

TRIINITY ACADEMY NEWCASTLE TRUST

Recruitment and Selection Policy

Approved by the Committee

June 2018

On behalf of The Board

Next Review Date – June 2019

Recruitment and Selection Code of Practice

1 Scope

The code applies to the recruitment and selection of all employees appointed by the 'Trust', whether permanent or fixed-term and full-time or part-time. This includes where the board provides extended services directly under the management of Trust staff. Additional requirements apply to the recruitment of members of the leadership group (head teachers, deputy head teachers and assistant head teachers) and these are set out in separate guidance.

Trust's should also apply relevant parts of the code of practice to the recruitment of unpaid volunteers.

2 Purpose

The purpose of this code of practice is to ensure that the recruitment and selection process is carried out in a fair, efficient and cost-effective manner and takes account of relevant legislation and the 'Trust's' equalities policy. This should result in the appointment of suitably qualified employees, minimise the risk of unlawful discrimination and enable Trust's to compete effectively in the job market.

▪ Roles and Responsibilities

- **The Board:** The board has overall responsibility for all staff appointments. It is recommended that that all Trustees should delegate the responsibility for staff appointments outside the leadership group to the Head of School.

Members of the board may also be involved in dealing with grievances or complaints from applicants.

Person(s) delegated to make appointment decisions: Their role is to make sure that the recruitment and selection process is carried out fairly and without discrimination. They will:

- decide how the vacancy is to be filled;
- plan and manage the recruitment process;
- finalise the job description, person specification and advert;
- arrange appropriate selection panels and appoint a chair;
- select an applicant to appoint;
- make an offer of employment to the selected applicant and explain that this is conditional;
- make sure all pre-appointment checks are satisfactory;
- ensure a single central record of recruitment and vetting checks is maintained; ensure that learners are not put at risk by failing to recruit staff in line with the procedures to safeguard learners.

Recruitment administrator: S/he is responsible for managing the administration of the recruitment and selection process and will:

- issue application forms and packs;
- detach equalities monitoring forms from the returned application form;
- send an interview letter and safe recruitment form to applicants;
- ask for references;
- inspect and copy proof of identity and qualifications documentation provided by the selected applicant;
- send documentation to Employee Services to enable pre-appointment checks to be carried out and a statement of terms and conditions to be issued;
- maintain the recruitment file;
- maintain the single central record of recruitment and vetting checks; and,
- complete equalities monitoring returns.

Employee Services: Providing that Trust's buy into an appropriate service level agreement, Employee Services will:

- place adverts in external media at the request of the Trust;
- include vacancies in the Council's Customer Service Centre, jobs bulletin and website;
- carry out pre-appointment checks; and,
- issue conditional letters of appointment, statements of main terms and conditions and confirmation of appointment letters.

External agencies: The City Council has an approved advertising agency that can place adverts in external publications and advise Trust's on preparing effective recruitment adverts.

4 **Legal Considerations**

- **Equalities legislation:** Employers must not discriminate, either directly or indirectly, against people because of their age, sex, race or ethnic origin, disability, sexual orientation or religion or belief. This applies to all aspects of the recruitment process from advertising jobs through to appointing staff. In limited circumstances there can be a genuine occupational requirement (GOR) to advertise for people of a particular age, sex, race or ethnic origin, disabled status, sexual orientation or religion or belief. The Equality Act (2010) prevents employers from asking applicants questions about their health before offering them work or including in a pool of successful candidates
- **Disabled persons:** An employer must make reasonable adjustments in the recruitment and employment of disabled people. This can include adjustments to recruitment and selection procedures, working arrangements and physical changes to premises or equipment.
- **Safeguarding learner:** This code of practice complies with DfE guidance on safer recruitment and selection in education settings. It is a legal

requirement that all posts in Trust's require the appointed applicant to obtain an enhanced certificate of disclosure from the Criminal Records Bureau. Trust's are required to maintain a single central record of recruitment and vetting checks undertaken. The board must ensure that at least one member of the appointment panel has completed safer recruitment training approved by the Secretary of State.

- **Recruitment and Selection Training:**

The Trust Staffing (England) Regulations 2009 require governing bodies of maintained Trust's to ensure that at least one of the persons who conducts an interview has completed safer recruitment training.²³ Governing bodies of maintained Trust's may choose appropriate training and may take advice from the local three safeguarding partners in doing so. The training should cover, as a minimum, the content of this guidance.

- While there is no statutory requirement for Academies to have any recruitment panel members trained it would be best practice to have at least one panel member who has undertaken training.

- The NSPCC has developed an online recruitment training course in line with the KCSIE guidance (2016), this training course follows the safeguarding framework for England. Details can be found at <https://www.nspcc.org.uk/what-you-can-do/get-expert-training/safer-recruitment-training/>

- **ENGLISH LANGUAGE REQUIREMENT FOR PUBLIC SECTOR WORKERS IN CUSTOMER FACING ROLES**

- Part 7 of the Immigration Act 2016 creates a duty to ensure that all public authority staff working in customer-facing roles speak fluent English to an appropriate standard. This includes relevant staff working in Trusts.
- The government has produced a statutory Code of Practice to help employers comply with this requirement (this can be viewed at www.gov.uk "Code of practice on the English language requirement for public sector workers"). Further advice and guidance on how the requirement will apply to recruitment and selection is provided at Appendix 4.
- **Preventing illegal working:** Only applicants allowed to work in the UK under the Immigration, Asylum and Nationality Act 2006 can be appointed. (See Appendices 2 and 3 for further information)
- **Data protection:** People applying for jobs have a legal right to see the interview notes under the Data Protection Act 2001.
- **Political restrictions:** Under the Local Government and Housing Act 1989, certain staff are politically restricted (not able to take part in political activities or take up a political office, for example, as a member of parliament).
- **Working time directive:** The working time directive says that workers over

the age of 18 must not work (on average) more than 48 hours a week (40 hours a week for people under 18). Appointed staff cannot work over 48 hours a week.

5 Policy Statement

This policy recognises that recruiting a skilled and effective Trust's' workforce is important in improving the outcomes for learner and young people in Newcastle.

It reflects the commitment of the board to:

- recruit the best staff, no matter what their age, sex, race or ethnic origin, disability, sexual orientation or religion or belief;
- aim to make the workforce representative of the community that the Trust serves and remove barriers to employment for under-represented groups;
- safeguard and promote the welfare of learner and young people;
- recruit within the law and according to best practice; and,
- treat applicants with dignity and respect.

The board expects all staff and volunteers to share this commitment.

It aims to:

- ensure that, Chief Executive Officer, Heads of Trust's, line managers and recruitment administrators follow this policy and code of practice
- support them to do so by ensuring that they understand their responsibilities and have access to appropriate training.

The board takes seriously any applicant who provides false information. This could result in:

- the applicant being rejected or summary dismissal of the employee if this comes to light after s/he has started work; and
- referral of the matter to the police and/or DfE.

6 Summary of the recruitment and selection process and its application

A summary of the recruitment and selection process is provided in Appendix 1.

The Trust will apply the recruitment and selection process as follows:

- all stages of the recruitment and selection process will apply to paid employees
- all stages will apply where unpaid volunteers are actively sought and there are candidates about whom there is little or no recent knowledge
- a streamlined process will apply where a parent well known to the Trust is approached: seeking references, checking to ensure others in the community know of no concerns and can make a positive recommendation, conducting an informal interview to gauge the person's aptitude and suitability,

undertaking a List 99 check and obtaining an enhanced certificate of disclosure from the Criminal Records Bureau.

The Trust will not need to apply the recruitment and selection process where:

- a volunteer is used on a one-off basis, for example accompanying an Trust trip or helping at an Trust event, provided that the person is not to be left alone and unsupervised in charge of learners
- a volunteer is recruited by another organisation, for example sports coaches from a local club, although the Trust should obtain assurance from that organisation that the person has been properly vetted.

7 Define the vacancy

The following details need to be clear before starting the recruitment process:

- the job role
- whether teaching or support staff terms and conditions apply
- the pay and grading of the post
- whether the post is full- or part-time and, if part-time, the number/pattern of hours of work
- in the case of support staff posts whether the post is required full year round or part year and, if part year, the number/pattern of weeks to be worked
- the duration of the contract to be offered to the appointed applicant.

- Posts within the academies staffing structure are determined by the board through the staffing structure review process. This includes the number, type and pay/grading of teaching and support staff posts. Consultation with staff on job roles and job descriptions is also within this process. The current Trust structure should be included as an annex to the Trust's 'Pay Policy for Teachers and Support Staff'.

- The duration of the contract is determined by the board. The factors to consider in whether the appointment is permanent or fixed-term are set out in the 'Policy and Procedure for Making Appointments and Contractual Changes'.

8 Define the scope of the recruitment process

All vacancies will normally be advertised to external applicants. This promotes open competition, avoids indirect discrimination and attracts a wider field of applicants to select from.

The Trust will restrict the recruitment process for a vacancy in the following circumstances:

- where there is an existing employee at the Trust who must be considered for redeployment because s/he is under notice of dismissal or at risk of dismissal on grounds of redundancy, ill-health, capability, conduct (except gross misconduct), contravention of a statutory enactment or for some other substantial reason and the vacancy may be suitable alternative employment

- where the Trust structure review process has decided that the appropriate method of appointment to the post is “ringfencing” or “slotting in”.

The Trust can choose to restrict the recruitment process for a vacancy in the following circumstances:

- where the vacancy can be filled without advertising by converting an employee’s contract from fixed-term to permanent (using the procedure set out in the ‘Policy and Procedure for Making Appointments and Contractual Changes’)
- where the vacancy can be filled without advertising by transferring an employee from another post within the Trust at the same grade (if more than one person is interested in transferring, a selection interview should take place)
- where an employee asks to “step down” to a lower-graded job
- where a post is already covered by job sharing and one of the sharers leaves as the remaining sharer can be offered the option of holding the post full-time
- where a vacancy arises within six months of the same or an identical one having been filled as the Trust may appoint one of the previously unsuccessful applicants without advertising the position, as long as the applicant meets all of the essential conditions.

9 **Define the job description**

The job description is a statement of the purpose and responsibilities of the post. The delegated person(s) must ensure it is up-to-date before the post is advertised. Consultation with staff and consideration of the pay/grading is needed if the proposed changes to the job description are significant.

The job description must include:

- the title of the post
- the grade
- the payscale/grade/range and any additional payments that apply
- the post to which the holder is responsible
- the posts for which the holder is responsible
- the job purpose or main function
- the main duties and responsibilities
- the post’s responsibility for promoting and safeguarding the welfare of learner and young people;

- a statement about the Trust’s commitment to safeguarding learners, for example “We are committed to safeguarding learner and expect all staff and volunteers to do the same”
- the date of the latest revision.

10 **Decide if this vacancy has a genuine occupational requirement (GOR)**

- In certain circumstances it is a genuine occupational requirement (GOR) to advertise for people of a particular age, sex, race, sexual orientation, disability status, religion or belief.
- These circumstances are likely to be rare within community Trust’s but, if you consider that a GOR may apply, contact your human resources adviser before taking further action.
- Where the delegated person(s) decide that a GOR applies, a detailed written record must be made of the reasons for the decision.

11 **Define the person specification**

- The person specification describes the skills and abilities needed to carry out the post. The delegated person(s) must ensure it is up-to-date before the post is advertised. It cannot be amended once the recruitment process has begun.
- The person specification must only contain criteria that:
 - are objective, fair, measurable and do not discriminate unlawfully
 - genuinely affect job performance and can be justified.
- The person specification must not include, unless there is objective justification to do so:
 - specific formal qualifications (that are not necessary to do the job)
 - general qualifications as an entry requirement (for example, five GCSEs)
 - a specific number of years of experience (it should be defined in terms of quality, level and type)
 - age as a condition or as an indicator of experience or maturity
 - physical requirements that could exclude people with disabilities.

- The following requirements must be included in the person specification for posts in Trust's:
 - no adverse criminal record
 - satisfies requirements for General Teaching Council registration (qualified teaching posts only)
 - any Genuine Occupational Requirement (GOR) that applies.

There must also be a statement about the Trust's commitment to safeguarding learners for example "We are committed to safeguarding learners and expect all staff and volunteers to do the same".

- The person specification must identify the method that will be used to assess applicants against each of the criteria. The recruitment process must involve an interview that uses information collected from other sources, for example, a job application form, references and so on. It is not essential, but strongly recommended, that at least one other method of assessment, such as a lesson observation, occupational test, work sample or practical job-related exercise, is used to give unbiased information.

12 **Plan the recruitment exercise**

- The delegated person(s) should identify the key timescales for the different stages of the recruitment process and allow sufficient time at each stage so that safeguarding requirements are met. For example, the process must allow references on short-listed candidates to be obtained before interview.
- Applicants should be given advance notice of the planned interview dates in the advert or application pack.
- In the case of a teaching appointment, the plan may need to consider resignation dates in case the selected applicant is already employed as a teacher. These are:
 - Autumn Term: 31 October (30 September for head teachers)
 - Spring Term: 28 February (31 January for head teachers)
 - Summer Term: 31 May (30 April for head teachers).

13 **Prepare the job advert**

- Except as detailed in the 'Define the vacancy' section above, all vacancies will be available to both external and internal applicants. The delegated person(s) must prepare an advert, decide the publications it is to be placed in and the closing date (usually two weeks later).
- The City Council's external advertising agency can place adverts in all publications or the Trust may make its own arrangements. Advice on copywriting is available free of charge and, unless the Trust opts out, the

agency will edit adverts appearing in the Evening Chronicle composite to ensure cost-effectiveness. Only educational organisations that agree to the City Council's equalities policy can place adverts in the Council's composite advert in the Evening Chronicle.

- All adverts placed via Employee Services are also publicised in the Council's Customer Service Centre, weekly jobs bulletin and public website at no additional cost.
- The delegated person(s) should give Employee Services:
 - an advert request form including the publication(s) and date(s) the advert is to appear in and the closing date
 - the text of the proposed advertisement including a statement about the Trust's commitment to safeguarding learner and young people (for example "We are committed to safeguarding learner and young people"), the need for the selected applicant to obtain an enhanced certificate of disclosure from the Criminal Records Bureau and any Genuine Occupational Requirement (GOR) that applies
 - the job description and person specification for the post.

14 Decide the content of the application pack

- People enquiring about a job must receive:
 - the job advert
 - an application form
 - the job description and person specification
 - the safe recruitment form that includes information about the pre-appointment checks that will be made on the short-listed and appointed applicants
 - any additional information about the Trust or job that the delegated person(s) decide to provide.
- There are two application forms available. Both include all of the requirements for safer recruitment in education settings. The delegated person(s) must decide which form is most appropriate for the post being advertised:
 - Form 1 is appropriate for all teaching and most support staff jobs
 - Form 2 is appropriate for support staff jobs with no or limited entry requirements.

The job application form is divided into three sections. Part A covers personal details, part B covers experience, qualifications and skills, and part C covers equality monitoring. CV's cannot be accepted under any

circumstances.

15 **Set up the recruitment file**

- The recruitment administrator must set up a recruitment file and update it during the recruitment process. It must be retained for 12 months and include copies of the following:
 - job description, person specification and any additional information provided to applicants
 - a written record of the reasons for a Genuine Occupational Requirement (if this applies)
 - job advert
 - application forms
 - safe recruitment form
 - equality monitoring forms
 - record of shortlisting decisions
 - interview notes and a record of the decisions made and reasons why
 - test results and other forms of assessment (if this applies)
 - reference request letters and references received
 - rejection letters
 - all other correspondence relating to the appointment.
- Additional documentation for the appointed applicant is set out in the 'Offer of employment and pre-appointment checks' section below.

16 **Handling applications**

16.1 **Sending out applications**

- The recruitment administrator will send out the application pack to applicants. S/he should amend the instructions at the end of part A (personal details) of the City Council application form to state where completed forms should be returned to.

16.2 **Receiving and acknowledging applications**

- When the form is returned the recruitment administrator will remove part C (equalities monitoring) of the City Council application form. This

is used for monitoring purposes only and must not be seen by anyone involved in the selection process.

- The recruitment administrator should scrutinise the application form and safe recruitment form to ensure that they are fully completed. Incomplete forms should not be accepted and returned to the applicant for completion.
- Completed forms should be returned by the closing date. The recruitment administrator will contact the delegated person(s) to ask if they will accept any applications received after the closing date. Late applications should not be accepted once the short-listing process has started.
- The Trust will not acknowledge application forms or contact people who have not been short-listed due to the costs involved.

16.3 Alternative formats

- Disabled people may choose to apply for jobs in Braille, on audio tape or in large print. Advice on these formats is available from Employee Services.
- An applicant who cannot fill in a job application form themselves (for example, because of reading or writing difficulties or a disability) should still be considered, unless this is directly relevant to the job. In such cases, they may get help to fill in the form.

16.4 Applicant's relationship with a trustee or senior staff

- An applicant must tell us about any relationship with a trustee or senior staff in the Trust where they are applying for a post
- Staff must tell the head teacher in writing about their relationship to an applicant for a job in the Trust.

16.5 Canvassing

- Any applicant who canvasses (tries to use their relationship to gain an advantage in the recruitment process) or allows someone to canvass on their behalf will be disqualified.
- Unless they are related to or have a close personal relationship with someone applying for a job, trustees and employees are allowed to act as referees for an applicant for a post in the same Trust. If they are involved in the recruitment process (short-listing or interviewing) it must be an employment reference, not a personal reference.

16.6 Declaring outside interests and other employment

- People applying for a support staff job over spinal column point 30 must not carry out any other business or take up additional appointments without the Trust's permission.

17 Short-list applicants

17.1 Short-listing process

- Applications should be short-listed by at least two people who will be involved in the final interview panel. As far as possible, the people short-listing for each post should be a reasonable balance of men and women.
- All applications should be scrutinised to ensure that the information provided is consistent and does not contain any discrepancies. Any gaps in employment should also be identified. Any anomalies or discrepancies or gaps in employment should be noted and consideration of the totality of these may influence whether the applicant is short-listed.
- The people creating the short-list review each application form and assess that applicant against the person specification for the post. Any applicant who does not meet the minimum essential conditions should not be included on the short-list. A record of each decision should be made on the short-listing form.
- The delegated person(s) are responsible for the security and confidentiality of the application forms.
- The short-listing form should be returned, together with the application forms of the successful and unsuccessful applicants, to the recruitment administrator.
- It is policy to interview all disabled applicants who meet the essential requirements for the post. The recruitment administrator is responsible for reviewing the short-listing form against the equalities monitoring forms (which were separated from the application forms on receipt) to identify any disabled applicants who have not been short-listed. The delegated person(s) responsible for short-listing will add to the short-list any disabled applicants who meet the essential conditions.

17.2 Contacting short-listed applicants

- The recruitment administrator will check if any of the short-listed applicants have asked for special interview arrangements on the application form and make the necessary arrangements.

- The recruitment administrator will send a letter to the short-listed applicants inviting them to an interview and enclose an interview expenses claim form.

17.3 Take up references and verify facts

- All short-listed applicants must provide two referees, one of which must be the current or most recent employer. References must be requested direct from the referee. References provided by the applicant or open references addressed “to whom it may concern” should not be considered.
- Written references must be requested before the final selection stage and made available to the people carrying out the interview. The recruitment administrator will write to the referees and enclose the reference request form, job description and person specification.
- In exceptional circumstances it may not be possible to obtain references prior to interview, either because of delay on the part of the referee or because the candidate strongly objects to the current employer being approached at this stage but that will be the aim in all cases. It is up to the delegated person(s) to decide whether to agree to a candidate’s request to approach their current employer only if s/he is the preferred applicant after the interview.
- If a short-listed applicant claims to have some specific qualification or previous experience that is particularly relevant to the post that will not be verified by a reference, the delegated person(s) should telephone the relevant previous employer and ask for written confirmation of the facts.

18 Interview and assessment

18.1 Interview panel

- The interview panel must include the delegated person(s) making the appointment. One-to-one interviews are not acceptable and, as far as possible, the panel should have a reasonable balance of men and women.
- People other than the delegated person(s) can be on the interview panel. This may include people external to the Trust, for example, where there are partnership arrangements in place. Their role should be viewed as advisory and only the delegated person(s) can make the final decision on appointing staff.
- The panel must meet before the interviews to:
 - agree their interview questions to assess the relevant criteria on the person specification

- consider the issues to be explored with each candidate based on the information provided in the application form, safe recruitment form and references.

18.2 Conducting the interview

- All applicants must be asked a series of standard questions. It is acceptable to follow up the standard questions with related questions to make sure the applicant has the opportunity to demonstrate their knowledge or to expand on the information they have given on their application form. The interview panel must always ask for information about previous employment and get satisfactory explanations for any gaps in employment or discrepancies in the information provided.
- The selection process for all posts in Trust's must include an assessment of each applicant's suitability to work with learner. Appropriate questions must be asked at interview to assess this including the applicant's:
 - attitude towards learners and their motivation to work with them
 - ability to form and maintain appropriate relationships and personal boundaries with learner
 - emotional resilience in working with challenging behaviours
 - attitudes to discipline.
- The interview panel must discuss the safe recruitment form with each applicant, even if no convictions have been declared. The delegated person(s) must consider the requirements of the 'Code of Practice on the Disclosure of Criminal Convictions '.
- Where there is a discrepancy or concern about the information provided by a referee, the interview panel must discuss this with the applicant. If references have not been received before the interview, the applicant must be asked at interview if there is anything s/he wishes to declare or discuss in light of the questions that have been put to the referee.
- The interview panel must use an interview record form to record the questions asked and to summarise each applicant's answers. It must show how each applicant has met (or not met) the person specification. Interviewers should summarise the evidence presented by the applicant.
- At the end of the interview, the panel should discuss the responses given by each applicant and agree who best meets the person specification and the reason why. A summary of their decision must be recorded on an applicant assessment form. This must have enough detail to make sure that the reason for the decision is clear in case of

any future complaint about the recruitment process.

18.3 **Other forms of assessment**

- Observing applicants as part of the formal assessment process is an ideal opportunity to assess how they deal with learner and young people. This may be by observing a lesson or through a structured task that directly involves learner, young people, parents and carers or other stakeholders in the recruitment process. The delegated person(s) must make sure that they are effectively briefed on their role within the process.
- Reasonable adjustments must be made for disabled persons where the assessment method would put them at a disadvantage. The applicant may need to complete tests or presentations in alternative formats, be allowed more time or have a support worker.

18.4 **Contacting interviewed applicants**

- The delegated person(s) must make arrangements to tell short-listed applicants the outcome of their application as soon as possible. Applicants with a sight or hearing difficulty must be contacted in the appropriate way, for example, a phone call or in Braille for people with a sight difficulty or by letter or minicom for people with a hearing difficulty.
- Both internal and external applicants may ask for feedback on how they performed during the selection process. If asked, the delegated person(s) should make arrangements for this to happen.

19 **Offer of employment and pre-appointment checks**

19.1 **Conditional offer of employment**

- Any offer of appointment must be made on the condition that the applicant satisfactorily meets all of the pre-appointment checks required by the post. These are listed in Appendix 2. It is the responsibility of the delegated person(s) making the appointment to ensure that the checks have been carried out, decide whether the outcome is satisfactory and ensure that Trust's single central record of recruitment and vetting checks is updated.
- There is a duty to make reasonable adjustments for disabled people. Disabled applicants should be asked about workplace adjustments only if they are selected for the job. The job offer should be on the condition that reasonable adjustments can be made.
- In the case of community and voluntary controlled Trust's the local authority must appoint the selected candidate unless they fail to meet one of the requirements relating to qualifications, health and physical

capacity, professional registration or conduct.

19.2 Documentation requirements

- The recruitment administrator must take to all reasonable steps to check that the following documents are original and valid, and be satisfied that the applicant is the person named in the document before copying for the selected applicants:
 - identity documents including photographic evidence
 - the specific proof of identity documents required for an application for an enhanced certificate of disclosure from the Criminal Records Bureau
 - the specific proof of identity documents required to show the right to work in the UK or any documents required to submit an application for entry clearance or leave to remain in the UK under the points based immigration system
 - certificates, diplomas or letters of confirmation for the academic qualifications that the applicant has stated on their application form.
- The Chief Executive Officer must sign the appointment instruction form before it is sent to Employee Services. This confirms those pre-appointment checks that have already been satisfactorily completed and gives instructions for the remainder to be done.
- The recruitment administrator must send the appointment instruction form to Employee Services with a copy of:
 - the appointed applicant's application form
 - references received
 - the safe recruitment form
 - proof of identity documents obtained
 - the employee appointment/changes form confirming the key terms and conditions of the post
 - any interview expenses claimed.

Copies of these documents should also be kept on the individual's personal file in the Trust and a record maintained of when the outstanding pre-appointment checks are satisfactorily met.

- Employee Services will take up the outstanding pre-appointment checks and issue an appointment letter and statement of main terms and conditions to the appointed applicant. This is regardless of

whether a provisional start date has been identified or not.

19.3 Identifying a start date

- The selected candidate must not be confirmed in post or start work until all the pre-appointment checks in Appendix 2 are satisfactorily completed.
- The only exception is that the delegated person(s) do have discretion for an individual to start work before the enhanced certificate of disclosure is received from the Criminal Records Bureau, subject to certain conditions. These are set out in the 'Code of Practice on Disclosure of Criminal Convictions'. If this discretion is used, the head teacher must sign a declaration form confirming that these conditions are met and send this to Employee Services.

19.4 Starting salary

- The arrangements for starting salaries are set out in the Trust's 'Pay Policy for Teachers and Support Staff'.
- In the case of teaching staff the starting salary is the appropriate point on the payscale for the post. This is determined by the rules set out in the Trust Teachers' Pay and Conditions Document and the discretions it delegates to the board within the Trust's pay policy. Employee Services may need to undertake a salary check with another authority.
- In the case of support staff the starting salary is usually the lowest point of the grade for the post. Exceptions are allowed in certain circumstances, for example, where the employee would not otherwise receive an increase in pay.

19.5 Confirming the appointment

- Employee Services will write to the selected applicant to confirm their appointment once all pre-appointment checks are satisfactorily completed and the start date and starting salary are agreed.
- A record of all pre-appointment checks will be retained on the employee's personal file in Employee Services. Employee Services will notify the delegated person(s) of the outcome of the checks so that the Trust can maintain its single central record of recruitment and vetting checks.

19.6 Interview expenses

- Interview expenses are paid to applicants at the rates set out in the policy once the interview process is complete. Expenses are not refunded if an applicant withdraws or turns down an offer of employment. The expenses of the appointed applicant are paid when

they start work.

- Additional expenses may be paid to meet any reasonable requirements for a disabled person attending an interview. This could include travelling expenses for a support worker or the reasonable cost of travelling by taxi rather than bus or train.

19.7 Resettlement Scheme

The board has discretion to pay the appointed candidate appropriate expenses if they need to relocate.

20 Equalities monitoring

- The recruitment administrator is responsible for collating equalities monitoring information on applicants and appointments

21 Complaints

- If anyone applying for a job believes that they have been unlawfully discriminated against during any part of the recruitment and selection process, they have the right to make a complaint within three months. Internal applicants within the Trust should submit their complaint under the formal stage of the Trust's 'Grievance Procedure', which will be investigated within the timescales set out in that procedure. External applicants should submit their complaint in writing to the chair of trustees, which will be investigated within a reasonable timescale.
- If a complaint that an applicant has been unlawfully discriminated against is upheld, the solution offered will usually be for the person who made the complaint to rejoin the selection process. Examples of solutions are:
 - if an applicant is not included on the short-list and there is no justified reason for this, they may be put on the short-list for the job or for another appropriate vacancy;
 - if the questions asked at the interview are considered to be unfair, the applicant's suitability may be reassessed and another interview arranged for that job or another appropriate vacancy;
 - if it is found that the person making the complaint was the best person for the job, they may be offered either that job or another appropriate vacancy;
 - if it is found that the Trust has failed to make a reasonable adjustment for a disabled person who has been made a conditional offer of appointment and the post is still vacant, the adjustment will be made with an offer for that job; or,
 - if it is found that the Trust has failed to make a reasonable adjustment and the post applied for has been filled, arrangements will be made to interview the disabled person for another suitable vacancy and to make reasonable adjustments if the person is selected.

22 Relationship with other policies and procedures

- **Policy and Procedures for Making Appointments and Contractual Changes:** This sets out the circumstances when it is appropriate for Trust's to offer permanent or fixed-term contracts to appointed applicants.
- **Code of Practice on Disclosure of Criminal Convictions for Academy's:** This explains the requirements for all staff appointments (as well as agency staff, trustees and third parties).

Appendix 1 – Summary of Recruitment and Selection Process

1. Define the vacancy
 - a. job role
 - b. pay and grading
 - c. hours and weeks to be worked
 - d. duration of the contract
2. Define the scope of the recruitment process
 - a. is it appropriate to restrict the recruitment process?
3. Define the job description
4. Decide if this vacancy has a Genuine Occupational Requirement (GOR)
5. Define the person specification
6. Plan the recruitment exercise
 - a. timescales for advert, closing date
 - b. who will be involved and responsibilities
 - c. resources needed
7. Prepare the job advert
 - a. text of advert
 - b. publications and dates
 - c. closing date
8. Decide the content of the application pack
9. Set up the recruitment file
10. Handle applications
11. Short-list applicants
12. Contact short-listed applicants
13. Take up references and verify facts
14. Interview and assessment
15. Make conditional offer of employment
16. Undertake pre-appointment checks
17. Confirm the appointment

Appendix 2 – Pre-Appointment Checks

Overview

- Pre-appointment checks are key to ensure that learner are safeguarded and the risk of harm from those who are in contact with them is minimised.
- Everyone selected for appointment to a teaching or support staff post in a maintained Trust must satisfy checks on:
 - identity;
 - criminal convictions;
 - List 99 (and in residential establishments Protection of Learner Act POCA list);
 - the right to work in the UK, or gain entry clearance or the right to remain in the UK under the points based immigration system;
 - academic qualifications;
 - references;
 - previous employment history; and,
 - medical fitness.
 - S128 (if applicable)
- Trinity Academy Newcastle Multi Academy Trust will complete a Criminal Records Disclosure check with GBG Online Disclosures on your behalf. Once the DBS has been issued, it would be advantageous for both employee and organisation for the employee to register with the update service.
- Teachers must also be registered with the General Teaching Council (GTC) and have qualified teacher status, except in limited circumstances.
- Additional checks may be necessary for newly appointed staff who have lived outside of the UK.
- The delegated person(s) must ensure that information on pre-appointment checks is included in the Trust's single central record of recruitment and vetting checks.
- The delegated person(s) must report the facts to the police and/or the DfE Learner's Safeguarding Operations Unit where:
 - the selected applicant is found to be on List 99 or the PoCA list or the DBS disclosure shows s/he has been disqualified from working with learner by a court;
 - an applicant has provided false information in, or in support of, his/her application;
 - there are serious concerns about an applicant's suitability to work with learner; or
 - there are medical grounds for barring a person from working with learner.

The delegated person(s) should notify the DfE where they have refused employment, paid or unpaid, to an individual on the basis of the CRB disclosure information and where s/he does not already appear on List 99.

Identity

- The delegated person(s) must make sure that the selected applicant is who he or she claims to be. Proof of identity such as a birth certificate, driving licence or passport combined with evidence of address must be seen. Some form of photographic identity should be seen except where for exceptional reasons none is available.
- Proof of identity is also required for an application for a certificate of disclosure from the Criminal Records Bureau and to confirm the selected applicant has the right to work in the UK.

Criminal Convictions

- The delegated person(s) must ensure that the selected applicant does not have an adverse criminal record. All new staff appointed to the Trust's workforce need an enhanced certificate of disclosure from the Criminal Records Bureau under the Trust Staffing (England) (Amendment) Regulations 2006.
- The procedure for obtaining a disclosure and deciding whether it is satisfactory is set out in the 'Code of Practice on Disclosure of Criminal Convictions for Trust's'. This includes the need to check proof of identity to make an application to the Criminal Records Bureau (CRB) for an enhanced certificate of disclosure. There is a list of acceptable proof of identity documents (which is different to the list of acceptable proof of identity documents required for the right to work in the UK below).

List 99 and POCA list (Protection of Learner Act list)

- The delegated person(s) must ensure that the selected applicant is not barred from working with learner.
- List 99 is a confidential document kept by the Department for Education which contains the names, dates of birth, National Insurance numbers and, in the case of teachers, the teacher reference numbers, of people who have been stopped or restricted from working in certain jobs by the Secretary of State. A List 99 check is required for all posts in Trust's.
- The POCA list is managed by the Department for Education on behalf of the Department of Health (DH). It lists people banned from working with learner. A POCA list check is required for posts in residential establishments.
- The enhanced certificate of disclosure from the CRB will contain details of whether the person is included on List 99 and/or the POCA list. A separate List 99 check is required if the CRB certificate of disclosure remains outstanding and the delegated person(s) have used their discretion to allow the person to begin work.

Right to work in the UK

- The delegated person(s) must ensure that the selected applicant has the right to work in the UK .

- The delegated person(s) must make sure that the documents presented as proof belong to the selected applicant, and that they allow the applicant to do the type of work they are being appointed to do. If an applicant gives two documents which have different names, ask them for a further document to explain the reason for this, such as a marriage certificate, a divorce decree, a deed poll or statutory declaration.
- The proof of eligibility to work in the UK will either show an ongoing right to work in the UK (List A) or it will show an entitlement to work in the UK for a limited period only (List B). These lists are attached as Appendix 3
- If you appoint someone who provides the specified documents from List B you must make repeat checks at least once every 12 months to ensure the employee can still work legally in the UK.
- Further advice is available if you wish to appoint someone who is from Bulgaria or Romania, or from the Czech Republic, Estonia, Hungary Latvia, Lithuania, Poland, Slovakia or Slovenia, or someone who is not an EEA national
- Where the selected applicant does not have the right to work in the UK, the Trust can ask the authority to submit an application to the UK Border Agency to gain entry clearance or the right to remain in the UK for the individual. This application will be made under the appropriate tier of the points based immigration system where this applies.

Academic qualifications

- The delegated person(s) must always check that the person selected has actually got the academic or professional qualifications that are legally required for the post and should check any others that they claim they have on their application form. Trust's can do this by asking to see the relevant certificate or diploma, or a letter of confirmation from the awarding institution. If original documents are not available, the Trust must ask to see a properly certified copy.

References

- The delegated person(s) must make sure that two satisfactory references are received for the selected candidate, one of which must be from the current or most recent employer. The references must be scrutinised and any concerns resolved satisfactorily before the appointment is confirmed.
- If the applicant is not currently working with learner but has done so in the past, the delegated person(s) should contact their previous employer to make sure they are suitable to work with this group.
- The reference request should remind the referee that they have a responsibility to ensure that the reference is accurate, that relevant factual content of the reference may be discussed with the applicant and they may be subsequently contacted for

clarification of any part of a reference. As all posts in Trust's involve working with learner it should ask:

- about the referee's relationship with the applicant, for example, the nature of any working relationship, how long the referee has known the applicant and in what capacity;
- whether the referee is satisfied that the person has the ability and is suitable for the post based on the criteria in the person specification;
- whether the referee is completely satisfied that the candidate is suitable to work with learner and, if not, for specific details of the referee's concerns and the reasons for these.

Where the referee is the applicant's current or previous employer in work with learner, it should also ask:

- confirmation of the applicant's current post, employment dates, position held, salary record;
 - specific verifiable comments about the applicant's performance history and conduct;
 - details of any current disciplinary procedures the applicant has been subject to in which the disciplinary sanction is current;
 - details of any disciplinary procedures the applicant has been subject to involving issues related to the safety and welfare of learner or young people including any in which the disciplinary sanction has expired and the outcome of those; and,
 - details of any allegations or concerns that have been raised about the applicant that relate to the safety and welfare of or behaviour towards learner or young people and the outcome of those concerns, for example whether the allegations or concerns were investigated, the conclusion reached and how the matter was resolved.
- If the delegated person(s) telephone the referee for more information, a written record should be made and attached to the reference received from that referee.
 - The reference should be compared to the application form to ensure that the information provided is consistent. Any discrepancy in the information should be taken up with the applicant.
 - Any information about past disciplinary action or allegations should be considered by the delegated person(s) in the circumstances of the individual case. Cases in which an issue was satisfactorily resolved some time ago or an allegation was unfounded or did not require formal disciplinary sanctions, and in which no further issues have been raised are not likely to cause concern. More serious or recent concerns or issues that were not resolved satisfactorily are more likely to cause concern. A history of repeated concerns or allegations over time is also likely to give cause for concern.

Previous employment history

- The delegated person(s) must discuss previous employment history with applicants at interview and ensure that there is a satisfactory explanation for any gaps in employment.

- If an applicant for a teaching post is not currently employed as a teacher, the delegated person(s) should also check with the Trust, further-education institution or local education authority at which they were most recently employed to confirm details of their employment and their reasons for leaving.
- The General Teaching Council for England (GTC) may also be able to confirm details of a registered teacher's previous employment history.

Medical fitness

- Anyone appointed to a post involving regular contact with learner or young people must be medically fit. The delegated person(s) should consider advice from the Council's Occupational Health service.
- The selected candidate will be asked to complete a confidential medical questionnaire. This is assessed by Occupational Health and s/he may be asked to attend Occupational Health in person to assess their fitness for that particular post.

Attendance Record

The Equality Act prevents employers from asking any health related questions before a job offer is made. Successful applicants will be asked for details of their absence record on the EAS11 Employee Details Form. The delegated person(s) must be satisfied that this is acceptable before a final offer is confirmed

General Teaching Council for England (GTCE) registration (teaching posts only)

- The delegated person(s) must ensure that the legal requirement for relevant teachers to be registered with the GTCE is met by the selected applicant.
- The following people must have full registration with the GTC:
 - teachers with Qualified Teacher Status (QTS) who are employed to carry out 'specified work' in a maintained Trust, a non-maintained special Trust or a learner referral unit. 'Specified work' is defined as:
 - planning and preparing lessons and courses for learners;
 - delivering lessons to learners;
 - assessing the development, progress and attainment of learners;
 - reporting on the development, progress and attainment of learners.
- The following people must have provisional registration with the GTC:
 - trainee teachers on mainstream initial teacher training (ITT) courses;
 - staff on an employment-based teacher training scheme, such as the Graduate Teacher Programme, Registered Teacher Programme and Overseas Trained Teacher Programme.
- Those teachers who should be registered with the GTC are exempt from this requirement to be registered for up to four weeks from the date they take up the post, provided that they have already applied for registration.

Additional checks for staff who have lived outside the UK in the last 5 years

- CRB Disclosures will not generally show offences committed by individuals whilst living abroad. Therefore in addition to an enhanced CRB Disclosure, if an applicant has worked or lived overseas in the previous 5 years where possible you should get a check of the applicant's criminal record from the relevant authority in that country or additional checks such as obtaining certificates of good conduct from relevant embassies or police forces are necessary. The CRB provides an overseas information service and provides details of the sort of criminal record information which new employees may be able to get from their home countries. You can get more information from the CRB enquiry line on 08700 100 450 or visit <http://www.crb.gov.uk/default.aspx?page=2243>.
- If it is not possible to get this information within a reasonable time scale, the delegated person(s) must take extra care in taking up references and carrying out other background checks. For example, additional references should be sought and references followed up by telephone as well as letter.

Appendix 3 -LIST A and LIST B

Acceptable Documents for Preventing Illegal Working

LIST A - DOCUMENTS WHICH SHOW AN ONGOING RIGHT TO WORK

Any one of the following **original** documents should be provided:

- a passport showing that the holder is a British citizen, or has a right of abode in the UK;
- a passport or national identity card showing that the holder is a national of a European Economic Area¹ (EEA) country or Switzerland;
- a residence permit, registration certificate or document certifying or indicating permanent residence issued by the Home Office or the UK Border Agency (UKBA), to a national from a EEA country or Switzerland;
- a permanent residence card issued by the Home Office or the UKBA to the family member of a national of EEA country or Switzerland;
- a Biometric Immigration Document issued by the UKBA to the holder which indicates that the person named in it is allowed to stay indefinitely in the UK, or has no time limit on their stay in the UK;
- a current passport or other travel document endorsed to show that the holder is exempt from immigration control, is allowed to stay indefinitely in the UK, has the right of abode in the UK, or has no time limit on their stay in the UK.

If one of the above documents can not be provided, a combination of **two** of the following **original** documents should be provided:

An official document issued by a previous employer or Government Agency which contains the permanent National Insurance number and name of the person. This could be a P45, P60, National Insurance card or a letter from HM Revenue and Customs.

AND one of the following documents:

- An Immigration Status Document issued by the Home Office or the UKBA to the holder with an endorsement indicating that the person named in it is allowed to stay indefinitely in the UK or has no time limit on their stay in the UK; **OR**
- A full birth certificate issued in the UK, which includes the name(s) of at least one of the holder's parents; **OR**
- A full adoption certificate issued in the UK which includes the names of at least one of the holder's adoptive parents; **OR**
- A birth certificate issued in the Channel Islands, the Isle of Man or Ireland; **OR**
- An adoption certificate issued in the Channel Islands, the Isle of Man or Ireland; **OR**
- A certificate of registration or naturalisation as a British citizen; **OR**
- A letter issued by the Home Office or UKBA to the holder which indicates that the person named in it can stay indefinitely in the UK.

LIST B - DOCUMENTS WHICH SHOW A RIGHT TO WORK FOR UP TO TWELVE MONTHS

Any one of the following **original** documents should be provided:

¹ The EEA is made up of Austria, Belgium, Bulgaria*, Cyprus, the Czech Republic*, Denmark, Estonia*, Finland, France, Germany, Greece, Hungary*, Iceland, Republic of Ireland, Italy, Latvia*, Liechtenstein, Lithuania*, Luxembourg, Malta, the Netherlands, Norway, Poland*, Portugal, Romania*, Slovakia*, Slovenia*, Spain and Sweden. Although Switzerland is not a member of the EEA, their nationals can work in the UK without restriction. *NB There are additional regulations regarding employing people from these countries. Please see further guidance.

a passport or travel document endorsed to show that the holder is allowed to stay in the UK and is allowed to do the type of work in question, provided that it does not require the issue of a work permit;

A Biometric Residence Permit issued by the UKBA to the holder which indicates that the person named in it can stay in the UK and is allowed to do the work in question;

A residence card or document issued by the Home Office or the UKBA to a family member of a national of a EEA country or Switzerland;

If one of the above documents can not be provided, one of the following combinations of **original** documents should be provided:

First Combination

a work permit or other approval to take employment issued by the Home Office or the UKBA;

AND one of the following documents:

a current passport or another travel document endorsed to show the holder is allowed to stay in the UK and is allowed to do the work in question; **OR**

a letter issued by the Home Office or the UKBA to the holder or the employer or prospective employer confirming the same.

Second Combination

a certificate of application issued by the Home Office or the UKBA to or for a family member of a national of a EEA country or Switzerland stating that the holder is permitted to take employment which is less than six months old; **OR**

an Application Registration Card issued by the Home Office or the UKBA stating that the holder is permitted to take employment.

NOTE either one of the above documents is only valid when it has been checked by the UKBA Employer Checking Service.

Third Combination

an official document issued by a previous employer or Government Agency which contains the permanent National Insurance number and name of the person. This could be a P45, P60, National Insurance card or a letter from HM Revenue and Customs.

AND one of the following documents:

an Immigration Status Document issued by the Home Office or the UKBA to the holder with an endorsement indicating that the person named in it can stay in the UK, and is allowed to do the type of work in question; **OR**

a letter issued by the Home Office or the UKBA to the holder or the employer or prospective employer, which indicates that the person named in it can stay in the UK and is allowed to do the work in question.

Appendix 4 - English Language Requirement for Public Sector Workers in Customer Facing Roles

What is the requirement?

Part 7 of the Immigration Act 2016 creates a duty to ensure that all public authority staff working in customer-facing roles speak fluent English to an appropriate standard. The Government has issued a statutory Code of Practice to help employers comply with this regulation. The code can be found at www.gov.uk "Code of practice on the English language requirement for public sector workers".

Who is covered?

Members of staff who, as a regular and intrinsic part of their role, are required to speak to members of the public in English are considered as working in a customer-facing role. This means that they must have a command of spoken English which is sufficient to enable the effective performance of their role. Either face-to-face or telephone conversations can bring a role within the scope of the act.

Reception staff, teaching staff and teaching assistants are likely to be covered. Facilities staff are unlikely to be. A higher level of competence may be required depending on the nature of the role and the profession of the employee. There is already a requirement under the Teachers Standards for Teachers to be fluent in English.

The fluency duty applies in respect of existing staff as well as to new recruits, permanent and fixed-term employees, apprentices, self-employed contractors and agency temps.

What is meant by fluency?

Employers must satisfy themselves that an individual has the necessary level of fluency appropriate for the role they will be undertaking, whether an existing or a potential new member of staff.

Fluency relates to a person's language proficiency and their ability to speak with confidence and accuracy, using accurate sentence structures and vocabulary. In the context of a customer-facing role, a person should be able to choose the right kind of vocabulary for the situation at hand without a great deal of hesitation. They should listen to their customer and understand their needs. They should tailor their approach to each conversation appropriate to their customer, responding clearly with fine shades of meaning, even in complex situations. **Fluency does not relate to regional or international accents, dialects, speech impediments or the tone of conversations.**

The Code of Practice refers to **The Common European Framework of Reference for Languages (CEFR)** as a useful descriptor of fluency levels.

Recruitment and selection - How can fluency be measured?

When recruiting for a post that has been identified as meeting the fluency requirement Trusts can, but are not required to, specify a minimum spoken English qualification as long as it is above the Common European Framework of Reference for Languages, Level B1 **(more information on this is provided in the statutory Code of Practice).**

Many non-EEA migrants may have already passed a similar qualification for the purpose of their visa application and would therefore be able to provide evidence of this.

Nevertheless, employers are free to satisfy the requirement through other means, such as a test or formal interview.

There are a number of ways a job applicant could demonstrate their fluency, including, but not limited to:

- competently answering interview questions in English;
- passing an English spoken language competency test or possessing a relevant spoken English qualification at CEFR Level B1 or above, taught in English by a recognised institution abroad;
- possessing a relevant qualification for the role attained as part of their education in the UK or fully taught in English by a recognised institution abroad;

Where job applicants are clearly fluent to the necessary standard for the role in question, no further action is necessary.

Job Adverts, Job Descriptions and Person Specifications

When recruiting for a role where the requirement will apply, Trusts should specify this in the advert, job specification and job description. The example wording below is provided in the Code of Practice.

“The ability to converse at ease with customers and provide advice in accurate spoken English is essential for the post.”

And

“An ability to fulfil all spoken aspects of the role with confidence through the medium of English.”

Trusts could change customers to read members of the public/learners.

What about the Equality Act?

Trusts must take into account their obligations under the Equality Act when considering their duty to ensure that each person in a customer-facing role speaks fluent English. The processes and methods used to determine whether a person has a command of spoken English for effective performance in the role must be fair and transparent.

It is unlawful to discriminate directly or indirectly against a person on grounds of race. Trusts should ensure that people from particular nationalities or ethnic backgrounds, in a recruitment process or whilst at work, are treated in the same way as people from an English background.

The interview panel members will need to ensure that they understand the spoken language requirements for the role and that they evaluate candidates against clear criteria set out in the role specification.

What happens if the requirement is not met?

Members of the public can complain if they feel that a customer-facing employee has insufficient fluency in spoken English. A learner and or their parent/carer or could complain. The complaint would then need to be investigated and responded to.

A complaint about a member of staff’s accent, dialect, manner or tone of communication, origin or nationality would not be considered a legitimate complaint about the fluency duty.

Members of staff who are the subject of a complaint should be notified of the complaint and the action being taken in relation to it. They should be given the opportunity, as soon as practicable, to give their own account of the facts leading to the complaint.

Appendix 5 - Disqualification Under the Childcare Act 2006

There are a number of reasons that a person may be disqualified from working with learner, under the Childcare Act 2006. These may be grouped under the following general headings:

- Grounds relating to the care of learner
- Offences against learner
- Offences against adults
- Inclusion on the list held by the Disclosure and Barring Service
- Living on or working on premises where a disqualified person lives or where a disqualified person is employed (disqualification by association)
- Having registration refused or cancelled (this does not apply to a person whose registration as a childminder or childcare provider is cancelled in England for non-payment of fee after 1 September 2008)
- Offences include those committed overseas that, had the offence been committed in the UK, would disqualify that person from registration, regardless of how the offence is described in the law of the other country.

The Act and Regulations prohibit anyone who is disqualified themselves under the Regulations, or who lives in the same household as a disqualified person, from working in relevant settings, including in Trusts. The latter is referred to as Disqualification by Association.

The requirements have been around for a number of years, and apply to registered childcare provision outside of Trust's, but it's only since October 2014 that the DFE has made it clear that these also apply to Trust's. The Statutory guidance for Trusts about employing staff who have been disqualified from providing childcare can be found at www.gov.uk "Statutory guidance: Disqualification under the Childcare Act 2006".

The requirements apply on top of what Trust's do in relation to enhanced DBS checks and checks against the barred lists.

The DFE have advised that Trusts should use their judgment when deciding which Trust staff are covered by the regulations. However, a summary is provided below.

Early years provision* – staff who provide care for a learner up to and including reception age, both during and outside of Trust hours.

Later years provision (for learner up to 8) – staff who are employed to work in childcare provided by the Trust **outside of Trust hours**, including breakfast clubs and after Trust provision.

Staff who are directly concerned in the **management of early or later years provision** – Trusts will need to use their judgment to determine who is covered, this will include the head teacher, and may also include other members of the senior leadership team, any manager, supervisor, leader or volunteer responsible for the day-to-day management of the provision. Volunteers and casual workers concerned in any of the above.

*Early Years means from birth until 1st September following a learner's fifth birthday i.e. up to and including reception age. Later Years means learner under the age of 8.

	DURING TRUST HOURS	OUTSIDE TRUST HOURS*
Reception age or younger	Covered	Covered
Older than Reception age until age 8	Not Covered	Covered
8 years or older	Not Covered	Not Covered

What roles are not covered by the regulations?

- Staff who only provide education, childcare or supervised activity during Trust hours to learner above reception age (including extended Trust hours for activities such as Trust choir or sports teams)
- Staff who only provide childcare or supervised activities out of Trust hours for childcare who are aged 8 or over
- Staff such as caretakers, cleaners, drivers, transport escorts, catering and office staff, who are not employed to directly provide childcare
- Most staff who are only occasionally deployed and are not regularly required to work in relevant childcare
- Anybody involved in any form of health care provision for a learner, including Trust nurses, and local authority staff, such as speech and language therapists and education psychologists
- Trust Trustees and proprietors are not covered as an outright role

It is an offence for an employer to knowingly employ someone when they should be disqualified. Ofsted have the power to enforce the prohibition on employing a disqualified person and if necessary to initiate a prosecution against the Trust.

Although there is no duty on a Trust to monitor the ‘suitability’ of persons living in staff households, Trusts do need to check with staff that they are not living with a person that is disqualified from working with learner.

If a member of staff is living in a household with someone who is disqualified, then they too are disqualified from working with learner by association. This applies to household members including partners, learner including foster learner, house share colleagues and lodgers.

However, there are two points to bear in mind:

First the person is not guilty of an offence if they do not know a person they are living with is disqualified. For example, a member of staff may live in shared housing and may not have any knowledge about the people they live with including whether those people are disqualified. Neither the member of staff nor the employer has any legal requirement to seek this type of information.

Second the law is clear that this is about “**knowingly**” employing someone who is disqualified. Trusts who regularly ask staff to confirm there are no changes in their circumstances and act on any information received that brings into doubt a staff member’s suitability are taking appropriate steps to make sure they do not knowingly employ someone who is disqualified.

With this in mind Trusts may wish to consider undertaking the disqualification check on an annual basis for existing staff that the regulations apply to.

What should Trusts do?

The DFE has said that Trusts are responsible for putting in place arrangements to obtain the necessary information to ensure the suitability of staff to work in early years and childcare. **This applies to both existing staff/volunteers and any newly appointed**

staff/volunteers. In the DoE **statutory guidance**, there are a number of key points about what Trust's should do:

- Make staff covered by the regulations aware of what information will be required and how it will be used to make decisions about disqualification.
- Take steps to gather sufficient and accurate information (although a self-disclosure form isn't mandatory). Any questions must be relevant and limited to the requirements of the legislation.
- Ask relevant questions which are limited to the requirements of the legislation. In particular, this includes any cautions or convictions that they have for a relevant offence (that are not yet filtered), and whether they or anyone living or employed in their household is named on the DBS Learner's Barred List. It can also include asking about cautions or convictions for offences covered by the regulations which are not yet spent under the Rehabilitation of Offenders Act 1974.
- Inform staff that they are not required to disclose the spent cautions or convictions of a person who lives or is employed in their household.
- Keep a record of those staff covered by the regulations, and the date disqualification checks were completed.
- Retain personal information that is relevant to disqualification on the personnel file.
- To identify cases where a staff member covered by regulations may be disqualified 'by association', Trust's must ask those staff to provide, to the best of their knowledge, information about someone who lives or is employed in their household.
- Trust's must be certain that any information provided is adequate, accurate and relevant, and where information is provided in error, or is not relevant, it should be destroyed. This would include an unspent conviction of a partner for an offence which is not listed as a relevant offence, or a spent conviction of a partner (regardless of the offence).
- Explain to any individual falling within one of the disqualification criteria how to make an application for a waiver.

What Trusts can't do

The statutory guidance also includes key points about what Trust's can't do:

- Trusts must not knowingly employ a person who is disqualified under the regulations in relevant childcare provision.
- Trusts should avoid asking for medical records, details about unrelated or spent convictions of household members, DBS certificates from third parties, or copies of a person's criminal record.
- Trusts should not ask staff or third parties to make requests for their criminal records, as this will amount to an enforced subject access request which will be an offence under section 56 of the Data Protection Act from 10th March 2015.
- Substantive details of criminal record checks should not be retained and information that is not relevant should be destroyed.

A self-disclosure form isn't mandatory however a sample form is included in the Manager's Toolkit. This form can be used for new starters, existing staff and volunteers. For existing staff/volunteers it is recommended that it is updated on a regular basis e.g. annually.

Signed on behalf of the Board:

A handwritten signature in black ink, appearing to read "P. J. Carter". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Peter Carter (Chairperson of the Board)

Date: June 2018