

# **CHOOSING TO PROTECT**

## **A GUIDE TO USING THE PROTECTION OF VULNERABLE ADULTS, NORTHERN IRELAND [POVA (NI)] SERVICE**

The Service is operated by:-

POCVA Referral Team  
Child Care Policy Directorate  
DHSSPS  
Room D2.10, Castle Buildings  
Stormont Estate  
Belfast BT4 3SQ

**April 2005**  
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## Foreword

The Pre-Employment Consultancy Service (PECS) operated by the Department of Health, Social Services & Public Safety (the Department) since 1982 assisted agencies in screening out and assessing the suitability of individuals when recruiting to positions where there was likely to be substantial access to children and to adults with learning disabilities. Although over 20,000 requests for checks were received by PECS each year, it was not compulsory for organisations to use PECS either for pre-employment checking or to refer individuals to the PECS Register as unsuitable to work with children or adults with a learning disability.

The Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA) commenced on 1<sup>st</sup> April 2005 (with the exception of Article 46 which commenced on 30/07/07) and enhanced the arrangements for safeguarding vulnerable members of society by providing a legislative basis for maintaining two lists as follows:

- The *Disqualification from Working with Children (DWC (NI)) List* which is a list of individuals who are considered unsuitable to work with children and;
- The *Disqualification from Working with Vulnerable Adults (DWVA (NI)) List* which is a list of individuals who are considered unsuitable to work with vulnerable adults.

POCVA also provides a legislative basis for pre-employment checks against these Lists,

**From 1<sup>st</sup> April 2008 a new disclosure service (Access NI) will replace the existing checking service provided by the DHSSPS. Staff in Access NI will assist with any queries regarding registering with and submitting requests for checks. See website [www.accessni.gov.uk](http://www.accessni.gov.uk) for full details.**

The referral service will still be operated by the DHSSPS until the commencement of the Safeguarding Vulnerable Groups (NI) Order 2007 when the referral service will transfer to the new Independent Safeguarding Authority.

In the interim it is imperative that there are clear and substantive guidelines for organisations making referrals to the disqualification lists. Staff in the POCVA referral team based in the Child Care Policy Directorate will assist with any queries. (Tel No: 028 9052 2131 or 028 9052 2005)



Paul Martin

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# Section 1

## INTRODUCTION

### 1.1 RECRUITING SUITABLE PEOPLE TO WORK WITH VULNERABLE ADULTS

It is important for every care provider to recruit the most suitable personnel. This means choosing people with the necessary skills, knowledge and experience, and ensuring those whose behaviour could be a threat to the safety and well-being of vulnerable adults are screened out. Vulnerable adults are often limited in their ability to protect themselves from abuse or exploitation, and in their ability to seek help if they are ill-treated.

The Protection of Children and Vulnerable Adults (NI) Order (POCVA) became law in February 2003 and became operational (with the exception of Article 46) in April 2005. Article 46 commenced on the 30<sup>th</sup> July 2007. POCVA aims to improve existing safeguards for vulnerable adults by preventing unsuitable people obtaining work, in any capacity, whether paid or unpaid, with vulnerable adults. POCVA complements the protection measures each care provider is required to have. All care providers entrusted with the care of vulnerable adults need to have robust recruitment and staff selection procedures and to provide appropriate training for all staff and volunteers.

### 1.2 CHOOSING TO PROTECT: CONTENT OF THE GUIDE

This guide will assist all care providers working with vulnerable adults to understand how the new law affects them and explains how to use the POVA (NI) Service.

The guidance contained within is for information only and is not intended to be a definitive statement of the law.

The guide covers:-

- The main provisions of POCVA
- What employers/care providers must do to fulfil their responsibilities regarding referral and checking
- How the POVA (NI) Service will operate
- Where to get help and support

A sister guide has been provided to assist organisations working with children. Both guides are available on the Department's website [www.dhsspsni.gov.uk](http://www.dhsspsni.gov.uk)

### 1.3 ARRANGEMENT OF SECTIONS

- Section 1 Introduction
- Section 2 The Protection of Children and Vulnerable Adults (NI) Order 2003 (POCVA)
- Section 3 Protection of Vulnerable Adults [POVA (NI)] Service
- Section 4 Making referrals for inclusion in the Disqualification

from Working with Vulnerable Adults (DWVA (NI)) List  
Section 5 Requesting checks on prospective employees  
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#### **1.4 CANCELLATION OF EXISTING GUIDANCE**

This guide replaces all existing departmental guidance circulars and letters about PECS, as follows:

- Circular HSS (Gen 1) 6/83 - 'Services for Vulnerable Adults and Young People in Northern Ireland: Recruitment of Staff: Establishment of a Pre-Employment Consultancy Service.';
- Circular HSS (CC) 2/89 (and amendments) - 'Disclosure of Criminal Background of Persons Seeking Access to Vulnerable Adults or Mentally Handicapped People.';
- Circular HSS (CGLU) 1/91 - 'Disclosure of Criminal Background: Proprietors and Managers of Homes for Persons in Need and Nursing Homes.'
- Circular HSS (CC) 4/02 -Circular HSS (CC) 4/02 – 'The Pre-employment Consultancy Service (PECS) – Operational Changes'.
- Making the Right Choice - A Guide to The Pre-Employment Consultancy Service DHSSPS May 2003

## Section 2

# PROTECTION OF CHILDREN AND VULNERABLE ADULTS (NI) ORDER 2003 (POCVA)

### 2.1 GENERAL PROVISIONS

The commencement of POCVA provided a legislative basis for referral to the Department of those workers, either paid or unpaid, in care positions who are unsuitable to work with vulnerable adults and for screening prospective employees to care positions. It brought significant changes to existing arrangements and greatly extended the scope of the checking mechanism to all adults who are defined as vulnerable by POCVA (See 2.2). This section sets out the main provisions and provides a definition of terms.

The main provisions are:-

- The introduction of the Disqualification from Working with Vulnerable Adults (DWVA (NI) List. The Department is required to maintain a list of individuals who are considered unsuitable to work (in a paid or unpaid capacity) with vulnerable adults in a care position.
- The requirement for providers of care for vulnerable adults to **refer** to the Department, for consideration of inclusion on the DWVA (NI) List on the grounds of misconduct, those individuals who have **harmed a vulnerable adult or placed a vulnerable adult at risk of harm**.
- The introduction of a right of appeal to an independent tribunal for individuals whose names are placed on the DWVA (NI) List;
- *From the 30<sup>th</sup> July 2007:-*
  - *a requirement for providers of care for vulnerable adults **to carry out checks** against the DWVA (NI) List when proposing to appoint someone to a care position;*
  - *the introduction of **offences** if individuals disqualified from working with vulnerable adults apply for, offer to do, accept or do any work, either paid or unpaid, in a care position;*
  - *the introduction of **offences** if individuals knowingly offer, employ, or procure work (either paid or unpaid) for a disqualified person in a care position or if they fail to remove a disqualified person from such positions..*

## 2.2 DEFINITION OF TERMS

“**care position**” means a position (either paid or unpaid) which:-

- a) enables the individual to have **regular contact** in the course of their duties with adults to whom accommodation is provided at a **residential care home or nursing home**;
- b) enables the individual to have regular contact in the course of their duties with adults to whom **prescribed services** are provided by a **health services body or at a private hospital**;
- c) is concerned with the provision of personal care, and assessment of the need for such care, for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.

*Only (a) and (c) were commenced on 1<sup>st</sup> April 2005*

“**care provider**” means:-

- (a) any person who carries on a **residential care home or nursing home**;
- (b) any person who carries on a **domiciliary care agency** or is a social worker, care manager, community or district nurse, chiropodist or a person who provides services to a vulnerable adult in that vulnerable adult’s own home to assist with their sight, sound, speech, appearance or mobility and which may involve physical contact.
- (c) any person who carries on a **private hospital** which provides **prescribed services**; and
- (d) **a health services body which provides prescribed services.**

*Only provisions for parts (a) and (b) were commenced on 1<sup>st</sup> April 2005*

“**personal care**” in relation to a vulnerable adult means:-

- a. rehabilitation, which includes time-limited programmes designed to enable that person to acquire the skills necessary to achieve independent living;
- b. personal assistance, which includes assistance to get up and go to bed, assistance with dressing and undressing, surgical appliances, prosthesis and orthoses, mechanical and manual aids and transfers including use of a hoist;
- c. personal hygiene, which includes bathing, showering, hair washing, shaving, oral hygiene and nail care;
- d. continence care, which includes assistance with toileting, catheter or stoma care, skin care, laundry and bed changing directly related to continence care or illness;

- e. assistance with eating, assistance with special diets under the guidance and direction of an appropriate professional and assistance with preparation of food where this is necessary to make sure that that person eats regularly and safely;
- f. assistance with mobility, which includes dealing with the consequences of not being able to move in so far as it impacts on the individual's ability to meet his personal care needs;
- g. personal safety and well-being, which includes assistance to make sure the person is kept safe which may involve assistance with the management of reminding and safety devices, supervision to reduce or eliminate risk and assistance with the management of behaviours that may compromise the safety of the person or others; and
- h. simple treatments, which includes assistance with the administration of medication, application of creams and lotions, simple dressings and oxygen therapy, emotional and psychological support, including counselling, advice, encouragement and supervision, the promotion of social functioning and assistance with cognitive functions which includes speech, physical and occupational therapy.

**“the Department”** means the Department of Health, Social Services and Public Safety.

**“vulnerable adult”** means an adult to whom:-

- (a) accommodation and nursing or personal care are provided in a **residential care home or nursing home**;
- (b) the provision of personal care, or the assessment of the need for such care, is provided **in their own home** under arrangements made by a domiciliary care agency or by one of the following persons:
  - a social worker or care manager;
  - a community or district nurse;
  - a chiropodist; or
  - a person who provides services to a vulnerable adult in that vulnerable adult's own home to assist with their sight, sound, speech, appearance or mobility and which may involve physical contact.

or

- (c) **prescribed services** are provided by a **health services body or at a private hospital**.

An adult is a person aged 18 years of age and over.

*Only provisions for parts (a) and (b) were commenced on 1<sup>st</sup> April 2005*

## Section 3

### **THE PROTECTION OF VULNERABLE ADULTS SERVICE [POVA (NI)]**

**From 1 April 2008 the checking service provided by the Protection of Vulnerable Adults (NI) Service [POVA (NI)] will cease. All future requests for checks must be made to Access NI.**

**Please note that a check for a care position will require an Enhanced Disclosure.**

The link below will take you to Access NI's website which provides all the necessary information you will need to register and request disclosures:-

[www.accessni.gov.uk](http://www.accessni.gov.uk)

The POVA (NI) referral services will continue to be provided by the POCVA Referral Team based in the Child Care Policy Directorate at the Department.

#### **3.1 WHAT DOES POCVA MEAN FOR CARE PROVIDERS FOR VULNERABLE ADULTS ?**

POCVA requires that all providers of care for vulnerable adults:-

- Refer individuals to the Department in certain circumstances for consideration of inclusion in the DWVA (NI) List.
- Terminate the employment of anyone in a care position if it becomes known that the individual is included in the DWVA (NI) List.

All referrals for consideration of inclusion on the DWVA (NI) List should be made to POVA (NI).

**All requests for pre-employment checking should be made to Access NI. See website below for details on how to register and apply for disclosures.**

[www.accessni.gov.uk](http://www.accessni.gov.uk)

#### **3.2 FURTHER ADVICE**

**Questions about particular requests for checks, or about disputes or disagreements over the results of checks should be made to Access (NI).**

[www.accessni.gov.uk](http://www.accessni.gov.uk)

Questions about referrals to the DWV (NI) List should be directed to the POCVA Referral Team in Child Care Policy Directorate.

## Section 4

### MAKING REFERRALS FOR INCLUSION ON THE DISQUALIFICATION FROM WORKING WITH VULNERABLE ADULTS LIST

POCVA sets out the circumstances where care providers for vulnerable adults (see para 2.2 for definitions) **must** refer names to POVA (NI) for consideration of inclusion on the DWVA (NI) List.

#### 4.1 GROUNDS FOR REFERRAL

The grounds for referral are:-

- that the care provider has dismissed the individual on the grounds of **misconduct** (whether or not in the course of their employment) **which harmed a vulnerable adult or placed a vulnerable adult at risk of harm;**
- that the individual has resigned, retired or been made redundant in circumstances such that the care provider would have dismissed them, or would have considered dismissing them, on such grounds if they had not resigned, retired or been made redundant;
- that the care provider has, on such grounds, transferred the individual to a position within the organisation which is not a care position; or
- that the care provider has, on such grounds, suspended the individual or provisionally transferred them to a non care position, but has not yet decided whether to dismiss them or to confirm the transfer.

Additionally, care providers may refer names to the Department in other circumstances. This would be where they have dismissed an individual, the individual has resigned, retired or has been transferred to a position within the organisation which is not a care position and where information not available to the care provider at the time has since become available. On the basis of that information the care provider has formed the opinion that, had the information been available at the time and if (where applicable) the individual had not resigned or retired or been made redundant the care provider **would have, or would have considered** dismissing the individual on the grounds of misconduct which harmed a vulnerable adult or placed a vulnerable adult at risk of harm.

**“Would have dismissed”** - This covers the situation where an individual has engaged in misconduct which satisfied the criteria for referral (i.e. misconduct which harmed a vulnerable adult or placed a vulnerable adult at risk of harm), and has possibly been suspended or moved whilst the matter is investigated by the employer. As a result of the employer’s investigation (and possibly a disciplinary hearing) the employer is satisfied that the individual has carried out the misconduct and as a result should be dismissed or moved to a non-care position. However, before this decision can be communicated to the individual, the individual resigns/retires. In this situation the employer has come to the conclusion that dismissal was appropriate in the circumstances because they have

completed their enquiry into the allegations and can draw this conclusion.

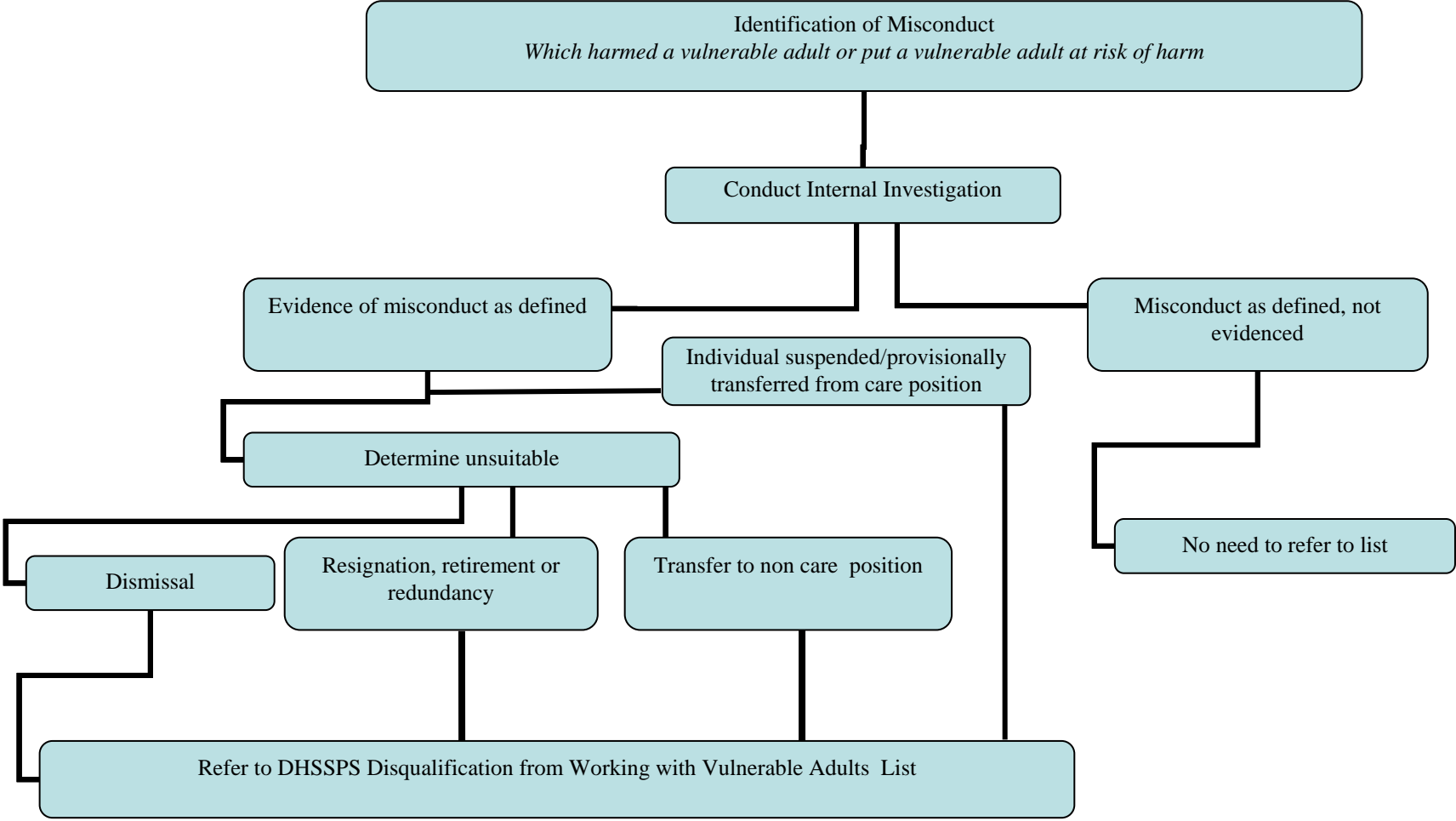
**“Would have considered dismissing”.** This type of referral will be where an allegation has come to light which satisfies the criteria. However, before the employer has had the opportunity to complete their investigation the individual retires/resigns. Until the employer has completed their investigation they cannot conclude, with any degree of certainty, that the individual would have been dismissed. Whilst the employer should undertake all investigations open to them it may not be possible to conclude all enquiries. From the information available they could only realistically conclude that they **would have considered dismissing** the individual. Employers could only come to that conclusion when bearing in mind the nature of the allegations made, dismissal would have been a serious possibility, that is, within the range of reasonable options.

It is important to note that care providers should not make a referral to the Department when dismissal of the individual was **not a serious option**. If a referral was made in such circumstances the Department would take the matter no further on the basis that it would not be appropriate for the individual to be included in the DWVA (NI) List.

**See figure 1**

Figure 1

**Procedure for Referrals to DHSSPS DWVA (NI) List**



## 4.2 WHAT CONSTITUTES “MISCONDUCT”?

“Misconduct” is defined within POCVA as “misconduct which harmed or placed at risk of harm a vulnerable adult and was committed (whether or not in the course of his employment) at a time when the individual was employed in a care position”. The determination of “misconduct” must be a matter for the employer to decide. It is difficult in guidance such as this to give precise examples, because it is not possible to reflect every situation which is likely to apply. However, misconduct can take the form of physical, psychological, emotional, financial or sexual maltreatment, or neglect of a vulnerable adult, which may include intentional inappropriate restraint and/or poor care practices in breach of professional codes of conduct, which resulted in harm or risk of harm to vulnerable adults. Acts of omission and commission should both be considered.

Misconduct which occurred after the individual left their position is therefore not relevant for referral to POVA (NI), because once the individual had left the post they could not have been dismissed, however it may be necessary to report such misconduct to the relevant appropriate authority.

## 4.3 INFORMATION TO BE SUPPLIED WITH A REFERRAL

Only the names of persons who occupied care positions, whether paid or unpaid, within the meaning of POCVA may be referred to the Department for consideration of inclusion on the DWVA (NI) List. ( See Para 2.2 for definitions)

Care providers should note that a referral of a name does not lead to automatic inclusion on the DWVA (NI) List. Referrals should be made on form POCVA (NI) 7 (see Section 6) along with a full report. The minimum information that the Department will require for all referrals is as follows:-

- Full name, address, date of birth and National Insurance Number of the individual;
- Confirmation that the individual occupied a care position within the meaning of POCVA;
- Full details of the alleged misconduct;
- Detailed explanation about how – by their misconduct – the individual harmed a vulnerable adult or placed a vulnerable adult at risk of harm;
- Details of any investigations carried out to date – and their conclusions – including copies of all relevant papers (including statements, notes of interviews, minutes of meetings and minutes/notes of disciplinary hearings) and details of the care provider’s disciplinary procedures;
- Details of the action taken against the individual, e.g. suspension, dismissal or transfer from a care position;
- Information on any police involvement (or the involvement of any other agency);
- Details of proposed further action – i.e. dates for disciplinary hearings, timetable on further investigations etc; and
- Any other information considered relevant to the circumstances of the alleged misconduct

***NB: In circumstances where a care worker has been suspended or dismissed (or has resigned etc) from a care position, whether paid or unpaid, after having been charged with offences against vulnerable adults and who is awaiting the outcome of criminal investigation or trial, a referral to the Department should also be made.***

**The individual referred must be given a copy of POCVA (NI) 7 and a copy of the care provider's accompanying report. If posting these documents to an individual recorded delivery should be used and a certificate of posting retained. The individual responsible for making the referral to the Department should sign and date POCVA (NI) 7 to certify this action has been completed.**

#### **4.4 ASSESSMENT OF REFERRAL BY DEPARTMENT**

The Department will examine and make an initial assessment of the information submitted with a referral. It may decide not to proceed if the case is clearly not suitable for inclusion, (i.e. the individual was clearly not in a care position or it is evident from the outset that no vulnerable adults were harmed or put at risk of harm by the actions of the individual)

If the referral passes the initial assessment the Department will invite observations from the referred individual before making its determination whether or not to provisionally include the individual on the DWVA (NI) List (except in cases where the individual clearly poses an immediate risk to vulnerable adults – in these circumstances the Department will progress to provisional listing before seeking observations from referred individual)

The Department will ensure the individual is provided with full details of the information submitted by the referring organisation and will copy all papers to the individual. The individual will be given 28 days in which to make written representations, or to indicate that they intend to make representations within a reasonable period.

The Department will make decisions about the provisional listing of individuals as quickly as is reasonably possible.

An individual whose name has been included provisionally on the DWVA (NI) List for a period of more than nine months (except in cases where criminal proceedings are ongoing) may, with the leave of an independent tribunal have the issue of the inclusion of their name on the DWVA (NI) List determined by an independent tribunal instead of the Department.

#### **4.5 ACTION FOLLOWING PROVISIONAL LISTING**

The following steps will be taken:-

1. If a name is provisionally included in the DWVA (NI) List, the Department will confirm this, in writing, with the referring care provider and will also immediately inform the referred individual by letter.
2. The individual will then have a further opportunity to make written representations direct to the Department as to why their name should not be retained on the DWVA (NI) List.

***Persons provisionally included in the DWVA (NI) List should not be employed in a care position.***

## 4.6 THE DECISION TO LIST

When a referral is made to the Department the name will be provisionally included in the DWVA (NI) List provided the criteria for making a referral are satisfied, i.e. that the care provider reasonably considered the individual to be guilty of misconduct which harmed a vulnerable adult or placed a vulnerable adult at risk of harm **and** the individual had been dismissed, resigned, retired or been made redundant in circumstances such that the care provider would have dismissed or transferred the individual to a non care position.

Before a decision is taken to confirm inclusion on, or removal from the DWVA (NI) List the Department will undertake a full investigation. All representations made by the individual will be passed to the referring care provider for comment and the individual concerned will receive copies of all papers submitted by the referring care provider.

Following this process of information gathering and exchange, a Panel of between one and three people including senior officers in Child Care Policy Directorate and the Office of Social Services, will review the case and reach a decision. Before confirming that a name is to be included on the DWVA (NI) List (other than provisionally) the Panel on behalf of the Department must form the opinion that:-

- The care provider reasonably considered the individual to be guilty of misconduct (whether or not in the course of his employment) which harmed a vulnerable adult or placed a vulnerable adult at risk of harm; **and**
- That the individual is unsuitable to work with vulnerable adults

It should be noted that some people may be included in the DWVA (NI) List, even though the information which the Department take into account do not lead to conviction for an offence.

It is also important to note that the Department can list an individual on the DWV (NI) List by virtue of their referral and inclusion on the DWVA (NI) List **if** the allegations against the individual are sufficiently serious enough for the Department to consider that the individual may also pose a risk to children.

*Where a person has been provisionally included on the List whilst suspended or provisionally transferred to a position which is not a care position, the Department will not form their opinion confirming inclusion of the name on the DWVA (NI) List until the care provider has dismissed the individual, or has confirmed the individual's transfer. However, even if the Department has been unable to reach a conclusion, the person provisionally included in the DWVA (NI) List may apply to have their case heard by a tribunal after nine months (except in cases where criminal proceedings are ongoing).*

#### **4.7 REFERRALS BY EMPLOYMENT BUSINESSES, EMPLOYMENT AGENCIES AND NURSING AGENCIES**

Providers of care for vulnerable adults may obtain temporary staff through employment agencies/businesses and/or nursing agencies. POCVA imposes a duty on such agencies/businesses to refer a supply worker to the Department if:

- they have decided not to do any further business with the worker on the grounds of misconduct which harmed a vulnerable adult or placed a vulnerable adult at risk of harm; or
- they have decided on such grounds not to find the worker further employment in a care position.

The process of referral and assessment is the same as that for care providers.

#### **4.8 REFERRAL BY OTHER AUTHORITIES**

Various other bodies such as the Northern Ireland Social Care Council and Nursing and Midwifery Council can make referrals to the Department on the same grounds as care providers. (Article 38 of POCVA refers)

There is also provision within the Order for the Department to include individuals provisionally on the DWVA (NI) List, as the result of Inquiry Reports which find individuals guilty of relevant misconduct and unsuitable to work with vulnerable adults. (Article 39 of POCVA refers)

In these circumstances the same process of inviting and considering observations, is conducted.

#### **4.9 SAFEGUARDS FOR THE INDIVIDUAL– A RIGHT OF APPEAL**

In drawing up the procedures for the establishment of the DWVA (NI) List, careful account has been taken of the rights of the individual and the need for protection from malicious or unsubstantiated referrals. As well as giving the individual the opportunity to comment on the information submitted to the Department to support the referral, the individual will have the right of appeal to the Care Tribunal. The individual will be able to appeal a decision by the Department to include their name (other than provisionally) in the DWVA (NI) List or against inclusion provisionally in the DWVA (NI) List for a period exceeding 9 months.

There is also scope for a listed individual to apply to the Care Tribunal for removal of their name from the DWVA (NI) List. The Care Tribunal will only consider removal if and when certain conditions are met. Actual removal from the DWVA (NI) List will only be possible if the Care Tribunal deems the individual to be suitable to work with vulnerable adults.

#### **4.10 ADDRESS FOR REFERRALS**

All referrals to the DWVA (NI) List should be sent to:-

POCVA Referral Team  
Child Care Policy Directorate  
DHSSPS  
Room D2.10 Castle Buildings  
Stormont BT4 3SQ

## Section 5

### REQUESTING CHECKS ON PROSPECTIVE EMPLOYEES

From the 30<sup>th</sup> July 2007 it has been a legal requirement for providers of care for vulnerable adults to carry out checks against the DWVA (NI) List when proposing to employ an individual in a care position (see para 2.2). If an individual is included in the DWVA (NI) List the care provider **must not** offer them employment in a care position.

#### 5.1 LEGAL REQUIREMENT TO CHECK - NEW OFFENCES

From the 30<sup>th</sup> July 2007 the following new offences apply:

- Anyone who is disqualified from working with vulnerable adults will commit a criminal offence if they apply for, offer to do, accept or do any work either paid or unpaid in a care position
- An individual who knowingly employs a disqualified individual to work in a care position; offers work to or procures work for a disqualified individual; or fails to remove a disqualified person from a care position will be guilty of a criminal offence.

Individuals found guilty of any of these offences will be punishable by imprisonment or fines or both.

All responsible care providers will want to satisfy themselves that the potential employee does not have a criminal record for violence, abuse or neglect of vulnerable adults before offering a care position. Care providers who do not carry out the appropriate checks may find themselves without any adequate defence against a charge of 'knowingly' employing someone who is disqualified from working with vulnerable adults.

*Notification that an individual is on the DWVA (NI) List is a prohibition on employment in a care position.*

#### 5.2 WHICH POSTS CAN BE CHECKED?

Care providers may only request a check on the **preferred** applicant for a care position (as defined in para 2.2 above) that is, someone to whom a conditional offer of appointment has been made - **not** short listed applicants.

**Checks should not normally be requested on existing staff or volunteers.** However, a check may be requested if:-

- someone takes up new duties in a care position where this had not previously been the case;
- serious allegations are made about someone already working with vulnerable adults or

new information comes to light.

## **Care Positions**

**It is mandatory that checks are carried out by care providers before making an appointment to any care position including a temporary position.** (See para 2.2 for definitions) The following paragraphs provide guidance about arrangements for a number of specific situations. All care providers employing people to work with vulnerable adults must examine all job descriptions against the definition of care position. If they have any difficulty with interpreting the provisions of POCVA they should seek their own independent legal advice to ensure they are compliant with the requirements of POCVA.

### **Staff Employed by Private Contractors within Care Providers' Premises**

Providers of care for vulnerable adults may contract out services such as cleaning, maintenance and building works to the private sector. Checks should be carried out by the service provider on any of their staff who are considered to be in care positions as defined in para 2.2 above. Care providers contracting out such work should be satisfied that the relevant checks are carried out.

In such circumstances, care providers should, at the tender stage, make it clear to private contractors that checks must be carried out after a contract is awarded, but before any work is undertaken. At the same time, the care provider should advise contractors that an employee will be refused entry to the premises if the care provider considers appropriate checks have not been carried out.

### **Services Provided Under Contract to a Care Provider**

Where an organisation, within its own premises, provides services under contract to a provider of care for vulnerable adults it is for the organisation providing the services to determine whether any posts are care positions, and to use the Access (NI) disclosure service as appropriate.

### **Nursing and Allied Health Professionals Students Undergoing Professional Training Who Are Not Formally Employed**

Special arrangements apply to Nursing and Allied Health Professionals students whereby the Universities or Colleges are responsible for requesting checks on students after acceptance on to the course and prior to the commencement of training. Each University and College of Nursing must discuss the arrangements for training with the organisations providing it, and identify those placements which will be care positions.

This procedure does not apply to students from Universities or Colleges outside Northern Ireland, or to students who are formally employed by a Board or Trust. Responsibility for checks on such students remains with the Board or Trust concerned.

## **Colleges of Further and Higher Education**

Students who undertake a health or social care course in a College of Further or Higher Education may have a number of training placements in care positions during their course. To avoid multiple checks being carried out the College must request checks for these students at the beginning of the academic year.

## **Employment Agencies, Nursing Agencies and Employment Businesses**

Employment and nursing agencies who supply staff to statutory, voluntary and private providers of care for vulnerable adults are required by POCVA to request checks on the staff they provide. A provider of care for vulnerable adults must satisfy itself that a check has been carried out within the past 12 months on any individual supplied by an employment agency and obtain written confirmation of the information provided.

Checks **should not** be requested on applicants who are going to work outside the UK and information cannot be provided from the DWVA (NI) List in these circumstances.

### **5.3 ARRANGEMENTS FOR THE POLICE TO REPORT CONVICTIONS OF STAFF DURING EMPLOYMENT**

The police will advise Health and Social Care Trusts if an existing employee, who is in a care position, is convicted of an offence involving; indecency, dishonesty, violence, alcohol or drugs. The employee should be told about the report and given the opportunity to confirm its accuracy.

### **5.4 TERMINATION OF EMPLOYMENT**

If a provider of care for vulnerable adults becomes aware that an individual who is employed in a care position is included in the DWVA (NI) List, the care provider must terminate the employment or move the individual to a non care position.

# SECTION 6

**RESTRICTED**

**POCVA (NI) 7**

**REFERRAL TO THE DISQUALIFICATION FROM WORKING WITH CHILDREN LIST  
AND/OR DISQUALIFICATION FROM WORKING WITH VULNERABLE ADULTS LIST**

|   |   |
|---|---|
| To: POCVA Referrals<br>Child Care Policy Directorate, DHSSPS<br>Room D2.10<br>Castle Buildings<br>Stormont Estate<br>BELFAST<br>BT4 3SQ | Date of Referral: _____<br>Name: _____<br>Organisation: _____<br>Address: _____<br>_____<br>_____<br>Postcode: _____<br>Contact Tel No: _____ |
|---|---|

**A. SUBJECT'S DETAILS** Post Occupied (with dates) \_\_\_\_\_

|   |                              |                   |                          |                              |                          |  |  |                  |  |
|---|------------------------------|-------------------|--------------------------|------------------------------|--------------------------|--|--|------------------|--|
| <b>Surname:</b>   | <b>National Insurance No</b> |                   |                          |                              |                          |  |  |                  |  |
| <b>Forenames:</b>   | <b>Date of Birth:</b>        |                   |                          |                              |                          |  |  |                  |  |
| <b>Previous Surname(s):</b>   |                              |                   |                          |                              |                          |  |  |                  |  |
| <b>Home Address:</b>  |                              |                   |                          |                              |                          |  |  |                  |  |
|   |                              |                   |                          |                              |                          |  |  | <b>Postcode:</b> |  |
| <b>Previous Address: (within last 5 years):</b>   |                              |                   |                          |                              |                          |  |  |                  |  |
| <b>Address:</b>   |                              |                   |                          |                              |                          |  |  |                  |  |
|   |                              |                   |                          |                              |                          |  |  | <b>Postcode:</b> |  |
| <b>Please indicate below if the referral is on the grounds of the individual's misconduct against a child, a vulnerable adult, or both.</b> |                              |                   |                          |                              |                          |  |  |                  |  |
| Children  | <input type="checkbox"/>     | Vulnerable Adults | <input type="checkbox"/> | Children & Vulnerable Adults | <input type="checkbox"/> |  |  |                  |  |

**B. DETAILS OF ALLEGATIONS/INCIDENT**

A listing on the Disqualification from Working with Children list and/or the Disqualification from Working with Vulnerable Adults list is a serious matter with legal consequences for the person involved. It is therefore important that organisations provide full information with the referral addressing each of the areas below in order that the Department can make an informed decision. Please continue on a separate sheet if necessary **and/or attach any relevant documents** such as witness statements, etc.

**B.1 Details of the alleged misconduct (including dates)**

**B.2 Detailed explanation about how this misconduct either harmed a child or placed a child at risk of harm and/or harmed a vulnerable adult or placed a vulnerable adult at risk of harm. Action taken, eg referral to police or social services with dates.**

**B.3 Details of any investigations and their findings (provide copies/witness statements, etc)**

**B.4 Details of the action taken against the individual eg has the individual been moved to another post which is not a child care or caring position, been dismissed, suspended from duties, resigned, been made redundant or accepted early retirement?**

**B.5 Any other information considered relevant eg police involvement, charges, prosecutions, etc.**

**B.6 Explain why you consider this individual unsuitable to work with \*children and/or**

**\*vulnerable adults.** (\*delete as appropriate)

A large, empty rectangular box with a thin black border, occupying most of the page below the text. It appears to be a placeholder for content that has been removed or is yet to be added.

**C. DECLARATION**

Organisations are asked to **tick box 1, 2 or 3** as appropriate and sign the declaration.

**For individuals who have been dismissed, permanently transferred, resigned, retired or been made redundant.**

1.  This person has been employed by this organisation in a post involving work with children and/or vulnerable adults as defined under POCVA. Following allegations, which were investigated by this organisation, I am of the opinion that the individual has:
- a. harmed a child or placed a child at risk of harm and/or
  - b. harmed a vulnerable adult or placed a vulnerable adult at risk of harm.
- (delete a. or b. as appropriate)

**For individuals who have been suspended or provisionally transferred from a regulated or care position**

2.  This person has been suspended/transferred from a regulated or care position following allegations of misconduct which harmed a child/vulnerable adult or placed a child/vulnerable adult at risk of harm but no decision has been made whether to dismiss or confirm the transfer.

**Where the individual was previously employed by this organisation and has since left.**

3.  Information not available at the time of dismissal, suspension, transfer, resignation, retirement or redundancy has become available and I am of the opinion that the organisation would have dismissed or considered dismissing the individual on the grounds of misconduct which:
- a. harmed a child or placed a child at risk of harm and/or
  - b. harmed a vulnerable adult or placed a vulnerable adult at risk of harm.
- (delete a. or b. as appropriate)

I am therefore reporting the matter to the DHSSPS to consider whether this person's name should be included on either:

- a. the Disqualification from Working with Children List, and/or
  - b. the Disqualification from Working with Vulnerable Adult List.
- (delete a. or b. as appropriate)

I confirm that I have passed a copy of this POCVA 7 form and the accompanying reports and documentation to the person named at Section A above along with the appropriate

- a. POCVA (NI) 7 (Children) Explanatory Note: and/or (see POC (NI) Service guide)
  - b. POCVA (NI) 7 (Vulnerable Adult) Explanatory Note
- (delete a. or b. as appropriate)

**SIGNED:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**POSITION:** \_\_\_\_\_

**NAME IN CAPITALS:** \_\_\_\_\_

**POCVA (NI) 7 (Vulnerable Adults) Explanatory Note**  
**EXPLANATORY NOTE – REFERRAL TO DHSSPS**

**TO:**

**Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_

This is a copy of a report concerning you which has been sent to the Department of Health, Social Services and Public Safety (DHSSPS) for consideration of inclusion of your name on the Disqualification from Working with Vulnerable Adults List (DWVA (NI) List).

These notes tell you what the report is for, what the DHSSPS is going to do and what your rights are. Nothing in the report or these notes affects your rights under civil or criminal law.

The DHSSPS operates a Protection of Vulnerable Adults (NI) Service so that providers of care for vulnerable adults can check whether the police or the DHSSPS have any information about someone who applies for a care position that might indicate they were not suitable for that position.

As part of the service, the DHSSPS is required by law (the Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003) to maintain a list of the names of people who have been reported by their employers because their behaviour harmed a vulnerable adult or placed a vulnerable adult at risk of harm. The conditions for inclusion are:

- That the organisation has dismissed the individual on the grounds of **misconduct** (whether or not in the course of his employment) **which harmed a vulnerable adult or placed a vulnerable adult at risk of harm.**
- That the individual has resigned, retired or been made redundant in circumstances such that the organisation would have dismissed them, or would have considered dismissing them, on such grounds if they had not resigned, retired or been made redundant.
- That the organisation has, on such grounds, transferred the individual to a position within the organisation which is not a care position.
- That the organisation has, on such grounds, suspended the individual or provisionally transferred them to a non care position, but has not yet decided whether to dismiss them or to confirm the transfer.

The DHSSPS will now consider if your name should be included on the DWVA (NI) List.

There are four stages to this process as follows:

**Received Stage** - POCVA (NI) 7 form received by the Department. The Department will consider whether it meets the criteria for referral.

**Pre-provisional Stage** – At this stage your case has met the initial criteria for referral and we will write to you offering you the opportunity to submit any observations you may wish to make on the referral. You will have 28 days in which to submit your observations. If you do not make observations, your case will automatically be considered for provisional listing or no further action.

**Provisional Listing Stage** – Once your observations are received your case will be considered for provisional listing or no further action – you will be advised in writing of the outcome of this consideration. If provisionally listed you will be given 14 days in which to submit any further observations. Provisional listing allows the Department time to fully investigate the referral. If you are provisionally listed on the DWVA (NI) List this will be disclosed to any potential employers who propose to offer you employment in a care position. They will be advised that you should not be employed in a care position. If your case has not been decided on within nine months from the date of provisional listing, you may, with the leave of the Care Tribunal, have the issue of your listing determined by the Care Tribunal instead of the Department.

**Fully Listed/Removal Stage** – Once all relevant information has been received your case will be passed to the Decision Panel who will consider whether your name should be fully listed on the DWVA (NI) List or removed from the DWVA (NI) List (if you are suspended your referral will not progress to full listing consideration until your employer has reached a decision regarding your suspension). You will be informed of the outcome of the Decision Panel's consideration in writing. If the outcome is that you are to be fully listed on the DWVA (NI) List you will have a right of appeal to the Care Tribunal.

**There are serious consequences if your name is fully listed on the DWVA (NI) List. If your name is fully listed on the DWVA (NI) List you will be disqualified from working with vulnerable adults in a care position. This means you will be guilty of an offence if you apply for, offer to do or accept or do any work either paid or unpaid in a care position.**