Protection of Vulnerable Adults Scheme (POVA)

(This summary of the DOH guidance for the POVA scheme has been prepared on behalf of the Kent and Medway Adult Protection Committee. It is intended to provide an overview of the main issues contained in the POVA guidance and their implications for practice. It is strongly recommended that all care providers read the full guidance and where necessary consult their legal advisor regarding their responsibilities in particular cases if these are not clear.)

Introduction
The POVA scheme, as set out in part V11 of the Care Standards Act 2000 came into force on a phased basis on 26th July 2004. It will act as a workforce ban on care workers who have harmed or placed at risk of harm vulnerable adults (whether or not in the course of their employment). It will be a criminal offence for anyone on the POVA list to apply for a care position. Anyone entered onto the POVA list may also be added to the POCA list if it is considered that they also pose a risk to children.
A POVA check is part of the Criminal Records Bureau (CRB) process for workers caring for vulnerable adults. In situations where the recruitment of staff is very urgent to meet the statutory staffing requirements of the service there is provision for a ‘POVA First’ check to be carried out through the CRB only when an application for the CRB check for the individual has already been made. (As at 9th August 04, no additional charge for a POVA First check)

Who does POVA apply to?

There is a statutory requirement on employers who are planning to employ a care worker to check whether that person is included in the POVA list. This includes both paid and unpaid workers. Checks on POVA will be carried out via CRB for staff moving into the care sectors or changing employers.
In the first instance, POVA will be implement in the social care sector only and there is no date given for health sector implementation.

From 26th July 04 POVA applies to:
- Care workers in registered care homes, including those provided by agencies. It will apply to people in care positions that enable them to have regular access to residents;
- Care workers of registered domiciliary care agencies and businesses, who are employed to provide personal care;
- Volunteers who are under contract to work with registered services;
- Regulated adult placement carers;

It does not apply to:
- Workers in Day Centres;
- Council’s social workers and care managers in the normal course of their assessment and care management duties;
- Self–employed persons, volunteers and informal helpers who are neither under a contract nor have any other arrangements with the providers of care;
- Individuals who are directly “employed” by service users living in the community through Direct Payments.
- NHS staff until further notice

Carol McKeough August 04
Who will be on the POVA list?

The POVA process places a duty on employers (including care agencies) to refer a care worker to POVA for possible inclusion on the list if, through their misconduct (action or inaction), they harmed or placed at risk of harm a vulnerable adult (whether or not in the course of employment). There are two lists one is a provisional list for care workers who have been suspended pending investigation where dismissal is a serious possibility the other is a permanent list. To be referred to the permanent list, the harm must have been serious enough for the employer to dismiss the care worker or transfer him to a non-care position. The list will include:

- Those dismissed for misconduct where harm to a vulnerable adult was an issue
- Those who have resigned, been made redundant where the employer would have considered dismissing them if the former had not happened.
- Those who have been transferred to a non-care position where misconduct, e.g. harm, has been an issue.
- Those who have been suspended or moved to a non-care role while the issues are being considered.

An individual provisionally included on the list for more than 9 months, may have the issue of their inclusion determined by the Care Standards Tribunal instead of the Secretary of State. If they have also been included on the POCA they may seek leave of the Tribunal to determine their position on the list.

Would have dismissed or considered dismissal.

This covers the responsibility of employers regarding former employees who have left employment after the POVA scheme coming into force. If the investigation has been completed or could not be completed because the care worker left the employment before the investigation was finished and the conclusion is that the worker would have been dismissed or dismissal would have been considered, this person may be referred to the POVA list.

Although there is no requirement for the employer to refer care workers who left their position prior to POVA implementation, the guidance allows for a referral to be made in the interests of the protection of vulnerable adults. This is only when dismissal was a real possibility. In order to make such a referral all the information contained in section 68 must be made available to POVA.

(See sample referral form Appendix 1)

The Role of the Commission for Social Care Inspection (section 63)

The CSCI have a statutory power to refer individuals for consideration of their inclusion on POVA where they have evidence of appropriate misconduct that has not previously been referred to POVA. This might apply where the registered persons themselves warrant referral for inclusion on the POVA list where they are directly involved in care provision. The primary responsibility however lies with providers of care (and employment agencies and businesses) under the Act for making referrals to POVA.
Referral of individuals from certain inquiries. (section 64 to 66)
When relevant inquiries as listed in subsection 85(7) of the Care Standards Act 2000 are carried out and find evidence that a care worker was guilty of misconduct which harmed or placed at risk of harm a vulnerable adult, the Secretary of State will consider their inclusion on the POVA list.

Referral following police charges (section 67)
A referral to the secretary of state should be made in circumstances where a care worker has been suspended, dismissed or resigned after having been charged by the police with offences against vulnerable adults, and is awaiting the outcome of criminal investigation or trial.

Action following receipt by POVA of an application for a care worker to be listed
Any care worker referred by their employer to POVA will be provided by POVA with full details and usually a copy of the information submitted by the employer or CSCI to POVA. They will have 28 days to make written observations or indicate that they intend to make observations on the issues within a reasonable time. The Secretary of State will make a decision whether to include the care worker on POVA list based on all the evidence received.

Definitions
a) Personal Care
   The definition of personal care within the guidance is in line with Domiciliary Care National Minimum Standards (DOH 2003). It defines four main types of care:
   - Assistance with bodily functions such as feeding, bathing and toileting;
   - Care which falls just short of assistance with bodily functions, but still involves physical and intimate touching, including activities such as helping a person to get out of a bath and assistance with dressing;
   - Non-physical care, such as advice, encouragement and supervision relating to the forgoing, such as prompting a person to take a bath and supervising them during this;
   - Emotional and psychological support, including the promotion of social functioning, behaviour management, and assistance with cognitive functions.

b) Care worker means:
   - An individual who is or has been employed in a care home and who has regular contact with service users;
   - An individual who is or has been employed by a domiciliary care agency and who provides personal care to vulnerable adults.

c) Regular contact:
   - Is defined as contact, which has a constant or regular pattern.

Role of Councils
The guidance encourages local councils with social services responsibilities: ‘to ensure that all providers of care who are independent of them, particularly those from whom councils commission services, and employment agencies and business who supply workers are made aware of the phased implementation of POVA and that copies of the guidance are made available to them’. (Copies of the full POVA guidance and this summary will be posted under the adult protection sections on KNET for KCC managers and staff and on the kent.gov.uk web site for all external service providers).
Section 21 reminds local councils and partner agencies that their local adult protection multi-agency policies and procedures should provide the bedrock of local approaches to adult abuse. That POVA significantly adds to the means by which local councils and other providers of care can protect vulnerable adults from harm. It adds the requirements

- To review and strengthen, where necessary, the work of the local Adult protection Committee;
- ensure through local programmes for learning and development that staff who manage, develop or provide services for vulnerable adults are aware of local multi-agency policies and procedures;
- Review and help to raise levels of awareness about abuse, and what to do if abuse is experienced or observed, amongst service users and the general public;
- Local councils should also ensure that all other local policies that effect the provision of services are informed by, and relate to, the multi-agency adult protection policies and procedures. E.g. in the single assessment process for older people, councils and their NHS partners should ensure that, at overview assessment, issues of safety - including harm from abuse and neglect – are discussed in private with the service users or older people seeking help.

**Implications for Adult Protection Practice.**

- Only the employer or the regulatory body CSCI may report a person to the POVA list. Social services, as the co-ordinators of the adult protection process will normally hold the full records of referral, planning, investigation / assessment and case conference and outcome of the case. If a care worker is believed to have been responsible for abuse the adult protection paperwork including: full details of investigations carried out, statements, minutes of meetings, notes of disciplinary hearings outcome of multi-agency work may need to be made available to the employer (if they are not implicated in the adult protection concerns). If the employer is implicated or is reluctant to pass information to POVA then the regulatory body CSCI will carry out this task.
- Where records from SSD are required to be passed to the employer / regulators, it will be necessary to anonymise, or otherwise protect as confidential the names of referrers, victims, whistleblowers and third parties who may be subjected to harassment if their details are made available to the subject of the POVA process. The Secretary of State may request further information should this be necessary in order for a decision to be made.
- Possible legal challenges by the perpetrator in relation to the management and outcomes of adult protection cases.
- No reference is made to the Data Protection Act.
- The phased implementation will give abusers an opportunity to move around within the unregulated social care sector and within health provision.
- POVA will not be a complete record of people unsuitable to work with vulnerable adults. A very large number of people in daily contact with vulnerable adults as part of their role are not included in the provisions of POVA.

A form is attached to assist service providers to make a referral to the Secretary of State for a care worker to be included on either the provisional or the permanent POVA list. This form has been developed from sections 68 and 69 of the guidance and is optional and not a requirement

Carol McKeough; Adult Protection Policy Manager, KCC SSD.
Kent and Medway Adult Protection Committee

Form to assist providers to make a referral to the Secretary of State requesting that an employee/ex-employee be placed on the POVA list

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1. <strong>Permanent or (Provisional pending an investigation)</strong></td>
<td>Permanent* / Provisional* (<em>Delete as appropriate)</em></td>
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<tr>
<td>2. Forenames</td>
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<tr>
<td>3. Surname</td>
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<td>4. Date of Birth</td>
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<tr>
<td>6. Permanent Address</td>
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<tr>
<td></td>
<td>Post Code</td>
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<tr>
<td>7. Employer Name and Address</td>
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<td></td>
<td>Post Code</td>
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<tr>
<td>8. Employer Contact Name</td>
<td></td>
</tr>
<tr>
<td>9. Employer Contact Number</td>
<td></td>
</tr>
<tr>
<td>10. Evidence attached of employment in care position</td>
<td>Yes ☐ No ☒ Details:</td>
</tr>
<tr>
<td>11. Summary of alleged misconduct, to include the nature of the abuse (physical, financial, neglect etc) and the relationship between the perpetrator and the victim (e.g. care officer, home manager, volunteer).</td>
<td></td>
</tr>
</tbody>
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| **12. Details of alleged misconduct.**  
List of documentation provided:  
e.g. Witness statement etc | 1. ..........................................................  
2. ..........................................................  
3. ..........................................................  
4. ..........................................................  
5. ..........................................................  

Please number documentation according to the list.

| **13. Explanation of how the alleged perpetrator harmed or put at risk the vulnerable adult, i.e. their conduct/misconduct.** |  
|  
|  

Please use an extra sheet if necessary, clearly labelling the section it refers to.

| **14. Details of the action taken against the individual, e.g. suspensions, dismissals or transfer to alternative employment not involving contact with vulnerable service users.** | 1. ..........................................................  
2. ..........................................................  
3. ..........................................................  
4. ..........................................................  
5. ..........................................................  
6. ..........................................................  

Please use an extra sheet if necessary, clearly labelling the section it refers to.
| 15. Information about the involvement of other agencies e.g. Police, CSCI, SSD voluntary or independent sector agency. | 1. ..........................................................  
|  | 2. ..........................................................  
|  | 3. ..........................................................  
|  | 4. .......................................................... |

| 16. Details of proposed further action, e.g. disciplinary proceedings, future investigations, etc. |  
| Please use an extra sheet if necessary, clearly labelling the section it refers to. |

| 17. Any other information considered relevant to the referral for the alleged misconduct. | 1. ..........................................................  
|  | 2. ..........................................................  
|  | 3. ..........................................................  
|  | 4. .......................................................... |
Guidance for completion:

All boxes should be filled with the relevant information. Additional sheets may be used to provide extra information and/or supporting evidence, but must be clearly labelled as to which section they relates to on the form.

In addition to the above information, a referral to the POVA list from a provider of care should be accompanied by a copy of either:

a. Their registration certificate issued by the Commission for Social Care Inspectorate; or

b. The standard letter from the Commission for Social Care Inspectorate saying that the provider’s application for registration has been received and is being processed.

Once completed, the form and all its supporting papers should be sent (in hard copy) to:

The Manager
Protection of Vulnerable Adults List
Ground Floor Area E
Mowden Hall
Darlington
County Durham
DL3 0TP

NB: When sending material through the post, those making referrals should have due regard to the confidential nature of the material. They should also be prepared to assure themselves that the material safely reached the Manager of the POVA list.

POVA Helpline: 01325 391328