

VIOLENT AND POTENTIALLY VIOLENT PERSONS WARNING MARKERS – THEIR USE AND BEST PRACTICE

1. The Council's responsibility

- 1.1 Health and safety legislation places a duty of care on the Council to take reasonable steps to prevent foreseeable risk of harm occurring to its employees in the workplace. The Council is fully aware of its obligations in this respect and acknowledges that none of its employees should have to work in fear of injury, intimidation, harassment or abuse when carrying out their official duties, including responding to telephone calls.
- 1.2 This guidance is designed to ensure that the Council uses the violent and potentially violent persons warning markers (the Marker(s)), in compliance with the data protection principles, for example ensuring that the information it holds is accurate and up to date. This guidance also explains how this type of information can be shared between organisations and how long the personal details should be kept on file. The decision to place such a Marker on an individual's file should always be based on a specific incident, and details of that incident must be accurately recorded. These criteria are fully explained in this guidance.
- 1.3 This guidance applies to employees, councillors, agents, contractors and other persons working for or providing services on behalf of the Council.

2. The employee's responsibility

Health and safety legislation places a duty on employees to take reasonable care for their own health and safety and to co-operate with their employer. This includes undertaking any appropriate training offered, reporting incidents and assisting in any investigations.

3. What is workplace and workplace related violence?

- 3.1 Most people think of violence as a physical assault. However, workplace violence has a much broader concept. It is any act in which a person is abused, threatened, intimidated or assaulted in his/her employment. Workplace violence includes the following (this list is not exhaustive):
 - 3.1.1 threatening behaviour - such as shaking fists, property damage/vandalism or throwing objects;
 - 3.1.2 verbal or written threats - any expression of an intent to inflict harm;
 - 3.1.3 harassment - any behaviour that demeans, embarrasses, humiliates, annoys, alarms or verbally abuses a person and that is known or would be expected to be unwelcome - this includes words, gestures, intimidation, bullying, or other inappropriate behaviour;
 - 3.1.4 physical attacks - hitting, shoving, pushing or kicking.
- 3.2 Workplace violence is not limited to incidents that occur within the Council offices. Work - related violence can occur off-site e.g. site visits, home visits or a threatening telephone call to an employee's home, from a customer.

4. What work-related factors increase the risk of violence?

Certain work factors, processes, and interactions can put employees at increased risk from workplace violence. Examples include:

- 4.1 working with the public;
- 4.2 handling money;
- 4.3 carrying out inspections of premises or enforcement duties;
- 4.4 providing services, care or advice;
- 4.5 working with unstable or volatile persons;
- 4.6 working alone, in small numbers or in isolated areas;
- 4.7 working in community-based settings.

5. Why use Markers?

5.1 Markers are a means of identifying and recording concerns that some individuals pose, or are likely to pose, a risk to Council employees, councillors, agents, contractors or other persons working for or on behalf of the Council, who come into contact with them. The Markers generally take the form of a flagged piece of text attached to an individual's paper file or included in the Violent and Potentially Violent Persons Register (an electronic database) and, as with any other form of personal information, any processing must comply with the Data Protection Act 2018.

5.2 Under the **Data Protection Act 2018 and the UK GDPR (applying the General Data Protection Regulation)**, processing personal data will be lawful only if, and to the extent that, at least one of the lawful bases in Article 6 of the UK GDPR is met. For the purposes of Markers, the Council relies on Article 6(1)(c) i.e. the processing is necessary to comply with a legal obligation to which the Council as data controller is subject and section 8(c) of the Data Protection Act 2018, in service to the Health and Safety at Work etc Act 1974.

The processing of information in the form of Markers is considered necessary to comply with the Council's duty of care obligations under health and safety legislation and the legal obligations imposed on the Council as data controller, in connection with employment.

5.3 The most reliable predictor of future violence is previous violence or incidences of a potentially violent nature. Therefore, it is important that all incidents of actual or threatened violence are reported and recorded, by the victim's service manager on the VPVPR.

6. Violent and Potentially Violent Persons Register (VPVPR)

6.1 The purpose of the VPVPR is not to stigmatise individuals, but to manage risk. The VPVPR alerts Officers and organisations acting on the Council's behalf to the potential risks of dealing with a particular individual and allows them to take all reasonable and practical measures to assess the risks and put in place the necessary control measures to protect them against any violence etc.

6.2 Personal information is included in Markers. The data involved in these cases is often of a sensitive nature, requiring careful handling and so must comply with the

Data Protection Act 2018. If questioned in a court of law, would the Council be in a position to justify the use of a Marker? Service managers must therefore ensure that there is a good and sufficient objective reason for a Marker to be applied.

6.3 Markers should be used very carefully and should contain the reasons for identifying individuals as being violent or potentially violent. Markers are likely to record information relating to:

6.3.1 the apparent mental stability of an individual; or

6.3.2 any threatening actions, incidents or behaviour the individual has or is alleged to have committed.

7. Classifiable risk incident categories

7.1 A number of key risk incident categories have been identified, following consultation with service managers. These are:

7.1.1 verbal abuse;

7.1.2 racist comments;

7.1.3 throwing substances (including objects, powders and liquids) onto a person;

7.1.4 brandishing weapons or other objects;

7.1.5 threats or risk of injury to Council employees and/or contractors;

7.1.6 punching and kicking;

7.1.7 hitting and slapping;

7.1.8 sexual assault;

7.1.9 incidents where reckless behaviour results in physical harm to others;

7.1.10 incidents where attempts are made to cause physical harm to others and fail;

7.1.11 incidents of non-physical behaviour or physical assault caused by someone associated with the individual e.g. carer, friend, relative, guardian etc.;

7.1.12 unintentional application of force e.g. by individuals with mental disorders where there is a lack of capacity;

7.1.13 householder's pets e.g. dangerous dogs;

7.1.14 environmental/property conditions e.g. unsanitary living conditions;

7.1.15 other anti-social behaviour.

7.2 Additional information in support of the Markers must highlight specific areas of risk or known triggers, for example:

'Please exercise caution when dealing with this individual. He/she has been involved in a physical assault against Council staff but should not be denied access to services. All staff should seek advice on the safeguards that need to be in place before dealing with this individual.'

8. Who makes the decision to include an individual on the VPVPR?

8.1 Service managers are responsible for making these decisions and for ensuring that decisions are reviewed regularly in accordance with section 10 below. When making a decision, service managers will take into account:

8.1.1 the nature of the threat; and

8.1.2 the degree of violence used or threatened; and

8.1.3 whether or not the incident indicates a credible risk of violence to employees etc. (a risk assessment ¹must be carried out).

8.2 All decisions must accurately record any incident and be based on a case-by-case basis. The VPVPR will be reviewed at three monthly intervals or sooner, at the discretion of the service manager.

9. Is the decision in support of a Marker an objective or subjective one?

9.1 A decision to include an individual on the VPVPR must be based on a specific incident or expression of clearly identifiable concern by an employee, councillor, agents or other persons working for or on behalf of the Council, rather than general opinions about that individual. The individual should pose a genuine risk and the decision should be based on objective reasons and any one or more of the risk categories referred to in section 7.1 above.

10. Review and retention of Marker and associated information on the VPVPR

10.1 Establishing and documenting review periods and carrying out reviews are an essential part of any system. One of the main components of good information handling is that information should not be kept longer than necessary. Markers must be reviewed at regular intervals to assess whether they can be removed or should remain on file, for a further period.

10.2 A feature of the VPVPR is that once the details have been added, service managers will, at the end of a given period, receive an automatic alert (generated by the computerised system), to review the information. Alerts to all service managers, will be generated at three-month intervals or more frequently.

10.3 The retention period of the Marker will depend on the risk. For example:

10.3.1 the original level or threat of violence/gravity of the incident;

10.3.2 length of time since the incident occurred;

10.3.3 the previous and subsequent behaviour of the individual;

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10.3.5 whether or not an incident was likely to have been a 'one-off e.g. where the individual was suffering an unusual amount of stress due to a particular set of circumstances;

10.3.6 environmental or other identified risks have changed.

10.4 Service managers must ensure that Markers are removed, unless the seriousness of the incident warrants the details to be retained. Reasons for retention must be recorded.

¹ Local Government Ombudsman Decision - Nottinghamshire County Council (16 009 251)

11. Should the Council inform the individual about the Marker?

11.1 For the processing to be fair, the Information Commissioner advises that at the time the decision is taken to impose a Marker, the individual should be notified that a Marker has been added to their file and advised why their behaviour was unacceptable and how this has led to the Marker.

11.2 The Data Protection Act 2018 gives individuals the right to make a subject access request (see section 12 below). In most circumstances, you should reveal the fact that there is a Marker on the individual's record but you will need to consider whether:

- revealing the existence of the Marker;
- revealing the information in the Marker;
- revealing the information in a Marker to another organisation providing services on the Council's behalf; or
- what the individual may infer from the existence of the Marker,

may actually cause serious harm to the physical or mental health or condition of that individual or create a risk of a violent reaction from them against staff etc.

Whether to disclose the existence of a Marker is decided on a case-by-case basis. If in doubt, seek advice from the Data Protection Officer.

12. What are the individual's rights?

12.1 The Data Protection Act 2018 gives individuals the right to:

- (a) make a **subject access request**. Subject access requests are dealt with in accordance with the guidance issued by the Data Protection Officer – 'Subject Access Requests - Dealing with requests from individuals for personal information' (available through the intranet).

13. Can Marker information be disclosed to other staff and/or organisations?

13.1 From a legal point of view, the UK GDPR Article 6 condition referred to in section 5.2 above, will not cover disclosing the Marker and associated information to other organisations, as the condition applies to a legal obligation on the Council for its own staff, not other organisations' staff. However, where there is a good reason for providing the information to another organisation, for example, to alert them to the potential risk to their staff, the processing is justified and not unfair.

13.2 Service managers must determine the disclosure of Markers and associated information to other organisations and staff on a case-by-case basis, where there is a credible risk that an unlawful act, such as an assault, will occur. The information provided will be that related to a particular individual, not the entire VPVPR.

13.3 If service managers pass the information on to another organisation, a record of this must be placed on the VPVPR.

- 13.4 If, having reviewed the Marker, service managers decide to change or remove it, the organisation to which the Marker was notified, must be advised.
- 13.5 The Council may receive information from other enforcement agencies e.g. police about placing Markers against particular individuals. In this case, the VPVPR will identify the source of the information and the date received. The review process referred to in section 10 above, will apply.
- 13.6 The decision of the Court of Appeal in *Clift v Slough Borough Council*² makes clear that even when information is disseminated internally within the Council or to other organisations, the reputations of those persons affected by Markers cannot be treated lightly on grounds of administrative convenience. The Court held that the protection of employees from violent conduct is a legitimate aim but notifying other staff and/or organisations who are unlikely to be approached by the individual with a Marker, is disproportionate and indiscriminate and cannot be justified on grounds of administrative convenience.

14. Access to and security of the VPVPR

- 14.1 THE VPVPR will be password protected with access regulated on a 'need to know basis' only.
- 14.2 No hard copies of the VPVPR are to be maintained under any circumstances.
- 14.3 A mobile phone optimised address search can be used while away from the Civic Centre via a URL - https://windmz.dartford.gov.uk/ufs/PVR_MOBILE.eb (the URL can be saved to a mobile phone or added to a mobile home screen as an icon if preferred). Access is through an allocated User ID and password. Contact the Support Services Supervisor or IT Services.

15. Staff training

- 15.1 Service managers will ensure that staff are trained in the use of the VPVPR and that staff are aware of:
- 15.1.1 their duty to report all violent or threatening incidents or professional expressions of concern about real or potential violence;
 - 15.1.2 the name of the person they should report incidents to; and
 - 15.1.3 service managers who make the decisions about Markers.
- 15.2 If a member of staff is in any doubt on how to handle an identified risk, further advice should be sought in the first instance, from their service manager. The Data Protection Officer will provide guidance, if necessary.

16. Monitoring

- 16.1 The Support Services Supervisor in consultation with the Data Protection Officer will monitor the integrity of the VPVPR on an annual basis, to ensure that the

² [2010] EWCA Civ 1171; [2010] WLR (D) 343

system of review is effective and that only those persons with a 'need to know' have access to the VPVPR.