

Model Policy/Procedure

Disclaimer - Please note that this policy is for information and guidance only and the Royal Mencap Society cannot accept liability for it being wholly suitable for the activities of your group, and should not be taken as a substitute for your group taking its own legal advice.

Referrals to the POCA and POVA lists

MODEL GUIDANCE NOTES FOR SERVICE PROVIDERS

1. INTRODUCTION

As an affiliated group you have a legal obligation to refer employees, relief workers and volunteers to the Secretary of State in certain circumstances. These referrals may result in the individual being placed on one or both of two lists. These lists are:

- The POVA (Protection of Vulnerable Adults) list; and
- The POCA (Protection of Children Act) list.

A referral must be made to the POVA list if it appears that an individual has caused harm, or put at risk of harm, a vulnerable adult. Once included on the POVA list, the individual is barred from working with vulnerable adults.

A referral must be made to the POCA list if it appears that an individual has caused harm, or put at risk of harm, a child. Once included on the POCA list, the individual is barred from working with children.

In some cases, the Secretary of State may decide to place an individual on both lists.

You are responsible for making referrals to the Secretary of State. This document explains:

- How you make the referral; and
- What you need to take into account before making the referral.

2. WHO CAN BE REFERRED?

Not all individuals who work with your service users can currently be referred to the lists.

You can refer 'care workers', ie those who work directly with service users in care homes or domiciliary schemes.

You can refer 'childcare' workers, ie those who are engaged in the provision of accommodation, social services or health services to children or in

supervising children; and where the job holder has regular contact with children during the course of his/her duties.

3. WHAT ARE THE CIRCUMSTANCES IN WHICH A REFERRAL SHOULD BE MADE?

You are legally required to refer a care worker or childcare worker to the Secretary of State if in your view the individual has been guilty of misconduct which 'harmed' or 'placed at risk of harm' a vulnerable adult or a child. The harm or potential harm should have been because of certain action or inaction on the part of the individual. 'Harm' is defined in law as 'ill treatment or the impairment of health or development'.

The worker should be referred to the relevant list (ie the Protection of Vulnerable Adults List or the Protection of Children Act list), but cannot be referred to both lists (unless they have caused harm to both vulnerable adults and to children).

3.1. Misconduct which caused harm to a vulnerable adult or placed them at risk of harm

The circumstances in which you must refer a care worker or childcare worker to the Secretary of State for possible inclusion on the POVA or POCA list (as relevant) are as follows:

- if you have dismissed the worker on the grounds of misconduct (whether or not in the course of his/her employment) which harmed or placed at risk of harm a vulnerable adult or a child;
- if the worker has resigned, retired, been made redundant or left by mutual agreement (eg compromise agreement) in circumstances such that you would have dismissed him/her, or would have considered dismissing him/her, on such grounds if he/she had not resigned, retired or been made redundant or left by mutual agreement;
- if you have, on such grounds, transferred the worker to a position which is not a care or childcare position; or
- if you have, on such grounds, suspended the worker or provisionally transferred him/her to a position which is not a care or childcare position but you have not yet decided whether to dismiss him/her or to confirm the transfer.
- if you have stopped using a relief worker on the grounds of misconduct (whether or not in the course of his or her relief work with us) which harmed or placed at risk of harm a vulnerable adult or child.

3.2. Misconduct that comes to light later

You are also under a duty to refer to the Secretary of State care workers or childcare workers:

- where it is only later that it comes to light that the care worker or childcare worker's misconduct caused 'harm' or could have caused 'harm' to a service user; and
- where, had you known about the misconduct at the time, you would have dismissed the care worker or childcare worker on these grounds, or stopped using the relief worker.

The misconduct could have been at work or it could have occurred outside of work.

Please note that in order to determine whether such a referral to the POVA or POCA list is appropriate, it may mean that you have to undertake further investigations into the alleged misconduct that has later come to light.

4. KEEPING YOURSELF INFORMED ABOUT POTENTIAL POVA OR POCA CASES

In order to ensure that you make the necessary referrals to POVA or POCA, you will need to make arrangements (eg via your managers or senior staff) to receive regular reports on suspensions, dismissals and other departures from your organisation where misconduct against a service user is alleged.

Line managers also have a responsibility to draw to your attention any cases which they consider merit referral to the POVA or POCA lists.

5. REVIEWING A CASE PRIOR TO REFERRAL

When deciding whether or not to refer the individual to the POVA or POCA list, you will need to consider the following:

- was the individual a care worker working in a care home or domiciliary scheme?
- Was the individual a childcare worker?
- Did the alleged misconduct cause or could it have caused 'harm' ('ill treatment or the impairment of health or development') to one or more service users?
- Are there reasonable grounds for believing that the misconduct actually occurred, or do you need to undertake further investigation to ascertain this?

You should discuss the matter with your senior manager/ personnel advisor and take other advice as needed, prior to taking a decision on whether to refer the individual to the POVA or to the POCA list.

Please consider every case carefully. Your duty is to ensure that vulnerable adults and children are protected now and in the future. The aim must be to ensure that potential abusers do not move around the care sector whilst

suspended pending completion of an investigation, or after the termination of their employment with your organisation.

You also have a responsibility to the employee or former employee. The Department of Health guidance notes state the following about referrals during suspension:

'A precipitate suspension and subsequent referral that later proves to be based on groundless allegations could cause significant upset and damage to the worker.'

The Department of Health POVA Frequently Asked Questions list gives the following guidance (in relation to care workers, but the same principles apply to childcare workers):

'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'.

6. INFORMING AN INDIVIDUAL OF REFERRAL

If you take the decision to refer an individual, you must send one of the letters that appear in **appendix one** of this document. The letter you send depends on whether the individual is suspended, dismissed or has left your employment for other reasons; or whether the individual is a relief worker or an employee.

You should send this letter immediately after making a referral to POVA or POCA.

7. SUPPORTING THE REFERRED INDIVIDUAL

When an employee is on suspension pending an investigation, and you decide to refer him or her to the POVA or POCA list, you have a particular obligation to support that individual.

In the letter you send informing the individual about referring them to the POVA or POCA list, you should also include the contact details of your personnel manager (or the person who advises you on personnel matters). You should offer the individual the opportunity to meet with the personnel manager, if he or she wishes, in order to raise any questions about the operation of the investigation, the disciplinary procedure and the POVA/POCA referral. The personnel manager should be able to answer and follow up

questions about matters of procedure, but he/she will not be able to comment on or listen to information about the allegation against the individual.

The above approach should help to support the individual during a very difficult time. You should also consider in each circumstance what further support might be appropriate to put in place.

8. CONFIDENTIALITY

In the interests of confidentiality, only the senior manager, the relevant personnel manager (or advisor), the individual's manager and the individual him or herself will know whether a referral has been made. There is no risk to our service users from others in your organisation not knowing, since at the point of referral, the individual will either be on suspension or will no longer be working for you. There is also no risk to other vulnerable adults, since if the individual tries to apply for other jobs as a care worker or childcare worker, the new employer will be told by the CRB that the individual's name is on the POVA or POCA list and will therefore not recruit them.

A note will be made on the individual's personal file. You must inform the employee administration department (or designated individual), so that the note can be made. You can do this by copying the letter you send to the individual to your employee administration team (or designated individual).

9. UNFOUNDED ALLEGATIONS AGAINST SUSPENDED OR TRANSFERRED WORKERS

Sometimes, you may find that allegations against a suspended worker or a worker who has been temporarily transferred from a care or childcare position are clearly and fairly groundless. Should this be the case after you have referred that worker to the POVA or to the POCA list, you must contact the POVA or POCA team (as relevant) at the Department for Education and Skills as a matter of urgency, so that the person's name may be removed from provisional inclusion on the POVA or POCA list. See section 11 below for contact details of the POVA and POCA teams.

Make sure that your managers know to tell you if an allegation that has led to a referral subsequently proves to be groundless.

10. INFORMATION TO BE SUPPLIED WITH THE REFERRAL

The minimum information that the Secretary of State will require for all referrals is detailed below. However, we are advised that we should not delay making a referral if we do not have one or two items of information available to us. The POVA or POCA teams (as relevant) will contact us if they do not have sufficient information to allow them to consider a provisional listing.

- full name of the individual;
- date of birth of the individual;
- National Insurance number of the individual, where known;

- last known address;
- confirmation that the individual occupied a care or childcare position (as relevant) at the time of the misconduct;
- full details of the alleged misconduct;
- detailed explanation about how – by his or her misconduct – the individual harmed or placed at risk of harm a vulnerable adult or child;
- details of any investigations carried out to date – and their conclusions – including copies of relevant papers (including statements, notes of interviews, minutes of meetings and minutes/notes of disciplinary hearings) and details of your organisation's disciplinary procedures;
- details of the action taken against the individual – for example, whether suspended, dismissed or transferred from a care or childcare position or other action taken;
- information on any police involvement (or the involvement of any other agency);
- details of proposed further action – that is, dates for disciplinary hearings, timetable on further investigations, and so on; and
- any other information considered relevant to the circumstances of the alleged misconduct.

In addition to the above information, and in the case of the POVA referral only, you must also provide:

- the relevant registration certificate issued by the Commission for Social Care Inspection or the Care Standards Inspectorate for Wales; or
- the standard letter from the Commission or Inspectorate saying that our application for registration has been received and is being processed.

A standard covering letter for referrals appears at appendix 2.

11. ADDRESSES FOR REFERRALS

All referrals to the POVA list should be sent in hard copy to:

The Manager
 Protection of Vulnerable Adults List
 Ground Floor Area E
 Mowden Hall
 Staindrop Road
 Darlington

Co Durham DL3 9BG

POVA advice line: 01325 391328

Local Fax: 01325 392178

E-mail: POVA.MAIL@dfes.gsi.gov.uk

All referrals to the POCA list should be sent in hard copy to:

The Manager
Protection of Children Act List
Department of Health
Room 134
Wellington House
133 – 155 Waterloo Road
London
SE1 8UG

All referrals should be sent by registered post.

12. DECISION BY THE SECRETARY OF STATE ON PROVISIONAL INCLUSION ON THE POVA OR POCA LISTS

The Secretary of State will initially examine the quality of the information submitted with a referral. He may decide not to proceed if the case is clearly not suitable for inclusion. (For example, the individual was clearly not in a care or childcare position or it is evident from the outset that no vulnerable adult was harmed or put at risk of harm by the actions of the individual).

The Secretary of State may decide to seek more information from us before considering whether to proceed with a decision to provisionally include the individual on the POVA or POCA list.

The Secretary of State will be looking to make decisions about the provisional listing of individuals as quickly as is reasonably possible. Should he require more information from us, you are expected to consider his request as a matter of utmost priority.

Having satisfied himself that the information provided with the referral (either within the original referral letter or as a result of subsequent further correspondence) is complete, the Secretary of State will make a decision about provisional listing. If it appears from the information submitted that it may be appropriate for the individual to be included on the list the Secretary of State will provisionally include the individual.

If a worker is suspended or temporarily transferred to a non-care or childcare position, any provisional listing will remain provisional until such time as the worker is dismissed or the transfer confirmed.

13. POSSIBLE PROVISIONAL INCLUSION ON BOTH THE POVA AND THE POCA LISTS

If the Secretary of State decides that the information provided with the referral makes it appropriate to provisionally include the individual on the POVA or POCA list, he will also consider if the nature of the alleged misconduct means that the individual should be provisionally included on both lists).

In reaching such decisions, the Secretary of State will be mindful that, in general, an individual who breaches the trust placed in him by harming a vulnerable person in his care, no matter the age of that vulnerable person, is not welcome within the care workforce.

14. ACTION FOLLOWING PROVISIONAL LISTING

14.1. Informing the individual

If an individual is provisionally included on either the POVA or the POCA list, the Secretary of State will confirm this to you (as the person making the referral from your organisation) and will immediately inform the individual by letter sent by "Special Delivery".

The individual will then have the opportunity to make written representations direct to the Secretary of State as to why he should not be confirmed on the POVA or POCA list (as relevant). The Secretary of State will provide the individual with full details of the information submitted by your organisation and will usually copy all papers to the individual.

The individual will be given 28 days in which to make written observations, or to indicate that he/she intends to make observations within a reasonable period. If observations are not received, the Secretary of State will take a decision based on all available evidence.

Individuals who are provisionally included on the POVA list may not be employed in a care position working with vulnerable adults.

Individuals who are provisionally included on POCA list may not be employed in a care position working with vulnerable adults.

14.2. Representations, information gathering and exchange

Before an individual's name may be confirmed on the POVA or on the POCA list, the Secretary of State will need to be of the opinion that Mencap as the referring organisation reasonably considered the individual to be guilty of misconduct which harmed or placed at risk of harm a vulnerable adult or a child (as relevant), and that the individual is unsuitable to work with vulnerable adults or children (as relevant). All representations made by the individual will be passed to you as the referring manager for comment. Similarly the Secretary of State would expect to be able to provide the individual concerned with copies of all papers submitted to him from your organisation.

This process of information gathering and exchange will continue for as long as it takes for the Secretary of State to be satisfied that he has sufficient information to enable him to come to the opinions he is required to reach.

14.3. Decision of the Secretary of State

If the Secretary of State determines that the individual's name should not be confirmed on the POVA or on the POCA list, he will immediately remove the provisional entry from that list.

If the Secretary of State decides that the individual's name should be confirmed on either the POVA or the POCA lists, he will make a decision as to whether to confirm the individual's name on the other list too.

Immediately the Secretary of State has made his decision, notice of it will be sent by "Special Delivery" to the individual and to Mencap as the referring organisation. At the same time the individual will be either removed from, or confirmed on one or both lists.

15. REFERRAL TO REGULATORY BODIES – CARE WORKERS

As soon as a care worker is provisionally included on the POVA list, you must consider prompt referral to appropriate regulatory bodies such as the General Social Care Council, the Commission for Social Care Inspection or the Care Standards Inspectorate for Wales. If you make a referral, you must inform the worker that you have done this.

Where a worker is removed from the POVA list and if you are aware of the removal, you should promptly inform the regulatory body of the removal. You should inform the individual that you have done this.

16. REMOVAL FROM THE POVA OR POCA LIST

There are several ways in which an individual who is on the POVA or on the POCA list (whether on a provisional or confirmed basis) can seek to have his or her name removed. He or she will be informed of these when confirmation is given of his or her inclusion on one or both of the lists.

With the exception of the circumstances in point 9. above, Mencap is not able to influence the individual's removal from the list. This is a matter between the individual who is on the list, and the Secretary of State.

17. FURTHER INFORMATION

The Department of Health POVA and POCA offer guidance and related material which can be accessed on the Internet at www.dh.gov.uk. For a quick find, type "Vulnerable Adults" or "Protection of Children" into the search box.

APPENDIX 1

Letter A - letter to be sent by someone in a senior position, for referring a care worker or childcare worker who has been suspended.

Dear

Referral to the Protection of Vulnerable Adults List/Protection of Children Act List (*delete as applicable*)

The circumstances of your suspension from employment have been passed to me for consideration, in connection with the Protection of Vulnerable Adults List/ Protection of Vulnerable Adults List (*delete as applicable*).

(Insert name of your organisation has a statutory obligation to refer to the Secretary of State the names of individuals who have been suspended for alleged misconduct which may have caused harm to a vulnerable adult/child (*delete as applicable*) or which may have placed the vulnerable adult/child (*delete as applicable*) at the risk of harm.

Having reviewed your papers, I am of the opinion that:

- The misconduct you are alleged to have committed caused or could have caused 'harm' to one or more service users; and that
- There are reasonable grounds for believing that this misconduct actually occurred.

Your name will therefore be referred to the Department of Health for the Secretary of State to consider provisional inclusion on the POVA/ POCA list (*delete as applicable*).

Clearly, an investigation into the allegations against you is still underway. We have not made a final decision about your case. If at any time during the investigation, it appears that the allegations against you are unfounded, I will write immediately to the Secretary of State to inform him of this and to request that your name be removed from the list.

If the matter proceeds to a disciplinary hearing and at that stage, it is decided that the allegations against you are unfounded, I will also write immediately to the Secretary of State to inform him of this and to request that your name be removed from the list.

Whilst we are under an obligation to refer you, it is the decision of the Secretary of State as to whether you will be provisionally included on the list or not. If you are provisionally included, you will be informed as soon as

possible by the Secretary of State and you will be given the right of appeal to the Secretary of State.

The implications of referring you to the POVA list/POCA list (*delete as applicable*) is that you will not be able to work as a care worker/ childcare worker (*delete as applicable*) whilst on that list. Employers are obliged to check the list before appointing anyone to a position as a care worker or childcare worker (*delete as applicable*).

I would reassure you that this referral is being made on a confidential basis. The Personnel Manager (if appropriate) , (name), and your line manager are aware of the referral. A note of the referral will also be kept on your personnel file. No other individuals will be informed of this referral.

I appreciate that this is an extremely difficult time for you. I will ensure that the investigation into allegations against you proceeds as quickly as possible. I have asked (investigating manager, name) to contact you to inform you of the progress of the investigation. If you wish to call him or her, you can do so on..... However, you will appreciate that he/she can only talk about the progress of the investigation and not about the findings. These will be shared with you in full as soon as the investigation is complete and you will have full opportunity to comment on them.

If you would like to, you may also arrange to meet (Named manager), in order to raise any questions about the operation of the investigation, the disciplinary procedure and the POVA/POCA (*delete as applicable*) referral. His/her telephone number is.....(Named manager) will be able to answer and follow up questions about matters of procedure, but he/she will not be able to comment on or listen to information about the actual allegation against you.

Yours sincerely

Name – Job title/or role within organisation

Letter B - letter to be sent by someone in a senior position, for referring a care worker or childcare worker (employee) who has been dismissed.

Dear

Referral to the Protection of Vulnerable Adults List/ Protection of Vulnerable Adults List

The circumstances of your dismissal from employment have been passed to me for consideration, in connection with the Protection of Vulnerable Adults List/ Protection of Children Act List (*delete as applicable*).

We have a statutory obligation to refer to the Secretary of State the names of individuals whose conduct caused harm to a vulnerable adult/child (*delete as applicable*) or which placed the vulnerable adult/child (*delete as applicable*) at the risk of harm.

Having reviewed your papers, I am of the opinion that:

- The misconduct you are alleged to have committed caused or could have caused 'harm' to one or more service users; and that
- There are reasonable grounds for believing that this misconduct actually occurred.

Your name will therefore be referred to the Department of Health for the Secretary of State to consider provisional inclusion on the POVA/POCA (*delete as applicable*) list.

Whilst we are under an obligation to refer you, it is the decision of the Secretary of State as to whether you will be provisionally included on the list or not. If the Secretary of State decides to include you provisionally, you will be informed as soon as possible by the Secretary of State.

The implications of referring you to the Protection of Vulnerable Adults List is that you will not be able to work as a care worker or childcare worker (*delete as applicable*) whilst on that list. Employers are obliged to check the list before appointing anyone to a position as a care worker or childcare worker (*delete as applicable*).

If you have made an appeal against your dismissal and it is decided at the appeal that the allegations against you are unfounded, I will write immediately to the Secretary of State to inform him of this and to request that your name be removed from the list.

This referral is being made on a confidential basis. The Personnel Manager, xxxx and your line manager are aware of the referral. A note of the referral will also be kept on your personnel file. No other individuals will be informed of this referral.

Yours sincerely

Name – Jon title/or role within organisation

Letter C - letter to be sent by someone in a senior position, for referring a relief support worker whom we have ceased using due to alleged misconduct which caused harm to or placed at risk of harm a vulnerable adult or a child.

Dear

Referral to the Protection of Vulnerable Adults List/ Protection of Children Act List (*delete as applicable*)

The circumstances of our ceasing to engage you as a relief support worker have been passed to me for consideration, in connection with the Protection of Vulnerable Adults List/ Protection of Children Act List (*delete as applicable*).

We have a statutory obligation to refer to the Secretary of State the names of individuals whose conduct caused harm to a vulnerable adult/child (*delete as applicable*) or which placed the vulnerable adult/child (*delete as applicable*) at the risk of harm.

Having reviewed your papers, I am of the opinion that:

- The misconduct you are alleged to have committed caused or could have caused 'harm' to one or more service users; and that
- There are reasonable grounds for believing that this misconduct actually occurred.

Your name will therefore be referred to the Department of Health for the Secretary of State to consider provisional inclusion on the POVA/ POCA list (*delete as applicable*).

Whilst we are under an obligation to refer you, it is the decision of the Secretary of State as to whether you will be provisionally included on the list or not. If the Secretary of State decides to include you provisionally, you will be informed as soon as possible by the Secretary of State.

The implications of referring you to the Protection of Vulnerable Adults List/Protection of Children Act List (*delete as applicable*) is that you will not be able to work as a care worker or childcare worker whilst on that list. Employers are obliged to check the list before appointing anyone to a position as a care worker or childcare worker, whether on a relief or on an employed basis.

If an investigation is ongoing, add the following:

If it is decided during further investigations that the allegations against you are unfounded, I will write immediately to the Secretary of State to inform him of this and to request that your name be removed from the list.

This referral is being made on a confidential basis. The Personnel Manager, xxxx and your line manager are aware of the referral. A note of the referral will also be kept on your personnel file. No other individuals will be informed of this referral.

Yours sincerely

Name – Job title/or role within organisation

Letter D - letter to be sent by someone in a senior position, for referring an employee who has resigned or retired.

Dear

Referral to the Protection of Vulnerable Adults List/ Protection of Children Act List (*delete as applicable*)

The circumstances of your retirement/resignation from employment have been passed to me for consideration, in connection with the Protection of Vulnerable Adults List/Protection of Children Act List (*delete as applicable*).

We have a statutory obligation to refer to the Secretary of State the names of individuals whose conduct caused harm to a vulnerable adult/child (*delete as applicable*) or which placed the vulnerable adult/child (*delete as applicable*) at the risk of harm.

Having reviewed your papers and having undertaken additional investigation (***Delete if no additional investigation is appropriate***) I am of the opinion that:

- The misconduct you are alleged to have committed caused or could have caused 'harm' to one or more service users; and that
- There are reasonable grounds for believing that this misconduct actually occurred.

Your name will therefore be referred to the Department of Health for the Secretary of State to consider provisional inclusion on the POVA/POCA list (*delete as applicable*).

Had the investigation been completed, and had it been considered that, on the balance of probabilities, the alleged offences did occur, Mencap would have dismissed you. This does not prejudice the outcome, as this cannot be known.

The implications of referring you to the Protection of Vulnerable Adults List/Protection of Children Act list (*delete as applicable*) is that you will not be able to work as a care worker/ childcare worker (*delete as applicable*) whilst on that list. Employers are obliged to check the list before appointing anyone to a position as a care worker/ childcare worker (*delete as applicable*).

Whilst we are under an obligation to refer you, it is the decision of the Secretary of State as to whether you will be provisionally included on the list or not. If the Secretary of State decides to include you provisionally, you will be informed as soon as possible by the Secretary of State.

I would reassure you that this referral is being made on a confidential basis. The Personnel Manager, xxxx and your line manager are aware of the

referral. A note of the referral will also be kept on your personnel file. No other individuals will be informed of this referral.

Yours sincerely

Name – Job title/or role within organisation

APPENDIX 2

Standard POVA/POCA referral letter

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

OR

The Manager
Protection of Children Act List
Department of Health
Room 134
Wellington House
133 – 155 Waterloo Road
London
SE1 8UG

Date

Dear Sirs

Please find enclosed details of [full name of employee] who may meet the requirement for referral for possible inclusion on the POVA/POCA [DELETE AS APPLICABLE] list.

We enclose copies of the relevant documentation as in the relevant Department of Health guidance.

If you require any further information regarding this case please contact xx[name], on Tel: xx.

I thank you for your assistance in this case.

Yours sincerely

www.mencap.org.uk



Name – Job title/or role within organisation

Enc.