

# Harrop Fold School



## Safe Recruitment Working Practices Schools 2018/2019

**(Salford City Council Policy)**

**Date of Next Review: Spring 2019**

**Delegated Committee: Resources Committee**

## **1.0 Introduction**

Organisations who work with or on behalf of children, young people and other vulnerable client groups need to be vigilant in their recruitment and selection of staff. Abusers may target these organisations and can be extremely skilled at presenting themselves as caring and trustworthy individuals. Some indicators of abusive behaviour can emerge through inappropriate attitudes or inconsistent reactions and a vigorous recruitment and selection process provides important opportunities to identify these and deter and prevent offenders from gaining access to children, young people and vulnerable adults through their work.

This document has been prepared to provide information and support to all recruiting managers within schools who recruit new employees and outlines the key requirements expected in relation to the safe recruitment and selection of people. It is expected that the same principles will also be applied when engaging volunteers, contractors or via agencies.

Safe recruitment is a key priority for Salford City Council and schools to ensure our staff, pupils, clients, customers and service users are not subject to any risk whether it is through their day to day duties and responsibilities or access to the services we are depended upon to provide. The guidance has been designed to help ensure safe and effective recruitment and selection decisions are made in line with best practice, regulatory and legal guidance and the Salford Safeguarding Children Board (SSCB) Safe Recruitment Policy and Good Practice Guide.

The purpose of the document and overall approach to recruitment is to encourage the continuous improvement of safer recruitment practices across the City Council and schools to help deter, identify and reject unsuitable individuals and to safeguard all who access council services. Safe recruitment is not solely for those individuals who work with vulnerable people i.e. adults, children and young people but ensures best practice in recruitment across the Council.

## **2.0 Safe Recruitment in Salford**

Salford Council including schools, have a corporate social responsibility to account for the safety and protection of every individual it deals with as an employer, as a service provider and as a corporate parent. We therefore need to be confident that our recruitment practices embed this culture of safety and protection throughout the Council and schools.

For those individuals who will work and/or come into contact with children and young people, the recruitment practice requires managers to meet existing regulatory and legal requirements such as Working Together, The Bichard Report and Safeguarding Children and Safer Recruitment in Education and to achieve 'Effective' status within the LSCB Self Assessment Tool (SAT) Quality Standards Framework.

For those individuals who will work and/or come into contact with vulnerable adults the recruitment practice requires managers to meet existing requirements including The Bichard Report, Care Standards Act 2000 and the Health and Social Care Act 2008.

Whilst there are specific mandatory regulatory and legal requirements for children, young people and vulnerable adults, safe recruitment should not be considered to be exclusive to these service groups or staff. Implementing mandatory best practice across the Council and schools to engage safe recruitment practices and processes will

encourage the continuous improvement in practice that will help to deter, identify and reject people who are unsuitable to work for Salford Council.

### **3.0 Safe Recruitment Steps**

#### **3.1 E-Recruitment / Application Process**

All recruitment to school vacancies should where possible be administered through the e-recruitment system (Your Council Jobs). The recruitment process is supported by the e-recruitment system and ensures that the correct type of application form is used as appropriate to each vacancy. Not all jobs require the specific dates in each period of employment however those posts classified as 'safeguarding or high risk' and requiring Disclosure and Barring Service (DBS) clearance do and therefore different application forms are required.

#### **3.2 Scrutinising and Short Listing**

All application forms should be scrutinised to ensure that they are fully and properly completed, the information provided is consistent and does not contain any discrepancies.

The application form employment history should be checked for gaps and any subsequent identified gaps should be clarified during the selection process to enable the recruiting manager to make an informed decision to continue.

The detail of such gaps and explanation should be documented and recorded by the school. This must be complete prior to any initial offer letter being processed.

All candidates should be assessed equally by the members of the interview panel, against the criteria contained in the person specification/role profile without exception or variation.

#### **3.3 Conditional Offer of Employment**

Following the verbal offer and acceptance of employment, employees must not commence working for the school until full clearances have been received and checked by the employer. All Community and Voluntary Controlled Schools must follow this safe recruitment practice and it is recommended to Voluntary Aided schools and Academies.

Pre employment checks include a DBS check, verification of entitlement to work in the UK in line with Asylum & Immigration Act requirements, receipt of satisfactory references, qualification check and medical clearance where appropriate. This also applies to internal appointments, in that staff should not transfer to a regulated activity post until such checks can be evidenced.

#### **3.4 Pre Employment Conditions/Clearances**

The recruiting manager must complete the New Starter Form (**Appendix 1**) and New Starter Checklist (**Appendix 2**) and return to Human Resources to evidence safe recruitment practice. The forms are to verify all school checks have been undertaken and the level of clearances required before employment can be confirmed. The recruiting manager must identify which conditions must be met for the post that they are recruiting to on the checklist otherwise the form will be returned for full completion.

Human Resources will action the appointment requesting the necessary clearances. Please note employment **must not** commence until all relevant conditions have been

met and documentary evidence has been received and recorded on file by HR. The recruiting manager will be notified once all the relevant clearances have been received and a start date can then be confirmed.

Arrangements should not be made for a new employee to commence employment prior to clearances being received and will be in breach of the safe recruitment requirements therefore the HR team will be unable to arrange for any payment to be made.

In exceptional circumstances, and only following a full assessment of risk and Strategic Director approval, it may be possible for a new employee to commence employment before all conditions have been met. These decisions must be discussed with the HR team and be fully documented with the rationale recorded on the individual's personal file. A risk assessment form for this purpose can be found at **Appendix 3**.

If an existing employee is transferring employment or taking up secondary employment, Human Resources will undertake an audit of the clearances currently held on record.

### 3.5 Disclosure and Barring Service (DBS) Clearance

The government introduced a new definition of regulated activity in September 2012 to scale back the number of criminal record and barred list checks to a more proportionate and common sense level whilst still safeguarding vulnerable groups.

All school based positions would be covered by this definition and an enhanced check would be required. This check must be in place prior to the individual commencing employment and documentary evidence to this effect on record. Whilst safe recruitment requirements are a key priority it is also recognised that there can be delays in clearance being received. However, these delays may be as a result of further checks being needed and could indicate an issue.

Where ONLY the DBS check is missing, a risk assessment could be considered and on these occasions, the risk assessment form must be completed by the recruiting manager and approved by the Chair of Governors. For posts that have direct, unsupervised contact with children, young people or vulnerable adults, it is not advisable to proceed on the basis of a risk assessment. This will only be waived if it is agreed that as part of the induction process they are off site, out of direct contact, fully supervised or working on aspects of the job that don't require direct and/or unsupervised access to clients. Such decisions must be discussed with the HR team and be fully documented with the rationale recorded.

### 3.6 Portability of DBS Checks

In line with Council policy, all employees employed within schools will be subject to a **five** year re-check from the Disclosure and Barring Service.

However, from September 2012, employees who are already in receipt of an enhanced DBS check from their existing employer may use that disclosure as proof of a DBS in the following circumstances (all of the below **must** apply):

- The employees original DBS/CRB certificate can be produced.
- The DBS check has been carried out within five years of their new start date with a Salford School.
- The DBS is clear of any positive disclosures.
- The employee has no break in service between leaving employment with their previous employer and commencing work at a school (with the exception of normal school holidays).
- The name and address of the employee are the same as other identification.

NB. This only applies where the DBS check has been undertaken by a Local Authority. Where a DBS check has been undertaken by a privately commissioned HR service, this will not be acceptable to Salford City Council. Local Authorities adhere to a standard that cannot be guaranteed by a privately commissioned service.

The recruiting manager will need to verify the identity of the individual in line with existing guidelines, and satisfy themselves that the DBS certificate produced is both genuine and relates to the individual concerned.

Where an employee cannot produce an original DBS certificate, where there has been a break in service or where there are positive disclosures on the DBS check, a new DBS check will need to be undertaken in line with the Council's safer recruitment guidelines.

The above guidance does not preclude schools from complying with all other safer recruitment practices (i.e. satisfactory references, identity checks, registration with statutory bodies).

### 3.7 Identification and Verification of Right to Work

All candidates must provide documentary evidence of their identity and right to work, in line with the Immigration, Asylum and Nationality Act 2006 (**Appendix 4**) A UK passport should always be seen where available. Additionally a document such as a utility bill must be provided that verifies the candidates name and address. Where relevant, change of name documentation must be produced.

If the recruiting manager is checking identification, the original documents **must** be seen and a copy taken. The copy must then be signed and dated to say the original document has been seen and sent through to Human Resources.

### 3.8 References

Two written references are required for every new employee, one **must** be the individual's current/previous employer.

References will be requested by the recruiting manager using the standard reference request forms. Where possible, references will be requested for all shortlisted candidates prior to interview to enable the recruiting manager to follow up any issues or gaps during the interview process.

The recruiting manager must complete a reference verification form (**Appendix 5**) to confirm the information provided has been carefully checked against the application form for any discrepancies or anomalies and reflects the candidate's experience.

Further guidance on references can be found at **Appendix 6**.

### 3.9 Employees from within Salford City Council or another Salford School

For internal candidates i.e. those already employed by the Council or from another Salford School, a streamlined approach will be followed. It is therefore important that you indicate this on the new starter form. This will enable HR to check and confirm any employment clearances which are already on file (i.e. a DBS check) and will speed up the recruitment process.

It is however important that you obtain at least one satisfactory reference verifying the candidates suitability for the new post and providing details of current performance.

### 3.10 Withdrawing a Conditional Offer

As long as it is made clear to a prospective employee that an employment offer is conditional, the offer can be withdrawn if a condition is not satisfied.

A contract of employment is only made where there has been an unconditional offer and an unconditional acceptance, supported by the intention to create a legal relationship.

## 4.0 **Volunteers**

4.1 A volunteer is a person who performs an activity which involves spending time, unpaid, doing something which aims to benefit someone (individuals or groups).

The new definition of regulated activity relating to children and young people does not apply to the work of supervised volunteers however there is statutory guidance to consider when the work of a volunteer would be regulated activity if not supervised.

The three main points to consider are:

- there must be supervision by a person who is in regulated activity.
- the supervision must be regular and day to day.
- the supervision must be reasonable in all the circumstances to ensure the protection of children.

This provides managers with the flexibility to determine what is reasonable following a full risk assessment of the circumstances. The specific level of supervision required should be based on the following factors:

- ages of the children, including whether their ages differ widely.
- number of children that the individual is working with.
- whether or not other workers are helping to look after the children.
- the nature of the individual's work (or, in a specified place such as a school, the individual's opportunity for contact with children).
- how vulnerable the children are (the more they are, the more an organisation might opt for workers to be in regulated activity).
- how many workers would be supervised by each supervising worker.

Any risk assessment undertaken must be clearly documented and held by the school.

4.2 Where is it identified through a risk assessment that a volunteer is not supervised under the above definition, a full enhanced DBS check should be carried out. It must be identified whether the post is a true volunteer as follows:

- How often will the volunteer be working?
- What activities will the volunteer undertake?
- Will this potentially lead to paid employment?

## 5.0 **Governors**

5.1 There is no statutory requirement for school governors to have an automatic DBS check unless they have regular unsupervised contact with children. If the governing body determine that it is necessary or appropriate for a governor to be checked due to their involvement in regulated activity, this will take place every four years. The rules for the portability of DBS checks for employees will also apply to school governors (see section 3.6).

## **6.0 E-Learning**

To assist recruiting managers, there are Recruitment & Selection and Safer Recruitment e-learning modules available on the intranet which can be accessed at the following link <http://intranet.salford.gov.uk/traininganddevelopment>

## Appendix 1

### NEW STARTER NOTIFICATION FORM – SCHOOLS

1. CANDIDATE DETAILS										
Name	Click here to enter text.									
Address	Click here to enter text.									
Telephone Number	Click here to enter text.									
Date of Birth	Click here to enter text.									
NI Number	Click here to enter text.									
Teacher reference number	Click here to enter text.									
2. POST DETAILS										
School	Click here to enter text.									
Post title	Click here to enter text.									
Preferred start date	Click here to enter text.									
Type of contract	Permanent	<input type="checkbox"/>	Fixed Term	<input type="checkbox"/>						
If fixed term	Reason	Click here to enter text.		End date if known	Click here to enter text.					
	If linked to SEN, name of pupil.	Click here to enter text.		If linked to maternity, name of employee.	Click here to enter text.					
TEACHERS ONLY										
Pay point (MPS/UPS) or other amount	Click here to enter text.									
If part time state %	Click here to enter text.									
NQT?	<input type="checkbox"/>									
TLR?	TLR1	£	Click here to enter text.		TLR2	£	Click here to enter text.			
Reason for TLR	Click here to enter text.									
Additional allowance?	Recruitment and retention?	£	Click here to enter text.		Additional Allowance	£	Click here to enter text.			
Reason for allowance	Click here to enter text.									
End date of R&R or additional allowance.	Click here to enter text.									
SEN allowance?	SEN1	£			SEN2	£				
Leadership appointment?	Leadership range				Leadership point					
SUPPORT STAFF ONLY										
Grade	Click here to enter text.									
Salary Point	Click here to enter text.									
Job Evaluation Job Code if unique post.	Click here to enter text.									
Working pattern	Hours of work per week	Click here to enter text.		Term Time Only	<input type="checkbox"/>					
	Additional weeks if TTO	Click here to enter text.		All Year Round	<input type="checkbox"/>					
Daily working hours	Mon		Tue		Wed		Thu		Fri	

(discounting breaks – should add up to total hours per week)										
--	--	--	--	--	--	--	--	--	--	--

### 3. SAFE RECRUITMENT CHECKS

(Please sign and date all copied documents with the words “Original document seen”.)

Application form	I confirm that the application form is attached (Desirable).	<input type="checkbox"/>
Employment gaps	I confirm the application form has been checked and there are no gaps in employment history.	<input type="checkbox"/>
	I confirm the application form has been checked and the gaps in employment have been investigated and clarified. I am happy to continue with the appointment.	<input type="checkbox"/>
JD and PS	I confirm that the JD and PS are attached (Desirable).	<input type="checkbox"/>
DBS	I can confirm the employee has a valid DBS check in line with the safe recruitment guidance:  Number: _____ Date: _____	<input type="checkbox"/>
Statutory Qualifications	I confirm there are no statutory qualifications required for this post.	<input type="checkbox"/>
	I confirm the original documents of the required qualifications have been seen, a copy obtained and attached.	<input type="checkbox"/>
Other relevant qualifications	I confirm there are no other essential qualifications required for this post.	<input type="checkbox"/>
	I confirm the original documents have been seen, a copy obtained and are attached.	<input type="checkbox"/>
Eligibility to work in the UK and proof of ID	I confirm proof of eligibility to work in the UK (as detailed in the Immigration, Asylum and Nationality Act 2006) and proof of identity has been documented by the school. Original documents have been seen and a copy attached.	<input type="checkbox"/>
Medical	I confirm that medical clearance has been received from HR.	<input type="checkbox"/>
References	I confirm two satisfactory references have been received and verified and copies of both references and verification form are attached.	<input type="checkbox"/>

### 4. AUTHORISATION

I confirm all statements above are accurate.		
Name of Headteacher or other authorised signatory	Click here to enter text.	
Signature	Click here to enter text.	
Job title	Click here to enter text.	

Date	Click here to enter text.
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## Appendix 2

### NEW STARTER CHECKLIST FOR SCHOOLS

All Community and Voluntary Controlled Schools and those Aided Schools and Academies that have indicated they are.

<b>School/employee must provide the following information</b> (Headteacher/Bursar/ESO should sign and date to say they've seen original)	Essential/ Desirable
Application form	<input type="checkbox"/> D
Job Description and Person Specification	<input type="checkbox"/> D
2 references and reference verification form where new to the school (not necessary when internal appointment)	<input type="checkbox"/> E
Occupational Health Clearance	<input type="checkbox"/> E
Photo ID	<input type="checkbox"/> E
Proof of address	<input type="checkbox"/> E
Proof of eligibility to work in the UK (may already be satisfied by Photo ID).	<input type="checkbox"/> E
CRB/DBS Clearance (Note portability arrangements)	<input type="checkbox"/> E
Qualified Teacher Status (Teachers only)	<input type="checkbox"/> E
Qualifications essential to the role	<input type="checkbox"/> E
Check Teaching Agency register for barred teachers	<input type="checkbox"/> E
<b>If CRB is missing.....</b>	
A risk assessment signed by the Headteacher and Chair of Governors List 99 check undertaken by HR	<input type="checkbox"/> E <input type="checkbox"/> E
<b>If any other safe recruitment checks are missing.....</b>	
<i>(Community and Voluntary Controlled Schools)</i> A risk assessment signed by the Headteacher and Chair of Governors and e-mail confirmation from Cathy Starbuck authorising from LA perspective)	<input type="checkbox"/> E
<i>(Aided Schools and Academies)</i> A risk assessment signed by the Headteacher/Principal.	<input type="checkbox"/> D

## Appendix 3 - Risk Assessment

### Consideration of commencement of employment prior to pre-employment checks

<b>Name of prospective employee:</b>		<b>Name of Head Teacher</b>	
<b>Proposed post title:</b>		<b>Date of risk assessment:</b>	
<b>Service/school:</b>			

Reasons for considering commencement of employment prior to receiving clearances:	<b>Consequences, to service delivery, of waiting for clearance:</b>	Level of access during "waiting period"
Supervision arrangements during "waiting period" and any other control measures:	<b>Pre-employment checklist:</b> Has the employee left employment? Y / N Medical clearance received? Y / N UKBA clearance check completed? Y / N Qualifications verified? Y / N References? Y / N Satisfied with general background & employment history checks? Y / N Current DBS check back Y / N List 99 check (where no DBS) Y / N	Previous DBS clearance: Is a previous disclosure available? Y / N Has it been seen by you? Y / N What is its date? _____ (see section on 'Portability' within Policy)

To be completed by the Headteacher and Chair of Governors if ONLY the DBS check is not in place.

To be completed by the Headteacher and authorised by the Strategic Director of Children's Services if any other safe recruitment checks are not in place.

**Assessment of risk following control measures:**

**High**

**Medium**

**Low**

**Options:**

- 1) This prospective employee will not commence work prior to satisfactory clearances.
- 2) Following risk assessment, I have determined that the above named may commence employment with the identified control measures. I undertake to personally review this situation at intervals of no less than every two weeks.

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **Review Dates:** \_\_\_\_\_

## Appendix 4      Preventing Illegal Working in the UK

The law on preventing illegal working is set out in sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006 (known as the 2006 Act) which came into force on 29 February 2008. These rules replaced the previous ones under section 8 of the Asylum and Immigration Act 1996 (known as the 1996 Act).

The law is in place to:

- make it harder for people with no right to work in the UK to unlawfully gain or keep employment ;
- make it easier for you to ensure that you only employ people who are legally allowed to work for you; and
- strengthen the Government's controls on tackling illegal working by making it easier for us to take action against employers who use illegal workers.

Employing someone who is not allowed to work in the UK is illegal. As an employer you have a duty under the 2006 Act to carry out document checks on people to make sure they have the right to work in the UK **before** you employ them.

The documents that are acceptable for proving someone has the right to work in the UK are split into two lists. These lists are called List A and List B. You should always refer to these lists to make sure that you ask for the right documents.

### **LIST A      DOCUMENTS WHICH SHOW AN ONGOING RIGHT TO WORK**

1. A passport showing that the holder, or a person named in the passport as the child of the holder, is a British citizen or a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport or national identity card showing that the holder, or a person named in the passport as the child of the holder, is a national of the European Economic Area or Switzerland.
3. A residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to a national of a European Economic Area country or Switzerland.
4. A permanent residence card issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the family member of a national of a European Economic Area country or Switzerland.
5. A Biometric Residence Permit issued by the UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom, or has no time limit on their stay in the United Kingdom.
6. A passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the United Kingdom, has the right of abode in the United Kingdom, or has no time limit on their stay in the United Kingdom.

7. An Immigration Status Document issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the United Kingdom or has no time limit on their stay in the United Kingdom, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
8. A full birth certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's parents, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
9. A full adoption certificate issued in the United Kingdom which includes the name(s) of at least one of the holder's adoptive parents **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
10. A birth certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
11. An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
12. A certificate of registration or naturalisation as a British citizen, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
13. A letter issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the holder which indicates that the person named in it is allowed to stay indefinitely in the United Kingdom **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.

## **LIST B DOCUMENTS WHICH SHOW A RIGHT TO WORK FOR UP TO 12 MONTHS**

1. A passport or travel document endorsed to show that the holder is allowed to stay in the United Kingdom and is allowed to do the type of work in question, provided that it does not require the issue of a work permit.
2. A Biometric Residence Permit issued by the UK Border Agency to the holder which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question.
3. A work permit or other approval to take employment issued by the Home Office, the Border and Immigration Agency or the UK Border Agency **when produced in combination with** either a passport or another travel document endorsed to show the holder is allowed to stay in the United Kingdom and is allowed to do the work in question, or a letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer confirming the same.

4. A Certificate of Application issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to or for a family member of a national of a European Economic Area country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old **when produced in combination with** a positive confirmation letter from our Employer Checking Service.
5. A residence card or document issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to a family member of a national of a European Economic Area country or Switzerland.
6. An Application Registration Card issued by the Home Office, the Border and Immigration Agency or the UK Border Agency stating that the holder is permitted to take employment, **when produced in combination with** a positive confirmation letter from our Employer Checking Service.
7. An Immigration Status Document issued by the Home Office, the Border and Immigration Agency or the UK Border Agency to the holder with an endorsement indicating that the person named in it can stay in the United Kingdom, and is allowed to do the type of work in question, **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.
8. A letter issued by the Home Office, Border and Immigration Agency or UK Border Agency to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the United Kingdom and is allowed to do the work in question **when produced in combination with** an official document giving the person's National Insurance Number and their name issued by a Government agency or a previous employer.

You can find out more about these documents and view images in our 'Full guide for employers on preventing illegal working in the UK' which can be downloaded from our website: [www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/](http://www.ukba.homeoffice.gov.uk/business-sponsors/preventing-illegal-working/)

## Appendix 5

### Reference Verification Confirmation

#### Candidate Details

Name:

Job Title:

#### Reference 1

Name:

Address:

Contact Number:

**I confirm reference 1 has been verified and the information contained in the reference reflects the candidates experience stated in the application form and that the information provided in the reference has been confirmed as an accurate record from the referee detailed above.**

Signed \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

#### Reference 2

Name:

Address:

Contact Number:

**I confirm reference 2 has been verified and the information contained in the reference reflects the candidates experience stated in the application form and that the information provided in the reference has been confirmed as an accurate record from the referee detailed above.**

Signed \_\_\_\_\_

Print Name \_\_\_\_\_

Date \_\_\_\_\_

## **Appendix 6            Guidance on References**

### Purpose of References

The purpose of seeking references is to obtain objective and factual information to support appointment decisions. References should not be used as part of the shortlisting process. If conducted properly, the process of seeking references can provide important information about a candidate.

References should always be sought and obtained directly from the referee. References or testimonials provided by the candidate or those which are addressed 'To whom it may concern' should not be accepted as their authenticity cannot be verified. Such references may not be reliable or they may be the result of a compromise agreement and would therefore be unlikely to include any adverse comments.

References direct from employers also have their limitations perhaps because:

- employers are sometimes hesitant to provide an unfavourable reference for a former employee
- glowing references can sometimes be provided by employers as a way to get rid of an unwanted staff member
- applicants usually select people who will give them a glowing reference
- referees are sometimes friends
- a reference is sometimes negotiated as part of a compromise agreement

Nevertheless, despite these limitations, references must be sought on all candidates and with a systematic and structured approach can positively contribute to a vigorous and transparent selection process.

### Requesting References

It is recognised that it is common practice in the private sector for references only to be requested following a conditional offer of appointment being made. However, DfES guidance<sup>1</sup> states that ideally references should be sought on all short listed candidates, including internal ones, and be obtained before interview, so that any issues of concern they raise can be explored further with the referee, and taken up with the candidate at interview.

References must always be sought for both internal and external candidates and offers of employment always made subject to receipt of satisfactory references, where these have not been obtained prior to interview. However, this should occur only in exceptional circumstances where for example, because of delay on the part of the referee, or because a candidate has requested that their current employer is not contacted prior to interview. It is up to the chair of the interview panel, advised by HR consultants/providers, as to whether to respect this request. It should be acknowledged that there sometimes may be personal difficulties between individuals and their employers which may explain why an applicant may not want a past employer to be contacted. There should be an opportunity for candidates to explain these circumstances at interview and an expectation by the interview panel that they will do so.

In any case, where a reference has not been obtained on the preferred candidate before interview, the prospective employer must ensure that a reference is sought, received and scrutinised, and any concerns are resolved satisfactorily, before the person's appointment is confirmed.

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<sup>1</sup>

Where all references have not been received prior to the interview, care should be taken to ensure that candidates are not disadvantaged. Should a recruitment complaint be received, it would not be possible to justify making an appointment purely because two satisfactory references had been received on one candidate but not the other.

Request for reference letters should be sent out at the same time as the invitation to interview letters and should include a copy of the relevant Job/Role Description, Person Specification/Role Profile and a pre-paid envelope for the response. It is wise not to solely rely upon check boxes as references are intended to elicit information from the referee and therefore the request should include a list of specific open questions.

It is normal practice that one of the references is the applicant's current or most recent employer. There are circumstances when this is not always applicable, for example:-

- If the candidate has not previously been employed, a reference would normally be requested from their last establishment.
- If the candidate has recently been unemployed or self-employed, then consideration should be given to asking for another suitable referee with knowledge of the candidate such as a doctor, solicitor, police officer or other professional.
- If it is not possible to obtain a reference from any of the above, the panel will consider asking for another suitable reference

Normally two references should be sufficient, providing one is the current or most recent employer. However, if the candidate is not currently working with children, but has done so in the past, an additional reference should be sought from the employer by whom the candidate was most recently employed to work with children.

Relatives and friends should be precluded from providing references as they are unlikely to be objective and there is no way of verifying the accuracy of the information they have provided. Applicants should always be reminded that the prospective employer reserves the right to make contact with any of the employers listed on the application form.

### Obligation to Provide References

It is rare for an employer to refuse as it is established practice to provide a reference and a refusal could result in adverse consequences for the employee.

In the event that a referee does refuse to provide a reference, find out why and seek an alternative referee.

Under the Data Protection Act 1998 it is no longer possible to guarantee that a reference will remain confidential. The author of a reference may stipulate that it is confidential, and need not show it to the employee. However, employees can ask their new employer for a copy of the reference which may be disclosable if it is proper to do so, having balanced the rights of the author, any other person mentioned in the reference and the employee.

### Evaluating References

Evaluating references is not a simple task as referees may make certain assumptions and/or have prejudices of their own. It is often difficult to distinguish fact from opinion or to judge whether the referee is fully aware of the job content. Similarly there may be well meaning referees who are anxious to promote their candidate, non-committal referees who don't provide sufficient response or ill-motivated referees who are keen to move unsatisfactory work colleagues elsewhere.

It is, therefore, important to evaluate the information with care.

An example Reference Request letter and pro forma are included in this pack, and should help to ensure that objective verifiable information and not subjective opinion are provided.

A copy of the job/role description and person specification/role profile for the post for which the person is applying should be included with all requests.

On receipt, references should be checked to ensure that all specific questions have been answered satisfactorily. If all questions have not been answered or the reference is vague or unspecific, the referee should be telephoned and asked to provide written answers or amplification as appropriate. This makes it easier to clarify and/or expand upon certain aspect of the reference where necessary.

The information given should also be compared with the application form to ensure that the information provided about the candidate and his/her previous employment by the referee is consistent with the information provided by the applicant on the form. Any discrepancy in the information should be taken up with the applicant.

References should be treated as confidential. Difficulties arise, however, where a reference raises a serious concern about the preferred candidate's suitability for the post. The referee's consent to the disclosure of the contents of the reference should be obtained prior to discussing the concerns directly with the candidate. As a result of receipt of an adverse reference, the panel may:-

- Seek clarification on the area of concern with the candidate during the interview. If this proves satisfactory, the panel may appoint.
- Refuse the appointment on the grounds of an unsatisfactory reference. Where this is the case the panel must ensure that the decision is fair and reasonable and based on justifiable grounds.
- Where the reference is unclear or hints at problems, it is advisable to telephone the referee in order to clarify the information. Notes of the conversation must be documented, dated, signed and placed on file.

### Providing a Reference

An employer has a duty of care to exercise reasonable skill and care in the preparation of a reference. If this is not done adequately, the employee could bring a claim under one of the following:-

- Negligence – where reasonable care is not taken. An employer may be found to be liable if loss results from the employer's failure to exercise reasonable care in the preparation of a reference
- Defamation – where a reference contains a false or unsubstantiated statement that damages the reputation of a former employee. The employee may be able to claim damages
- Deceit – where a false statement is knowingly made.

The employer may be able to defend inaccuracies only where it can be shown it was given in good faith. Likewise, a disclaimer of responsibility could be included:-

"Whilst pleased to provide this reference, it is given on the understanding that this is done without legal responsibility and with the exclusion of legal liability on the part of and in respect

of the organisation providing the reference and the author of it and without legal liability to the subject of it and the recipient of it”.

However attractive this disclaimer may appear, it would be unlikely to protect where the supplier of the reference fails to comply with the duty of care, maliciously defames or intends to deceive, however, it can be used to assist in preventing the success of claims.

It should be noted that the author of a reference also owes a duty of care to the recipient of the reference if the reference was carelessly favourable or contained omissions.

Care should be taken to ensure that references are:

- Provided only by those members of staff in organisation who are authorised to do so.
- honest and the facts are correct. Even if the discrete components are factually correct care should be taken to ensure that the reference does not give a misleading overall impression of the individual.
- carefully considered. Be cautious about giving subjective opinion about an individual's performance, conduct or suitability which cannot be substantiated with factual evidence
- written for a specific job vacancy. They should not be written as an “open reference”, to be used on an ad-hoc basis.
- provided on headed notepaper on behalf of the organisation in response to specific requests from the prospective employer

Open references are often sought at times of dismissal, redundancy, conduct or capability. Managers sometimes provide these references with the best of intentions, in the hope that the employee will secure alternative employment

It is recommended that this type of reference only be provided where agreement has been reached between employer, employee, TU representative and HR, for an agreed reference to be produced as part of a compromise agreement.

However, ‘compromise agreements’ by which an individual agrees to resign and the agency/organisation agrees not to pursue disciplinary action should never be used in situations which follow a substantiated allegation of illegal or inappropriate behaviour against a child.