

Number 32

To have or not to have..... CRB checks for staff before starting work

The Care Standards Regulations 2001¹ make it plain that a CRB check is required prior to any member of staff commencing employment at a care home. The rule applies to anyone working at a care home who may in the course of his duties have regular contact with service users. This means that most care home staff are covered. Whilst it is clearly relevant to nurses and care assistants, kitchen and gardening staff who do not deliver direct care, but may, nevertheless, come into contact with residents are also within the definition of 'care worker' and must have a CRB check before commencing employment.

Given the length of time that it can on occasion take to obtain a CRB check this has caused difficulties. Certainly for many lower paid or less qualified staff, the need to wait for the results of a CRB check before commencing employment can be a significant dis-incentive to accepting a job offer. This in turn can make it very difficult for employers to fill vacancies.

Because of these difficulties CSCI previously provided guidance permitting staff to commence employment on a probationary basis pending the result of the CRB check.

That guidance has now been withdrawn². Although the guidance still states:

"However, recognising that there will be always exceptional circumstances in which some providers will still face real difficulties obtaining their CRB checks, CSCI Inspectors will apply general discretion on a case by case basis".

This discretion is however not a reason to avoid obtaining a CRB check in those cases and should not be relied on as a regular approach to such matters as it is likely to apply to exceptional cases only.

The position may sometimes be improved by obtaining a POVA check. A POVAfirst check indicates whether or not an individual of a specific name and date of birth is on the POVA List. The result of a POVAfirst check is returned quickly to the employer. If the result of a POVAfirst check indicates that the potential employee is not on the POVA List, then an offer of employment subject to the CRB check and the full POVA check can be made. The regulations³ state that where a clear POVAfirst check is obtained, the employee can commence work pending receipt of the CRB check, but only if the care provider would potentially breach its statutory staffing requirements if the employee is not able to start work.

This is therefore not a panacea for all CRB problems as it only provides a basis for employment to start pending receipt of the CRB check if staffing levels would otherwise be breached.

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Out of office **emergency** advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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¹ Regulation 19, Care Standards Regulations 2001

² in September 2003

³ The Care Standards Act 2000 (Establishment & Agencies) (Miscellaneous Amendments) Regulations 2004

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