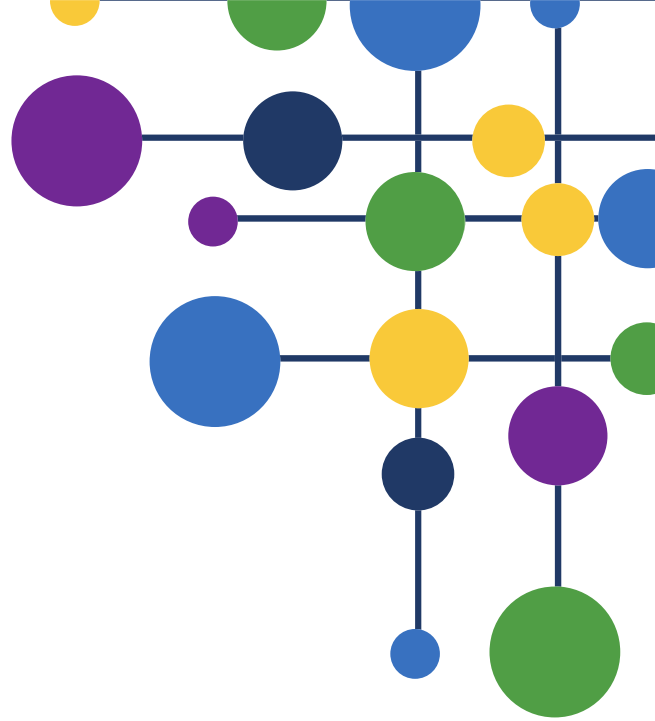


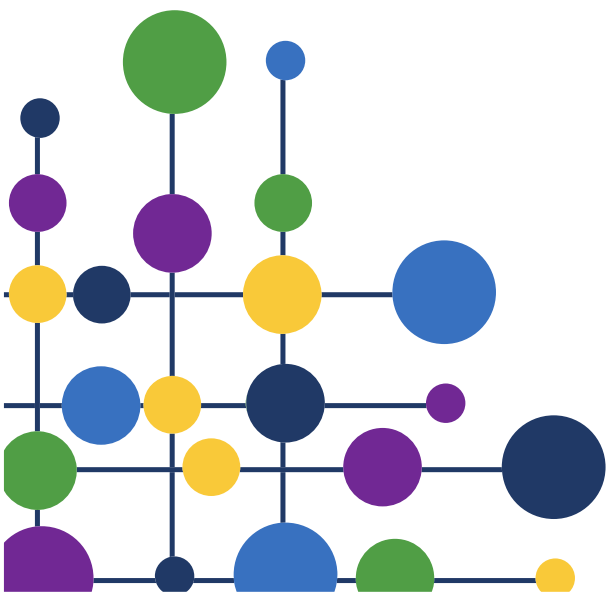


**SHARE**  
MULTI-ACADEMY TRUST



# RECRUITMENT POLICY AND PROCEDURE

Version	2.4
Name of policy writer	Debbie Howard
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## 1. Introduction

- 1.1 The policy is based on the premise that the trust will ensure that fair, consistent and objective processes exist for matters relating to recruitment and selection of staff and volunteers.
- 1.2 Regardless of the size or nature of an organisation, appropriate processes require not only to be robust but also to be applied in a consistent manner to ensure the safest levels of staff recruitment. Accordingly, this policy is designed to develop and maintain an underlying culture of safeguarding awareness by observing best practice in relation to risk assessment and strategic management throughout.
- 1.3 The policy is designed to ensure that the best possible staff are recruited on the basis of their individual merits, abilities and suitability for the available advertised position, and to ensure that all individuals are given equal opportunity to apply for positions within the Trust with all applications being considered equitably and consistently.
- 1.4 Such practice will ensure that the trust embraces fully the principles of the Equality Act 2010 whilst also acting in accordance with relevant sections of data protection legislation, principally the Data Protection Act 2018 and the General Data Protection Regulation (GDPR), by clarifying its justification to obtain and retain (or process) certain categories of identifiable data.

## 2. Purpose and scope

- 2.1 This document underlies the principles enshrined in 'Inspecting safeguarding in early years, education and skills settings' (guidance for inspectors undertaking inspection under the common inspection framework – last updated September 2019) and in 'Working together to safeguard children' (statutory guidance on inter-agency working to safeguard and promote the welfare of children – July 2018, updated December 2020) as well as the documents entitled 'School Staffing (England) (Amendment) Regulations 2012' and 'Keeping Children Safe in Education 2022'.
- 2.2 The purpose is to ensure that a fair and consistent procedure is applied to all employees, having regard to the nature of their employment.
- 2.3 The purpose is also to ensure that safer recruitment procedures are followed in line with best practice to identify people who may be unsuitable to work with children, and additionally to ensure that those who come into regular contact with pupils (this may include individuals such as volunteers, contractors (and their employees) and supply staff) are checked as to their suitability.
- 2.4 It is important that all staff have appropriate training, induction and appraisal so that they understand their roles and responsibilities and are confident about carrying them out.
- 2.5 These procedures apply to all employees (and potential employees) of the trust. Nothing in these procedures is intended to contravene the statutory rights, duties and obligations of those individuals.



### 3. Preliminary review prior to recruitment

- 3.1 Any vacancy presents an opportunity to consider restructuring or to reassess the requirements of the post within the context of the trust / individual academy's development plan and budgetary constraints.
- 3.2 Valid considerations include any change in the functions of the post, any alterations to the post in relation to new technologies or any new work patterns etc. Addressing these issues will help to clarify the precise requirements of the post and how it fits into the overall staffing structure of the organisation.
- 3.3 The departure of a member of staff represents an opportunity to gain useful information about their role which, over time, may have evolved beyond the parameters of the existing job description. Such information may help to clarify requirements before a decision is taken as to whether the role should be advertised in an identical or amended format (or indeed my further inform debate as to the need for a direct replacement).
- 3.4 It is considered good practice to conduct exit interviews or hold discussions with the current (that is the departing) jobholder as this will provide useful information about the role.
- 3.5 If an exit interview cannot be arranged prior to the employee leaving, an appropriate questionnaire can be posted to their home address (or emailed) to allow them an opportunity to respond. In exceptional cases the employee may wish the exit interview to be conducted by someone other than their line manager and this should be accommodated where possible (for instance an HR Advisor could undertake that task).

### 4. Planning Process

- 4.1 It is important that sufficient time is allowed to plan for recruitment. Relevant elements include: drawing up the job description and person specification; deciding on the appropriate media for advertising; drafting the advertisement and preparing recruitment pack information; and ensuring that all staff involved in the recruitment process are fully aware of their responsibilities.
- 4.2 For some posts there may be in addition to a face to face interview, in-tray exercises and other activities which will require to be factored into the timeline for the final assessment process.

### 5. Selection Panel

- 5.1 In line with safeguarding requirements, it is mandatory that **at least** one member of every recruitment panel has undergone appropriate training in safer recruitment.



- 5.2 Such training courses are no longer accredited at a national level, however training providers must cover, as a minimum, the content of the latest version of the document 'Keeping Children Safe in Education'.
- 5.3 The selection panel should normally consist of at least two managers (or senior postholders) who have the authority to make appointment decisions, please refer to the trusts' Scheme of Delegation.
- 5.4 Senior Leadership Team posts must be recruited to in accordance with the Scheme of Delegation.
- 5.5 The panel members must:
- agree the job specification before carrying out the shortlisting process;
  - agree the questions to be asked at interview (and any assessment activities that are part of the recruitment process);
  - agree to appoint a chair whose role is to co-ordinate;
  - ensure that the interview process is conducted fairly and without discrimination.

## 6. Job Description

- 6.1 The job description should detail the underlying purpose and principal tasks of the role.
- 6.2 The job description should be reviewed regularly to ensure that the duties as detailed continue to reflect, in an accurate manner, the practical nature of the role.
- 6.3 The job description should also be reviewed to ensure fitness for purpose whenever a post becomes vacant.
- 6.4 All job descriptions should be free of bias such as age, gender and disability. They should specify:
- the main purpose and tasks of the job;
  - the scope of the job – expanding on the main tasks and importance of the job, including the number of people to supervise;
  - and should also clarify the band/pay range of post.
- 6.5 An accurate job description is essential for all posts in the staffing structure. It should include a statement of responsibility and requirements for safeguarding and can act as a guide to induction and training in addition to enabling prospective applicants to assess their suitability for the role.
- 6.6 The job description also provides the basis for drawing up a person specification, which is effectively a profile of the skills and aptitudes considered essential, or in some cases merely desirable, in the postholder.



## 7. Person Specification

- 7.1 The person specification represents a framework of the qualifications, skills, experience, knowledge and other attributes (selection criteria) which a candidate must possess to perform the duties of the role in a satisfactory manner.
- 7.2 Drawing up the person specification allows the trust to profile the ideal person to fill the job. It is very important that the criteria cited in the person specification are related precisely to the needs of the job. If these are inflated beyond what is necessary for effective job performance, there is a risk that an individual may be employed on the basis of false hopes and aspirations, in which event both employer and employee may end up disappointed in each other.
- 7.3 Another good reason not to set unnecessary requirements is to avoid any possibility of discrimination against an identifiable group of potential applicants. The process of drafting a job description and person specification should help the employer to develop and implement a policy of equal opportunity in the recruitment and selection of employees.
- 7.4 Factors to consider when drawing up the person specification include:
- the skills, knowledge and aptitudes directly related to the job;
  - the type and level of experience necessary;
  - the competencies necessary (including, where appropriate, any requirement for fluency in spoken English);
  - the required level of education and training (but only so far as is necessary for satisfactory job performance).
- 7.5 Any specified criteria relating to personal qualities or circumstances must be directly related to the requirements of the job. These criteria must be applied equally to all individuals and must not discriminate on grounds of age, disability, race (or nationality), religion or belief, gender (including transgender), pregnancy (or maternity), sexual orientation, marital or civil partnership status, or whether the individual is or is not a member of a trade union. To act otherwise is potentially discriminatory.
- 7.6 The criteria must be categorised as either essential or desirable; essential being applicable to those criteria which the applicant must possess to perform the role adequately and desirable being applicable to those criteria which would enhance performance from the outset but which (if not initially possessed) could be developed over time with training.

## 8. Advertisement

- 8.1 Any advertisement needs to be designed and presented effectively to ensure the right candidates are attracted. Advertisements must be tailored to the level of the target audience and should always be clearly worded and easily understood.
- 8.2 Advertisements must be non-discriminatory and should avoid any gender or culturally specific language. To support this, the Trust should include in the advert its statement



of commitment to equal opportunities, which will confirm the employer as one which will welcome applications from all sections of the community.

- 8.3 All advertisements, whether for internal or external placement, should carry the same information. To avoid accusations of age discrimination it is advisable not to use such phrases as 'young and dynamic', 'would suit someone who has just qualified', 'minimum of ten years' experience' or similar, as these may lead to age bias.
- 8.4 In terms of a 'genuine occupational requirement' (GOR), it is permissible to advertise for a person of a particular age, gender, race, religion etc. provided the employer can demonstrate there is a specific requirement and that the action is proportionate to the aim, in other words that this cannot reasonably be achieved by any other means. It is good practice that a statement to this effect is added to any advertisement that contains a GOR, specifying that this particular requirement is 'permitted under Schedule 9, part 1 of the Equality Act 2010' which is deemed relevant to the circumstances.
- 8.5 The trust's equal opportunities statement must be included in the advert, this is "*Share MAT is committed to safeguarding and promoting the welfare of children and young people and expects staff and volunteers to share this commitment*".
- 8.6 The job description and person specification will enable the selection panel to identify the key functions of the role to be advertised and the qualifications, skills, experience and attributes believed to be necessary in a successful candidate.
- 8.7 Factors to consider when drafting the advertisement include the following:
- keep the text short and simple while giving the main aspects of the job such as: pay, career prospects, location, contract length, suitability for job share, fixed term etc.;
  - make clear the form of reply and the closing date for applications;
  - ensure an appropriate contact name and phone number for further information and enquiries;
  - confirm the requirement for a Disclosure and Barring Check (and/or other relevant declarations) appropriate to the post.
- 8.8 It is good practice to advertise all vacancies externally to avoid any potential claim of discrimination – however, where there is a reduction in the workforce or developmental reasons, posts will be recruited from existing staff.
- 8.9 Internal recruitment can have the advantages of building on existing staff's skills and training and providing opportunities for development and promotion. This represents a good way to retain valuable employees whose skills can be further enhanced. Other advantages include the opportunity for staff to extend their competencies and skills to the benefit of both the Trust and the individual, and the enhancement of individual motivation (such as in relation to succession planning).
- 8.10 Examples of places to advertise include the following:
- commercial recruitment agencies – often specialise in particular types of work



- DfE Portal – free advertising
- national newspapers – advertising in the national press is expensive, but likely to produce a good response for senior role
- specialist and professional journals – less expensive than the national press, these journals can guarantee to reach the precise group of potential applicants for specialist and professional vacancies
- internet, microsites, school website
- local newspapers, radio – for less specialised jobs, or to target groups in a particular area
- Jobcentre Plus (DWP) – will display employers' vacancies and refer potential recruits: they also administer some of the government training programmes (the Disability Service Team staff at Jobcentre Plus can help address the specific requirements of attracting disabled people).

## 9. Application Form

- 9.1 A well-crafted application form (whether submitted as hard copy or in electronic format) can assist in the recruitment process by enabling necessary and relevant information to be provided by the applicant in relation to their experience and skills. The design of the application form needs to be realistic and should be tailored to the available position.
- 9.2 In accordance with data protection legislation (most pertinently GDPR) any requests for personal information must be confined to elements which can be justified as necessary for the process of recruitment, or (in relation to the successful candidate only) necessary for contractual purposes of employment. In this regard the application form may reference the Trust's privacy notice, and signpost where this will be found.
- 9.3 The application form should always make reference to the employer's protocols in relation to employment of individuals with a previous criminal record.
- 9.4 The use of a well-designed application form has advantages in providing the required information in the format desired by the recruiter, thus providing the basis for the initial sift prior to shortlisting and interview. The application form should provide a record of experience and qualifications which is easy to follow if the form is completed accurately.
- 9.5 The trust will request all applicants to complete a safeguarding declaration\* appropriate to the specific post being advertised. The relevant declaration can be included in the applicant pack/application form, and serves to confirm that the applicant is neither on a relevant barred list nor disqualified from working with children etc. Completion of the declaration will additionally ensure that (in the event of their application being successful) the individual is under an obligation to inform the headteacher immediately in the event of any of the clauses in the declaration becoming applicable at some point in the future (throughout the duration of their employment).
- 9.6 A minimum of two references must be obtained, one of which should always be from





the applicant's current (or last) employer (and must be from the headteacher if the last or current employer is a school), and this requirement should be outlined clearly within the applicant pack/application form. Any reference obtained from a school should be signed by the Headteacher.

- 9.7 Any information which has potential relevance to protected characteristics under the Equality Act 2010, such as title (revealing gender and, in some cases, marital status), name (possibly revealing ethnic origin) or date of birth (revealing age) but which may legitimately be requested for monitoring purposes (to evidence compliance with legal requirements guarding against discrimination) should be clearly shown to be for this purpose only and should be recorded on a separate sheet or tear-off section. (See section 11 for further information on monitoring of demographics.)
- 9.8 If the applicant's response on the application form declares or suggests that they are disabled, the recruiting panel should take note of this. In the case of disability, the potential employer has a legal duty under the Equality Act 2010 to make reasonable adjustments, for example by holding the interview in an easily accessible room or allowing extra time for selection tests.

## 10. Criminal records considerations

- 10.1 The trust will reference (within the applicant pack/application form) the requirement for Disclosure and Barring Service (DBS) checks for relevant roles and will if necessary clarify the trust's policy on employing people with a criminal record.
- 10.2 Applicants are not required to declare information relating to criminal records when responding to a self-disclosure request or when completing a job application form. Employers must not take any such information into account when assessing an applicant's suitability for a post.
- 10.3 DBS guidance suggests that organisations use the following questions (to which the answer must be either 'yes' or 'no') as a template for their own recruitment processes:

*Do you have any unspent conditional cautions or convictions under the Rehabilitation of Offenders Act 1974?*

*Do you have any adult cautions (simple or conditional) or spent convictions that are not protected as defined by the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2020?*

- 10.4 The following paragraph should also be included in the application form within the section for employing people with a criminal record:

*The amendments to the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (2013 and 2020) provide that when applying for certain jobs and activities, certain convictions and cautions are considered 'protected'. This means that they do not need to be disclosed to employers, and if they are disclosed, employers cannot take them into account. Guidance about whether a conviction or caution should be disclosed can be found on the Ministry of Justice website:*





*<https://www.gov.uk/government/publications/new-guidance-on-the-rehabilitation-of-offenders-act-1974>. Further advice and guidance may be obtained from NACRO or Unlock.*

- 10.5 It should be noted that in line with safer recruitment procedures, it is recommended that only those applicants who are shortlisted should be asked to disclose any criminal convictions. Additionally, it is necessary for applicants to be provided with information on where to access relevant advice (such as from NACRO or Unlock) before details of convictions are submitted, and applicants must therefore be given time to access this information and advice. Accordingly, to allow sufficient time, this should be done after shortlisting is completed but before interviews take place. (Note that supplying information pertaining to the disclosure of convictions on the organisation's application form is helpful in meeting your obligations in this regard.)
- 10.6 DBS guidance states that employers should conduct a case-by-case analysis of any convictions and cautions disclosed and consider how, if at all, they are relevant to the position sought. It also states that it would be advisable for the employer to keep records of the reasons for any employment decision (and in particular rejections), including whether any convictions or cautions were taken into account and, if so, why.

## **11. Applicant Pack**

- 11.1 The principal aim of the applicant pack is to clarify the role in sufficient detail as to encourage applications from those individuals most suited to the role. The pack may contain:
- a covering letter explaining contents and further information;
  - a copy of the advertisement (which in turn should specify if fluency in spoken English is a necessary requirement of the post);
  - an application form with equal opportunities monitoring form attached;
  - advice on how to complete the form;
  - job description and person specification;
  - Trust and/or academy chart (reporting lines etc.);
  - information about the school/profile/prospectus/statistical information;
  - information about the local area;
  - outline terms and conditions of employment;
  - the employer's Disclosure and Barring Service (DBS) checks policy;
  - confirm CVs will not be accepted;
  - details of other pre-employment checks (including those related to disqualification where relevant).
- 11.2 The applicant pack should explain the application process and clarify both the closing date and, ideally, the date(s) on which interviews (and assessments, if applicable) will be held. It should also confirm that if the applicant has not heard from the Trust within two weeks of the closing date, they should assume that their application has been unsuccessful.



- 11.3 Application forms received from candidates should be scrutinised on arrival by an administrator independent of the selection panel to ensure that they are properly completed and that the information contained within them is consistent. Having ensured their acceptability on these points the administrator should then anonymise the application by removing all identifiable information before the relevant sections are passed to the recruitment panel for shortlisting.
- 11.4 Incomplete applications must not be accepted. A decision should be made at the outset of the process as to whether any applications that are found to be incomplete are to be returned for completion or discarded.

## 12. Demographic Monitoring

- 12.1 The Equality Act 2010 makes it unlawful for employers to discriminate against job applicants as well as existing workers because of a 'protected characteristic'.
- 12.2 The protected characteristics under this act are (in alphabetical order): age; disability, gender reassignment, marital or civil partnership status, pregnancy and maternity, race (or nationality), religion or belief, sex and sexual orientation. It is similarly illegal (under different legislation) to discriminate on the basis of membership (or non-membership) of a trade union.
- 12.3 To minimise the possibility of receiving a claim alleging discrimination, it is good practice to ensure that the initial stage of demographic monitoring is carried out (on initial receipt of the completed application forms) by an administrator independent of the selection panel.
- 12.4 The separate elements of each application form should be identified on the recruitment summary sheet using the number allocated to each form, and any personal identifiers, as well as any demographic information, detached from the application before the remaining element of the form (containing details of qualifications, training, current and previous employment plus the applicant's personal statement) is sent (in anonymised format) by the administrator to the appointment panel once the closing date has been reached.
- 12.5 The appointment panel should then proceed with shortlisting by reference to anonymised applications only.
- 12.6 The completed summary sheet (in anonymised format) should be kept within the recruitment file but all identifiable data relating to the unsuccessful candidates should be retained securely until disposed of.
- 12.7 Demographic data, consisting of information (contained within the equal opportunities monitoring form – completion of which remains optional for the candidate) which constitutes a discrete and anonymised element within the application pack, can, however, be retained indefinitely (on the basis that it contains no identifiable data) for the purposes of monitoring the employer's performance in relation to equal opportunities and related concepts.



### 13. Shortlisting

- 13.1 The shortlist should be drawn up as soon as possible after the closing date and to ensure fairness the process of shortlisting should involve an absolute minimum of two members of the recruitment panel. Shortlisted candidates are chosen on the basis of a comparison of the information provided in their (anonymised) application forms with the person specification, which is in turn based upon the job description.
- 13.2 The shortlisting grid/matrix should only be completed after application forms have been numbered and have had their identifying information (including demographic data) removed (by someone not involved in the shortlisting process) in order to ensure a systematic and objective procedure is followed.
- 13.3 The chosen criteria for the post should be entered on the grid and each applicant's number should be inserted. The criteria should then be compared to the information supplied in the application form, inserting a tick or a cross to indicate whether or not these have been met. The columns should then be totalled.
- 13.4 A clear distinction should be maintained between essential and desirable criteria, and any candidate who does not meet the essential criteria should not be shortlisted for interview. Desirable criteria can be used to further differentiate between those who have satisfied the essential criteria, if the shortlist is longer than required in terms of practicality.
- 13.5 In the event of job applications being received from more than one applicant with a view to the role being undertaken on a job share basis, equal consideration must be given to such proposals, although in these circumstances each applicant is required to be assessed for the role on the merits of their **individual** application.
- 13.6 Once shortlisting is completed, the record on the summary sheet for candidates who have been excluded from further consideration at this juncture should be updated by an administrator with the principal reason(s) for their exclusion documented in the appropriate location.
- 13.7 In accordance with KCSIE 2022, the academy will give consideration to online searches\* on shortlisted candidates for employment (as well as individuals under serious consideration for volunteer roles) as part of their due diligence before any person is confirmed as a new member of staff. This is to ensure that all persons to be interviewed are suitable to work with children and keep them safe.
- 13.8 All shortlisted candidates should be made aware that they may be subject to an online check and that if anything of concern emerges from this they will be asked to comment on it at interview.
- 13.9 Following interviews (and/or additional assessments as and when appropriate), once a decision has been reached to offer the position to the chosen candidate, details of all unsuccessful candidates should be passed to administration for the summary sheet



to be similarly updated with the principal reason(s) for their exclusion from further consideration.

- 13.10 If there is a poor field of applicants, and only one applicant meets the essential criteria, that person may be appointed to the position. However, this should only be after a face-to-face interview has been undertaken to satisfy the recruitment panel as to the individual's suitability for the role in question.

## 14. References

- 14.1 Any offer of employment must be conditional upon provision of satisfactory references (in addition to other pre-employment checks). The purpose of seeking references is to obtain information (which must in every case be accurate, factual and not misleading) to support appointment decisions.
- 14.2 The application form requests two references, one of which must be from the candidate's current (or most recent) employer and from the headteacher if the current or most recent employer is a school. Character references may be acceptable in the absence of a suitable employment history but neither referee should be a relative or someone known to the applicant solely as a friend.
- 14.3 The application form reserves the right of the prospective employer to approach any of the candidate's previous employers, and if the candidate has previously worked with children but their current (or most recent) employment does not (or did not) involve work with children, then one reference should be from the employer with whom the applicant most recently worked with children.
- 14.4 References should always be sought and obtained directly from the referee, and sufficient diligence should be undertaken to ensure not only that all referees are genuine but also that they are in a position of validity in relation to the provision of a reference. For example, any reference which is provided on school headed paper but has been signed by a person other than a Headteacher should (given that it purports to emanate from the school) have been reviewed (before being issued) by a person in authority and this should be confirmed that this is indeed the case.
- 14.5 A copy of the job description should be included with the reference request, which should make clear that only objective and verifiable information is sought. It is vital that subjective opinion should not be encouraged.
- 14.6 As soon as shortlisting has taken place, references will be sought for all shortlisted external candidates and should also be requested for shortlisted internal candidates if the new role involves a significant change of responsibilities (although in the case of the latter these should always be sourced from an individual manager who is not personally involved in the shortlisting/interview process).
- 14.7 When seeking references, the trust should make clear that although these are to be regarded as confidential, they may be shared with other persons involved in the recruitment process and may also be shared with the candidate upon request.
- 14.8 The consent of the applicant should always be obtained before seeking a reference, and although this may be implied (on the application form) it is appropriate to seek



and obtain explicit consent from the applicant if sensitive personal data (such as details of sickness absence or health) is to be requested from the referee (unless this is stated clearly on the application form). A referee may request sight of such consent before responding.

- 14.9 References should (where possible, and with the candidate's permission) be obtained before interview. All references received should be compared to the information supplied in the candidate's application form to ensure consistency and compatibility throughout. Any apparent discrepancy should be taken up with the candidate.
- 14.10 The current employers of all short-listed candidates will, within the reference request, also be asked for details of any capability history in the previous two years. The reasons for this are as enshrined in the School Staffing Regulations (England) (Amendment) 2012:
- 'Governing bodies of maintained schools must confirm in writing whether or not a teacher at the school has been the subject of capability procedures within the last two years and, if so, provide details of the concerns which gave rise to this, the duration of the proceedings and their outcome, if asked to do so by the governing body of any maintained school or the proprietor of an academy school to which that person has applied for a teaching post.'*
- 14.11 It is further recommended that the previous employer should be asked for details of:
- whether or not the applicant has been subject to any disciplinary procedures for which a disciplinary sanction is still current;
  - any disciplinary procedures (where the applicant's previous employment has involved working with children or young people) involving issues related to the safety and welfare of children or young people to which the applicant has been subject, such details to include the outcome of those procedures (inclusive of details of any relevant disciplinary sanction which may have since expired);
  - any allegations or concerns that have been raised about the applicant that relate to the safety and welfare of children or young people, or questionable behaviour towards children or young people, and the outcomes of those concerns (for example whether the allegation or concern was investigated, the conclusion reached and how the matter was resolved).
- 14.12 It is particularly important that the question relating to working with vulnerable groups is asked whenever a reference is requested.
- 14.13 In the event that a reference in respect of the preferred candidate has not been obtained prior to interview, the trust will ensure that a reference is received and scrutinised, and that any concerns are resolved to its satisfaction, before an offer of appointment is confirmed. If the reference is vague or unspecific, the referee should be contacted and requested to provide further information (preferably in writing) as appropriate.
- 14.14 The trust will not accept 'to whom it may concern' testimonials or unsolicited correspondence supplied by the candidate.



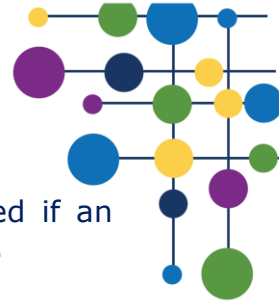
## 15. Invitation to Interview

- 15.1 Candidates for interview should be informed of their shortlisting in a letter that contains a detailed programme for the interview day(s) including:
- any preparation required by candidates (such as for a presentation or lesson);
  - an indication of the time the process is anticipated to take;
  - a location map or instructions relating to the interview venue.
- 15.2 Disabled candidates should be contacted in writing (normally through the invitation letter) to ascertain what arrangements/reasonable adjustments may be required to enable them to participate fully in the interview/assessment process.
- 15.3 Where relevant, the invitation should advise candidates that any issues arising from references will be discussed at interview.
- 15.4 In order to comply with legal requirements in a way that avoids claims of discrimination, all prospective employees should be asked to prove both their identity and their eligibility to work in the UK. Photographic proof of identity (such as a passport) should be presented for verification at interview and a record should be kept in relation to the date and means by which the individual's identity has been verified (and additionally stating when and by whom such verification was undertaken).
- 15.5 It is therefore important to include, within the invitation letter sent to candidates, advice about the appropriate original documents to be brought to interview in order to establish both proof of identity and proof of the applicant's right to work in the UK. The relevant documents should be checked, verified, copied and signed by the designated administrator and kept on file for the successful candidate.
- 15.6 Candidates should also be asked to bring to the interview, for verification purposes, original documentation in relation to their qualifications. Once again copies should be obtained, checked and copied and kept on file for the successful candidate. If originals are not available a letter of confirmation from the awarding institution should be obtained from the candidate.

## 16. Final Selection Process

- 16.1 The aim of the selection process is to measure the skills, abilities (or competencies) and experience of the shortlisted candidates against the requirements identified in the person specification. An interview should take place with all candidates who have been shortlisted but it may be appropriate to use selection tests to complement the process.
- 16.2 The academy will consider where relevant, the observation of trial lessons as part of an extended interview process (in line with the School Staffing (England) (Amendment) Regulations 2012).
- 16.3 The academy will ensure that tests for job applicants are not unlawfully discriminatory. For example, a written English test would discriminate against those





whose first language may not be English – although this could be justified if an acceptable level of proficiency with written English was necessary for the job.

- 16.4 Examples of suitable tasks to be undertaken as part of an assessment might include the following: in-tray exercises; presentations; observed group discussion or lessons; group problem-solving activities; small panel interviews or practical skills demonstration.
- 16.5 It is good practice for candidates (particularly those who have been shortlisted) to have an opportunity (prior to interview) to see the academy and pupils at work. This may involve some pupils in showing interviewees around the premises in the company of a senior staff member.

## 17. Interview

- 17.1 The key purpose of a selection interview is to assess the skills, experience and general background of a particular individual in order to make a decision on whether that person is a suitable (or the most suitable) candidate for the role in question. Interviewing is the most commonly used method of assessing prospective employees and the selection process should always include a face-to-face interview unless this is logistically impractical.
- 17.2 The interview should also be a forum through which each candidate can obtain information about the organisation and the vacant job. The selection interview should be structured around a two-way communication process.
- 17.3 The format of the interview should be the same for each candidate to help ensure that all shortlisted individuals undergo a similar experience and receive the same information about the post. However, this does not mean identical questions must be asked of each candidate (and if any issues of concern have arisen (from, for instance, an online search) then appropriate enquiry should be made at this point to satisfy the recruitment panel that the candidate is suitable to work with children).
- 17.4 Managers involved in recruitment have a duty to conduct selection interviews fairly and without bias for or against any particular candidate. Reasonable adjustments must be made for disabled candidates who have requested special arrangements, to ensure that they are not placed at a disadvantage.
- 17.5 Questions asked at interview should be designed to obtain relevant information about the applicant's experience and skills. The interview also represents an opportunity to check facts, test achievement and assess aptitude and potential, and questions should in addition explore attitudes and motives in relation to working with children as well as specifically probing any gaps within a candidate's employment history as indicated on their application.
- 17.6 Safeguarding guidance recommends that competency based questions should be used which ask the candidate to 'relate how (they) dealt with an actual situation' or questions that 'test a candidate's attitudes and understanding of issues'. Please consult with HR for additional advice regarding both competency and value based





interview questions.

- 17.7 It is potentially discriminatory (on the grounds of disability) to ask a job applicant questions about his or her health or disability before making a job offer to that person, although there are some exceptions to this rule in that during an interview. It is legitimate to establish whether the applicant is able to carry out 'a function that is intrinsic to the work' and (less commonly) to make sure the candidate possesses any specific disability that may be deemed necessary as a general occupational requirement (GOR) for that role.
- 17.8 The use of an assessment grid to record conclusions is highly recommended to encourage a systematic and objective approach that can be readily justified in the event of subsequent challenge.
- 17.9 The recruitment panel should be aware of any candidate being in receipt of an ill health pension and in such instances should confirm with the applicant whether they would be eligible to undertake paid work under their pension scheme rules.
- 17.10 In safer recruitment procedures applicants should not be asked verbally during the interview whether they have any criminal cautions or convictions that would prevent them from working with children. To do so would not allow them access to the independent advice they are entitled to obtain in relation to what they are legally obliged to disclose.
- 17.11 In the event that the applicant inadvertently discloses protection cautions or convictions, this information should not be taken into account regarding their suitability for the post, as this would be unlawful.
- 17.12 All candidates attending for interview should be informed how and when decisions on recruitment will be communicated to them.

## **18. Record Keeping**

- 18.1 The academy must always be able to justify the decision to recruit a particular person in preference to other applicants. It is therefore necessary to document the process as much as possible, and at interview, sufficient time should be allocated between each candidate for panel members to record appropriate information to evidence the eventual recruitment decision reached.
- 18.2 Such notes should be retained, along with assessment grids or matrices and application forms (along with demographic information) from all candidates, for as long as is required in order that objective evidence is at hand in the event of a recruitment decision being challenged by an unsuccessful candidate.
- 18.3 Relevant information relating to candidates who have not been appointed should therefore be kept on record in the short term (although this should always be in accordance with data protection legislation and the Trust's relevant policies and procedures) to offer security (as outlined above) in the event of subsequent legal challenge.
- 18.4 Such information may also legitimately be retained and referred to in the event of the



initial chosen candidate's appointment falling through, or a similar position within the trust becoming available in the near future, as it may be considered acceptable, within a matter of a few weeks or months, to offer such a position to a candidate who has narrowly missed out on being appointed.

- 18.5 Notwithstanding the above, in normal circumstances any identifiable data relating to unsuccessful candidates should be deleted after a period of no longer than six months, although information relating to a successful candidate will of course be retained within their individual personnel file, subject to appropriate justification under GDPR, for the duration of their employment.

## 19. Conditional Offer of Appointment

- 19.1 A conditional offer of appointment should always be made in the first instance; as official confirmation of employment is dependent on a number of conditions (outlined below) being satisfied. This requirement is designed to minimise the risk of appointing unsuitable staff.
- 19.2 Any job offer extended to a candidate must therefore always be conditional on relevant pre-employment checks being not only completed but also proving satisfactory. The trust will ensure that robust vetting procedures are in place to support this objective.
- 19.3 These conditions will include provision of at least two satisfactory references if these have not already been received prior to interview, a satisfactory declaration of health, evidence of the employee's right to work in the UK and proof of the employee's stated qualifications.
- 19.4 It is also essential before commencing employment that the applicant's identity has been verified by comparison of their appearance to acceptable and appropriate photo ID (such as a passport or UK driving licence). It is important to be sure that the person is who they claim to be, this includes being aware of the potential for individuals changing their name. The applicant's name on their Birth Certificate, where this is available, should therefore be checked. This confirmation of identity whether carried out at the time of interview or at a later opportunity, should always be formally documented, that is, with a record being made to confirm who and when such verification has been undertaken.
- 19.5 The conditional offer letter in addition to setting out the trust's requirement in terms of pre-employment checks, should also include the following information:
- post title and brief description;
  - terms of employment (hours, pay, etc.);
  - start date;
  - details of any probationary period.
- 19.6 The appointment should only be officially confirmed, by means of issuing a contract of employment which should either incorporate or be accompanied by a statement of



particulars, once the conditions specified in the conditional offer letter have been met (and on the rare occasion when an employee commences work before those conditions – other than satisfactory completion of a probationary period – have been met, it is good practice to make clear in the contract that continued employment is still dependent on all such conditions being satisfied.

- 19.7 Providing false information to a prospective employer whether in relation to the initial application or to any pre-employment check, is an offence that could result in the application being rejected, or in summary dismissal if the applicant has already been appointed.

## 20. Pre-employment Checks

- 20.1 Whilst certain pre-employment checks (further explored below) are mandatory for specified roles care must be taken by schools to ensure that they do not employ an indiscriminate approach whereby all employees regardless of circumstances, are subject to enquiries of an intrusive nature.
- 20.2 Accordingly, schools must always ensure that there is an appropriate justification for seeking to acquire, and to hold, personal (special category) data, and must similarly be conscious that this justification may not be applicable to certain data previously placed (whether or not legitimately at that time) on record (and for this reason it is inappropriate to request certain sensitive information, for instance in relation to medical history or previous convictions, from applicants unless and until there is an intention to make a conditional offer of employment to the individual).
- 20.3 A pertinent example of this may be in relation to 'disqualification by association' which is no longer applicable to staff employed within an educational setting, although schools with nurseries and/or those establishments which provide pre-school or after-school provision of a non-educational nature (such as breakfast clubs etc.) for those under the age of eight, still need to be aware that certain staff members, namely those involved either directly, or in the management of, childcare activities (as opposed to educational provision) should not be employed in such roles if they are in their own right disqualified from involvement in such care.
- 20.4 Although there is no legal obligation for an appropriate declaration to be completed to document the eligibility of such members of staff, many schools nonetheless find this to be the most expeditious method of ensuring that they are not employing staff inappropriately, and a form designed for this purpose appears as Declaration A (Declaration B being the parallel declaration for those members of staff who are not directly involved in childcare activities).
- 20.5 In the event that any pre-employment check or personal declaration reveals an unexpected disclosure, the potential or current employer must be mindful that any decision reached on the basis of such information should always be proportionate to both the nature of the disclosure and the specific role proposed for (or undertaken by) the individual – in other words there must be no blanket policy of denying employment opportunities to persons identified in this manner without an objective analysis of the situation.



- 20.6 Additionally, all educational establishments should be aware of government guidance to the effect that schools should remind all staff (not just those working with children under the age of eight) that their 'relationships and associations' (including those online) may have an implication for the safeguarding of pupils, and that if there are concerns that such contacts may be of relevance then the school should be told.
- 20.7 Schools should ensure that staff understand their duty in this regard and should include guidance to this effect in relevant policies.

## 21. Additional (DBS, prohibition from teaching and Section 128) recruitment checks and risk assessments

- 21.1 Schools can use the Teacher Regulation Agencies Employer Access to make prohibition, direction, restriction, and children's barred list checks. The service is free to use and is available via the TRA's webpage. Users will require a DfE sign in account to log onto the service.
- 21.2 All staff employed by the trust in regulated activity will undergo appropriate DBS (enhanced and barred list) checks.
- 21.3 Employees will not be allowed to work in the trust until a satisfactory DBS check has been received. In exceptional circumstances, an employee may be allowed to start earlier – provided they can provide a recent check from their previous employment and there have been a barred list check and a prohibition from teaching check. NB. Separate barred list checks **must** only be carried out in the following circumstances:
- for newly appointed staff who are engaging in regulated activity, pending the receipt of an Enhanced Certificate with Barred List information from the Disclosure and Barring Service (DBS); or,
  - where an individual has worked in a post in a school or college that brought them into regular contact with children or young persons which ended not more than three months prior to that person's appointment to the organisation.

Headteachers must seek permission from the trust's HR team before allowing somebody to work in these circumstances.

- 21.4 In addition to appropriate DBS checks and prohibition checks, it is also necessary (under a directive issued by the Secretary of State under the Education and Skills Act 2008) to undertake, in relation to the management of teaching, a Section 128 check (further details of which process are set out in KCSIE) with the Teaching Regulation Agency (TRA) before confirming:
- appointment (in any school) as a governor;
  - membership (in an independent (or free) school) of the proprietorial body; or
  - appointment (in a non-maintained school) as a manager of other personnel who are themselves directly involved in teaching.



An individual who is subject to a section 128 direction is unable to:

- take up a management position in any of the trust's academy schools as an employee;
- be a trustee of an academy within the trust or,
- be a governor on any governing body in an academy within the trust that retains or has been delegated any management responsibilities.

21.5 This is to ensure that relevant individuals have not been disqualified by the TRA from serving as a governor or from taking part (in an independent or free school) in the management of teaching (and in this context it is vital to note that **the definition of an independent school includes academies**).

21.6 Individuals who have lived or worked outside the UK **must** undergo the same checks as all other staff in the trust's schools. This includes obtaining (via the applicant) an enhanced DBS certificate (including barred list information, for those who will be engaging in regulated activity) even if the individual has never been to the UK. In addition, academies **must** make any further checks they think appropriate so that any relevant events that occurred outside the UK can be considered. Following the UK's exit from the EU, academies should apply the same approach for any individuals who have lived or worked outside the UK regardless of whether or not it was in an EEA country or the rest of the world.

These checks **could** include, where available:

- criminal records checks for overseas applicants - Home Office guidance can be found on GOV.UK; and for teaching positions
- obtaining a letter (via the applicant) from the professional regulating authority in the country (or countries) in which the applicant has worked confirming that they have not imposed any sanctions or restrictions, and or that they are aware of any reason why they may be unsuitable to teach. Applicants can find contact details of regulatory bodies in the EU/EEA and Switzerland on the [Regulated Professions database](#). Applicants can also contact the UK Centre for Professional Qualifications who will signpost them to the appropriate EEA regulatory body.

**Where available**, such evidence can be considered together with information obtained through other pre-appointment checks to help assess their suitability.

**Where this information is not available** academies should seek alternative methods of checking suitability and or undertake a risk assessment that supports informed decision making on whether to proceed with the appointment. Refer to HR for support and guidance.

Although sanctions and restrictions imposed by another regulating authority do not prevent a person from taking up teaching positions in England, academies should consider the circumstances that led to the restriction or sanction being imposed when considering a candidate's suitability for employment. Further information can be found in DfE guidance 'Recruiting Teachers from Overseas'.



Not all countries provide criminal record information, and where they do, the nature and detail of the information provided varies from country to country. Academies should be mindful that the criteria for disclosing offences in other countries often have a different threshold than those in the UK. The Home Office provides guidance on criminal records checks for overseas applicants which can be found on GOV.UK.

Some overseas qualified teachers can apply to the TRA for the award of Qualified Teacher Status (QTS) in England. NB. Holding a teaching qualification (wherever it was obtained) does not provide suitable assurances for safeguarding purposes that an individual has not been found guilty of any wrongdoing or misconduct, and or is suitable to work with children.

21.7 The SCR will document details of all relevant pre-employment checks for all members of staff, including directly employed teacher trainees, agency staff, members and trustees of the academy trust.

21.8 Pre-employment check information recorded on the SCR must indicate when each check was carried out and should (as a minimum) include the following:

- an identity check;
- an enhanced DBS check (in respect of which documentation will include the unique reference number, the date on which the certificate was issued, the identity of the individual who has scrutinised the document in question and the date when this was inspected);
- a children’s barred list check (ditto);
- a prohibition from teaching check (ditto) – this is not applicable to non-teaching staff (but see following clause);
- a section 128 check for governors of maintained schools and for management positions (including membership of the proprietorial body) in independent schools, including academies and free schools (as set out in paragraph 237 of KCSIE 2022)
- a check of professional qualifications, where applicable;
- a check to establish the person’s right to work in the United Kingdom;
- further checks on people who have lived or worked outside the UK\* (including recording checks for relevant teacher sanctions and restrictions).

*\*Individuals who have lived or worked outside the UK must undergo similar checks to all other staff in schools or colleges. More detailed advice from the Home Office on this topic can be found at: <https://www.gov.uk/government/publications/criminal-records-checks-for-overseas-applicants> .*

21.9 In addition to prohibition checks for teachers the academy will undertake similar checks in respect of any person who provides unsupervised/undirected teaching work to ensure that they are not subject to a prohibition order\*. (Although only





individuals holding QTS can be subject to a prohibition order it is not unknown for such persons to subsequently gain employment in a support staff role, which, in certain establishments, can involve carrying out a teaching role and, accordingly, it is incumbent upon schools to ensure that no person who provides unsupervised/undirected teaching work (even if not employed specifically as a teacher) is currently subject to a prohibition order.)

*\*A prohibition order is put in place by the Secretary of State for Education, most often following a determination made by the Teaching Regulation Agency (TRA), to prohibit a person from any involvement with teaching.*

- 21.10 The academy will not keep any photocopy or other image of the content of the DBS certificate (which remains the possession of the person to whom the information relates) or any equivalent certification (sourced from outside the UK). However, all DBS checks undertaken (and equivalent checks for those who have lived or worked abroad) will be documented accurately in the academy's Single Central Record (SCR).
- 21.11 The academy will also carry out (and document) a risk assessment in relation to any relevant volunteer roles, and this may, in certain circumstances, include provision to undertake further checks, although such decisions should always be proportionate to the role and the activities to be carried out by the individual concerned.
- 21.12 All temporary agency staff working in regulated activity will be DBS checked by their agency before they start work for the academy and those providing teaching services (which may, as outlined above, include certain members of support staff as well as those holding QTS) will also be prohibition order checked. The completion of such checks forms part of the agreement between the academy and the agency.
- 21.13 Written receipt of confirmation of an up to date and acceptable DBS check is required from the supply agency as is (where applicable) confirmation of the certified absence of any prohibition order. These confirmations will be documented on the academy's SCR as detailed above.
- 21.14 It is, however, vital to note that it remains the responsibility of the academy to ensure that the individual presenting himself or herself for agency teaching work at the academy is the same person on whom these checks have been carried out, and once again an additional record should be documented on the academy's SCR to confirm how, when, and by whom such verification of identity has been undertaken.
- 21.15 Each individual academy is not required to have its own separate SCR as long as all those (such as Ofsted) who may require sight of the (universal) SCR can do this easily.

## 22. Disqualification Checks

- 22.1 The Trust will request prospective employees to complete a safeguarding declaration to confirm that they are neither on a relevant barred list nor disqualified from working





with children and that they will inform the headteacher immediately in the event of any of the clauses in the declaration becoming applicable at a later date.

### **23. Right to Work Checks**

- 23.1 Permission to work in the UK is subject to legislation. It is a criminal offence to employ those who do not have permission to live or work in the UK. Under Section 35 of the Immigration Act 2016 (effective since 12 July 2016) these requirements are enforceable by a fine and potential imprisonment for up to five years where the employer “had reasonable cause to believe” that the individual was disqualified from being employed in the UK due to their immigration status.
- 23.2 The trust is subject to a legal duty to prevent illegal working. In addition to verification of their identity all prospective employees must be requested to provide the necessary documentation to demonstrate eligibility for work in the UK. Such documentation should be copied and stored securely for the duration of the person’s employment and for a further two years.

### **24. Health Checks**

- 24.1 Anyone appointed to a post involving regular contact with children or young people must be medically fit (Education (Health Standards) (England) Regulations 2003).
- 24.2 Schools are statutorily responsible for satisfying themselves that potential appointees have the appropriate level of physical and mental fitness, and accordingly a declaration of health should be completed by the prospective employee.
- 24.3 This declaration should be scrutinised by an appropriate individual or agency before an appointment offer is confirmed (and advice from occupational health (OH) may be indicated in the event of any doubt arising as to an individual’s fitness for the role in question).

### **25. Contract of Employment**

- 25.1 The Employment Rights Act 1996 requires employers to provide employees with a written statement of the main terms and conditions of employment.
- 25.2 All employers should be aware that under The Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 and The Employment Rights (Miscellaneous Amendments) Regulations 2019, all workers (the definition of worker is broader than that of employee) are entitled to be provided with specified contract documentation from the first day of their employment.

The contract, either incorporating or accompanied by a statement of particulars, should include the following elements:

- employer’s name



- employee's name
- date employment commenced (and date continuous service commenced, if earlier)
- whether the contract is permanent; fixed term (to a specified date); or temporary (to a specified circumstance, such as provision of maternity cover); or (*as and when applicable*) still dependent on certain conditions (other than satisfactory completion of a probationary period) being met
- job title
- place of work
- remuneration, specifying scale or rate of pay (or the method of calculating this) and additionally specifying any additional benefits in kind
- method and frequency of payment
- hours (and days) of work (and whether these are likely to vary in future)
- details of any probationary period
- terms and conditions (including holiday and sickness absence entitlement and pay)
- details of any compulsory training (and whether this will be paid for by the employer)
- details of notice periods (both to and from the employer), including, if applicable, any different notice period within the probationary period
- details of eligibility for statutory paid leave\* (such as maternity/paternity etc).

*\*This can be provided by means of signposting to another document with detailed information (such as a policy statement).*

- 25.3 Additional information, as detailed in the following clause, is required **either** to be included in the initial contract or statement of particulars supplied at commencement of employment **or** to be provided to the employee (or worker) no later than two months after the start of employment.
- 25.4 Such information, which can be provided either in a supplementary statement of particulars or by means of signposting to another document with detailed information (such as a policy statement) includes details of:
- pension arrangements
  - any collective agreements
  - any additional training which may be conditional on specified eligibility requirements
  - disciplinary process (which should include reference to an appeal mechanism)
  - grievance process (ditto).
- 25.5 Either the contract itself, or an accompanying statement of particulars, should also make appropriate reference to the academy's privacy notice (detailing the relevant justification for processing of identifiable data relating to the employee) and clarify where this is to be found.



## 26. Feedback to unsuccessful candidates

- 26.1 There is no requirement to give unsolicited feedback to unsuccessful candidates. Providing constructive feedback can be a difficult and delicate task, and it should only be undertaken in response to a specific request.
- 26.2 In giving feedback it is appropriate to 'describe' rather than to 'evaluate', by making reference to what happened during the particular situation (such as interview or task performance) that is the subject of the feedback. In this way, attention can be drawn to areas which made a specific impression whether favourable or unfavourable on the members of the interviewing panel.
- 26.3 Any feedback given should avoid making value judgments. Feedback should be specific and should avoid generalities. It is better to be positive where possible in preference to being overly critical, whilst reminding the candidate of the key criteria which the panel were looking for. This may be achieved by quoting examples of what the candidate may have said, or written, and how this affected the outcome.
- 26.4 It is good practice (and may be important for future reference) to record all feedback that has been provided.

## 27. Induction

- 27.1 The purpose of induction is to ensure the effective integration of staff into or across the trust to the benefit of both parties. The induction programme must be designed to provide all the information that new employees need, and are able to assimilate, without overwhelming them or diverting from the essential process of integration into a team.
- 27.2 The length and nature of the induction process will depend on the complexity of the job and the background of the (new) employee. All employees will, as a minimum, receive an academy level induction and a department induction. Those appointed to leadership roles will additionally receive a leadership induction.
- 27.3 It is important to keep a checklist of the areas of induction training received, ideally countersigned by the individual. This helps to ensure all employees receive all the information they need. This checklist can be a vital source of reference later in employment – for example to check that an employee has been briefed on policies, or to produce evidence of training in the event of a health and safety inspection.

## 28. Documentation

- 28.1 For each recruitment vacancy a file should be created which will contain:
  - job description and person specification;
  - advertisement;
  - shortlisting matrix;
  - interview assessment sheet;



- application forms received;
- references obtained;
- any other correspondence relating to the vacancy;
- the recruitment summary sheet.

28.2 Each vacancy should have its own set of records, which should be retained for a maximum of six months before being deleted in accordance with the trust's GDPR policy.

28.3 Any documents relating to the successful applicant will routinely be transferred to the new employee's personnel file which should be created as soon as the appointment has been confirmed.

## 29. Other Policies and Procedures

29.1 This policy is supported by the following policies and procedures:

- GDPR Policy
- Equality and Diversity Policy
- Safeguarding Policy

### Appendix 1: Checks in relation to the right to work in the United Kingdom

*Much of the following advice is extracted from the Home Office document 'Employer right to work checks supporting guidance' dated 6<sup>th</sup> April 2022.*

Since 1 July 2021, EEA citizens and their family members are required to hold a valid immigration status in the UK, in the same way as other foreign nationals. They can no longer rely on an EEA passport or national identity card to prove their right to work.

On 6 August 2021, the government announced temporary protection for more applicants to the EU Settlement Scheme (EUSS). This means that those who apply from 1 July, and joining family members, will have their rights protected while their application is determined. Where the employment of an EEA citizen or a non-EEA family member commenced on or after 31 August 2021, and a statutory excuse was established for the duration of that person's employment before 6 April 2022, the document checks set out in the employers guide updated on 31 August 2021 [Right to work checks: an employer's guide - GOV.UK \(nationalarchives.gov.uk\)](https://www.gov.uk/guidance/right-to-work-checks-an-employers-guide).

All employers in the UK have a responsibility to prevent illegal working. You do this by conducting simple right to work checks before you employ someone, to make sure the individual is not disqualified from carrying out the work in question by reason of their immigration status.

This guidance provides information on how and when to conduct a right to work check.



[You should also refer to the following documents: the code of practice on [Illegal working penalties: codes of practice for employers - GOV.UK \(www.gov.uk\)](#) and the code of practice for employers on [Avoiding discrimination while preventing illegal working: code of practice, 2014 - GOV.UK \(www.gov.uk\)](#)]

If you conduct the checks as set out in this guide and the code of practice, you will have a statutory excuse against liability for a civil penalty in the event you are found to have employed someone who is prevented from carrying out the work in question by reason of their immigration status. This means that if [*the Home Office*] find that you have employed someone who does not have the right to do the work in question, but you have correctly conducted right to work checks as required, you will not receive a civil penalty for that illegal worker.

In addition to the codes of practice and this guidance, there is a range of tools available on gov.uk to support you in conducting right to work checks.

The law on preventing illegal working is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006, section 24B of the Immigration Act 1971, and Schedule 6 of the Immigration Act 2016.

It is illegal to employ someone aged 16 or over who is subject to immigration control and who is not allowed to undertake the work in question (by reason of their immigration status). The civil penalty scheme is the sanction applied in most routine cases involving the employment of illegal workers.

If you are found to be employing someone illegally and you have not carried out the prescribed checks, you may face sanctions including a civil penalty of up to £20,000 per illegal worker or a criminal conviction carrying a prison sentence of up to five years and an unlimited fine.

## **How to conduct a right to work check**

You should conduct a right to work check before you employ a person to ensure they are legally allowed to do the work in question for you. If an individual's right to work is time-limited, you should conduct a follow-up check shortly before it is due to come to an end.

To ensure that you do not discriminate against anyone, you should provide every opportunity to enable an individual to prove their right to work. You should not simply check the status of those who appear to be migrants, otherwise you could be breaking the law. You may face a civil penalty if you do not carry out a check on someone you have assumed has the right to work for you but is found to be an illegal worker.

A statutory excuse is an employer's defence against a civil penalty. In order to establish a statutory excuse against a civil penalty in the event that an employee is found to be working illegally, employers must do one of the following before the employee commences employment:

1. a manual right to work check
2. a right to work check using IDVT via the services of an IDSP (to be used only for those holding a valid British or Irish passport)



3. a Home Office online right to work check (use of a sharecode with those who hold a biometric residence permit or biometric residence card or settled status under the EU Settlement Scheme)

Conducting any of these checks as set out in this guidance and in the code of practice will provide you with a statutory excuse.

You can also use the employer checking service <https://www.gov.uk/employee-immigration-employment-status> where an individual has an outstanding application, administrative review or appeal in relation to their immigration status.

## Conducting a manual right to work check

There are 3 basic steps to conducting a manual right to work check. In order to establish a statutory excuse you need to complete all three steps before employment commences to ensure you have conducted a check in the prescribed manner.

### Step 1: Obtain

There are 3 basic steps to conducting a manual right to work check. In order to establish a statutory excuse, you need to complete all three steps before employment commences to ensure you have conducted a check in the prescribed manner. You must obtain original documents from either List A or List B of acceptable documents.

### Step 2: Check

You must **check** that the documents are genuine and that the person presenting them is the prospective employee or employee, the rightful holder and allowed to do the type of work you are offering. You must check that:

1. photographs and dates of birth are consistent across documents and with the person's appearance in order to detect impersonation;
2. expiry dates for permission to be in the UK have not passed;
3. any work restrictions to determine if they are allowed to do the type of work on offer (for **students** who have limited permission to work during term-times, you **must** also obtain, copy and retain details of their academic term and vacation times covering the duration of their period of study in the UK for which they will be employed);
4. the documents are genuine, have not been tampered with and belong to the holder; and
5. the reasons for any difference in names across documents can be explained by providing evidence (e.g., original marriage certificate, divorce decree absolute, deed poll). These supporting documents must also be photocopied and a copy retained.

### Step 3: Copy



You must make a **clear copy** of each document in a format which cannot manually be altered and retain the copy securely: electronically or in hardcopy. You must also retain a secure record of the date on which you made the check. **Simply writing a date on the copy document does not in itself confirm that this is the actual date when the check was undertaken. If you write a date on the copy document, you must also record that this is the date on which you conducted the check.**

You must copy and retain copies of:

1. **Passports:** any page with the document expiry date, the holder's nationality, date of birth, signature, leave expiry date, biometric details, photograph and any page containing information indicating the holder has an entitlement to enter or remain in the UK (visa or entry stamp) and undertake the work in question (the front cover no longer has to be copied).
2. **All other documents:** the document in full, including both sides of a Biometric Residence Permit, Application Registration Card and a Residence Card (biometric format).

**All copies of documents taken should be kept securely for the duration of the worker's employment and for two years afterwards. The copy must then be securely destroyed.**

It is recommended by the Home Office that employers use their 'Right to Work Checklist' to ensure that they have correctly carried out all the appropriate steps; or online interactive tool: <https://www.gov.uk/legal-right-work-uk> which takes you through the process.

## **Acceptable documents**

The documents you may accept from a person to demonstrate their right to work are set out in two lists – List A and List B.

List A contains the range of documents you may accept for a person who has a permanent right to work in the UK. If you conduct the right to work checks correctly before employment begins, you will establish a continuous statutory excuse for the duration of that person's employment with you. You do not have to conduct any further checks on this individual.

List B contains a range of documents you may accept for a person who has a temporary right to work in the UK. If you conduct the right to work checks correctly, you will establish a time-limited statutory excuse. You will be required to conduct a follow-up check in order to retain your statutory excuse. This should be undertaken in the same way as the original check.

## **List A**

### **Acceptable documents to establish a continuous statutory excuse**





1. A passport (current or expired) showing the holder is a British citizen or a citizen of the UK and Colonies having the right of abode in the UK.
2. A passport or passport card (in either case, whether current or expired) showing that the holder is an Irish citizen.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted unlimited leave to enter or remain under Appendix EU(J) to the Jersey Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.
4. A current passport endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has a right of abode in the UK, or has no time limit on their stay in the UK.
5. A current Immigration Status Document issued by the Home Office to the holder with an endorsement indicating that the named person is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
6. A birth or adoption certificate issued in the UK, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer<sup>1</sup>.
7. A birth or adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.
8. A certificate of registration or naturalisation as a British citizen, **together with** an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

<sup>1</sup> definition includes a full birth certificate issued by a UK diplomatic mission eg British Embassy or British High Commission

## List B

### Group 1: Documents where a time-limited statutory excuse lasts until the expiry date of permission to enter or permission to stay

1. A current passport endorsed to show that the holder is allowed to stay in the UK and is currently allowed to do the type of work in question. <sup>1</sup>
2. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man, which has been verified as valid by the Home Office Employer Checking Service, showing that the holder has been granted limited leave to enter or remain under Appendix EU(J) to the Jersey



Immigration Rules, Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules.

3. A current Immigration Status Document containing a photograph issued by the Home Office to the holder with a valid endorsement indicating that the named person may stay in the UK, and is allowed to do the type of work in question, together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer.

## **Group 2: Documents where a time-limited statutory excuse lasts for 6 months**

1. A document issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme) on or before 30 June 2021 together with a Positive Verification Notice from the Home Office Employer Checking Service.
2. A Certificate of Application (digital or non-digital) issued by the Home Office showing that the holder has made an application for leave to enter or remain under Appendix EU to the immigration rules (known as the EU Settlement Scheme) on or after 1 July 2021 together with a **Positive Verification Notice** from the Home Office Employer Checking Service.
3. A document issued by the Bailiwick of Jersey, the Bailiwick of Guernsey or the Isle of Man showing that the holder has made an application for leave to enter or remain under Appendix EU(J) to the Jersey Immigration Rules or Appendix EU to the Immigration (Bailiwick of Guernsey) Rules 2008 or Appendix EU to the Isle of Man Immigration Rules, together with a **Positive Verification Notice** from the Home Office Employer Checking Service.
4. An Application Registration Card issued by the Home Office stating that the holder is permitted to take the employment in question, **together with a Positive Verification Notice** from the Home Office Employer Checking Service.
5. A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.

<sup>1</sup> *This includes a current passport endorsed with a stamp showing an individual has been granted leave to enter and there are no work-related conditions attached. If, under the conditions of the individual's leave, work was restricted or prohibited the endorsement placed in the individual's passport would explicitly set that out as a condition.*



## Checking the validity of documents

When you are checking the validity of the documents, you should ensure that you do this in the presence of the holder. This can be a physical presence in person or via a live video link. In both cases you must be in physical possession of the original documents. For example, an individual may choose to send their documents to you by post to enable you to conduct the check with them via live video link. **You may not rely on the inspection of the document via a live video link or by checking a faxed or scanned copy of the document.**

The employer has responsibility for checking the validity of the document. Whilst it may be delegated to members of staff (including agency workers engaged by the employer and working under their control) the employer will remain liable for the penalty in the event the individual is found to be working illegally and the prescribed check has not been correctly carried out. The employer may not delegate this responsibility to a third party. Whilst a third party may be used to provide support in terms of technical knowledge or specialised equipment to prevent the employment of illegal workers, the responsibility for performing the check (in order to obtain a statutory excuse from a civil penalty) will remain with the employer.

If the employer is supplied with a false document, they will only be liable for a civil penalty if it is reasonably apparent that it is false. This means that a person who is untrained in the identification of false documents, examining the document in question carefully, but briefly, and without the use of technological aids, could reasonably be expected to realise that it is not genuine.

Employers may wish to read the online guidance about recognising fraudulent identity documents, which can be found at [Guidance on examining identity documents - GOV.UK \(www.gov.uk\)](http://www.gov.uk/guidance/recognising-fraudulent-identity-documents)

As an employer you can also compare identity and travel documents against the images published on: [Council of the European Union - PRADO - Home \(europa.eu\)](http://europa.eu/prado)

These are archives of identify and travel documents.

If someone presents a false document, or a genuine document which does not belong to them, you should use the following link to report the individual to the Home Office: [Report an immigration or border crime - GOV.UK \(www.gov.uk\)](http://www.gov.uk/guidance/report-an-immigration-or-border-crime) or call the Employer Enquiry helpline on 0300 790 6268 (Monday to Thursday, 9am to 4:45pm; Friday 9am to 4:30pm).

## Retaining evidence

You must keep a record of every document you have checked. This can be a hardcopy or a scanned copy in a format which cannot be manually altered, such as a jpeg or pdf document. You should keep the copies securely for the duration of the person's employment and for a further two years after they stop working for you. You should also be able to produce these document copies quickly in the event that you are requested to show them to demonstrate that you have performed a right to work check and retain a statutory excuse.



You must also make a note of the date on which you conducted the check. This can be by either making a dated declaration on the copy or by holding a separate record, securely, which can be shown to the appropriate authority upon request. This date may be written on the document copy as follows: **'the date on which this right to work check was made: [insert date]'**. Alternatively, a manual or digital record which includes this information may be made at the time you conduct and copy the documents. You must be able to show this evidence if requested to do so in order to demonstrate that you have established a statutory excuse. You must repeat this process in respect of any follow up check. You may face a civil penalty if you do not record the date on which the check was performed.

Simply writing a date on the copy document does not, in itself, confirm that this is the actual date when the check was undertaken.

### **A right to work check using IDVT via the services of an IDSP – using an Identity Service Provider (IDSP)**

From 6 April 2022, employers can use Identity Document Validation Technology (IDVT) via the services of an IDSP to complete the digital identity verification element of right to work checks for British and Irish citizens who hold a valid passport (including Irish passport cards).

Digital identity verification conducted by IDSPs is the process of obtaining evidence of the prospective employee's identity, checking that it is valid and belongs to the person who is claiming it.

If you use the services of an IDSP for digital identity verification, holders of valid British or Irish passports (or Irish passport cards) can demonstrate their right to work using this method. This will provide you with a continuous statutory excuse. It is your responsibility to obtain the IDVT check from the IDSP. You will only have a statutory excuse if you reasonably believe that the IDSP has carried out their checks in accordance with this guidance.

You must not treat less favourably those who do not hold a valid passport, or do not wish to prove their identity using an IDSP. You must provide individuals with other ways to prove their right to work and should carry out a manual document-based right to work check in these circumstances.

For a detailed guide on how to complete a right to work check, using an IDSP, please refer to Annex D of the Home Office guidance: [Employers Guide to Right to Work Checks 6 Apr 22.pdf](#)

### **Basic steps to conducting a RTW check using an IDSP:**

- IDSPs can carry out digital identity verification to a range of standards or levels of confidence. The Home Office recommends that employers only accept checks via an IDSP that satisfy a minimum of a Medium Level of Confidence. A list of certified providers is available for you to choose from on GOV.UK: Digital identity certification for right to work, right to rent and criminal record checks. It is not mandatory for you to use a certified provider; you may use a provider not featured within this list if you are satisfied that they are able to provide the required checks.



- Satisfy yourself that the photograph and biographic details (for example, date of birth) on the output from the IDVT check are consistent with the individual presenting themselves for work (ie the information provided by the check relates to the individual and they are not an imposter).
- You must retain a clear copy of the IDVT identity check output for the duration of employment and for two years after the employment has come to an end.

Should you be found to be employing individuals without their identity and eligibility being verified correctly in the prescribed manner, you will not have a statutory excuse in the event the individual is found to be working illegally by reason of their immigration status. The employer remains liable for any civil penalty if there is no statutory excuse.

### **Conducting a Home Office online right to work check**

An online right to work check will provide you with a statutory excuse against a civil penalty in the event of illegal working involving the subject of the check. You can do an online check by using the online service, entitled: [View a job applicant's right to work details - GOV.UK \(www.gov.uk\)](https://www.gov.uk/view-a-job-applicant-s-right-to-work-details)

It will not be possible to conduct an online right to work check in all circumstances, as not all individuals will have an immigration status that can be checked online. The online right to work checking service sets out what information you will need. In circumstances in which an online check is not possible, you should conduct the manual check.

Currently, the online service supports checks for a range of individuals depending upon the type of immigration documentation they are issued with. The digital proof of immigration status forms part of the Home Office move towards of UK immigration system that is digital by default.

Some individuals have been issued with an eVisa and can only use the online service to prove their right to work.

Biometric Residence Card (BRC), Biometric Residence Permit (BRP) and Frontier Worker Permit (FWP) holders are also only able to evidence their right to work using the Home Office online service. This means that you cannot accept or check a physical BRC, BRP or FWP as proof of right to work.

### **How does the service work?**

Individuals using the service must select one of the three reasons for sharing their immigration status. For prospective or existing employees, they must select choose to prove their right to work in the UK.

After selecting the correct option, in this case 'prove your right to work to an employer', the individual can then generate a 9-character long share code that can be passed on to an employer which, when entered alongside the individual's date of birth, enables you to access the information.

The share code will be valid for 90 days from the point it has been issued and can be used as many times as needed within that time.



Share codes can only be used for the purpose they were originally selected for. Since 10 January 2022, all share codes begin with a letter denoting the purpose the share code can be used for. Where a share code begins with the letter 'W', this will indicate that the share code has been generated by a prospective or existing employee to evidence their right to work. Employers will not be able to accept or use share codes which begin with the letter 'R' or 'S' as these are designed for other services.

If a share code has expired, or the individual has used a code generated by another service, you must ask them to resend you a new right to work share code.

Where an individual provides you with a share code via the Home Office online service, you must carry out the check by accessing the [View a job applicant's right to work details - GOV.UK \(www.gov.uk\)](https://www.gov.uk) webpage in order to obtain a statutory excuse against a civil penalty. It is not sufficient to view the details provided by the prospective or existing employee on the migrant part of the service.

The online service allows checks to be carried out by video call. You do not need to see physical documents as the right to work information is provided in real time directly from Home Office systems.

### **Step 1: Use the Home Office online service**

The individual may provide the share code to you directly, or they may choose to send this to you via the service. If they choose to send it to you via the service, you will receive an email from [right.to.work.service@notifications.service.gov.uk](mailto:right.to.work.service@notifications.service.gov.uk)

To check the person's right to work details, you will need to:

- access the service 'View a job applicant's right to work details' via GOV.UK
- enter the 'share code' provided to you by the individual, and
- enter their date of birth

It is not sufficient to simply view the details provided to the individual on the migrant part of the service and doing so will not provide you with a statutory excuse.

### **Step 2: Check**

You must check that the photograph on the online right to work check is of the individual presenting themselves for work (ie the information provided by the check relates to the individual and they are not an imposter).

You must only employ the person, or continue to employ an existing employee, if you are conducting a follow-up check, if the online check confirms they have the right to work and are not subject to a condition preventing them from doing the work in question.

### **Step 3: Retain evidence of the online check**

You must retain evidence of the online right to work check. For online checks, this should be the 'profile' page confirming the individual's right to work. This is the page





that includes the individual's photo and date on which the check was conducted. You will have the option of printing the profile or saving it as a PDF or HTML file.

You should store this securely, (electronically or in hardcopy) for the duration of employment and for two years afterwards. The file must then be securely destroyed.

Should illegal working be identified, you will need to be able to evidence that you have conducted a right to work check in order to have a statutory excuse and avoid a civil penalty. By retaining evidence of the check as above, you will be able to present this to an Immigration Officer in the event of illegal working.

## **Biometric Residence Permits**

BRPs provide evidence of the holder's immigration status in the UK. They contain the holder's unique biometric identifiers (fingerprints, digital photograph) within the chip. They also display a photograph and biographical information on the face of the document and details of entitlements, such as access to work and/or public funds.

For migrants overseas, who are granted permission to enter the UK for more than six months, they are issued with a vignette (sticker) in their passport which will be valid for 30 days to enable them to travel to the UK. Following their arrival, they will have 10 days or before their vignette expires (whichever is later) to collect their BRP from the Post Office branch detailed in their decision letter. BRP holders must still collect their card, but they prove their right to work using the Home

Office online service rather than showing the physical document. Those permitted to work in the UK are strongly encouraged to collect their BRP before they start work in order to use the information to generate a right to work share code. If they need to start work for you prior to collecting their BRP, they will be able to evidence their right to work by producing the short validity vignette in their passport which they used to travel to the UK. You will need to conduct a manual right to work check on the basis of this vignette, which must be valid at the time of the check. However, as this will expire 30 days from issue, you will have to repeat the check using the online service, for the statutory excuse to continue.

If you employ someone on the basis of the short validity vignette and they are unable to access their BRP information to use the online service when the vignette time expires, you are not required to immediately terminate the employment if you believe the employee continues to have the right to work. However, once the 30 days has expired, you will not be able to establish a statutory excuse if it transpires that the employee is working illegally.

NOTE: since 6 April 2022, BRC, BRP and FWP holder are required to evidence their right to work using the Home Office online service only. Employers cannot accept physical cards for the purposes of a right to work check even if it shows a later expiry date. BRCs, BRPs and FWPs have been removed from the lists of acceptable documents used to conduct a manual right to work check.

## **When to contact the Home Office Employer Checking Service to verify right to work**





In certain circumstances, you will need to contact the Home Office's Employer Checking Service (ECS) to establish a statutory excuse: [Use the Employer Checking Service - GOV.UK \(www.gov.uk\)](https://www.gov.uk). These are when:

1. You are presented with a document (non-digital CoA or an acknowledgement letter or email) confirming receipt of an application to EUSS on or before 30 June 2021; or
2. You are presented with non-digital CoA confirming receipt of an application to the EUSS on or after 1 July 2021; or
3. You have checked a digital CoA, using the online service, confirming receipt of an application to the EUSS on or after 1 July 2021, and been directed to the ECS; or
4. You are presented with a valid Application Registration Card stating that the holder is permitted to undertake the work in question. Any work will be restricted to employment in a shortage occupation; or
5. You are satisfied that you have not been provided with any acceptable documents because the person has an outstanding application with us which was made before their previous permission expired or has an appeal or administrative review pending and therefore cannot provide evidence of their right to work; or
6. You consider that you have not been provided with any acceptable documents, but the person presents other information indicating they are a long-term resident of the UK who arrived in the UK before 1988.

In the above circumstances, you will establish a statutory excuse only if you are issued with a **Positive Verification Notice (PVN)** confirming that the named person is allowed to carry out the type of work in question.

You should not contact the ECS where employment commenced before 29 February 2008 and has been continuous ever since. You will receive a Negative Verification Notice because this employment is out of scope of the civil penalty scheme.

To find out if you need to request a verification check from the ECS and to conduct that check, you should use the online tool [Use the Employer Checking Service - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

### **Certificate of Application**

You must make a copy of this document and retain this copy, in the usual way. If you are required to verify the CoA with the ECS, you must also obtain and keep a copy of the Positive Verification Notice (PVN). In so doing, you will have a statutory excuse for six months from the date stated in the PVN. A Positive Verification Notice will not provide a statutory excuse if you know that the employment is not permitted. In such circumstances, you will also be committing a criminal offence.

### **Application Registration Card and asylum seekers**

Since July 2017, upgraded Application Registration Cards (ARC) have been issued to new asylum claimants through a gradual rollout. The ARC is the card used by asylum claimants to demonstrate they have made an asylum claim. The new ARC closely resembles the Biometric Residence Permit. It includes extra security features, a



biometric facial image and an expiry date. Whilst the earlier version of the ARC is no longer being issued, the cards already in circulation will continue to be acceptable until they expire.

Asylum claimants are not normally allowed to work whilst their claim is being considered. They are instead provided with accommodation and support to meet their essential living needs if they would otherwise be destitute. We may grant permission to work to asylum seekers whose claim has been outstanding for more than 12 months through no fault of their own. Anyone allowed to work under this policy is restricted to working in jobs on the [Immigration Rules - Immigration Rules Appendix Shortage Occupation List - Guidance - GOV.UK \(www.gov.uk\)](#) published by the Home Office. Their ARC will state "**work permitted shortage OCC**". Any permission to work granted will come to an end if their claim is refused and any appeal rights are exhausted because at that point, they are expected to leave the UK.

You may accept a new biometric style or an old-style ARC, provided you verify the right to work and any work restrictions by obtaining a Positive Verification Notice issued by the ECS. This excuse will expire six months from the date of the PVN, when a further check must be undertaken if the statutory excuse is to be retained.

If you receive a Negative Verification Notice from the ECS, which informs you that the individual does not have the right to work, and you employ this person, you will not have a statutory excuse and may be liable for a civil penalty or be committing a criminal offence.

Anyone who is granted permission to remain in the UK as a refugee, or who is granted humanitarian protection has unrestricted access to the labour market. A refugee may demonstrate their work entitlement through the Home Office online service (if they have a BRP) or Immigration Status Document (an older form of document issued to refugees and certain other categories of migrant prior to the introduction of the BRP).

## **Windrush generation individuals**

The Government has put in place additional safeguards to ensure that those who have lived lawfully in the UK since before 1988 are not denied access to work.

In some circumstances, individuals of the Windrush generation (those who arrived in the UK before 1973) and those non-UK citizens who arrived in the UK between 1973 and 1988, may not be able to provide documentation from the acceptable document lists to demonstrate their entitlement to work in the UK.

The Home Office has established the Windrush Help Team which is handling applications for confirmation of indefinite leave to remain, including a biometric residence permit or applications for British citizenship, and in these circumstances, you should contact the Employer Checking Service (ECS), using the following website: <https://www.gov.uk/employee-immigration-employment-status>

The ECS will notify the Windrush Help Team, who will contact the individual to confirm their circumstances and arrange for their status to be resolved. Working with the Windrush Help Team, the ECS will be able to confirm an individual's right to work in these circumstances and will do so by issuing you with a PVN.



A PVN issued by the ECS will provide you with a statutory excuse for six months from the date stated in the PVN. The information provided by the ECS will clearly set out whether a repeat check will be required, and if so, when.

The Windrush Help Team can offer support and guidance about the Windrush Scheme and advise individuals on how to apply. It can also help vulnerable people or those who need additional support. If a prospective or existing employee has been affected, they can contact the Windrush Help Team via the above link or by calling 0800 678 1925.

### **Transfer of undertakings**

Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006 provide that right to work checks carried out by the transferor (the seller) are deemed to have been carried out by the transferee (the buyer). As such, the buyer will obtain the benefit of any statutory excuse established by the seller.

However, if the seller did not conduct the original checks correctly, the buyer would be liable for a penalty if an employee, who commenced work on or after 29 February 2008, is later found to be working illegally. Also, a check by the buyer may be the only way to determine when any follow-up check should be carried out in respect of employees with time-limited permission to work in the UK.

For these reasons, employers who acquire staff in cases of TUPE transfers are advised to undertake a fresh right to work check on those staff they have acquired. Employers are not required to have a statutory excuse in respect of employment which commenced before 29 February 2008, where the individual has been in continuous employment prior to that date. This includes where employment has continued as part of a TUPE transfer.

We recognise that there may be practical problems in undertaking these checks before employment commences for workers acquired as part of a TUPE transfer, and for this reason a grace period has been provided during which you should undertake the check.

This period runs for 60 days from the date of the transfer of the business to correctly carry out fresh right to work checks in respect of those TUPE employees acquired. There is no grace period for any subsequent follow-up checks.

This 60-day grace period applies in all situations where there is a "relevant transfer", even if the transferring business is subject to "terminal" insolvency proceedings falling within regulation 8(7) of the 2006 TUPE Regulations, such as cases involving compulsory liquidation.

### **Right to work checks for EEA citizens from 1 July 2021**

Since July 2021, EEA citizens and their family members are required to have immigration status in the UK. They can no longer rely on an EEA passport or national identity card, which only confirms their nationality, to prove their right to work. They are required to prove evidence of lawful immigration status in the UK, in the same way as other foreign nationals.



## Irish citizens

Irish citizens continue to have unrestricted access to work in the UK. They can prove their right to work using their Irish passport or Irish passport card (in either case, whether current or expired), or their Irish birth or adoption certificate together with an official document giving the person's permanent National Insurance number and their name issued by a government agency or a previous employer. Irish citizens can also apply for a Frontier Worker Permit, which can be issued digitally or as a physical permit, so they may choose to prove their right to work using the webpage [Prove your right to work to an employer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/prove-your-right-to-work-to-an-employer).

## Support for employees and employers carrying out a right to work check

Employer Enquiry helpline / UKVI Resolution Centre

If you need help carrying out a right to work check you should call the Employer Enquiry helpline:

Telephone: 0300 790 6268, select option 2, then option 4 Monday to Thursday, 9am to 4:45pm Friday, 9am to 4:30pm.

## Appendix 2: Disclosure and Barring Service and related checks

Those members of staff who undertake, or initiate, DBS and/or other pre-employment checks on employees and potential employees will need to determine the type and extent of such checks, bearing in mind what can be justified in terms of the employee's position. In many instances, this will depend on whether the employee will be engaging in regulated activity.

For **all** new employees, schools are required to obtain (via the applicant) an enhanced DBS certificate (including barred list information, for those who will be engaging in regulated activity) unless a previous certificate is brought forward from employment in another school in England within the last three months.

Details regarding the procedure for applying for the appropriate level of disclosure should be forwarded to the successful applicant for the position along with the conditional offer of appointment.

### DBS definition of regulated activity

Regulated activity refers to certain roles carried out by applicants in relation to children and/or vulnerable adults. It covers various types of activities which, by their nature, would entitle an individual to an enhanced DBS check with applicable barred list checks (there are two separate barred lists which contain information of people barred from working with, respectively, children and vulnerable adults).

Activity relating to children is regulated if it involves unsupervised activities: teaching, training, instruction, care for or supervision of children, or providing advice/guidance on well-being, or driving a vehicle only for children.



An enhanced DBS check is the highest level of criminal record check available and will detail both spent and unspent convictions, as well as any cautions, warnings or reprimands the applicant may have received.

Separate barred list checks must only be carried out in the following circumstances:

- for newly appointed staff who are engaging in regulated activity, pending the receipt of an Enhanced Certificate with Barred List information from the DBS and where all other relevant checks have been carried out; or
- where an individual has worked in a post in a school or college that brought them into regular contact with children or young persons which ended not more than three months prior to that person's appointment to the organisation and where all other relevant checks have been carried out.

### **Appendix 3: Protocol for employing people with a criminal record**

1. As an organisation using the Disclosure and Barring Service (DBS) to assess applicants' suitability for positions of trust, the school complies fully with the DBS Code of Practice and undertakes to treat all applicants for positions in a fair manner. The school undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed.
2. Criminal records will only be taken into account for recruitment purposes when the conviction is relevant. Unless the nature of the work demands it, applicants for positions within the school will not be asked to disclose convictions which are 'spent' under the Rehabilitation of Offenders Act 1974. Having an unspent conviction will not necessarily bar applicants from employment. This will depend on the circumstances and background to an applicant's offence.
3. The school selects candidates for interview based on their skills, qualifications and experience relevant to the position applied for. For those positions within the school where an Enhanced or Standard Disclosure and or Barred List is required, job adverts will contain a statement that the successful applicant will be subject to a criminal record check from the Disclosure and Barring Service before the appointment is confirmed. It should be noted that details of criminal convictions should not be required to be provided on an application form. Shortlisted applicants should be requested to disclose any criminal convictions prior to interview and such applicants must be provided with information on where to obtain advice on the disclosure of a criminal conviction and allowed sufficient time to seek such advice.
4. The school will ensure that staff involved in the recruitment process are provided with information and guidance in relation to the employment and fair treatment of ex-offenders and the Rehabilitation of Offenders Act 1974 and will, on request, provide a copy of the Disclosure and Barring Service Code of Practice to all applicants.
5. If the DBS check (which will only be requested once a conditional offer of employment has been made) reveals a trace, the school will ensure that an open and measured discussion takes place on the subject of any previous history that might be relevant to the position. Failure to reveal information that is directly



relevant to the position sought could lead to withdrawal of an offer of employment.

- 6. Having a criminal record will not necessarily bar an applicant from working with the school. This will depend on both the nature of the position and the circumstances of the offence.

### Appendix 4 Safeguarding declarations

Different categories of staff may be required to undergo specific pre-employment checks, or to make relevant declarations, in relation to their **precise role** within the school. It is **not** appropriate to ask all members of staff to complete declarations that are more extensive than required by the regulations, as possession of such identifiable data, without adequate justification, potentially represents a breach of data protection legislation.

Those members of staff who are subject to the **2018 update to the Childcare (Disqualification) Regulation 2009** (defined below) should be requested to complete **Declaration A** whereas all other members of staff who are deemed to be in **regulated activity** (generally interpreted as any person permanently employed by, and working on the premises of, a school) but who are not subject to the 2018 update to the Childcare (Disqualification) Regulation 2009 should be requested to complete **Declaration B**.

Staff who should complete Declaration A are those who are employed, and/or provide childcare, in either early years or later years (although this no longer extends to the provision of **education** (as opposed to childcare) to children in later years).

- early years means from birth until 1st September following a child’s fifth birthday (in other words, up to and including reception age)
- later years means children under the age of 8.

*Staff subject to/not subject to the above regulation:*

	<u>During school hours</u>	<u>Outside school hours</u>
<i>Nursery/reception age or younger</i>	<i>Subject</i>	<i>Subject</i>
<i>Older than reception age up to age 8</i>	<i>Not Subject</i>	<i>Subject</i>
<i>8 years or older</i>	<i>Not Subject</i>	<i>Not Subject</i>

Staff who are directly concerned in the **management** of early or later years provision are also subject to the legislation. This will necessarily include the headteacher; it may also include other members of the school’s leadership team and any manager, supervisor, leader or volunteer responsible for day-to-day management of such provision.

Staff who are **not** subject to the above legislation include (but may not be limited to) caretakers, cleaners, transport escorts, catering and office staff. (Any workers who are not employed to directly provide childcare are not subject to the above legislation.)





## Declaration A

### (for staff subject to the 2018 update to the Childcare (Disqualification) Regulation 2009)

The trust is committed to safeguarding and promoting the welfare of children and young people and expects all staff and volunteers to share this commitment.

In order to help us process your application/confirm your appointment (*delete as applicable*) we require the following declaration to be completed.

**I declare that I, . . . . .**  
(please print your full name)

- am not on a relevant barred list (a Department for Education list of people whose employment has been barred or restricted on grounds of misconduct or on medical grounds)
- am not disqualified from work with children
- am not subject to sanctions imposed by a regulatory body (for example the DfE)
- have no criminal convictions, cautions or bindovers, either at home or abroad
- am not known to the police and children's social care
- have never had any of my own children taken into care, nor have they been the subject of a child protection order or court order
- have never had a registration cancelled in relation to childcare or children's homes and have never been disqualified from private fostering.

**I also undertake to inform the headteacher immediately in the event of any change in circumstances which would render one or more of the above bullet points applicable at any point during the duration of my employment with the Trust/academy.**

Signed: ..... Dated: .....

NB If you are unable to complete the declaration by confirming all of the above points, we ask that you do not sign the declaration but that you provide written details, which will be discussed with you in absolute confidence before any decision is made in relation to your employment by the trust.

Any information of this nature should be provided to ..... (*named person*)



in an envelope marked 'Strictly Private and Confidential'.

**Declaration B**

**(for staff not subject to the 2018 update to the Childcare (Disqualification) Regulation 2009)**

The trust is committed to safeguarding and promoting the welfare of children and young people and expects all staff and volunteers to share this commitment.

In order to help us process your application/confirm your appointment (*delete as applicable*) we require the following declaration to be completed.

**I declare that I,** .....  
(please print your full name)

- am not on a relevant barred list (a Department for Education list of people whose employment has been barred or restricted on grounds of misconduct or on medical grounds)
- am not disqualified from work with children
- am not known to the police and children’s social care
- am not subject to sanctions imposed by a regulatory body (for example the DfE)
- have no criminal convictions, cautions or bindovers, either at home or abroad

**I also undertake to inform the headteacher immediately in the event of any change in circumstances which would render one or more of the above bullet points applicable at any point during the duration of my employment with the Trust/academy.**

Signed: ..... Dated: .....

NB If you are unable to complete the declaration by confirming all of the above points, we ask that you do not sign the declaration but that you provide written details, which will be discussed with you in absolute confidence before any decision is made in relation to your employment by the trust.

Any information of this nature should be provided to ..... (*named person*) in an envelope marked 'Strictly Private and Confidential'.