

# SAFE WORKING PROCEDURE

## Incident List

CORPORATE HEALTH & SAFETY SERVICE VERSION 10.02 | JUNE 2024

### STATEMENT:

In order to comply with legislation and fulfil statutory responsibility, the Council must make sure that:

- Employees are warned about clients, service users and customers who have demonstrated a propensity for violence and/or abusive and/or threatening behaviour towards Council officers, by their inclusion on an 'Incident List'.
- The 'Incident List' is a source of information that enables the Council to manage how it deals with those named on it, informing managers risk assessment processes and comprising of the names and addresses of individuals. It details how dealings with those individuals should be managed and when their inclusion on the 'List' will be reviewed.
- **No unofficial lists** are to be kept by Service Areas. The List sanctioned by the Service Director – Legal & Governance must be the **only one** in circulation.
- All Service Areas are responsible for implementing local procedures to conform to this Safe Working Procedure.

### SCOPE:

This Safe Working Procedure applies to:

- All employees of Southampton City Council.
- All contractors working on behalf of the Council.
- All health care service providers commissioned by the Council.

## Version Control

This Safe Working Procedure is issued and managed by Corporate Health and Safety Service.

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	May 2013	May 2014
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### Content

1. [Compliance with the Data Protection Act](#)
2. [Responsibilities](#)
3. [Procedure \(Non Urgent Cases\)](#)
4. [Procedure \(Urgent Cases\)](#)
5. [Incidents deemed inappropriate for inclusion, or of particular local concern](#)
6. [Assessment Criteria](#)
7. [Categories of Risk](#)
8. [Limitations on the exercise of this Safe Working Procedure](#)
9. [Safe Working Procedures Relevant to This Document](#)
10. [Main Legislation Relevant to This Document](#)
11. [Contact Addresses and Guidance Links](#)

[Appendix 1:](#) Incident List Procedure Flow Chart

## 1. Compliance with the Data Protection Act

- 1.1. The Health and Safety at Work etc. Act 1974 places a duty of care on employers to ensure their staff are protected in the workplace. An incident list and/or warning markers are a means of identifying and recording individuals who pose, or could possibly pose, a risk to the members of staff who come into contact with them. Personal data, and often sensitive personal data, will be included in an incident list or warning marker so these records must comply with the Data Protection Act 1998 ("the DPA").

### Compliance with the DPA – fairness

- 1.2. The first data protection principle requires that the processing must be fair and lawful. This means that a decision to add an individual to the 'Incident List' or annotate their file with a warning marker must be based on a specific incident or expression of clearly identifiable concern by a competent person, rather than general opinions about that individual. The individual should pose a genuine risk, and the decision should be based on objective and clearly defined criteria, in line with a clear and established policy and review procedure. The criteria should take into account the need to accurately record any incident.
- 1.3. A decision on inclusion on the incident list will be made in consultation with staff members and their line manager and CHSS. CHSS will review the current incident and previous incident history and make recommendations based on risk to staff to make the final decision as to whether an individual is included on the list.
- 1.4. Should further information be required or where a degree of uncertainty is identified during the decision making process, CHSS will consult with others as appropriate, taking into account:
- The nature of the threat;
  - The degree of violence used or threatened; and
  - Whether or not the particular incident indicates a credible risk of violence to staff.
- 1.5. For the processing to be fair, individuals should normally be informed if they have been identified as being a potential risk after the decision is made to add them to the 'Incident List' or to add a warning marker to their record. The individual should be informed why their behaviour was unacceptable and how this has led to the decision.
- 1.6. The individual should be told:
- The nature of the threat and/or behaviour that led to the inclusion or warning marker;
  - That their records will show the inclusion or warning marker;
  - Who the Council may pass this information to; and
  - When the inclusion will be reviewed and/or removed.
  - That they have a right to appeal the decision and that if the wish to appeal, this must be done in writing to Legal and Democratic Services
- 1.7. There may be cases where informing the individual may in itself create a risk of violence and/or threatening behaviour by them, or may cause serious harm to the individual's physical or mental health. In these cases, it may not be sensible to inform the individual as described earlier. In this instance, it must be able to be shown why the Council considers that by informing the individual of the inclusion or warning marker, there would be a risk of further violent and/or threatening behaviour or physical and/or mental harm. All decisions must be made on a case-by-case basis with appropriate records kept.
- 1.8. If at the end of the review period it is decided the person should remain on the list for a further period, the individual should again be told of the reasons why and their right to appeal, with records updated accordingly.

### Compliance with the DPA - processing conditions

- 1.9. As an Employer, the Council has a duty of care towards its staff. Therefore under health and safety legislation, the appropriate DPA Schedule 2 condition to allow processing of information in relation to the 'Incident List' is that processing is necessary to comply with any legal obligation imposed on the data controller (which in this case would be the employer). The appropriate Schedule 3 condition is

that processing is necessary to comply with any legal obligation imposed on the data controller in connection with employment.

### **The individual's rights**

- 1.10. The DPA gives individuals the right to make a subject access request. In most circumstances, it would be revealed that there is an 'Incident List' entry or warning marker on the individual's file/record, although usually the individual should already have been informed. However, this decision should be made on a case-by-case basis and in light of the criteria referred to in paragraph 1.3 and 1.4 above.

### **Requests from individuals to stop processing their personal information**

- 1.11. Section 10 of the DPA gives individuals the right to require a data controller to stop processing their personal information if this is likely to cause them substantial and unwarranted damage or distress. If an individual gives the Council a section 10 notice relating to inclusion on the 'Incident List' or addition of a warning marker, then the Council may ultimately have to justify its actions in court.

### **Passing the information to other organisations**

- 1.12. The appropriate DPA Schedule 3 condition for processing will not cover disclosing the inclusion or warning marker information to other organisations, as the condition relates to a legal obligation on the employer for their 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, this will be justified even though no Schedule 3 condition obviously applies. In this instance, the focus is on whether the processing is justified and fair. A senior appointed person in the Council should determine this on a case-by-case basis, where there is a credible risk that an unlawful act, such as an assault, will occur. They should only provide the information to an agreed appointed person in the other organisation.
- 1.13. If the Council passes the information on to another organisation, the individual should be informed, unless there would be a serious risk to the person or another individual. Similarly, if the inclusion or warning marker is reviewed and a decision taken to change or remove it, the other organisations that have been sent the information should be informed.

### **Retention**

- 1.14. The fifth DPA principle states that personal information should not be kept longer than necessary. An inclusion and/or warning marker must be removed when there is no longer a risk. This should be part of the standard review procedure. The retention period is likely to depend in part on:
- The original level or threat of violence;
  - How long ago this was;
  - The previous and subsequent behaviour of the individual; and
  - Whether or not an incident was likely to have been a 'one-off', for example, where the individual was suffering an unusual amount of stress due to a particular set of circumstances.

### **Security**

- 1.15. All records containing an indication that an individual is potentially a risk should be retained securely whether they are paper based or recorded electronically. Appropriate steps should be taken to prevent unauthorised access to any information indicating that an individual has been included on an incident list.

### **Staff training**

- 1.16. Staff should be trained to use the system and procedures relating to the 'Incident List' and warning markers. Staff should be aware of:
- Their duty to report all violent or threatening incidents or professional expressions of concern about real or potential risks to the Council's employees;
  - The procedure for reporting incidents; and

- The senior appointed person who makes the decisions about inclusions and markers.
- 1.17. The need to meet the requirements of the DPA must be balanced with the need to prevent staff from foreseeable and unforeseeable harm.

## 2. Responsibilities

### Senior Managers are responsible for:

- 2.1. Ensuring that CHSS are supplied with a list of Key Officers to whom the Incident List must be sent.
- 2.2. Ensuring procedures are in place to conform to this Safe Working Procedure (SWP).
- 2.3. Considering any cases (in conjunction with CHSS) that are inappropriate for inclusion on the Incident List or of particular local concern under paragraph 5 of this Procedure.
- 2.4. Conducting reviews of violence and abuse incidents which are reported via the Health and Safety Management System ([HSMS](#)), and where necessary include all relevant supporting evidence for the individual case where they support / do not support a recommendation for inclusion on the incident list, or for the addition of a note or annotation on a client's file / record in accordance with section 5 of this procedure.

### Managers are responsible for ensuring compliance with this Procedure and must:

- 2.5. Be aware of the information held on the 'Incident List' and control the distribution of details from the List as necessary (this includes limiting access of the List to officers/contractors/service providers who only require certain property or location specific details rather than the entire list).
- 2.6. Report all incidents as per SWP Accident/Incident Reporting and Investigation.
- 2.7. Complete the associated incident report on the [HSMS](#), with all supporting evidence to the Corporate Health and Safety Service (CHSS). Supporting evidence should include a risk assessment completed having regard to the assessment criteria listed in section 6 of this Procedure.
- 2.8. Carry out the necessary investigations of incidents reported and update the incident report form with supporting reasons if the individual should be considered for inclusion on the List.
- 2.9. Update CHSS if there are further incidents relating to the same individual.
- 2.10. Participate in the consultation process towards CHSS making the final decision as to whether an individual should be placed on the incident list, providing supporting information and/or documents as applicable.

### Employees must:

- 2.11. Report all incidents as per SWP Accident/Incident Reporting and Investigation.

### The Corporate Health and Safety Service (CHSS) must:

- 2.12. Decide whether to authorise the inclusion of an individual on the Incident List, the category of risk that should be applied, the period of inclusion, and how contact with them should be managed.
- 2.13. Where appropriate, collect and collate further evidence if this assists or is necessary to make a decision.
- 2.14. Refer especially serious cases to the relevant Legal Officer to consider whether court action is also appropriate following consultation with the referring manager.
- 2.15. Review incidents as per SWP Accident/Incident Reporting and Investigation.
- 2.16. Arrange for consultation with staff and managers etc. as appropriate towards making decisions on inclusion and removal of individuals on the Incident List.
- 2.17. Advise reporting managers in relation to cases that may fall outside the Corporate Incident List but merit the inclusion of a note or annotation on a client file/record, in accordance with section 5 of this Procedure.
- 2.18. Send notifications or warning letters to the individual(s) concerned, as appropriate.
- 2.19. Ensure that the necessary recommendations and comments are recorded on the [HSMS](#)
- 2.20. Participate in the process of reviewing decisions to include individuals on the 'List', by providing any relevant information about the individual's conduct since their initial inclusion on the 'Incident List'.
- 2.21. Act as a point of contact offering advice and information on the operation of this SWP.

**The Monitoring Officer must:**

- 2.22. Determine appeals against inclusion on the 'Incident List' or the period of inclusion. Appeals can be assigned to a Senior Solicitor unless this is not possible due to a conflict of interests, whereby, the Monitoring Officer will determine the appeal personally or assign to another appropriate Officer.

**The Senior Legal Assistant (Data Protection Officer) (DPO), acting on behalf of the Service Director – Legal & Governance, must:**

- 2.23. Act as a point of contact offering advice and information on the operation of this SWP, and compliance with the DPA.
- 2.24. Participate if appropriate in the decision making process if requested by CHSS to make recommendations from a legal aspect of individual cases and whether the individual should be included on the 'Incident List'.
- 2.25. Participate if appropriate in the process of reviewing decisions to include individuals on the 'List', by providing any relevant information about the individual's conduct since their initial inclusion on the 'Incident List'.
- 2.26. Assist CHSS with making a decision on inclusion for "urgent cases", as outlined in Section 4 of this procedure.

**Key Officers must:**

- 2.27 Make themselves known through their Senior Managers to the DPO.
- 2.28 Ensure controlled distribution of the Incident List to managers who need to be aware of the information held on the Incident List; Controlled distribution includes limiting access of the List to officer/contractors who only require certain property or location specific details rather than an entire list or specific details.
- 2.29 Ensure, as far as is reasonably practicable, that there are no unauthorised lists in existence.
- 2.30 Ensure they have a deputy in place to deal with their duties when absent from work.

**3. Procedure (non-urgent cases)**

- 3.1 For an individual to be considered for inclusion on the Incident List:
- 3.1.1 Any officer can report an incident following SWP Accident/Incident Reporting and Investigation, giving full details of the incident; or
- 3.1.2 CHSS receive relevant information about an individual via another means, e.g. from the Police or another public body, together with sufficient evidence to justify inclusion on the Incident List.
- 3.2 Managers must clearly recommend inclusion on the Incident List in the incident report and specify the reasons for this recommendation. This referral is sent to CHSS in line with SWP Accident/Incident Reporting and Investigation with supporting evidence, including a risk assessment, considering the assessment criteria listed in section 6 of this Procedure.
- 3.3 CHSS will consider the incident report and supporting evidence provided by the reporting officer, and also any relevant information available and determine whether an individual should be added to the Incident List, which category of risk, period of inclusion and to agree how dealings with them should be managed.
- 3.4 Where an individual is to be added to the Incident List, CHSS will notify the individual concerned in writing and uploaded a copy to the [HSMS](#), provided this has not been deemed inappropriate in the circumstances. They should inform the individual that their inclusion on the list will be reviewed after the determined period and outlining their right to appeal against their inclusion on the Incident List. The Incident List will be updated accordingly.

- 3.7 Although it is possible to add an individual to the Incident List for a period of up to 24 months, where justified, the default position should be the shortest period that is deemed appropriate and proportionate, considering all the circumstances, should be applied. Only the most serious cases will merit inclusion for 24 months.
- 3.8 Where an individual is added to the Incident List, the officer who reported the incident may, in consultation with their line manager, arrange for an appropriate warning marker or note to be placed on the client's record or file held within that department. Any such marker or note must include details as to the circumstances leading to the inclusion and the potential actions staff need to take if in contact with that individual. This should also include a review date which reflects the period of inclusion on the Incident List. A copy of the incident report and/or all supporting evidence must be retained on the client's record and stored electronically on the file where appropriate. This marker must be removed when the individual is removed from the Incident List.
- 3.9 In the event that an individual is not included on the Incident List following a referral, CHSS will update the [HSMS](#) accordingly, as well as the reasons for not including the individual.

#### 4. Procedure (urgent cases)

- 4.1 In the event that an incident occurs that is genuinely too urgent to be considered in accordance with the non-urgent procedure, and that poses an imminent risk to Council officers, the following procedure may be followed:
- 4.1.1. The reporting officer contacts CHSS as soon as possible with details of the incident;
  - 4.1.2. CHSS will consider the circumstances and if the incident is deemed sufficiently serious and is so urgent that it could not be considered under the non-urgent procedure, CHSS will assist by completing an incident report on the [HSMS](#). The HSMS will send an automated email alert to key officers advising them of the incident list update and steps that should be taken to safeguard employees;
  - 4.1.3. The reporting officer must fully complete an Incident Report giving full details of the incident in line with SWP Accident/Incident Reporting and Investigation as soon as is reasonably practicable, but within, at least, 5 days of the incident first being reported;
  - 4.1.4. Following completion of the incident report, the usual non-urgent procedure will be followed to determine a course of action from that point.

#### 5. Incidents deemed inappropriate for inclusion, or of particular local concern

- 5.1 Incidents which do not meet the prescribed criteria for inclusion on the corporate Incident List may still be highlighted with the addition of a note or annotation on a client's file/record (effectively a management instruction relating to dealings with a particular individual), **ONLY** with the written/email consent of a Senior Manager and CHSS. Any action taken must be recorded on the [HSMS](#) against the incident report.
- 5.2 Consent will only be given in relation to incidents confirmed to fall outside the remit of this Procedure, by reason that, any risk to Council officers would only arise in very specific and isolated circumstances (for example, an elderly service user with mental health issues who reacts negatively to personal care by staff).
- 5.3 In such cases, the note on the client's file/record must be accompanied by written details of the circumstances leading to the addition of the note and the potential actions employees need to take if in contact with that individual. It should also give a review date of not more than 6 months. Access to the note should be restricted to those employees who need to know, insofar as is possible. Any renewals are subject to the same consent procedure.
- 5.4 As such a note constitutes a management instruction on a file/record and is not a warning marker, it would not usually be necessary to notify the individual that such a note has been created, provided this procedure is followed. Each decision whether to notify should however be considered on a case by case basis.

## 6. Assessment criteria

6.1 The following factors are examples of what should be considered when assessing an individual's suitability for inclusion on the Incident List, and the type of risk involved:

- A specific incident or expression of clearly identifiable concern by a professional;
- Relevant recent convictions (typically convictions within the last 5 years);
- Historical convictions if they exhibit an undesirable pattern of behaviour;
- Registration on warning lists, e.g. registered sex offenders, Multi-Agency Public Protection Arrangements (MAPPA);

6.2 The following factors are examples of what should **not** be considered when assessing an individual's suitability for inclusion on the Incident List, and the type of risk involved, and should **not** be taken into account:

- Anecdotal or speculative information, opinions or assumptions in relation to an individual;
- Irrelevant convictions;
- Information relating to historical convictions, unless they exhibit an undesirable pattern of behaviour;

## 7. Categories of risk

7.1 When a decision has been made to add an individual to the Incident List, a category of risk must be assigned to each inclusion. This is intended to inform employees of the general reason for inclusion on the List, and enable appropriate steps to be taken prior to future contact.

7.2 The categories of risk that may be assigned are as follows:

Category 1 (Most Serious)
1. Physical assault (with or without weapons)
2. Threatening behavior (aimed at officers)
3. Aggressive behavior (not aimed at officers, e.g. breaking of goods, furniture)
4. Brandishing of weapons (holding or waving around)
5. Police involvement (called after incident or attended the visit)
6. Psychological or sexual behavior towards an officer
Category 2 (Less Serious)
1. Verbal abuse (racist comments, being sworn at, etc.)
2. Obscene/offensive words or gestures (lurid comments, hand signals, etc.)
3. Intimidation (physically barring access, invading personal space)
4. Verbal/written Allegations (aimed at an officer)
5. Previous convictions, historical convictions showing a pattern of behavior, or registration on relevant warning lists

## 8. Limitations on the exercise of this SWP

8.1 General exceptions:

- Open Meetings of the Council;
- Voting in person at local, national and European elections;
- Schools;
- City Council libraries, museums and galleries;
- Leisure and other premises whose operation is governed by a body other than the City Council. (Exclusions can be applied in Leisure Centres run by Southampton City Council);
- Any occasion when an individual is making a rightful payment or collection of money, e.g. payment of rent or Council Tax or the collection of housing benefit;



- Any occasion when the individual concerned has a statutory right to attend a City Council building e.g. to inspect the Land Charges Register;

Whilst it is not possible for the City Council itself to prevent people exercising their right to attend civic buildings to perform these functions, it may be possible to insist that their contact with the Council is regulated, for instance that they attend civic buildings for this purpose by appointment only, or make contact with the Council in writing only, subject to emergencies (a situation involving actual or likely damage or harm to an individual(s) or property).

- 8.2 Any exclusion that would prevent a Health and Social Care client receiving their rightful service except where this exclusion has been made as a last resort following all the steps laid down in the Health and Social Care policy on this matter.

## 9. Safe working procedures relevant to this document

- 9.1 Preventing Workplace Harassment and Violence
- 9.2 Working Alone in Safety
- 9.3 Accident/Incident Reporting and Investigation

Other safe working procedures may apply, and these should be consulted. All SWPs are available on the Council's [Health and Safety Intranet](#).

## 10. Main legislation relevant to this document

### 10.1. [The Health and Safety at Work etc Act 1974 \(HSW Act\)](#)

Employers have a legal duty under this Act to ensure, so far as is reasonably practicable, the health, safety and welfare at work of their employees.

### 10.2. [The Management of Health and Safety at Work Regulations 1999](#)

Employers must consider the risks to employees (including the risk of reasonably foreseeable violence), decide how significant these risks are, decide what to do to prevent or control the risks and develop a clear management plan to achieve this.

### 10.3. [The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 2013 \(RIDDOR\)](#)

Employers must notify their enforcing authority in the event of an accident at work to any employee resulting in death, specified injury, on incapacity for normal work for seven or more days. This includes any act of nonconsensual physical violence done to a person at work.

### 10.4. [Safety Representatives and Safety Committees Regulations 1977 \(a\) and The Health and Safety \(Consultation with Employees\) Regulations 1996 \(b\)](#)

Employers must inform, and consult with, employees in good time on matters relating to their health and safety. Employee representatives, either appointed by recognised trade unions under (a) or elected under (b) may make representations to their employer on matters affecting the health and safety of those they represent.

## 11. Contact addresses and guidance links

### 11.2 Corporate Health and Safety Service •

[Health and Safety Intranet](#)

- [Health and Safety Schools website](#)
- [Health and Safety Management System](#)
- [Report an Incident](#)

For full contact address visit the Health and Safety intranet [Useful Contacts](#).

## Appendix 1 – Incident List Flow Chart

