals.

In Sunderland in July 2004, the adult protection committee established a multi-agency POVA working group. Its initial remit was to support independent providers and to provide information and guidance. The DH Practical Guidance together with other supporting information was sent to all providers in the city. A series of ‘information days’ were held where providers had the opportunity to ask questions and debate particular issues or themes.

Today this group continues to identify issues, concerns and areas of good practice, which are shared with providers in the city through information exchange seminars and meetings. A further series of information days is planned, to communicate what has been learned over the past two years since the implementation of the POVA list. Providers have also been involved in producing local protocols developed to support managers dealing with allegations about staff and disclosure of information. Information packs – which include copies of these protocols together with a copy of the DH Practical Guidance, the DH referral form and other relevant adult protection documentation – have been produced and sent out to all providers in the city.

Constructive local relationships can be consolidated through joint training and working together. Some local adult protection teams offer training to local employers. Where people have trained together, they find it easier to approach the team for help in the future.

Examples
Barnet Adult Protection Team recently hosted briefing sessions at which local providers discussed making POVA referrals with a barrister experienced in employment law.

The Sheffield Adult Protection Team regularly holds stakeholder workshops.

E-learning material for POVA training has been commissioned and part-funded as part of a co-funded programme for the care sector in Milton Keynes, Oxfordshire and Buckinghamshire. The course covers awareness of abuse,
vulnerable adults, reporting abuse, legislation and case examples of abuse. It is currently being piloted and users report that the material is well received, particularly when supported by a facilitator. See the Elderworld website for more information.

Local adult protection coordinators will support those making POVA list referrals. It is likely that they will already know the employer or manager and will be able to advise and encourage them. It is important for the coordinators to approach this with a positive attitude, recognising that some employers can feel apprehensive and uncertain about making referrals.

**Example**
Shropshire County Council has obtained joint funding for a post in the adult protection team to support local providers both generally and with POVA referrals.

Some employers say that they feel stigmatised when making a referral, as if the whole organisation is guilty of causing harm. They fear that this will work against them with other providers, local commissioners of services and the public. In fact, they are fulfilling their statutory and best practice responsibilities by taking appropriate action. Local adult protection teams are encouraged to support and advise employers and managers when they are considering and making POVA referrals.

**Example**
The adult protection committees in Sheffield, Hull and the East Riding of Yorkshire are chaired by people who are independent of the local authority. In Shropshire, local adult protection panels are chaired by team managers from different localities.

The POVA team positively welcome referrals and emphasise that they are investigating individuals, not organisations.

**Example**
A representative of Marshlands Care Home rang the POVA advice line to discuss a serious incident that had resulted in the deaths of two residents. The representative was clearly worried that the home would appear at fault, even though the facts showed that the perpetrator’s actions could not have been predicted or avoided. As the result of a feeling of failure, the care home had been reluctant to make a referral. However, following discussions with the DfES POVA team, it submitted a comprehensive referral that resulted in the perpetrator being confirmed on the list and prevented from posing a risk to vulnerable adults in the future.
4. Deciding to make a POVA list referral

Key questions

Expectations

Practice overview

Practice points

Key questions for employers and adult placement organisers

• Have you agreed who can make POVA referrals in your organisation?
• Are you eligible to make referrals?
• Is the person you want to refer eligible for referral?
• Has there been misconduct causing harm or risk of harm to a vulnerable adult?
• Will the worker be dismissed, or have they already been dismissed on these grounds?
• Will you make the referral before or after your disciplinary procedure is completed?

Expectations

• The only persons or agencies allowed to make POVA referrals are employers and managers, the Commission for Social Care Inspection (CSCI), the Care Standards Inspectorate for Wales (CSIW) and the Secretary of State for Health.
• They can refer care workers, volunteers and approved carers who have regular contact with vulnerable adults in registered care or nursing homes, adult placements or service users’ homes when they are receiving domiciliary care.
• They make referrals when they reasonably consider that an individual is guilty of misconduct that has caused harm or a risk of harm to a vulnerable adult.
• The referral is usually made when disciplinary action leading to dismissal is taken and, exceptionally, when the individual has been suspended pending further investigation.
• For adult placement carers, decisions to refer relate to the withdrawal of a carer’s approval to provide adult placements.

Practice overview

The primary aim of the POVA list is to protect vulnerable adults from harm. However, banning an individual from working in care positions is a serious matter, which is decided by the Secretary of State and not by employers.

The POVA referral procedure is designed to help employers and managers make efficient and accurate referrals, while protecting the rights and well-being of vulnerable adults, other staff and the individual who is referred.

In most cases, the only decision an employer must make is to inform the Secretary of State when an individual has been dismissed or, in serious cases, is being investigated for misconduct resulting in the harm of a vulnerable adult. Adult placement scheme
managers do this when a carer’s approval has been terminated for misconduct under these circumstances.

At all stages, the employer or manager must take immediate action to protect and support the vulnerable people in their care. This should not be confused with making a POVA referral. That protects vulnerable people in the future by banning the referred individual from ever doing care work again. In itself, the POVA referral is no substitute for effective action at the time of the allegation.

Employers and managers should offer support to staff who report colleagues for suspected misconduct. It is expected that such staff will be covered by local policies for adult protection and whistle blowing. Having a robust procedure will also protect individuals from false or malicious allegations.

Employers and managers should support witnesses, helping them to make full statements.

This area can be highly charged, sensitive and complex. Employers are encouraged to seek advice from local adult protection teams, CSCI/CSIW and the POVA team.

**Practice points**

**Who can refer to the POVA list?**

**Who can be referred to the POVA list?**

**Grounds for referral**

**When to make a POVA referral**
4a. Who can refer to the POVA list?

Referrals to the POVA list can be made only by:

- employers and managers who are care providers
- regulators in CSCI and CSIW
- the Secretary of State for Health, following an inquiry.

**Employers and managers**

In this context, ‘employers and managers’ includes anyone who employs staff or who directs and supports self-employed care workers or adult placement carers in the specified care services:

- registered care or nursing homes
- registered domiciliary care services
- adult placement schemes.

This may be a manager or owner of a single home, agency or scheme, or the manager of a home or service that is part of a larger organisation. In the latter case, the responsibility for referring to POVA is shared by both the wider organisation and the individual service manager.

**Example**

Large providers such as BUPA handle all POVA referrals centrally. This means that every referral is carried out in a standard way, is coordinated and monitored centrally and is separated from the local situation and disciplinary process. Lead officers are building up experience and knowledge about making referrals and have developed good relationships with the DfES POVA team. Local managers are supported in making referrals.

Referrals cannot be made by staff in local authority adult protection teams, by the police or by commissioners of services such as social services or primary care trusts.

Some employers and managers find the idea of making a referral daunting. While it is a serious action that needs to be undertaken with care, it is a statutory duty and employers should act confidently to protect vulnerable adults. It is always better to make a referral than to do nothing; the final decision to list an individual is made by the Secretary of State, not by employers.

Although you do not need the consent of the vulnerable adult to make a referral, it is important to consult the person and to keep them informed of what is happening where this is appropriate.

In deciding to make a POVA referral, employers are acting responsibly in carrying out their statutory duty to protect vulnerable people and for the benefit of the wider social care sector – they might be the next employer of someone who was not appropriately referred to the POVA list. Employers who fail to refer risk losing their registration as a care provider on the grounds of lack of fitness.
Making a referral can be particularly daunting for small service providers. These employers may wish to consult local adult protection coordinators and their CSCI/CSIW inspectors for advice and support.

Referrals are made on behalf of the whole organisation, rather than by employers as individuals. This limits the opportunities for victimisation or malicious referrals. Referrals are not made in isolation from the clear processes of local adult protection procedures and robust employment or review practices.

**CSCI and CSIW**

Exceptionally, the regulators at the CSCI and the CSIW can make a referral to the list. In practice, this is done only when they find evidence of misconduct that has not been referred by the employer, or where there is no one else available to make the referral. Unlike providers, the regulators do not have the power to make retrospective referrals.

**Examples**

CSCI has made referrals when the home in which the registered person was working has been closed.

CSIW has made referrals where a service provider was unable to do so or refused. In the case of the refusal, this raised questions of fitness to practise under the registration criteria.
4b. Who can be referred to the POVA list?

Care workers and adult placement carers

The POVA scheme currently covers care workers in registered (and registering)

• care homes
• domiciliary care agencies
• adult placement schemes.

The procedures apply to any workers in care positions in a registered service who have regular contact with a vulnerable adult in a care home or are providing personal care through a domiciliary care agency. For adult placement schemes, it means anyone in the registered placement service who regularly sees clients, including the adult placement carer and scheme staff – see POVA referral for adult placement.

The definition of a care worker is very wide and includes anyone who has regular contact with vulnerable adults:

• managers, care assistants, voluntary workers and ancillary workers such as cooks, gardeners or cleaners
• workers supplied by employment agencies and businesses
• visiting practitioners such as chiropodists, hairdressers, therapists, priests and other religious leaders, other practitioners.

Even the most informal of connections and voluntary work are covered by the POVA scheme. Even where no money changes hands, voluntary, community-based and other organisations and individuals working for providers of care in an agreed capacity constituting a care position, whether or not under the terms of a contract, will come within the scope of the scheme.

Because job titles and job descriptions vary so much across the country, the examples given below provide only a general guide to who is eligible for referral – it is clearly a matter for employers and managers to judge. The following questions will help them in making this decision:

• Is the person employed or deployed as a care worker?
• What type of service are they employed in? This is more important than who actually employs them.
• What type of work are they doing?
• If employed in domiciliary care, are they providing any personal care to service users?
• Do they have any regular contact with vulnerable adults – for example, daily, weekly, monthly?
• Have they been POVA checked? You can also refer people who have not been checked.
Examples of regular contact

• A care home administrator, as an agreed part of his formal duties, daily assists at meal times to ensure that severely disabled or frail residents make their way to the dining room and are assisted in eating their food. This is considered to be ‘regular contact’ with vulnerable adults. (Note: In this example, the administrator has received appropriate training.)

• A cook not only runs the kitchen of a care home, orders food and prepares menus and meals but also pays weekly visits to residents in their rooms to ascertain and check what meals are required and their other dietary needs. The cook also helps severely disabled residents eat their food.

• An administrator with a domiciliary care agency works in the agency’s office, and also, in times of staff shortages and high demand, stands in for the agency’s home-help staff by providing less intensive forms of personal care to service users in their own homes. It is likely that a POVA check would be required in this situation. (Note: In this example, the administrator has received appropriate training.)

• A chiropodist has a contract with a care home to provide weekly sessions for the residents.

• An adult placement scheme organiser pays regular visits to the home of an adult placement carer to monitor the placement.

Examples of eligible care workers in care homes

• Registered managers
• Deputy and assistant managers
• Administrative, finance, clerical and reception staff
• Care assistants
• Nurses in care homes that provide nursing on the premises
• Cooks
• Cleaners
• Maintenance workers, gardeners, handy-persons, and so on
• Volunteers (such as ‘friends of the care home’)
• People coming into the home to provide services under arrangements made with the home, such as chiropodists, hairdressers, priests or other religious leaders, persons providing library services, and so on.

Examples of care workers in domiciliary care agencies

• Registered managers
• Deputy and assistant managers including home-care organisers
• Administrative, finance and clerical staff
• Home-care workers and domiciliary care workers
• Home helps, home support workers and domiciliary care assistants
• Volunteers (including those recruited by agencies such as Crossroads or the Red Cross to visit vulnerable adults in their homes).
Responsible individuals

The CSCI will also refer individuals who are responsible for organisations and the owners or directors of companies or services where this is warranted in terms of harm or risk of harm to vulnerable adults.

Former employees

Some employers have referred individuals who had left their employment before 26 July 2004 when the POVA scheme was introduced. This was due to their particular concerns about these individuals and their suitability to be employed as care workers.

Former employees may be referred to the POVA list in two situations:

• where information about a care worker who left a care position after 26 July 2004 subsequently comes to light
• where an employer considers that including on the POVA list a care worker who left a care position before 26 July 2004 is in the interests of the protection of vulnerable adults.

In both cases, the same criteria for referral apply as those for existing employees or approved carers.

Examples

Leaver (post-26 July 2004): A home manager had resigned, apparently in innocent circumstances, having decided to seek out other opportunities. However, a subsequent audit of the home's accounts revealed discrepancies in the handling of residents' monies, particularly in respect of the allowances they received. Further investigation revealed that this effectively amounted to theft by the former manager. A referral was made to the DfES POVA team, and the matter was also referred to the police. This resulted in the former manager being confirmed on the POVA list and receiving a police caution.

Leaver (pre-26 July 2004): A male carer had been dismissed from a care home, for having an inappropriate sexual relationship with a vulnerable adult with learning difficulties, which resulted in her becoming pregnant. The police failed to secure a prosecution because the incident pre-dated recent legislation on sexual offences (which clarified issues surrounding consent). Nevertheless, following the introduction of the POVA legislation, the care home made a referral that resulted in the carer being confirmed on the POVA list, and thus removed the risk of him being in a position to repeat the abuse in the future.

There is no specific guidance about how far back in a person's work history employers can go in making these referrals. Some have checked their records back to the year 2000, and others have referred only when they had very serious concerns about a former worker. These employers point out that it is more difficult to make a fully evidenced case in these types of cases, where supporting information may be less clear and where witnesses may no longer be available. The POVA team and local adult protection staff can advise on this.
Individual referrals

Referrals on the grounds of misconduct that caused harm or risk of harm should be made only in relation to individuals. Block referrals – for example, of whole staff groups – cannot be considered, as each individual must be subject to a separate referral. While links between referrals will be noted, each case will be treated individually and the POVA team will need evidence to show the involvement of each person.

In such cases, employers, managers and regulators should show that there is a link between referrals by noting this on each form and by sending the referrals together in the same envelope. This helps the POVA team to see the broader context of the referrals, and they will make a joint submission to the Secretary of State for Health.

Example
A care organisation referred carers X, Y and Z after suspending them for deliberately sleeping on duty. The carers were employed in a care home for the elderly, including dementia sufferers, and had been discovered during a routine inspection by two of the management team. Carers X and Y were both nurses and jointly in charge of the night shift involved; carer Z was a care assistant. No other staff were on shift at the time. Following investigations and disciplinary action by the employer, it was found that the case against all three carers was proven. However, it was felt that Z had followed the lead of X and Y and effectively had little choice but to do so. As a result, X and Y were dismissed and Z received a final written warning. The POVA case against Z was, therefore, closed, and X and Y subsequently were confirmed on the list.
4c. Grounds for referral

Grounds for referring care workers

Employers must refer a current employee/care worker to the POVA team when they reasonably consider that person to be guilty of misconduct (at work or elsewhere) that harmed or placed at risk of harm a vulnerable adult, and where:

• they have dismissed the worker
• the worker has resigned, retired or been made redundant in circumstances in which the employer would have dismissed them, or would have considered dismissing them
• the employer has transferred the worker to a non-care position or has provisionally transferred the worker pending a further decision
• the employer has suspended the worker on these grounds pending further investigation and decision
• a care worker has been suspended, dismissed or has resigned after having been charged by the police with offences against vulnerable adults, and is awaiting the outcome of a criminal investigation or trial.

Example
A member of staff at a residential service for adults with learning disabilities was found asleep on a waking night shift, which put service users at risk of harm. The worker was dismissed and a POVA referral was made. The manager was new and unfamiliar with the POVA referral process. She took advice from her manager and the local adult protection team who had been involved throughout the disciplinary process in line with the local adult protection procedures. The manager followed the practice guidance step by step and contacted the POVA team for advice on a couple of queries. She found everyone really helpful and the referral process easy to follow. In the end, the person was not listed, but the manager was satisfied that she had fulfilled her responsibilities and accepted the final decision of the Secretary of State. Her advice to others making POVA referrals is to get support, follow the guidance and use the POVA helpline if you are unsure about something.

Grounds for referring workers supplied by employment agencies and businesses

Using the same criteria, referrals about supply workers must be made where:

• the agency or business has decided not to do any further business with the worker on grounds of misconduct that harmed or placed at risk of harm a vulnerable adult
• the agency or business has decided not to supply the worker for further employment in a care position.

In these cases, there needs to be good communication between the home and the agency when allegations are made. The agency makes the referral, and the home is responsible for ensuring that the referral is made.
Example
Two carers were both registered with the same two employment agencies, who secured them work in local CSCI-registered care homes and domiciliary care agencies. It came to light that they were implicated in neglecting vulnerable adults, to the point that serious harm and risk of harm ensued. The two agencies worked together effectively with the care home where the abuse took place to ensure that an effective well-supported referral was made. This resulted in both carers being provisionally included on the POVA list within a short period of time.

Recognising harm

In deciding whether an individual should be referred to the Secretary of State for inclusion on the POVA list, employment agencies and businesses and other providers of care must decide whether, in their view, the individual is guilty of misconduct that has harmed or placed at risk of harm a vulnerable adult.

To do this, they must be able to recognise different types of harm. The definitions and descriptions in No secrets and In safe hands (both found at www.dh.gov.uk/POVA) will assist employers in deciding whether harm has been caused, and in what way.

The King’s College research study (Manthorpe and Stevens, 2005) showed that nearly all of the first 100 POVA referrals involved either neglect, physical abuse or financial abuse. Neglect and physical abuse were more likely to be found in residential settings, and financial abuse was more common in domiciliary care.

Southern Cross Healthcare has provided its managers with the following definitions for different types of abuse. This is not intended to be an exhaustive list, but it does helps staff understand which warning signs to look for.
<table>
<thead>
<tr>
<th>Abuse type</th>
<th>Definition</th>
<th>Examples/warning signs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Physical abuse</td>
<td>Any physical contact that results in discomfort, pain or injury</td>
<td>Hitting, slapping, pushing, shaking. Bruising, finger marks, burns, untreated sores or wounds, under- or overuse of medication, unprescribed or inappropriate medication, use of restraint.</td>
</tr>
<tr>
<td>Verbal abuse</td>
<td>Any remark or comment by others that causes distress</td>
<td>Demeaning, disrespectful, humiliating, racist, sexist or sarcastic comments. Condescending tone of voice, excessive or unwanted familiarity, shouting, swearing, name-calling.</td>
</tr>
<tr>
<td>Psychological or emotional abuse</td>
<td>Action or inaction by others that causes mental anguish</td>
<td>Inflexible regimes and lack of choice. Mocking, coercing, denying privacy, threatening behaviour, bullying, intimidation, harassment, deliberate isolation.</td>
</tr>
<tr>
<td>Sexual abuse</td>
<td>Coercion or force to take part in a sexual act</td>
<td>Inappropriate touching. Pain, itching, bleeding, bruising or injury in the anal, genital or abdominal area. Sexually transmitted disease or recurrent bouts of cystitis. Unexplained problems with catheters. Stained, torn underclothes or sheets.</td>
</tr>
<tr>
<td>Financial abuse</td>
<td>Misuse of money, valuables or property</td>
<td>Unexplained withdrawals from resident’s account, unexplained shortage of money, reluctance by relatives to pay for replacement clothes or personal needs, theft, fraud, pressure in connection with wills or inheritance.</td>
</tr>
<tr>
<td>Information abuse</td>
<td>Failure to adhere to relevant data protection guidance and lack of appropriate information about care</td>
<td>Breach of confidentiality, inappropriate disclosures of information, failing to pass on essential care information.</td>
</tr>
<tr>
<td>Institutional abuse</td>
<td>Failure to recognise individuality and rights as citizen</td>
<td>Inflexible, regimented regimes and lack of choice, communal clothing, overuse of wheelchairs leading to loss of independence, lack of individualised care planning.</td>
</tr>
<tr>
<td>Abuse by omission</td>
<td>Failure to identify and/or meet care needs of individual</td>
<td>Untreated weight loss, pressure sores or uncharacteristic problems with continence. Poor hygiene, dirty clothes, insufficient food or drink, ignoring resident’s requests, unmet social needs.</td>
</tr>
<tr>
<td>Political abuse</td>
<td>When older individuals are denied access to treatment due to their age.</td>
<td>Refer to Evans, G. (1999) ‘Elder abuse: Implications for practice’, <em>Nursing Times</em> Clinical Monograph no 6.</td>
</tr>
</tbody>
</table>

Source: Southern Cross Healthcare Prevention of Abuse policy
Assessing the impact of harm can be difficult, particularly where service users are unable to tell staff what has happened. In such cases, employers and managers will need to take account of:

- changes in behaviour
- unusual distress
- unusual behaviour or reactions – for example, becoming fearful of a shift worker
- observations of staff who know the service user well
- assessments (before and after)
- statements from others – staff, visitors, relatives or service users
- psychologists’ reports
- service user’s history – any previous allegations?

Neglect

Harm can be caused by inaction or neglect as well as by specific actions. Some employers have found it hard to distinguish between actions/inactions that support independence and appropriate, informed risk-taking by vulnerable adults, and those of neglect. Where this is in doubt, reference to the care plan of the vulnerable adult will clarify agreements about acceptable and informed risk-taking.

Examples

Support: A care worker, Mrs D, worked for a domiciliary care agency where she looked after service user Mrs B. Mrs B had health problems that greatly restricted her mobility and meant that there was a risk of harm when she was being transferred from place to place. Her care plan, therefore, stated that two workers were required to get her out of bed each morning. One morning, the second carer was late arriving. Mrs B was insistent that she needed to be up, as she was visiting her daughter that day. Mrs D assessed the situation and, without the assistance of the other carer, helped her get up. Mrs B suffered a strain during this. Although Mrs B did not complain about her injury, Mrs D was dismissed when the issue came to the attention of the agency’s management, and a referral was made to the DfES POVA team. However, having taken account of all the circumstances and, in particular, the fact that this had been a one-off incident where the care worker had been seeking to meet the service user’s wishes, it was concluded that Mrs D did not pose an ongoing risk to vulnerable adults and, therefore, she was not included on the POVA list.

Neglect: As an experienced carer working for a domiciliary care agency, Mrs M’s duties included getting service users up in the morning. Most of them were very frail and Mrs M needed the support of another carer to get them out of bed – a requirement that was fully documented in their care plans. Despite this, Mrs M routinely ignored the plans and arrived at the service users’ homes at her own convenience and got them up on her own, whatever the risk. While some of the service users were not unhappy with this arrangement, others felt bullied. When the situation became known to management, Mrs M was dismissed and a referral made to the DfES POVA team. It was concluded that she was guilty of misconduct that risked harm to vulnerable adults and that she was an ongoing and real risk to them in putting her own requirements before their care needs. She was, therefore, confirmed on the POVA list.
Making judgements – messages from research

The King’s College research into the first 100 referrals to the POVA list identified some of the complex judgements that employers and managers make in investigating and assessing allegations of misconduct.

• Determining the seriousness of the misconduct
  > Is it a single incident or is there a history of allegations?
  > What is the degree of harm caused – visible, psychological?
  > Is there a breach of policies designed to protect vulnerable adults?
  > Has there been inadequate management, poor clinical judgement or deliberate abuse?
  > Statements from other staff can be revealing – for example, in cases of bullying or intimidation.
  > The perspectives of other agencies such as adult protection teams can be useful.

• Establishing the facts of the case
  The normal disciplinary process and reports from these proceedings provide the basis of the POVA referral. Robust investigation is particularly important when staff deny the allegation and their involvement:
  > importance of good evidence and quality of investigation
  > skills in taking and assessing witness statements
  > making sense of conflicting interpretations
  > level of proof required – assessing on the balance of probabilities.

• Interpreting the significance of events
  Employers must use their judgement to determine if there has been deliberate abuse or incompetence, remembering that a POVA referral must be made when harm has been caused or if there is a risk of harm. Examples include:
  > poor practice and over-involvement in managing money – for example, when acting on behalf of service users
  > inappropriate reactions to challenging behaviour – for example, an instinctive reaction that is abusive
  > overstepping emotional involvement – for example, when banter goes too far
  > blurred lines between incompetence and deliberate abuse, especially in cases of neglect – for example, not responding to alarm calls
  > poor-quality service generally, as well as the specific actions of the individual worker.

• Staff mitigation
  Staff may claim a variety of reasons for their behaviour, which employers need to weigh up in their decision-making:
  > poor working conditions: understaffing and overwork
  > lack of training: inadequate training or incompetence in doing the work
  > mental health: personal stress often linked to working conditions
  > intentions: misunderstood or accidental – the person never meant to harm vulnerable adults.
Each case is considered on its merits, and the Secretary of State will give due consideration to mitigating factors. However, while such factors may be used by staff in their defence, none of them justifies harming vulnerable adults or putting them at risk of harm. In addition, employers are entitled to dispute any of these factors if they are not true.
4d. When to make a POVA referral

There are two key times when employers and managers should consider making a POVA referral after they have come to believe that a worker or carer is guilty of causing harm to a vulnerable adult:

• when the worker or carer has been suspended
• when the worker or carer has been dismissed.

The timing of the POVA referral will depend on the seriousness of the misconduct and whether the provider has reasonable evidence to support the allegation. If the allegation is serious and is believed to have substance and the worker is suspended because of it, then a referral may be made at the earliest possible moment. If the employer is unclear about whether the allegation has substance but has suspended the worker while more evidence is obtained, the referral should wait until this information is available.

Employers and managers must address issues of harm to vulnerable adults directly through their disciplinary processes. If they are not tackled in this way, the grounds for a POVA referral may be undermined.

When the worker or carer is suspended

The criteria for deciding whether to make a referral at suspension stage are:

• the seriousness of the alleged abuse
• whether the employer has reasonable evidence that harm or a risk of harm was caused.

In the first year of the POVA scheme’s operation, employers have been able to refer individuals who are suspended pending further investigation into their alleged misconduct. This has been to ensure that potential abusers do not move around the care sector while suspended, pending an investigation.

Experience shows that, at this stage, there is often very little information with which to evidence the referral, and the POVA team can usually only make a provisional listing and then wait until the disciplinary investigation is concluded.

In a large proportion of suspended cases, the allegations are subsequently unproven. While that should not deter care organisations from making a referral where suspension is involved, it does reinforce the need to consider carefully the timing of the referral.

There is no hard and fast solution, but experience suggests that an early referral should be made only:

• where there is reasonable evidence that the carer is guilty of misconduct that harmed a vulnerable adult, and it appears that the carer is an ongoing or serious risk to vulnerable adults, and
• where the alleged abuse is very serious (for example, cases involving sexual assault and/or rape, physical assault or harm, deliberate cruelty or withholding of care).

Reasonable evidence might include video footage, clear witness statements or clear evidence of harm, for example wounding. A decision by the police to investigate the matter is not in itself an indicator of guilt. In judging this, employers should consider all the circumstances with particular regard to the vulnerability of the adult involved and its impact on them.

Examples

*Inappropriate referral at suspension:* A care home made a referral following the suspension of a care worker for verbally abusing a resident. The referral was made immediately following the suspension, and included very little information on the incident, and the worker’s past history and so on. As a result, the DfES POVA team needed more information and wrote to the care home about that. In the meantime, the care home completed an investigation of the allegation, and reinstated the worker when it became clear that the allegation was not proven. On hearing of this, the POVA team closed the case, but not before significant and fruitless extra work had been put in by the team and the care home.

*Appropriate referral at suspension:* A domiciliary care agency made a referral about a care worker who was suspected of financial abuse and had been suspended as a result. A preliminary investigation and local strategy meeting had been undertaken by that stage, and the case was moving towards a full investigation and disciplinary action. The referral included sufficient information to enable the worker to be provisionally listed quickly. The worker was subsequently confirmed on the list following the full investigation, which resulted in dismissal. As a result the worker had been stopped from working (and thus from posing a risk to others) promptly, and when it became clear that it was appropriate.

Some employers will inform the POVA team that they are about to make a serious referral, particularly if it is an early referral at suspension. The team can then respond to it urgently. However, this information must be followed up with a formal referral, which can only be made in writing, using the referral form and enclosing written evidence and supporting material.

Some employers fear they will face litigation if they refer a care worker to the POVA list when they have been suspended, if it is later found there is no case to answer. This has not been the experience of the POVA team so far, nor of the POCA team. In making appropriate referrals, employers are taking the action that is required by law. However, unless the circumstances are particularly serious, the referral will be stronger and better evidenced if it is made after the disciplinary proceedings and final decisions.

**Referral following disciplinary proceedings and dismissal**

Most referrals will be made following the employer’s investigations, when their decisions about the misconduct and the employment status of the care worker
are completed. All of the appropriate disciplinary proceedings have been held and concluded, and the employer is able to send appropriate information and evidence to the POVA team.

**Example**

A care home suspended carer Mr K following allegations that he physically and verbally abused two residents. The abuse did not cause serious injuries and the home was aware that Mr K did not work elsewhere. The home, therefore, made the judgement to hold off referring the matter to the DfES POVA team until the disciplinary process was complete. Following full investigation, Mr K was dismissed, and a full referral submitted. This followed the format of the standard referral form, and included signed witness statements from every staff member involved, full transcripts of the investigatory and disciplinary meetings held, and details of training received by Mr K. These showed that all angles had been considered and that a pattern of behaviour, which showed Mr K to be an ongoing risk to vulnerable adults, was involved. The quality of the referral allowed the DfES POVA team to progress the case swiftly. After Mr K had been given the opportunity to comment on the content of the referral, which he declined to do, he was promptly confirmed on the POVA list.

Where people resign before the disciplinary process has begun, it is essential to carry out and conclude the disciplinary hearing, gathering all of the material as if the person were there. This ensures that the evidence base exists for a POVA referral in order to protect vulnerable people in future.

The POVA referral should be made before any appeals against the disciplinary proceedings for unfair dismissal are heard. For adult placements this is the equivalent of appeal against panel decisions. New information arising from the appeal should be forwarded to the POVA team as soon as possible.

In these cases, the employers and managers are appropriately informing the POVA team where they have dismissed a care worker for misconduct or terminated an adult placement carer’s approval. The POVA referral process is quite separate from the disciplinary process and focused entirely on informing the Secretary of State about the disciplinary decisions and outcomes.

**Example**

In its dismissal letter, one employer includes the following statement:

‘We will be considering referring you to the Secretary of State’s list of care workers who are unsuitable to work with vulnerable adults. Please note that referrals to POVA are a statutory requirement and do not form part of this organisation’s internal disciplinary and grievance procedure.’

**Police investigations**

Referrals should be made when a care worker has been suspended or dismissed or has resigned after having being charged by the police with offences against vulnerable adults and is awaiting the outcome of a criminal investigation or a trial.
The responsibilities of employers and managers remain in place even when the police are involved and they should keep copies of any written material given to the police. The POVA team still need comprehensive evidence and information to support such a referral.

When there is a police investigation, the POVA team has the option to list individuals provisionally and then wait until the investigation is completed.

However, the POVA team have received many referrals where the police are involved but there is little or no evidence to support the referrals. Experience shows that a large number of these eventually result in the individual not being confirmed on the list because there is no substance in the allegations. Instead, where the referring organisation retains ownership of the issue (in terms of the particular employment issues) and makes a reasoned judgement of whether an allegation is valid, the referral is far more likely to result in a POVA listing.

**Examples**

**Inappropriate referral:** When there was a spate of thefts from residents at a care home, carer Ms G was suspended because she was the only carer on duty during the shifts when the thefts had occurred. The home immediately called in the police, and also submitted a referral with very little more information than the details given above. Because of the uncertainty, a decision was taken to seek more information before putting Ms G on the POVA list provisionally. When the police investigation eventually revealed that Ms G was not the culprit, the POVA case was closed.

**Appropriate referral:** Carer Mr S was accused of having sexual intercourse with a care home resident who had learning difficulties – something that is illegal and tantamount to rape. Although there was no physical proof, the vulnerable adult, who had no prior record of sexualised behaviour or of making false allegations, was clear and consistent about Mr S’s alleged actions. Furthermore, what was known of Mr S’s previous behaviour supported the case for considering the allegations valid. The home, therefore, made a prompt referral, including the above details, even though the matter was still being investigated by the police, and Mr S was provisionally placed on the POVA list. The police investigation ultimately failed to result in a criminal conviction, largely because it was felt that the resident would not be able to stand up to a trial and Mr S had ensured that there was no DNA evidence. Nevertheless, it was concluded that the civil standard of proof (that is, the balance of probability) had been met and Mr S was confirmed on the POVA list.

**Misconduct outside of employment**

Referrals can be made of staff who have been convicted of offences outside their employment if the incidents have placed vulnerable adults at risk of harm.

**Examples**

The support worker supplied to a registered care home one day a week by local social services had been charged with sexual assault of vulnerable adults
in another setting. Social services could not refer him to the POVA list as his employment with them was not CSCI registered. However, the care home was registered and so could refer him, as under the legal definition, employment ‘means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract’, and the harm to a vulnerable adult does not have to be in the course of his employment.

A domiciliary care worker was, unknown to the agency which employed her, visiting a client outside her normal working hours, and on several of these visits, she removed property from the client’s home. Knowledge of the thefts came to light only when the client’s daughter complained. The agency was able to make a POVA referral because the worker was in a ‘care position’ and had caused harm to a vulnerable adult.

**Employment tribunals**

In cases where an employment tribunal becomes involved, this should not in any way affect the decision to make a referral to the POVA list, which is an entirely separate process.

If an ex-employee loses a case at an employment tribunal, that will be taken into account in the decision to list the individual. If the ex-employee wins the employment tribunal case, however, the decision about their listing will depend on the tribunal’s reasoning. A person will be removed from the list only if it can be shown that they have not been guilty of misconduct that harmed a vulnerable adult.

**Out-of-court settlements**

If an out-of-court settlement is reached between parties in an employment dispute, a listed individual will remain provisionally listed until such time as the evidence has been collected and reviewed. A decision will then be made about their listing.
5. **POVA referral for adult placement**

This section outlines key practice points for adult placement schemes in making referrals to the POVA list. While the referral procedure is basically the same as for other services, some differences arise due to the nature of adult placement services; these are summarised here. All other sections of this report apply to adult placement.

Adult placement schemes operate in a similar way to fostering agencies in recruiting, assessing, approving and supporting individuals and families – known as ‘Adult Placement (AP) Carers’ – who provide a range of services to people who need support to live in and take part in their community.

Adult placement services differ from other services under the POVA scheme because scheme managers are not the employers of the AP carers and because AP carers are approved rather than employed.

**POVA referral for adult placement – explained**

The Protection of Vulnerable Adults (POVA) scheme is a list of people who are banned from working with vulnerable adults in registered care services in England and Wales. AP carers who work with vulnerable adults aged 18 years or over in registered adult placement schemes are eligible for referral to the POVA list. This means all those working in registered placement schemes who see clients, including:

- adult placement scheme managers and organisers
- administrative, finance and clerical staff
- adult placement carers.

In the POVA scheme, the definition of ‘employment’ is intentionally wide, including both paid and unpaid work and self-employed AP carers. In this context, the term ‘employer’ or ‘manager’ means anyone who directs and supports self-employed care workers or AP carers.

AP carers are not dismissed but have their approval as an adult placement carer terminated. The decision to terminate this approval is made by an independent panel, based on reports from scheme workers.

Adult placement scheme managers must make a referral to the POVA list whenever an AP carer is reasonably considered to be guilty of misconduct that has harmed vulnerable adults or has placed them at risk of harm.

**Developing local policies and robust procedures**

For adult placement schemes, there must be clear procedures for investigating and terminating AP carers’ approval in cases of misconduct relating to the harm of vulnerable adults. These may involve agreements with local adult protection units and should complement local policies.
The adult placement scheme should agree a protocol with the relevant local authority’s adult protection team or nominated lead person that clarifies:

- the roles of the adult protection team and/or care managers and the roles of the scheme and worker in the case of an allegation of abuse against an AP carer
- the relationship between the local authority investigation process and the scheme’s internal process.

The adult placement scheme should ensure that adult placement is recognised and included in the local authority’s adult protection protocols developed in line with No secrets (2000) guidance. Detailed advice is available in the National Association of Adult Placement Services (NAAPS) good practice guidance for cases of allegations of abuse against AP carers.

For adult placements, carers found guilty of misconduct relating to harm of a vulnerable adult will have their approval terminated by an independent panel. The panel should base any decision about the continuing approval of the AP carer on:

- an up-to-date carer review report
- the report of the investigation, including any conclusions and recommendations made
- evidence from the AP carer.

See NAAPS good practice guidance for the process following an allegation.

In all social care services, and particularly small ones, such proceedings can make a great impact, both on service users and on other staff. In adult placements, for example, an investigation can be devastating for the carers and can irretrievably damage the relationship with the specific vulnerable adult so that the placement is lost even where the carers have been cleared of the allegations. This can also impact on other people in the placement, even where there has been no concern about their care.

According to the good practice guidance issued by NAAPS, when there has been an allegation against an AP carer, the safety of the person in the placement is paramount and any allegation should be carefully and rigorously investigated. However, it is important that this response is not in itself abusive and does not damage a good placement beyond repair. The impact of an allegation of abuse on the relationship between the person making the allegation and the AP carer should not be underestimated.

**Who makes POVA referrals?**

In cases of misconduct relating to the harm of vulnerable adults, adult placement scheme managers are responsible for making POVA referrals.
Grounds for referring AP carers to the POVA list

The criteria for referring AP carers are:

• where the AP carer’s approval has been, or would have been, terminated because of misconduct causing harm or a risk of harm to a vulnerable adult
• where a placement has been suspended pending further investigation
• where a placement has been suspended or the carer’s approval is terminated after the AP carer has been charged by the police with offences against vulnerable adults.

Timing of referrals

A POVA referral is usually made only when the scheme’s own investigations are concluded. Where the offence is very serious, a referral can be made when a carer is suspended, in which case they may be provisionally listed until the outcome is clear. As with employed staff, POVA referrals are quite separate from the approval procedures of the adult placement scheme; they flow from the process but do not influence it.

For adult placement schemes, the investigation is usually led by the local social services’ adult protection staff, and the adult placement scheme staff will be informed of interim and final conclusions. In these cases, agreement should be reached about the timing of any POVA referral.

Where referrals are made before the final outcome of an investigation is known, information should be sent to the POVA team as it becomes available, including any that is generated by an appeal against the independent panel’s decision. As these carers are not employees, their only recourse is to the scheme’s complaints procedure, which may include appeal to the local government ombudsman.

Making referrals

POVA referrals for adult placement schemes and carers are made in exactly the same way as for all other services, using the same form and standards of reporting. The person making the referral should indicate clearly that the person being referred is an adult placement carer or worker.

The POVA team are available to support anyone wishing to make or discuss making a referral. They can be contacted by email via the POVA helpline and by telephone on the advice line: 01325 391 328.
6. Making a POVA list referral

Making a referral to the POVA list: a flowchart

Key questions

Expectations

Practice overview

Practice points

Key questions for employers and adult placement managers

• Have you completed the POVA referral form?
• Have you gathered together all of the information required in this form?
• Are documents clearly referenced, signed and dated? Have you kept copies?
• Have you communicated clearly with everyone involved in the referral, including witnesses and local adult protection staff?

Expectations

• Employers and managers should provide the information and supporting material to demonstrate their decision that the referred individual is guilty of misconduct in harming a vulnerable adult.
• While employers and managers are not required to comment on an individual’s suitability to work in care positions in future, they are expected to provide information to inform the POVA team and the Secretary of State for Health in making this judgement.
• Referrals should be made using the official referral form with clear cross-referencing to attached documents. Information should be clear and factual, and accompanied by formal statements and supporting evidence.

Practice overview

The information that is required is listed in the POVA referral form and guidance.

The POVA team have no powers of investigation; they rely on the evidence provided by employers and managers to support their referral, which should be robust. If a case goes to an employment tribunal, it will be the employer who must prove that misconduct occurred.

The quality of the POVA referral is often determined by the quality of the employer’s employment and recording practices.

Employers and managers are reminded that this is a legal process that requires good evidence to a civil standard. The decision to list will be determined by the quality of the evidence provided. It is not sufficient to write or email simply asking the POVA team to list an individual who has been dismissed.
Practice points

Providing evidence to support POVA referrals

Confidentiality and protecting whistle blowers and witnesses

Witnesses and witness statements

Malicious referrals

Using the referral form

Communication
6a. Making a referral to the POVA list

Events, actions and decisions – follow the numbers

1. Incident reported and allegation made.
2. Manager ensures safety of vulnerable adult and keeps them involved/informed as appropriate.
3. Follow local procedures, informing and taking advice if needed from CSCI/CSIW/local adult protection team/police.

<table>
<thead>
<tr>
<th>4. Suspension of individual</th>
<th>Consider POVA referral</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Is it harm to a vulnerable adult?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Is the person under investigation a care worker?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Is it misconduct?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Is the offence very serious?</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Is there reasonable evidence that harm or risk of harm has been caused?</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>If no, take no action in relation to POVA list at this stage.</th>
<th>If yes, complete POVA referral form. Provide information as available. POVA team may list provisionally and inform the individual.</th>
</tr>
</thead>
</table>

5. Alert others and start local processes – for example, CSCI/CSIW, adult protection team, police.
6. Undertake investigation into alleged harm.
7. Conduct local disciplinary proceedings.

<table>
<thead>
<tr>
<th>8. Disciplinary outcome</th>
<th>9. Consider making a POVA list referral</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If referred to POVA list at suspension stage:</td>
</tr>
<tr>
<td></td>
<td>Inform POVA team. Submit information to support removal from list. POVA team recommend to remove.</td>
</tr>
<tr>
<td></td>
<td>Confirm outcome to POVA team. Provide supporting information. POVA team consider referral information and recommend if provisional listing is to be confirmed.</td>
</tr>
<tr>
<td></td>
<td>Consider POVA list referral:</td>
</tr>
<tr>
<td></td>
<td>Is it harm to a vulnerable adult?</td>
</tr>
<tr>
<td></td>
<td>Is the person under investigation a care worker?</td>
</tr>
<tr>
<td></td>
<td>Is it misconduct?</td>
</tr>
<tr>
<td></td>
<td>Has the worker been dismissed?</td>
</tr>
<tr>
<td></td>
<td>If yes, complete POVA list referral forms and provide supporting information. POVA team examines evidence and recommends. Employers should forward any further information arising from a local appeal to the POVA team as it becomes available. Listed person may appeal to Care Standards Tribunal.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>No action.</th>
<th></th>
</tr>
</thead>
</table>

|                        | If not previously referred to POVA list: |
|                        |                                    |

6b. Providing evidence to support POVA referrals

The information given to the POVA team is used to build a wide picture of the situation and circumstances of the incident and to make judgements about whether or not to place the individual on the POVA list. The POVA team need as much of the context, history, chronology and supporting evidence as possible to judge the suitability of this individual to continue to work in care positions.

- When the POVA team are trying to judge the suitability of a care worker to work with vulnerable adults, a full picture can help them avoid malicious referrals and make recommendations on the ‘balance of probability’. The judgements that employers make about misconduct will have included this wider exploration and investigation of the incident.
- Referral information should be as comprehensive as possible and provide a clear narrative of what happened, who was involved and the details of the events. The more that can be provided with the initial referral, the better, as this will avoid prolonged correspondence and further requests for information. Documents should be signed and dated.
- The DfES form must be used and must be sent through the post with accompanying evidence. Forms should be typed where possible, with full answers and clear cross-checking to attached documents. Information must be well ordered, with clear referencing and sign-posting. Descriptions should be made as factually as possible. Employers recommend sending documents by special delivery so that there is a record that they have been sent and securely delivered.
- Information about the incident should be recorded at the time it occurs – and if this is not the case, then the referral should explain why. For example, someone may not have reported an incident immediately but may have done so the next day after reflection.
- Employers should include copies of the relevant policy against which they have disciplined the individual, and other relevant policy documents including their disciplinary procedures.
- Adult placement scheme managers should send copies of the relevant policies governing the powers and conduct of the independent panel. Other relevant policy documents are also needed, including the procedure followed when an allegation has been made against an adult placement carer, as well as the procedure for termination of approval.
- Transcripts of disciplinary hearings and review panels are most useful. Where resources are not available to do this, clear summaries of findings, judgements and actions taken are needed. Include properly minuted notes of meetings showing why decisions have been made.
- Employers and managers should keep copies of the material they send to the POVA team in support of their referrals. If there is an appeal, the employer and witnesses will be required to support the initial referral and may need to refer back to this material.
Example
Sense North has a clear checklist for making POVA referrals, which staff use to ensure that they have taken appropriate actions and included all the relevant documents. Only certain people in the organisation can make POVA referrals, and practice is monitored centrally.
6c. Confidentiality and protecting whistle blowers and witnesses

Vulnerable adults and whistle blowers should be supported and protected when disclosing instances of abuse. However, being POVA listed has serious consequences for the referred individual and it is important that he or she has full information about the allegations that have been made and by whom.

Where there are concerns about the safety of whistle blowers, employers and managers can send copies of statements that have been made anonymous to protect witnesses. However, should the referral proceed to an appeal to the Care Standards Tribunal, the names of witnesses will be required. At the referral stage, there is an option to flag information that the referred individual may not have seen and that needs to be kept confidential at least until the appeal stage.
6d. Witnesses and witness statements

At the referral stage, employers should tell witnesses that their statements may be used for appeals to the Care Standards Tribunal and that they may be asked to attend the hearing. They should be assured that they will be supported throughout tribunal appearances.

Where possible, the home addresses of witnesses should be given to the POVA team so that they can be contacted at a later date, should the case go to the tribunal. Their involvement may be key and it is easy to lose touch with them if they leave their employment. Some appeals have been hindered by the unavailability of witnesses.

Employers should include witness statements that:

• are clearly set out, preferably typed and clearly numbered and titled
• clearly state the name of the witness, the context in which they work and their connection to the case
• include dates and the length of time the individual has worked in the service
• give a clear account of the narrative, including details of the incidents, dates and times, context and impact of harm
• name people specifically and say what action they took
• conclude with a statement of belief in the above statement
• are signed and dated.
6e. Malicious referrals

Employers are responsible for ensuring that malicious referrals are not made about individuals. Their own disciplinary proceedings should ensure that this does not occur, and the POVA referral process includes the following safeguards for individuals:

- The quality of the information provided with the referral will be examined, and cases will only proceed when they are deemed clearly suitable for inclusion on the list.
- The individual being referred has the opportunity to comment on the events that led to the referral.
- Listed individuals can appeal the Secretary of State for Health’s decision through the Care Standards Tribunal.
6f. Using the referral form

Use of the standard form for making referrals to the POVA list is now mandatory. Introduced and revised in 2005, it will continue to evolve as it becomes clearer which information is needed to support robust recommendations. In its present form, it leads employers and managers through the required information so that they can make good referrals. It must be completed and posted with additional pages attached.

Example
The DfES POVA team’s experience of dealing with some 3,000 referrals clearly shows that, where a referral is made using the referral form and providing the information indicated on it, the process goes much more smoothly. In particular, it is far less likely that further or detailed exchanges of information will be needed between the POVA team and the care organisation, and much more likely that a prompt decision will be made.

Providers who have used the form say that they like it and find it helpful in systematically retrieving and annotating all the required information. BUPA has found that, with experience, it is providing better-quality information and relevant supporting documentation. Consequently, there are fewer further requests for information or clarification from the POVA team.

Employers should not delay sending in the form if they do not have every piece of information required (see below). The POVA team will contact them if they do not have sufficient information, and final pieces of evidence can be submitted after the main referral.

Please note that the form will be revised from time to time. Employers and managers should always use the latest version held on the Department of Health website.

When making a referral, the following information is required:
<table>
<thead>
<tr>
<th>Information about the individual being referred</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. General information</td>
<td>For example, copy of letter of employment and/or application form, job description. Include details of the person’s care position and normal duties (e.g. personal care of vulnerable adults). For adult placement carer, show evidence of their approval.</td>
</tr>
<tr>
<td>Surname</td>
<td></td>
</tr>
<tr>
<td>Forename(s)</td>
<td></td>
</tr>
<tr>
<td>Maiden name or alias</td>
<td></td>
</tr>
<tr>
<td>Title</td>
<td></td>
</tr>
<tr>
<td>Date of birth</td>
<td></td>
</tr>
<tr>
<td>National Insurance number (if known)</td>
<td></td>
</tr>
<tr>
<td>Position held</td>
<td></td>
</tr>
<tr>
<td>Dismissed, suspended or resigned? (If resigned, please confirm that the individual would have been dismissed or considered for dismissal)</td>
<td></td>
</tr>
<tr>
<td>Last known address</td>
<td></td>
</tr>
<tr>
<td>Postcode</td>
<td></td>
</tr>
<tr>
<td>Telephone number</td>
<td></td>
</tr>
<tr>
<td>2. Evidence of the person’s employment in a care position</td>
<td>Give starting dates and, if person has been dismissed or suspended, dates when this occurred.</td>
</tr>
<tr>
<td>3. Length of the person’s employment in post/with your organisation</td>
<td>Include details (post, length of service) of previous/other jobs (where known) and of any previous disciplinary action or complaints against the person.</td>
</tr>
<tr>
<td>4. Details of the person’s employment history</td>
<td>For example, physical, sexual or financial abuse, neglect.</td>
</tr>
<tr>
<td>5. Details of the person’s relevant skills and qualifications and training received</td>
<td>Describe the conduct/misconduct. Please use an extra sheet if necessary, clearly labelling the section to which it refers.</td>
</tr>
</tbody>
</table>
| 6. Summary of alleged misconduct, to include the nature of the abuse | For example:  
• physical injuries, sexually transmitted diseases, pregnancy  
• emotional: changes in eating and sleeping patterns  
• behavioural: changes in dress or attitude.  
Give details of whether the victim(s) has/have given those details or whether they are based on an assessment of the impact (including details of who was involved in that assessment).  
<p>| 7. Explanation of how the person harmed, or put at risk of harm, the vulnerable adult(s) |          |
| 8. Impact of the alleged abuse on the victim(s) |          |</p>
<table>
<thead>
<tr>
<th>9. Background details on the victim(s)</th>
<th>For example, age, medical condition, level of care needed to assist his/her daily life, level of capacity, mobility.</th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Details of the care relationship between the person and the victim</td>
<td>For example, personal/domiciliary carer, care assistant, nurse, home manager, volunteer, adult placement carer. Include details of the care usually provided – e.g. help with getting up, dressing, medication.</td>
</tr>
<tr>
<td>11. Evidence of alleged misconduct – and list of documents provided</td>
<td>For example, witness statements, hearing notes. Please number documentation according to the list.1.2.3.</td>
</tr>
<tr>
<td>12. Details of investigations – and their conclusions – carried out to date</td>
<td>Include copies of relevant papers (statements, minutes of meetings, notes from disciplinary hearings), signed if possible. Send copies of the relevant policy against which the individual has been disciplined, and other relevant policy documents including the organisation's disciplinary procedures. The POVA team has found that, when available, transcripts of disciplinary hearings are most useful. When these are unavailable, clear summaries of the findings and conclusions of disciplinary hearings should be provided. In the case of suspension pending investigation, the planned investigation activities should be described.</td>
</tr>
<tr>
<td>13. Details of the action taken against the person</td>
<td>For example, suspension, dismissal or transfer to alternative employment not involving contact with vulnerable service users. Please use an extra sheet if necessary, clearly labelling the section to which it refers.</td>
</tr>
<tr>
<td>14. Information on police involvement or any other agency</td>
<td>For example, CSCI, local adult protection team, social services, voluntary or independent sector agency.</td>
</tr>
<tr>
<td>15. Details of proposed further action</td>
<td>For example, dates of any scheduled or adult protection investigations and/or disciplinary hearings. Please use an extra sheet if necessary, clearly labelling the section to which it refers.</td>
</tr>
<tr>
<td>16. Any other information considered relevant to the referral</td>
<td>If relevant, include brief details of any other employees involved in the abuse, and complete additional referral forms for them as appropriate. State if you have referred the individual to another body such as the Nursing and Midwifery Council.</td>
</tr>
<tr>
<td>---------------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>17. Employer details: name, address and postcode</td>
<td></td>
</tr>
<tr>
<td>18. CSCI registration number</td>
<td>Please enclose a copy of the certificate with the referral.</td>
</tr>
<tr>
<td>19. Type of establishment</td>
<td>For example, care home. Include details of the number and nature of service users and of the care provided.</td>
</tr>
<tr>
<td>Contact name</td>
<td></td>
</tr>
<tr>
<td>Contact number</td>
<td></td>
</tr>
<tr>
<td>Email address</td>
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<tr>
<td>Position</td>
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</tr>
<tr>
<td>Signed</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td></td>
</tr>
</tbody>
</table>

**New information**

When new information comes to light or an allegation proves groundless, employers and managers must write to the POVA team, enclosing details of the evidence. Information can be sent to the team at any time.
6g. Communication

Communicating with vulnerable adults

Respond, an organisation representing service users, highlights the importance – throughout the whole process – of keeping vulnerable adults informed as much as possible about what is happening, including the POVA referral.

Communicating with adult protection teams and CSCI/CSIW

Care homes have a legal obligation – under Regulation 37 of the Care Homes Regulations – to notify CSCI or CSIW of significant events and allegations of misconduct. There are similar notification requirements for domiciliary care agencies, and also for adult placement schemes under Regulation 33 of the Adult Placement Scheme Regulations. Local adult protection procedures will require similar notification to the local adult protection team when incidents occur.

Therefore, by the time the POVA referral is made, employers and managers will have been in touch with the local adult protection coordinator, in line with the local adult protection procedures, and also with CSCI/CSIW to inform them of the allegations and investigations.

Regulators and the adult protection teams should be informed of the referral; they will also support employers and managers in making referrals and they can be consulted for advice during the referral process. In addition, CSCI and CSIW will wish to be kept informed of what arrangements that have been made to assure the well-being of service users pending conclusion of the matter, and will want to be told the final outcome.

Communicating with the POVA team

The completed form and supporting information should be sent to the POVA team at:

The Manager
Protection of Vulnerable Adults List
Ground Floor E, Mowden Hall,
Staindrop Road
Darlington
Co Durham DL3 9BG

preferably by special delivery. Referrals cannot be made by telephone or email.

For employers, there is a POVA email helpline and a telephone advice line: 01325 391 328. POVA team officers will be glad to assist with any questions employers may have when making referrals.
Communicating with referred individuals

Employers should inform individuals that they are referring them to the POVA list. In some circumstances, employers prefer not to do this, but this should be exceptional. Some employers include in their formal correspondence relating to disciplinary proceedings a statement of their intention to refer the individual to the list.

**Example**

BUPA tells people that they may be referred to the POVA list at each stage in the investigation and disciplinary process, that is:

- when they are first suspended
- when they are invited to a disciplinary hearing
- when they are dismissed.

Once provisionally listed, the individual will be contacted by the POVA team, and will receive copies of the documentation for their consideration and comment. In this way, the process is transparent and complies with the *Human Rights Act*.

Communicating with witnesses

Employers should ensure that witnesses are not bullied, intimidated or involved in collusion with a staff member.

In the initial referral and until the point of appeal, witness statements and evidence can be kept anonymous. However, if the listed individual appeals to the Care Standards Tribunal about their listing, then all the witnesses and those who have made statements may be named.

Employers should take this into account in preparing referrals, and should make accurate assurances to staff and witnesses about confidentiality, anonymity and their likely role in the event of an appeal against the POVA listing.

Employers are responsible for ensuring that witnesses understand that they may be required to stand by their statements right through to a Care Standards Tribunal. They should also ensure that the witnesses can be contacted by the POVA team, even if they leave their present employment – for example, by keeping an up-to-date record of their contact details and by providing the POVA Team with their home address.

Communicating with other regulatory bodies

When making a referral to the POVA list, employers and managers should also consider making a referral to other appropriate regulatory bodies such as the General Social Care Council and the Nursing and Midwifery Council (NMC). This is not done by the POVA team but is the responsibility of the referring employer or manager.
Example
Where relevant, BUPA makes referrals to the NMC at the same time as the POVA referral.

As soon as a care worker is provisionally included on the POVA list, prompt referral to other appropriate regulatory bodies should be considered by the person who has made the referral to the POVA list. Equally, when a worker is removed from the POVA list, the person who made the referral should inform the other regulatory bodies that they may have contacted of that removal.

The POVA team will, however, cross-reference referrals to the POCA (Protection of Children Act) list.
7. **What happens after referral?**

**Expectations**

*Practice overview*

**Practice points**

**Expectations**

Officials process the information, making a provisional listing where appropriate, and consider whether the individual should also be placed on the POCA (Protection of Children Act) list.

They will inform the referred individual of the provisional listing, requesting more information from both sides as required. When all the available evidence is compiled, a recommendation about whether to list or not is made to the Secretary of State for Health.

Individuals confirmed on the POVA list have the right of appeal to the Care Standards Tribunal.

**Practice overview**

The processing of referrals often involves further collection of information and comment on it.

The POVA team will make contact with the referring organisation and the referred individual throughout the process. Both sides will be given copies of all information and comments made.

The decision-making process may take time, and employers may be asked for further information and to comment on the referred individual’s observations.

Employers and witnesses should be prepared to support their referrals when appeals are made to the Care Standards Tribunal.

**Practice points**

*What happens when referrals are received?*

*Removing people from the confirmed list*

Care Standards Tribunal
7a. What happens when referrals are received?

The POVA team check referrals to ensure that they meet the legal criteria:

- Is the organisation one of those specified in the *Care Standards Act*?
- Is the person a care worker?
- Did the misconduct harm, or risk harm to, a vulnerable adult?
- Is the person who has been referred unsuitable for further care work?

The team also scan the referrals looking for cases of serious harm so that these can be given priority.

If the referral is within the legal definitions, the referral information is reviewed and further information obtained if needed. A decision whether or not to list the individual provisionally, pending further review, is made as quickly as possible. If the individual is provisionally listed, the following actions are taken:

- The individual is considered for listing on the Protection of Children Act (POCA) list if it is thought that they are unsuitable for work with children.
- Both the organisation and the individual are notified of the provisional POVA listing.
- Except when there are on-going police investigations, the individual can comment on the evidence supplied with the referral. They will receive full details of the information submitted by the referring organisation and copies of all papers.
- The individual can make written observations within 28 days of provisional listing as to why they should not be confirmed on the POVA list (and the POCA list where this applies).
- The referring organisation is asked to comment on these observations.
- This process of information gathering and exchange continues for as long as it takes for the POVA team to be able to make recommendations to the Secretary of State for Health.
- When ready, the POVA team prepares a report for the Secretary of State, based on all the available evidence, which includes a recommendation about whether or not to list the individual.
- If the Secretary of State decides that the individual’s name should not be confirmed on the POVA list, the POVA team immediately removes the provisional entry from that list and from the POCA list if the name has also been provisionally included. The individual and the referring organisation are informed of this.
- If the Secretary of State decides that the individual’s name should be confirmed on the POVA list, the POVA team immediately confirms the listing.
- Immediately the Secretary of State has made the decision, notice of it is sent to the individual and to the referring organisation. At the same time, the individual is either removed from or confirmed on the list.
- Where an individual has been provisionally listed while suspended or temporarily transferred to a non-care position, the decision to confirm the listing (or not) is made only when the referring organisation has made its final decision about the individual.
• Referral information is kept for future reference by the POVA team even if an individual is not listed. A pattern of repeated referrals may lead to a person being listed.

• Individuals who are confirmed on the list stay on it for 10 years, after which they can apply for a review. This time period is only five years if the individual was under the age of 18 when they were first listed.
7b. Removing people from the confirmed list

There are only three ways in which individuals may seek removal from the POVA list:

• removal by the Secretary of State for Health
• appeal to the Care Standards Tribunal
• application for review of inclusion on the POVA list.

Removal by the Secretary of State for Health

An individual who is confirmed on the POVA list may ask the Secretary of State to have their name removed from the list. The Secretary of State can remove an individual from the list at any time if satisfied that the individual should not have been included on it. If the Secretary of State decides not to remove an individual from the list, that person will have the right of appeal to the Care Standards Tribunal.

Appeal to the Care Standards Tribunal

An individual who is confirmed on the POVA list has the right of appeal to the Care Standards Tribunal. Should the Secretary of State decide to be party to an appeal before the Tribunal, they will submit detailed witness statements and full background papers to the tribunal. The Secretary of State will expect the full co-operation of all providers in this process.

Application for review of inclusion on the POVA list when circumstances change

An individual included on the POVA list may make an application to the Care Standards Tribunal for their removal from the list if their circumstances have changed. The tribunal will decide whether or not the individual should continue to be included on the list. If it is satisfied that the individual is no longer unsuitable to work with vulnerable adults, it shall direct the Secretary of State to remove the individual from the list.

Full details of these procedures are available in the Department of Health Practice Guidance. Employers and managers cannot ask for a person to be removed once they have been listed. However, if new evidence comes to light, this can be sent at any time to the POVA team.
7c. Care Standards Tribunal

The Care Standards Tribunal is an independent judicial body first established under the *Protection of Children Act 1999*. There are three situations in which a referred or listed individual can appeal to the Care Standards Tribunal:

- when they have been provisionally listed for nine months
- once they are confirmed on the list
- after they have been listed for 10 years (or five years if the individual was under the age of 18 at the time of listing).

Employers are likely to be involved in the first two situations but not the third.

The evidence to prove whether or not misconduct took place comes under close scrutiny at the appeal stage, as does that surrounding the carer’s suitability or otherwise. In particular, the tribunal will closely consider the ‘what’, ‘when’, ‘who’, ‘how’ and ‘why’ of what happened. Documentary and other ‘hard’ evidence surrounding these questions are, therefore, very important. Employers should keep copies of all relevant documents, and there should be a clear audit trail.

In addition, given the nature of care work, witness evidence is often vital. As a result, it is important that the care organisation not only carefully handles ‘hard’ evidence, but also keeps in close contact with witnesses, even when they subsequently leave their employment.

**Example**

In a recent appeal case, witness evidence was crucial in reaching the conclusion that the carer be confirmed on the POVA list. However, by the time of the appeal, out of four key witnesses only one was available to come to the hearing. Of the other witnesses, one had unfortunately died, but the two others could not be contacted because they had left the care organisation’s employ and no one had kept in touch with them. As a result, there was no option but to withdraw from the appeal, as there was no hope of proving either the misconduct or unsuitability.

The Care Standards Tribunal has issued its own guidance on how to use its services and how to lodge appeals. This is available on its [website](#) and printed copies of it are available from:

Care Standards Tribunal Secretariat, 18 Pocock Street, London SE1 0BW.
Appendix 1: References

All Department of Health publications are available from: DH Stores, PO Box 777, London SE1 6XH.

Action on Elder Abuse (2000) Listening is not enough. Available from Action on Elder Abuse, Astral House, 1268 London Road, London SW16 4ER.


Appendix 2: Relevant legislation and inquiries

Legislation

Care Standards Act 2000
Carers (Recognition and Services) Act 1995
Chronically Sick and Disabled Persons Act 1970
Data Protection Act 1998
Disability Discrimination Act 1995
Disabled Persons (Services, Consultation and Representation) Act 1986
Employment Rights Act 1996
Health Act 1999
Health Services and Public Health Act 1968
Housing Acts 1985 and 1996
Human Rights Act 1998
Local Authority Social Services Act 1970
Mental Health Acts 1959 and 1983
National Assistance Act 1948
National Health Service and Community Care Act 1990
National Health Service Act 1977
Police and Criminal Evidence Act 1970
Power of Attorney Act 1971
Public Health Acts 1936 and 1961
Public Interest Disclosure Act 1998
Registered Homes Act 1984
Registered Homes (Amendment) Act 1991

Inquiries

The Secretary of State will consider including on the POVA list any individual named in a relevant inquiry and who is, or has been, employed in a care position. Relevant inquiries are defined in section 85(7) of the Care Standards Act 2000 as:

(a) an inquiry held under –
   (i) section 10 of the Act
   (ii) section 35 of the Government of Wales Act 1998
   (iii) section 81 of the Children Act 1989
   (iv) section 84 of the National Health Service Act 1977
   (v) section 7C of the Local Authority Social Services Act 1970
(b) an inquiry to which the Tribunals of Inquiry (Evidence) Act 1921 applies
(c) any other inquiry or hearing designated for the purposes of [section 85(7)] by an order made by the Secretary of State.
Appendix 3: Schedule 2 pre-employment information

Information and documents required in respect of persons carrying on, managing or working at a care home


SUBSTITUTED SCHEDULE 2 TO THE CARE HOMES REGULATIONS 2001:
Schedule 2, Regulations 7, 9 and 19

1. Proof of identity, including a recent photograph.

2. Details of any criminal offences:
   (a) of which the person has been convicted, including details of any convictions which are spent within the meaning of section 1 of the Rehabilitation of Offenders Act 1974 and which may be disclosed by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions Order) 1975; or
   (b) in respect of which he has been cautioned by a constable and which, at the time the caution was given, he admitted.

3. Two written references, including, where applicable, a reference relating to the person’s last period of employment, which involved work with children or vulnerable adults, of not less than three months’ duration.

4. Where a person has previously worked in a position which involved contact with children or vulnerable adults, written verification of the reason why he ceased to work in that position unless it is not reasonably practicable to obtain such verification.

5. Documentary evidence of any relevant qualifications and training.

6. A full employment history, together with a satisfactory written explanation of any gaps in employment.

7. Either:
   (a) where the certificate is required for a purpose relating to section 115(5)(ea) of the 1997 Act (registration under Part 2 of the Care Standards Act 2000) or the position falls within section 115(3) or (4) of that Act, an enhanced criminal record certificate issued under section 115 of that Act; or
   (b) in any other case, a criminal record certificate issued under section 113 of that Act, including, where applicable, the matters specified in sections 113(3A) and 115(6A) of that Act and the following provisions, namely section 113(3C)(a) and (b) and section 115(6B)(a) and (b) of that Act.

8. A statement by the person as to his mental and physical health.

9. Details and evidence of registration with, or membership of, any professional body.
Appendix 4: Overview of POVA list referral process

**WHO CAN REFER?**

Employers and managers of registered care homes, domiciliary care services and adult placement services
Regulators (CSCI/CSIW)
Secretary of State for Health

**WHO CAN BE REFERRED?**

Care workers in regulated services and adult placement carers who are reasonably considered guilty of causing harm to a vulnerable adult and who have been suspended, dismissed, moved to a non-care position or would have been if they had not left before these actions could be taken.

**WHEN TO MAKE REFERRALS?**

Usually, when the person is dismissed, following a clear and properly documented dismissal and disciplinary process.

When the person is suspended pending investigation, where the offences are very serious and there is reasonable evidence that harm, or risk of harm, was caused.

Retrospectively, for former employees you are concerned about.

**HOW DO I MAKE A REFERRAL?**

By completing the standard form and attaching listed documents

Form available at www.dh.gov.uk/assetRoot/04/11/66/36/04116636.rtf

Send this material by post to the POVA team at:

The Manager
Protection of Vulnerable Adults List
Ground Floor E, Mowden Hall,
Staindrop Road
Darlington
Co Durham DL3 9BG

Email: POVA.mail@dfes.gsi.gov.uk

Advice line: 01325 391328
WHO DO I TELL?

You will have already told the local Adult Protection Team and CSCI/CSIW when the alleged misconduct took place. You must keep them informed of the outcome of the referral and can ask them or the POVA team for advice at any time.