



**PROTECTION OF
VULNERABLE ADULTS SCHEME**

in England and Wales

for

care homes and domiciliary care agencies

**FREQUENTLY ASKED
QUESTIONS**

PROTECTION OF VULNERABLE ADULTS (POVA) SCHEME

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Important notice – these Frequently Asked Questions are issued in support of the “Practical Guide” for the POVA scheme, which is located on the Department of Health’s website for vulnerable adults. While this Frequently Asked Questions document provides an introduction to, and explains some detailed aspects of, the POVA scheme to care providers and other stakeholders, it is not definitive guidance. It is the Practical Guide that provides the definitive guidance and, as such, must be fully understood by all care providers and others who may need to refer individuals to the POVA list and make checks against the list.

Background and overview of implementation

1. **What is POVA?**

POVA is the Protection of Vulnerable Adults Scheme. It comes into force on 26 July 2004. At the heart of the POVA scheme is the POVA list. Care workers are referred to the list if they have harmed, or put at risk of harm, a vulnerable adult in their care. Generally, checks are made against the list when employers are about to offer an individual a care position. In short, POVA is a workforce ban that will be one means of ensuring that known abusers who have abused or mistreated vulnerable adults in their care do not remain in the workforce or find their way back into such positions again. The Practical Guide published by the Department of Health gives full details of the POVA Scheme.

2. **Will POVA operate in the same way in England and Wales?**

The POVA scheme applies in both England and Wales. However, as no easements are presently in place in Wales to allow domiciliary care staff to work whilst CRB checks are being processed, it is not possible for domiciliary care workers in Wales to start working following a *POVAFirst* check. Hence for the time being, there is no point to Welsh providers of care requesting a *POVAFirst* check.

3. **What does POVA add to existing Regulations?**

The POVA scheme will give significantly greater protection to vulnerable adults than has previously been the case. Care providers (refer to the Practical Guide for definitions of this and other terms) will have a statutory duty to check that any potential new care workers are not on the POVA list before allowing them to work in a care position. If the person is on the

POVA list then they cannot be employed in a care position. This, together with CRB Disclosures, the taking up of references and other good pre-employment practices will mean that individuals intent on harming vulnerable adults will find it extremely difficult to obtain jobs where they will be caring for vulnerable adults.

4. Why has it taken so long to implement POVA?

The Department of Health has been working with colleagues in other Government departments and in the care sector to ensure that all possible issues are identified and addressed before implementation. In addition, POVA checks are part of the CRB Disclosure service and it was important that the CRB was confident that it had systems in place to deal with the increased workload that the POVA scheme would cause.

5. Why is POVA not being implemented in the NHS at this point?

Implementing the POVA scheme in the NHS at this stage would cause disruption out of proportion with the likely incidence of abuse in hospitals and other health settings. For example, the way that the POVA scheme is currently constituted would require repeat checks every time a health care trainee or junior doctor changes placements during their training. The Government feels that such checks would create disproportionate and unnecessary resource and administrative burdens.

6. When will POVA be fully implemented across the NHS?

The POVA scheme will be implemented in the NHS as soon as possible. This is very likely to involve changes to legislation in order to avoid the problem of repeat checks referred to above.

7. Why are some services such as day care not included?

Some services do not fall within the scope of the POVA scheme. This is because they are not yet regulated under the Care Standards Act 2000. Day care services are an important part of service provision for many adult service users. Although day care staff will not be eligible for a check against the POVA list, employers should act responsibly and check the suitability of new recruits by taking up references, requesting CRB Disclosures and carrying other robust pre-employment checks, before making appointments. In fact, the Government encourages the use of CRB Disclosures as part of good recruitment practice.

8. Won't all the gaps in POVA brought about by partial implementation and the limited scope of the Care Standards Act 2000 leave many places for abusers to hide?

The POVA scheme adds extra protection for vulnerable adults in care homes and in receipt of personal care in their own homes. These groups are often the most vulnerable. Individuals in receipt of other social care

services, such as day care, can continue to be protected through good pre-employment practices as mentioned above. Until the POVA scheme is extended to the NHS, abusers who feel that they can hide in hospitals and other NHS facilities will be deterred or exposed by pre-employment checks that include the taking up of references and CRB Disclosures. The POVA scheme was never intended to be a substitute for robust pre-employment checks.

9. What sort of care positions are covered by the POVA Scheme? Will the Department of Health publish a list?

If an individual is providing a service for, or on behalf of, a registered care home and has regular contact with residents in the course of their duties, then they are covered by the POVA scheme. This applies whether or not the individual is paid for these services. If an individual is providing a service for, or on behalf, of a registered domiciliary care provider and provides personal care to vulnerable adults within their own homes in the course of their duties, then they are covered by the POVA scheme. This applies whether or not the individual is paid for these services. Annex B of the Practical Guide gives examples of those individuals working in care homes and for domiciliary care agencies who are covered by the POVA scheme. However, the important consideration for an employer when deciding whether an individual qualifies as a care worker is the amount and type of contact they have with vulnerable adults in performing their duties rather than their job title or their job description. This varies according to whether the worker is employed in a care home or by a domiciliary care agency. As the individual circumstances are so diverse it would not be helpful for the Department of Health to give a definitive list of care positions that may require a POVA check.

Checks against the POVA List

10. How quickly will the CRB turn around a POVA check?

A full CRB Disclosure, including a POVA check, will be issued in line with the CRB public service standards of 90% of Enhanced Disclosures issued within four weeks and Standard Disclosures issued within two weeks. In practice, however, over 70% of Enhanced Disclosures are completed within three weeks and over 50% within two weeks. It is important that the CRB Disclosure and POVA check are carried out thoroughly to protect both the care worker and vulnerable adults.

11. What is *POVAFirst*?

Paragraphs 37 to 46 of the Practical Guide contain full details. In summary, *POVAFirst* is an optional service provided by the CRB. It allows those organisations who are eligible to access the POVA list, and who have requested checks of the list on their CRB Disclosure application form, to receive results of the POVA check in advance of the full Disclosure being issued. It will help those providers of care to keep that

staffing levels up to the necessary statutory requirements. Without it, providers of care would not be able to take appropriate advantage of the recent easements to CRB Disclosures as, from 26 July 2004, new workers cannot take up care positions without a POVA check.

On receipt of an email request and a correctly completed Disclosure application form from the registered body, the CRB will make a check against the POVA list and notify the registered body within two to three days of the result. They will check whether the POVA list contains details of a person with the same name and date of birth as the person being considered for the care position.

The *POVAFirst* check should only be used in very exceptional circumstances. The Commission for Social Care Inspection and the Care Standards Inspectorate for Wales will take appropriate action against providers of care who misuse it by, for example, requesting *POVAFirst* checks in situations where staffing levels are at or above the required levels.

12. Can a POVA check be made for both a Standard and Enhanced Disclosure?

Yes.

13. How much will a POVA check cost?

A POVA check is provided as part of the CRB Disclosure service and carries no additional charge. Initially, *POVAFirst* checks will carry a zero rated charge and therefore will not appear on the normal monthly statement/invoice at this stage. The zero rated charge will apply until the necessary fee regulations are laid before parliament. After which the CRB will levy a fee for each *POVAFirst* check.

14. Is a POVA check portable between different care providers?

No. Generally a POVA check must be made for each separate care position that started on or after 26 July 2004. Take a care worker who has more than one care position with different care providers. For each care position starting on or after 26 July 2004, a separate POVA check is required. Now take another care worker who moves from one care position to another. A new POVA check is required with each move. The exception to this is for staff employed by employment agencies or businesses. See the answer to Question 15.

15. Do staff who are supplied by an employment agency or business need a POVA check for each new placement?

From 26 July 2004, where a care worker is supplied by different employment agencies or businesses to different care providers a POVA check is required for each supply. For example, Mr A is supplied by

Agency 1 to Care Home X, by Agency 2 to Care Home Y and by Agency 3 to Care Home Z. A POVA check is required for each placement.

(However, if Mr A is supplied by Agency 1 to Care Homes X, Y and Z, only one POVA check is required (see Question 16 below.)

16. **This seems tough on employment agencies and businesses and people who use them. Doesn't the Practical Guide contain some good news in this respect?**

It's tough but right. Abusers could use different employment agencies and businesses over time to get jobs with different care providers and so cheat the system.

However, a care worker who is supplied to a care provider by an employment agency or business before the 26 July 2004, and whose placement continues, without a break, beyond the 26 July 2004, and who has had a CRB check, does not require a POVA check. However if the care worker moves to a new placement on or after the 26 July 2004 then a POVA check will be required. Once an employment agency or business has obtained a POVA check, it is not necessary for it to make a further check for each subsequent placement, provided it has carried out a check within the previous 12 months.

17. **If I am on maternity leave, long-term sick leave, unpaid leave, a sabbatical, leave of absence or secondment do I need a POVA check when I return to my duties after 26 July 2004?**

No. If your contract of employment is with a care provider and has been continuous then you will not need a POVA check when you return to your duties, provided that you have had a CRB check. However, you will need a POVA check if you have a new contract of employment upon your return to work, as you will then be employed in a new position, and are no different from a new worker. This is covered in paragraph 31 of the Practical Guide.

18. **If the CRB Disclosure confirms a match against the POVA list, can I employ the individual?**

No one named on the POVA list, provisionally or confirmed, can be employed in a care position. It is within the law to employ him in a non-care position but managers should be aware of their general duty to ensure the welfare of service users.

19. **If I am included on the POVA list and apply for another job, will prospective employers know all about me?**

It depends. If the post you are applying for is not a care position for the purposes of the POVA scheme, your prospective employer will not be able to request a POVA check. However, if you do apply for a care position

then your prospective employer will be informed that you are on the POVA list when he undertakes pre-employment checks. There is no place in the care workforce for those who have abused a position of trust.

20. **Will there be any penalties for domiciliary care agencies or care homeowners who fail to request a POVA check before they employ an individual in a care position? Will there be penalties if they employ an individual who is named on the POVA list?**

The Commission for Social Care Inspection and the Care Standards Inspectorate for Wales will determine this. Care providers are required by law to request POVA checks as part of CRB Disclosures in relation to an individual who is to be employed in a care position. Failure to check staff as part of the recruitment process or to employ a worker named on the POVA list would be against the law and could lead to a range of enforcement options from the Commission for Social Care Inspection and the Care Standards Inspectorate for Wales. Please see Question 35, which covers failure to refer care workers to the POVA list.

21. **Will care providers need to make a separate Disclosure Application for a check to be made against any POVA lists in Scotland / Northern Ireland?**

Equivalents to the POVA scheme do not operate in Scotland and Northern Ireland.

However, both Enhanced and Standard Disclosures will show any convictions in Scotland or Northern Ireland which are recorded on the Police National Computer. Only selected Northern Ireland convictions are recorded on the Police National Computer. But, in the case of an Enhanced Disclosure on someone who is seen to have a Northern Ireland connection, a local police check will be carried out and all Northern Ireland convictions will be shown.

22. **Will care providers in Scotland know if a care worker has been POVA listed in England and Wales?**

When carrying out Disclosure checks in Scotland, Disclosure Scotland (the Scottish equivalent of the CRB, operated by the Scottish Criminal Record Office) will check for any criminal records in England and Wales. However, this will not include a check against the POVA list.

23. **Should I request a POVA check if I appoint workers from overseas?**

A POVA check should be requested for a care worker working in a care position regardless of postal address or nationality. Care providers operating in England and Wales make referrals to the POVA list. It is possible that a care worker from overseas has previously held a care position in England and Wales. Employers are also encouraged to access the Overseas Information Service provided by the CRB. To help

organisations access this information the CRB has set up a dedicated advice service - Overseas Enquiry Line: Telephone: 08700 100 450 or Email: overseas@crb.gsi.gov.uk. Opening Hours: Monday - Friday 9:00am - 5:00pm. For full details, visit the CRB website www.crb.gov.uk

Referrals to the POVA List

24. Why are referrals made to the DfES?

Referrals to the POVA list are made to the Department for Education and Skills who are operating the scheme on behalf of the Department of Health. The POVA scheme will benefit from the experience DfES have gained by operating the equivalent list for children, the Protection of Children Act (POCA) list.

25. How soon should a referral be made to DfES when a worker has been suspended? Will the Department of Health provide timescales in which referrals need to be made?

Details of when a referral should be made to the DfES are given in paragraph 53 of the Practical Guide. It would not be helpful for the Department of Health to suggest a timescale for referrals as each case needs to be dealt with according to the individual circumstances. However, the aim must be to ensure that potential abusers do not move around the care sector whilst suspended, pending completion of an investigation.

26. What information is needed in order for a care worker to be referred to the POVA list?

Paragraph 68 of the Practical Guide gives details of the information required when a referral is made. All this information is required. However, care providers should not delay making a referral if they do not have one or two items of information available to them. The POVA team will contact the employer if they do not have sufficient information to allow them to consider a provisional listing.

27. Should all workers who are suspended following an allegation of abuse be referred to the POVA List?

No. There may be circumstances where a care worker is suspended on "neutral grounds" and in such a case a referral may not be necessary. For example, an allegation of abuse is made by a care home resident but this is not supported by any evidence (another care worker was in the room at the same time and saw nothing, or the resident may have some form of dementia and has made such allegations regularly in relation to many members of staff). In these circumstances, a provider might decide to suspend the care worker. He would then carry out an investigation to establish whether there was evidence of abuse. If, as a result of further investigation, the provider then finds some evidence of misconduct he must then make a referral to the list. If, however, it becomes clear that

there is no evidence of misconduct and the worker returns to his duties then a referral to the POVA list is not necessary. Paragraph 53 of the Practical Guide gives the basic details.

28. How long will it take for someone's name to be removed from the POVA list if an allegation proves groundless?

If an allegation proves groundless, the care provider, preferably the same person who made the original referral, should write to the Manager of the POVA team stating that the care worker is re-instated or exonerated and giving the evidence on which this decision was taken. This is covered in paragraphs 87 and 88 of the Practical Guide.

29. Are care providers likely to face litigation if they refer a care worker for inclusion on the POVA list when they have been suspended and it is then found there is no case to answer?

This has not been the experience of the equivalent list for children. In making a referral, where a care worker has harmed or put at risk of harm a vulnerable adult, employers will be taking the action that is required by law. The circumstances in which the employer has a statutory responsibility to refer a care worker for inclusion on the POVA list are clearly defined within the Practical Guide. Care providers will therefore be working to statutory guidance in such cases.

30. I am not clear about whether current workers who leave before any action can be taken should be referred for inclusion on the POVA list.

This is covered in paragraphs 52 and 55 of the Practical Guide. If after investigation, the employer would have dismissed or would have considered dismissing the care worker then a referral must be made to the POVA list. This applies to workers in post on, or after, 26 July 2004. For workers who left their employment before 26 July 2004 please refer to the next question.

31. Under what circumstances can a former employee, who left before POVA was implemented, be referred to the POVA list?

This is covered in paragraphs 54 and 56 of the Practical Guide. Employers may refer former employees who left before 26 July 2004 to the POVA list. The Practical Guide gives details of how referrals are made. Employer should exercise their judgement as to whether they make a referral or not in these circumstances. The Department of Health would encourage referrals where this is in the best interests of vulnerable adults.

32. Is there a cut-off-date for retrospective referrals to the POVA list?

No. Referrals of former employees may be made at any time. Sound records of what happened and what action was taken should support the referral.

33. Why is it 10 years before an individual can apply to the Care Standards Tribunal to have their name removed from the POVA list?

The abuse of a vulnerable adult by a care professional is a very serious matter. It was thought that 10 years was a proper time to elapse before an application could be made. It is not uncommon for professional regulatory bodies to ensure that an application for restoration to a register (for example where someone has been struck off) is only to be made once a stated period of time has elapsed.

34. Will some individuals be referred to the POVA list out of malice?

Employers can only refer individuals to the POVA list if they have been suspended, dismissed from their care positions (or otherwise moved away from work with vulnerable adults) where there is evidence that they have harmed, or placed at risk of harm, a vulnerable adult in their care. The quality of the information provided with the referral will be examined and cases will only proceed when they are clearly suitable for provisional inclusion on the POVA list. Individuals accused of abuse or neglect will be asked for their comments on the referral. Only after all information has been gathered and evaluated will an individual be confirmed on the POVA list. Individuals who have been referred will be able to give their views.

35. Will there be penalties for care providers who do not refer individuals to the POVA list as required?

The Commission for Social Care Inspection and the Care Standards Inspectorate for Wales will determine this. Failure to refer staff could lead to a range of enforcement options from the Commission for Social Care Inspection and the Care Standards Inspectorate for Wales. Please see Question 20, which covers failure to check against the list before employing an individual in a care position.

36. Does there need to be a police investigation or criminal conviction before a referral is made to the POVA list?

No. There does not have to be a criminal conviction for a referral to be made to the POVA list. Some forms of misconduct may not lead to a criminal prosecution but nonetheless cause significant harm to vulnerable adults. Employers should refer to the POVA list if there is a balance of probability that a care worker has harmed or placed at risk of harm a vulnerable adult. In most cases, it is anticipated that an employer will have commenced a disciplinary process.

37. Can the Police refer to the POVA list?

No. Please refer to the Practical Guide for details of who can refer to the POVA list. Details of when referrals should be made following police charges are given in paragraph 67 of the Practical Guide.

38. **Will the Department of Health or the Department for Education and Skills inform professional regulatory bodies if a care worker is placed on the POVA list?**

No. Employers should make a referral to the appropriate professional regulatory body, such as the General Social Care Council of the Nursing and Midwifery Council in cases of professional misconduct. Please see paragraph 95 of the Practical Guide.

39. **Will the confidentiality of vulnerable adults and whistleblowers be preserved during the referral process?**

Vulnerable adults and whistleblowers should be given support and protection when disclosing instances of abuse. However, inclusion on the POVA list has very serious consequences for the referred individual, as he will be prevented from working in the care sector. It is therefore important that he has full information about the allegations made against him. This will include details of what allegations have been made and by whom.

Practice Issues

40. **What will happen if a significant number of staff are absent on 26 July 2004, for example there is a flu outbreak or similar? The Practical Guide says agency staff that have not had a POVA check cannot be employed. Service users will be at risk if employers failed to provide adequate staffing cover.**

Paragraph 37 of the Practical Guide refers to this. The welfare of service users must come first. Care providers must have systems in place, which ensure that care staff supplied to them by employment agencies, and businesses have been POVA checked, as this will be a legal requirement from 26 July 2004. If they have not been checked by the agency or business, then the care provider must carry out the check before employing the worker. If, in exceptional circumstances, a care provider has difficulty in providing adequate staffing cover then the advice should be sought from the Commission for Social Care Inspection and the Care Standards Inspectorate for Wales.

41. **What are the responsibilities of PCTs who commission a service from a care provider?**

The responsibility to check against, and refer to, the POVA list is with the employer not commissioner of the service.

42. **I am a care provider and I have just dismissed a care worker because he has been convicted of assault on his elderly mother with whom he lived. May I refer him to POVA?**

No. Only those care workers who are dismissed for misconduct against a vulnerable adult as defined by section 80(6) a and b of the Care Standards Act 2000 may be referred to the POVA list. The vulnerable adult must be a care home resident or in receipt of personal care in their own home under arrangements made by a domiciliary care agency. However, this conviction would be disclosed as part of the CRB process if the individual sought employment in the care sector.

43. **Whilst at the swimming pool I see a former employee giving swimming lessons to young adults with learning disabilities. I dismissed this worker for misconduct following a sexual assault on a resident, also a young adult with learning disabilities. There was no criminal conviction. The worker is on the POVA list. Should I tell the leisure centre manager of this?**

The intention of the POVA scheme is to prevent known abusers from working in the care sector. Good practice and common sense indicates that the employer should be informed if you are certain of your facts. He can then ask the employee to confirm or deny the allegation and carry out further investigations and seek additional information (for example, from former employers) if necessary.

Further Information

44. **Where can I obtain further written information about POVA?**

Further information can be found on the Department of Health website.

http://www.dh.gov.uk/PolicyAndPracticalGuide/HealthAndSocialCareTopics/HealthAndSocialCareArticle/fs/en?CONTENT_ID=4075533&chk=WFdy%2Bi

45. **Can I direct questions about the POVA scheme to the Department of Health and get a quick answer?**

You can comment on, or ask questions about, the POVA Practical Guide by emailing the official Department of Health Mailbox at :

Vulnerableadults@doh.gsi.gov.uk

You can also use this Mailbox to send in good practice examples of local approaches to the POVA scheme or other aspects of adult protection.