

Protection of Vulnerable Adults Advisory Group

Questions & Answers

Welcome to the Department of Health's Protection of Vulnerable Adults (POVA) Advisory Group questions and answers document. This document holds a selection of the POVA Advisory Group members' questions as discussed and answered by the POVA Team, in a meeting on 9th March 2005.

If you have any other enquiries regarding POVA, please do not hesitate to email them to:

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Subject	Query	Response
Adult Protection Committees	There appears to be a variation in which POVA referrals are currently being investigated across England. This ranges from homes being allowed to conduct and report on their own investigation, to some extremely intrusive POVA investigations involving the police with all admissions suspended until matters are concluded. This suspension may in certain instances be for several weeks compared to the much shorter time scale that internal management are able to achieve.	<i>I am assuming this question refers to investigation of cases of abuse. How councils respond to reports of abuse are a matter for them - but I would expect them to follow the 'No Secrets' guidance. CSCI will be inspecting councils' implementation of "No Secrets" in line with the recommendations of the Health Select Committee on Elder Abuse.</i>
Agency Staff	How can care homes best ensure that the staff are not on the POVA list and thus be adequately checked?	<p><i>Agency staff who were in a placement prior to 26th July 2004 were not required to have a POVA check immediately POVA began if they remain in the same placement and have been checked by the CRB.</i></p> <p><i>A POVA check is required when a new placement begins or will be required by 25th July 2005 which ever comes sooner.</i></p> <p><i>Care homes are ultimately responsible for making sure staff in their homes are 'fit' persons and may require the agency to carry out a POVA check.</i></p>
Agency Staff	Care homes find it difficult to obtain confirmation from agencies that workers supplied	

	by them have had a satisfactory POVA check carried out with the preceding 12 months.	<i>This is for agencies and care homes to resolve between them. If agencies will not carry out appropriate checks and provide confirmation, care homes have the option not to use them.</i>
Agency Staff	How to ensure that agencies carry out the necessary checks otherwise the care home is at fault when it transpires that the individual has not had all the checks.	<i>As above.</i>
Agency Staff	Care homes should not have to pay for CRB & POVA checks for agency staff.	<i>In law, it is the applicant (the employee) themselves who is responsible for paying the fee. However, the vast majority of employers normally pay on behalf of their staff. Agencies who supply staff to care homes must decide between themselves who will pay for the check.</i>
Anonymity of Witnesses.	If copies of statements are sent to the person whose name has been forwarded to the POVA list, how can we ensure the anonymity of witnesses and what impact is this likely to have on potential "whistle blowers"?	<i>Employers can send anonymised copies of statements with the POVA referral to protect anonymity of witnesses where there are concerns about safety of the whistleblower. Employers will have to bear in mind that should a referral proceed to the Care Standards Tribunal on appeal, then names of witnesses will be required.</i>
Care Home Managers	Do managers meet the full definition of a care worker?	<i>Managers in regulated social care services who have regular contact with vulnerable adults should be POVA checked. 'Care worker' as defined by the CSA 2000 covers anyone in the home who has regular contact as part of their duties.</i>
Conditional Employment Status	Should all employees be considered conditional staff pending the receipt of the full CRB check even if the POVA First check has been cleared?	<i>Yes. The CRB check and the POVA check are two distinct checks containing different information.</i>

Confidential Information	Older people who have been abused will be obliged to give consent for their name and details of the abuse to be used for a referral to the list. This needs to be handled sensitively and the confidentiality and dignity of the abused is respected. There may be instances where the abused individual does not want to, or is not able to, disclose details. In those circumstances, will the abuser be placed on the list	<i>Respecting confidential information and sensitive handling is always required when a vulnerable adult has been harmed. The provisions place a duty on providers to refer where harm has been caused - so consent, while desirable, is not needed.</i>
CSCI	Can CSCI make retrospective referrals?	The Care Standards Act only permits CSCI to make referrals in relation to misconduct that has occurred after July 26 th 2004 in contrast with providers who can make referrals about events which predate POVA implementation
CSCI	Clarification that CSCI staff should not under any circumstances be drawn into instructing registered providers to suspend staff. CSCI is only able to offer advice, not instruct.	<i>This is a matter for CSCI. They are responsible for ensuring providers are meeting their statutory responsibilities and the Government has given CSCI the necessary enforcement powers.</i>
Documentation for Provisional Listing	At the time of suspension - there is often no documentation available.	<i>The referrer should send whatever information is available as soon as possible especially if they are reporting very serious misconduct. Where the employer considers that a referral to POVA is possible, but is still collecting information in order to determine whether harm has been caused (or there is a risk of harm), the referral should be deferred. Once the information is available that allows a determination</i>

		<i>to be made - the referral should be made.</i>
Employment and Human Rights Law	The onus upon employers to refer to the POVA list has implications under employment law which favouring the employee as it does, could inevitably lead to damages claims, resulting in a reluctance to make a referral as providers will naturally fear what could be envisaged as a zealous reaction.	<p><i>See also answer given on employment rights.</i></p> <p><i>Providers will be in breach of the law if they do not refer as laid out in the POVA provisions in the CSA. Referral is a duty not an option.</i></p> <p><i>And it must be remembered that CSCI will look at compliance with POVA as part of their regulatory responsibilities.</i></p> <p><i>If damage claims are made, it will be because employers did not have due regard to employment law – therefore employers must ensure their employment policies and disciplinary procedures are up to date, that they and their managers are clear on matters relating to misconduct.</i></p>
Employment and Human Rights Law	Clarification as to where, or with whom, the buck stops would be helpful. Whether it stops with the Secretary of State or with the employer and consequently, should an employee decide that the issue is not being dealt with correctly, who should they pursue the issue with.	<p><i>In the first place, employers determine whether or not to make a referral to the POVA list, and they do so following a decision to sack or suspend an individual. Responsibility for that decision rests with the employer.</i></p> <p><i>There is no right of appeal against provisional listing. In the event an employee considers their case is not being given due consideration, they can write to the Secretary of State for Health and Department of Health officials will look into the case.</i></p> <p><i>The Secretary of State for Health is responsible for giving due consideration to information provided by employers and the individual in determining whether a person is listed provisionally and then confirmed. In reality this is carried out by senior officials from Department of Education and Skills acting on her behalf under a service level agreement between the two Departments. Employees have the right of appeal to the Care Standards Tribunal if they consider they should not be confirmed on the list.</i></p>

Employment Rights	There is conflict between the POVA provisions and employment rights.	<i>The Department of Health considers there is no conflict between the two areas of legislation. Prior to POVA, providers had to decide how to deal with staff when misconduct occurred where service users were harmed or placed at risk. Employers used their employment policies to sack or suspend staff – and they must continue to do so. The POVA provisions add a further responsibility in that employers must, in addition, determine whether harm has been caused or people were placed at risk of harm and if so, make a referral.</i>
Extending POVA	It would be very useful to see a timetable for implementation in other areas with dates of when POVA will be extended.	<i>We will take the opportunity to extend the POVA scheme wider as the recommendations from the Bichard report are taken forward in the Safeguarding Vulnerable Groups Bill announced in the Queens Speech in May 2005.</i>
Independent Sector Workers	Should care homes request checks for independent sector workers?	<i>If a home makes an arrangement for a chiropodist or an independent physiotherapist to practice in the care home, then POVA and CRB checks should be made.</i>
NHS Staff Who Visit Care Homes	Who is responsible for checks on NHS workers who are regularly on the care home premises.	<i>The NHS employer is responsible for carrying out CRB and other pre-employment checks. The guidance is clear that where other professionals, volunteers or other services come into the care home as part of their statutory duties, or on the express invitation of the resident, POVA checks should not be considered (Page 36).</i>
Police	The practice of local police/social services officers preventing the employer interviewing their own staff once a possible POVA issue has been reported.	<i>The advice of police officers and social services should be followed where they would not wish an employer to prejudice an investigation. Where police and social services advice appears to be at odds with the duty to the welfare of service users, providers should discuss and agree the best way to proceed. Police and social services may need reminding that providers have a duty to act in the best interests of service users and therefore providers must be able to establish whether the worker is a risk to other service users and then take appropriate disciplinary action. Once disciplinary action has been taken, there must be an opportunity for providers to obtain sufficient information to enable a determination to be made about referral to the</i>

		<p><i>POVA list.</i> <i>That does not necessarily mean carrying out a full investigation at the outset – a worker can be suspended while full investigations are carried out.</i></p>
Portability of POVA Checks	<p>Care workers regularly leave our employ, then return two or three months later. Since July 26th, we have been applying for new CRB's for these individuals in order to obtain POVA's. This is expensive, and causes a good deal of resentment on the part of the care worker.</p>	<p><i>The law requires that new staff are checked against the list prior to being offered employment – there are no exceptions though there are easements for agency staff who are supplied by one agency. The Government understands that the current arrangements are not satisfactory. The Safeguarding Vulnerable Groups Bill will address the changes needed to make checks more flexible.</i></p>
Portability of POVA Checks	<p>Some providers are not applying for POVA checks, and are offering care workers jobs on the basis of CRB checks which have been obtained by other providers. This information has been brought to the attention of individual CSCI Inspectors, who have declined to take any action.</p>	<p><i>This is against the law. If providers are concerned about individual inspectors they should take this up with CSCI.</i></p>
POVA Audit	<p>What feedback is being given to referrers? Without detailed feedback organisations who refer improvements on the quality of information supplied, will not improve.</p>	<p><i>The Department has commissioned Professor Jill Manthorpe from Kings College London to carry out an audit of 100 cases so lessons can be learnt about best practice in referring workers to the list. The audit is expected to be complete in the next couple of months.</i></p>
POVA First	<p>Degree to which POVA First should only be used in</p>	<p><i>Care providers have consistently argued that all recruitment is urgent and therefore POVA First is needed in every circumstance. The</i></p>

	<u>exceptional</u> circumstances and whether all recruitment matters in care homes are exceptional and urgent.	<i>Department accepts there will be some circumstances when immediate replacement of staff is imperative – but to accept that all recruitment is urgent would suggest that care providers are unable to plan their recruitment strategies which is not the case. At the moment POVA First is free but once charges are in place, providers can choose whether or not to use the service. Ultimately the Department would like the CRB service to improve to the point where POVA First is not needed.</i>
POVA First	Once charges for POVA First have been introduced, will the guidance be amended as to how POVA First may be used	<i>Yes. At the moment POVA First is free of charge. Once charges are in place, providers will choose whether or not to use the service. Ministers will want to see the service improve vastly before charges are introduced. Ultimately the Department would like the CRB service to improve to the point where POVA First is not needed.</i>
POVA Guidance	Confusion caused by the guidance / possibility of producing a step by step guide to reporting cases.	<i>It would be difficult to produce prescriptive guidance that could cover any situation, but additional guidance will be when the report of the audit of POVA referrals is received.</i>
POVA Guidance	There is a need for more guidance on making a referral.	<i>One of the outcomes of the POVA Audit will be additional guidance using the experiences from actual referrals.</i>
Promotion of staff	Clarification as to whether a worker who is promoted by their employer from one care position to another needs to be re-checked. This needs to take into account promotion and sideways moves from one care home to another within the same company	<i>A member of staff should have CRB & POVA checks when promotion involves moving from a non care position to a care position. Moving from one care position to another within the same employer will not require a new check. Checks will be required where staff are moving between care homes where those homes are different employers.</i>
Referrals	Under what circumstances should an employee be	<i>See response to Employment Rights.</i>

	referred?	
Referrals	When should employees be referred?	<i>This is a matter of judgement for the employer and depends on circumstances. The principle should be that referrals are made as soon as possible once it has been determined that the employee caused harm or placed people at risk of harm. See also answer on Documentation.</i>
Smaller providers	Smaller independent sector providers are not aware of POVA.	<i>The Department will use every available opportunity to publicise the POVA provisions. CSCI have also been giving information to providers.</i>
Students	Do students at schools and college (ages 11 – 18 year olds) need POVA & CRB checks?	<i>Advice to schools and colleges of further education has been that CRB and POVA checks are not needed for students who visit care homes on work experience schemes. Students 18 and under should not undertake tasks in place of care staff and should be supervised at all times.</i>
Students	What about students in higher education (age 18+)	<i>Students undertaking placements in care homes as part of their health or social care studies should be CRB and POVA checked prior to taking up a placement if they meet the criteria in the CSA 2000. The care home is ultimately responsible for ensuring that those employed in the home are 'fit persons'.</i>
Suspension	The guidance suggests that the question of whether an offence has some basis should take place <u>before</u> suspension, but that once suspended, a reference should be made to the POVA list. The FAQs suggest that once an employee is suspended, the care home has the discretion as to whether to notify or not.	<i>There is no discrepancy. Referral to POVA can only occur after suspension or sacking or a persons resigns before they can be sacked.</i> <i>As in all cases, the timing of the POVA referral will depend on the seriousness of the misconduct and whether the provider regards the allegation of misconduct as having substance. If the allegation has substance and the worker is suspended because of it, then a referral should be made at the earliest possible stage. If the employer is unclear about whether the allegation has substance, but has decided to suspend a member of staff while more information is obtained, then referral should wait until more information has been obtained and there has been a determination about whether harm has been</i>

		<i>caused.</i>
Suspension	Clarification about question 29 of the FAQs (page 9) does not address the fact that what will cause the statutory guidance to be followed will be the employer's judgement. Indeed it is likely that the employer's judgement is what is likely to be challenged.	<i>Employers have always had to make judgments in disciplinary matters - the introduction of POVA does not change that.</i>
Welsh regulations	Please clarify the differences in regulations between England and Wales.	<i>With regard to POVA, the provisions in the CSA 2000 are the same for England and Wales.</i>