

Guidelines for recruiting those working with vulnerable adults



The risks associated with recruiting someone into a position where they are working with a vulnerable person, either directly or indirectly, are huge. As an employer it is your responsibility to ensure you are recruiting a person who will not take advantage, in any shape or form, of the people you support.

For people recruited into a registered care setting, if they are found abusing their clients they are reported and put onto LIST 99 which is searched as part of an enhanced CRB check and prevents them from working with vulnerable adults again. However, for people working in supported housing, there is currently no equivalent, and therefore it is imperative that all providers have concrete recruitment processes and reporting procedures which include links to the local authority adult protection team.

This guidance will look at what you should be considering when recruiting and what procedures you should go through every time. Please remember that this guidance is not intended to be a replacement for legal advice. The law does change and it is important that you regularly check your original documents to ensure you understand your legal obligations.

Legal recruitment framework



Protection of Children Act 1999/Criminal Justice and Court Services Act 2000

It is an offence for any organisation to offer employment which involves regular contact with young people under 18, to anyone who has been convicted of certain specified offences. It is an actual offence for anyone convicted of such a crime to apply to work with young people. Schedule 4 of

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the Criminal Justice and Court Services Act states the unacceptable offences. These can be found at appendix 1.

Rehabilitation of Offenders Act Exceptions Order 1974

When an offender has a spent conviction they do not have to advise a prospective employer of it. Custodial sentences over two and a half years are never considered exempt. However, if the advertised job is considered to be an 'exempted' occupation all previous convictions must be declared. Such exceptions include working with vulnerable adults. For a full list please see appendix 2.

It is the employers' responsibility to ensure that all applicants know that the advertised job is an 'exempted' occupation. This is usually indicated on the application form. This will mean that any applicants will have to disclose all offences, whether spent or unspent.

Part 5 of the Police Act 1997

This Act created the Criminal Records Bureau (CRB)

It is the employers responsibility to ensure they are registered with the bureau so they can apply for criminal record checks/disclosures.

Conduct of Employment Agencies and Employment Business Regulations 2003

This places the emphasis on employment agencies to vet temporary staff who work with vulnerable groups such as children, the elderly and the infirm. They also have a responsibility to withdraw that person from an employer if adverse information is disclosed at a later date, or to advise the employer accordingly if that person has been made a permanent member of staff.

Recruitment and selection checks and procedures



The Chartered Institute of Personnel & Development believe that all employers carrying out recruitment for a position where the applicant will be working with a vulnerable person, should carry out a number of techniques to ensure they employ the correct person. Such techniques should include:

Interviews	Selection tests
Psychological assessments	Role play

Criminal record information

Standard disclosures: gives details of spent and unspent convictions, cautions, reprimands and final warnings held on the National police computer. Lists held by government departments of those banned from working with vulnerable groups are also searched.

Enhanced disclosures: It contains the same information as the standard disclosure but also includes no-conviction information from local police records if thought to be relevant for the post applied for.

For all of our Supported living services we would expect you to have written into your procedures that enhanced CRB checks will be carried out for all employees who come into contact with your service users.

As employers you will only be made aware of whether the disclosure has been satisfactory or unsatisfactory. The nominated person within your organisation who receives CRB disclosures will be aware of the offences which have led to the unsatisfactory outcome. If there are any discrepancies, local police departments are always willing to discuss these with you.

Internal procedures - it is imperative, that if results from CRB checks go to your head office, you have robust procedures in place to deal with a disclosure which is returned as unsatisfactory. Procedures need to ensure that head office are aware of the job being applied for before they determine whether any offences can be disregarded and the applicant employed.



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Reference checks

The purpose of a reference is to obtain information about an applicants employment history, qualifications, experience and an assessment of their suitability for the post.

It is estimated that 1 in 8 people exaggerate their qualifications and therefore asking the correct questions to referees is essential.

References should always be taken up and should always include the **last employer**. This is important, as if an offence has happened at the applicants last place of employment, it may have happened too recently to show up on any CRB or police checks. It is important to state that you want the last employer as, left to the applicant to choose, they are more likely to choose an employer who will give them a favourable reference.

Where a person has not been employed before, it may only be possible to obtain personal references. These carry less weight than professional references as they are chosen by the applicant and can therefore be subjective.

Consideration should be given to creating a standard reference form. This will enable employers to ask referees, questions which are relevant to the role applied for. This could include length of service, description of duties, suitability for the role etc. By using a pro forma it is easier to compare one applicant against another.

References tend to be more reliable if:

- The old and new jobs are similar
- Questions are based on job analysis
- Facts, rather than opinions, are requested.
- Where personality traits have to be measured, they are defined and specific examples given.
- Relevant information about the job vacancy was supplied to the referee.

Advances in case law has meant that a number of people who act as referee take a more cautious stance. It is imperative that the reference is not misleading and everything disclosed should be substantiated with evidence if

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required. The case *Spring V Guardian Assurance Plc* demonstrates that the author of a reference owes a duty of care to both:

- The person about whom it is written
- To the recipient of the reference if the reference was carelessly favourable.

Commencement of employment

Previous contact monitoring has made us aware that a number of providers have differing stances over a new employee starting work before references are returned. However, we can offer this guidance:

'If an employee starts a job before the receipt of their references, the requirement to obtain a satisfactory reference may no longer be a condition of employment. The employee will have the same rights in relation to wrongful dismissal, statutory dismissal procedures or any form of discrimination, as any other employee'.

CRB Checks - If a person is to start work prior to the return of a successful CRB check then employers must ensure that comprehensive risk assessments are in place and that no lone working takes place. Ideally, Supporting people would prefer all checks to have been completed prior to a person starting work.

Employing people with criminal records



It has been estimated that a fifth of the working population has a criminal record and studies show that failure to get employment following a prison sentence is a major reason for re-offending.

To encourage ex-offenders to apply for jobs blanket exclusions policies should not be in existence. Consideration should be given to extenuating circumstances and the nature and relevance of the offence. Employers

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should also ensure that their **recruitment and diversity & equality policies** address the issue of employing a person with a criminal record.

The majority of roles within supported housing will be considered to be an exempted occupation and therefore all prospective employees should declare all spent and unspent convictions on their application form. People can be encouraged to declare convictions if they are aware that they could submit this information separately from their application form to a named manager. However, it is then the employers' responsibility to ensure consideration is given to the application and a risk assessment process carried out to determine whether the criminal offence is one that can be managed within the supported living environment.

The risk assessment must ensure that risk is looked at from the perspective of the service user, other employees, the applicant and the business.

In some areas of supported living it can be argued that it would be beneficial to employ someone who has direct experience of being homeless, having mental health issues or being a drug addict etc, all of which may have led him or her to committing a crime. In such cases, the employer should ensure that they make links with any rehabilitation programme the prospective employee may have undertaken as well as talking to other professionals who have worked with the individual.

Implementing safeguards

Research has shown that many ex-offenders stay with one employer rather than move around. With this in mind it highlights the importance of re-doing CRB checks every 3 years (Guidance time only). If employees are aware that you have this practice in place, they are more likely to be honest about offences they commit outside the workplace. By cultivating this environment, employers are more able to manage situations and safeguards against negative outcomes.

Employers also need to check their insurance policies to ensure they do not exclude the employment of some offenders into specific roles.

Supporting people recommendations



We would like to see all providers have the following practices in place:

- Ensuring all 'Exempted' positions are advertised as such, with details given on application forms as to what this means
- Enhanced disclosures being carried out for all positions within supported living
- Robust procedures between local schemes and head office to ensure a clear flow of information in relation to outcomes of CRB checks
- A CRB renewal policy in place with links to the organisations disciplinary procedure should any new offences be disclosed
- References being requested from the applicants LAST employer
- Ask for reasons behind any gaps in employment
- Standardised reference requests
- A recruitment procedure which advocates the use of a number of techniques for determining the most appropriate applicant for the role
- A recruitment procedure and a Diversity & Equality policy which addresses employing people with a criminal record, with appropriate risk assessment templates
- Employment not commencing until the outcome of the CRB and reference checks are known.
- Ensure you have links to Child protection procedures - where applicable.

For further information please look at the Chartered Institute of Personnel & Development's website

www.cipd.co.uk

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Appendix 1

Section 26.

SCHEDULE 4 Meaning of "offence against a child"

1 The offences mentioned in paragraph (a) of subsection (1) of section 26 are—

- (a) an offence under section 1 of the [1933 c. 12.] Children and Young Persons Act 1933 (cruelty to children),
- (b) an offence under section 1 of the [1938 c. 36.] Infanticide Act 1938 (infanticide),
- (c) an offence under section 5 of the [1956 c. 69.] Sexual Offences Act 1956 (intercourse with a girl under 13),
- (d) an offence under section 6 of that Act (intercourse with a girl under 16),
- (e) an offence under section 19 or 20 of that Act (abduction of girl under 18 or 16),
- (f) an offence under section 25 or 26 of that Act (permitting girl under 13, or between 13 and 16, to use premises for intercourse),
- (g) an offence under section 28 of that Act (causing or encouraging prostitution of, intercourse with or indecent assault on, girl under 16),
- (h) an offence under section 1 of the [1960 c. 33.] Indecency with Children Act 1960 (indecent conduct towards young child),
- (i) an offence under section 54 of the [1977 c. 45.] Criminal Law Act 1977 (inciting girl under sixteen to incest),
- (j) an offence under section 1 of the [1978 c. 37.] Protection of Children Act 1978 (indecent photographs of children),
- (k) an offence under section 1 of the [1984 c. 37.] Child Abduction Act 1984 (abduction of child by parent),
- (l) an offence under section 160 of the [1988 c. 33.] Criminal Justice Act 1988 (possession of indecent photograph of child),
- (m) an offence under section 3 of the Sexual Offences (Amendment) Act 2000 (abuse of trust).

2 The offences mentioned in paragraph (b) of that subsection are—

- (a) murder,
- (b) manslaughter,
- (c) kidnapping,
- (d) false imprisonment,
- (e) an offence under section 18 or 20 of the Offences against the [1861 c. 100.] Person Act 1861 (wounding and causing grievous bodily harm),
- (f) an offence under section 47 of that Act (assault occasioning actual bodily harm),
- (g) an offence under section 1 of the [1956 c. 69.] Sexual Offences Act 1956 (rape),
- (h) an offence under section 2 or 3 of that Act (procurement of woman by threats or false pretences),

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- (i) an offence under section 4 of that Act (administering drugs to obtain or facilitate intercourse),
- (j) an offence under section 14 or 15 of that Act (indecent assault),
- (k) an offence under section 16 of that Act (assault with intent to commit buggery),
- (l) an offence under section 17 of that Act (abduction of woman by force or for the sake of her property),
- (m) an offence under section 24 of that Act (detention of woman in brothel or other premises).

3 A person falls within this paragraph if—

- (a) he commits an offence under section 16 of the Offences against the [1861 c. 100.] Person Act 1861 (threats to kill) by making a threat to kill a child,
- (b) he commits an offence under section 7 of the [1956 c. 69.] Sexual Offences Act 1956 (intercourse with defective) by having sexual intercourse with a child,
- (c) he commits an offence under section 9 of that Act (procurement of defective) by procuring a child to have sexual intercourse,
- (d) he commits an offence under section 10 of that Act (incest by a man) by having sexual intercourse with a child,
- (e) she commits an offence under section 11 of that Act (incest by a woman) by allowing a child to have sexual intercourse with her,
- (f) he commits an offence under section 12 of that Act by committing buggery with a child under the age of 16,
- (g) he commits an offence under section 13 of that Act by committing an act of gross indecency with a child,
- (h) he commits an offence under section 21 of that Act (abduction of defective from parent or guardian) by taking a child out of the possession of her parent or guardian,
- (i) he commits an offence under section 22 of that Act (causing prostitution of women) in relation to a child,
- (j) he commits an offence under section 23 of that Act (procuration of girl under 21) by procuring a child to have sexual intercourse with a third person,
- (k) he commits an offence under section 27 of that Act (permitting defective to use premises for intercourse) by inducing or suffering a child to resort to or be on premises for the purpose of having sexual intercourse,
- (l) he commits an offence under section 29 of that Act (causing or encouraging prostitution of defective) by causing or encouraging the prostitution of a child,
- (m) he commits an offence under section 30 of that Act (man living on earnings of prostitution) in a case where the prostitute is a child,
- (n) she commits an offence under section 31 of that Act (woman exercising control over prostitute) in a case where the prostitute is a child,
- (o) he commits an offence under section 128 of the [1959 c. 72.] Mental Health Act 1959 (sexual intercourse with patients) by having sexual intercourse with a child,

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(p) he commits an offence under section 4 of the [1967 c. 60.] Sexual Offences Act 1967 (procuring others to commit homosexual acts) by—

(i) procuring a child to commit an act of buggery with any person, or

(ii) procuring any person to commit an act of buggery with a child,

(q) he commits an offence under section 5 of that Act (living on earnings of male prostitution) by living wholly or in part on the earnings of prostitution of a child,

(r) he commits an offence under section 9(1)(a) of the [1968 c. 60.] Theft Act 1968 (burglary), by entering a building or part of a building with intent to rape a child,

(s) he commits an offence under section 4(3) of the [1971 c. 38.] Misuse of Drugs Act 1971 by—

(i) supplying or offering to supply a Class A drug to a child,

(ii) being concerned in the supplying of such a drug to a child, or

(iii) being concerned in the making to a child of an offer to supply such a drug,

(t) he commits an offence of—

(i) aiding, abetting, counselling, procuring or inciting the commission of an offence against a child, or

(ii) conspiring or attempting to commit such an offence.

Appendix 2

The following is a list of excepted professions, occupations and offices:

- Accountants
- Nurses and midwives
- Chiropractor
- Opticians
- Dealer in securities
- Osteopath
- Dentists, dental hygienist or dental auxiliary
- Pharmaceutical chemists
- Director, controller etc of insurance company or building society
- Police constables
- Prison board of visitors
- Prison officers
- Firearms dealers
- Probation officers
- Judicial appointment
- Justices' Chief Executives
- Justices' clerks and assistants
- Lawyers
- Managers or trustees of unit trust
- Medical practitioners
- Teachers
- Veterinary surgeons
- Traffic wardens

Other excepted occupations include:

- Any office or employment where the question about spent convictions is asked for the purpose of safeguarding national security - for example, if you wish to be employed by the UK Atomic Energy Authority, the Civil Aviation Authority or as an officer of the Crown.
- **Certain types of work in health and social services where the work involves access to people over 65, people suffering from serious illness or mental disorder, alcoholics or drug addicts, blind, deaf or dumb people, persons who are substantially and permanently handicapped by illness, injury or congenital deformity, or where**

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the work is concerned with the provision of care, recreation or leisure facilities, schooling, social services, supervision or training, to people under 18.

- Applications for certain certificates or licences - for example, those for firearms, explosives or gaming - require that your spent convictions must be disclosed and allow the licensing authority to take them into account. Failure to disclose a spent conviction could lead to the refusal or loss of the certificate or licence and even to prosecution.