

Safer Employment

Gathering information to make informed decisions

LCAS FORUM

26 March 2024

About DHA





Dominic Headley FRSA

Dominic Headley & Associates (DHA) is a specialist consultancy practice that supports employers to recruit safely and fairly.

Our founder is the UK's leading expert on criminal records, and a trusted expert adviser to government departments on criminal record policy.

We develop practical guidance for employers across various sectors and provide expert advice, training and consultancy services to organisations in the public, private and voluntary sectors on safe and fair recruitment, safer employment and dealing with safeguarding concerns effectively.

Key projects

- We developed the Skills for Care guide Safe and fair recruitment: a guide to carrying out pre-employment checks in social care.
- We worked in partnership with Skills for Care, Disclosure and Barring Service, Reed Screening, Better Hiring Institute and VBA Consulting to develop the toolkit – Sharing effective references and conduct information.

Safeguarding & Inclusion





Safeguarding and Inclusion
- <u>are not</u> conflicting interests



Recruiting safely and fairly - informed decision making



Safeguarding & Inclusion





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Recruiting safely and fairly - informed decision making



Legal responsibilities



Regulation 19(3)(a) of the Health and Social Care Act (Regulated Activities) Regulations 2014 requires providers to ensure all 'Persons employed' by the organisation (including agency, bank staff and volunteers) must:

- Be of good character
- Have the qualifications, competence, skills and experience which are necessary for the work to be performed by them, and
- Be able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the work for which they are employed



Regulation 19: FPPR

Fit and proper persons employed requirements



- 1. Proof of identity including a recent photograph
- 2. Criminal record **self-declaration** + **criminal record check** at appropriate level (i.e. basic, standard, or enhanced DBS checks; or enhanced DBS check with barred list checks)
- 3. Satisfactory **evidence of conduct** in previous employment concerned with the provision of services relating to health or social care or children or vulnerable adults (e.g. reference, written evidence from other persons but only if it provides information regarding an individual's conduct)
- 4. If applicant was employed in a position where their duties involved work with children or vulnerable adults **Satisfactory verification as to reasons why employment ended**
- 5. Satisfactory documentary evidence of any relevant qualification
- 6. A full employment history, together with a satisfactory written explanation of any gaps in employment
- 7. Satisfactory information about any **physical or mental health conditions** which are relevant to the person's capability to properly perform tasks which are intrinsic to their employment for the purposes of the regulated activity

Robust vetting













Employment







References & Conduct information







Case study



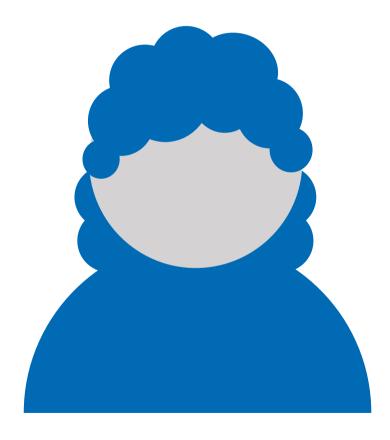


Layla



Applying to work as a care worker for Outis Care

She has previous experience working with adults at risk and/or children





Layla's criminal record

	Offence	Sentence	Date
1.	Actual bodily harm	Reprimand	13.01.06
2.	Theft	Conditional discharge order 12 months	25.03.08
3.	Possession of Class A drugs Cocaine	Fine £200	03.11.09
4.	Common assault	Community order 24 months	25.02.10





Layla's criminal record - what if....

No convictions for disclosure



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What do they have in common?





None of them had criminal records But abused in positions of trust



Many people who abuse in positions of trust DO NOT have criminal records

97%

Standard and enhanced DBS checks contain **no information** relating to cautions, convictions, police intelligence or barred list information











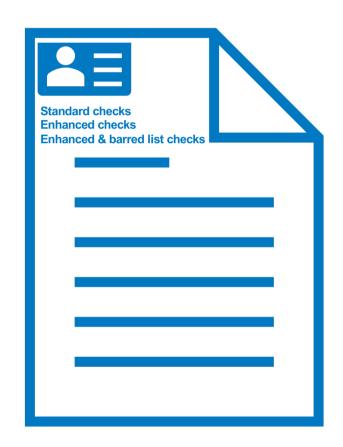


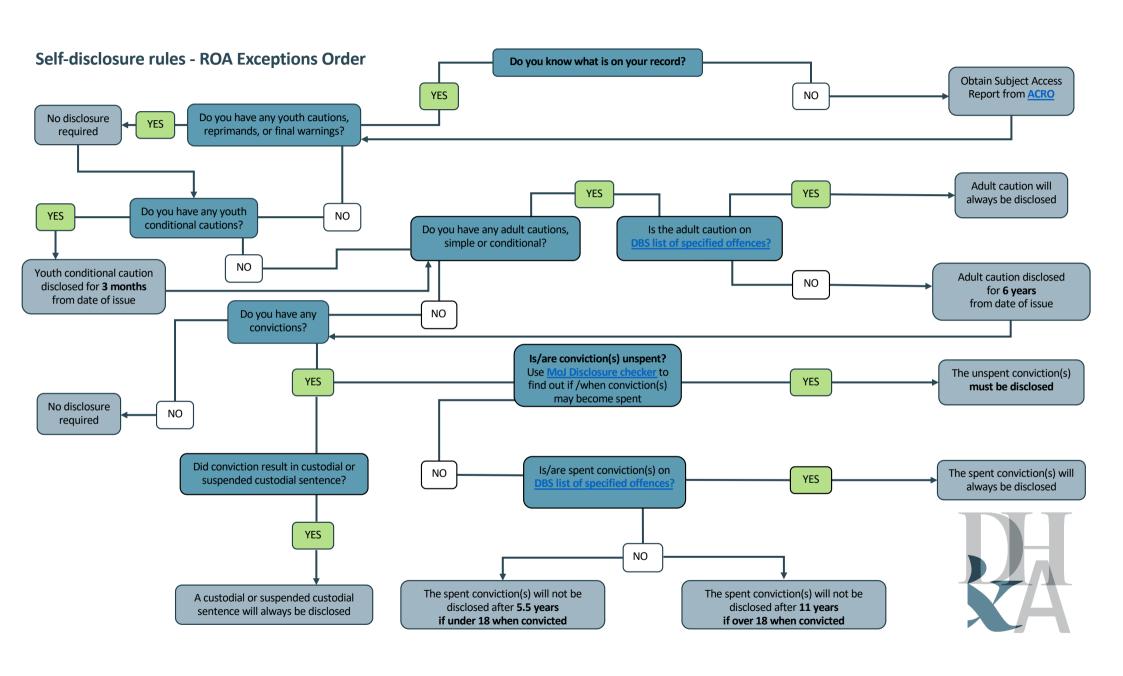
- A barring decision can take a long time
- Unless / Until a
 person is barred –
 they are still free to
 engage in regulated
 activity



ROA Exceptions Order (as amended in 2020)

DBS filtering rules





DBS list of specified offences



These common offences would qualify for filtering:

- Common assault, battery, assault by beating
- Assault on a police constable
- Theft and fraud offences
- Possession of class A, B or C drugs
- Possession of offensive weapon in a public place
- Harassment
- Criminal damage

These common offences would not qualify for filtering:

- ABH, GBH, wounding with intent
- Arson
- Affray
- Burglary, Robbery
- Supply of Class A, B or C drugs.
- Sexual offences

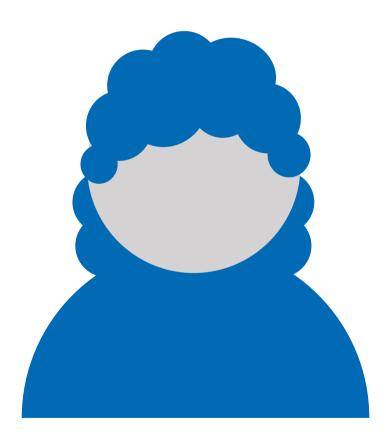




www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check



Layla





Layla's criminal record

	Offence	Sentence	Date
1.	Actual bodily harm	Reprimand	13.01.06
2.	Theft	Conditional discharge order 12 months	25.03.08
3.	Possession of Class A drugs Cocaine	Fine £200	03.11.09
4.	Common assault	Community order 24 months	25.02.10





	Offence	Sentence	Filtered
1.	Actual bodily harm	Reprimand	Never
2.	Theft	Conditional discharge order 12 months	Never
3.	Possession of Class A drugs Cocaine	Fine £200	Never
4.	Common assault	Community order 24 months	Never



Old filtering rules 27 Nov 2020



	Offence	Sentence	Filtered
1.	Actual bodily harm	Reprimand	28.11.20
2.	Theft	Conditional discharge order 12 months	28.11.20
3.	Possession of Class A drugs Cocaine	Fine £200	28.11.20
4.	Common assault	Community order 24 months	25.02.21



New filtering rules – 28 Nov 2020



	Offence	Sentence	Filtered
1.	Actual bodily harm	Adult caution	
2.	Theft	Conditional discharge order 12 months	28.11.20
3.	Possession of Class A drugs Cocaine	Fine £200	28.11.20
4.	Common assault	Community order 24 months	25.02.21



What if.....??

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www.gov.uk/government/publications/dbs-list-of-offences-that-will-never-be-filtered-from-a-criminal-record-check



	Offence	Sentence	Filtered
1.	Actual bodily harm	Adult caution	Never
2.	Theft	Conditional discharge order 12 months	28.11.20
3.	Possession of Class A drugs Cocaine	Fine £200	28.11.20
4.	Common assault	Community order 24 months	25.02.21





	Offence	Sentence	Filtered
1.	Actual bodily harm	Reprimand	28.11.20
2.	Theft	Conditional discharge order 12 months	28.11.20
3.	Supply of Class A drugs Cocaine	Fine £200	
4.	Common assault	Community order 24 months	25.02.21



What if.....??

DBS list of specified offences



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What if.....??

DBS list of specified offences



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Disclosure law changes implications

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Dominic Headley & Associates

The recent changes to criminal record disclosure legislation has resulted in **less criminal record information** being provided to employers.

Now more than ever, employers will be reliant upon **all the information** they gather within the recruitment process to determine suitability of the applicant and their fitness to do the role.









https://www.skillsforcare.org.uk/resources/documents/Recruitment-support/Application-and-selection-process/Safe-and-fair-recruitment-guide.pdf

Carrying out effective pre-employment checks

The guide can help you...

- Understand the changes to criminal record disclosure rules
- Determine DBS eligibility

Assess and manage the risk and relevance of criminal record and

conduct information

- Deal with police intelligence
- Make a barring referral
- Address applicant's practical barriers





Gathering criminal record information





Ensure the organisation's recruitment and selection policy and all recruitment information incorporates an **explicit statement** about your commitment to inclusion, safeguarding and promoting the welfare of **adults at risk** and/or children.



Send applicants information about the values of the organisation and the associated expected behaviours.



Ensure the <u>application form</u> is used to gather full employment history, details of relevant academic or vocational qualifications, reasons for leaving employment, details of disciplinary offences or safeguarding concerns relating to **adults at risk** and/children.



The applicant should also provide details of <u>at least two referees</u> – at least one should be professional, the applicant's current or most recent employer.



Determine what **level of criminal record check** the role is eligible for using **DBS eligibility** guidance and **DBS eligibility** tool. Contact **DBS** or Nacro if you are still unsure whether role is covered by ROA 1974 or exempt.



Details of criminal offences should be requested only from short-listed applicants. This should be gathered separately and confidentially in the form of **criminal record self-declaration** or **disclosure statement** – not as part of the application form.



Using a values-based approach, probe sensitively any gaps in employment history and other questions not answered in the application form at the interview.



Carry out all required pre-employment checks including criminal record checks, effective (detailed) references, Right to work checks, qualification, and health checks. Complete a <u>pre-employment risk assessment</u> form if any concerns arise from information received/not received.



Document the rationale behind the final recruitment decision. Retain criminal record information (self-declaration, copy of criminal record certificate and pre-employment risk assessment (if appointment is confirmed) – in line with DBS handling certificate information guidance.

Handling DBS Certificate information



Settings which are inspected by the CQC, or Ofsted and other organisations that need to retain recruitment records in order to demonstrate 'safer recruitment' practice for the purpose of safeguarding inspections/ audits, are legally entitled to retain recruitment and vetting information including Criminal record information (self-declaration, risk assessment and a copy of the DBS certificate) for as long as practicable.

Full name			Pre-Employment Checks			
ost applied for to you have unsa	ent conditional cautions or convictions under the Rehabilitation of Offenders		Risk Assessment			
Act 19747 Yes			SECTION A: To be completed by the relevant Line Manager/Hiring Manager and Huma			
rotected as defin	adult cautions (simple or conditional) or spent convictions that are not ed by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 gland and Wales) Order 2020?	Resources Please complete in full:				
res 🗆	No□	Name of applicant:				
If you are not sure whether your caution(s) or conviction(s), should be disclosed please contact Nacro for further advice.		Post applied for/current post:				
you have answe	red yes, you now have two options on how to disclose your criminal record.					
ption A: Please	provide details of your criminal record in the space below.	Enhanced and	Enhanced and	Standard	Basic	
		Level of disclosure barred adults	barred both			
elow and attach	n disclose your record in a written statement provided that you tick the box the disclosure statement stapled to this form in an envelope. The envelope CONFIDENTIAL and state your name and the details of the post you are	required	_	Ш	Ш	
pplying for.	etails of my criminal record separately	Division/Department:				
DECLARATION	and of the district and a second appearance	Date of assessment:				
declaration of a cr	nformation provided on/with this form is correct. I understand that the minal record will not necessarily prevent me from being offered this role at	Name of assessor one (HR Team):				
insert name of or Signed:	Date:	Name of assessor two (Line Manager):				
oigneu.	Date:	(Annual Control of Con				
	form to: [insert name of approved HR representative]					

www.gov.uk/government/publications/handling-of-dbs-certificate-information

Handling DBS Certificate information

Dominic Headley & Associates

Criminal record check did not spot hammer attack carer threat

© 5 December 2017

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https://www.bbc.co.uk/news/uk-england-london-42225664



Pamela Batten suffered a fractured skull in the attack by her husband's former carer

The son of a 90-year-old woman who was stabbed in the neck by a carer with a previous assault conviction is calling for a change to criminal record chacks

A primary school unknowingly hired a murderer as a teaching assistant

https://www.bbc.co.uk/news/uk-england-oxfordshire-48661365

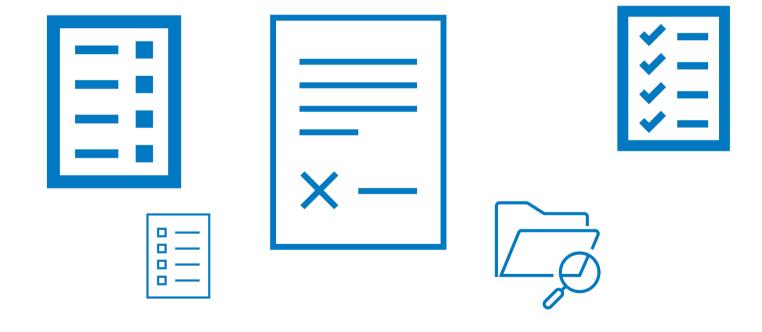
Murderer worked in schools after being barred https://www.bbc.co.uk/news/articles/c5 yewk7zen80

Butlin's sacks convicted paedophile who worked as children's lifeguard for 10 months

https://news.sky.com/story/butlinssacks-convicted-paedophile-whoworked-as-childrens-lifeguard-for-10months-13061376

Sharing effective references





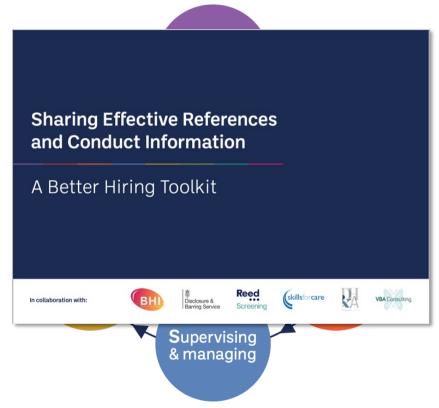
PRISIM Model of safer employment



The PRISIM model of safer employment is a framework that encompasses a 360° approach to safeguarding in employment.

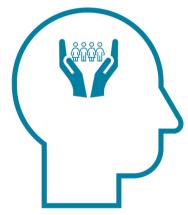
It supports employers to embed a safeguarding mindset at every stage of the employment journey – from planning recruitment through to managing leavers.

It also supports employers move beyond compliance, encouraging organisations to be 'curious' about their own organisational culture, and their approach to all stages of employment, in order to fulfil their responsibilities to keep everyone safe.



What is a safeguarding mindset





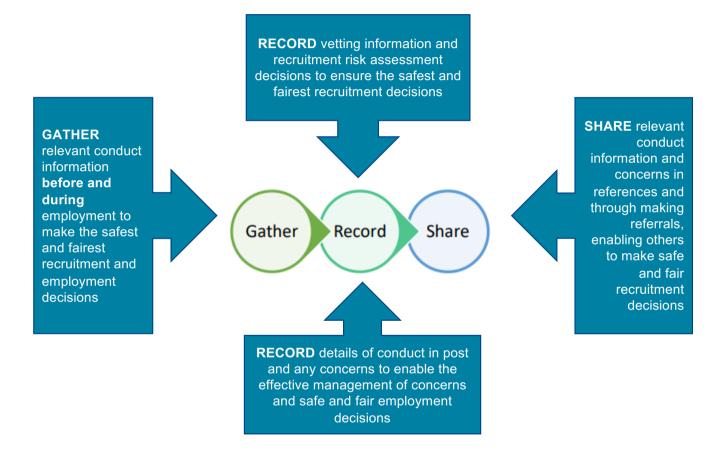
- A safeguarding mindset is the difference between compliance and curiosity
- Many inquiries and serious case reviews have indicated that a culture of compliance alone does not keep people safe



- Compliance is when an organisation meets the minimum standards and ticks all the right boxes but does not explore or consider anything that sits outside of that process
- Curiosity is when an organisation goes beyond compliance and is actively curious about the information they do and don't have

How to Gather, Record and Share conduct information





If the information gathered through vetting is insufficient, **PRISIM** enables us to apply a risk-based approach to doing **more to keep everyone safe**.

Data protection considerations

- There is a common myth that data protection is a barrier to data sharing, and it is often used by some organisations as an excuse to justify not sharing information.
- Data protection should never be a barrier to responsible data sharing.
- High profile inquiries have shown that children and vulnerable adults have come to harm because of this misconception.
- Whilst UKGDPR/ DPA 2018 does not prohibit responsible information sharing especially when it concerns safeguarding vulnerable individuals – it mandates that it be done appropriately, considering the principles of necessity, proportionality, relevance, accuracy, timeliness, and security.





Criminal offence data



- Organisations that may be processing criminal offence data and/or special category data when sharing effective references or conduct information, will need to identify both a lawful basis for general processing, and an additional condition for processing this type of data.
- UKGDPR/DPA 2018 gives extra protection to criminal offence data (under Article 10) which includes criminal activity, conduct, allegations, investigations and proceedings.
- It includes not just data which is obviously a caution, criminal conviction or trial, but may also include personal data about – unproven allegations; and information relating to the absence of convictions.
- This type of data is likely to be high risk to individuals, and so the organisation should have in place an appropriate policy document, identify a lawful basis, and complete a data protection impact assessment (DPIA).



Sharing Effective References and Conduct Information

A Better Hiring Toolkit

Check out our **Data Protection FAQs**

Sharing effective references and conduct information



This resource can support you...

- Share and request effective references
- Clearly demonstrate safe recruitment practices to CQC
- Deal with discrepancies or negative references
- Implement an effective exit process
- Explore gaps in employment
- Risk assess information
- Store information received
- Confidently refer to DBS



Toolkit overview



Why we need to get it right



What to do with information received



Legal responsibilities & UKGDPR considerations



How to share references and conduct information



How to gather references and conduct information



FAQs



Templates and checklists



- Application form checklist
- Reference request checklist
- Safer recruitment and employment checklist
- Sharing effective references and conduct information checklist



- Professional factual reference
- Personal or character reference
- Professional factual and character reference
- Sample application form
- Pre-employment risk assessment form
- Employee exit form
- Telephone/video call reference
- Volunteer reference template
- Safe & fair recruitment policy statement
- Written reference template
- Low level concerns policy and template
- Shared Lives property reference request template
- Shared Lives medical reference request template





12 June 2021

Re: Layla Stephens - Employment Verification

To whom it may concern,

Layla Stephens worked for XYZ Care from 10 March 2019 - 17 December 2020 and held the title of Healthcare Assistant.

Yours faithfully,

Jane Doe Registered Manager

XYZ Care 12 Ocacia St, London SE14 0VF





- Is this reference sufficient to satisfy the legal requirements?
- Would you verify this reference was genuine?
- Would you follow up this reference? If so, how?
- What would you do if you could not obtain a reference?
- How/ would you obtain full employment history?
- How/would you address any gaps in employment history?
- How/would you obtain reasons for leaving previous employment?
- How/would you gather evidence of conduct in previous employment with children or adults at risk?
- How/would you ensure risks around recruitment were suitably assessed and managed?
- How/would you record/evidence decision making?

What we want vs what we give



In	formation requested	Information provided
•	Job role	Name of candidate
	Dates of employment	Date of birth
•	Experience	Job role
	Performance	Dates of employment
•	Punctuality/ time keeping	
	Sickness	
	Reliability	
	Grievances/ disciplinaries	Limited information
-	Safeguarding concerns	Only answer questions asked on
•	Suitability for the role	the reference request
•	Would they re-employ?	

What happens next



Outis Care does not follow up the reference via phone call and does not complete a pre-employment risk assessment form.

Unbeknownst to the Outis Care, Layla was subject to serious allegations of theft from an adult at risk in her care whilst employed by the previous employer.

She resigned prior to the completion of the investigation, but the employer completed a referral to the DBS for consideration that she be barred from engaging with regulated activity with adults.

The previous employer makes no mention of the allegations or the DBS barring referral in the basic reference/ employment verification.





Re: Layla Stephens - Employment Verification

To whom it may concern,

Layla Stephens worked for Outis Care from xxx- xxx and held the title of Care Worker.

Yours faithfully,

Joe Bloggs

Registered Manager

Outis Care 43 Millstream Rd, London W4 8DH

An employer may be failing in its duty of care (to applicant and prospective employer)....





Re: Layla Stephens -

Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat.

Yours faithfully,

Joe Bloggs

Registered Manager

Outis Care 43 Millstream Rd, London W4 8DH

An employer may be failing in its duty of care (to applicant and prospective employer)....

....by failing to give a detailed reference





Re: Layla Stephens - Employment Verification

To whom it may concern,

Layla Stephens worked for Outis Care from xxx- xxx and held the title of Care Worker.

Yours faithfully,

Joe Bloggs Registered Manager

Outis Care 43 Millstream Rd, London W4 8DH

The referee also has a responsibility to ensure that any reference provided is accurate, dependable and does not contain any material misstatement or omission





Re: Layla Stephens -

Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat.

Yours faithfully,

Joe Bloggs Registered Manager

Outis Care 43 Millstream Rd, London W4 8DH

If referee is not satisfied the person is suitable to work with adults at risk and/or children....

... they should provide specific details of their concerns





Confidential

25 April 2023

Re: Layla Stephens -

Lorem ipsum dolor sit amet, consectetur adipiscing elit, sed do eiusmod tempor incididunt ut labore et dolore magna aliqua. Ut enim ad minim veniam, quis nostrud exercitation ullamco laboris nisi ut aliquip ex ea commodo consequat. Duis aute irure dolor in reprehenderit in voluptate velit esse cillum dolore eu fugiat nulla pariatur. Excepteur sint occaecat cupidatat.

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Outis Care 43 Millstream Rd, London W4 8DH

If a reference is marked as confidential...

UKGDPR creates a specific exemption enabling both the company who issued it and the company receiving it...

not to share details of/a copy of the reference with the applicant

Confidential references



A Better Hiring Toolkit

Professional and Character Reference

This form can be adapted to fit the purposes of your organisation. The below template contains all information that can be used in this process

Regulation 19 - Fit and proper person requirements

The post applied for is subject to Regulation 19(3)(a) of the Health and Social Care Act (Regulated Activities) Regulations 2014 which requires us to ensure all "Persons employed" by our organisation (including agency, bank staff and volunteers) must:

- a. Be of good character
- have the qualifications, competence, skills, and experience which are necessary for the work to be performed by them, and
- c. be able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the work for which they are employed.

In order to fulfil our legal requirements, we need to make available to CQC:

- Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to health or social care or children or vulnerable adults;
- Satisfactory verification as to reasons why employment ended, if candidate was employed in a position
 where their duties involved work with children or vulnerable adults.

It is therefore essential to require a reference from a previous employer, and the employee cannot be expected to find work of this type unless his or her employer provides a **full and frank** reference to a prospective employer.

When completing this reference organisations have a responsibility to ensure that the reference is accurate and does not contain any misstatement and nothing significant is omitted.

UKGDPR/Data Protection Act 2018

This form contains personal data as defined by UKGDPR/DPA 2018. It may include special category data (Article 10) which has been requested for the purposes of recruitment and safeguarding adults at risk and/or children. As we are the organisation requesting this data, we will protect any information disclosed within the form in line with data protection requirements and ensure it is not passed to anyone who is not authorised to see the information.

The content of the reference may be discussed with the applicant; in addition, the applicant may request and be granted access to the reference.

HOWEVER, if this reference is marked as confidential, the UKGDPR/DPA 2018 creates an exemption from:

- The right to be informed (privacy information)
 - The right to make a subject access request.

Therefore, if this reference is marked as confidential, and the applicant/former employee makes a subject request <u>BOTH</u> the company who issued it and the company who received it – would be exempt from having to provide a copy to the applicant/former employee.

If this reference is marked confidential, it can only be disclosed to whom it is addressed and will not be released to a third party.

To ensure that a recruitment process remains open, transparent, and fair to all applicants we request that you only consider using this confidential exemption on a case-by-case basis and justify and document reasons below for relying on the confidential exemption (For example, the employee was subject to investigation for safeguarding related conduct concerns but left before investigation completed).

Referees also need to be aware that a confidential reference confide

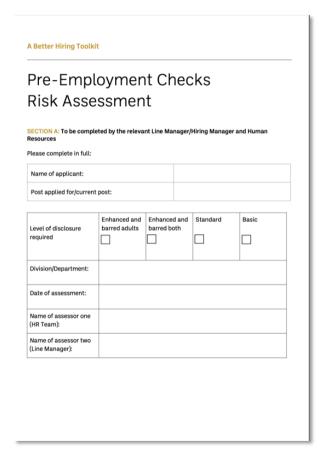
Do you want this reference to be treated as confidential?

Yes No

No

If yes, please give reasons:

Pre-employment risk assessment

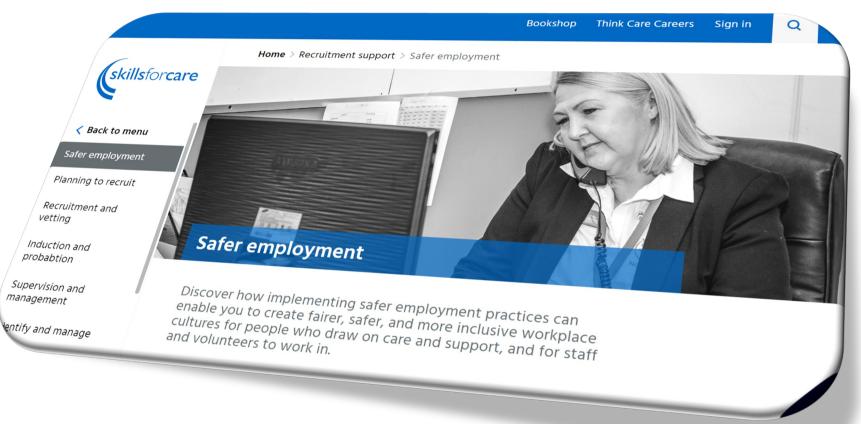


Nature of check	Yes	No	Pending	N/A
Identity checks completed				
Right to work check completed				
Overseas criminal record check				
Reference requests completed (Please also complete section D)				
Occupational health check completed				
Evidence of professional registration received and validated				
Does the applicant have an existing subscription to DBS Update Service for the same workforce as the role applied for? COVID-19 roles only				
Does the applicant have an existing DBS Certificate for the same workforce as the role applied for issued within the last three years? COVID-19 roles only				
Fast-track emergency barred list(s) checks completed? COVID-19 roles only				
Have you established any issues or concerns from the pre-employment checks carried out or the initial interview?				
If yes, please give details				
Has the applicant declared any criminal convictions or cautions in the UK or any other country, or are they under police investigation? If 'No, please go to section D				



PRISIM and Safer employment





www.skillsforcare.org.uk/Recruitment-support/Safer-employment/Safer-employment.aspx



Dominic Headley FRSADirector DHA

M: 07399 814 199

Email: info@dominicheadleyassociates.co.uk

Website: www.dominicheadleyassociates.co.uk

