City Hospitals Sunderland
NHS Foundation Trust

EMPLOYMENT CHECKS POLICY

Document Reference	HR16.EC.5.0
Document status	Final
Target Audience	Recruiting managers and HR staff responsible for administering recruitment and carrying out employment checks
Date Ratified	November 2017
Ratified by	Policy Committee
Release Date	24 November 2017
Review Date	January 2019
Sponsor	Kath Griffin, Director of Human Resources

Version Control

Version	Date of amendment	Author	Update comments
1.0	October 2008	Jan Armstrong, Deputy Director of HR	
2.0	March 2012	Jan Armstrong, Deputy Director of HR	
3.0	March 2013	Vicky Bowmaker, HR Administration Manager	
4.0	November 2015	Vicky Bowmaker, Employee Services Manager	
5.0	November 2017	Vicky Bowmaker, Employee Services Manager	Insertion of Fit & Proper Persons section

CITY HOSPITALS SUNDERLAND NHS FOUNDATION TRUST

DOCUMENT APPROVAL PROFORMA

Policy Title: Employment Checks Policy

Policy Number: HR16.EC.V5

Name of Author: Vicky Bowmaker, Employee Services Manager

Name of Sponsor: Kath Griffin, Director of Human Resources

New Policy: No

Reviewed Without Amendments: No

Type of Policy:
- Risk management
- Operational policy
- Operational guidelines
- Mental Health Act
- Human Resource X
- Control of infection
- Drugs policy
- Other

Equality Impact Assessment: If this policy has a potential discriminatory impact please record below the person who has informed and involved the sponsor:

Name:

Title:

Date:

NB: It is the sponsor's responsibility to submit the policy through the CHS approval route.

Checklist for the review and approval of the policy

	Is the policy compliant with:	Yes/No	Comments
	Corporate style	Yes	
	Format including duties,	Yes	
	Content; **intended outcomes clearly described**	Yes	
	Evidence base**; key references included and cited in full**	Yes	

	Associated documentation **recorded**	Yes	
	Review/consultation process: **List of groups/committees included with the policy**	Yes	
	Appropriate stakeholders consulted	Yes	
	Approval: **Staff side committee (if appropriate)**	Yes	
	Dissemination & implementation: **appropriately described**	Yes	
	Training: **requirements included (where appropriate)**	Yes	
	Document control: **table updated appropriately**	Yes	
	Monitoring compliance/ effectiveness: **adequate description and appropriate monitoring**	Yes	
	Review date: **identified and acceptable**	Yes	
	Page numbers: **correct with index**	Yes	
	Intranet to be updated: **Record the date and person responsible**		Deputy Head of Corporate Affairs 11 01 16 (V4) & 24 11 17 (V5)
	Individual approval; **Policy author**	Date	Sign
	Director of Corporate Affairs: **update version control and approval of the process**	Date	Sign 11 01 16 (V4) & 24 11 17 (V5)
	Policy archived		11 01 16 (V4) & 24 11 17 V5)

<u>Committee Approval</u>

Committee which forms the approval process: Policy Committee

Date of approval:

Signature of Chair of Committee, including approval:

CONTENTS

1. INTRODUCTION

Effective recruitment processes and on-going employment checks are essential to ensure the highest standards of patient care and safety within City Hospitals Sunderland NHS Foundation Trust ("the Trust").

The Trust is committed to equality of opportunity in employment and the recruitment of a diverse workforce regardless of race, gender, age, religion or belief, nationality, sexual orientation (including transgender) or disability. The Trust aims to positively support the recruitment of a diverse workforce in line with our Single Equality Scheme.

All applications for work will be decided fairly and on merit. Information declared will be used to consider the applicant's suitability for the position, will be treated in confidence and will not be used as the sole criteria to decide an applicant's fitness for the position.

The employment checks described in this policy form part of the information governance and assurance standards linked to the use of the NHS Health and Social Care Information System. For more details visit http://systems.hscic.gov.uk

2. PURPOSE AND SCOPE

The purpose of this policy is to describe how the Trust will ensure that it carries out those employment checks required by law, NHS rules and/or the NHS Employment Check Standards.

The NHS Employment Check Standards have been produced in a suite of six key documents, covering:-

1. Identity
2. Right to work
3. Professional registration and qualifications
4. Employment history and reference
5. Criminal record and barring
6. Work health assessments

Failure by any person to provide accurate or truthful information at the time of applying for a post will be considered under the Trust's Disciplinary Procedure. Where it is found that someone has intentionally or recklessly provided inaccurate information or has withheld information that is relevant to their appointment, then the offer of appointment will be withdrawn. In the case of existing employees, such action(s) will be regarded as gross misconduct. The disciplinary procedure will be invoked and may result in disciplinary action up to and including the possibility of dismissal.

Persons whose services are hired by the Trust and who are not employees e.g. agency workers, holders of honorary contracts, agency worker/locum doctors and apprentices, will be subject to the same standard of employment checks as employees. The checks also apply to unpaid workers e.g. volunteers and work experience.

In applying this policy, the Trust will respect the individual's human rights, equality and the right not to be discriminated against.

It is recognised that some staff may require support, have special needs or be unable to understand/read the text of this policy. In such instance this policy will be explained on a one-to-one/face-to-face basis by a member of the HR Department. Any such support will be provided in confidence.

3. DUTIES

3.1 Trust Chair

It is the overall responsibility of the Trust Chair to discharge the Fit and Proper Persons Requirement, to ensure that all Board post holders, other Board level posts and those post holders directly accountable to the Chief Executive meet the fitness test and to declare to the CQC that the Trust complies with the requirements of Regulation 5 of the Health and Social Care Act 2008.

3.2 Board of Directors

The Board of Directors is responsible for monitoring and approving a framework to support a robust pre and post employment checking process, which is compliant with all relevant legislation, guidelines and NHS employment check standards.

3.3 Chief Executive

The Chief Executive has ultimate responsibility for ensuring that a robust pre and post employment checking process is in place that is compliant with all relevant legislation, guidelines and NHS Employment Check Standards.

3.4 Director of Human Resources

The Director of Human Resources is the nominated Director lead for the management of this policy and is directly responsible to the Chief Executive for facilitating the implementation of this policy following consultation with the staff side representatives.

The Department of Human Resources will ensure that:

- A record of posts showing the level of Disclosure and Barring Service (DBS) check required for each job role within the Trust (standard, enhanced or no check) is maintained;
- A record of all employment checks for each appointee is carried out and recorded on the pre employment or placement checklist;
- Trained staff are in place to support individuals in making DBS applications and to provide advice to managers and staff regarding the DBS process;
- All necessary employment checks are carried out in line with this policy;

- Where candidates are unable to meet the standards set out in this policy, matters are dealt with in accordance with the relevant Trust policies and/or UK/EEA employment law.
- A monthly audit of potential new starters is completed to ensure that employment checks are being carried out in accordance with this policy.
- Monthly reporting is carried out to check professional clinical registration status of staff, as well as using the ESR/GMC/NHS notification process.
- Quarterly audit of Honorary Contract and Agency Workers to ensure checks are being carried out in accordance with this policy.

3.5 Managers

It is the responsibility of the manager to ensure that:

- Where they are responsible for recruitment, they have completed the necessary recruitment and selection training provided by the Trust
- They understand their duties for checking documentation as part of the recruitment process e.g. references.
- They update professional clinical registration information within ESR as required
- They notify the HR Department if any new posts are created involving patient access or if the duties of an existing post change the level of access to patients, so that the list of posts requiring DBS checks can be updated

3.6 Employees

It is the responsibility of the employee to:

- Ensure they provide information in an open and honest way, making any declaration as appropriate, during the course of their employment.
- Ensure they provide information in an open and honest way, making any declaration as appropriate, and agree to adhere to the Trust's recruitment processes and pre-employment checks
- Participate in retrospective DBS checking process as required.
- Inform the Director of Human Resources of any criminal convictions, cautions, warnings, binding or supervision orders, which occur during their period of employment with the Trust. Failure to do so will be considered as a disciplinary matter, which could result in disciplinary action up to and including dismissal.
- Ensure that, where required for their role, professional clinical registration is kept up to date.
- Where appropriate, comply with requests for information from Human Resources with requests for information which relate to the NHS Employment Check Standards.

4. <u>DEFINITIONS</u>

4.1 NHS Employment Check Standards

These standards, set by NHS Employers, outline the legal/mandatory requirements for employment checks in the NHS.

4.2 **Identity Check** – check undertaken of an individual's documents to confirm their identity.

4.3 **United Kingdom Visas and Immigration (UKVI)** - is a shadow agency of the Home Office. It is responsible for border control for the UK, and enforcing immigration and customs regulations. It also considers applications for permission to enter or stay in the UK, citizenship and asylum.

4.4 **Certificate of Sponsorship/Restricted Certificate of Sponsorship** - is not a paper certificate like a work permit. It is a 'virtual document', with a unique reference number which the Trust issue to a migrant so that they can apply for permission to enter the UK if they are overseas (known as 'entry clearance'), or permission to stay in the UK if they are already here (known as 'leave to remain').

4.5 **Work Permit (Tier 2) -** document which allows an individual to work in a specific job within the UK. To make a successful UK Work Permit (Tier 2) application the potential employee must have received a confirmed offer of employment from the Trust and as well as a Certificate of Sponsorship.

4.6 **Indefinite Leave to Remain (ILR)** – sometimes referred to as 'settlement'. ILR is an immigration status granted to a person who does not hold right of abode in the United Kingdom (UK), but who has been admitted to the UK without any time limit on his or her stay and who is free to take up employment or study, without restriction.

4.7 **Right to Work** - applicant has the legal right to work in the UK

4.8 **Resident Worker** - is a person who is a European Economic Area (EEA) national or has settled status in the UK within the meaning of the Immigration Act 1971, as amended by the Immigration and Asylum Act 1999, and the Nationality, Immigration and Asylum Act 2002.

4.9 **Refugee** - is a person who has had a positive decision on their claim for asylum under the1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention). Individuals who do not meet the Refugee Convention's criteria for Refugee Status may qualify either for Humanitarian Protection (granted for five years), or Discretionary Leave to Remain (granted for up to three years).

4.10 **Asylum Seeker** - is a person who has made an application for asylum, but whose application is yet to be decided upon. Since 2003, asylum seekers do not have the right to work in the UK.

4.11 **Qualification checks -** verify the information about educational or professional qualifications that a prospective employee provides on their application form. For non-health professionals, qualifications that form part of the requirements for a position must be checked.

4.12 Professional registration – a clinical professional must possess registration with a regulatory body to allow them to legally work.

4.13 Alert Notice - is a way of notifying NHS bodies and others about a registered health professional whose performance or conduct could place patients or staff at serious risk.

4.14 Disclosure and Barring Service (DBS) - provides access to information across England and Wales about criminal convictions and other police records to help employers make an informed decision when recruiting staff. The information provided by the DBS is known as a 'disclosure'. The DBS was previously known as the Criminal Records Bureau (CRB).

4.15 Honorary Contract – type of contract issued where individuals from other organisations come to work in / for the Trust, but whose main employment contract is with another organisation.

5. EMPLOYMENT CHECKS

5.1 Verification of Identity

Identity verification is the most important of all the employment checks. It should be the first check performed and an application will not progress until the Trust is satisfied that a person's identity is proven.

The process involves checking two elements of a person's identity:

1. Attributable – the evidence of a person's identity that they are given at birth (including their name, date and place of birth) and any subsequent change(s) of name.
2. Biographical – a person's personal history including education and qualifications, addresses, electoral register information and employment history.

Individuals must provide acceptable documents containing their photograph (where available), such as a passport or UK photo driving licence, and original documents providing their current address, such as a utility or bank statement.

A conditional offer of employment will be sent to the successful candidate, outlining the employment checks they will be required to undergo.

An appointment will be made for him/her to attend the HR Department with a request that they provide the necessary original documents to enable their identity to be verified.

HR staff will inspect the documents to verify the person's identity, take copies and initial and date these for retention on the personal file, returning the originals to the candidate. The outcome of the checks will be recorded on the Pre-Employment/Placement Checklist.

5.1.1 Doubts on Authenticity of Information

Where the identity checks return inconsistent information, information that contradicts the details provided by the candidate and/or raises concerns, the recruitment team will refer the matter to the relevant Divisional HR Manager who will:

- Proceed in a sensitive manner – there may be a reasonable explanation for apparent inconsistencies;
- Address concerns directly with the candidate where necessary.

In exceptional circumstances, where the checks reveal significant concerns about the authenticity of the information, the Trust reserves the right to report it's concerns to the local police via the Director of Human Resources, who will take advice from the Home Office employers' helpline where considered necessary.

5.2 Right to Work

The Immigration, Asylum and Nationality Act 2006 (amended in February 2008) makes it a criminal offence for employers who knowingly employ illegal migrant workers and reinforces the continuing responsibility on employers of migrant workers to check their ongoing entitlement to work in the UK.

The Trust risks breaking the law, unless an individual's right to work in the UK is checked before they start work with the Trust. Failure to check this could result in a civil penalty of up to £20,000 and the loss of the Trust's A Rated Sponsorship Licence.

There are 3 steps that employers must work through to confirm a prospective employee has the right to work in the UK:

1. Request right to work documents
2. Validate the documents in the presence of the holder
3. Copy, making a record of the date of the check and securely store the documents.

5.2.1 Right to work documents

To confirm that a candidate has the legal right to work in the UK, HR staff will assess the eligibility of an individual's right to work in the UK by verifying the specific documents as set out in NHS Employers' Right to Work Standard.

All documents, which contain an expiry date, must be valid, current and original, except where the applicant is a British citizen, a citizen of the UK, a national of a European Economic Area (EEA) country or Switzerland, or their family members with permanent residence in the UK where they present an expired passport.

The Trust will undertake the same checks to verify an out-of-date passport as they would for a valid (in-date) passport and copies of documentation will be kept on file to avoid a penalty notice.

An indefinite leave to remain stamp in an expired passport will not be accepted. Where an individual presents an expired passport with indefinite leave to remain, the Trust will provide the individual with opportunity to obtain and provide current documents, such as a Biometric Residence Permit. Photocopies or documents downloaded from the internet will not be accepted.

The documents must show that the holder is entitled to do the type of work being offered.

5.2.2 Biometric Residence Permit

Formerly known as the identity card for foreign nationals, Biometric Residence Permits (BRP's) allow the Trust to check a migrant's right to work in the UK. They are part of a national identity system that helps the UK Government, employers and other organisations check the immigration status and other entitlements of foreign nationals. Biometric residence permits are applicable to foreign nationals of countries outside the EEA and Switzerland who are granted leave to remain in the UK. Under current guidelines the Trust can accept these permits, alongside the other recommended documents, to verify the individual's identity and right to work in the UK

5.2.3 Validating the documents

The HR Department will carry out all of the following checks on all documentation:

- Check photographs, where available, to ensure they are consistent with the appearance of the individual;
- Check that the date of birth is consistent with the individual's identity documents (see above section on Verification of Identity);
- Check that expiry dates of any limited leave to enter or remain in the UK are still valid
- Check any government stamps or endorsements to ensure the individual is entitled to do the work being offered

If the candidate provides documents that have different names, the HR Department will request further documentation to explain the reason for this (marriage/civil partnership certificate, divorce certificate, deed poll, adoption certificate or statutory declaration). Dates will be cross-referenced with identity documents and work permits, or confirmed by contacting appropriate embassies and consulates.

5.2.4 Copying and storing the documents

All documents provided will be photocopied and retained on the candidates/employees personal file to provide an ongoing defence against a penalty.

Human Resources staff will photocopy the relevant page or pages of the document in a format that can not be subsequently altered, for example a photocopy or scan.

In the case of a passport or other travel document, the following parts must be photocopied or scanned:

- Passports - any page with the documents expiry date, nationality, date of birth, signature, leave expiry date, biometric details and photograph, and any page containing information indicating the holder has and entitlement to enter or remain in the UK and undertake the work in question
- All other documents - the document in full, both sides of a Biometric Residence Permit.

Other documents will be copied in their entirety. Where the Human Resource Department have been provided with a national identity card, both sides of the card will be photocopied.

Copies of the documents will be kept securely on the personal file for the duration of the individual's employment and for a further 6 years after their employment has ceased.

5.2.5 What if the applicant does not have the right to work in the UK?

If, after carrying out these checks, it is established that the applicant is not permitted to work in the UK, then the Trust will not be able to allow the individual to commence employment.

If there is no evidence that such permission is going to be promptly forthcoming, the Human Resources Department will write to the individual to withdraw the offer of employment.

If a person is likely to obtain the relevant permission within an acceptable time period, such as within two weeks, then the Director of Human Resources will make a decision about whether or not to withdraw the offer of employment or wait until the permission is received.

5.2.6 Work Permits

In order for the Trust to apply for a work permit, known as a Certificate of Sponsorship (CoS), the job vacancy must either appear on the Home Office Shortage Occupation list or the Trust must provide evidence that the Resident Labour Market Test has been applied.

Should the Trust be required to apply for a CoS the route for this – restricted CoS or unrestricted CoS – will be dependent on the individual's circumstances. If the Trust is successful in the application for a CoS, this is then passed to the potential employee in order for them to apply for a Tier 2 work permit. It is the responsibility of the appointed individual to obtain and meet the cost of any work permit.

After an individual has lived legally in the UK for a certain length of time, they may be able to apply for permission to settle in the UK. This is known as 'indefinite leave to remain'. Their right to apply for settlement will depend on their current immigration category.

An individual who has 'indefinite leave to remain' does not require any further work permit to allow them to take up employment within the UK.

Further information on how to obtain a work permit is available at http://www.ukba.homeoffice.gov.uk

5.2.7 Visas

Non-EEA nationals may need entry clearance before they can travel to the UK. The entry clearance process for the UK is carried out by UK Visas, which runs the UK's visa service through British diplomatic posts overseas.

It is the responsibility of the appointed individual to obtain and meet the cost of any visa required. Further information on whether the individual needs to apply can be obtained from Gov.UK

Particular scrutiny should be given to those individuals who present student visas and the Trust will contact UKVI if they are in any doubt regarding the suitability and authenticity of these documents. Individuals who currently hold a visa and who have existing leave to enter or remain granted under the old visa arrangements, will be able to extend their leave under Tier 2 but are not required to change their status until their leave to remain expires.

5.2.8 Refugees and Asylum Seekers

A refugee is a person who has had a positive decision on their claim for asylum under the 1951 United Nations Convention Relating to the Status of Refugees (the Refugee Convention). Individuals who do not meet the Refugee Convention's criteria for Refugee Status may qualify either for Humanitarian Protection (granted for five years), or Discretionary Leave to Remain (granted for up to three years).

A refugee has rights under the Geneva Convention to be treated no less favourably than citizens of the host nation. In the UK, refugees have the right to work and are able to move and reside freely. They are also eligible for mainstream benefits and services, including access to education and NHS treatment in the same way as UK citizens. Refugees with Humanitarian Protection or Discretionary Leave to Remain are entitled to apply for further leave before their current leave expires. A refugee's entitlement to employment and training continue during this period of waiting for a decision on their application.

Refugees will not normally have national passports and are unlikely to have copies of other official documents, such as birth certificates or photo-cards. When granted leave to remain in the UK, a refugee will be issued with an Immigration Status Document (ISD) by the Home Office, which will indicate their refugee status as outlined above. This document can be used for identification purposes. They may also have a travel document.

5.3 Professional Clinical Registration and Qualifications

The purpose of registration and qualification checks is to ensure that a prospective employee is recognised by the appropriate regulatory body and that they have the right qualifications to do the job.

The conditional offer of employment letter sent to prospective employees makes it clear that confirmation of appointment depends on satisfactory registration / qualification checks being completed and that any information disclosed on the application form will be checked.

Prospective employees are also informed that any offer of appointment may be withdrawn if they knowingly withhold information, or provide false or misleading information and that employment may be terminated should any subsequent information come to light once they have been appointed.

5.3.1 <u>Qualifications</u>

For all qualifications deemed essential in the person specification for the post, the HR Department will:

- Request original certificates and take copies of these;

AND

- Check that the details on certificates match those the person provided as part of their application;

OR, WHERE ORIGINAL DOCUMENTS ARE NOT AVAILABLE

- Advise the applicant to contact the awarding body directly, where possible, to obtain evidence of their attendance, course details and qualification awarded.

It is quite possible that the name given in a qualification certificate will not match that given by the applicant due to a number of reasons, such as marriage/civil partnership, or divorce. In such cases, the Trust will request the individual to provide additional evidence to validate the change of name

If a prospective employee has gained their qualifications overseas, the HR Department will check that this qualification exists, that it is equivalent to the stated UK qualification and that the prospective employee does, in fact, hold the qualification.

Where it is not possible to check directly with the awarding body, then advice may be sought from the relevant country's UK embassy, consulate or high commission.

5.3.2 <u>Professional Clinical Registration with statutory regulatory bodies</u>

There are currently eight regulatory bodies covering the health professions. Their four main functions are:

- establishing standards of competence, ethics and conduct
- establishing standards for training
- keeping a register of those who meet the standards
- dealing with registrants who fall short (e.g., by placing conditions on their registration or erasing them from the register).

Before the Trust appoints any health professional the following will always be checked as part of the pre-employment process by the HR Department:

- That the candidate is registered to carry out the proposed role. This will be done via the relevant website and by asking the candidate for evidence of up to date registration;
- Whether the registration is subject to any current restrictions which might affect the duties proposed. This will be done by checking the relevant website;
- If the candidate has any investigations against them about their fitness to practise that the regulatory body has a duty to disclose. This will be done by checking the relevant website

For professions where clinical revalidation is required, this will also be confirmed via the professional clinical website or via the employment confirmation procedure.

Newly qualified registered nurses will be allowed to commence employment prior to their registration being received, but only as a Healthcare Assistant, until evidence of NMC registration is presented and validated by the HR Department.

Ensure that a copy of the validated registration is printed for the individual's personnel file.

A professionals' clinical registration will be recorded within ESR on appointment.

Registration must be checked directly with the relevant regulatory body. It is not sufficient to take a copy of documentation provided by the practitioner as proof of registration – i.e. copy of their PIN. Each regulatory body has different procedures for disclosing fitness to practise information, which are outlined in NHS Employers' Professional Registration and Qualification Check Standard.

The Trust's Professional Clinical Registration Policy also sets out the procedures for ongoing registration checks, a copy of which is available on the Trust intranet.

5.4 Alert Notices

An alert notice is a way of notifying NHS bodies and others about a registered health professional whose performance or conduct could place patients or staff at serious risk.

The HR Department will check whether or not a candidate is the subject of an alert notice irrespective of whether or not the position applied for requires registration with a regulatory body. If a prospective employee/worker is recorded as having an alert logged against them, this will be flagged with the Director of HR for further investigation. The Trust reserves the right to withdraw a conditional offer of employment/placement for an individual who is noted as having an alert notice issued against them.

5.5 Employment History (References)

The main purpose of employment history/reference checks is to obtain confirmation of an applicant's employment and/or training history. The secondary purpose is to cross-reference information received with that provided by the individual on their application form.

Where an individual currently works or has previously worked in the NHS, the Electronic Staff Record (ESR) will be used to verify employment history via the Inter Authority Transfer (IAT) function.

Where employment has been outside the NHS or overseas then employment references will be used to validate employment history.

The Trust will make it clear to individuals that the conditional offer is subject to satisfactory employment checks and that information disclosed on the application form will be checked. Individuals will also be informed that the conditional offer will be withdrawn if they knowingly withhold information, or provide false or misleading information.

A minimum of 3 years' continuous employment and/or training history including any gaps in service will be checked. The number of references may therefore differ for each applicant, depending on how many episodes of employment/training they have had in the previous 3 years. Where an individual has been with one employer/training establishment for 3 years or more, one reference will be sought, apart from newly qualified clinical staff where a reference will be requested from the current educational establishment as well as the individual's mentor/clinical supervisor.

Where there are gaps in employment/training, the individual will be asked to provide evidence to support their period of unemployment e.g. confirmation of unemployment benefit.

Employment history/reference requests will always be sought in writing - post, e-mail fax etc. using official stationery / letter head. Electronic confirmation will only be accepted from a company e-mail address – private e-mail addresses such as Yahoo, Hotmail etc. will not be accepted.

References will be requested through the applicant's employer's HR Department, line manager or other relevant department manager.

If the applicant is already working within the Trust, the ESR will be used to verify dates.

<u>Executive Appointments</u>

References will be requested by the HR <u>prior to interviews</u>.

Referees will be asked to comment on:
- The applicant's character and ability to carry out the duties specified in the job description
- Particular strengths or weaknesses the applicant has which are considered relevant to the post.

As well as providing information regarding:
- Their sickness absence record during the past 2 years (including dates and reasons)
- Any disciplinary sanctions or investigation(s) currently underway

<u>Requesting References – Substantive Consultant Appointments</u>

References will be requested by HR <u>prior to interviews</u>.

One of the referees provided by the applicant as part of the process must be the applicant's current Medical Director or if they are currently a doctor in training, their Educational/Clinical Supervisor. They will be asked to provide information to include: In addition please provide details of:

- ➢ Their sickness absence record during the past 2 years (including dates and reasons)
- ➢ Any disciplinary sanctions or investigation(s) currently underway
- ➢ Any fitness to practice/conditions/restrictions with the GMC
- ➢ Any concerns with regard to revalidation
- ➢ Information regarding performance concerns

<u>Revalidation Information – **all** GMC Registered Doctors</u>

For medical staff who require GMC registration, but are not in a training post, the HR Department will, in addition to the 3 year employment history, request information to confirm revalidation and fitness to practice.

This information must be supplied by the individual's current Medical Director / Responsible Officer, apart from when the individual is currently in a training post when it will be requested from the Educational Supervisor.

When an individual is offered a substantive consultant position with the Trust, a reference will always be required from the individual's current Medical Director.

Other Types of Reference

Depending on the individual's circumstances, other types of references may also be required if:

- they have been overseas for a single spell of three months or more, or a cumulative total of six months or more, then every effort should be made to obtain a relevant reference from overseas (see below)

- they have been in full-time education in the last three years, then a reference should be obtained from the relevant academic institution

- they have served in the Armed Forces or Civil Service during the previous three years, then employer's references should be obtained from the relevant service or department

- The applicant has been self-employed; evidence should be obtained (for example, from HM Revenue & Customs, bankers, accountants, solicitors, client references, etc), to confirm that the individual's business was properly conducted and the applicant's involvement in the business was terminated satisfactorily.

Overseas Employment or Training

Prospective employees will need to give a reasonable account of any significant periods of time spent overseas (three months or more).

The following documentation can be requested as an assurance of time spent overseas:

- proof of residence for time spent abroad
- overseas employer or academic references/certificates
- References from UK departments and agencies based overseas, for example the Foreign and Commonwealth Office (FCO) missions, British Council, non-government departments and agencies.

Information on time spent overseas should always be requested early to prevent unnecessary delays in the recruitment process. Confirmation of dates should be cross-referenced with passports, work permits etc; or by contacting embassies and consulates, where appropriate. UK representatives for overseas countries can be found on the Foreign and Commonwealth Office website or by phone on 020 7008 1500.

Every effort should be made to obtain references from overseas employers or training providers by independently confirm the details of the candidate's previous employer and check reference details in the same way local references are checked.

Where an applicant has not been able to provide sufficient documentary evidence of their time spent abroad, this will be raised with a Divisional HR Manager to consider what additional assurances may be gained at interview or through evidence of other relevant training and experience in the UK.

5.6 Disclosure and Barring Service Checks

The Disclosure and Barring Service (DBS) provides access to information across England and Wales about criminal convictions and other police records to help employers make an informed decision when recruiting staff. The information provided by the DBS is known as a 'disclosure'

The DBS provides three levels of disclosures currently available for exempt positions – standard, enhanced and enhanced with barring. The Trust, through a risk assessment process, will determine the level of disclosure required for a position prior to the post being advertised, balancing the need to prevent unsuitable people from working in sensitive posts, against the risk of discrimination against ex-offenders who are rehabilitated.

Where a DBS check is required, it will only be carried out on a prospective employee/worker after a provisional offer has been made. It will be made clear to prospective employees/workers that appointment to any position is conditional on satisfactory checks.

Prospective employees/workers will also be informed that any conditional offer of appointment/placement may be withdrawn if they knowingly withhold information, or provide false or misleading information.

The decision rests with the Director of Human Resources as to whether or not to employ a person or place a worker whose DBS disclosure reveals a conviction or other information. The Director of Human Resources will make a decision based on all the relevant information including:

- the nature of the offence
- the age at which it was committed
- its relevance to the post in question
- whether the applicant has a pattern of offending behavior
- whether the applicant's circumstances have changed since the offending behavior
- The circumstances surrounding the offence and the explanation(s) offered by the convicted person.

All Positive Disclosures returned to the Trust will be fully investigated by the HR Department whilst ensuring confidentiality is maintained.

Under no circumstances will the appointing panel be made aware of the Positive Disclosure during any stage of the recruitment process.

Possession of a criminal conviction does not automatically make an applicant unsuitable for employment but some offences (e.g. involving violence or sexual abuse) are likely to preclude an applicant from having access to patients.

5.6.1 Declaration forms

Where the post meets the criteria for a criminal record check, the HR Department will request a self declaration from the applicant.

The Trust will use model declaration form A, for positions eligible for a standard or enhanced disclosure. Copy of this form is available at http://www.nhsemployers.org

The Trust's DBS Policy sets out the procedures for undertaking DBS checks. A copy of this is available on the Trust intranet.

5.7 Work Health Assessments

All NHS staff must have a work health assessment (sometimes referred to as a pre appointment health assessment), that adheres to equal opportunities legislation and good occupational health practice.

The purpose of a health assessment is to assess whether new employees:

- Have a health condition or disability that requires adjustments in the workplace to enable them to undertake the post offered; or
- Have a health condition or disability that requires restrictions to their role (e.g. Exposure Prone Procedures (EPP) workers with a blood-borne virus)

All work health assessments must take into account the requirements of the disability provisions within the Equality Act 2010 and reasonable adjustments must be made to ensure that people can work in the NHS regardless of physical impairment or learning disabilities.

Before a conditional offer of employment can be confirmed, a work health assessment must be carried out by Occupational Health in accordance with equal opportunities legislation and good occupational health practice.

The HR Department will issue the successful candidate(s) with screening and immunisation questionnaires and an infectious disease history form (if re applicable), with the conditional offer of employment. These must be completed and returned to Occupational Health Department to ensure confidentiality of information.

Where Occupational Health is unable to confirm fitness for work from the information provided on the questionnaire, an assessment will be carried out and advice provided on whether or not the person is capable of carrying out the duties of the job. This advice may include recommendations about reasonable adjustments to the work, role or environment, which then need to be considered in line with the NHS Occupational Health Employment Checks Standard.

The outcome of individual's work health assessment will be sent to HR, including any recommended restrictions or adjustments

Where necessary a risk assessment should be carried out by the recruiting manager with support from and/or Occupational Health, Health and Safety Team or Access to Work (Job Centre Plus), to address any specific issues raised.

5.7.1 <u>Withdrawing conditional offers on health grounds</u>

Legislation permits the Trust to ask health questions after making a conditional job offer that is subject to medical clearance and to withdraw the offer, if a health condition makes the person unsuitable after reasonable adjustments have been considered

The Trust will not withdraw conditional offers solely because a candidate has a disability or because of the effects of a disability, unless it has first considered whether reasonable adjustments might help the disabled person to be employed and rejection is '*a proportionate means of achieving a legitimate aim'*, e.g. where the candidate, if employed, would create a real (and not a fanciful) risk to health and safety in the workplace.

Decisions to withdraw conditional offers on health grounds will therefore not be taken by the Trust unless:

- Expert Occupational Health advice has been sought, AND;
- The candidate has been assessed by an Occupational Health professional, AND;
- The recruiting manager and HR Manager have fully considered the Occupational Health advice and explored / discussed this and any reasonable adjustments with the candidate.

If having followed all of the above steps, a decision is taken to withdraw the conditional offer on health grounds, the HR Department will write to the candidate confirming this.

5.8 Secondary Employment

Successful candidates will be asked to disclose any existing secondary employment that they wish to continue after commencing employment with the Trust. The Trust's Secondary Employment Policy sets out the procedure for declaring secondary employment. A copy of this is available on the Trust Intranet.

5.9 Fit and Proper Persons Requirement

The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, places a duty on NHS providers not to appoint a person or allow a person to continue to be an Executive Director or equivalent or a Non-Executive Director (NED) under given circumstances. This means that NHS provider organisations must ensure that director level or equivalent appointments meet the 'Fit and Proper Persons Requirement'.

This regulation has been integrated into the Care Quality Commission's (CQC's) registration requirements and falls within the remit of their regulatory and inspection approach.

The Trust must not therefore appoint a person to an Executive Director level post (including Associate Directors) or to a Non-Executive Director post, other Board level posts and those post holders directly accountable to the Chief Executive unless they are of 'good character', in that they:

- Have not been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence, which if committed in any part of the United Kingdom, would constitute an offence;
- Have not been erased, removed or struck-off a register of professionals maintained by a regulator of health or social care.
- Have the qualifications, competence skills and experience necessary for the relevant position;
- Are able to perform the work that they are employed for after reasonable adjustments are made which are intrinsic to the office or position for which they are appointed;
- Can supply information as set out in Schedule 3 of the Regulations

The CQC's definition of good character is "*not the objective test of having no criminal convictions but rather a judgement to be made as to whether a person's character is such that they can be relied upon to do the right thing under all circumstances*."

Guidance issued by the CQC emphasises the importance of the Fit and Proper Person Requirements in ensuring the accountability of Directors of NHS bodies. NHS bodies have a responsibility to ensure the requirements are met with the CQC's role being to monitor and assess how they feel this responsibility is discharged.

The Fit and Proper Person Requirement lists categories of persons who are prohibited from holding office and for whom there is no discretion.

It is the responsibility of the Trust's Chair to discharge the requirement placed on the Trust to ensure that all Directors meet the fitness test / do not meet any of the 'unfit' criteria.

The CQC expects senior leaders to set a tone and culture of the organisation that leads to staff adopting a caring and compassionate attitude. It is important therefore that in making appointments, Boards and Councils of Governors take account of the values of the organisation and the extent to which candidates provide a good fit with those values.

In addition to the pre-employment checks required by the NHS Employment Check Standards, the Fit and Proper Persons Requirement will be completed for the relevant posts as outlined above and repeated annually therafter.

5.10 Junior Doctors in Training

Junior doctors in specialist, core or GP training posts are employed by the Lead Employer Trust (LET) and join City Hospitals on rotation as part of their training programme. The LET provides HR with a management report for each rotation which confirms all pre-employment clearances for each doctor who is to join the Trust. Junior doctors are asked to present confirmatory evidence of their identification on their first day of working at the Trust.

5.11 Locum Doctors and Agency Workers

Whilst the responsibility to carry out employment checks is delegated to the agency, the HR Department will ensure that these checks have been carried out and evidence is obtained to confirm this, prior to a locum doctor/agency worker being allowed to start work. The locum doctor/agency worker will also be checked against for a professional alert in line with section 5.4.

All agencies will be required to provide evidence to the HR Department that their employment checks have been undertaken for the locum doctor/agency worker in line with NHS Employment Check Standards.

Locum doctors/agency workers are asked to present evidence of their identification and professional clinical registration to HR (where required for the role) on their first day.

5.12 Honorary Contract Workers

In line with the NHS Employment Checks Standard, individuals wishing to commence with the Trust under an honorary arrangement must have satisfied all the required pre-engagement checks. The worker will also be checked for a professional alert in line with section 5.4.

The Trust's Honorary Arrangements Policy sets out the procedures for undertaking pre-engagement checks. A copy of this is available on the Trust intranet site.

5.13 Work Experience

Individuals on work experience are asked to present evidence of their identification to HR on their first day.

6. POST EMPLOYMENT CHECKS

The following checks will be carried out on existing employees as part of any subsequent recruitment or organisational change process.

6.1 Employment History (References)

Employee Services will verify that all details recorded on ESR are up to date, and, in conjunction with the relevant Divisional HR Manager, that there is no relevant information on the individual's personal record that should be considered before an appointment is made.
Employment history/references will only be sought where the individual holds secondary employment (paid or unpaid) external to the Trust.

6.2 Professional Clinical Registration and Qualification

Qualifications as outlined as essential within the person specification relevant to the new post applied for will be verified following the conditional offer of employment in line with this policy. This will be recorded on the pre employment checklist.

The HR Department produces monthly ESR reports and checks the information held about employees' professional registration status against that on the relevant professional bodies' website. Where necessary, employee information is updated in ESR.

The relevant Divisional HR Manager will investigate any notified delays in processing re-registrations, directly with the relevant professional body and where necessary consider whether or not extensions to registration need to be requested.

6.3 Disclosure and Barring Checks

A new DBS check is not required where an existing member of staff moves jobs within the same organisation and their roles and responsibilities and level of contact with that vulnerable group does not change. The criteria for determining whether a new check is required, is where:

- The person has never had a DBS check before and is moving into a post that requires a DBS check at standard, enhanced or enhanced with barred list check.
- The person has previously only had a standard level disclosure and is moving into a post that requires them to have an enhanced or enhanced with baring list level disclosure.

- There has been a break of service of more than three months between leaving the old post and taking up the new one
- There is a concern about that individual's suitability for the post.

6.4 Work Health Assessment

A work health assessment will only be carried out if the employee is due to transfer to a different post in the Trust that involves a significant change of duties, working hours, patterns or work, shift working and/or environment. This will be determined by reviewing the risk assessment for the post with account being taken of any current or previous illnesses/conditions and the duties imposed on the Trust by the Health and Safety at Work and Equality Act.

Notification of whether or not the employee is considered fit to carry out the duties of the new post, which may include a recommendation regarding reasonable adjustments, will be sent to HR who will then inform the recruiting manager, prior to issuing a contract amendment.

Where Occupational Health does not consider the post to be suitable or where adjustments have been considered but are not practicable, the matter will be referred to the recruiting manager and relevant Divisional HR Manager who will arrange to meet with the employee to discuss the next steps. This may result in withdrawing the conditional offer of appointment.

6.5 Right to Work Checks

As part of the Sponsorship License Agreement between the Trust and the UKBA, employees must ensure the Trust is updated with regard to any change in their right to work status. Employees' right to work information is held within ESR. Employees are expected to co-operate in providing documentary evidence of their right to work in the UK when requested to do so by HR.

7. WITHDRAWING CONDITIONAL OFFERS OF EMPLOYMENT

No conditional offer of employment will be confirmed until all checks have been completed satisfactorily / to the Trust's absolute satisfaction and the Trust reserves the right to withdraw a conditional offer of employment if checks cannot be satisfactorily completed within 4 weeks of the conditional offer being made, despite several recorded attempts.

The Trust also reserves the right to withdraw conditional job offers, where the results are not to the Trust's absolute satisfaction / standards.

If the Director of HR agrees that a candidate can start work before the results of all checks are known, the Trust will write to the individual making it clear that the offer may be withdrawn if the checks prove unsatisfactory.

Offers of employment will be withdrawn where there is evidence that an individual has knowingly withheld information and/or provided false or misleading information. Employment may be terminated should this come to light after the candidate has started in post.

The outcome of all employment checks are recorded on ESR.

8. MONITORING COMPLIANCE/EFFECTIVENESS OF THE POLICY

A checklist is completed for all appointments by the Employee Services Team to ensure that on an individual basis all the necessary steps in the process have been completed before an offer of employment is made to an individual.

Additionally ESR reports are run each month by the Employee Services Team highlighting individuals whose checks are due to lapse (e.g. professional registration, work permits/visas), to ensure appropriate action is taken.

Compliance with the policy is also checked by Internal Audit as part of its annual programme of HR audits.

9. DISSEMINATION, IMPLEMENTATION AND TRAINING

- Senior Manager Forum
- Intranet
- Team Brief
- Recruitment and Selection Training

10. CONSULTATION, REVIEW, APPROVAL AND RATIFICATION

10.1 Consultation
- ➢ Joint Management Group
- ➢ Joint Consultative Group

10.2 Approval
- ➢ Executive Committee

10.3 Review
- ➢ Every 3 years

10.4 Ratification
- ➢ Policy Committee

11. EXTERNAL REFERENCES

- ➢ NHS Employers - Employment Checks Standards – www.nhsemployers.org
- ➢ Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975
- ➢ Freedom of Information Act 2000
- ➢ NHS Reform and Healthcare Professionals Act 2002

- Medical Act 1983
- Equality Act 2010
- The Human Rights Act 1998
- Part time Workers (Prevention of Less Favourable Treatment) Regulations 2000
- Health and Safety legislation
- Health and Social Care Act 2014

12. ASSOCIATED TRUST POLICIES

- Criminal Background and Barring Checks Policy
- Disciplinary Procedure
- Grievance Policy and Procedure
- Professional Clinical Registration Policy
- Recruitment and Selection Policy
- Locum Doctor and Agency Worker Policy
- Honorary Arrangements Policy
- Secondary Employment Policy