



## Review Sheet

Last Reviewed  
01 Apr '23



Last Amended  
01 Apr '23

Next Planned Review in 12 months, or  
sooner as required.

Business impact



Reason for this review

Scheduled review

Were changes made?

Yes

Summary:

This policy will support with the DBS/disclosure process and has been updated in section 5.18 to incorporate CQC guidance and clarify when (and to what extent) DBS checks are to be retained. References have also been checked and a link to CQC guidance added.

Relevant legislation:

- Rehabilitation of Offenders Act 1974 (Exceptions) Order
- The Police Act 1997
- Police Act 1997(Criminal Records)(Amendment) Regulations 2020
- Serious Organised Crime and Police Act 2005 (commencement No.16) Order 2020
- The Care Act 2014
- Health and Social Care Act 2008 (Registration and Regulated Activities) (Amendment) Regulations 2015
- Safeguarding Vulnerable Groups Act 2006
- Data Protection Act 2018
- Coronavirus Act 2020
- UK GDPR

Underpinning knowledge - What have we used to ensure that the policy is current:

- Author: CQC, (2022), *Disclosure and Barring Service (DBS) checks (formerly criminal record (CRB) and barring checks)*. [Online] Available from: [https://www.cqc.org.uk/sites/default/files/20191113\\_Disclosure\\_and\\_Barring\\_Service\\_DB\\_S](https://www.cqc.org.uk/sites/default/files/20191113_Disclosure_and_Barring_Service_DB_S) [Accessed: 13/4/2022]
- Author: GOVERNMENT, (2020), *Rehabilitation of Offenders Act 1974*. [Online] Available from: <https://legislation.gov.uk/ukpga/1974/53> [Accessed: 13/4/2022]
- Author: CARE QUALITY COMMISSION, (2020), *COVID-19: Interim guidance on DBS and other recruitment checks*. [Online] Available from: <https://www.cqc.org.uk/guidance-providers/all-services/covid-19-interim-guidance-dbs-other-recruitment-checks> [Accessed: 13/4/2022]
- Author: GOVERNMENT, (2020), *Disclosure and Barring Service*. [Online] Available from: <https://www.gov.uk/government/organisations/disclosure-and-barring-service> [Accessed: 13/4/2022]
- Author: GOVERNMENT, (2020), *Fast-track service - eligible roles*. [Online] Available from: <https://www.gov.uk/government/publications/covid-19-free-of-charge-dbs-applications-and-fast-track-barred-list-check-service/fast-track-service-eligible-roles> [Accessed: 13/4/2022]
- Author: Home Office, (2022), *Guidance - Criminal records checks for overseas applicants*. [Online] Available from: <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants> [Accessed: 13/4/2022]
- Author: Hertfordshire Gov.UK, (2019), *Disclosure Risk Assessment Form*. [Online] Available from: <https://www.hertfordshire.gov.uk/media-library/documents/childrens-services/hscb/professionals/dbs-risk-assessment-form-appendix-7.pdf> [Accessed: 13/4/2022]
- Author: CARE QUALITY COMMISSION, (2021), *COVID -19 registrations*. [Online] Available from: <https://www.cqc.org.uk/guidance-providers/registration/covid-19-registrations> [Accessed: 13/4/2022]



<b>Suggested action:</b>	<ul style="list-style-type: none"><li>• Widely distribute the 'Key Facts' of the policy</li><li>• Establish process to confirm the understanding of relevant staff</li><li>• Establish training sessions for staff</li><li>• Share content of the policy with all staff</li></ul>
<b>Equality Impact Assessment:</b>	Commenciz Ltd have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.



## 1. Purpose

1.1 To ensure that those members of staff who are engaged in a regulated activity with vulnerable adults and/or children are subject to a DBS check of the appropriate level and that Commenciz Ltd complies with its duties under the Rehabilitation of Offenders Act 1974 (Exceptions) Order.

1.2 To ensure that Commenciz Ltd only employs people who are safe to work with Service Users.

1.3 This policy should be read alongside the Recruitment Policy and Procedure.

1.4 To support Commenciz Ltd in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
SAFE	S1: How do systems, processes and practices keep people safe and safeguarded from abuse?
SAFE	S3: How does the service make sure that there are sufficient numbers of suitable staff to support people to stay safe and meet their needs?
WELL-LED	W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?

1.5 To meet the legal requirements of the regulated activities that {Commenciz Ltd} is registered to provide:

- Rehabilitation of Offenders Act 1974 (Exceptions) Order
- The Police Act 1997
- Police Act 1997(Criminal Records)(Amendment) Regulations 2020
- Serious Organised Crime and Police Act 2005 (commencement No.16) Order 2020
- The Care Act 2014
- Health and Social Care Act 2008 (Registration and Regulated Activities) (Amendment) Regulations 2015
- Safeguarding Vulnerable Groups Act 2006
- Data Protection Act 2018
- Coronavirus Act 2020
- UK GDPR



## 2. Scope

2.1 The following roles may be affected by this policy:

- All staff
- Volunteers
- Agency staff
- Work placements
- Student placements

2.2 The following Service Users may be affected by this policy:

- Service Users

2.3 The following stakeholders may be affected by this policy:

- Family
- Commissioners
- External health professionals
- Local Authority
- NHS



### 3. Objectives

- 3.1** To ensure that Commenciz Ltd has a clear, straightforward policy outlining when a DBS check will be required, at what level and how this will be maintained on an ongoing basis.
- 3.2** To ensure that those individuals carrying out regulated activities are aware of the requirement to hold a valid and current DBS check.
- 3.3** To ensure that Commenciz Ltd adheres to the COVID-19 requirements for DBS checks that will enable a free of charge and fast track service in relation to eligible roles.
- 3.4** To ensure that there is a clear understanding at the recruitment stage of what Commenciz Ltd can ask about convictions.
- 3.5** To ensure that Commenciz Ltd follows the most up-to-date guidance from the CQC and that the safety of Service Users is promoted while recognising the exceptional circumstances and the need for flexibility to be demonstrated during the coronavirus (COVID-19) pandemic.
- 3.6** To ensure that all DBS checks are stored in accordance with the law on Data Protection.
- 3.7** To ensure that Commenciz Ltd knows when a barring referral to the DBS is required.



## 4. Policy

**4.1** Commenciz Ltd is committed to the fair treatment of its staff, potential staff or Service Users, regardless of race, gender, religion, sexual orientation, responsibilities for dependants, age, physical/mental disability or offending background. Commenciz Ltd actively promotes equality of opportunity for all with the right mix of talent, skills and potential and welcomes applications from a wide range of candidates, including those with criminal records. Commenciz Ltd selects all candidates for interview based on their skills, qualifications and experience.

**4.2** As an organisation using the DBS service to assess applicants' suitability for positions of trust, Commenciz Ltd complies fully with the DBS Code of Practice regarding the correct handling, use, storage, retention and disposal of disclosures and information. Commenciz Ltd undertakes to treat all applicants for positions fairly. It undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of a conviction or other information revealed.

**4.3** Commenciz Ltd complies fully with its obligations under the Data Protection Act 2018 and other relevant legislation pertaining to the safe handling, use, storage, retention and disposal of disclosure information. Commenciz Ltd takes its duties to protect Service Users from unsuitable people gaining access to them very seriously. Commenciz Ltd balances this duty with respect for human rights, privacy and compliance with the Data Protection Act 2018.

Prospective employees are required to disclose any criminal convictions, warnings or reprimands at all stages of the recruitment and selection process. This will include all spent (as well as unspent) convictions, cautions and reprimands. Candidates will be informed that failure to disclose could result in a conditional offer being withdrawn. Candidates will also be informed that any disclosure will be held in confidence and discussed only with the HR Team as appropriate.

Any data collected as part of this policy will be processed in accordance with current Data Protection legislation, the Privacy Notice issued to staff and the Data Security and Data Retention Policy and Procedure at Commenciz Ltd. Commenciz Ltd appreciates that certain data related to criminal records will be special category data and Commenciz Ltd will process this data accordingly.

**4.4** Commenciz Ltd considers that the roles below will fall within the groups requiring DBS checks and that are **Excepted Roles**, allowing Commenciz Ltd to ask questions about any spent convictions:

- Any work defined as regulated activity relating to children within the meaning of Schedule 4 Part 1 of the Safeguarding Vulnerable Groups Act 2006
- Any work defined as "work with children" in regulation 5C of the Police Act 1997 (Criminal Records) Regulations 2002
- Any work defined as regulated activity relating to adults within the meaning of Schedule 4 Part 2 of the Safeguarding Vulnerable Groups Act 2006
- Any work defined as "work with adults" in regulation 5B of the Police Act 1997 (Criminal Records) Regulations 2002; and
- Any office or employment which is concerned with:
  - The provision of care services to vulnerable adults; or
  - The representation of, or advocacy services for, vulnerable adults by a service that has been approved by the Secretary of State or created under any enactment
  - And which is of such a kind as to enable a person, in the course of his normal duties, to have access to vulnerable adults in receipt of such services

**4.5** However, Commenciz Ltd will also undertake a risk assessment of each role to ascertain the level of checks to be undertaken (if any), in line with the appropriate guidance issued by the Disclosure and Barring Service.

**4.6** Commenciz Ltd will comply with the provisions of the Rehabilitation of Offenders Act 1974 (Exceptions) Order as set out in this policy.

**4.7** Commenciz Ltd will comply with any changes to the DBS process as a result of the rapidly evolving coronavirus (COVID-19) pandemic, as detailed in the 'Coronavirus' procedural section.

**4.8** Commenciz Ltd will, during the period of the coronavirus (COVID-19) pandemic, follow all DBS and Care Quality Commission guidance. This will ensure that any staff required to commence work urgently are not unduly delayed, but will also provide sufficient measures to promote safe care delivery.

**4.9** During the coronavirus (COVID-19) pandemic, Commenciz Ltd will undertake a comprehensive risk



assessment to assess the level of checks and assurances required for each new member of staff before starting their role at Commenciz Ltd. These assessments will be fully documented to provide evidence that appropriate processes have been followed.



## 5. Procedure

### 5.1 Coronavirus (COVID-19)

Where health and social care workers are being recruited in connection with the provision of care and treatment of COVID-19 in England, DBS checks and a fast track emergency check of the adults' and children's barred list will be conducted free of charge. The government website highlights the [interim guidance](#) that Commenciz Ltd should follow, alongside a full list of eligible roles, where this is required.

**5.2** The CQC is working in partnership with the DBS service and recognises the challenges presented. They are supporting a flexible approach to recruitment of staff that have been specifically employed to help meet the challenges presented by the coronavirus pandemic. There are three conditions that have to apply if the more flexible approach is to be adopted:

- Providers need to start staff urgently
- Waiting for a full DBS check could cause undue delay
- This delay could lead to risks to the continuity of the service, impacting the safety and wellbeing of Service Users

If the above conditions do not apply, and recruitment is not as a direct result of the coronavirus pandemic, then the existing recruitment processes outlined by the DBS and the CQC must be followed.

**5.3** If Commenciz Ltd requires staff urgently and it meets the three criteria defined by the CQC, then an application can be made through usual DBS channels. Commenciz Ltd will receive a barred list check (for both adult and children's services) by the end of the next working day, and the full DBS check later. There is no separate 'Adult First' check when using the specific coronavirus process. The Fast Track Barred List check is the only check needed and covers both adult and children's services.

**5.4** Commenciz Ltd may start staff appointed to meet the extraordinary coronavirus need based upon the satisfactory return of the fast track barred list application. However, in addition, Commenciz Ltd must evidence that:

- It is essential that the person starts work before the receipt of the full DBS check
- They have satisfied themselves of the person's fitness to carry out their role
- They have received the person's employment history, professional registration (where applicable), references, evidence of conduct in previous employment, and reasons why they left previous employment

Where it is not possible to get all the information above before starting employment, Commenciz Ltd must:

- Document what information has not been able to be sourced, the efforts they took to get the information and the justification for starting the person
- Risk assess the situation and have put measures in place to mitigate any risks identified, e.g. preventing lone working or instigating more robust supervision arrangements
- Include details in the personnel file that the person has been employed as a result of the coronavirus pandemic. This will ensure that they can be easily identified and any element of recruitment that needs to be followed up on can be done effectively

**5.5** The Care Quality Commission has adopted a flexible approach to recruitment and has taken a pragmatic view on the portability of DBS certificates for staff specifically employed to meet the exceptional needs during the coronavirus pandemic. They have stated that an existing, enhanced DBS certificate completed within the previous **three years** may be an acceptable short-term option, but a risk assessment would need to be completed by the provider to confirm that the existing DBS provides a suitable level of assurance.

The CQC also recognises that if potential staff are current subscribers to the DBS Update Service and already have a relevant check in place, Commenciz Ltd can access the suitability of the applicant using the original certificate and a check of the Update Service.

**5.6** During the coronavirus pandemic, Commenciz Ltd will take a proactive approach to recruitment and follow all guidance issued by appropriate bodies such as the CQC and DBS. The CQC has stated that it recognises the challenges faced by providers in meeting the extraordinary demand and has stated that:



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- Providers need to risk assess the recruitment of staff and satisfy themselves that any reduced measures (such as taking only one reference, or conducting some elements over the telephone rather than waiting for letters to arrive) are sufficient to promote the safety of the Service User
- If Commenciz Ltd takes reasonable steps to ensure that new staff are adequately supported and sufficiently supervised so that Service Users are safe, the CQC will not take a 'punitive approach'
- The above approach only applies for staff recruited as a direct result of the coronavirus pandemic. For all other staff, the full recruitment procedures, including DBS, must be followed

### 5.7 DBS Process

A DBS Certificate will be requested as part of pre-recruitment checks at Commenciz Ltd following an offer of employment for any role which has been assessed as requiring a DBS check, including volunteering roles. In the event that the role does not require a DBS check, Commenciz Ltd may ask the individual to voluntarily disclose their criminal record history, and/or, may ask the individual to obtain a basic DBS check.

**5.8** The recruiting manager will determine whether a DBS check is required for the post and the appropriate level. The Disclosure and Barring Service Eligibility Flowchart supporting this policy provides a useful guide for managers.

**5.9** Commenciz Ltd expects all current and prospective members of staff to voluntarily disclose any spent and unspent convictions. Commenciz Ltd is entitled to ask about spent convictions on the basis that the role is an **Excepted Role** as outlined above. For guidance on when a conviction will be unspent, please see the table that supports this policy.

**5.10** As an organisation assessing an applicants' suitability for positions which are included in the **Rehabilitation of Offenders Act 1974 (Exceptions) Order** using criminal record checks processed through the Disclosure and Barring Service (DBS), Commenciz Ltd complies fully with the Code of Practice and undertakes to treat all applicants for positions fairly.

Commenciz Ltd undertakes to not discriminate unfairly against any person who is the subject of a criminal record check on the basis of a conviction or other information revealed.

Commenciz Ltd can only ask an individual to provide details of convictions and cautions that it is legally entitled to know about. A DBS Certificate at either standard or enhanced level can legally be requested where the position is one that is included in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 as amended, and, where appropriate, Police Act Regulations as amended. It is the view of Commenciz Ltd that most of the job roles provided by Commenciz Ltd will be excepted roles and Commenciz Ltd will be entitled to request details of any spent convictions.

**5.11** Commenciz Ltd can only ask an individual about convictions and cautions that are not protected.

**5.12** Commenciz Ltd ensures that all those in Commenciz Ltd who are involved in the recruitment process have been suitably trained to identify and assess the relevance and circumstances of offences.

**5.13** Commenciz Ltd also ensures that they have received appropriate guidance and training in the relevant legislation relating to the employment of ex-offenders, e.g. the Rehabilitation of Offenders Act 1974.

**5.14** An application for a criminal record check is only submitted to DBS after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions where a criminal record check is identified as necessary, all application forms, job adverts and recruitment briefs will contain a statement that a DBS Certificate will be required as a condition of employment in the event of the individual being offered the position.

**5.15** At interview, or in a separate discussion, Commenciz Ltd ensures that an open and measured discussion takes place on the subject of any offences or other matter that might be relevant to the position. Failure to reveal information that is directly relevant to the position sought could lead to the withdrawal of an offer of employment or, if the employment has commenced, dismissal from that employment. Commenciz Ltd considers that failure to reveal information that is directly relevant to the position sought would be an act of gross misconduct.

**5.16** Commenciz Ltd makes every subject of a criminal record check submitted to DBS aware of the existence of the Code of Practice and makes a copy available on request.

**5.17** Commenciz Ltd undertakes to discuss any matter revealed on a DBS Certificate with the individual seeking the position before withdrawing a conditional offer of employment.

### 5.18 Procedure for DBS Applications

Commenciz Ltd may be a registered body with the DBS and is entitled to carry out and countersign applications for DBS checks themselves. However, in the event that Commenciz Ltd is not a registered





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body, Commenciz Ltd engages an umbrella body who is a registered body and is entitled to countersign and carry out applications for DBS checks on behalf of Commenciz Ltd. There is an expectation that, if Commenciz Ltd is a registered body or if an umbrella body is being used for the undertaking of DBS checks, that the DBS Code of Practice is complied with.

Commenciz Ltd will first make an assessment of the post to be filled to determine whether a DBS check is necessary and, if so, at what level. It is expected that **Enhanced Disclosures** will be most often required. The check will be an Enhanced Level for those employees having direct access to Service Users, and a Standard Level for those who do not have direct access. Best practice dictates that Enhanced Level Checks are used in all instances due to the practical difficulties of ensuring that a person subject to only a Standard Check never has unsupervised access to Service Users.

Commenciz Ltd or the umbrella body will then send a DBS application form to the individual who has been offered the role. The individual must complete this fully and completely, disclosing all information. It is a condition of any offer of employment made to an individual that they consent to Commenciz Ltd applying for a DBS check and that the individual will provide a copy of the DBS Certificate upon receipt. It is also a condition of employment that the individual permits the retention of the certificate on their file.

Once the DBS check has been carried out, the DBS will send, to the individual, a copy of the certificate. Commenciz Ltd expects the individual to provide a copy of the DBS Certificate to them within 7 days of receipt. Failure to do so may result in the withdrawal of any conditional job offer. Commenciz Ltd may, as per CQC guidance, retain a partial copy of the certificate on the personnel file (secured appropriately) as evidence that this check has been undertaken. The CQC guidance states "Providers do not need to retain original DBS certificates for the purposes of inspection. CQC has an agreement that for social care services, the top third of the DBS certificate can be retained for 12 months or until inspectors have seen them. Keeping this part of the certificate is for evidence that a certificate has been obtained. They must be destroyed after we have seen them. However, it should only be retained if it does not include details of offences. (In exceptional circumstances where a large number of offences are listed, these may continue onto the reverse of the top third section; in these circumstances the top third should not be retained once the recruitment decision has been made.)"

#### **Renewal Checks**

Commenciz Ltd will carry out renewal checks on every member of staff in line with any contractual requirements or as agreed by Commenciz Ltd. If the member of staff is signed up to the update service or if Commenciz Ltd has reasonable cause to request an update, the decision to renew the DBS will be agreed by Commenciz Ltd.

#### **5.19 DBS Update Service**

Commenciz Ltd may require candidates and current employees who already have existing DBS Certificates to sign up to the DBS Update Service and consent to Commenciz Ltd having access to it. This allows Commenciz Ltd to carry out checks to see if any new information has come to light since the date of the original check. It is the decision of Commenciz Ltd as to whether it will pay this fee on behalf of the candidate or employee.

#### **5.20 Handling and Disposal of Disclosure Information**

Commenciz Ltd will take the following steps when handling and disposing of disclosure information:

- Ensure that disclosures are available only to those who need to have access to them in the course of their duties relevant to recruitment and vetting. The DBS maintains a record of all those to whom certificates and certificate information has been revealed. It is a criminal offence to pass disclosure information to anyone who is not entitled to receive it
- Ensure that disclosure information is kept in secure conditions in a locked, non-portable container (wherever possible, in rooms to which access is limited to staff engaged in recruitment work). Keys or combinations to the container must not be freely available within Commenciz Ltd and access must be restricted to named individuals who are entitled to see it as part of their duties
- Ensure that no copies of disclosure information (in any format) are made without the prior agreement of the DBS or as the result of a stipulated requirement relating to its e-channel service
- Use certificate information only for the specific purpose for which it was requested and for which the applicant's full consent has been given
- Retain disclosure information only for as long as is necessary and for a maximum of six months following the recruitment decision for which it was obtained, unless a dispute is raised or, in exceptional circumstances, where DBS agreement is obtained. It should not be kept on file simply in case it is





useful in the future. The DBS will only permit extended retention when it considers it appropriate after taking into account both human rights and data protection rules

- Dispose of disclosure information securely (by shredding, pulping or burning). Self-evidently, copies of disclosures must be destroyed with the originals, although the DBS anticipates that employers will wish to retain details of:
  - The name of the candidate
  - The date of the search
  - The type of search
  - The position
  - The DBS reference number, and
  - The recruitment decision taken
- Open confidential waste sacks and other open receptacles (even if they eventually lead to secure disposal after the waste leaves the building) are considered to be an inappropriate method of disposal. In most cases, employers will wish to use shredders to dispose of disclosure information, preferably also disposing of the shredded information securely
- Ensure that any additional police information, including information as to its existence, is not revealed to the disclosure applicant and is disposed of in the appropriate manner and at the appropriate time

### 5.21 Positive Disclosure

If there is a positive disclosure in any returned DBS check then this does not automatically mean that the person should not be employed. Commenciz Ltd should review the nature of the information disclosed against the role the person will be undertaking and make a decision on the suitability of employment. Any decision should be based upon a robust, fair, transparent and equitable risk assessment process that is specific to the content of the disclosure and the role to be undertaken. Any decision made regarding the person's employment should be recorded and be able to be justified. The actual DBS disclosure should be held in line with data protection and the process highlighted in 5.26.

### 5.22 Overseas Criminal Records Checks

The application process for criminal records checks or 'Certificates of Good Character' for a candidate from overseas varies from country to country. Commenciz Ltd can apply to the relevant embassy in the UK where this is required. Where further help or support is needed, the [Disclosure & Barring Service](#) can be contacted for support.

A certificate is required for all candidates to Commenciz Ltd who have lived outside of the UK for 12 months or more (whether continuously or in total) in the last ten years, while aged 18 or over.

#### Getting a criminal records check for time spent abroad

Details of how to obtain a criminal records check from the relevant authorities abroad are available at [GOV.UK](#).

If the country concerned is not listed, Commenciz Ltd will contact the relevant embassy or consulate for further [details](#).

#### If Commenciz Ltd cannot obtain a criminal record certificate from the relevant country

It is not always possible to obtain a certificate from countries that do not have functioning criminal record regimes or refuse to provide these to anyone other than their own citizens.

In the absence of available checks, Commenciz Ltd must obtain as much information as possible in the form of references before deciding whether to make an offer of employment.

### 5.23 Rehabilitation of Ex-Offenders

Commenciz Ltd complies with The Rehabilitation of Offenders Act 1974 and seeks to ensure that past offence(s) do not impact on an individual's life after the offence(s), if they have continued to abide by the law. This usually means that Commenciz Ltd does not consider any spent conviction unless someone wants to work with children, young people or adults at risk.

**5.24** A person who has been convicted of a criminal offence but does not re-offend during a specific period will be entitled to treat themselves as having a clean record in certain circumstances. The effect is to treat this conviction as "spent", meaning that the person is not obliged to disclose it. This is unless the occupation for which they are employed is an "excepted occupation" or if the rehabilitation period has not yet expired. The individual will be told if the role they have applied for is an excepted occupation.

**5.25** When someone is applying to work with children, young people, or adults at risk - regardless of whether a conviction is deemed spent - you are required by law to inform Commenciz Ltd. Failure to disclose this is a gross misconduct offence and may lead to summary dismissal or, if not yet employed,



withdrawal of an offer of employment.

**5.26** A Disclosure is only requested after a thorough risk assessment has indicated that one is both proportionate and relevant to the position concerned. For those positions whereby a Disclosure is required, all application forms, job adverts and recruitment briefs will contain a statement that a Disclosure will be requested in the event of the individual being offered the position.

**5.27** Having a criminal record will not necessarily bar a person from working with Commenciz Ltd. This will depend on the nature of the position and the circumstances and background of the offences.

**5.28** Following the changes to the DBS Filtering rules on 28th November 2020, Commenciz Ltd will not ask about youth cautions, reprimands or warnings. Commenciz Ltd also acknowledges that the multiple conviction rule has been removed, meaning that if a current or prospective member of staff has more than one conviction, each conviction will be considered against the remaining rules individually, rather than all being automatically disclosed. It does not matter what type of offence it is or how much time has passed.

### **5.29 Barring Referral**

It is a legal requirement that Commenciz Ltd must make a referral to the DBS to be added to the barred list where there is evidence that a worker is guilty of misconduct by harming a Service User or putting a Service User at risk of being harmed. As a result, the worker is dismissed or removed from their care role. The DBS barred list makes sure that any person who has been guilty of misconduct by harming a Service User should not be able to get a new job elsewhere in a care position.

A referral must be made when Commenciz Ltd has dismissed or removed the individual from working in a care role because they have done at least one of the following:

- Engaged in relevant conduct that has harmed the Service User or put them at risk of harm
- Been cautioned or convicted for a relevant offence
- Satisfied the Harm Test (i.e. there has been no relevant conduct but the risk of harm still exists)

Harm can take many forms and includes sexual harm, physical harm, financial harm, neglect, emotional harm, psychological harm and verbal harm.

Referrals to DBS can be made online or by post.



## 6. Definitions

### 6.1 Regulated Activities

- In addition, any activity which consists of or involves the day-to-day management or supervision of a person carrying out a regulated activity on a regular basis is in itself a regulated activity
- **The Conveying of Adults** – A person who transports an adult because of their age, illness or disability either to or from their place of residence and a place where they have received, or will be receiving, health care, personal care or social care; or between places where they have received or will be receiving health care, personal care or social care. This will not include family and friends or taxi drivers
- **Provision of Assistance in the Conduct of a Person's Own Affairs** – Anyone who provides various forms of assistance in the conduct of an adult's own affairs, for example, by virtue of an enduring power of attorney. Please see the Safeguarding Vulnerable Groups Act 2006, as amended by the Protection of Freedoms Act 2012, for the further categories which are covered here
- **Provision of Assistance in Relation to General Household Matters** – The provision of assistance to an adult because of their age, illness or disability, in relation to managing the person's cash, paying their bills or shopping on their behalf
- **Provision of Social Work** – The provision of social care by a social care worker which is required in connection with any health care or social services to an adult who is a client or potential client
- **Provision of Personal Care** – This means any of the following:
  - Providing physical assistance with eating or drinking including the administration of parenteral nutrition, going to the toilet, washing or bathing, dressing, oral care, or the care of the skin, hair or nails because of an adult's age, illness or disability
  - Prompting and supervising an adult in relation to the above activities who, because of their age, illness or disability, would otherwise be unable to make a decision to perform the above
  - Training, instructing or offering advice or guidance which relates to the performance of the above activities to an adult who requires it because of their age, illness or disability
- **Provision of Health Care** – Any healthcare professional providing health care to an adult, or anyone who provides health care to an adult under the direction or supervision of a healthcare professional
- The definition of regulated activity relating to adults identifies the activities which, if any adult requires them, lead to that adult being considered vulnerable at that particular time. There are six categories of regulated activity, and a broad outline of these categories is set out below:

### 6.2 Unspent Conviction

- A conviction which is sufficiently historical to fall outside the time periods where a conviction would be classed as unspent

### 6.3 Spent Conviction

- A spent conviction is a conviction which, under the terms of the Rehabilitation of Offenders Act 1974, can be effectively ignored after a specified amount of time. The amount of time for rehabilitation depends on the sentence imposed, not on the offence

### 6.4 Excepted Occupation

- A role that falls within the Rehabilitation of Offenders 1974 (Exceptions) Order and which entitles an employer to request a DBS check to reveal all spent and unspent convictions

### 6.5 Pandemic

- A pandemic is the worldwide spread of a new disease. COVID-19 was characterised as a pandemic on 11th March 2020

### 6.6 Coronavirus (COVID-19)

- Novel coronavirus is a new strain of coronavirus first identified in Wuhan City, China. The virus was named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2). The disease it causes is called COVID-19

### 6.7 Disclosure & Barring Service (DBS)

- The DBS provides access to information about criminal convictions and other police records to help employers make an informed decision when recruiting staff across England and Wales



## 6.8 Disclosure

- Disclosure is the term that is used to describe the service provided by the Disclosure and Barring Service (DBS) and the document issued to the applicant and Registered Body when a DBS check has been completed

## 6.9 Criminal Record

- A record of convictions held on the Police National Computer (PNC) for individuals convicted of crimes (includes information on cautions, reprimands, final warnings and bind-overs)

## 6.10 Child

- A person aged under 18

## 6.11 Caution

- A formal warning about future conduct given by a senior police officer, usually in a police station, after a person has admitted an offence. It is used as an alternative to a charge and possible prosecution, generally used for juvenile or first-time offences. Basically, there are two types of caution, which we have noted below:
  - **Simple Caution** - previously known as a formal caution - is used to deal quickly and simply with those who commit less serious crimes. It aims to divert offenders away from appearing in court and to reduce the likelihood of them offending again
  - **Conditional Caution** - introduced by the Criminal Justice Act 2003, differs from a simple caution in that the offender must comply with certain conditions to receive the caution and to avoid prosecution for the offence they have committed. Like simple cautions, conditional cautions aim to keep lower level offenders out of court. The conditions are usually in the form of rehabilitation or reparation where the offender is requested to repair/or make good the damage caused. The offender may be requested to pay financial compensation

## 6.12 Special Category Data

- Special Category Data is a category of data which is more sensitive than normal personal data. This includes data which relates to:
  - Race
  - Ethnic origin
  - Politics
  - Religion
  - Trade union membership
  - Genetics
  - Biometrics (where used for ID purposes)
  - Health
  - Sex life
  - Sexual orientation



## Key Facts - Professionals

Professionals providing this service should be aware of the following:

- Employees whose roles are Excepted Occupations are required to disclose all spent and unspent convictions
- Strict rehabilitation periods apply to convictions and, once these have expired and there has been no re-offending, the conviction is treated as spent
- Employees are required to disclose all unspent convictions if asked to do so
- Commenciz Ltd will follow emergency procedures at times of evolving events, such as the coronavirus pandemic, to ensure that DBS checks are conducted correctly
- Providers should risk-assess different roles and look at their responsibilities and activities to determine if staff are eligible for a DBS check and to what level. The CQC expects providers to be able to show that they have undertaken this risk assessment, especially where they have decided not to undertake a check
- Providers should undertake checks at the appropriate level for staff and volunteers who are eligible for them. They should consider the eligibility of everyone employed, including contracted staff, temporary staff, bank staff, practitioners working under practising privileges, volunteers, students and learners, and contractors
- All health and social care providers registered with the CQC, are responsible for checking the suitability of their staff
- There is no requirement for a service that directly employs its own staff to repeat DBS checks within a set period. For example, there is no blanket rule such as re-checking all employees every three years. However, employers can re-check their staff whenever they think it is necessary. Any additional checks should be proportionate to risk and Commenciz Ltd should check any contractual requirements



## Key Facts - People affected by the service

People affected by this service should be aware of the following:

- Commenciz Ltd owes a duty to protect your health and safety. Commenciz Ltd therefore undertakes DBS checks, where at all possible, to identify areas of risk
- Commenciz Ltd wishes to give opportunities to all individuals, regardless of background. However, it must be acknowledged that some areas of business within Commenciz Ltd require absolute protection of vulnerable Service Users, and must take this into account when making recruitment decisions



## Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

**GOV.UK - DBS Update Service:**

<https://www.gov.uk/dbs-update-service>

**GOV.UK - Guidance on the Rehabilitation of Offenders Act 1974 and the Exceptions Order 1975:**

<https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>

**GOV.UK - Making Barring Referrals to the DBS:**

<https://www.gov.uk/guidance/making-barring-referrals-to-the-dbs>

**GOV.UK - DBS Barring Referrals Flowchart:**

<https://www.gov.uk/government/publications/dbs-referrals-referral-chart>



## Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- Commenciz Ltd ensures, as far as is possible, that all members of staff are signed up to the update service
- Commenciz Ltd ensures that a clear re-checking practice is established and maintained consistently without exception
- Commenciz Ltd follows best practice and carries out enhanced checks on all prospective members of staff
- Commenciz Ltd carries out and retains records of full risk assessments for each role regardless of level
- Commenciz Ltd can demonstrate a full understanding of when an occupation is and is not "Excepted" and applies the relevant criteria and processes for each
- Commenciz Ltd is highly proactive in understanding the nature of convictions, supports applicants with convictions to apply, and treats applicants on an individual basis



## Forms

The following forms are included as part of this policy:

Title of form	When would the form be used?	Created by
Defined Rehabilitation Periods - PR04	To check rehabilitation periods.	Commenciz Ltd
DBS Confirmation Form - PR04	To track receipt of the DBS confirmation.	Commenciz Ltd
Positive Disclosure Decision Support Risk Assessment Questionnaire - PR04	When a positive disclosure is received.	Commenciz Ltd
Types of DBS Checks - Guidance - PR04	For information on DBS Checks.	Commenciz Ltd
DBS Flow Chart - PR04	This flowchart is to offer guidance on whether a DBS check is required.	Commenciz Ltd

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The defined rehabilitation periods that Commenciz Ltd adheres to are:

<b>Sentence</b>	<b>Old Rehabilitation Period (pre-March 2014)</b>	<b>New Rehabilitation Period</b>
Custodial sentence over 4 years or a public protection sentence (a custodial sentence for specified sexual and violent offences)	Never spent	Never spent
Custodial sentence (over 2½ years, up to 4 years)	Never spent	7 years (beginning with the day on which the sentence, including any period on licence, is completed)
Custodial sentence (over 6 months, up to 2½ years)	10 years (from date of conviction)	4 years (beginning with the day on which the sentence, including any period on licence, is completed)
Custodial sentence (up to 6 months)	7 years (from date of conviction)	2 years (beginning with the day on which the sentence, including any period on licence, is completed)
Fines	5 years	1 year (beginning with the date of the conviction in respect of which the fine is imposed)
Absolute Discharge	6 months	No rehabilitation period



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<b>Name of Individual:</b>			
<b>Date of Birth:</b>			
<b>Post Applied For:</b>			
<b>Recruiting Manager's Name:</b>			
<b>Disclosure Reference Number:</b>			
<b>Disclosure Date:</b>			
<b>Type of Disclosure:</b>			
<b>Returned Disclosure Date:</b>			
<b>Disclosure Outcome</b>	<b>Yes</b>	<b>No</b>	
<b>Cleared to Work</b>			Proceed with standard recruitment process at Commenciz Ltd
<b>Positive Disclosure</b>			Completed 'Positive Disclosure Decision Support Risk Assessment Questionnaire Form'
<b>Other:</b>	<i>Please provide comments:</i>		
<p><i>Where a candidate is no longer suitable for the role, please refer to the Recruitment Policy &amp; Procedure and complete the 'Recruitment Further Investigation Record'.</i></p>			

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**Part A**

<b>Name of individual:</b>			
<b>Date of Birth</b>			
<b>Post Applied for:</b>			
<b>Recruiting Manager Name</b>			
<b>Disclosure Reference Number</b>			
<b>Disclosure Date</b>			
<b>Decision (please tick as applicable)</b>			
<b>Employ</b>		<b>Do not employ</b>	
<b>Suspend</b>		<b>Allocate to other work</b>	
<p><b>*Employ with adjustments to role (give details e.g. supervision, monitoring)</b> State what adjustments are required:</p>			
<b>Discussed with individual Yes/No</b>		<b>Date:</b>	

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**Part B**

Consider the following questions	Possible Responses	Response	Comments - please complete as fully as possible to inform risk assessment
<b>Do the DBS Listings bar the appointment?</b> If the answer is yes, then the appointment is automatically unlawful and the person must not be appointed to the post. Do not continue with this decision sheet.	Yes		
	No		
<b>Are you satisfied with the candidate's/employee's/volunteer's explanation of the circumstances of the offence?</b> All positive disclosures should be discussed with the candidate. Note down their explanation of the circumstances.	Yes		
	No		
	Unsure		
<b>How serious do you consider the offence to be?</b>	Major		
	Moderate		
	Minor		
<b>Did the offence occur recently?</b> For example, minor offences that occurred a long time ago may be less relevant than ones that are very recent.	Within last;		
	Year		
	3 years		
	10 years		
	Older		
<b>At what age were the offences committed?</b> Was the offence committed as an adult, or as a child or adolescent? Offences that took place years ago may have less relevance now except for serious violent or sexual offences.	Record Age		
<b>What age is the applicant now?</b>	Record Age		

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Consider the following questions	Possible Responses	Response	Comments – please complete as fully as possible to inform risk assessment
<p><b>Does the disclosure show a pattern of behaviour, or was the offence a one-off?</b> Repeated offences may indicate that the individual has not been able to change his/her offending behaviour and may be more likely to re-offend.</p>	One-off		
	Repeat – frequent		
	Repeat – infrequent		
<p><b>Have the circumstances that contributed to the applicant committing the offence or behave in such a manner changed for the better?</b> Look at all the circumstances, including the employment pattern and the individual's own explanation.</p>	Yes		
	No		
	Unsure		
<p><b>Did the applicant disclose any convictions, cautions, reprimands or final warnings which would not be filtered in line with current guidance, as part of the application process/at interview/or during their employment?</b> Note that a failure to disclose a relevant offence, without a satisfactory reason, will be a breach of contract and render any employment offer void or where the individual is an employee lead to disciplinary action which could lead to their dismissal.</p>	Yes		
	No – no reason given		
	No – but reason given		
<p><b>Are there any concerns regarding the employee's motivations for working with vulnerable adults or where there may be children?</b></p>	Yes		
	No		
<p><b>Is there any evidence regarding any inability to manage conflict, cope with challenging behaviour?</b></p>	Yes		
	No		
<p><b>Were any gaps in employment identified and were these cause for concern?</b></p>	Yes		
	No		

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Consider the following questions	Possible Responses	Response	Comments – please complete as fully as possible to inform risk assessment
<p><b>Were both employer references satisfactory and references verified by telephone?</b></p>	Yes		
	No		
<p><b>Does the post involve responsibility for finance, items of value or other high-risk areas such as access to Service User finances/property?</b> This is particularly relevant where the disclosed offences are related to robbery, burglary or fraud.</p>	High		
	Moderate		
	Low		
<p><b>Does the role allow the opportunity to re-offend?</b> Consider the nature of the post in relation to the disclosed offence (s).</p>	Yes		
	No		
<p><b>What level of management supervision will the person receive?</b> What opportunity would there be to re-offend? Will supervision reduce the risk? How much responsibility does the post carry?</p>	High		
	Moderate		
	Low		
<p><b>What mechanisms are in place to track the individual's progress?</b> Probationary period or appraisal system allows for the possibility of the person moving to a role they are not currently safe for, or moving into a 'safer' role or dismissed if there is a deterioration.</p>	Adequate		
	Inadequate		

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**Part C**

Summary of evidence considered and rationale for this decision. Any additional comments from the hiring manager:

Do you wish to proceed with employment? Yes/No (if yes, please explain why here):

Date:.....

Name:.....

Signature:.....

**Outcome: Agreement to continue with offer/withdraw offer (if agreed, please give details of the evidence relied upon to make this decision)**

**Name:**.....

**Date risk assessment authorised:**.....

**Signature:**.....

The Disclosure and Barring Service (DBS) offers three types of criminal record check:

**Basic DBS check** contains details of unspent convictions, conditional and unconditional cautions, or a statement that the individual has no such convictions or cautions. An individual can apply directly to the Disclosure and Barring Service to obtain a basic check

**Standard DBS check** contains details of an individual's convictions, cautions, reprimands or warnings recorded on police central records and includes both 'spent' and 'unspent' convictions. These are shown on a criminal records check

**Enhanced DBS check** contains the same details as a standard check, together with any information held locally by police forces that it is reasonably considered might be relevant to the post applied for. These can only be applied for in the event that the post is an excepted post included in both the Exceptions Order and the Police Act Regulations

The Enhanced DBS check may also include checks of any information stored about the individual on any statutory lists as set out below:

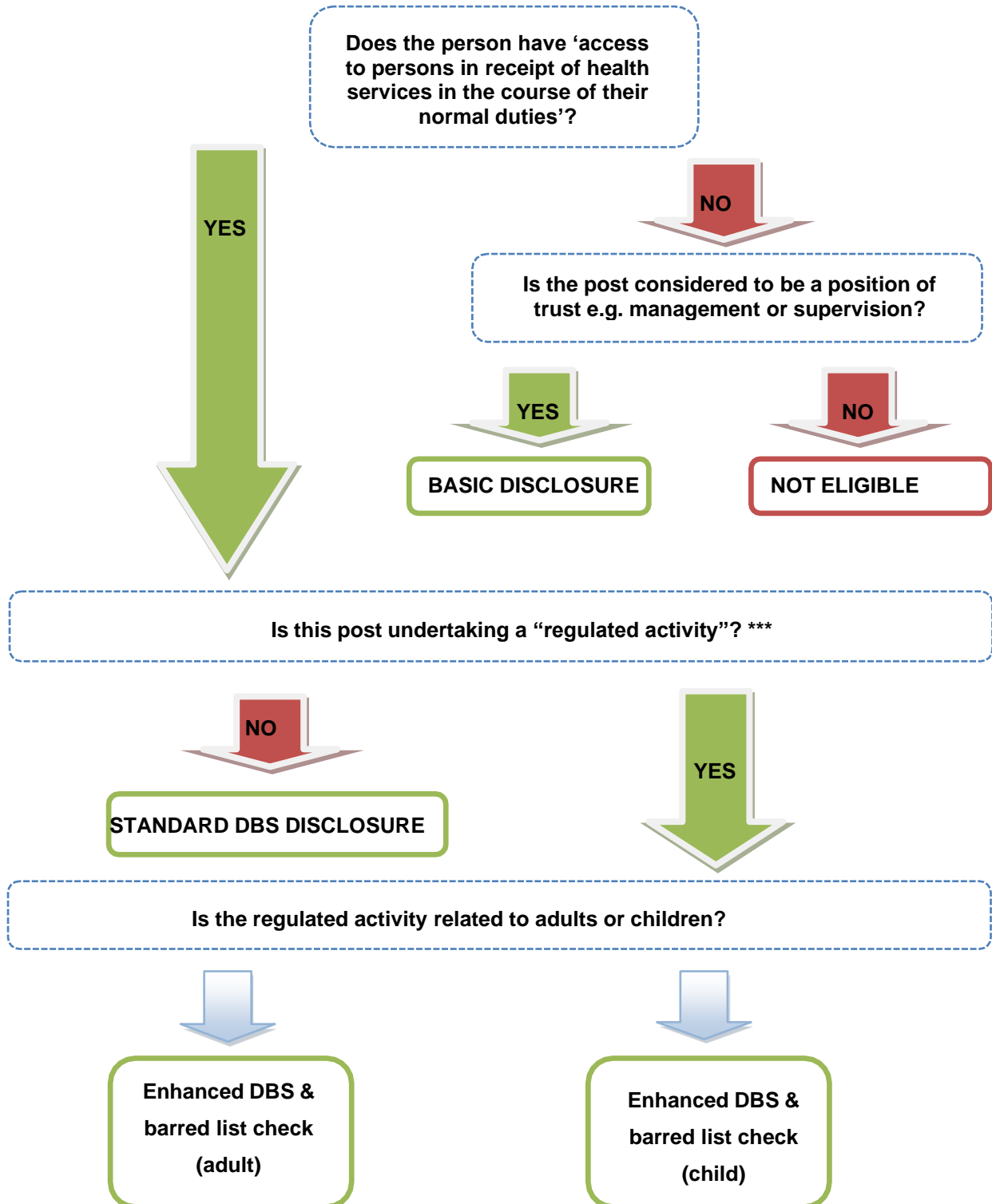
**Enhanced DBS and Barred List Check (Child)** includes information from the DBS Children's Barred List and is only available for those individuals engaged in regulated activity with children and a small number of posts as listed in the Police Act regulations, for example, prospective adoptive parents

**Enhanced DBS and Barred List Check (Adult)** includes information from the DBS Adult's Barred List and is only available for those individuals engaged in regulated activity with adults and a small number of posts as listed in the Police Act regulations



## DISCLOSURES AND BARRING SERVICE FLOWCHART

This flowchart is to offer guidance on whether a DBS check is required.



\*\*\*Undertakings that fall within the definition of Regulated Activities include:

*This is a precedent letter only and for general guidance only. You should ensure that you complete all the missing information where indicated within the square brackets or delete as appropriate. If you are unsure about any matters referred to within this letter, it is recommended that you seek legal advice.*

Activities relating to children comprising:

- Unsupervised activities: teaching, training, care, supervision or driving a vehicle for children;
- Working in schools, children's homes, childcare premises;
- Personal care (e.g. washing, dressing etc);
- Health care (even if supervised by a professional);
- Registered child-minding and foster carers.

Activities relating to adults comprising:

- Health care (even if supervised by a professional);
- Personal Care, including:
  - Physical assistance (e.g. with eating, washing, dressing etc) due to an adult's age, illness or disability;
  - Prompting AND Physical assistance (as above) for an adult who cannot make the decision to physically care for themselves because of their age, illness or disability;
  - Training an adult in their own physical assistance because of their age, illness or disability.
- Social care by a social worker;
- Assistance with money, bills, shopping etc. because of age, illness or disability;
- Assistance in the conduct of their personal affairs (e.g. a Lasting Power of Attorney);
- Transporting an adult from their place of residence to a place where they have received/will receive health/social/personal care because of their age, illness or disability.

*This is a precedent letter only and for general guidance only. You should ensure that you complete all the missing information where indicated within the square brackets or delete as appropriate. If you are unsure about any matters referred to within this letter, it is recommended that you seek legal advice.*