

**Guidance for Allied Health Professionals
supporting individuals with criminal
convictions and mental health conditions
into work, volunteering or education**

success
rehabilitation
occupationaltherapy
future disclosure job
recovery
employment
outcomes offender pvg
convictions work offences
recruitment

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FOREWORD

Throughout Scotland there has been an emphasis on vocational rehabilitation within mental health and forensic mental health. No health without mental health, the cross Government mental health strategy (2011) recognised the need to improve services for people with mental health problems, including improving employment outcomes. Strategic policies in Scotland such as Realising Potential (2010), the AHP Delivery Plan (2012) and the Mental Health Strategy (2012) have begun a process of change skilling up AHP staff to address vocational issues with the ultimate aim of enabling those with mental health conditions to maximise their potential and to achieve their work related aspirations.

A report commissioned by the Scottish Government Towards work in forensic mental health (2011) reviewed current vocational rehabilitation provision making recommendations on the delivery of evidence based vocational rehabilitation. During the national scoping exercise associated with this report over 60% of the AHPs who responded reported they were unclear around disclosure of criminal offences to potential employers. The need for knowledge development with a particular emphasis on the legal issues in relation to disclosure of criminal convictions, mental health issues and work was identified.

This guidance document aims to provide guidance and develop knowledge in this area. It was conceived following a training workshop for occupational therapists facilitated by Kathleen Bolt employment lawyer and Jean McQueen AHP Consultant. It provides information on what to consider when supporting someone with mental health issues and criminal convictions into work.

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1.0 MEMBERSHIP OF THE GROUP

A working group was convened to progress this work with membership including occupational therapists, representatives from the voluntary sector, third sector and Scottish Government.

Jean McQueen (Chair)	AHP Consultant Forensic Network
Lisa Jamieson	Occupational Therapist NHS Grampian
Rosie Toal	Scottish Government Restricted Patient Team
Susi Paden	Occupational Therapist, NHS Lothian
Dughall Laing	Director Recruit with Conviction
Maureen Black	Occupational Therapist NHS Lanarkshire
Marion Findlay	The Volunteer Centre Edinburgh
Moira Paterson	Occupational Therapist NHS Greater Glasgow and Clyde
Caroline Hall	Occupational Therapist, NHS Ayrshire and Arran
Susan Bradford	Occupational Therapist, NHS Lothian
Joanna Falconer	Occupational Therapist, NHS Tayside
Vivienne Gration	Manager Forensic Network

2.0 INTRODUCTION

There is very strong evidence which demonstrates that being in work is good for health and assists recovery (Waddell and Burton 2006). For people with a history of offending, one of the most effective ways to prevent reoffending and improve their chances of leading a better life is likely to be finding and keeping a job (Centre for Mental Health 2010). It is possible to support people with mental health problems and offending histories into mainstream employment and it can be extremely beneficial, both in promoting recovery, reducing recidivism and as a route out of poverty.

Supporting those with forensic mental health issues towards work can be a complex process requiring knowledge of the Rehabilitation of Offenders Act, The Equality Act, the PVG Scheme and issues around data protection. This guidance considers the relevant legislation related to offending it outlines factors to explore and consider including the various means of background checks and positive disclosure. The flow chart (p6) provides a pathway ensuring all relevant avenues are explored collaboratively between the patient and relative parties. Disclosure of mental health is considered giving an overview of the equality act and the protections offered by this should someone come under the definition of disability. The document also presents some case studies offering practical examples of disclosure in practice. Many people with criminal records feel that employers will discriminate against them and they are unsure how to market themselves. This document provides therapists supporting those with criminal convictions with the tools and knowledge to maximise their client's chance of success.

3.0 DISCLOSING OFFENCES

3.1 The Rehabilitation of Offenders Act

The Rehabilitation of Offenders Act (ROA) 1974 aims to support people who have been convicted of a criminal offence, and who have not offended since, to gain employment. Under the Act convictions become 'spent' or ignored after a specified rehabilitation period. This means that after the specified time has passed, an ex-offender would not normally be obliged to mention their criminal conviction when applying for jobs, obtaining insurance or during any involvement with criminal proceedings. All cautions and convictions eventually become

'spent', with the exception of prison sentences over two and a half years.

It applies to the whole of the UK. There are some parts which are Scottish and differ slightly to the legislation in the rest of the UK.

3.2 Spent and Unspent Convictions

Convictions are "unspent" for a certain number of years after the date of conviction with the exception of prison sentences over two and a half years. Once this time period is over, convictions are "spent" and do not need to be disclosed to employers, unless they specifically ask. There are some exceptions particularly in jobs where there is contact with children or protected adults this is known as regulated work.

3.3 Exceptions

There are some categories of employment (those with high level of trust) known as regulated work which the Rehab of offender act does not apply and where even spent convictions must be disclosed. Within these types of employment a disclosure (PVG) is often required and the employer requires to assess the risk attached to employing the ex offender. This is not a blanket bar on certain types of employment but assessment must take place. Such positions which are exempt include:

- Financial sector
- Child care services
- Care services
- Health professions
- Law enforcement
- Licensing work (i.e. security)

3.4 Rehabilitation periods

The rehabilitation period (the length of time before a caution or conviction becomes spent) is determined by the type of disposal administered or the length of the sentence imposed. It is calculated from the date of conviction or the date the caution is administered. The rehabilitation periods are shown in Table 1.

If two convictions are eligible for consideration, the individual will need to wait until longest conviction is spent before having nothing to disclose. Even in the case of custodial sentences where a shorter period of time may be served than the original sentence, it is still the

latter which comes into play when working out when a conviction becomes spent.

When a rehabilitation period has been completed, the individual's conviction is classed as spent. Spent convictions do not have to be revealed unless the job is exempt from the rehab of offenders act.

Simple cautions, reprimands, final warnings, spent at moment of issue adult or youth conditional caution or those spent after 3 months will still show up in disclosure but if applying for a job under the rehab of offenders act you can tick no.

Once spent convictions are disclosed the employer should not simply refuse employment with the company, they should risk assess the relevance of the offence to the position. Adverts for posts should state if a post is exempt from ROA and the applicant should be aware that if they are offered a job it will be subject to disclosure check, and require Protection of Vulnerable Groups (PVG) registration.

CAUTION: We could be disadvantaging people if we are unnecessarily overprotective with disclosure as they are under our care. Therefore we need to be careful not to disadvantage people when the law and risk does not require us to.

Overview:

- A spent conviction does not have to be revealed at interview or on a job application unless the type of job is covered by the PVG scheme
- Persons should not be prejudiced by it
- Employers cannot refuse to employ someone or dismiss them because of a spent conviction unless the job is covered by the PVG scheme

More information on notification periods can be found on the Disclosure Scotland webpage

<http://www.disclosurescotland.co.uk>

The period of time for which an offender is required to comply with the notification requirements depends on the sentence or order they were given.

Table 1:Notification Periods

When the offender	They will be subject to the notification requirements for:
Is sentenced to 30 months or more imprisonment	An indefinite period
Is admitted to a hospital subject to a restriction order	An indefinite period
Is sentenced to more than 6 months but less than 30 months imprisonment	10 years
Is sentenced to imprisonment for 6 months or less	7 years
Is admitted to hospital, without a restriction order	7 years
Received any other disposal (such as a community punishment or fine)	5 years
Is cautioned	2 years
Is given a conditional discharge	The duration of the conditional discharge

These notification periods apply to offenders over the age of 18. For those under 18 when convicted, reprimanded etc, the notification periods of ten, seven, five and two years are halved.

The civil law equivalent of a period of service detention received at a court martial is a community punishment. Therefore the notification period for offenders who receive such a penalty is five years.

3.5 Professions exempt from the Rehabilitation of Offenders Act

There is a Scottish mandate or memorandum that states the professions that are exempt from ROA. This is helpful to know as if someone has spent convictions they will come up in a PVG and it may be that the individual doesn't apply for these types of jobs as it may be highly unlikely they will be accepted.

Employers have a duty to ensure that information systems in their organisation only allow the people who need to know about convictions access to information.

It is an offence under the Data Protection Act for anyone with access to criminal records to disclose spent convictions unless authorised to do so.

3.6 To Share or Not to Share

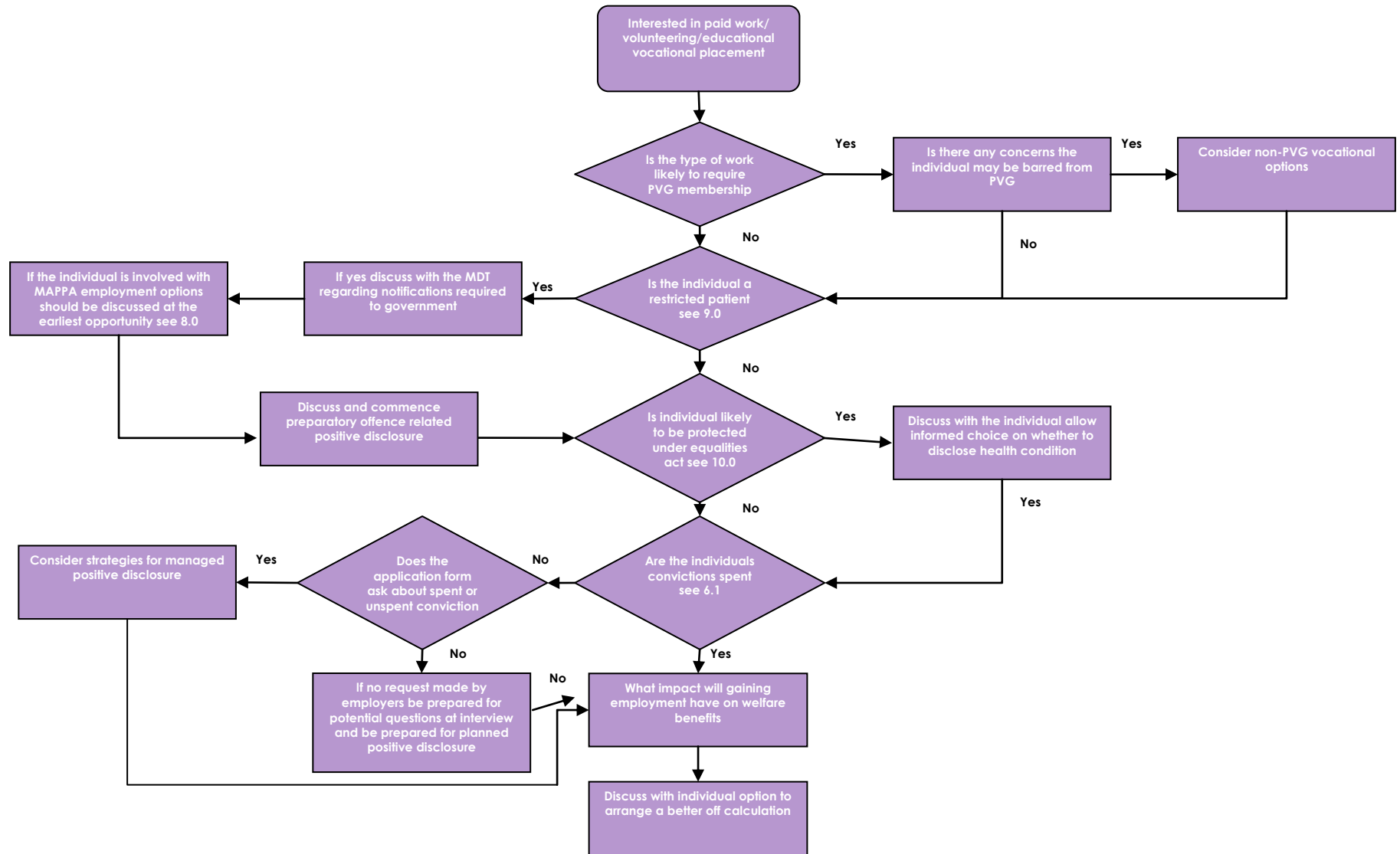
Managing sensitive information across complex partnerships or with third parties requires careful consideration. The legal requirements on all organisations that hold personal information on individuals are specific, uncompromising and absolute. All personal information, whether held in paper or electronic form should be kept securely and accessed solely by persons who are entitled to view it as defined in legislation. It is not sufficient for people to have authority to access systems, they must have a legitimate reason to see the specific information they view. All data management systems whether paper or electronic must include safeguards that prevent inappropriate access.

Where information is required to be shared with employers or other third parties careful thought should be given to how that information is handled. To comply with the data protection act 1998 and the freedom of information act 2000 all organisations must be able to demonstrate they are holding information for a useful purpose and there are clear grounds as to why it is shared.

Key considerations include

- Is the individual interested in paid work, voluntary work or education?
- How does the type of work/opportunity relate to the individual's functional capacity, mental health condition and/or offence history. Consider assessment of the issues supporting and hindering ability in a work role and identifying triggers to relapse and/or potential risks?
- Is the individual a restricted patient? If yes consider the implications this will have on information sharing, disclosure of offences and the role that you and the MDT will play.
- Are the individual's convictions likely to be spent or unspent and what will this mean in relation to disclosure?
- Does the type of work fall under the definition of regulated work i.e. does it require PVG. If so, Is the individual likely to be barred from the PVG scheme?

Flow Chart



4.0 TYPES OF BACKGROUND CHECKS

4.1 The PVG scheme

From 28 February 2011, the new membership of the PVG scheme replaced the Enhanced Disclosure check arrangement for those working with vulnerable groups:

The PVG scheme was established by the Protection of Vulnerable Groups (Scotland) Act 2007 and is managed by Disclosure Scotland.

Vulnerable groups are defined as:

Children – an individual under 18 years of age and **protected adults** – an individual aged 16 or over in receipt of one or more of the registered care services i.e. health care, community care or welfare services.

The PVG scheme which delivers on the provision outlined in the PVG (Scotland) Act 2007 is intended to:

- Help to ensure that those who have regular contact with children and protected adults, through paid and unpaid work, do not have a known history of harmful behaviour
- Be quick and easy to use, reducing the need for PVG scheme members to complete a detailed application form every time a disclosure check is required
- Strike a balance between proportionate protection and robust regulation and make it easier for employers to determine who should be checked to protect their client group
- Be a scheme where membership is portable for the individual and membership is essentially for life. Records remain 'live' and any new or related information can be flagged up to employers for consideration at any time. This is a significant enhancement on the current scheme which is static.

Any individual who is not barred may apply to become a member of the PVG scheme. It allows employers to satisfy themselves that an individual they are offering regulated work is not barred from doing that type of work. PVG members are continuously monitored for new vetting information which may indicate they are unsuitable to undertake regulated work.

4.2 Differences between enhanced disclosure and PVG

Enhanced disclosures are no longer available for people undertaking regulated work with children and protected adults. The PVG scheme is different as once an individual is a scheme member, their membership is portable and can be carried from employer to employer. The PVG scheme also allows continuous updating – the collection of vetting information about an individual after the initial disclosure check has been made.

4.3 Jobs which require PVG?

PVG checks are required for jobs which involve working with protected adults or children. These jobs are termed regulated work. A PVG check is required if the individual will have responsibility for caring, teaching, instructing, providing guidance or assistance to protected adults or children and/or is likely to be working alone with either children or protected adults. If PVG membership is a requirement for the job it should be stated at the time of advertising. PVG should not be required for posts that do not involve working with protected adults or vulnerable children.

4.4 The disclosure document

The disclosure document contains impartial and confidential criminal history information held by the police and government departments which can be used by employers to make safer recruitment decisions.

Information Included

The information included in the disclosure will depend on the type of disclosure applied for.

Disclosure information could include:

- Details of criminal records
- Information about a persons inclusion on children's or adults' lists
- Other relevant information held by a local police force or Government Body
- Or state that there is no information

Information Included	Type of disclosure						
	Basic	Standard	Enhanced	Enhanced with Lists check	PVG Scheme Record	PVG Scheme Record Update*	PVG Scheme Membership Statement*
Unspent Convictions	✓	✓	✓	✓	✓	✗	✗
Spent Convictions	✗	✓	✓	✓	✓	✗	✗
Cautions	✗	✓	✓	✓	✓	✗	✗
Membership Status	✗	✗	✗	✗	✓	✓	✓
Consideration Status	✗	✗	✗	✓	✓	✓	✓
Suitability Information	✗	✗	✗	✓	✗	✗	✗
Prescribed Court Orders & Sex Offenders Notification Requirements	✗	✗	✗	✓	✓	✗	✗
Sex Offenders Notification Requirements	✗	✓	✓	✗	✗	✗	✗
Other Relevant Information	✗	✗	✓	✓	✓	✗	✗
Information about last PVG Scheme Record	✗	✗	✗	✗	✗	✓	✗
Information about changes to Vetting Information	✗	✗	✗	✗	✗	✓	✗

✓ Information Included on Certificate ✗ Information Not Included on Certificate

* Checks completed as per PVG Scheme Record but only those indicated with (tick) are shown on the certificate.

4.5 Types of disclosure

- Basic Disclosure contains only convictions considered unspent under The Rehabilitation of Offenders Act 1974.
- Standard Disclosure contains all conviction information, spent and unspent, including cautions.
- Enhanced Disclosure contains all conviction information, spent and unspent, and any other non conviction information considered to be relevant by the police or other Government bodies.
- Protecting Vulnerable Groups Scheme Membership contains all conviction information, spent and unspent, and any other non conviction information considered to be relevant by the police or other Government bodies.
- Please Note: Disclosure Scotland will continue to process applications for the small number of enhanced disclosures that remain under the Police Act for purposes other than Regulated Work with Children or Protected Adults. Regulated work is the term used by the PVG Act to define the types of work which barred individuals must not do, and for which PVG Scheme membership is available.

4.6 Who should apply for disclosure?

Anyone can apply for a basic disclosure in their own name. This might be requested for a new job, volunteer work or to support a visa application.

Individuals cannot apply for their own PVG, this must be undertaken by the employer.

Some employers and organisations can also apply for a standard (or enhanced disclosure for specific posts) for a potential new employee or a volunteer position.

5.0 SUBJECT ACCESS REQUESTS

Individuals can obtain a copy of their full criminal record information by submitting a Subject Access Request (SAR) to their local police force or the Police Scotland website. There is a £10 fee for this service. Please Note, these cannot be used for employment purposes, and merely provide an accessible way for individuals to check what is held on their criminal record.

To apply for a SAR an individual would require to complete a form (this can be downloaded from the police Scotland website) and they can apply through the police headquarters of where they currently live, or last lived in the UK.

The individual needs two forms of ID with their name (passport or driving licence) and other with current address (utility bill etc). A response should be within 40 days of receipt.

This has to be requested by the individual themselves. If an organisation pays for the report and the person applies, the person can share it with the organisation, to allow work preparation and appropriate vocational rehabilitation support to be put in place.

5.1 What are the benefits of Subject Access Reports?

Empowering people to know what information is held regards their history helps them make an informed decision regarding information sharing, and how to move forward with their employment related plans.

5.2 What about Basic Disclosure?

Anyone can apply for a basic disclosure from Disclosure Scotland and this will show only unspent convictions

6.0 POSITIVE DISCLOSURE

Disclosing information in certain ways may increase the chances of obtaining successful employment. There are many techniques which could assist in making the process for disclosure of mental health issues and previous offences easier and increase the success of applications. A blanket process for disclosure, one size fits all approach, is not appropriate, disclosure must be individualised. Information provided to employers in relation to Protection of Vulnerable Groups (PVG), disclosures or dates of employment via an application form will only provide factual information about offences, illness, dates and gaps in employment and it will not put them in context. The use of written personal statements, letters, pre-rehearsed phrases are all useful to put offences in context and/or explain gaps in employment history and ensure these are conveyed well.

6.1 Personal Information Plan

Developing a personal information plan can be useful to ensure the individual is making an informed decision regards disclosure. Personal information plans can consider:

- How has the service user managed personal information and disclosure in the past - what worked and what didn't?
- What do they need to disclose for the kind of jobs they are considering?
- What do they wish to disclose and not disclose?
- Any complex forensic issues likely to impact on work role?
- What could be put in place to manage these risks or issues?
- What needs to be disclosed legally?
- Agreement with service user on discussions with external partners.
- Rehearsal of key statements, phrases the individual may use if asked about criminal convictions

Personal Information Plan

This form can be worked on collaboratively by the individual and therapist, and then adapted into a letter of disclosure to be used for interview preparation, applications, referrals, supporting statements etc.

Name:

Placement interested in (if known):

Strengths and skills (paragraph1):

These are some ideas for you to use with the person to start to think about strengths and skills.

- *WRAP for work*
- *Work matters*
- *Career Scotland website*
- *Personal affirmation exercises*
- *Worker role interview*
- *Work skills checklist*
- *Your observations*
- *The persons own views*

Identifying sensitive information (paragraph 2)

This should be written in the persons own words, but you can use the following to guide the process.

- *Legally, you don't need to give details of formal diagnosis however, it may be helpful to summarise by making a general statement e.g. 'I'm recovering from mental health challenges/difficulty' (in your own words)*
- *Mention why you have chosen to disclose in your letter*
- *Describe circumstances around the offence e.g. life events, unwell, use of alcohol or drugs etc. If post is PVG'd or includes disclosure then it is best practice to name the offence (as placement will find this out via disclosure). If no PVG/disclosure*

then it is ok to be vague and you are not legally required to mention detail of the offence.

- *Demonstrate commitment to not re-offending e.g. describe how you feel about it now, what has changed etc. Be careful when wording this to ensure it doesn't sound defensive and clearly demonstrates personal responsibility.*
- *Highlight the positives, how things have changed since this event.*
- *The letter is unique to you and very personal. This may be the most important letter that you write. Take your time over it. Be honest and be prepared to discuss content at interview. It may be useful to practice this with someone you trust in order to prepare.*

What I need to stay well (only include this if you are choosing to disclose mental illness) (paragraph 3)

Assist the person to visualise being in the placement and what they'd like or need from others to have a healthy placement

- *Keeping busy/managing the pace/expectations*
- *Giving clear instructions*
- *How to offer support, provide feedback or supervision*
- *How to manage breaks etc*

5.2 Personal Statement

A personal statement or letter to supplement the interview or application can be helpful to address areas the person feels the employer will turn them away for and can be helpful to sell their skills. Supporting letters from the client ensures the individual is in control of how information is released, what is communicated, how they want to disclose and who to.

For example it may include:

- What are their skills to do the job considering transferable and job specific skills?
- Address employers concerns regarding :
 - Will they fit into the workforce
 - Will they be reliable
 - Are they likely to offend in future in a way which will discredit the company
 - Will they be a danger to the workforce

With such documents they should

- Avoid the word disclosure and use 'information sharing' or 'personal information' instead.
- Be kept short as possible.
- Be able to be communicated verbally if needed
- Use a strengths based approach, highlighting positive strengths and skills, personal attributes and interests.
 - Focus on characteristics an employer may value
 - Focus on functional abilities in relation to job including relevant experience to the post and relevant knowledge and skills.
 - Discuss mental health issues rather than diagnosis
 - If mentioning an offence put this in context

5.3 Covering Letter

A covering letter for an application form can serve the same purpose if the person has concerns their mental health or offending history will be a barrier at the application stage.

5.4 Written Character References

A written character reference in the form of a supporting letter from an individual involved in the persons care or where they are volunteering etc can be useful to highlight strengths and achievements and transferable skills.

5.5 Portfolio of achievement

A portfolio of achievement can be another means of sharing with potential employers relevant experience and skills. It can also be used to enable individuals to discuss in an open and positive way issues around their mental health and offending history using this information to demonstrate how far they have travelled on their rehabilitation journey. The portfolio of achievement can include evidence of work experience, formal and informal learning, supported by personal statements, CV and testimonials from staff who have observed their progress. Evidence of commitment to a leisure activity, building structure and routines and any certificates obtained can also be used. The portfolio of achievement can be used as a basis for interview preparation.

5.6 WRAP plan (Specific Work WRAP)

A Wellness Recovery Action Plan for work (WRAP) facilitates supportive conversations about managing ill health triggers and support needs, it can empower service users and relieve employer concern, aiding their understanding of the person and their illness. It should cover signs and symptoms of mental illness, triggers, and resources available to support self management and who should be contacted in the event of a crisis. Perhaps not to be used at interview but if successful in gaining employment this could be used with HR/ Occupational Health or manager as appropriate. Training around WRAP can be provided by trained facilitators supported through the Scottish Recovery Network www.scottishrecovery.net .

What makes up a WRAP?

WRAP offers a structured means by which people can maintain wellness and recovery while working to anticipate and reflect on crisis.

WRAP is underpinned by a number of core principles:

- That recovery is possible ('hope').
- That individuals should take personal responsibility for their own lives and well being ('personal responsibility').
- That it is important to know yourself, to be self aware ('education').
- That it is important to believe in and advocate for oneself ('self advocacy'); and that the support of others is vital ('support').

Individuals work within these principles to create their own WRAP. Each plan should include the following components:

- Wellness toolbox
- Daily maintenance plan
- Identification of triggers and associated action plan
- Identification of early warning signs and associated action plan
- Identification of signs that things are breaking down and associated action plan
- Crisis planning
- Post crisis planning

7.0 EMPLOYER SUPPORT

Employer support is equally important in supporting this client group into work. Consideration needs to be given to how to address the needs of the employer in relation to their concerns. Those with mental health conditions can be a valuable and under utilised labour resource. One advantage is that many individuals with a diagnosed mental health condition have access to a supportive team who can work with the individual and employer to enhance success. In addition some employers who are positive about recruiting those with criminal convictions have reported reduced staff turn-over, as these individuals tend to stay with the employer meaning that their business incurs less recruitment and staff training costs.

8.0 THE DATA PROTECTION ACT

The disclosure of a mental illness or a history of offending to an employer is a sensitive matter in terms of the Data Protection Act (DPA). Therefore such disclosure will be covered by rights under this act. There are specific requirements within the DPA that relate to the use of general and medical information about employees by employers and how this info is held and shared. Information should be kept confidential and should not become a matter of general workplace knowledge. Asking occupational health to keep information confidential may mean that the employer is not regarded as knowing that a person has a disability or knowing about previous criminal convictions. Employers should have procedures for how they deal with this information and restrict those who have access to it. Only a very

limited number of people within a workforce should be aware of information as judged to be necessary.

9.0 MAPPA AND SEX OFFENDERS

Sex offenders are amongst the most difficult group of offenders to place in terms of employment for a range of reasons including the emotive nature of the offences, the potential reaction of other employees and the possible risks to customers and other staff posed by the offender. Research indicates that unemployment is one of the biggest factors that can serve to increase the risk of re-offending from this particularly disadvantaged group (Kruttschnitt, Uggen and Shelton 2000).

Multi Agency Public Protection Arrangements ("MAPPA") and CPA for restricted patients have a common purpose of maximising public safety and the reduction of serious harm. Although the same underlying principles of gathering and sharing of relevant information in relation to risk apply, CPA focuses on the care and treatment likely to minimise the risk posed, whilst MAPPA focuses on multi agency management of risk. Within the MAPPA framework, the CPA process will remain the vehicle for planning a person's care and treatment and for risk assessment and management planning.

9.1 Restricted Patients

Restricted patients are mentally disordered offenders who are detained in hospital for treatment or monitored in the community. They are subject to special controls and restrictions by Ministers from the Scottish Government.

9.2 Memorandum of Procedure

Scottish Ministers have a statutory role in relation to restricted patients the Memorandum of Procedure (MOP) published by the Scottish Government in 2010 explains this role in relation to suspension of detention (SUS) adding an extra layer of scrutiny for the protection and security of the public from those patients who pose a serious risk. For patients identified as restricted patients specific permission is required before patients can undertake work placements deemed suitable by the clinical team. The Memorandum of Procedure is an essential reference document for those who are involved with the management and care of restricted patients. These are patients who are subject to a

compulsion order with restriction order, a hospital direction or a transfer for treatment direction.

The Memorandum also sets out information in relation to certain patients subject to other types of mental health orders, such as interim compulsion orders, assessment orders and treatment orders, in relation to whom Scottish Ministers also have a statutory role although they are not "restricted patients". The procedures it describes should be closely noted and observed by all those involved in the care and management of restricted patients, and other patients in relation to whom the Scottish Ministers have a statutory role, both within hospitals and in the community.

Where employment or work placement has been identified a SUS request should be completed using the appropriate paper work as soon possible. This should include information on the exact location of the job or placement, travel arrangements, frequency and length of time. If an urgent response is required due to for example a specific start date this should be flagged up to the restricted patients team with a covering letter sent with the SUS request or an advance phone call. This will enable consideration of the request as a matter of urgency.

10.0 DISCLOSURE OF MENTAL HEALTH CONDITIONS

There is no legislation which states that individuals are required to disclose any information about their mental health to employers. However if individuals do decide to disclose there can be advantages in terms of protection from the equality act 2010.

10.1 The Equality Act

Equality Act October 2010

The equality act protects certain groups from harassment, direct discrimination, indirect discrimination and/or victimisation from the outset of employment, education or if they are in receipt of a service. There are certain positive rights and benefits people can obtain by bringing themselves under the Equality Act by disclosing a mental illness.

Protected Groups

Sex/gender, marriage/civil partnership, race/colour/nationality or ethnic origin, pregnancy/maternity, gender reassignment, sexual orientation, religion and age, disability (mental health is under this). For the purposes of disability, to be afforded protections under the act, the

individual must meet the definition of disability outlined in the act and explained below.

Ex – Offenders are not protected in the context of their offences under this act but are afforded protections under the Rehabilitation of Offenders Act 1974. If our client group fall under any of the other groups of protected characteristics i.e. disability due to mental health condition, the Equality Act is relevant in the context of that characteristic.

For employment, employees or potential employees would be protected from the recruitment stage to being employed in a post. Volunteering is not always entitled to be covered by the Equality act however, some volunteer opportunities could be argued as employment. In addition, some voluntary opportunities could argue the individual should be afforded protections under the act if the opportunity was sourced via a service i.e. the voluntary service as they provide a service.

10.2 Definition of 'Disability' Under the Equality Act

For someone to be afforded rights under the act, you need to be able to argue they come under the definition of disability. There is no definitive tool which can identify if someone has disability. You need to gather evidence so you can argue that they come under the definition. In the case of any dispute, a tribunal would have the final say. The definition is as follows; it is long and has many components and all components should be considered when assessing if someone comes under the definition.

Disability definition

A mental or physical impairment that has a substantial and long term adverse effect on a person's ability to carry out normal day to day activities.

Substantial Adverse Effect Means

Someone having difficulties beyond what you think is normal. Consider the time taken to carry out an activity, the way in which it is carried out and any alterations or any cumulative effects. For example, the individual can manage one thing but cumulative things can be a problem. Consider things they avoid or have stopped due to the impairment. If it seems unreasonable in comparison to others, it could be argued they come under the definition of disability.

Long Term Adverse Effect

A long term adverse effect is one which has lasted at least 12 months or where the total period of which the disability lasts is likely to be 12 months (this does not have to be consistent for 12 months but the cumulative total should be 12 months at least). If someone has been in hospital for 1 year you could argue their problem is long term but this is dependent on why they have been in hospital. The substantial/ long term adverse effect is assessed by removing the impact of treatment. Therefore, consider if there would be a disability if the treatment was removed? Treatment includes medication, psychological therapies, counselling etc.

Other Points

Progressive conditions are included as soon as there is some adverse effect provided that in the future the adverse effect is likely to be substantial.

Impairment caused by medication can also bring the individual under the definition.

Entitled Conditions: Some conditions bring a person within the definition immediately and are therefore covered by the act without having to clarify or further provide evidence of effect on function. These conditions are as follows:

- Cancer
- HIV
- Multiple sclerosis
- Blind or sight impaired

Unconfirmed Diagnosis's: For diagnosis's not confirmed, or where it is unclear, the description of the effect of impairment can bring an individual under the definition.

Excluded Conditions: Substance addiction and criminal behaviours are excluded conditions, even when they are a manifestation of the impairment. But if an individual has the above and a mental illness and meets the definition of disability, they will be afforded protection under the act due to their mental illness.

Previous Disabilities: A person who was previously had disability but no longer has it, is still afforded protections of the act as a person with a past disability. They must however, have had the disability for 12 months (cumulative or consistently).

OT Role: OT's are well placed to work through the definition with a patient to identify if they come under this given that we are experts assessing impact of mental health on function. An OT report could bring someone into the definition as it often includes the disability and the influence on function, giving examples. (A medical report can help establish the disability or diagnosis but the effect of the diagnosis on function is also needed which is the most important bit).

10.3 Protections Provided by the Act

If an individual comes under the definition of disability or falls within one of the other protected groups and informs the employer of this, they will be afforded protection in relation to the protected characteristic from:

- Direct Discrimination
- Indirect Discrimination
- Harassment
- Victimisation

Direct Discrimination

Definition: Treating a worker less favourably than another worker due to a protected characteristic, because they are associated with someone who has a protected characteristic or the worker is perceived to have a protected characteristic.

Example: An employer withdrawing a job offer due to the individual revealing they have bipolar in response to a health questionnaire or telling an employee that a less experienced individual is promoted as after a sickness period it became known the individual has schizophrenia. Disciplining someone for poor time keeping which is inconsistent with their usual performance due to deterioration in their health condition or change in medication related to their disability.

Indirect Discrimination

Definition: The employer poses a rule or system which applies to all workers but has a disproportionate impact or effect on a group with a protected characteristic. There are some areas this can be justified (i.e. age).**Note:** The employer does not need to be aware of the individual's disability for this to be applicable.

Example: An employer has a practice of regularly requiring staff to work late or skip breaks if something urgent happens. This may

disadvantage disproportionately someone with a mental health condition that requires careful management in terms of routine/ work life balance/ suitable breaks etc.

Harassment

Definition: Subjecting a worker to unwanted conduct for reasons related to a protective characteristic, which have the purpose or effect of violating the persons dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual. This includes harassment from the employer or from a third party. Third party harassment includes harassment from a colleague or customer. In this case the employer has a responsibility to take action on the 3rd occasion but the individual harassed must ensure that the harassment is reported to the employer.

Victimisation

Definition: When an employee is subject to negative circumstances because she/ he has previously complained about discrimination in some way on their own behalf or on behalf of others. If an employee feels they have been discriminated against and it cannot be resolved informally, they would have to raise a grievance in writing with the employer and pursue the matter via the employment tribunal. In this case a complaint should be raised with the tribunal within 3 months less one day from the last act of discrimination.

Pre employment health screening - S60 in Equality Act

Section 60 of the equality act gives guidance to the way employers can seek info about an applicant's health prior to making a decision to offer them a job.

It is unlawful for an employer to ask any job applicant about their health or disabilities during the short listing and interview process. Likewise, there is no obligation for an employee to disclose to an employer if they have a disability or mental health condition until they have been offered a job.

However, there are occasions where disclosure may happen for example:

- An individual has to answer a question posed by employer in good faith which leads to disclosure
- There may be times it is necessary for health and safety reasons. i.e. the duties an individual requires to undertake involve driving heavy machinery and the medication the individual is on does not permit this.

- It is advisable or necessary to disclose for example, to obtain benefits under the Equality Act 2010.

This process aims to clarify if the withdrawal of a job offer is due to health issues. If there is no other explanation for the withdrawal and it appears it was due to disclosure then the withdrawal will amount to direct discrimination. If they withdraw an offer on grounds of sickness absence that is disability related this also amounts to discrimination. If employer comes up with other reasons then these could be investigated.

Therefore employers they should not:

- Ask about health / history of health / disability or sickness record at or before interview via discussion or health questionnaire prior to a job offer.
- Questions on an application form asking about a prospective employee's health/ history re health/ disability sickness absence record or declaring health conditions.
- Questions on any of the above at interview.
- Requesting that an employee speak with occupational health prior to interview and job offer.
- Seeking references in advance of interview with requests of info re health and sickness.
- Once a job is offered or a pool of people are identified then enquiries can be made about health issues. .
- An offer can be conditional or unconditional for example, after completion of refs/ health questionnaires.
- The employer has a responsibility to look at reasonable adjustments before withdrawing a job offer.

This does not preclude potential employees providing information to the interviewer about illness but the employer should limit the discussion on the basis that any exploration at this stage is unlawful from the employers perspective unless it relates to an intrinsic function of the job. Clients should try to anticipate employers response and anticipate how to deal with this.

What are the exceptions? (When it is lawful to ask questions about health and disability?)

Employers can ask questions to:

- To establish if the applicant needs reasonable adjustments for any aspect of the interview or assessment process.
- If it is part of the equal opportunities monitoring process.

- If it is to allow the client to benefit from a positive action measure e.g. access to guaranteed interview scheme if meets essential criteria.
- To vet applicants for purposes of national security.
- If the question relates to a function that is intrinsic to that job – this includes a question asking could the person carry out the job with reasonable adjustments.
- To ask further questions about reasonable adjustments needed to carry out functions intrinsic to job.

What should the employer do if disclosure raised issues about capacity to do the job?

The Employer should consider whether the applicant has a disability in terms of the equality act. They should then identify in what way they think the mental health condition may impact on the ability of the applicant to do the job. If there is no impact then they have no grounds for withdrawing the offer without this being discrimination.

The employer should consider reasonable adjustments which can be made to alleviate barriers if they think the employee cannot carry out parts of the job. Adjustments should be explored and agreed.

What can be done if the employer is in breach of Section 60?

Asking questions itself, does not amount to discrimination, but, if a job was not offered after a disclosure was made, the reasons for the rejection could be investigated further. The individual can make a request for written reasons/ feedback as to why they were not successful. If there is sufficient evidence of discrimination then the client could pursue a claim via an employment tribunal. In this case there is a time limit of 3 months from date of discrimination. The tribunal has the right to admit late claims if they believe it is just.

If someone's job offer is withdrawn because of disclosure you can write and ask for justification as to why.

Reasonable Adjustments

Reasonable Adjustments can be a key tool for trying to remove any barriers that might prevent someone from carrying out their job as compared with an employee without a disability. For an individual covered by the Equality Act, if they make the employer aware of their disability, it is the duty of the employer to make reasonable adjustments should they be offered the job. This is one of the key benefits to disclosing you have a disability. The protection does not arise unless the employer knows the situation.

It is the duty of the employer not to treat disabled people unfavourably because of something connected with their disability. Therefore if

someone's offence was in the context of illness it could be argued this could be considered but the employer would need info on the illness and offence and you could request this is considered. Legislation within the Rehabilitation of Offenders Act may also be useful.

The duty is triggered where in comparison with non disabled persons:

- 1) A provision, criterion or practice puts a disabled person at a substantial disadvantage
- 2) A physical feature puts a person at a substantial disadvantage
- 3) A disabled person would be put at a substantial disadvantage if it were not for the provision of an aid (i.e special chair etc).

What is considered to be reasonable?

In deciding if it is reasonable, considerations should be given to how effective the adjustment would be in removing the barrier, how practicable adjustments would be, costs, length of time to make adjustments and how disruptive adjustments would be to others. What is considered reasonable may vary according to the circumstance of the employer. Adjustments should be reviewed within agreed timescales.

Examples of reasonable adjustments:

- A Transfer to an existing vacancy including any need for re-training
- Altering work hours
- Redeployment or Relocation to a different place of work which is accessible or arranging home work
- Allowing absences for rehabilitation/ assessment or treatment
- Arranging training or mentoring
- Acquiring or modifying equipment
- Moving a work station nearer a toilet or away from something i.e. noise, light heat etc.
- Changes to start and finish times
- Increased supervision or support
- Changes to role
- Phased return to work
- Advance Plan: If you know the individual may not manage into work and may not inform the employer, have an advance plan in place to identify this issue and problem solve what can be done to minimise the impact of this. I.e. agree with employer before hand how this will be treated so the individual does not have unauthorised absence. This can be formulated and documented

via a work Wrap Plan. Certain allowances or strategies can help manage and minimise the impact of someone's illness allowing certain things to fall within authorised leave.

- Allowing a period of disability leave. If the individual discloses a disability and they inform the employer that the reason for illness is connected to their disability the employer could make reasonable adjustments to not count these periods of illness in their total sick leave total in cases where a certain number of absences trigger a referral to occupational health.

Adjustments can be short and long term, are often small and uncomplicated and do not cost a lot or create much of a problem to others. They should be reviewed as much as deemed appropriate.

Process of requesting reasonable adjustments:

1. Agree if the team think someone comes under the definition of disability or another protected characteristics. In the context of disability, as before, the key thing is to note impairment not solely the diagnosis.
2. Identify any health information to back this up i.e. letter from OT and consultant letter with diagnosis.
3. Help patients identify adjustments needed through discussion with them.
4. Discuss informally with manager or Human resources or occupational health.
5. Make a request in writing with proposals of reasonable adjustments.
6. Give employer time to consider and consult with necessary departments.
7. Raise grievance if unsatisfactory and client wishes to pursue.

OT Role in considering reasonable adjustments

An OT is well placed to support the employer and patient to consider the impact of the illness on work and how any impact can be managed and overcome through reasonable adjustments.

11.0 DISCLOSURE IN ACTION – CASE STUDIES

11.1 Billy's Story

Billy is a restricted patient with a history of violent offences, currently living in the community.

Billy is keen to undertake an HNC course at college however, due to his restricted status, history of violence, prior convictions and mental health issues some consideration is required regarding the sharing of personal information.

Key points considered in this case

- **Assessment and documentation of risks through MAPPA**
- **Consideration of what needs to be disclosed and to whom**
- **Potential triggers of mental health relapse and WRAP**
- **Liaison with education provider**
- **Key phrases for Billy to use when managing personal information**

Information Sharing

The Occupational Therapy Service had previously established a single point of contact with this college through the safeguarding liaison officer who works with students and external agencies to safeguard students and the public. Initial contact was made through this established route with Billy's consent.

Discussions held during Billy's recent MAPPA meeting concluded that there were minimal risks to public safety associated with Billy's previous conviction and him accessing community facilities. The College requested a letter from Billy's RMO confirming this and the decision was taken by the college and MDT that there was no further need to disclose specific details relating to Billy's offences. It was agreed however by all parties, including Billy that information sharing would be beneficial around potential triggers, which may increase the risk of mental health relapse. It had been identified there was a significant chance of triggers being present in the college environment. It was also agreed early warning signs would be beneficial to share given this. Billy and his occupational therapist discussed the benefits and purpose of meeting with college staff to share such information and discussed how and what information would be shared. A meeting was then arranged with Billy, his occupational therapist, the safeguarding liaison officer and the sector lead for the HNC course. Billy took the lead in this information sharing meeting presenting information on early warning signs and trigger factors. A written crisis management plan which had previously been devised by the multi-disciplinary team and Billy, for use

by staff, third party carers and friends involved with Billy was shared. This set out guidance on early warning signs, potential trigger factors, how to respond and who to contact should concerns be noted. Billy also shared his WRAP plan which provided details of potential triggers and what Billy found helpful in these situations.

This meeting served to re-assure college staff who reported it was helpful to know what was important to feedback, and allowed them to ensure a thorough risk assessment of Billy and others safety by Billy attending the course.

Through meeting with the college and sharing such information, Billy and the occupational therapist were able to have a deeper understanding of aspects of the course which could cause relapse. Billy was then supported by his occupational therapist to prepare for such scenarios. One example is that Billy's offending history could easily be found online with the potential for fellow students to access this information. Through discussing such scenarios and supporting Billy to prepare responses and coping strategies he became more confident in managing his personal information should the need arise.

11.2 Sarah's Story

Sarah was an inpatient within a secure hospital when she was asked about her aspirations for work. During her time as inpatient Sarah worked in the patient cafe undertaking back of house duties initially such as washing the dishes and preparing the salad before progressing to serving customers. Sarah has numerous convictions for breach of the peace and a long standing history of mental health issues linked to Schizophrenia and social anxiety. Sarah is interested in hospitality work and enquires about a post advertised in the window of a local restaurant. Through her work with the employment specialist and community occupational therapist Sarah has chosen to apply for positions that do not require her to work early in the morning and do not require PVG registration this job appears to offer that.

Key points considered in this case

- **Use of time limited voluntary work**
- **Early preparation i.e. CV, Portfolio of achievement**
- **Use of Subject Access Request**
- **WRAP for work**
- **Patient empowered to manage their personal information**
- **Pre-rehearsed phrase to put convictions into context**
- **Use of a letter to the employer**

Staff in the restaurant ask Sarah to come back with her CV and to meet with the manager and restaurant owner. Sarah and her occupational therapist previously applied for a SAR which detailed the information the police currently hold about her convictions. Although Sarah knows she does not need to reveal her criminal convictions (this job does not fall under the category of regulated work) she would be required to reveal convictions if her employers ask. She is anxious about what she should do. Sarah's plans to apply for work are discussed and supported by the mental health team treating Sarah in the community. The occupational therapist and Sarah revise and update her WRAP for work which was completed previously for her voluntary job, they review her CV and quickly prepare for her meeting with the restaurant owner. Sarah has references from her voluntary work and her portfolio of achievement complete with pictures of food she prepares in the cafe.

Following Sarah's meeting she is offered the job on a 3 month trial basis and is keen to prove herself. The employer did not ask about her criminal convictions or mental health condition and Sarah reported she had simply mentioned she had some health issues previously though these were no longer an issue. Sarah therefore has a dilemma on

whether to disclose or not. As legally Sarah does not need to disclose she decides only to disclose her mental health condition to the manager in a letter once she has completed her three month trial. She writes about how her voluntary work at the cafe helped her in her mental health recovery and what getting this job has meant to her personally, she did not feel able to share her WRAP with her employer but felt that a weight had been lifted from her shoulders through writing the letter. Although Sarah has not disclosed her criminal convictions she has been supported to rehearse a personal statement putting her offences into context and highlighting how far she has travelled and the length of time since these convictions so that should she need to discuss she feels better prepared.

11.3 Jacob's Story

Jacob was a final year nursing student when he was convicted of driving whilst under the influence of alcohol. He received a fine and a suspended sentence. Jacob was unable to finish his training due to the need to undertake clinical placements and knew he would be unable to practice as a nurse because of his criminal record. He was devastated at the realisation that he could not fulfil his ambition to become a nurse. He was now unemployed, and began to lose contact with his friends many of whom were now practising as nurses. He was diagnosed with depression and spent long periods of time alone. Although in general his concentration was poor he found reading was one of the only things he was interested in, finding it a form of escapism.

Key points considered in this case

- **Use of self employment**
- **WRAP for work**
- **Patient empowered to manage their personal information**
- **Pre-rehearsed phrase to put convictions into context**
- **Use of a letter to the employer**

Jacob was prescribed course of CBT which helped to some extent but he was still spending the majority of his time alone and he began to relapse. With his negative thoughts re-emerging Jacob was referred to an occupational therapist where they discussed how he was spending his time, he completed a WRAP and he was asked about his aspirations for the future which included discussions about work. Jacob shared his passion for reading and literature. English had always been a subject he enjoyed at school, and he'd gained a high grade in his exams.

The occupational asked if this was an area he could see himself working in? His interest lay in this area and with support he began to apply for jobs. He passed an online test with a freelance proof reading company and began to take on assignments. As he was self employed he was not asked about his convictions or his mental health. Jacob then decided to apply for positions with national newspapers, a marketing firm and copy editors. When completing applications he was supported to explain in a covering letter the nature of his offence, about his regret and subsequent journey. He began to be offered interviews and was eventually offered a job within a small marketing company. Jacob described the process as challenging with a few set-backs along the way but his employers were sympathetic to his explanation of the offence and he welcomed the opportunity to prepare in advance. Jacob is also aware five years after his offence it is now considered spent, however his driving licence will be endorsed for 11 years which may be a consideration if he ever wants to apply for a position which requires driving. He has decided to apply for a SAR as a means to confirm that his driving conviction is now considered spent. Jacob also wished to share the fact that he is now no longer on any anti-depressants and feels hopeful for the future.

12.0 PERSONAL INFORMATION PLAN

12.1 Case Example (letter should be individualised)

Detailed below is an example of a personal information plan PIP that was completed early in a person's recovery journey whilst an in-patient in a medium secure setting. The PIP was then used and adapted by the person to develop a covering letter when they applied for a post in the community. This person coped well with managing their sensitive personal information effectively and benefitted from preparing for this early on in their recovery journey. The OT and community OT supported this person to consider this process throughout.

Personal Information Plan

This Personal Information plan was completed by a person who was an in-patient in medium secure unit. He had some access to a small number of passes at the time and was considering his future work role. He worked alongside OT to think around sensitive personal information and how best to convey this. At this point the person was considering this in a broad sense. Thinking around how he would answer questions at interview or answer questions from people he knew regarding what he had been doing for the past six years. He used this preparatory work to assist him in answering questions at interview for courses and projects. The PIP is detailed below:

“Due to a difficult period in my life I fell mentally ill and resorted to drugs and drink to cope. This led to an offence and I was then admitted to hospital for six years. Since then I have turned my life around. I have now recovered from mental illness and have not touched drugs and alcohol in over six years. I am now looking to further my recovery through education and work. I now have a positive view for the future”.

Covering Letter

The person was discharged from hospital and worked alongside the Community OT to further develop his work role. At this time the person had engaged in a variety of skill development courses and projects and was looking to apply for food related jobs. The person worked alongside the community OT to adapt the PIP into a personal letter which accompanied application. The covering letter is detailed below:

To whom it may concern,

I am really interested in the position of Pastry Chef within your restaurant. I have relevant experience in a similar post and would welcome to opportunity to meet with you and share my skills.

Four years ago I was diagnosed with a mental health condition and I turned to drink and drugs to cope. As a result I spent some time in hospital, hence the gap in my CV. I've now grown and developed as a person. I'm much more responsible, reliable and trustworthy and keen to get back to work. Since being in hospital I have turned my life around, I'm mentally well and have good support systems. I am keen to continue turning my life around and give something back to society and the community.

I have a passion for cooking and believe I am good at it. I have been working voluntary at the Recovery Cafe keeping my skills up to date and am now looking to move into paid work.

Thank you for reading this letter and considering me for the post. I hope we can work together in the future.

Yours sincerely,
Mr Anonymous

13.0 GLOSSARY OF TERMS

PVG – Protection of Vulnerable Groups

MAPPA - Multi Agency Public Protection Arrangements involving inter-agency co-operation to assess and manage the 'critical few' offenders that post the highest risk

HNC – Higher National Certificate

LOD – Letter of Disclosure

PIP – Personal Information Plan

RMO – Registered Medical Officer

MDT – Multi-disciplinary Team

SUS - means suspension of detention from hospital (granted under section 224 of the 2003 Act for restricted patients)

Restricted Patients - Are mentally disordered offenders who are detained in hospital for treatment or treated in the community and subject to monitoring and special controls by ministers from the Scottish Government.

APPENDIX 1: PVG Scheme

In February 2011, the Scottish Government introduced a new membership scheme to replace and improve upon the current disclosure arrangements for people who work with vulnerable groups.

Protection Services check:

- **If an individual is barred from working with children and/or protected adults?**

They will be refused PVG Scheme Membership. This means they cannot work with the workforce they are barred with i.e. children or/and vulnerable adults

- **If an individual is not barred from working with children and/or protected adults.**

A search will be carried out to check for vetting information (e.g. convictions, cautions, children's hearing findings, other relevant information from the police).

- **If there is no vetting information or it does not have a bearing on the individuals suitability to do regulated work.**

The PVG Scheme Membership certificate will be issued

Once an individual is a PVG Scheme Member?

All PVG Scheme Members are subject to ongoing monitoring (continuous updating). This means that PVG Scheme Members vetting information is kept up-to-date and if there is new information this will be assessed to determine if they are suitable to do regulated work with children and/or protected adults.

Please Note: the contact number is now 0870 609 6006

14.0 REFERENCES

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Scottish Government (2012) Mental Health Strategy. St Andrews House: Edinburgh <http://www.scotland.gov.uk/publications/2012/08/9714>

Scottish Government (2012) AHPs as agents of change in health and social care; The National Delivery Plan for the Allied Health Professions in Scotland St Andrews House: Edinburgh

<http://www.scotland.gov.uk/resource/0039/00395491.pdf>

15.0 USEFUL RESOURCES

NACRO DVD on Disclosing Criminal Record

<https://www.nacro.org.uk/in-the-news/disclosing-criminal-records-video-launched,1873,NAP.html>

Recruit with Conviction <http://www.recruitwithconviction.org.uk/>

Redkite Training DVD

Scottish Recovery Network

<http://www.scottishrecovery.net/WRAP/wellness-recovery-actions-planning.html>

PVG Scheme Telephone Helpline: 08706096006

Childrens Law Centre

<http://www.childrenslawcentre.org.uk/index.php/publications>