Wirral Community NHS

NHS Trust

Management of Employment Checks Policy

No. HRP 9

Applies to:	All Staff
Committee for approval:	Education and Workforce Committee
Date of approval:	November 2011
Review date:	November 2013
Name of Lead Manager	Jo Harvey
Version	1

Management of Employment Checks Policy

CONTENTS

Paragraph		Page
1	Introduction	3
2	Purpose	3
3	Definitions	4
4	Duties within the organisation	5
5	Good Corporate Citizen	7
6	Pre-Employment Checks	7
	6.1 Occupational Health Assessment	7
	6.2 Verification of Identity checks	8
	6.3 Right to work checks	9
	6.4 Qualification check	11
	6.5 Employment History and Reference Checks	11
	6.6 Criminal Record Checks	12
	6.7 Professional Registration Checks	13
	6.8 Alert notices	14
	6.9 Work Permits and Visas	14
	6.10 Driving Document Checks	14
	6.11 Temporary Staff	15
7	Following up on those who fail to satisfy Employment Checks	15
	7.1 Pre Employment Checks	15
	7.2 Post Employment Checks	16
8	Post Employment Checks for Existing Staff	16
9	Equality Impact Assessment	17
10	Training/Support	17
11	Process for monitoring effective implementation	17
12	Other relevant procedural documents	18
13	References	18

Appendices

Appendix 1 Additional guidance to obtaining and providing Employment References	19
Appendix 2 Guidance for Managers on Employment References	23
Appendix 3 NHS Litigation Authority Risk Management Standards Monitoring Tool	24

1. INTRODUCTION

The aim of this policy is to provide a framework that ensures Wirral Community NHS Trust complies with legislative and NHS requirements in relation to employment checks. This policy outlines the employment checks that the Trust must undertake during the appointment of prospective employees and during the ongoing employment relationship.

The policy aims to ensure that all individuals working in the Trust are trustworthy and reliable and attempts to avoid problems that may arise during employment by ensuring a thorough pre-employment process is in place.

In addition the policy also sets out various elements of good practice relating to the checks required to be carried out by the Trust before and following the appointing of staff.

The Trust is responsible for ensuring that managers/recruiters comply with legal obligations, including any prohibition on offering an appointment and with any requirements stipulated by regulatory bodies such as the Nursing and Midwifery Council and the Health Professionals Council.

This Policy has been developed in line with the NHS Employment Check Standards, issued by NHS Employers in 2008. The standards include all pre-employment checks required by law, those that are mandated by the Department of Health policy and those that are required for access to the NHS Care Record Service.

2. PURPOSE

The NHS Employment Check Standards apply to permanent employees, those on fixed term contracts, temporary employees, volunteers, students, trainees/apprentices, contractors and staff employed through an agency.

The Trust makes is clear to prospective employees that appointment to any position is conditional to the necessary checks being satisfactory and that any information disclosed on the application form will be checked.

There are six pre-employment checks that the Trust must carry out and that the successful applicants are required to satisfy. These are recorded on the Electronic Staff Record System (ESR) for reference and monitoring purposes.

The set of six documents below make up the NHS Pre-Employment Check Standards:

1. Verification of Identity Check
2. Right to Work Check
3. Registration and Qualification Check
4. Employment History and Reference Check

5. Criminal Record Check
6. Occupational Health Check

Any offer of employment may be withdrawn if an individual knowingly withholds information or provides false or misleading information, and that employment may be terminated should any subsequent information come to light once the individual has been appointed.

The Trust reserves the right to seek information in relation to an applicant. Any information relating to applicants criminal records, health or professional status, shall only be sought for successful applicants, prior to making an unconditional offer.

Conditional offer letters shall set out the pre-appointment check requirements.

The Trust shall make the decision on whether or not to confirm a conditional offer of employment based on a full and fair assessment of applicants' circumstances and the risks associated with the position to which they have applied. Please refer to HRP18 CRB policy and procedures for more information.

A criminal conviction shall not automatically bar an applicant from appointment. However, the Trust will need to reach a decision based on the following:

- The type of conviction received.
- The time between the receipt of the conviction and making application to the Trust.
- The position applied for

The Trust must ensure that pre-employment checks are carried out for professional posts by the recruiting manager with the relevant regulatory bodies, i.e. Nursing and Midwifery Council and the Health Professionals Council.

3. DEFINITIONS

Permanent staff
An individual employed with the intention of there being an ongoing employment relationship, for an indefinite period which may be full-time or part-time.

Employment check
An employment check provides the manager and HR department with the information they need to make an informed decision as to whether a person can safely work for the Trust.

Fixed Term staff
Fixed-term contracts are contracts which terminate on the expiry of a specific term or on the completion of a particular act. Fixed term employees include those:

- working on short-term contracts, such as “seasonal” employees taken on to cover busy periods;
- employed to cover for maternity, paternity, parental or sick leave;
- hired to do a particular job on “task” contracts which end when that job is done.

Fixed term contracts must have an end date and must be regularly reviewed with the individual.

Temporary staff
An employment situation where an employee is expected to remain in a position for a certain period of time. Temporary employees may have the opportunity to achieve permanent employment status after the time period has lapsed; Temporary workers may also be referred to as seasonal employees or temps. The employment term may be based on the completion of a project, the availability of funding, or other circumstances.

Temporary staff may be hired directly by the Community Trust or they are obtained from a temporary staffing agency.

External agencies
An employment agency can be used to supply temporary workers. Agencies should only be selected through the approved Office of Government Commerce Buying solutions framework for the NHS.

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

4. DUTIES WITHIN THE ORGANISATION

Chief Executive and the Board
The Chief Executive and the Board have overarching responsibility for ensuring the content of this policy is applied consistently and fairly across the Trust.

The Board of Directors have overall responsibility for ensuring that the Trust delivers high quality services that are efficient and effective.

The Board is made up of the Chairman, Chief Executive, Executive Directors, Medical Director and Non-Executive Directors. The Board of Directors oversee the running of the Trust, make the decisions that shape future direction, monitor performance and ensure accountability.

Director of Human Resources and Corporate Affairs
The Director of Human Resources and Corporate Affairs is the named officer responsible for ensuring the content of this policy is applied consistently and fairly across the Trust

Human Resources Department

The HR department is responsible for undertaking the required CRB checks and obtaining references and any other documents required prior to an employee commencing with the Trust. HR will also maintain the central professional registration database; ensuring it is kept up to date on a monthly basis to reflect leavers, new employees and those who are newly qualified.

Recruitment team

The recruitment team are responsible for administering, coordinating and supporting managers in the process of recruiting staff. The team record, monitor employment checks within the organisation and ensure compliance with the NHS pre-employment check standards.

Appointment Committees

There are certain roles that require appointment committees such as Executive and non-Executive Directors. There is guidance available from the HR department on the formation of these committees and necessary requirements.

Heads of Service and Divisional Managers

Heads of Service and Divisional Managers are responsible for ensuring this policy is adhered to across their departments, division or service and that they oversee the monitoring of Professional Registration status and appropriate employment checks of employees across their service.

Service Leads

Service Leads are responsible for monitoring compliance for employment checks being completed within their service. They should escalate appropriately to the Head of Service or Divisional Manager when action has been taken due to checks being unsatisfactory.

Line Manager

Line Managers are responsible for ensuring they maintain their own Professional Registration where it is a mandatory requirement of their role and to monitor the status of employment checks of their team members on an on-going basis. If they have concerns in relation to Professional Registration status or employment checks of a team member they must contact HR as a matter of urgency

Individuals

Employees are responsible for ensuring they maintain their Professional Registration where it is a mandatory requirement of their role and if they have concerns in relation to their Professional Registration status they must contact their line manager or HR as a matter of urgency.

In the event that employees apply for internal promotional opportunities within the Trust, they are responsible for partaking fully and willingly with the required checking processes undertaken by HR and the recruiting manager.

Employees are also responsible for flagging to their line manager, Head of Service or HR as a matter of urgency if they are aware that their status has changed i.e. in relation to CRB disclosure and any offences.

5. GOOD CORPORATE CITIZEN

Employment is a key determinant of health and social wellbeing and being a good corporate citizen includes the responsibility as an employer to protect our patients, employees and the community as a whole.

Having an effective employment check policy, along with robust and transparent procedures in place contributes to this being achieved

6. PRE-EMPLOYMENT CHECKS AND PROCEDURES

All staff within the Trust have an obligation to abide by this policy and bring to the Trust's attention anything that could affect their employment, particularly in relation to the criminal records check.

6.1. Occupational Health Assessment

From 1 October 2010, under the terms of the Equality Act 2010 Section 60, employers must not ask applicant's questions relating to health or disability on an application form or by issue of a separate questionnaire, unless in exceptional circumstances as set out in the Equalities Act 2010.

Before an unconditional offer of employment is made to the successful candidate the Trust will invite the prospective employee to make a declaration of yes or no against two statements, which will be included as part of the conditional offer of appointment.

The two statements are as follows:

1) Do you have any mental, physical or learning disabilities / health problems / allergies which may affect your work for which you may need adjustments to your job or workplace?.
2) Is there anything relating to your health that you wish to discuss with Occupational Health?

If the employee has responded yes to either of the above statements, or the manager has identified through the risk assessment process that the role requires Occupational Health advice then a full health questionnaire will need to be completed.

The Occupational Heath assessment will determine fairly, objectively and in accordance with equal opportunity legislation and good occupational health practice whether the prospective employee is fit to carry out the full duties of the post, the assessment will take into account the Equality Act 2010 and reasonable adjustments will be recommended to enable people to work in the Trust regardless of physical impairment or disability.

No applicants should be refused employment on health grounds unless:

- Expert occupational medical advice has been sought
- The applicant has had the opportunity to discuss issues raised with an occupational health professional
- The employing manager has given full consideration of all the facts.

Once an employee has been appointed into post, any concerns regarding the health of the employee should be considered by the line manager and designated HR representative in accordance with HRP5 Managing Attendance policy

6.2. Verification of Identity Checks

Prospective employees must provide acceptable documents containing their photograph, such as a passport or UK driving licence, and acceptable documents providing their current address, within the last six month and must contain the candidates name and address e.g. utility bill, bank statement. They will be required to provide either:

- Two forms of photographic personal identification and one document confirming their address, or
- One form of photographic personal identification and two documents confirming their address.

All documents must be originals and are to be brought with the candidate to the an ID check meeting with a member of the Recruitment Team once a conditional offer has been made. A copy will then be kept to retain on file, which will be signed and dated by the member of Recruitment Team to confirm the original copy has been produced.

Document authenticity is an integral part of the verification of identity checks; therefore, all documents will be thoroughly checked at the interview by the manager and a copy sent to the Recruitment Team. Once these checks are complete and the Trust is satisfied that the identity of the prospective employee is verified, a right to work check must be carried out. (See 6.3)

Should the checks return information that contradicts the details provided by the candidate and raises concerns the matter will be raised with the Recruiting Manager in liaison with HR, who will aim to address the Trusts concerns directly with the prospective employee and may take advice from the local police/Home Office before proceeding. The commencement of employment will be deferred pending these discussions.

6.3. Right to Work Checks

Following the changes to the Immigration, Asylum and Nationality Act (2006) in February 2008 it is now criminal offence for employers to knowingly employ illegal migrant workers and a there is a continuing responsibility for employers of migrant workers to check their ongoing entitlement to work in the UK. .

In most cases as part of their recruitment prospective employees will have identified if they require a work permit or visa so that these can be sought as a requirement for commencing employment. Advice and support can be sought from the Recruitment Team on work permits.

The Home Office points based system was rolled out during 2008/2009. The system changed the way individuals from outside the EU and EEA could work, train or study in the UK has now replaced the majority of the previous immigration system with a five tier system from Tier one to Tier five applications.
Further details can be found on www.ukba.homeoffice.gov.uk

These checks are concerned only with an individual's right to work in the UK and will therefore be done in conjunction with verification of identity checks so that the Trust can satisfy itself that the candidate is the rightful owner of the documents that they present.

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

- Request right to work documents
- Validate the documents
- Copy and store

The Trust will validate documentation from all prospective employees prior to the individual starting work to ensure they are eligible to reside and work in the UK and also to meet the requirements of anti discrimination legislation. All documents must be valid, current and original. Documents downloaded from the internet will not be accepted.

It is the responsibility of the Recruiting Manager along with advice from the Recruitment Team to carry out all of the following checks on all documentation:

- Check photographs, where available, to satisfy themselves that they are consistent with the appearance of the individual
- Check that the date of birth is consistent with the individual's identity documents
- Check that expiry dates of any limited leave to enter or remain in the UK are still valid

- Check any government stamps or endorsements to ensure the individual is entitled to do the work being offered dates will be cross-referenced with identity documents and work permits, or confirmed by contacting appropriate embassies and consulates.

All documents provided will be photocopied by a member of the Recruitment Team and retained as evidence of the verification process.

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

- For passports and travel documents, a copy will be taken of the document's front cover and any page containing the holder's personal details. In particular, a copy of any page that provides details of nationality, his or her photograph, date of birth, signature, date of expiry or biometric details
- Any page containing UK Government endorsements, noting the date of expiry and any relevant UK immigration endorsement which allows the prospective or current employee to do the type of work you are offering.

Other documents will be copied in their entirety.

No other documents or combinations of documents are acceptable. In certain circumstances documentation may be required to be re-inspected on a yearly basis. The Recruitment Team will monitor this and provide ongoing advice to the Recruiting Manager.

Documents must be originals and not photocopies. The documents must show that the holder is entitled to do the type of work being offered.

Copies of the documents will be kept securely for the duration of the individual's employment and for a further six years after their employment has ceased in their personal file. A record of the copied documents will be recorded on the individual's Electronic Staff Record.

All Employees

If, after carrying out these checks, it is established that the candidate is not permitted to work in the UK, then they will not be able to commence employment and will not be allowed to start work. The Recruitment Team will liaise with the Recruiting Manager for them to communicate with the prospective employee.

If there is no evidence that such permission is going to be promptly forthcoming the Trust will withdraw the offer of employment. If a person is likely to obtain the relevant permission within an acceptable time period, e.g. within two weeks, then it is at the Recruiting Managers discretion to withdraw the offer of employment or wait until the permission is received. The Recruitment Team Manager will discuss this with the Recruiting Manager concerned.

6.4. Qualification Check

The purpose of the qualification check is to ensure that a prospective employee has the right qualifications to do the job. Appointment to any position in the Trust is subject to a satisfactory qualification check.

It is the responsibility of the interview panel to ensure that the individuals short listed have the relevant qualifications identified in their person specification,

Qualifications checks verify the information about educational or professional qualifications. The prospective employee will be asked to bring their original certificates to the interview. The certificates should then be copied and checked against requirements of the person specification and retained for the personnel file. If the qualification is gained overseas it is the recruiting manager's responsibility to ensure that the qualification is equivalent to the stated UK qualification.
Where the checks return information that contradicts the details provided by the candidate and therefore raises concerns the matter should be raised with the Recruitment Manager in the HR department who will offer and advice and support, it is then the recruiting manager's responsibility to liaise directly with the prospective employee.

6.5. Employment History and Reference Checks

Previous employment history must be checked before an unconditional offer of employment is made to a prospective employee. References and application forms must be cross checked as part of this process by the recruiting Manager and the Recruitment Team.

The purpose of references is to obtain information, in confidence, from a third party providing a factual check on a candidate's employment history, qualifications, experience and usually an assessment of the candidate's suitability for the post in question. Prospective employers may seek information on matters including length of employment, salary, job title, brief details of responsibilities, abilities, overall performance, time-keeping and reason for leaving.

Details of referees are requested when a candidate completes an application form; the candidate should provide referees to cover the previous three years of employment and normally two of the referees should be from previous line managers. An exception to this would be a recent school leaver or graduate who could provide a tutor as a referee.

References are checked by the recruiting manager prior to the unconditional offer being issued; any concerns regarding the content of references are discussed between the recruiting manager and the Recruitment Team to ensure consistency and fairness of approach.

Where there is a lack of sufficient evidence on which to base an offer of employment, any conditional offer that has been made will need to be withdrawn. However, if references cannot be obtained for legitimate reasons the Recruitment Team will discuss with the recruiting manager whether or not an unconditional offer is appropriate

Employees of the Trust should only act as a referee on behalf of the Trust if they hold or have previously held a formal supervisory or managerial relationship with the subject of any reference and can therefore make an evidence based assessment of job related competence and personal qualities.

All references must be:

- Written by a person with management responsibility
- Honest
- Accurate
- Fair
- Made with reasonable care
- Include an assessment of job related competency

Subjective comments about personal qualities should be made with great caution. Please also note that following the Equalities legislation 2010 references should no longer request details of sickness absence, if a reference refers to sickness this section should not be completed and this information should not be asked of the candidates.

6.6. Criminal Record Checks

Where the prospective employee will be working in a regulated activity that meets the frequency test it is a mandatory requirement for the Trust to carry out an Enhanced CRB check. For those positions that are not covered by a regulated activity but involve the individual having access to patients in the course of their normal duties in a wider healthcare setting and they meet the frequency test then the Trust is required to undertake a Standard CRB check,

In exceptional circumstances where there may be a risk to the health safety and wellbeing of patients, service users or staff a prospective employee may be allowed to work prior to a satisfactory CRB check being received, in these circumstances the recruiting manager should conduct a risk assessment and appropriate safeguards should be put in place. The recruiting manager will then request a supervisory letter from the Recruitment Team within which they will make a declaration that the prospective employee will be supervised at all times until the recruiting manager is notified that satisfactory CRB clearance has been received.

Please refer to the Criminal Record Policy and Procedures (HRP 18) for further information, which is located on the Trusts internet Site.

6.7. Professional Registration Checks

In order to check and verify registration the prospective employee should bring evidence of their registration to their interview, the recruiting manager is then required to record on the outcome of interview documentation whether they have had sight of the current and valid registration.

As part of the pre-employment check process the Recruitment Team will also check with the registered body that the registration is current and valid.

The prospective employee will be unable to start in the role requiring professional registration without confirmation being received.

The expiry date of the registration will be updated on the ESR system for monitoring purposes. For some professions the system will automatically interface with the registered body and update when the registration has been renewed.

Where staff are required to hold and/or maintain membership of a professional body as a requirement of their role but not as a legal requirement, this must be established as part of the initial recruitment process via the person specification, continuing professional development and appraisal process.

It is the responsibility of clinical staff who require professional or medical registration as part of their employment to ensure that they maintain their professional registration. Evidence of registration status must be provided to the Line Manager at annual appraisal.

The HR department will provide managers with a monthly report of registration expiry dates (i.e. those up for renewal) up to a month in advance to prompt them to check staff registrations. In addition, the HR department receive notifications from the Electronic Staff Record System for particular staff groups who require professional registration as a mandatory requirement.

For more detailed information of how the Trust ensures that its staff members meet standard requirements of professional qualifications and registration please refer to the Policy for Professional, Clinical and Medical Registration HRP19 http://www.wirralct.nhs.uk/attachments/article/24/HRP19PolicyforProfessionalClinicalMedicalRegAug12(3)(2).pdf

6.8. Alert Notices

The Trust is committed to implementing and managing the alert scheme in accordance with the Healthcare Professionals Alert Notices Directions (2006)

An alert notice is a way of notifying NHS bodies and others about a registered health professional whose performance or conduct could pose a significant risk of harm to patients, staff or the public. The Recruitment team checks to see if a prospective employee is the subject of an alert letter irrespective of whether the position applied for requires registration with a regulatory body. This enables the Trust to make an informed decision about individuals who are the subject of an alert letter who are seeking to return to the NHS in a position which does not require registration with a regulatory body. The check is performed prior to an unconditional offer of employment being made to the prospective employee.

6.9. Work Permits and Visas

The Trust will need to demonstrate that it was unable to recruit to a resident worker via the Resident Labour Market Test before recruiting an individual from overseas and to provide details of the recruitment method used, timescales and give credible reasons why they did not appoint suitably qualified resident worker. Vacancies will be advertised by the Trust for a minimum period of four weeks before the Trust will consider a migrant worker.

Any prospective employee who requires a work permit or visa must have the validity and status of such documents verified. The Recruitment Team will alert the recruiting manager if a candidate requires a work permit, it is then responsibility of the recruiting manager to ensure that they have had sight of the original work permit or visa and a copy is taken for the personnel file. The Recruitment team will be able to provide advice and support on these requirements.

6.10. Driving Document Checks

Where driving is a requirement for a role, the manager must check the validity of the employee's driving licence and take a photocopy and send to HR for the employee's file.

In addition if an employee seeks to claim mileage expenses and use their own car, the manager must ensure both the validity of the employee's driving licence and that the employee's insurance policy covers them for business use. A copy of the employee's car insurance certificate must also be sent to HR for the employee's file.

These documents will be checked as standard as part of the annual appraisal process, however they will be checked on an ongoing basis by the line manager who will record and monitor renewal dates.

6.11. Temporary staff

Bank staff

Recruitment of all Bank staff is dealt with by the Nurse or Clerical bank coordinator. In these cases the HR department and the nurse or clerical bank will ensure that all of the necessary employment checks are carried out prior to an applicant being placed onto the bank working register.

External Agencies including locums

If external agencies are used they must be ‘Buying Solutions’ Government Procurement Services approved as the contract stipulates that all staff provided under the contract are subject to appropriate employment checks in accordance with the NHS Employment Check Standards prior to them being supplied to Wirral Community NHS Trust. Buying Solutions undertakes audits, both planned and unplanned.

However, it is still the Managers responsibility to assure themselves that the appropriate employment checks and professional registration checks have been completed and that they are satisfied that the worker should be working by taking photocopies of any relevant documents evidencing professional registration and retain on file centrally within the Service before the agency staff member is allowed to work within the service. Please also refer to the Policy for Professional, Clinical and Medical Registration HRP19.

Please note that as Wirral Community NHS Trust is not an umbrella body, CRB checks can only be carried out for those employed by the Trust. Recruiting Managers should ensure that the agency has carried out a CRB check if appropriate, or that the individual has obtained their own clearance using an organisation that is an umbrella body.

Please see the Criminal Record Policy and Procedures (HRP18) for further information.

7. Following up on those who fail to satisfy Employment Checks

7.1 Pre Employment

Applicants will not be able to commence in post until the stipulated checks have been confirmed as acceptable by both the recruiting manager and the Recruitment Team. Where it is deemed that any evidence is not forthcoming from an applicant following several requests, any offer of employment may be withdrawn.

7.2 Post Employment

Employees who require a work permit/visa, statutory professional registration, driving license and MOT (as described in 6.10), and allow these to lapse will not be allowed to continue in post until they have been renewed and the matter will be referred to the Divisional Manager/Head of Service (see section 4).

Failure to maintain Professional Registration and renew legal documentation represents a breach of a statutory requirement and may lead to summary dismissal under the terms of HRP1 Standards of Conduct & Disciplinary Policy. The approach taken is outlined in section 5.5 in the Policy for Professional, Clinical, and Medical Registration HRP19.

8. POST EMPLOYMENT CHECKS (FOR EXISTING STAFF)

Occupational Health and Risk Assessment

In circumstances where employees are changing roles within the Trust due to organisational change, redeployment or promotion and there is a significant change to their duties they will be required to complete the health enquiry form as stated earlier in paragraph 5.1 and the same process will follow.

CRB checks

In circumstances where an employee is changing roles within the Trust due to organisation change, redeployment, promotion or ill health and the new role changes the level of check that is required under the Safeguarding Vulnerable Groups Act then a new check will be required.

If during the course of their employment, an employee is arrested, charged, cautioned or convicted of any criminal offence they must notify their manager of the circumstances as soon as possible. This includes any pending court appearance, bind-over’s absolute and conditional discharges. Failure to do so may result in formal action being taken under the Standards of Conduct and Disciplinary policy HRP 1.

Wirral Community NHS Trust can conduct an audit of CRB checks for staff at any time it is deemed appropriate. It is a requirement of the contract that all employees comply with the Trusts policy on CRB checks being undertaken.

Renewal of Professional Registration

Professional registrations are monitored on a regular basis; the HR department will ensure that managers are in receipt of a monthly report of registrations due to expire. The onus is then on the manager to ensure that employees have renewed their registration and provided copies. If an individual allows their registration to lapse managers should seek advice from the HR department.

Please refer to the HRP 19 Policy for Professional, Clinical & Medical Registration for further information.

9. EQUALITY IMPACT ASSESSMENT

Wirral Community NHS Trust is committed to ensuring that none of its policies, procedures, services, projects or functions discriminate unlawfully. In order to ensure this commitment all policies, procedures, services, projects or functions will undergo an Equality Impact Assessment. A copy of the Equality Impact Assessment for this policy can be found in appendix 3. Reviews of Equality Impact Assessments will be conducted in line with the review of the policy.

In order to avoid discrimination the Trust will treat all candidates in accordance with this policy at each stage of the recruitment process.

All checks will be carried out in compliance with the Data Protection Act (1998). Information will only be obtained where it is essential to the recruitment decision and kept in accordance with the Act.
The Trust will record the outcome of all pre-employment checks. These checks are also part of the information governance and assurance standards linked to the use of the NHS Care Records Service.

The Equality Impact Assessment identified positive impacts for all equality groups as this policy ensures patients receive good quality treatment because it ensures the Trust ensures robust standards are in place for ensuring employment checks are made.

This policy will be available upon request in Braille, large print or alternate languages upon request.

10. TRAINING/SUPPORT

Training and support for managers in the application of this policy is available via the mandatory Essential Learning for Managers programme.

Any employees requiring support with any aspect of this policy should contact their line manager in the first instance.

11. PROCESS FOR MONITORING EFFECTIVE IMPLEMENTATION

The policy has been developed by the HR Policy Review Group and is required to be ratified by the Education and Workforce Committee

The policy will be published on the Trust's internet site, accessible to all staff.

It is not anticipated that this policy will create any training or support issues over and above the provisions currently provided by the HR department to key stakeholders within the Trust.

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This policy is subject to periodic review by the HR Policy Review Group which has delegated authority from the Education and Workforce Committee.

This policy will be reviewed every two years or before if there are legislation changes and any changes made to the NHS Employment Check Standards.

A checklist is completed for all appointments by the Recruitment Team to ensure that on an individual basis all the necessary steps in the process have been completed before an offer of employment is made to an individual. Additionally reports are run monthly by the Recruitment Team and sent to the line manager and relevant HR Business Partner. They highlight individuals whose checks are due to lapse for awareness raising and ensuring appropriate action is taken as accordingly. Compliance with the policy will be reviewed at the Education and Workforce Committee by using appendix 3.

12. OTHER RELEVANT PROCEDURAL DOCUMENTS

- Recruitment and Selection Guide HRG22
- CRB Policy and Procedures HRP18
- Recruitment and Selection Resource Pack for managers
- Professional, Clinical and Medical Registration HRP19

13. REFERENCES

The NHS Employers website provides the full list of employment checks and detailed guidance Available at www.nhsemployers.org

- Criminal record checks
- Employment history and reference checks
- Occupational health checks
- Registration and qualification checks
- Right to works
- Verification of identity checks

The Criminal Record Bureau website www.homeoffice.gov.uk/crb

Health Professions Council (2009) standards of education & training.
www.hpc-uk.org

The Buying Solutions website offers further information on the use of temporary staff at www.buyingsolutions.gov.uk

Appendix 1 - Additional Guidance to Obtaining and Providing Employment References

The guidelines below are to be used for both internal and external candidates and cover all categories of vacancies.

References must be sought from at least **two** referees for all posts using the following guidelines:-

- If the applicant is in employment, one reference must be from their current line manager and the other from their previous line manager.

- If the applicant is unemployed, the references must come from the applicant's most recent employer. If the applicant is applying after full time education references must be sought from the school/college/university.

All references must be reviewed by the recruiting officer before an offer of employment is made. Offers of employment must not be made subject to 'satisfactory references'. (*See Guidance for Managers Section - on how to deal with any issues that arise from the contents of the reference).*

The Trust will maintain their position to deem what is a satisfactory reference in line with the "Safer recruitment – a guide for NHS employers" guidelines.

If the applicant has refused to give permission for a reference to be sought then this should be discussed with the applicant at the interview. It must be explained to the applicant that a firm offer cannot be made without this.

Personal references from immediate colleagues or friends should not be accepted unless given as a character reference.

Verbal references should only be accepted in exceptional circumstances and must always be documented at the time and then followed up in writing.

Providing Employment References

This applies to any reference requests that managers are asked to provide on behalf of the Trust.

As an employer, the Trust is not under any legal obligation to provide a reference for any member of staff leaving its employment, although failure to do so may result in adverse consequences for the employee. Therefore it is good practice to provide references.

It is normal to provide certain factual information such as employment dates, job title, leaving salary and possibly information about absence or sickness. Such requests are usually straightforward; however, many references also ask for information and opinions concerning the candidate's ability to perform their new role. It is often these requests for subjective information that can potentially be an area of difficulty for referees.

References should not refer to performance or other issues that have not previously been discussed with the employee concerned.

Verbal References should only be given in exceptional circumstances i.e. a response is needed urgently. However, it is good practice to ask the prospective employer what information they need and then arrange a time to call them back. This will help verify the designation of the caller and will ensure that you have had time to prepare your response to avoid unintentionally making incautious statements and to make sure that the verbal reference will be followed up with a written reference.

Where an employee has been dismissed or has resigned whilst disciplinary action is pending, advice should be sought from the HR Department before complying with the request.

Providing Personal References

Employees may be approached by a colleague/former colleague to provide a reference for them. However, when doing so the individual must ensure that they use their own notepaper and clearly state that the reference is being given in a personal capacity. On no account should a personal reference be written on Trust letter-headed paper or in any way suggest that the Trust endorses the reference. Any employee doing so may find themselves subject to disciplinary action.

Legal Considerations

This section examines the various areas of law that come into play where references are concerned.

In providing a reference on behalf of the Trust, managers must be aware they have a duty of care to both the recipient and to the employee. This duty is to take reasonable care and to ensure that:-

- The information given is true, accurate and fair
- The overall impression of the employee is not misleading.
- Care should be taken to ensure that if information is omitted the reference as a whole is not misleading.
- Opinions are based on accurate facts.

It is important that Managers are aware that they have responsibilities to both parties and know what these entail.

Responsibilities to Employees

An employee/former employee has recourse to take legal action if he or she feels aggrieved by a reference given by their employer/former employer. There are two types of legal action that can result. These are detailed below.

Defamation

Employers must not deliberately provide an inaccurate or misleading reference. If a reference contains a false or unsubstantiated statement which damages the reputation of the individual concerned, an action for defamation and damages may result. It might be defamatory, for example, to imply that an employee lacked the skills, qualifications or ability to do a job where such attributes are necessary.

In practice however, there is little or no risk of an action for defamation succeeding where an employer believes it has made a truthful statement.

Negligence

An action may also arise if the referee has failed to exercise reasonable care in the preparation of a reference. For example, the Rehabilitation of Offenders Act 1974 imposes an obligation on a reference not to disclose ‘spent’ convictions unless the organisation is exempt from the ROA. If it is known that an employee has a conviction and there is a specific enquiry about known convictions, it is essential to know whether it is considered to be ‘spent’ under the Act. Otherwise, an incorrect statement, even if given in good faith, could amount to be a negligent mis-statement.

Discrimination

It is also important for Managers to be aware of equal opportunity legislation and their associated duties in relation to giving references.

An employee/former employee who believes that he or she has been discriminated against due to statements made in a reference, and has suffered as a result, which are based on age, race, sex, sexual orientation, religion or disability may claim discrimination at an Employment Tribunal.

Data Protection Act

Under the Data Protection Act 1998, it is no longer possible to guarantee that a reference will remain confidential. Although employees are not entitled to view references given in confidence by their employer/former employer, they can ask their new employer for a copy of the reference which may be discloseable if it is proper to do so having balanced the rights of the referee and the employee.

Responsibilities to Prospective Employers

A referee also has legal responsibilities towards a prospective employer. These are similar to those concerning employees. For example, if a referee gives a 'glowing' reference for an employee which is untrue, an action alleging deceit could arise. To be successful however, the new employer would have to show that the individual had been appointed solely because of the reference only for it to be found that he or she was unsuitable in respect of a particular characteristic mentioned in the reference.

The 2006 Act – Civil Defence

It is a criminal offence to employ an individual who is subject to immigration control. Employers must take reasonable steps to verify status in order to benefit from statutory defence; pre employment check means pre employment! For further details please see http://www.bia.homeoffice.gov.uk/

Where possible, employees will be temporarily re-deployed into a non-clinical role until suitable professional registration has been renewed. Where this is not possible the Trust may consider suspending the employee from duties as a last resort.

Suspension is not a disciplinary sanction and there should be no detriment to any employee suspended. Before suspending an employee, the Head of HR must be contacted and serious consideration must be given to any possible alternative measures that may be available; for example moving the employee to another work area or role. Further advice regarding alternative measures can be obtained from the HR Department.

Appendix 2 – Guidance for Managers on Employment References

The following guidelines are intended to support Trust policy on the use of references and provide managers with information on how to deal with issues that may arise with their use.

Providing references

- If requested to provide a reference your responses should be factually accurate and an honest assessment of the staff member's ability should be given.
- You should try to avoid providing vague personal statements or opinions which could be subjective and ambiguous.
- Under the data protection act individuals are allowed to see the contents of their personal file and you should bear this in mind when completing the reference form.
- If you only have limited working knowledge of the individual you are being asked to provide a reference for, you should state this and return the reference.
- Verbal references should only be given in exceptional circumstance i.e. a response is needed urgently. However, in these instances, you should verify the designation of the person you are providing the information to.
- Where an employee has been dismissed or has resigned whilst disciplinary action is pending, advice should also be sought from the HR Department.

Requesting references

- When recruiting either internally or externally references must be sought in accordance with this policy.
- It is the appointing manager's responsibility to ensure references are seen and any areas of concern addressed before a firm offer is made to appoint.
- Best practice would be to review references after the interview and before the offer is made to the applicant.
- When the appointing manager produces a short list, they should also indicate which references are required in accordance with this policy. This is important, as the references we require i.e. current/most recent employer may not necessarily be the referees the applicants have supplied.
- The appointing manager is also responsible for deciding whether there is any specific information needed for the appointment which is not covered on the reference form.
- This information should be sent to the Recruitment team.
- If you receive a reference that is ambiguous or raises concerns then you should follow up with a telephone call to the referee and seek advice from the HR Department.

Appendix 3: Process for Monitoring Compliance with HRP9 Management of Employment Checks – NHSLA Risk Management Standards

Minimum requirement to be monitored	Process for monitoring (e.g. audit)	Responsible individual/ group/ committee	Frequency of monitoring	Review of Results Process	Responsible individual for development of action plan	Responsible committee for monitoring of action plan and implementation
Duties	Review of Policy/ Terms of Reference	HR Policy Review Group	Annually	Minutes	HR Policy Lead	Education and Workforce Committee
Types of check required	Job Description/ Appraisal/ Supervision	Line Manager	Minimum Annually	Line Manager	Education and Workforce Committee	Education and Workforce Committee
How checks are made	Audit of Personnel Files	HR department	Annual	Education and Workforce Committee	HR department	Education and Workforce Committee
How the organisation follows up on those staff who do not satisfy the checking arrangements	Audit of records held in ESR system and Personnel Files	HR department	Monthly reports from ESR and Annual audit of files	Education and Workforce Committee	HR department	Education and Workforce Committee
How the organisation makes sure checks are being carried out by all external agencies used by the organisation in respect of all staff	Review/ Audit/ Evidence from Agency	HR department	6 monthly	Line Manager	Education & Workforce Committee	Education and Workforce Committee

Minimum requirement to be monitored	Process for monitoring (e.g. audit)	Responsible individual/ group/ committee	Frequency of monitoring	Review of Results Process	Responsible individual for development of action plan	Responsible committee for monitoring of action plan and implementation
How the organisation monitors compliance	Audit of Personnel Files	HR department	Annual	Education and Workforce Committee	HR department	Education and Workforce Committee