

*Model Policy/Procedure*

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# Protection of Vulnerable Adults and Children (POVA)

## Questions and Answers

*This Q&A document explains changes that by law you needed to make to your recruitment practices for care workers, from 26 July 2004.*

*It also explains what actions you must take if you believe a care worker in your employment has caused harm to a service user.*

*The changes apply to care workers in England and Wales. They do not apply to non-care staff and they do not apply to Northern Ireland.*

### 1. WHAT IS POVA?

The POVA (Protection of Vulnerable Adults) list came into force under the Care Standards Act 2000.

It is a list of adults in England and Wales who are considered unsuitable to work as care workers with vulnerable adults. It is a **legal offence** to knowingly recruit such adults. It is also a legal offence for those confirmed on the list to apply to work as a care worker.

You have to **make checks against the list** for workers in 'care positions'.

You also have to **refer individuals to the list** in certain circumstances.

### 2. WHEN DID POVA COME INTO FORCE?

POVA came into force on **Monday 26 July 2004**. The Department of Health guidance on POVA was issued in final form on 16 July 2004.

### 3. WHO DOES IT AFFECT?

You have to check if an individual is on the POVA list if we are about to offer work to them in a **care position**:

- In a registered care home involving regular contact with residents; or

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- Providing personal care in individuals' own homes.

The work could be as **an employee, as a relief worker or as a volunteer**. In the rest of this document, we will call these people 'workers'.

POVA therefore applies to the following posts in any care homes run by your organisation, and in any domiciliary schemes that you run. These posts may include the following:

- ❑ Support Workers
- ❑ Relief Support Workers
- ❑ Domiciliary Support Workers
- ❑ Relief Domiciliary Support Workers
- ❑ Senior Support Workers
- ❑ Deputy Schemes Managers
- ❑ Schemes Managers

POVA may also affect other posts, if they are 'care positions' and involve regular contact with service users, OR if they provide personal care in a domiciliary setting. Further information is contained in appendix 1.

#### **4. HOW DO I CHECK WORKERS AGAINST THE POVA LIST?**

You can request checks against the POVA list as part of an application for a Criminal Records Bureau (CRB) Disclosure. There is no additional charge for the POVA check, over and above the normal Disclosure fee. You can request a check against the POVA list for both Standard and Enhanced Disclosures.

A POVA check can be requested via the CRB administrator: Sanam Mughal, 4 Swan Courtyard, Coventry Road, Birmingham B26 1BU on 0121 707 7877 or email [sanam.mughal@mencap.org.uk](mailto:sanam.mughal@mencap.org.uk)

As a result of the introduction of POVA, you will see changes to the look of the Disclosure itself. The information provided on it from 26 July 2004, is printed in five boxes. These are as follows.

Police Records of Convictions, Cautions, Reprimands and Warnings, Box 1

Information from the list held under Section 142 of the Education Act 2002, Box 2

Protection of Children Act List information, Box 3

Protection of Vulnerable Adults List information, Box 4

Other relevant information disclosed at the Chief Police Officer(s) discretion, Box 5

If you place a cross [X] in Y3 of the application, the CRB will search lists relating to the protection of children. You must only tick this box if the prospective staff member is a care worker in a scheme involving children. If you place a cross [X] in Y4 of the application, the CRB will search the Protection of Vulnerable Adults list. Failure to place a cross [X] in these boxes will result in none of these checks being made.

A flowchart, produced by the Department of Health, is enclosed separately with this document. You may find it useful to refer to.

#### **5. WHAT IF THE PERSON I WANT TO APPOINT IS ON THE POVA LIST?**

If the Criminal Records Bureau (CRB) discovers that the person is included on the POVA list, the CRB will advise you that the person may not be employed in a care position. The CRB will also inform the police that an offence may have been committed.

If the person is only provisionally included on the POVA list, you will still be informed that the person may not be employed, but the police won't be informed, as it is not a criminal offence to seek work in a care position while provisionally included on the POVA list.

#### **6. CAN I START CARE WORKERS BEFORE A POVA CHECK HAS BEEN RECEIVED?**

**No.**

You are not allowed to start care workers until they have been checked against the POVA list. However, you may be able to start care workers after a 'fast track' POVA *First* check is completed, whilst still waiting for the full Disclosure. This is only for very exceptional circumstances and is explained below.

#### **7. WHAT IF I NEED TO RECRUIT URGENTLY?**

The Department of Health guidelines state that in very exceptional circumstances where service users may be placed at risk because of difficulties in recruiting sufficient staff, you may start people in work in care positions without having to wait for the full CRB Disclosure. However, this is not possible in domiciliary schemes in Wales (see 8. below).

You can start people in work if you have:

- carried out the required rigorous pre-employment checks (the requirements on pre-employment checks have changed in England, but not in Wales. See appendix 2 for updated requirements in England);
- applied for a CRB Disclosure and requested a POVA check on the CRB Disclosure Application Form;

- ❑ applied for, and received a satisfactory result from, a *POVAFirst* check (see below); and
- ❑ put in place stringent arrangements for the training and supervision of the employee in the interim (training and supervision requirements have changed in England, but not in Wales. See appendix 2 for updated requirements in England).

### **8. WHAT IS *POVAFirst*?**

The ***POVAFirst* check** is an optional CRB service for which there is no additional charge at present (*this is likely to change after the necessary fee regulations have been laid before parliament*). It checks 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.

It is faster than the CRB Disclosure and should be completed within a few days. The full CRB Disclosure then follows later, according to normal CRB timescales.

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

### **9. WHAT ARE THE PROCEDURES FOR *POVAFirst*?**

If you want to apply for a *POVAFirst* check, this is what happens:

1. You should make your application for a CRB Disclosure and a POVA check on the normal CRB application form.
2. The CRB administrator has a secure email address to apply for POVA checks on behalf of your new applicants.
3. In the first instance please contact the CRB administrator for further details about how to apply.
4. These requests are made by e-mail (it will not be accepted by post or by telephone).
5. You can only request a *POVAFirst* check if you also make a Disclosure application and request a POVA check on the form. If the related Disclosure application for a POVA request is not received within 7 days of the receipt of the *POVAFirst* email, the CRB will inform you that the *POVAFirst* request has been rejected.

6. On receipt of an email request and a correctly completed Disclosure application form from us as the registered body, the CRB will make a check against the POVA list and notify the CRB administrator by return e-mail 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.
7. If there is such a match, or if the CRB needs to continue its enquiries, the CRB administrator will advise you to wait for the full CRB Disclosure (that is, you must not employ the person for the time being). If this is the case, the individual should be told that the *POVAFirst* check has proved inconclusive and does not necessarily mean that he/she is actually included on the POVA list.
8. If there is no such match, the person may be employed pending the result of the full Disclosure.
9. Whilst you are waiting for the results of the full Disclosure, you must follow the supervision requirements outlined in appendix 2 (for England) and existing supervision requirements (for Wales).
10. When you receive the full Disclosure, there will also be a POVA check which will confirm the results of the *POVAFirst* check.
11. If the CRB Disclosure, once received, reveals matters that cause concern (for example, a criminal conviction or caution) then you will need to decide whether that conviction and so on is relevant to the person's employment in a care position. If, in your opinion, it is then you should cease to employ that individual in a care position.
12. If the confirmatory POVA check reveals that the individual is, in fact, on the POVA list then you must immediately take steps to terminate the individual's employment, or transfer him/her to another non-care position.
13. You should refer to your personnel procedures concerning the termination of employment.
14. Please note that from 1 October 2004, you must follow a 3 stage statutory procedure before terminating employment (but not relief work), as follows:

*Step 1*

send a written statement to the employee outlining your concerns;

*Step 2*

hold a meeting (hearing), at which the employee may be represented;

*Step 3*

allow the employee to appeal if he or she wishes.

#### **10. ARE THERE RESTRICTIONS ON WHEN I CAN USE POVAFirst?**

The Department of Health guidance stresses that employment pending a full CRB Disclosure, and related requests for POVAFirst checks, are very exceptional measures to be used only when absolutely necessary. They are intended to ensure that we are able to recruit staff immediately where otherwise staffing levels would not meet statutory requirements.

If you process your CRB Disclosures promptly and accurately, you should not generally need to use POVAFirst. It is much better to complete the CRB Disclosure process and other pre-employment checks, before starting someone in employment with your organisation.

#### **11. WHAT SHOULD I DO TO KEEP TRACK OF A CRB APPLICATION?**

The CRB's service standards currently are to issue 90% of Standard Disclosures within two weeks and 90% of Enhanced Disclosures within 25 days. If the full disclosure remains outstanding after two weeks in the case of a Standard Disclosure, or four weeks in the case of an Enhanced Disclosure, you should contact the CRB to check on progress. You are advised to keep records of your contact with the CRB. This is so that you can demonstrate to the Commission for Social Care Inspection and the Care Standards Inspectorate for Wales that you have taken the appropriate action if Disclosures are delayed.

#### **12. DO YOU HAVE TO CHECK THE POVA LIST BEFORE USING AGENCY STAFF?**

If you use agency staff, it is still your legal duty, as the provider of care, to check the POVA list. However, in these circumstances, you can instead obtain written confirmation from the agency that they have checked that the individual is not on the POVA list within the last 12 months. You must obtain this written confirmation every time you contact the agency to book an agency worker.

The agency worker may bring the written confirmation in to the workplace before starting work. You must satisfy yourself that this is genuinely from the agency, before the agency worker may commence work. You should also keep the written confirmation so that you can show an inspector from the Commission for Social Care Inspection or the Care Standards Inspectorate for Wales, if requested.

#### **13. DO YOU HAVE TO CHECK THE POVA LIST FOR INTERNAL RECRUITS?**

If an employee or relief worker transfers from a non-care to a care position in your organisation, a POVA check must be carried out before the employee or relief worker can

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start working in the care position. If an employee or relief worker moves from one care position to another, a POVA check is not required.

#### **14. DO WE HAVE TO CHECK EXISTING CARE STAFF?**

POVA checks are not required for existing staff employed prior to 26 July 2004.

#### **15. ARE CRB DISCLOSURES STILL 'PORTABLE'?**

**No.**

Up to now, it has been possible in some circumstances to 're-use' a Disclosure obtained for another job, provided that the Disclosure is not more than 12 months old.

From 26 July, it will no longer be possible to 're-use' a Disclosure; they will not be 'portable' between jobs.

#### **16. WHAT IF YOU DISCOVER THAT SOMEONE ALREADY WORKING WITHIN YOUR ORGANISATION IN A CARE POSITION IS ON THE POVA LIST?**

If you discover, through whatever means, that an individual already occupying a care position in your organisation is included on the POVA list (either as a confirmed inclusion or a provisional inclusion), you may not continue to employ him or her in a care position.

#### **17. WHAT ARE OUR OBLIGATIONS TO REFER CARE WORKERS TO THE LIST?**

As well as checking that prospective employees, relief workers and volunteers are not on the POVA list, you also need to refer care workers to the list in certain circumstances.

You are legally required to refer to the Secretary of State a care worker if it is your view that the individual has been guilty of misconduct which harmed or placed at risk of harm a vulnerable adult. This may have been because of certain action or inaction on the part of the individual.

'Harm', under the Care Standards Act 2000 means 'ill treatment or the impairment of health or development'.

The Commission for Social Care Inspection and the Care Standards Inspectorate for Wales may also, in some circumstances, make referrals to the list.

Because POVA is being implemented in a phased manner, it is only currently possible to refer care workers who are believed to have caused harm to:

- a resident of one of your homes, or
- an adult to whom personal care is provided in his own home.

You can't refer individuals if they caused harm to your service users who do not fall into the above categories.

## **18. IN WHAT CIRCUMSTANCES MUST YOU REFER?**

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

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

Please note that the above circumstances apply to relief workers as well as employees. So 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 you) which harmed or placed at risk of harm a vulnerable adult, then you should refer him or her to the POVA list.

You are also under a duty to refer to the Secretary of State in certain circumstances care workers who leave their care positions on or after 26 July, and where it is only later that it comes to light that the care worker's misconduct caused 'harm' or could have caused 'harm' to a service user.

## **19. WHO MAKES THE REFERRAL?**

In all cases, the decision to refer should be made by a senior manager, or other designated individual. These should be clearly listed

**However, it is your responsibility to inform the relevant senior manager, as soon as possible, if you think there may be a case to refer.** So, for example, if you suspend

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someone because of suspected misconduct, and you think that the misconduct may warrant referral to the POVA list, you must immediately contact the relevant senior manager.

The senior manager will undertake a review of the case. He or she will ask you for certain information. The senior manager will then take a decision on whether to refer to the POVA list. Please note that whilst it is your organisation's responsibility to make a referral, it is the decision of the Secretary of State as to whether the referred individual is placed on the POVA list.

There are separate guidance notes about referral to the POVA list. These are primarily aimed at the senior managers who need to do the referral.

## **20. WHO WILL KNOW IF THE PERSON HAS BEEN REFERRED TO THE POVA LIST?**

In the interests of confidentiality, only the following people will generally know that a referral has been made:

- the senior manager who made the referral;
- the relevant Human Resources Manager;
- you as line manager; and
- the individual him or herself.

You should keep the matter totally confidential and you should not tell any other person, whether inside or outside of your organisation or service

There is no risk to your service users from other staff 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, the new employer will be told by the CRB that the individual's name is on the POVA list.

A note should be made on the individual's personal file. The senior manager will be responsible for informing the person responsible for maintaining your employee records, so that the note can be made.

## **21. WHAT HAPPENS IF A SUSPENDED PERSON IS SUBSEQUENTLY CLEARED, YET HAS ALREADY BEEN REFERRED TO THE POVA LIST?**

All referrals to the POVA list are initially made on a provisional basis.

If a suspended person is subsequently cleared of the allegations against him or her, the senior manager who made the referral will write immediately to the Secretary of State requesting that the individual be removed from the provisional listing.

If you recommended to a senior manager that the individual should be referred to POVA when he or she was suspended, you must make sure that senior manager is aware as soon as the individual is cleared of the allegations.

## **22. WHAT DO WE TELL THE INDIVIDUAL WHO WE HAVE REFERRED?**

The senior manager will inform the individual if he or she has undertaken a provisional referral, using the standard letters in the separate guidance notes about POVA referrals.

A copy of the standard letter sent to an individual who is suspended in this circumstance is attached at appendix 3.

## **23. WHAT RIGHTS DOES THE REFERRED PERSON HAVE?**

Apart from in the circumstances in 21. above, You cannot request removal of the referred person from the POVA list. However, that person can appeal against his or her inclusion on the list. He or she does this directly to the Secretary of State and this is totally separate from your organisation or service. The individual is advised of his or her appeal rights by the Secretary of State.

## **24. IS IT POSSIBLE TO REFER SOMEONE WHOM YOU CONSIDER CAUSED HARM TO A SERVICE USER OR PLACED THEM AT RISK OF HARM *PRIOR TO 26 JULY*?**

If you consider that an ex-employee, who left your organisation or service before 26 July, should be referred to the POVA list, you should inform the senior manager responsible for making POVA referrals. A decision on the referral should be made by senior managers.

## **25. WHERE CAN I GO IF I HAVE FURTHER QUESTIONS?**

You can contact the Department of Health POVA for guidance, and related material which can be accessed on the Internet at [www.dh.gov.uk](http://www.dh.gov.uk). For a quick find, type "Vulnerable Adults" into the search box. Alternatively, this guidance and other material on vulnerable adults can be accessed directly from the Department of Health Website by entering : [http://www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/HealthAndSocialCareArticle/fs/en?CONTENT\\_ID=4075533&chk=WFdy%2Bi](http://www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/HealthAndSocialCareArticle/fs/en?CONTENT_ID=4075533&chk=WFdy%2Bi).

A paper copy of the guidance can be obtained from the Department of Health, PO Box 777, London SE1 6XH, telephone 0870 155 5455, fax 01623 724 524 or [Mailto:doh@prolog.uk.com](mailto:doh@prolog.uk.com).

## APPENDIX 1

### FURTHER INFORMATION ABOUT WHICH POSTS ARE COVERED UNDER POVA

#### Registered care homes

The Department of Health guidelines state that there will be a legal duty to undertake a POVA check on the following workers in care homes only if they have **regular contact** in the course of their duties with residents. Otherwise they should not be checked.

- ❑ Support Workers and Relief Support Workers
- ❑ Deputy and assistant managers. (Note that registered managers are POVA checked as part of the registration process with the Commission for Social Care Inspection / Care Standards Inspectorate for Wales after the coming into force of the POVA scheme)
- ❑ Administrative, finance, clerical and reception staff
- ❑ Care assistants
- ❑ Cooks
- ❑ Cleaners
- ❑ Maintenance workers, gardeners, handy-persons and so on.
- ❑ Volunteers

If you are not sure whether a particular post may be covered by POVA, you are advised to review the Department of Health guidance notes. For details of how to access these guidance notes, see section note 25. above.

#### Domiciliary care

There is a legal duty to check the following individuals only if they provide **personal care** in the homes of individuals who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance. Otherwise they should not be checked.

- ❑ Deputy and assistant managers. (Note that registered managers will already have been POVA checked as part of the registration process with the Commission for Social Care Inspection / Care Standards Inspectorate for Wales after the coming into force of the POVA scheme.)
- ❑ Administrative, finance and clerical staff
- ❑ Home care workers / domiciliary care worker [Note: the term “domiciliary care worker” is defined in the Domiciliary Care Agencies Regulations 2002 – in summary - as a person employed in a position which is concerned with the provision of personal care to individuals in their own homes.]
- ❑ Volunteers



## **APPENDIX 2**

### **PRE-EMPLOYMENT AND TRAINING/SUPERVISION REQUIREMENTS**

***NOTE – THIS APPLIES TO ENGLAND ONLY AND NOT TO WALES, WHERE THERE ARE CURRENTLY NO CHANGES TO THE EXISTING REGULATIONS.***

#### **Pre-employment checks**

Changes are being made to bring the Care Home Regulations 2001 into line with the Domiciliary Care Agencies Regulations 2002 and the Nurses Agencies Regulations 2002. The changes remove the requirement for applicants to provide a birth certificate and passport but strengthen checks in other areas.

The changes apply to all care homes and domiciliary care agencies, irrespective of whether or not they intend to appoint individuals ahead of the full CRB Disclosure being issued.

For care homes and domiciliary care agencies, from 26 July 2004, the regulations require:

- ❑ Details of any criminal offences :
  - of which the person has been convicted. Including details of any convictions which are spent; or
  - in respect of which he/she has been cautioned by a constable and which, at the time the caution was given, he/she admitted.
- ❑ Two written references, including, where applicable, a reference relating to the person's last period of employment of not less than three month's duration which involved work with children or vulnerable adults.
- ❑ Where a person has previously worked in a position which involved contact with children or vulnerable adults, written verification (so far as reasonably practicable) of the reason why he/she ceased to work in that position.
- ❑ Documentary evidence of any relevant qualifications and training.
- ❑ A full employment history, together with a satisfactory written explanation of any gaps in employment.
- ❑ A statement by the person as to his/her physical and mental health.
- ❑ Details and evidence of registration with, or membership of, any professional body.

#### **Training and supervision**

The training and supervisory requirements for new staff have been strengthened by the amendments to the Care Home Regulations 2001 and the Domiciliary Care Agencies Regulations 2002 that come into force on 26 July 2004.

Where providers of care wish to appoint individuals ahead of the full CRB Disclosure being issued, and subject to the requirements set out in paragraphs 37 to 46 above, they must appoint a named person, appropriately qualified and experienced, to supervise new members of staff until they have completed induction training and until the full CRB Disclosure has been completed satisfactorily. The named person, so far as is possible, must be on duty at the same time as the new member of staff. (Please note that there may be more than one named person.)

For domiciliary care providers it will not usually be possible for the named person to accompany the new member of staff on visits to service users' homes. In these circumstances, the regulations require the named person to be contactable, that the new member of staff be observed at work at least once while the result of the full CRB Disclosure is awaited, and that the provider contact the service user on a weekly basis to monitor the service user's satisfaction with the care provided.

The changes make into statutory requirements the induction training previously set out in the National Minimum Standards for Care Homes and Domiciliary Care Agencies. Providers must ensure new staff receive a minimum of three days of appropriate, structured and documented induction training.

## APPENDIX 3

### **STANDARD LETTER TO BE SENT TO INDIVIDUALS WHO ARE SUSPENDED DURING A DISCIPLINARY INVESTIGATION AND WHO ARE REFERRED FOR PROVISIONAL INCLUSION ON THE POVA LIST**

#### **Notes**

- Letter to be sent by the relevant senior manager
- This is an example letter only and the exact letter sent will vary according to each circumstance.
- Further guidance is available in the guide to POVA referrals for senior managers. This guide should be reviewed before a referral is made.

Dear

#### **Referral to the Protection of Vulnerable Adults List**

The circumstances of your suspension from employment have been passed to me for consideration, in connection with the Protection of Vulnerable Adults List.

Under the Care Standards Act 2000, Mencap has a statutory obligation to refer to the Department of Health the names of individuals who have been suspended for alleged misconduct which may have caused harm to a vulnerable adult or which may have placed the vulnerable adult 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 list.

Clearly, an investigation into the allegations against you is still underway. Mencap has 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 (*enter name of your organisation*) is 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 Protection of Vulnerable Adults List is that you will not be able to work as a Care Worker whilst on that list. Employers are obliged to check the list before appointing anyone to a position as a Care Worker.

I would reassure you that this referral is being made on a confidential basis. The Senior Manager, (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 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 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 – role/title in organisation

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