

# Sharing Effective References and Conduct Information

## A Better Hiring Toolkit

In collaboration with:



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# 1. Introduction

## Social Care staff and volunteers provide support for some of the most vulnerable people in society.

This Better Hiring Toolkit provides simple guidance to support you to both obtain and provide effective references and conduct information. It has been compiled as a collaboration between the Better Hiring Institute, Disclosure & Barring Service (DBS), Skills for Care, Reed Screening, Dominic Headley & Associates (DHA), and VBA Consulting. At the heart of the Toolkit is the safety of the people who employers are entrusted to care for and the staff who carry out this role.

Those responsible for recruiting or supervising staff or volunteers, have an obligation to conduct a safe and fair recruitment process and ensure that pre-employment checks are robust so that your organisation safeguards the people being supported.

On 28th November 2020, amendments were made to legislation covering the [filtering rules](#) – affecting both what an employer can ask an individual in relation to convictions and cautions (i.e. criminal record self-declaration), and what is disclosed on a Standard or Enhanced DBS certificate.

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

This includes sharing effective references which must go beyond standard employment verification (basic references), as evidence of the applicants' conduct forms a vital element of any social care reference. Those responsible for providing references may be failing in their duty of care, legal and/or safeguarding responsibilities if they do not provide an effective reference which includes relevant conduct information.

It is equally important to embed a culture that applies a 360° approach to safeguarding in employment. This makes best use of the induction, probationary period and effective supervision as part of an ongoing culture of safeguarding and vigilance to identify for all staff or volunteers any behaviours or attitudes which may cause concern and which may not have been shared in the references.

Employers who put in place an efficient system for managing and recording safeguarding related conduct concerns, (e.g., low-level concerns, allegations), will benefit from gathering the information required to share effective references, and conduct information with the Disclosure and Barring Service (DBS) and other relevant organisations when it might be required.

What we mean by an...



### Effective reference

Detailed, timely, full and frank and includes conduct information. Goes beyond standard employment verification (basic reference).

What we mean by a...



### Basic reference

Standard employment verification only, for example, confirms dates of employment and job role held but does not contain conduct information.

## 2. Why we need to get it right



“For those agencies whose job it is to protect children and vulnerable people, the harsh reality is that if a sufficiently devious person is determined to seek out opportunities to work their evil, no one can guarantee that they will be stopped. Our task is to make it as difficult as possible for them to succeed.”

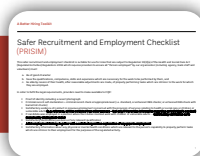
**Sir Michael Bichard (2004) Soham Inquiry**

“There is a concern that many abusers do not have convictions and that no intelligence is held about them. Therefore, the selection and recruitment process, if properly conducted, is an important, indeed essential, safeguard.”

**Sir Michael Bichard (2004) Soham Inquiry**

Safer recruitment and robust vetting provides organisations with the first opportunity to deter and prevent those who may be unsuitable for work with vulnerable people from securing a role with them. However, it is just one of many barriers organisations can and must put in place as part of their commitment to a safeguarding culture. Detailed effective references are an important and undervalued part of this process.

Access our Safer recruitment and employment checklist here



### PRISIM model of safer employment

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

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 to move beyond compliance, encouraging organisations to be ‘curious’ about their own organisational culture and their approach to sharing effective references and conduct information 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. We know from many inquiries and serious case reviews that a culture of compliance alone does not keep people safe.

For curious organisations, when something does not seem right, they seek additional information to validate or challenge their observations. This means they will have the evidence they need to make the right decision.

It's everyone's responsibility in an organisation to help safeguard adults at risk and/ or children. Those recruiting need to be curious when planning the recruitment and employment process and be able to understand what the safeguarding risks are in the roles being recruited. This will ensure that relevant information can be asked for on references, and relevant evidence of suitable conduct can be gathered and recorded throughout the recruitment process.

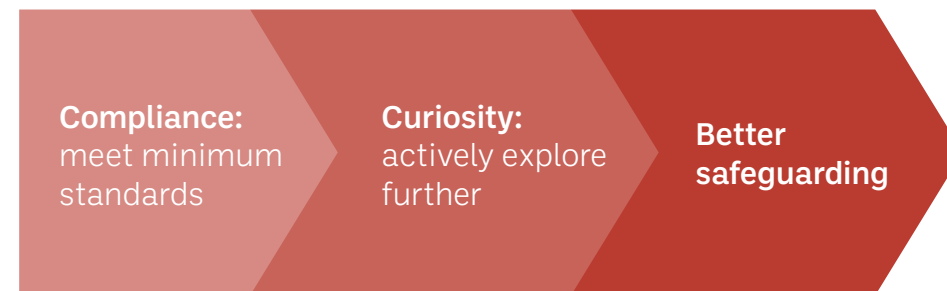


**Compliance** is when an organisation meets the minimum standards and ticks all the right boxes, but does not explore or consider anything that sits outside of that process.



**Curiosity** is when an organisation goes beyond compliance and is actively curious about the information they do and don't have.

## Journey towards better safeguarding



Find out more in the following guides from Skills for Care:

[A guide to safeguarding](#)



[Guide to safe staffing](#)



An example of a safeguarding mindset in action can be seen in this SCIE video -

[Safeguarding adults: Looking out for each other to prevent abuse.](#)



## Setting out safeguarding expectations

Letting applicants know about expectations and responsibilities demonstrates an organisation's commitment to safe practice and ensures any related conduct issues can be identified and managed quickly and effectively.

Safeguarding expectations and responsibilities should be included in:

- job adverts and application packs
- job descriptions and person specifications
- explanations of the different vetting checks being carried out for the role
- any selection tools used to assess the safeguarding mindset, values and attitudes.

### Example statement to include in adverts and application packs

Our organisation is committed to safe and fair recruitment, safeguarding and protecting those we care for and serve. We make sure all our staff are vetted, selected, trained, and supervised fairly and to a high standard so that they can provide safe, effective, and compassionate care.




### Example statements to include in job descriptions and person specifications

- Takes action and raises concerns.
- Forms appropriate relationships with those they care for and maintains professional boundaries in their work.
- Works within organisational policies, procedures and guidance.
- Is committed to demonstrating the organisations values and behaviours in their work.

## Case for change

The following scenario, based on real-life examples, shows the various points of gathering references where opportunities were missed to be curious. All names, of organisations and individuals, have been changed to protect identities.

Outis Care recently recruited **Layla Stephens** as a **CARE WORKER**.

 What Outis Care asked for...	 What they received...	 What Outis Care didn't do...
<p>In line with Regulation 19 fit and proper person employed, Outis Care asked applicants to complete an application form which requested:</p> <ul style="list-style-type: none"> <li>• full employment history,</li> <li>• reasons for leaving previous employment where they worked with children or adults at risk, and a written explanation of all gaps in employment.</li> </ul>	<p>Layla had a recent gap in her employment history – she did not complete the sections detailing full employment history, reasons for leaving or gaps in employment.</p>	<p>Outis Care DID NOT explore employment gaps or reasons for leaving prior employment with the applicant.</p>
<p>Outis Care requested a detailed reference from the previous employer.</p>	<p>They received a basic reference (employment verification) confirming dates only.</p>	<p>Outis Care DID NOT follow up the reference by phone for more information.</p>
<ul style="list-style-type: none"> <li>• Outis requested Layla complete a criminal record self-declaration form</li> <li>• Outis Care requested an enhanced DBS check with adults' barred list check.</li> </ul>	<ul style="list-style-type: none"> <li>• Layla did not complete a criminal record self-declaration form</li> <li>• Layla presented an enhanced DBS certificate which did not contain any criminal history or police intelligence</li> </ul>	<p>Outis Care DID NOT follow up Layla's failure to complete their criminal record self- declaration form in accordance with their recruitment policy.</p>



### Information Outis Care didn't find out...

- Layla had been 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.
- Layla was not barred from working in regulated activity with children or adults when she applied for the role. The previous employer had completed a referral to the DBS for consideration that she be barred from engaging with regulated activity with adults but did not mention the allegations or the DBS barring referral in the basic reference/employment verification.



### What happened next...

- A few months later, Layla was subject to a serious allegation of stealing £500 from vulnerable residents living in the care home whilst the experienced staff she was shadowing were distracted.
- Layla resigned prior to Outis Care completing their investigation.



### What the CQC inspection established...

- Safe recruitment processes were not always followed to ensure staff employed were of suitable character.
- Suitable pre-employment checks had not always been carried out.
- Risks around recruitment were not always suitably assessed and managed.
- Outis Care was rated 'Requires improvement/ Inadequate' against the key areas questions 'Are they safe?' and 'Are they well-led?'

If Layla is determined to continue seeking out opportunities where she has access to adults at risk, and Outis Care only provides a basic reference, they will be inadvertently facilitating her ability to cause harm to vulnerable people through her work or volunteering.

## Key points



Use a range of robust vetting checks and selection processes to make sure as much relevant information is gathered as possible about the conduct, character and suitability of the person to work in a role within the organisation.



**A safeguarding mindset** – doing everything possible to minimise the risk of harm to others through compliance, curiosity and courageous decision making.



# 3. Legal responsibilities

## Regulation 19

### Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

The intention of this regulation is to make sure that providers only employ 'fit and proper' staff who are able to provide care and treatment appropriate to their role and to enable them to provide the regulated activity.

To ensure organisations can meet this regulation, the following information must be gathered and kept.

- Proof of identity including a recent photograph
- Criminal record self-declaration + criminal record check at appropriate level (i.e. standard, or enhanced DBS checks; or enhanced DBS check with barred list checks)
- Satisfactory evidence of conduct in any previous employment involving healthcare, social care, children or vulnerable adults. This includes a written reference from a former employer(s) or written evidence from another person. **This must include information regarding an individual's conduct.**
- If an applicant was employed in a position where their duties involved working with children or vulnerable adults. **This record must include satisfactory reasons for why that employment ended.**
- Satisfactory documentary evidence of any relevant qualification(s).
- A full employment history with a satisfactory written explanation of any gaps in employment.
- Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purposes of the regulated activity.

## What we mean by...

### Satisfactory evidence of conduct

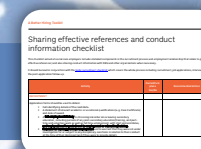
This is a term used by the Care Quality Commission (CQC). To ensure providers meet Regulation 19, inspectors look for types of information, including satisfactory evidence of conduct in previous employment concerned with the provision of services relating to (a) health and social care, or (b) children or vulnerable adults.

This information may be in the form of a reference from a previous employer – but need not be. Written appraisal documentation may also be relied upon to demonstrate an employer's view of an individual's conduct. Written evidence from other persons would also be acceptable if it provides information regarding an individual's conduct.

Providers only need to obtain evidence of conduct for the roles which relate to Health and Social Care, or where the applicant worked with children or vulnerable adults.

Even if an organisation is not regulated by the CQC, they should embed this into their own processes to make recruitment practices robust and safe.

Take a look at our 'Sharing effective references and conduct information checklist'.



## Data Protection Act 2018 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 (ICO, DBS Conference 2021).

Organisations need to identify a lawful basis, and establish necessity, and adequacy as well as make sure they are adhering to the key principles of data sharing. Some organisations consider consent as the lawful basis when dealing with references or conduct information, but consent cannot be used if there is an imbalance of power. An imbalance of power occurs when for example, the employer can rely on another legal basis, or the data subject may fear adverse consequences by refusing – e.g., not being offered a job!

No single basis is 'better' or more important than the others. Which basis is most appropriate to use will depend on the specific purpose and relationship with the individual.

The organisation must determine their lawful basis before they begin processing, and they should document it. They should also include the lawful basis for processing as well as the purposes of the processing in their privacy notice. [The ICO Lawful basis interactive tool](#) can help organisations work out which lawful basis is likely to be most appropriate for their specific processing activities.

As the organisation may be processing criminal offence data and/or special category data when sharing effective references and conduct information, they will need to identify both a lawful basis for general processing, and an additional condition for processing this type of data.

**When sharing safeguarding related concerns with other organisations, employers may consider using substantial public interest conditions – safeguarding of children and individuals at risk.**

**When obtaining a reference, employers may consider using 'legitimate interest' as their legal basis. Social care providers and education providers may consider 'legal obligation' to obtain/ provide a reference.**

UKGDPR/DPA 2018 gives extra protection to criminal offence data (under [Article 10](#)). 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) if sharing this information.

Further information on UKGDPR/DPA 2018 considerations is contained in the [ICO Data sharing information hub](#) and [Guide to Data Protection](#).

You can also find out more in [our FAQs](#).

## Key points

- ✓ Train staff involved in recruitment and vetting to ensure they can apply a safeguarding mindset when requesting and considering reference and vetting information.
- ✓ Regularly review role requirements, person specifications and safeguarding risks of roles to identify which information you need to gather to assess suitability and conduct during the recruitment and vetting process.
- ✓ Set out safeguarding responsibilities in recruitment and application materials so that applicants are clear from the outset safeguarding expectations of the role.

# 4. How to gather references and conduct information

An effective, safe and fair recruitment process will include a range of robust vetting checks, including values-based recruitment, criminal record self-declaration, DBS checks and detailed references, at appropriate stages.

This ensures that **as much relevant information as possible** is gathered about conduct and suitability **from as many sources as possible** about prospective employees to make the safest, fairest recruitment decision.

For example, references are likely to contain information that might not be received by completing a criminal records check, and vice versa.

If companies decide to use third party organisations, such as recruitment agencies or screening specialists, it is beneficial that the outsourced supplier covers all pre-employment checks rather than referencing alone. The employer should ensure they do their due diligence and have a robust process in place when choosing an outsourced supplier and managing their performance.

Ensuring staff involved in the recruitment and vetting process are adequately trained will help organisations to make the safest and fairest recruitment decisions.



What we mean by...



## Values-based recruitment?

Values based recruitment supports organisations to gather information about the **values, behaviours, and attitude** of potential employees, so that employers can assess whether they will be suitable to work for your organisation. This information can be compared to information gathered in references and other vetting checks, which helps make sure employers have a full picture of the person's character before employing them.

Find out more about values-based recruitment.



## What information do employers need to collect?

Organisations should start by thinking about the specific role they are recruiting for, rather than treating all roles the same.

- What tasks will the successful applicant be required to do?
- What are the safeguarding risks in the role? (So that suitability for working in a role with this level of risk can be fully considered). For example, is the role unsupervised, does it involve personal care?
- What values, behaviours and attitude are needed to do this role well?
- What skills and experience are needed to have and what training could be given?
- What information is your organisation legally allowed to ask for?
- What level of DBS check is the role eligible for?

Once employers have considered what information is required, ensuring that the **application, vetting, referencing** and **selection process** gathers and analyses this information and relevant evidence of suitable conduct can be obtained

## Application forms

Gathering effective references and conduct information starts at the beginning of the recruitment process when an employer first requests references (and other) information from the applicant. This is often done in the application form.

A focused application form that demonstrates the organisational commitment to safe practice can help to attract candidates with values that align to the organisation, while deterring those people who know their practice is unsafe.

For any organisation that doesn't yet have an application form, below is an example of an effective application form which includes all of the relevant ways to gather information about an applicant's conduct.

Sample application form



For organisations that already have an application form, our application forms checklist below will support organisations to review existing application templates and identify where changes are required.

## Application forms checklist

### How to use the checklist

**REVIEW** the application form against the checklist

- Are there any gaps?
- Are there any areas you could add to the organisational application form to enhance it?

**SHARE** updated application form with hiring managers and ensure they fully understand why changes have been made

**REFLECT** on changes made

- What worked well and provided useful information to support gathering references?
- Can any further improvements be made?

**REVIEW** the application form on a regular basis against current best practice



A Better Hiring Toolkit

### Application Form Checklist

**How to use the checklist:**

- **Review** the application form against the checklist
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- **Share** updated application form with hiring managers and ensure they fully understand why changes have been made
- **Reflect** on changes made
  - What worked well and provided useful information to support gathering references?
  - Can any further improvements be made?
- **Review** the application form on a regular basis against current best practice

Activity	Currently in place Yes/No	Recommended Action
<p><b>REQUIREMENT</b></p> <p>The application form should ask people to demonstrate how they meet the requirements of the job.</p> <p>Only information that is relevant for the job should be requested on the application form. This should focus on:</p> <ul style="list-style-type: none"> <li>• <b>Information about the applicant</b> - name, contact details, current employment status</li> <li>• <b>skills and knowledge</b> - qualifications and education, skills relevant to the role</li> <li>• <b>experience</b> - previous work experience and explanations of gaps</li> <li>• <b>values</b> - personal qualities, attributes, values and behaviours relevant to the role. Application forms should be used to obtain:</li> </ul>		

Download the checklist here



## When to seek a reference

At **what stage** references are requested varies from employer to employer but in all instances, they **must** be returned before the employee starts the role. This ensures all relevant information contained in references can be considered ahead of an applicant beginning employment.

Ideally, references should be requested as early as possible in the recruitment process. The same applies when using an outsourced supplier or third-party organisation to screen applicants or complete pre-employment checks.

Employers will ask applicants to provide referee details either before the interview or post-interview but before offer stage. If the applicant is currently employed, permission should be sought from the applicant before contacting the current employer for a reference. **It is important to obtain permission from the applicant before contacting referees for a reference.** Once permission has been provided, the process can begin by contacting a formal department such as a referencing team or HR.

If an unconditional employment offer is made and accepted by the applicant, a withdrawal of the offer will breach the existing contract of employment and the organisation will have to provide the employee with notice of termination of their employment.

### It's good practice to make sure the referee is aware that...

- an employer may be failing in its duty of care (to applicant and/or prospective employer) by failing to give a reference
- they have a responsibility to make sure any reference provided is accurate, dependable and does not contain any material misstatement or omission
- if they are not satisfied the person is suitable to work with adults at risk and/or children they should provide specific details of their concerns
- relevant factual content of the reference may be discussed with the applicant unless it is a confidential reference, in which case it wouldn't be shared but could be subject to disclosure in an employment tribunal or county court claim.

#### Top tip



Consider offering a conditional employment offer until satisfactory references have been obtained. If an organisation is unable to satisfy that the applicant is suitable for the role, the employment offer can be withdrawn.

## Reference request checklist

### How to request a reference

Before requesting a reference, it is important to verify that:

- the applicant's information is legitimate and correct
- the company exists
- the named referee is employed by the company in the position stated and authorised to provide a reference on behalf of the organisation
- all phone numbers and email addresses provided are genuine.

Reference requests can be sent via email, post, or online solutions. Some companies have their own online solutions or employ third party organisations to work on their behalf.

Using the Better Hiring Toolkit sample template forms may help referees to provide more consistent information as they can easily identify what information they need to provide. This should help speed up the process.



#### Top tip from our experts:

**Reed Screening says** "Sending reference requests so that they are present in the referee's inbox first thing in the morning, with a follow-up phone call, also increases the reference's likelihood of returning"



#### A Better Hiring Toolkit

### Reference request checklist

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Download the checklist here



## What does an effective reference include?

In addition to verifying standard employment information, such as:

- the referee's relationship with the applicant
- where the individual has been employed/volunteered or studied
- the dates of employment/volunteering or duration of study (exact dates, not just months and years)
- the position held or course undertaken
- confirmation of salary
- number of sick days or absence
- reasons for leaving employment, training or study (if known)

An effective reference for roles within social care should also detail **evidence of conduct for any previous employment involving children or vulnerable adults.**

Evidence of conduct should:	Evidence of conduct should not:
be factual and have evidence to back up what has been stated	contain opinions or claims which have no evidence to back up what has been stated
contain all relevant information – there are no omissions or misstatements	omit or misstate relevant information
share information about any physical or mental health conditions which are relevant to the person's capability (after reasonable adjustments are made) to properly perform tasks intrinsic to their employment.	share personal information or special category/protected characteristics data which may be irrelevant for the position applied.

**When sharing conduct information, it's important that the details provided are fair and accurate and can be backed up with evidence.** If appropriate, relevant information could include:

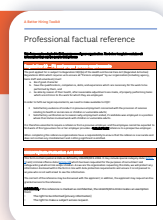
- specific verifiable comments about someone's performance history and conduct
- if and how someone failed to meet the requirements of their probation
- information about any disciplinary procedures the applicant has been subject to in which the disciplinary action is current or relevant to safeguarding adults at risk and/or children
- information about safeguarding related concerns, including low-level concerns, or investigations which relate to suitability and conduct and the outcome of those concerns/proceedings
- details of any complaints or allegations relevant to the role applied for that have been raised about the applicant that relate to the safety and welfare adults at risk and/or children
- whether the referee is completely satisfied that the applicant is suitable to work with adults at risk and/or children and, if not, provide specific details of their concerns and the reasons why they believe the person may be unsuitable
- whether or not they would re-employ the applicant in the same job
- positive achievements such as awards, commendations and feedback from colleagues or people who use services.



We've produced some templates that you can use and adapt to meet your needs. They include all the information and questions you need to fulfil your safeguarding and legal rights and responsibilities when recruiting safely and fairly.

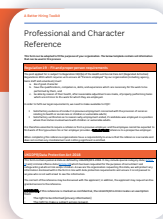
### Professional factual reference template

A factual reference is a short summary of employment and sticks to facts, such as job title and employment dates.



### Professional factual and character reference template

A character reference can include details about a person's character, their skills, disciplinary information and reason for leaving.



### Important note:

Employers owe their employees and ex-employees a duty to take reasonable skill and care to ensure the accuracy of a reference given about them. The duty also extends to a prospective employer who may reasonably rely on the accuracy of the reference provided.

An employer could be subject to a legal claim:

- for negligence – if it has given a negligent statement about an employee that subsequently causes them a loss. A reference may be negligent in law if it is unbalanced or contains statements which are untrue.
- for defamation – if a reference contains a false or unsubstantiated statement that damages the applicant's reputation.

## Different types of references

Character and personal references

Training history references

Self-employment references

Shared Lives schemes

Telephone/video call references

Confidential references

Volunteer references

Umbrella contractors

Overseas references

Armed forces references

## Character and personal references

Some employers won't accept character or personal references, but some consider them useful, particularly when recruiting young people with no work history or people who have never worked with adults at risk and/or children or if their previous employer has ceased trading.

If someone is approached to provide a professional reference on behalf of their organisation and they're not authorised to do so, they must make it clear that the information they're providing is a character or personal reference based on their relationship with the applicant in a personal capacity.

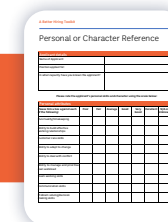
### Top tip:



Character and personal references should be sought from a **person of standing in the community** or a personal acquaintance of the applicant. This person should not be a relative of the applicant and should not hold any financial arrangements with them.

It may be useful to have a discussion with the applicant to determine who best to approach for a character or personal reference covering any education, training, or voluntary work they may have done.

Download a character and personal reference template.



## Training history references

Verifying training and qualifications can be difficult, particularly certificates from private providers. Attempts should be made to verify these, particularly where specific training is a key requirement of the role. Obtain original certificates where you can and check their validity with the training provider, as well as an outline of the training content.

If the applicant has indicated that they have left or are leaving full-time education, references to validate their education history should be sought from the individual's tutor or head teacher.

## Self-employment references

For periods of self-employment, evidence is required to confirm self-employment status, and references should be sought to confirm that the person's business was conducted properly. This may include information from customers or clients, accountants, HM Revenue and Customs, or Companies House.

Verify the information provided and determine if the company set up was a limited company or limited liability partnership (LLP). This can be done by searching the business on [Companies House](#), ensuring the email address is genuine and belongs to the business. The applicant is required to produce information from their accountant and/or HM Revenue and Customs to prove self-employment. If they cannot provide this information, ask for tax returns to confirm their self-employment status.

## Shared Lives schemes

Shared Lives carers are recognised by HMRC as being self-employed but are considered employees for the purpose of [care regulation](#) when working under a carer agreement.

When assessing suitability of an applicant to be a Shared Lives carer, it's recommended you seek a professional reference from the applicant's current/previous employer and a minimum of two personal character references.

In addition, the applicant must provide a medical reference from their GP, and a reference from their landlord or mortgage provider confirming:

- they have permission from their mortgage lender/landlord to undertake placements
- they are not in arrears with their mortgage payments/rent
- they are not in breach of the terms of their mortgage/lease/tenancy agreement.

Download our template Shared Lives medical reference request template.



Download our template Shared Lives property reference request template.



## Telephone/video call references

It's best practice to obtain a written reference, but some employers may prefer to provide a detailed reference in a telephone or video call.

Follow up calls are also helpful to discuss and verify information provided by a referee, particularly if they have not given sufficient information to evidence that the applicant is suitable to work with adults at risk and/ children or could undertake the post in question.

It is important to verify the referee's identity by confirming details such as their name, job title and organisation with them.

Taking a written account to send back to the referee to confirm it is an accurate reflection of the information provided (which can be completed electronically via email) is good practice.

Download a telephone reference template.



## Confidential references

There are many reasons why a reference may be labelled as confidential, e.g., it may contain details of disciplinary action, misconduct, or safeguarding concerns.

If a reference is marked as confidential, UKGDPR creates an [exemption](#) enabling **both** the company who issued it and the company receiving it not to share a copy of the reference with the applicant.

The Better Hiring Toolkit reference template forms include provision for the reference to be provided in confidence, but to ensure that recruitment processes remain open, transparent and fair to all applicants. It's recommended that employers only consider this confidential exemption on a case-by-case basis and document reasons for relying on the confidential exemption.

Referees need to be aware that a confidential reference could be subject to disclosure in an employment tribunal or county court claim.

## Umbrella company and recruitment agencies

An umbrella company employs applicants and pays their salaries after deducting National Insurance contributions and Income Tax on a PAYE basis. The umbrella company enters contracts with recruitment agencies. It will manage all administration aspects for its applicants, and act as an employer to agency contractors.

If the applicant was supplied through a recruitment agency, it is the responsibility of the agency to conduct the pre-employment checks before placing the applicant on the umbrella companies' payroll. Umbrella companies would need to obtain applicant references for their own records once the applicant is on their payroll.

## Volunteer references

Social Care employers have the same legal and safeguarding responsibilities for volunteers as they do for paid staff. So, you should seek volunteering references in the same way.

Where applicants have stated they have undertaken voluntary work, you should seek references from the relevant organisation, but it may be difficult to obtain a reference if the applicant has carried out voluntary care work with relatives and friends. In these cases, request a reference from healthcare professionals involved in the individual's care.

Consider requesting the applicant's bank statement as part of the screening process to make sure they weren't getting paid and concealing employment in the form of voluntary work.

Download a volunteer reference request.



## Overseas references

Applicants are asked to provide a reasonable account of any significant periods spent overseas i.e., a continuous period of six months or more.

If they were working overseas, check the employer's website to ensure it appears a credible business. The applicant must provide the name, official email address and how best to contact the company.

The reference should be sent electronically. If the reference is not provided in English, it should be translated by an official translation service. It is advisable to contact the referee regularly until the reference is returned, for example every three days.

[NHS Employers guidance](#) on employment history and references provides further information on gathering overseas references (see pages 8-9).

## Armed forces references

Applicants from the armed forces should possess a [certificate of service](#) (also known as confirmation of service) under cover of an official letter.

The [NHS Employers guidance](#) advises that where the applicant can present a certificate of service, you may accept this instead of needing to request a separate factual reference. Request the reason for discharge and a discipline note to be included in the certificate of service.

Certificates of service contain security marks such as holograms, verify these in the same way as any other official documentation.

## How many years of employment should references cover?

There is no standardised approach across the sector, it will depend on organisational policy.

NHS Employers recommend that employers should seek the number of references necessary to validate a period of three consecutive years of continuous employment or training immediately prior to the application being made.

Regulation 19 requires organisations regulated by the CQC to obtain:

- **full employment history** for all persons employed
- **satisfactory evidence of conduct** in all previous employment concerned with the provision of services relating to social, or healthcare, or children, or adults at risk
- **satisfactory verification as to reasons why employment ended** for all roles where the applicant worked with adults at risk and/children.

There should always be a **minimum of two references** obtained, but Regulation 19 does not stipulate the period of time that a reference should cover.

## Key points for gathering references and conduct information



Ensure the application form requests all relevant reference information from the applicant and demonstrates organisational commitments to safeguarding.



Ensure reference requests are clear so the referee knows what specific information is required about the suitability and conduct of the person. Our sample templates may help.



If the organisation is a regulated Health and Social Care provider, or employs staff engaged in regulated activity with adults at risk and/or children, they should be reminded of their legal and safeguarding responsibilities to provide conduct information when asked in a reference request. [This template letter](#) may assist.



References can sometimes prove difficult to obtain. Document efforts to obtain references from all sources as part of pre-employment record keeping and demonstrate a clear approach to how these have been followed up and/or verified.

## What to do when it has proved impossible to gather a reference

There could be several genuine reasons why an applicant cannot provide a referee from a previous employer. They may not have worked for some considerable time, or their previous employer has ceased trading.

In these cases, it's recommended to seek a reference from the applicant's last known employer and source an additional character or personal reference. Where this is not possible further references can be sought within the applicant's career history and many businesses that no longer trade may be verified by [Companies House](#).

If a company refuses to provide a reference, it is deemed good practice to use bank statements or HMRC records to confirm the period of employment and then seek to obtain another reference from a care organisation from the applicant's work history.

It may be useful to contact the organisation to encourage them to discuss the issue verbally and ask them to provide a telephone reference or follow-up written reference. If necessary, they can provide the reference in confidence (see confidential references section).

If the applicant has previously worked in social care or health settings or worked with adults at risk and/or children, CQC guidelines indicate that **written appraisal documentation** may also be relied upon to demonstrate an employer's view of an individual's conduct. Written evidence from other persons would also be acceptable, but only if it provides information regarding an individual's conduct.

Where it has genuinely proved impossible for a reference to be obtained, base the recruitment decision on what information can be reasonably obtained as part of the interview and checking stages.

The [Better Hiring Toolkit pre-employment risk assessment form](#) should be completed detailing the rationale for the recruitment decision, all efforts made to obtain a reference, the reasons why information could not be obtained, and any additional measures put in place to ensure new staff are adequately supported and sufficiently supervised to carry out their role safely and effectively.

Download pre-employment risk assessment form



## How to choose an outsourced supplier

The following advice has been developed for employers seeking to engage an outsourced supplier such as an umbrella company or recruitment agency.

### Factors to consider:

#### Quality of staff supplied

Ask the recruitment company or outsourced provider to supply information on the other health or social care organisations they work with. This will give an insight into their ability to supply or carry out checks on the staff you require.

#### Reputation/Service delivered

When selecting a recruitment company, it is important to consider their reputation and the service they deliver. If a company is a known brand and has a good reputation, that is another level of assurance. Look out for client testimonies on sites such as Trustpilot or reviews which cannot be fabricated.

#### Approach to values

A factor to consider is whether your values align with the provider. By sharing the same values, it sets a standard of service and expectations.

#### The importance of the environment

An overlooked factor when selecting a recruitment agency is their pledge to social corporate responsibility. How is an agency contributing to society? Consider their environmental pledges. Recruitment agencies are playing their part by pledging to be carbon neutral. This shows their commitment to the environment and what their business is doing to create a more sustainable planet.

## Managing & selecting a partner

When working with a supplier, it is good to assess the service they provide and how they manage their supply chain. To feel confident about your supply chain, ensure awareness around compliance and compliance within their supply chain is built. Do this by carrying out thorough due diligence on them to avoid any risks to clients and your business. Ensure to work very closely with your suppliers to identify and manage any potential risk and promote transparency in the process.

For more information on managing and selecting a supply chain, visit [www.betterhiringinstitute.co.uk](http://www.betterhiringinstitute.co.uk)

### Recruitment trade bodies

One way to get increased assurance is to look at recruitment agencies who are a member of a trade body. The two largest recruitment trade bodies are The Association of Professional Staffing Companies (APSCo) and the Recruiting & Employment Confederation (REC). Agencies that join these trade bodies must follow a certain ethical code and are bound by certain guidelines. By choosing a recruitment company that is a member of a trade body, this provides one level of assurance as they will have gone through a signup process. A higher level of assurance is to choose a recruitment agency with an external accreditation as this involves ongoing rigorous audits.

### External Accreditation

Not all recruitment agencies are the same; one factor that may differentiate agencies from each other is if they are part of an accreditation scheme. The main one is APSCo [Compliance+](#). This is predominantly for the supply of social workers, however, is expanding to cover broader care supply and many Compliance+ social work agencies already apply the same level of diligence for non-social work supply.

APSCo developed Compliance+ to set a best practice quality standard for social work recruitment businesses. It compels members to go beyond statutory safeguarding and aim for excellence in competency selections and service quality.



## Why should you choose Compliance+ accredited recruitment company?

The scheme provides certified safeguarding to agencies that go beyond the statutory requirements. Recruitment agencies will have an annual independent audit process undertaken by external practitioners on behalf of APSCo. APSCo Compliance+ Standards Committee ensure that Compliance+ remains relevant and appropriate. It provides governance of the audit process. It ensures every applicant's competency and suitability and endorses safer recruitment training requirements for staffing professionals. Finally, it is recognised as a certification by the Crown Commercial Service.

## Agencies putting workers first.

The UK's number 1 platform protecting non-permanent worker rights is [JobsAware](#), run by a charity with cross-government support called [SAFERjobs](#). At no cost, recruitment agencies can partner with JobsAware to promote free services to workers. This ensures a transparent supply chain for hirers and is a robust way for workers to report abuse or exploitation by staffing firms. JobsAware works closely with law enforcement and government regulators to provide intelligence to enforcement bodies. The regulator for the recruitment sector has named SAFERjobs as one of its largest sources of intelligence which helps the regulator improve the sector. The first four UK labour market strategies written by UK Government named SAFERjobs as an excellent way to tackle abuse and exploitation in supply chains. When choosing your recruitment agencies, it is advisable to ensure they already do, or agree to, partner with SAFERjobs. It is already mandatory for recruitment agencies to partner with SAFERjobs when supplying to the NHS.

## Concerns about agencies & agency workers

Where there are conduct concerns relating to agency workers, whilst safeguarding is everyone's

responsibility, the primary responsibility rests with the employer. The employer may be the recruitment agency, or it may be the payment intermediary. It is important that your organisation reports the information immediately to the agency and a joint decision is made about whether the worker is able to continue working whilst a full investigation is carried out. If the worker is deemed unsuitable to continue working, the employer may well have a duty to offer alternative work which does not involve vulnerable people. This is likely to be a multi-agency investigation and the employer will need to manage the worker and the process itself directly.

If an organisation believes the recruitment agency is not properly managing the safeguarding issue, they should report this to the relevant trade body. If the recruitment agency places the worker in another setting whilst the investigation is ongoing, or following the investigation finding the worker guilty, this can be reported to the recruitment regulator (see below)

## Reporting agencies

It is recommended by the trade bodies to report a complaint to the recruitment agencies first. Ensure you ask the agency for a copy of their complaint procedure, outlining how will they deal with the complaint and detailing the timescale it will be processed in. When making the complaint, ensure to state the individual's name you are making a complaint against, the nature of the complaint, the date the incident occurred, and your desired outcome.

If an agency is a member of any trade bodies, you can directly make a complaint through them. You can escalate the complaint to the EAS regulator if no action has been taken.

## Key points



When considering the use of recruitment agencies, refer to the Better Hiring Institute for advice & guidance



Where employers are using a recruitment agency, consider the use of an organisation which is a member of a trade body



For additional assurance, ensure your recruitment agency is externally accredited with a scheme such as Compliance+



To improve transparency in the supply chain and protect worker rights ensure your recruitment agencies partner with JobsAware



Where there is evidence of misconduct, report to the trade body or the government regulator

## 5. What to do with information received

**Compare and be curious about the different sources of information received and gathered to ensure it gives a full and accurate picture of the applicant's conduct and suitability. Where necessary, there may be a requirement to seek additional references.**

Ultimately, the decision to recruit or not lies with the employer. If necessary, carry out a risk assessment to determine all relevant information is present, or if there are any areas of concern, before allowing the person to start in post. Complete a pre-employment risk assessment form and make an informed recruitment decision based on all of the information as part of the interview and checking stages. Make sure the applicant has an opportunity to share their views and perspective before reaching a final decision.

If there are concerns but an organisation wants to give the person an opportunity, as part of the risk assessment consider putting in place additional measures, including:

- higher levels of supervision
- a probationary period with a focus on the areas of concern, extending the probationary period if required
- additional induction and training.

Share and refer any safeguarding concerns raised in the recruitment and vetting processes.

If necessary, complete a pre-employment risk assessment form and make an informed recruitment decision based on all of the information reasonably obtain as part of the interview and checking stages.



[Download a pre-employment risk assessment form here](#)



## Verifying references

When a reference is received, it's important to cross-check the applicant's initial details to verify it.

Where these details don't match, consider our advice for dealing with discrepancies.

If the reference is received by post, ensure the company's letterhead is within the document. If an electronic reference is received, ensure it originates from a legitimate source.

Further information on seeking references is included in the ['Sharing effective references and conduct information' checklist](#).

## Dealing with discrepancies in the information provided

Sometimes the information provided in a reference may contradict the information provided by applicants in their application. If this happens, any concerns must be resolved before a decision is made.

There may be a reasonable explanation for apparent discrepancies, and organisations should proceed sensitively to seek the necessary assurances directly with the applicant. Typical reference discrepancies include the start and end dates of employment, salary, the reason for leaving, duties and job titles.

The referee can provide evidence of employment and can also provide further clarification, when necessary, for example, if answers provided by the applicant are vague or they provided insufficient information.

You could also seek additional references, such as a character reference from a professional person.

If you have any concerns you should invite the person to come for an additional risk assessment interview to explore your concerns in more detail.

## Gaps in employment

Regulated Health and Social Care employers must obtain a satisfactory written explanation of any gaps in employment history for everyone employed.

If the applicant hasn't provided a satisfactory explanation at the application stage, the CQC expects this to be sensitively explored with the applicant at the initial interview, as part of robust, safe and fair recruitment exercises. Record the answers given by the applicant.

There is no set minimum standard for gap verification, but **it is advisable to class four weeks as an employment gap**. It's essential to ensure that the applicant provides sufficient evidence to determine what they have been doing during the gap period.

Obtainable evidence can include:

- **a gap referee:** this is a reference from a professional or character referee. This person must have known the applicant during the gap period
- **proof of travel:** if an applicant has been travelling during the gap period, they should be asked to provide evidence of this e.g., travel documents or visas
- **proof of income:** with the applicant's involvement, use HMRC's online services to help them provide proof of income or employment during the activity period that needs to be validated. This is particularly useful for individuals undertaking numerous short-term or multiple concurrent zero hours contracts and can mitigate the risk of applicants not providing details of employers that they do not want to approach for references
- **proof of benefits:** if an applicant was in receipt of state benefits during the gap period, they can provide a job centre summary letter or another government source to confirm this.

## Information of Concern

Where information of concern is included in a reference, this should be carefully considered and weighed up against the wider range of evidence gathered as part of the recruitment process. It's important to note that an applicant's circumstances may change over time so no assumptions should be made about their suitability for another role with a different organisation, or in a different setting.

To obtain the necessary assurances about the individual's suitability for a role, investigate any negative information provided by sensitively raising it with the individual concerned, giving them the opportunity to explain the situation in more detail and/or, if appropriate, giving them a chance to outline any learnings. Where necessary, organisations may want to seek additional references.

## What if the applicant challenges a reference?

If the applicant challenges a reference on the grounds of fairness or accuracy this could lead to potential claims of discrimination. An organisation should give the applicant the opportunity to address any concerns with the reference(s).

## How long should employers keep the information received?

Detailed, accurate and fair notes should be taken throughout the recruitment and vetting process. This should cover both the information that was gathered and the decisions that were made.

For successful applicants, the recruitment and vetting information should form part of the personnel file and be stored in line with organisational personnel file retention protocols.

Registered care homes which are inspected by the CQC, and other Health and Social Care 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 for as long as practicable.

For unsuccessful applicants, it's best practice to keep recruitment records in line with UKGDPR/DPA 2018 requirements in case a applicant challenges the process from a discrimination perspective.

## Key points

- ✓ It's an organisation's responsibility as an employer to practice safe and fair recruitment by looking at all the different sources of information gathered during the recruitment and vetting process.
- ✓ An applicant's circumstances may change over time so no assumptions should be made about their suitability for another role with a different organisation, or in a different setting.
- ✓ Complete a risk assessment to determine if all relevant information is present. The [pre-employment risk assessment template](#) may help.
- ✓ Be curious about the information received, ensure it gives a complete picture of an applicant's conduct and suitability for the role.
- ✓ Discuss any gaps, discrepancies or concerns sensitively with applicants – give them the opportunity to share their views and perspectives.
- ✓ Share and refer any safeguarding concerns raised during the recruitment and vetting processes with relevant organisations.

Specific guidance on the recording and storage of DBS records can be found at [Gov.uk-Handling of DBS Certificate Information](#).

More detailed guidance on the retention of all HR records can be found at [CIPD – Retention of HR Records Fact Sheet](#)

## 6. How to share references and conduct information

**The sharing of effective references and conduct information is part of a wider approach to safer employment practices, ensuring a safeguarding mindset at every stage of the employment relationship - from recruitment through to managing leavers.**

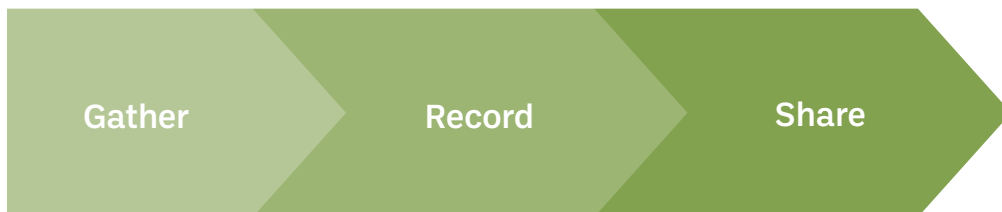
In order to gather effective references and conduct information from other employers, employers must also be prepared to share relevant information with them and with other organisations (e.g., DBS, CQC and other relevant agencies) as appropriate.

This includes sharing safeguarding related conduct information. Social Care providers need to be able to effectively identify, manage and share concerns to fulfil their legal and safeguarding responsibilities to keep vulnerable people safe.

Remember, employers may be failing in their duty of care by not providing a detailed reference. Organisations have a responsibility to make sure references provided are accurate, dependable and do not contain any material misstatement or omission. Relevant factual content of the reference may be discussed with the applicant unless it is a confidential reference.



## How to effectively gather and record conduct information



Organisations can only share meaningful conduct information on a reference if they gather and accurately record relevant information relating to conduct, concerns and low-level concerns at every stage of the employment relationship. Identifying and managing concerns is the responsibility of every organisation involved in providing care and support.

The CQC makes it clear that organisations must demonstrate they are both ‘safe’ and ‘well led’ in the way they identify, respond to and manage concerns. The PRISIM model of safer employment supports organisations in ensuring that they take every opportunity to gather and record accurate and factual conduct information and concerns so that they can be effectively shared in a detailed reference and with other relevant organisations such as DBS.

The table on the following page shows how organisations can effectively **Gather**, **Record** and **Share** conduct information and concerns at every stage of the employee journey. This may be used to reflect on how your organisation currently gathers and records conduct information to identify areas to develop and improve practice, so organisations are better able to share this information in a detailed reference.

Download our low-level concerns policy and concerns form here



What we mean by a...



### Concern

A concern is any behaviour, action or inaction which is in contravention of your organisation’s code of conduct, and which has or may have put adults, children, other staff, the individual or the organisation at risk of harm.

What is a...



### Low-level concern?

A low-level concern is any concern – no matter how small, and even if no more than a ‘nagging doubt’ – that an adult may have acted in a manner which:

- is not consistent with an organisation’s Code of Conduct.
- relates to an individual’s conduct outside of work which, even if not linked to a particular act or omission, has caused a sense of unease about that adult’s suitability to work with adults and/or children.
- does not meet the threshold of a safeguarding allegation or is not otherwise serious enough to consider a referral to the Local Authority Safeguarding Team.





## Stage of the employee journey



## How to GATHER conduct information



## How to RECORD conduct information



## How to SHARE conduct information

### Planning to Recruit

Ensuring the organisation has a safeguarding mindset when planning recruitment and requesting conduct information

- Request a reference based on a review and risk assessment of the essential characteristics and conduct required in the role.
- Applicants complete self- disclosure forms

- Use specific reference request forms
- On your organisational Recruitment /HR System record from whom, what and when was information requested and received

Externally - share what information is needed to know about the person's conduct from referees to get the most relevant and detailed reference from them.

### Recruitment and Vetting

Using a range of different vetting and recruitment tools alongside of references to gather conduct information and ensure the organisation can make the safest and fairest recruitment decisions

- Review and risk assess information received on a reference, and other vetting checks and recruitment activities.
- Follow up any concerns or gaps in information with the referee

- Use the [safer recruitment checklist](#) and the [pre-employment risk assessment form](#) to document information received and risk assessed decisions.

- Internally – share evidence with recruiting managers to make fair and safe recruitment decisions.
- Externally- refer any safeguarding concerns uncovered in the recruitment process to the Local Authority/ Police or relevant agency.

### Induction and Probation

Ensuring new staff are clear what is expected of them in terms of their conduct, the standards they must meet, and how information about their conduct and performance will be managed, recorded and used

- Observations of conduct during induction, including service user feedback.
- Probationary reviews of conduct and performance.

- On induction checklists or induction observations documents.
- On probationary review forms.

- Externally – share reasons for dismissal in the probationary period in a reference.
- Externally – make a referral to external bodies e.g., DBS, Local Authority, if conduct meets their threshold

### Supervision and Management

Supporting, developing, and holding employees to account for their conduct and performance when carrying out their roles safely and effectively

- Regular supervision meetings and informal one to ones.
- Structured Performance Development Reviews/ Appraisals.

- On a supervision record form.
- On a PDR/ Appraisal form.

- Externally – evidence of concerns and conduct from supervision and appraisal can be shared in references and other external referrals

### Identify and Manage Concerns

Establishing an open culture where any concerns about conduct are shared and appropriately managed

- Open culture of staff and service users raising concerns – Allegations, Low Level Concerns, Whistleblowing, complaints.
- Effective investigation and disciplinary processes for managing concerns.

- On a recording concerns form and an organisational recording concerns system/ spreadsheet.
- In investigation and disciplinary procedures file notes.

- Externally – evidence of concerns and conduct from investigations and disciplinarys can be shared in references.
- Externally – allegations and patterns of low- level concerns may be shared with the Local Authority and referred to other relevant organisations.

### Managing leavers and Referring Information

Collating and reviewing all information about an individual's performance and conduct during their employment in a format where it can be effectively shared in a reference and with other relevant organisations

Exit interviews and exit recording process to review and collate all information relating to the conduct and performance of an individual during their employment.

- On the [exit record form](#).

- Externally – the evidenced and recorded conduct and performance of all staff can be shared in a reference.
- Externally – make a referral to external bodies e.g., DBS, Local Authority, if conduct meets their threshold



## Top tips for Gathering and Recording Conduct Information throughout the employment journey

- Share your organisational code of conduct, relevant safeguarding and raising concerns policies and processes and how conduct is addressed with new starters during their induction to ensure everyone is clear on the expected standards of conduct in your organisation.
- Use probationary reviews to identify, manage and record any concern and to make good decisions about the suitability of people to work in your organisation.
- Regularly supervise and meet with staff to identify, address and record concerns around conduct and suitability at an early stage to give sufficient opportunities for improvement or to take action if required.
- Develop and share clear policies and processes on how to raise and record concerns with staff and service users and encourage an open culture where everyone feels confident in sharing their concerns.
- Ensure managers are trained in how to respond effectively to concerns being raised.
- Put in place an exit process for capturing and recording relevant information about an individual's conduct and performance during employment when they leave the organisation so that this information can be effectively shared in reference and with external organisations.

Here are some additional sources of support and information to help you develop each stage of the employee journey in your organisation.

### Recruitment and Vetting

[www.betterhiringinstitute.co.uk](http://www.betterhiringinstitute.co.uk)

[www.reedscreening.com](http://www.reedscreening.com)

[Recruitment and retention \(skillsforcare.org.uk\)](http://Recruitment and retention (skillsforcare.org.uk))

### Induction and Probation

[www.skillsforcare.org.uk/induction](http://www.skillsforcare.org.uk/induction)

[Code of Conduct \(skillsforcare.org.uk\)](http://Code of Conduct (skillsforcare.org.uk))

### Supervision and Management

[Skills for Care supervisions guide](http://Skills for Care supervisions guide)

[People Performance Management \(NHS Employers and Skills for Care\)](http://People Performance Management (NHS Employers and Skills for Care))

### Identifying and Managing Concerns

<https://www.farrer.co.uk/news-and-insights/developing-and-implementing-a-low-level-concerns-policy-a-guide-for-organisations-which-work-with-children/#>

### Managing leavers and referring information

For more information on managing leavers and referrals, [click here](#) or navigate to page 38

## How to effectively share conduct information once it has been gathered and recorded

The exit process, undertaken when people leave your organisation for any reason, is the opportunity to review and collate all of the information gathered and recorded about an individual's conduct and performance during the time they were employed, and to make a decision about how and to whom you will share this information. This may include:

- Providing a reference to potential future employers of the individual
- Making a referral to DBS
- Sharing information with the Local Authority or Police
- Making a referral to a professional body who the individual is a member of

### Important note

Some organisations may have separate departments or teams that deal with safeguarding allegations and concerns so individuals providing references may not have easy access to safeguarding related conduct information.

It is recommended that organisations put in place an effective system such as:

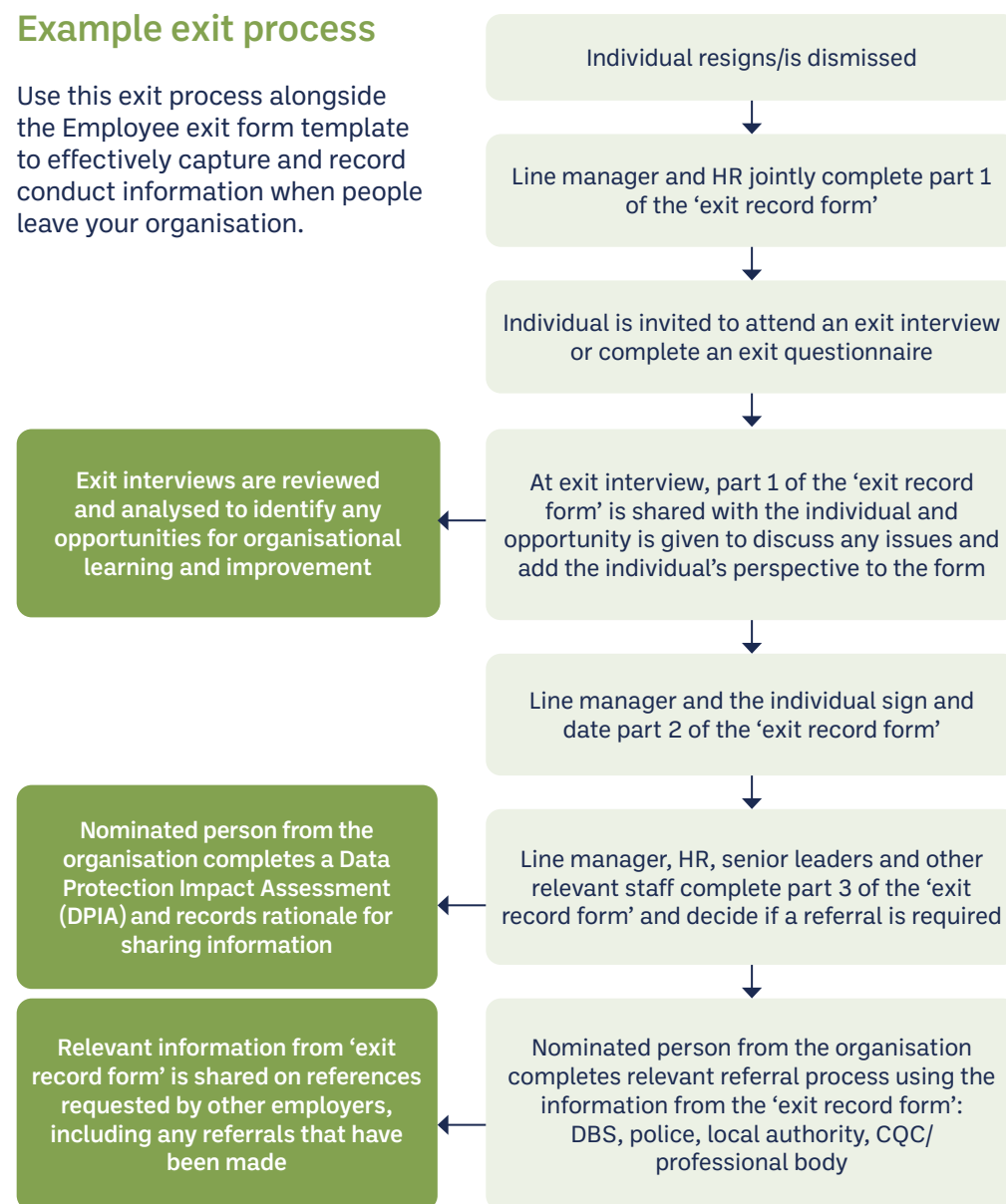
- Regular meetings between HR and safeguarding leads to discuss safeguarding cases
- notifying safeguarding leads and line managers when a reference request is received so they check for relevant information
- recording relevant information on an Exit form which can inform what information is provided in a reference.

[Download an employee exit form](#)



## Example exit process

Use this exit process alongside the Employee exit form template to effectively capture and record conduct information when people leave your organisation.



## Sharing conduct information in a detailed reference

One of the greatest barriers to sharing references and conduct information is not having information in an appropriate format to share, completed by someone who knew the employee's character and conduct in post. Reference requests are often sent to a centralised department such as HR who have no in-depth knowledge of the person, beyond what is contained on their employment file.

In order to be able to share relevant information more effectively, organisations should adopt an exit process and complete an [exit record form](#) for leavers.

If you offer an employee the opportunity to take part in the exit process and they refuse, you can still share information compiled about them where it meets the relevant sharing and referring information requirements.

Evidence of conduct should:	Evidence of conduct should not:
be factual and have evidence to back up what has been stated	contain opinions or claims which have no evidence to back up what has been stated
contain all relevant information – there are no omissions or misstatements	omit or misstate relevant information
share information about any physical or mental health conditions which are relevant to the person's capability (after reasonable adjustments are made) to properly perform tasks intrinsic to their employment.	share personal information or special category/protected characteristics data which may be irrelevant for the position applied.

When How to share references and conduct information, it's important that the details provided are fair and accurate and can be backed up with evidence. If appropriate, relevant information could include:

- specific verifiable comments about someone's performance history and conduct
- if and how someone failed to meet the requirements of their probation
- information about any disciplinary procedures the applicant has been subject to in which the disciplinary action is current or relevant to safeguarding adults at risk and/children
- information about safeguarding related concerns, including low-level concerns, or investigations which relate to suitability and conduct and the outcome of those concerns/proceedings
- details of any complaints or allegations relevant to the role applied for that have been raised about the applicant that relate to the safety and welfare adults at risk and/children
- whether the referee is completely satisfied that the applicant is suitable to work with adults at risk and/children and, if not, provide specific details of their concerns and the reasons why they believe the person may be unsuitable
- whether or not they would re-employ the applicant in the same job
- positive achievements such as awards, commendations and feedback from colleagues or people who use services.

As long as a reference is fair and accurate, it can show that a person is not suitable for a job. For example, a reference can show the person does not have enough experience for a job, or it can highlight that they were dismissed, or that the previous employer was considering dismissing them. This also includes sharing that a referral has been made to the DBS or the Local Authority in relation to safeguarding as this is a statement of fact.

The previous employer must be able to back up the reference, such as by supplying examples of warning or dismissal letters.

The reference can mention whether the individual was under investigation or being disciplined but cannot express they did something if the process is still ongoing. If the individual is found innocent, the employer should not mention the process in the reference.

## Supervision and management

Regular and effective supervision and management is needed to support, develop and hold employees to account for their performance and conduct. It enables organisations to identify and address concerns around conduct and suitability and provides employees the opportunity to share concerns and ask for support.

Records of supervision and performance management conversations provide key sources of information which can be appropriately shared and referred to other organisations if required.

For more support in developing these processes in your organisation look at these resources from Skills for Care and NHS Employers.:

Skills for Care supervisions guide



Performance Management Toolkit



### Top tip



**UKGDPR/DPA 2018 is not a barrier to sharing information.**

It creates a framework to comply with when sharing information.

## When to consider sharing conduct and safeguarding information with other organisations

The decision on whether to share information or make a referral rests with the employer, except in limited statutory situations. In some cases, referring the information is a statutory responsibility of the employer and it is important that they comply with that duty, such as to make a DBS referral in specific circumstances.

In all cases when there are any concerns raised about the conduct of an individual during their employment, it is important to move beyond statutory compliance and through adopting a safeguarding mindset, be curious about the significance of the concern and whether and to whom that concern could and should be shared.

A helpful frame for employers when adopting a safeguarding mindset is to ask themselves these questions:

1. Do I have a nagging doubt that the conduct of this individual is not appropriate or right for working with adults and/or children at risk?
2. Would I have concerns about this person providing care to my family member or friend?

If the answer to these questions is “yes” organisations should look at the most effective way to share the information in order to fulfil their responsibility to safeguarding all adults and/or children.

The [gov.uk](https://www.gov.uk) website has a list of prescribed people and bodies who you can refer and share concerns and conduct information with. These are organisations you may need to consider making referrals to.

Organisation	When should a referral be considered
<b>DBS</b>	When an employer or organisation believes an individual has caused harm or poses a future risk of harm to vulnerable groups, including children. And: <ol style="list-style-type: none"> <li>1) The organisation removes permission for the person to engage in regulated activity.</li> <li>2) The organisation believes the individual has engaged in relevant conduct, satisfied the harm test and/or been convicted or cautioned for a relevant offence.</li> </ol>
<b>Local Authority Safeguarding Adults Team</b>	When there is an allegation against people in positions of trust i.e., anyone working in either a paid or unpaid capacity, with adults with care and support needs and/ or children that they have or may have caused harm. <a href="#">Care Act implications for safeguarding adults briefing (skillsforcare.org.uk)</a> <a href="#">mash-oct2016.pdf (england.nhs.uk)</a>
<b>Care Quality Commission (CQC)</b>	Allegation of abuse notification You must tell CQC about abuse or allegations of abuse concerning a person using your service if any of the following applies: <ul style="list-style-type: none"> <li>• the person is affected by abuse</li> <li>• they are affected by alleged abuse</li> <li>• the person is an abuser</li> <li>• they are an alleged abuser</li> </ul> <a href="#">Allegations of abuse (safeguarding) – notification form   Care Quality Commission (cqc.org.uk)</a> To raise a concern about the health or social care service you work for (whistleblowing) <a href="#">Raising a concern with CQC: A quick guide for health and care staff about whistleblowing</a>
<b>Police</b>	When a criminal offence has or may have occurred <a href="#">Report a crime or incident   Police.uk (www.police.uk)</a>
<b>Professional bodies</b>	When you have concerns about the registration and fitness to practice of someone in a regulated profession <a href="#">Whistleblowing: list of prescribed people and bodies - GOV.UK (www.gov.uk)</a>
<b>Action Fraud</b>	When someone has committed financial fraud scamming, defrauding or committing cybercrime against someone they provide care to. <a href="#">Contact us   Action Fraud</a>
<b>ICO</b>	Information on compliance with required legislation related to data protection, freedom of information and the sharing of information <a href="#">www.ico.org.uk</a>
<b>Safer jobs</b>	When you suspect fraudulent activity within recruitment <a href="#">Safer Jobs (safer-jobs.com)   JobsAware (jobsaware.co.uk)</a>

## When to make a barring referral to DBS

Barring referrals should be made to DBS when an employer or organisation believes an individual has caused harm or poses a future risk of harm to adults at risk and/or children. A referral might be the last layer of defence if there are no criminal offences that would show on a DBS check if the individual attempted to gain further employment in [regulated activity](#).

The following two stages need to be considered when making a [DBS barring referral](#) and if both conditions are met, organisations have a legal duty to refer.

### Step 1

The organisation withdraws permission for an individual to engage in regulated activity with children and/or adults at risk or the organisation moves the individual to another area of work that isn't regulated activity.

Being removed from regulated activity can include:

- dismissal
- redeployment- moving someone to a non-regulated activity but keeping them within your employment
- retirement
- redundancy
- resignation.

If an individual has retired, been made redundant or resigned before an investigation has been completed you should continue with the investigation and decide on whether or not you would have kept the individual in regulated activity.

### Step 2

The organisation thinks the individual has carried out one of the following.

- Engaged in **relevant conduct** in relation to adults at risk and/or children. An action or inaction has harmed an adult at risk and/or child or put them at risk of harm. Relevant conduct is an action or inaction that has harmed or placed a vulnerable adult (adult at risk) or child at risk of harm. This is a legal term which is defined for both vulnerable adults and children under Schedule 3 of the Safeguarding Vulnerable Group Act 2006.
- Satisfied the **harm test** in relation to adults at risk and/or children e.g., there has been no relevant conduct but a risk of harm to a child or vulnerable adult (adult at risk) still exists For a case to be considered as a risk of harm, relevant conduct would not have occurred but **there must be tangible evidence** rather than a “feeling” that a person represents a risk to adults at risk and/children. For example, a teacher who confides in their head teacher that they are sexually attracted to children (but who had not engaged in ‘relevant conduct’) would satisfy the harm test.
- been **cautioned or convicted of a relevant offence**.

The [DBS referrals flowchart](#) may help you decide if it is appropriate to refer someone to DBS. An organisation who is under a duty to refer and fails to refer to DBS without reasonable justification is committing an offence. If convicted they may be subject to a fine.

## What makes a good quality referral?

Including all the right information as early as possible means that DBS can make a more accurate and timely decision. The more information the organisation can supply – the more information DBS have to make an appropriate decision.

For further information see [How to make a Good Quality Barring Referral](#)

## Where can we get support to make a referral?

For information about anything related to barring, including how to make a referral, organisations can contact:

**Helpline:** 03000 200 190

**Email:** [contactus@db.gov.uk](mailto:contactus@db.gov.uk)

## DBS Regional Safeguarding Outreach service

DBS has a [Regional Safeguarding Outreach service](#), which focuses on working collaboratively with safeguarding organisations, and organisations that are recruiting. Their aim is to work more closely with organisations to build and develop relationships, and to act as a single point of contact for all DBS-related enquiries within their region. For further information contact DBS [Regionalloutreach@db.gov.uk](mailto:Regionalloutreach@db.gov.uk).

For further information see [DBS barring referral FAQs](#).

## Key points



Strong record-keeping (of probation, supervisions, warning or dismissal letters, any relevant information) will support the provision of better references and conduct information.



An open culture, where concerns are shared and effectively responded to, will support safeguarding in your organisation.



Develop and embed an organisational code of conduct to make sure everyone is clear about the standards of conduct expected within your organisation.



View every stage of the employee relationship as an opportunity to gather, address and manage conduct and performance.



Have a clear induction plan for all new recruits which explains relevant policies and processes they must be aware of, expected conduct standards, details on the safeguarding process, and how they can share concerns.



Use probationary periods to identify and manage concerns and to make decisions about the suitability of new recruits for roles in your organisation. Share and refer safeguarding concerns where relevant.



Put in place an effective exit process for capturing and recording relevant information about an individual's employment at the point when they leave the organisation.



Take responsibility for referring information to all relevant organisations when there have been concerns about an employee. You shouldn't rely on or expect others to make the referral.



**UKGDPR/DPA 2018 is not a barrier to sharing information.** It creates a framework to comply with when sharing information.



# 7. FAQs

## Important note

The FAQs below are specifically aimed at social care organisations subject to [Regulation 19 requirements](#).



## Legal considerations FAQs

### Can an employer give a negative reference?

As long as a reference is fair and accurate, a reference can show that a person is not suitable for a job. The previous employer must be able to back up the reference, such as by supplying examples of warning or dismissal letters.

If the worker thinks they've been given an unfair or misleading reference, they may be able to claim damages in a court, but they must be able to show that the reference is misleading or inaccurate and they 'suffered a loss' - for example, a job offer being withdrawn as a result of misleading or inaccurate information provided by the former employer.

### Can a negative reference be challenged?

If an individual thinks they have been given an unfair or misleading reference, they may be able to claim damages in court. To do so they must show that the reference is misleading or inaccurate and that they 'suffered a loss', for example a job offer being withdrawn.

### Can an employer be sued by a candidate if they withdraw a conditional offer of employment due to unsatisfactory references?

If the employer feels that references are unsatisfactory, the employer may state that the contract is no longer legally binding, and the candidate cannot rely on its terms. The candidate may try to argue that the references were satisfactory, and the contract is binding. Although this would be unusual, if the candidate successfully sued for breach of contract the damages would be limited to the notice period.

### Can an employer share information about disciplinary action, safeguarding related concerns or an investigation in a reference?

There is nothing in law that prevents an employer sharing or asking about disciplinary action, safeguarding related concerns or an investigation.

The reference can mention whether the individual was under investigation or being disciplined but cannot express they did something if the process is still ongoing. If the individual is found innocent, the employer should not mention the process in the reference.

### Can the organisation make an employment decision based on information disclosed by the police under Common Law powers, if it does not appear on a DBS certificate?

Yes. On rare occasions, mainly where there is a public protection risk, the police may use their Common Law Powers to share relevant information with employers or a regulatory body to enable them to act swiftly to mitigate any danger or safeguarding risks.

It is not necessary for the employer to apply/wait for an enhanced DBS check to verify whether this police intelligence/information will be disclosed, if:

1. It has already been provided by the same source (i.e., the police);
2. information shared through Common Law is not necessarily disclosed on enhanced DBS checks;
3. waiting for an enhanced DBS check may take some time and will prevent the employer from acting swiftly to mitigate any danger or safeguarding risks.

The employer should instead make a comprehensive note of any information provided by the police (including dates, the information provided, and details of the officer(s) who provided the information), and document any decisions made as a result of receiving the information.

### Can an employer use a settlement/ compromise agreement where a safeguarding allegation has been made?

You should never use a settlement or compromise agreement or a pre agreed reference where a safeguarding allegation has been made and you must continue any investigations until you have a conclusion and decision on action even if the individual leaves before the end of the process

Settlement agreements must not be used to short-cut any investigations in relation to safeguarding concerns, or for any matter that may prevent an organisation delivering high quality safe and effective care. When considering the use of settlement agreements, the employer should ensure that they are aligned with their processes and procedures relating to sharing safeguarding related conduct information with relevant organisations (e.g., DBS barring referrals).

When there is a duty to refer an individual to DBS, regulator or professional body, the employer should do so even if a settlement agreement has been entered into with a former worker.

NHS Employers has developed [guidance](#) which outlines the legal boundaries when considering the use of settlement agreement. They recommend using the following clause in all agreements:

For the avoidance of doubt, nothing in this agreement shall:

- Prevent or inhibit or purport to prevent or inhibit, [the worker] from speaking up about any concerns he/she may have in relation to the quality and/or safety of the care provided by his/her employer or by any other organisation, nor from speaking up to any statutory, regulatory, supervisory or professional body in accordance with his or her professional and ethical obligations including those obligations set out in guidance issued by any statutory, regulatory, supervisory or professional body from time to time; nor
- Prejudice any right of [the worker] to make disclosures under the Employment Rights Act 1996.

For free confidential advice on dealing with concerns in the workplace employers can contact [Speak Up](#).

### How can employers deal with companies that will only provide a basic confirmation that the person worked there and their dates of employment?

It is important to make the referee aware that the post applied for is a regulated role working with adults at risk and/or children, which is a type of work where it is essential to require a reference from a previous employer, and the employee cannot be expected to find work of this type, unless their employer provides a full and frank reference to a prospective employer.

The referee should also be advised that an organisation may be failing in its duty of care (to candidate and prospective employer) by failing to give a detailed reference. When completing a reference request, the referee has a responsibility to ensure that the reference is accurate and does not contain any misstatement and nothing significant is omitted.

### Can employees use discrimination law to challenge the employer not providing a reference?

Yes. An employee may potentially bring a claim for direct discrimination or victimisation. In some cases, indirect discrimination or whistleblowing claims are possible.

### Can we provide a general reference address to 'whom it may concern'?

No. References should be addressed to a named person rather than 'To whom it may concern'.

### Do job candidates have the right to see CVs, interview notes, references and other documents obtained during the recruitment process?

Yes, candidates generally have the right to see CVs, interview notes, forms, references, and other documents obtained during the recruitment process.

However, if a reference is marked as being provided in confidence or confidential, and the candidate makes a subject request, both the company who issued it and the company who received it would be exempt from having to provide a copy of the reference.

**Can an employer include a liability disclaimer on a reference?**

Organisations may try to exclude or limit liability for the references they provide by using disclaimers, but they should be aware that disclaimers may be void if tested in the courts.

A typical disclaimer will express that a reference is given confidentially and in good faith, the employer believes the reference is accurate based on the information available, and the employer and its directors will not be liable if inaccuracies lead to loss as a result of relying on the reference.

A disclaimer in relation to an opinion on the employee's suitability for a particular job may be reasonable, but it is generally understood that liability cannot be excluded for misstatement of facts (e.g., safeguarding related concerns, disciplinary record, performance etc.) which were known to the employer.

**What should we do if a candidate cannot remember all their previous jobs?**

When applying for a regulated social care position, the candidate must attempt to provide a full employment history. They should make it clear in their application where they are unable to recall some information. Providers should discuss and explore any gaps with the candidate at the initial interview as part of their recruitment procedure risk assessment, which the CQC may later consider.

**Do providers have to obtain evidence of conduct for the candidate's full employment history?**

No, providers only need to obtain evidence of conduct for the roles which relate to health and social care, or where the candidate worked with children or vulnerable adults.

**Do providers need to obtain full employment histories and evidence of conduct for existing staff retrospectively?**

No. Inspectors must be proportionate about past recruitment practices, especially where people were recruited many years ago. However, this needs to be considered on a case-by-case basis.

If people have been recruited since the Fundamental Standards were introduced in 2014, an Inspector might ask the provider about the rationale for the recruitment practices. If providers follow any best/good practice guidance, it would be helpful to show this to Inspectors.

If providers have any current concerns about the performance, abilities, physical or mental health of any of their staff, the Inspector will want to see what steps they have taken to address these concerns, or to mitigate risks to the people who receive support. Mitigation steps might include regular supervision or providing additional learning and development opportunities. This is more important than fill employment reference gaps in a staff member's file.

**What if the checks under Regulation 19 have not been completed?**

A failure to evidence safe recruitment practice is likely to result in a breach of Regulation 19 which could affect a provider's rating under 'Safe', 'Effective' and/or 'Well-led'.

Where a provider has not been able to gain appropriate evidence of conduct, they should complete a risk assessment detailing their rationale for the recruitment decision, all efforts made to access the information, reasons as to why the information could not be obtained, and any additional measures they have put in place to make sure new staff are adequately supported and sufficiently supervised to carry out their role safely and effectively.

## Data Protection FAQs

### Does Data protection law present a barrier to providing detailed references/ conduct information?

UKGDPR/DPA 2018 is not a barrier to sharing information; it creates the framework to comply with when sharing information. Organisations need to identify a lawful basis and establish necessity and adequacy. They also need to ensure that they are adhering to the other principles. Although UKGDPR/DPA 2018 is not a barrier, it is often used by many organisations as an excuse to justify not sharing information.

### Can personal data be shared in emergency situations?

Yes. Data protection does not stop an organisation from sharing relevant data in an emergency – quite the opposite. An employer should do whatever is necessary and proportionate to save someone's life or prevent serious harm. For example, a social care provider finds out that a former employee recently barred from working in Regulated Activity with adults but is working as a carer for another adult social care provider or agency that had not requested a reference.

### How long can a reference be stored?

UKGDPR/DPA 2018 does not stipulate how long an organisation should store a reference, but they should ensure that they are adhering to UKGDPR/DPA 2018 general principles and not contravening other laws or recognised guidance.

### Is consent always needed to share references or safeguarding related concerns with another organisation?

No. An organisation can usually share without consent if they have a good reason to do so. It may often be inappropriate to rely on consent as the legal basis to rely upon when How to share references and conduct information.

Providing satisfactory references are an essential component of pre-employment checks carried out by prospective social care employers to satisfy their legal and safeguarding obligations. Most employers will stipulate they require the candidate to provide details of referees in their application forms and a conditional job offer will often be dependent upon satisfactory references being received.

If an individual does not consent/withdraws consent for references to be provided then in most cases, they may no longer be considered for the role applied for. Therefore, consent is not the only legal basis to rely upon when giving a reference.

### Example

Layla is applying to Outis Care, a social care provider subject to Regulation 19 requirements. In order to fulfil their legal requirements, the employer must obtain:

- 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.
- A full employment history, together with a satisfactory written explanation of any gaps in employment.

It is regulated activity; the type of work where it is 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.

In this instance, consent would not be the legal basis to rely upon for the organisation requesting the reference or the organisation providing the reference.

### Should an organisation include obtaining and providing references/How to share references and conduct information in their privacy notice?

It would be good practice to do so even though there is not an explicit requirement in UKGDPR/DPA 2018 to do so.

**Confidential references** are exempt from subject access rights, but they can still be included in a privacy notice. As much openness and transparency as to how the organisation will deal with the data would be helpful to staff and prospective employees. Many privacy notices are too generic and do not include satisfactory information for staff and prospective employees. Privacy notices should be tailored so staff info is not grouped with that of customers/service users etc.

The organisation should also make it clear how they deal with references and conduct information at interview or other stages of the recruitment process, and in other relevant policies/places where appropriate.

### Can organisations include information about cautions or convictions in a reference?

Any decision by the organisation to share cautions or convictions in a reference should be made on a case-by-case basis, taking into account UKGDPR/DPA 2018 considerations.

Any prospective social care provider should require shortlisted applicants to complete a criminal record self-declaration and will carry out their own criminal record checks as part of any robust, safe, and fair recruitment process. **Therefore, it would be extremely difficult for a referee to justify the routine sharing of criminal offences in a reference.**

However, if the former worker committed offence(s) that resulted in a caution or criminal conviction during their employment relationship, and the referee believes the conduct surrounding the offence(s) is relevant to safeguarding adults at risk and/or children (e.g., theft from an adult at risk), then they should consider sharing the specific information relating to the conduct in question. The referee needs to be able to justify any decision it makes and document the decision.

### Can an organisation include information about allegations or DBS barring referrals in a reference?

There is nothing in UKGDPR/DPA 2018 that prohibits the sharing of allegations or barring referrals in a reference or with other organisations. When completing/responding to reference requests this is a form of processing criminal record data whether the person has a criminal record or been subject to safeguarding related concerns or allegations.

When dealing with this type of data (Article 10 under UKGDPR) the organisation must identify both a **legal basis** and a **schedule 1 condition** in UKGDPR/DPA 2018 that they are relying upon to disclose. It is imperative that the organisation clearly document and record its justification and how they would respond to a complaint.

### Can an organisation include information about special category data (e.g., health or disability) in a reference?

NB. Regulation 19 requires provider to ensure that any “Person employed” is 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.

There is nothing in UKGDPR/DPA 2018 that prohibits the sharing of special category data in a reference or with other organisations.

When dealing with special category, the organisation must identify both a [legal basis](#) and a [Schedule 1 condition in UKGDPR/DPA 2018](#) that they are relying upon to share the information.

### Can an organisation ever share information with external agencies that led to a sanction that has been disposed of?

There is nothing in UKGDPR/DPA 2018 that explicitly prohibits the sharing of sanctions that have been disposed of. Decisions should be made on a **case-by-case basis** and any decisions recorded. It is imperative that the organisation clearly document and record its justification and how they would respond to a complaint.

### Can all social care and health references where the candidate is working with children or vulnerable people be considered confidential under UKGDPR/DPA 2018?

The exemption for [confidential references](#) from rights of subject access is a permissive one.

It is important to note that this exemption only applies to references given in confidence. The organisation should make it clear to individuals, and those providing references, whether they will treat references confidentially or adopt a policy of openness. They should do this through the privacy information they provide.

For more information see ICO guidance on the [right to be informed](#).

They should bear in mind that it is good data protection practice to be open as possible with individuals about information which relates to them. They should be able to challenge information that they consider to be inaccurate or misleading, particularly when, as in the case of a reference, this may have an adverse impact on them.

It would be difficult to consider a policy to be transparent, open and fair if it does not allow for the information to be challenged especially if the candidate does not know what the adverse information is. It may be an idea to simply redact some information which is considered confidential or consider only using the confidential reference exemption on a case-by-case basis.

#### Important note

a confidential reference could be subject to disclosure in an employment tribunal or county court claim.



### Can an organisation provide/obtain a reference over the phone/video conference?

Verbal conversations are not covered by UKGDPR/DPA 2018 – as there is nothing held. In terms of obtaining a reference over the phone it would be best to do so in a way which maintains confidence (e.g., recording or speaking in a room where no one else can hear).

#### Key considerations

Has the organisation asked permission to record conversation?

Are they recording verbatim?

Are they taking notes or are they asking for the information to be attributed to the other person (e.g., Jane Smith)?

If they are sending the information to the other person to be fact checked, then this would bring it under the consideration of UKGDPR/DPA 2018.

The referee can ask the information they provide to be treated confidential and it would be subject to UKGDPR/DPA 2018 Exemption but would need to be structured accordingly and appropriate safeguards put in place.

The organisation providing a reference needs to be aware that there are other considerations for public authorities.

### If a reference contains new information (not previously provided by the candidate) must the candidate be informed? If yes, within what timescales?

If the organisation receives a reference about a candidate which was not given 'in confidence' and they find out something new about the candidate, they must advise them of this new information.

They do not need to be told exactly what was said, but they must be informed of 'the categories of personal data concerned' (e.g., 'trade union membership', 'health', 'beliefs', 'disciplinary record' etc). They must be told this within a reasonable period, but no more than one month of the organisation receiving the information, but there are some [exemptions](#) to the right to be informed.

## How to share references and conduct information FAQs

### Induction & Probation

#### What can I do if I have concerns about someone's conduct or performance during their probationary period?

Using the probationary performance review process, you should highlight areas of concern in regular supervision sessions and provide training and support to enable the employee to improve their performance and conduct.

#### Can I extend the probationary period?

Yes, if you have included this provision in their employment contract and your organisational policies. Extend the probationary period by a month at a time to give the employee an opportunity to improve their performance or conduct where you have any concerns. A probationary period should not be extended beyond 6 months to be fair to the individual and to the organisation where it is not felt the individual will meet the requirements of the role.

#### How can I bring someone's employment to an end if they are unsuitable for the role?

Dismissal for failing to meet the requirements set out in the probationary period is a fair reason for dismissal as long as the organisation has followed its own disciplinary and dismissal policy, which should at the minimum comply with the ACAS code of practice. This includes:

- Giving the correct notice – which must be at least the statutory minimum (1 week), or any more favourable period set out in their employment contract.
- Pay any outstanding wages.
- Paying holiday pay for accrued annual leave that hasn't been taken.
- Dismissing the employee fairly in line with the Acas code of practice on disciplinary and grievance procedures.
- Dismissing the employee in line with any relevant contractual dismissal procedures.

[ACAS Starting staff: Induction Guidance 2015](#)

#### Can I refer conduct and safeguarding information about someone to another organisation if I have concerns about them in their probationary period?

Yes. If you have safeguarding concerns about an employee during their probationary period, you can refer them to the relevant organisation whether you continue to employ them in some capacity or dismiss them.

#### What can I share on a reference if someone was dismissed at the end of their probationary period?

You should state that the individual was dismissed for failing to meet the requirements of their probation. You can detail what these requirements were. It is important that the individual in question is aware of the reasons for their dismissal.

### Supervision & management

#### With whom and how can I share any concerns about conduct or safeguarding internally in my organisation?

If your organisation has a HR function or you use an external HR service provider, you should contact them for advice. If the concern involves safeguarding, you should contact the Designated Safeguarding Person within your organisation to make sure you know the correct procedures to follow.

If you do not have this support within your organisation, you should contact ACAS who can provide employment advice and support. If your concern is about safeguarding, you should contact your Local Authority Safeguarding Team for advice.

#### Who can concerns be raised and shared with internally?

Organisations should identify in their Sharing Concerns policy who concerns can and should be shared with. However, everyone should be trained in and aware of what to do if a concern is raised with them.

Organisations should have a lead designated safeguarding person who can advise and support managers and staff where safeguarding concerns are raised and who can liaise with external organisations where required. HR should also be consulted for advice and support.

If a concern is raised about a member of staff from another team or area within the organisation, depending on the nature of the concern and any investigations that take place, it may or may not be appropriate to share the concern with the other line manager. Advice should be taken from HR and the safeguarding lead.

### Do we have to wait until someone leaves or is dismissed before we share or refer concerns externally?

No. If the concern is about an allegation and it meets the allegation referral threshold, this information should be shared with the relevant Local Authority Safeguarding team. If the individual is removed from regulated activity but continues to be employed in the organisation due to concerns they have harmed or may have harmed a child or adult, a referral should be made to the DBS.

### What is the difference between an allegation and a low-level concern?

An allegation is defined in statutory documents (The Care Act 2014, Working Together 2018) and requires organisations to make a referral to the Local Authority Designated Safeguarding Team if the allegation meets that safeguarding threshold. A low-level concern is any concern which does not meet this threshold for referral.

### Do organisations need a separate low level concerns policy?

No. Low level concerns can be part of other organisational policies such as a “Sharing Concerns” policy. It is more important to invest time in communicating with and training staff on how to recognise and share low level concerns in a way that feels safe, supportive and acceptable.

### How should low level concerns be shared within organisations?

The organisation should identify someone who is not a senior leader or a member of the HR team who people can share low level concerns with. This could be the lead designated safeguarding person for safeguarding, or the organisation could identify and train a number of “values or low-level concern guardians” who people can share their concerns with. This could be done in writing using a sharing concerns form, or verbally.

### Can people share concerns confidentially and ask not to be named?

Yes. It is the organisation’s responsibility to protect and support the person who is sharing the concern as well as support the person about whom the concern is raised. It can be more challenging though to raise the concern with the subject of the concern where the person wants to remain anonymous, and the organisation needs to think about how it can do this in the most effective way.

### Do you have to tell staff you are recording low level concern information about them?

It is good practice to ensure that your low-level concern policy lets staff know that low level concerns are recorded when received and kept in a confidential, central file accessed only by staff who need to see the information for safeguarding purposes, which should be limited to designated safeguarding leads. It is also good practice to discuss any low-level concerns raised with the subject of the concerns to explore more around the areas of concern, offer advice and support and to explain further action if required.

## Managing leavers & referring information

### Can low level concerns be shared on references?

Farrer and Co advise that low level concerns that do not lead to disciplinary sanctions or which are not taken through as part of another organisational process should not be shared on a reference. However, where low level concerns relate to other information around suitability and conduct which may be shared on a reference, they should be considered for sharing as part of an overall assessment of the individual’s suitability for a role.

### Can low level concerns be referred to the DBS or shared with the Local Authority?

If there are a pattern of low-level concerns which taken together meet the threshold for an allegation or fulfil the DBS referral criteria, then the organisation should consider making a referral.

### Whose decision is it to share information and make a referral?

The decision as to whether to share information or make a referral, except in limited statutory situations, rests with the employer.

### When would we not share information about conduct or safeguarding?

- When your Data Protection Impact Assessment (DPIA) identifies that it is not proportionate to share the information.
- Potentially when the information is proven to be malicious or unsubstantiated.



### What should we do if an individual threatens to sue or take us to employment tribunal if we share information about them?

If you have carried out a Data Protection Impact Assessment and have assessed that the information you are sharing meets the criteria for referral or for sharing with another organisation, and you have followed your organisation's sharing concerns, investigation and disciplinary policy, you should not be deterred from sharing relevant information to safeguard others.

### What if someone takes a grievance out when we are in a dismissal process or are about to refer information?

You should take HR advice before continuing with the referral and dismissal. You may need to investigate and resolve the grievance before you complete the dismissal and referral process.

### What happens if an allegation is made after someone has left your employment?

You should carry out an initial fact-finding investigation to see if the concern meets the threshold of being an allegation. If it does you should refer it to the Local Authority Adult Social Care Team and the police as a historic allegation.

### What if the allegation or concern is about someone who is outside of working hours e.g., someone drunk on a night out?

Low level concerns include behaviour inside and outside of work. Your organisational code of conduct may include reference to behaviour outside of work that brings the organisation into disrepute. If the conduct is relevant, it should be considered and managed using your organisational sharing concerns and disciplinary processes.

### How do you refer information about other organisations or individuals not making referrals that they should be about the conduct of their staff?

If another care provider is not fulfilling their legal and safeguarding responsibilities, you could consider referring them to the CQC. If it is about someone who you believe meets the threshold for a referral to the DBS, you can make the referral and the DBS then have a duty to investigate. If a crime has been committed, you can make a referral to the police.

### What if the person you have concerns about has moved to another area, who do you refer to? Or they are working for multiple employers?

It is difficult when someone moves between different localities and the Local Authority Safeguarding Teams do not have joint up systems for sharing information automatically. If you know that an individual is working in multiple locations, you should make a referral to each local authority in which they work.

### Who should do the referral: HR or line managers or both?

It is for the organisation to decide who is in the best place to complete a referral. HR may lead on making referrals as a centralised role but if this happens, line managers will need to be involved in providing detail information as part of the referral process to give the best opportunity for the organisation to which they are making the referral to take action.

### Do non-regulated organisations have to share information?

Any organisation working in care should share information as part of their responsibility for safeguarding.

### Can family members or the public make referrals and share information?

Yes. Anyone can make a referral to the police, the Local Authority Safeguarding Adults Team or to the DBS.

### Can individual employers make referrals and share information?

Yes. Individual employers can make referrals to the police, the Local Authority Safeguarding Adults Team or to the DBS.

### Can you share or refer information about a pattern of unsubstantiated allegations which are not proven e.g., someone continually makes allegations of theft against a staff member?

It is not best practice to share unsubstantiated or unproven allegations. However, with a pattern of behaviour, you may choose to share this information with the DBS or with the Local Authority for their consideration as they may have other relevant information which they can consider alongside of your referral. It is important to carry out your own internal risk assessment and put in place appropriate supervision and management of the individual about whom multiple allegations are being made and manage the situation in accordance with your low-level concerns policy.

### In a multi-agency/ multiple organisations safeguarding process, who should make the referral to the DBS?

All organisations involved can make a referral from their own perspective. The employing organisation should make the referral as they are likely to have key information to share.

### Can we share information with others on a reference to say we have made a referral to the DBS or the Local Authority?

Yes. You can state that a referral has been made to the DBS or the Local Authority in relation to safeguarding as this is a statement of fact.

### What if someone refuses to complete the exit interview form or attend an exit interview, can we still share the information we compile about them in the exit process?

Yes, if you have offered them an opportunity to take part in the exit process and they have refused you can still share the relevant information where it meets the relevant sharing and referring information requirements.

### What if someone resigns before we have concluded an investigation into conduct or safeguarding issues?

It is important to conclude the investigation and any subsequent disciplinary process even in the absence of the person being employed. You can use the information gathered to share relevant information with other agencies where relevant. Document any decisions made to share or not share (See UKGDR/DPA 2018 considerations).

### How should we record our decisions to share conduct and safeguarding information?

This can be recorded on the Exit Process Record Form (See Exit process).

### What if I do not have legal duty to refer?

Even if the duty to refer is not met, if an organisation believes it is appropriate to make a referral to the DBS, they should do so – DBS are legally required to consider the information provided.

### At what point should a referral be made?

The best time to make a referral is when as much information has been gathered as possible, usually as part of a disciplinary process. Without evidence or substance to the claims, barring referrals the DBS may be quickly closed down. A referral that contains good evidence will help DBS barring professionals to arrive at a robust decision in a timely manner.

### What happens when we refer and what will we know – (explanation of legitimate interest)

Usually, the organisation making a barring referral no longer employs the individual they are referring. This means that they no longer need to know the outcome of the referral. This can be really frustrating to employers. The DBS can only disclose the outcome of a referral if the person or organisation can demonstrate a legitimate interest to know.

For example:

- Any person or organisation if they employ the person or are considering employing the person in regulated activity.
- A professional regulator or supervisory authority for the purposes of carrying out their functions.
- The police for the prevention, investigation and detection of crime or the apprehension or prosecution of offenders

### What happens when someone is under consideration for barring - who can share the information?

There is nothing in UKGDPR/DPA 2018 that prohibits an organisation from sharing that they have referred an individual to DBS for barring consideration in a reference, or with other organisations. However, it is essential that the organisation adheres to data protection principles and clearly documents and record its justification for sharing.

To be safe – the organisation should consider how they would document their decision making and how they would respond to a complaint

**I have made a reported an employee/volunteer to the police- do I still need to make a referral to DBS?**

**YES** - It is essential the DBS is informed of scenarios where the referring organisation has some evidence that an individual has posed a risk of harm, even if the organisation has informed the police of the situation, and no further action was taken. This is because the burden of proof for the police and the Crown Prosecution Service requires that there is sufficient evidence to be able to prove beyond all reasonable doubt that an individual has committed a certain act or behaved in a similar way. However, in order to make a decision to place an individual in a Barred List, the DBS only requires enough evidence to prove that on the balance of probability, a person has committed the same act. i.e., it is more likely than not that it occurred.

If the police do charge the individual, they would not automatically inform the DBS of this. Therefore, it is still important a DBS referral is made.

**I have made a referral to the regulator/ keeper of the register. Do I still need to make a referral to DBS?**

**YES** - Although the regulator may (although they may not) inform the DBS of a case, this does not happen as a matter of course. The legal duty to make the referral sits with the regulated activity provider/personnel supplier. Even if the individual is banned from working within their sector, this does not in itself prevent them from working in regulated activity.

**An individual has left my organisation during the investigation. Should I carry on with the investigation and do I still need to make a referral to DBS?**

**YES** - if an individual has left the organisation they should continue with the investigation and decide if they would have removed them from regulated activity (whether that would be dismiss them, redeploy them, make them redundant), whether they had engaged in relevant conduct or satisfied the harm test. Even though an individual can no longer cause harm in the organisation they could still cause harm in another organisation. If the organisation is the regulated activity supplier or the personnel supplier, they have a legal duty to make a referral to DBS.

**Can the DBS include individuals on the Barred List (Adult and/or Child) if they have not been cautioned or convicted of a serious offence?**

**YES** - The DBS do include individuals in one or both Barred Lists if an individual has been cautioned or convicted of a Relevant offence (Autobar Regulations, 2009). However, the DBS will also consider Discretionary referrals and Disclosure Information (information that comes to light when an individual applies for an enhanced DBS check with one or both barred lists). Therefore, it is possible that individuals who have no Cautions and Convictions could be included in one or both Barred Lists.

**Can an individual be included in one or both Barred Lists, despite not having any interaction with the police?**

**YES** - The DBS does not make decisions as to whether an individual should be included in one or both barred lists based solely on their criminal history. Certain cautions and convictions will result in an automatic inclusion on one or both barred lists (relevant offences).

When an individual applies for an enhanced DBS check with one or both barred lists because they are looking to work in a regulated activity the DBS will look at what information comes to light on this check and if necessary, follow the discretionary referral route.

The DBS also received discretionary referrals. Although with these referrals there may be police involvement, this is not always the case. The DBS makes findings based on the balance of probabilities, therefore police findings are not necessary for DBS to make decisions as to whether someone should be included in one or both lists.

**Can I only able to make a referral to the DBS if the legal duty to do so is met?**

**NO** - Even if the duty to refer is not met, if the organisation believes it is appropriate, they should make a referral to the DBS in the interests of safeguarding adults at risk and/children. DBS are required by law to consider any and all information sent to them from any source. This includes information sent where the legal duty to make a referral does not apply. An organisation that wants to make a referral to DBS where the legal duty does not apply, should do so in consideration of relevant employment and data protection laws. They may want to seek their own legal advice in relation to these cases.

**I have concerns about an individual behaviour outside work can I make a referral to DBS?**

**YES** - If harm is caused by an individual outside of regulated activity against someone not deemed a vulnerable adult or child but if repeated against a vulnerable adult or child would likely endanger them legislation allows a referral. Direct harm to a vulnerable adult or child does not need to have occurred for the DBS to consider including them in one or both Barred Lists.

**Will regulators automatically inform the DBS if an individual is banned/struck off from working with a specific sector?**

**NO** - The legal duty lies with the regulated activity provider not the regulator. Although a regulator can make a referral, to ensure this is not missed, it is important for the Regulated Activity Provider to make the referral to the DBS if appropriate to do so. Although the individual is banned from work in a certain sector this does not prevent them from working with the entire workforce.

**Will the DBS investigate a referral?**

**NO** - The DBS has no investigatory powers and relies upon information provided with referrals and other relevant information that it can gather. If the referring organisations knows about relevant information that exists within another organisation, they should let the DBS know who so that they can contact them to ask for it.

## 8. Useful Contacts

### Better Hiring Institute

**Email:** [secretariat@betterhiringinstitute.co.uk](mailto:secretariat@betterhiringinstitute.co.uk)  
**www.betterhiringinstitute.co.uk**

The Better Hiring Institute was formed following discussions between government and industry with a mission to make hiring Faster, Fairer and Safer. Their aim is to modernise hiring through digital solutions, reduce barriers for diverse groups, and improve the efficiency of the jobs market by maximising the available UK talent.

### Reed Screening

86 Deansgate, Manchester M3 2ER  
**Email:** [screening.enquiries@reed.com](mailto:screening.enquiries@reed.com)  
**Tel:** 0161 200 1086  
**www.reedscreening.com**

Reed Screening are the leading specialists in pre-employment vetting and are at the forefront of influencing regulation and industry change. Their vision is to 'create a safer world at work' by collaborating with government bodies and industry leaders to bring about change.

### Disclosure and Barring Service (DBS)

**For customer services:**  
 PO Box 3961, Wootton Bassett SN4 4HF  
**Tel:** 03000 200 190  
**Email:** [customerservices@dbs.gov.uk](mailto:customerservices@dbs.gov.uk)  
**For DBS barring:**  
 PO Box 3963, Wootton Bassett SN4 4HH  
**Tel:** 03000 200 190

DBS has a range of information about their services to help employers make safer recruitment decisions available on their website.

#### DBS regional outreach

DBS regional outreach advisers are available to organisations support with any questions and queries they have about DBS processes, procedures and legislation, including how and when to make a barring referral. For more information please visit <https://www.gov.uk/guidance/the-dbs-regional-outreach-service> or email [dbsregionaloutreach@dbs.gov.uk](mailto:dbsregionaloutreach@dbs.gov.uk)

### Skills for Care

West Gate Grace Street Leeds, LS1 2RP  
**Tel:** 0113 241 1275  
**www.skillsforcare.org.uk**

Skills for Care has tools and resources to help social care and health employers recruit and retain staff with the right values, which are available on their website.

### Dominic Headley & Associates (DHA)

**Email:** [info@dominicheadleyassociates.co.uk](mailto:info@dominicheadleyassociates.co.uk)  
**Mobile:** 07739 814 199  
**www.dominicheadleyassociates.co.uk**

DHA is a specialist consultancy practice that provides expert advice, training and consultancy services to employers on safe and inclusive recruitment and dealing with safeguarding concerns effectively.

### VBA Consulting

**Email:** [kerryleary.vbaconsulting@gmail.com](mailto:kerryleary.vbaconsulting@gmail.com)  
**Mobile:** 07793956613

VBA Consulting is a specialist Values Based Leadership and Culture consultancy that provides expert coaching, advisory and training services to leaders and organisations in the public, voluntary and private sector on developing values based, safeguarding cultures, values based recruitment and values based leadership practices.

### Care Quality Commission (CQC)

CQC National Customer Service Centre Citygate Gallowgate, Newcastle upon Tyne NE1 4PA  
**Tel:** 03000 616 161  
 Online contact form [www.cqc.org.uk](http://www.cqc.org.uk)

# Appendices

[Safe & fair recruitment policy statement](#)

[Sample application form](#)

[Application form checklist](#)

Sample reference temple forms:

[Reference Request Checklist](#)

[Safer recruitment and employment checklist](#)

[Sharing effective references & conduct information checklist](#)

[Professional factual reference](#)

[Personal or character reference](#)

[Professional factual and character reference](#)

[Shared Lives property reference request template](#)

[Shared Lives medical reference request template](#)

[Telephone/ video call reference](#)

[Volunteer reference template](#)

[Pre-employment risk assessment form](#)

[Employee exit form](#)

[Written reference template](#)

[Low level concerns policy and template](#)