

International Recruitment Q&A

We ran a webinar for Care Providers to over an Overview of International Recruitment, on the 9th May. This focused on:

- An overview of the international recruitment sponsorship process.
- Some tips around ethical recruitment.

Here, we include some of the questions asked during the webinar.

1. Can we stop applicants applying who need sponsorship and do we have to offer it? Is it discriminatory?

Providing you can provide a legitimate business reason, such as the role doesn't meet the salary threshold or is cost prohibitive, then you would have a justifiable business reason not to offer sponsorship.

You can prevent applicants from applying if the role doesn't offer sponsorship, again with a clear business reason. It may be that an applicant has sponsorship through another organisation and is applying for a role less than 20 hours, so you may want to consider how you ask this question throughout the recruitment process.

2. We as a Trust deliver children's services so we don't come under the council and Adult Social Care banner. We have got people that we want to appoint but do we use the code for social workers, and can we use health and social visa because my understanding is health and social visas are for adults?

One of the rules for applying for health and social care worker visa is that the sponsor is either:

- the NHS;
- an organisation providing medical services to the NHS; or
- an organisation providing adult social care.

There is no separate provision for children's social care.

To sponsor an overseas worker in children's services, you will need to sponsor under the standard Tier 2 skilled worker visa route.

3. On what grounds can you decline an offer of sponsorship?

There are requirements to offer sponsorship to candidates. The organisation could choose to decline sponsorship if it is deemed to be cost prohibitive and whereby there are candidates in the selection process that meet the requirements from within the UK. Hiring decisions are encouraged to be noted and auditable.

4. Are we allowed to put in the job adverts that the applicants must meet eligibility requirements to work in the UK?

Yes, it's a legal obligation and useful from a candidate experience perspective to set and manage expectations from the outset.

5. Where we have a vacancy and the salary does not meet the threshold for a Skilled Worker or specified Health and Care occupations, can we state in the job advert that sponsorship is not available?

Yes, if you have considered and determined sponsorship is not viable then this can be stated in the job advert.

6. Where we have a permanent vacancy or a long-term vacancy. Can we reject applicants who are on a limited graduate visa and there is no option to change to a skilled worker visa as the job would not meet the eligibility criteria?

If the job isn't eligible for sponsorship, then yes you can reject applicants on the basis that they are not going to be suitable to fulfil the role long term.

7. Apprenticeship funding requirements require applicants to have a visa to cover the period of the apprenticeship. Can we legally reject applicants, where they have a BN(O) visa, but their current visa does not cover the period required to fulfil the apprenticeship (even though BNO visa rules allows for unlimited extension)?

You can do, but we would advise having a justifiable business reason for doing so.

8. If someone applies for a vacancy and is sponsored by another organisation to work in the UK and is on a working visa, when undertaking Right to Work checks is there anything we need to do in terms of this?

If they are just undertaking their supplemental 20 hours for you, you will need to ensure that Right to Work checks have been passed as usual. You will also need to check that they're still employed by their sponsor and what their contracted working hours are.

9. Do we have to consider overseas applicants without right to work for published vacancies so essentially, do we have to offer a certificate of sponsorship if the applicant proves to be the best applicant?

In order to reduce the risk of a discrimination claim, you should have a justifiable business reason why you can't employ that person, particularly if they meet the

requirements for sponsorship and are the best applicant by far. You will need to check if the role is eligible for sponsorship and ensure an audit trail to justify hiring decisions.

- 10. If there were two people that were equally appointable for a role, one requiring sponsorship and another not, would an organisation be able to select the person where sponsorship wasn't required or do you have any advice in this scenario?**

It could be justifiable from a cost perspective to offer an individual where sponsorship was not required to avoid sponsorships costs to the organisation. You may wish to ensure clear audit trails of decisions and possibly consider additional assessment methods to help you make hiring decisions on job competency/skills.

- 11. We are probably going to be rescinding our licence holder status and so are currently looking at developing an exit strategy to support us through that transition, we have a mix of people who work for us and some who have an automatic right to work in the UK and some who are able to work in the UK but are on a time limited visa, and a very small handful that requiring sponsorship. Do you have any experience or case studies of where you support a client in exiting from their sort of licence holder status?**

Yes, employers cancel sponsorship of workers in all sorts of circumstances, either voluntary, rescinding their licence or having it withdrawn by UKVI. Cancelling sponsorship and terminating employment comes down to your standard employment obligations. You need to comply with notice periods under their contracts and terminate their employment in that way. If they have two years' service or more, then you need a fair reason for dismissal. That fair reason can be that you are withdrawing your sponsorship licence and so you are no longer going to be legally able to sponsor them. The fair reason is that you are no longer able to comply with your obligations under UK law to ensure they have the right to work.

- 12. Are we able to say in the job application process that candidates must have a time limited visa, that must cover sufficient time remaining that covers the duration of the contract that they are applying for.**

Yes. You can say you will require details of the time limited visa as part of the application process.

- 13. We have an employee working for us currently on a fixed term contract until end of March 25. Their time limited visa expires in September. Can we consider sponsoring them for the duration of their fixed term contract which is 6 months. Is sponsorship available on a six-month basis or is it hardwired on a year or three years or five years basis?**

You can do a short amount of time but bear in mind immigration skills charge is for a minimum of 12 months, so you won't get a refund for the balance of six months if you terminate employment after 6 months.

- 14. When an employee resigns during their contract, when should we notify the Home Office of this as that they are no longer covered under our sponsorship? Can we claim back any of the money that we paid out or is lost?**

You will need to notify UKVI within 10 working days via the Sponsorship Management System (SMS) that the individual's employment has ended. Apart from balance of the immigration skills charge, which may be refunded by UKVI, your options to reclaim the costs of sponsorship are very limited.

- 15. Can we appoint an applicant with a graduate visa and then sponsor them when the graduate visa expires, or do we need to sponsor them now?**

Providing they are working within the rules of their graduate visa, you don't need to sponsor them separately.

- 16. Is there a lower threshold salary for new entrants that are going onto graduate visas?**

It depends on the job but for a graduate visa, because you are not sponsoring, you don't need to meet minimum salary threshold of £38,700.

- 17. If I put a claw back in a policy if the applicant leaves, would I be able to claw any money back?**

There are certain sums you are allowed to reclaim, such as loans you have given to the individual, money owed for accommodation or training costs. However, any legal costs or sponsorship costs you have incurred wouldn't be legal to recover.

- 18. If someone applied for a permanent role when they were on a time limited visa would that be reason enough not to offer them a permanent role or could that be considered as discriminatory?**

It's easy enough for a visa to be renewed, and so you would need to objectively justify why you wouldn't be able to offer someone the job to avoid the risk of a discrimination claim.

- 19. Where you are providing accommodation for sponsored employees, can accommodation fees be deducted from the individual's salary?**

You will need to take any deductions for accommodation fees into account when you are calculating their salary for national minimum wage or for the sponsorship threshold purposes. You can take into account the accommodation offset rate for these calculations.

- 20. When employing a worker for their supplementary hours, do you still have to pay the minimum amount to meet the sponsorship threshold?**

No, as you are not sponsoring the individual. You will need to pay at least national minimum wage.

- 21. We have got a school that's moving to an Academy trust. We have got a certificate of sponsorship for one of those individuals. So, at the point that they move from the local authority, being the employer to the Academy Trust, we will need to notify the Home Office. What advice can we give the school about where they go to get another certificate of sponsorship?**

The school/Trust will need to get their own sponsorship licence, because it doesn't transfer from one organisation to the other. It's suggested that this should be discussed at the earliest chance before the TUPE transfer, so that the application can be started.

- 22. We have an employee who has a graduate visa, which is due to expire in November. They want us to provide a certificate of sponsorship. Would there be any other visa options other than certificate of sponsorship?**

This depends on their personal circumstances. Other options may be:

- A family visa; or
- If they are a dependent

Otherwise, they will most likely require sponsorship.

- 23. If we are employing someone for the supplementary 20 hours, how do we demonstrate proof of sponsorship with another employer? Would it be through the candidate providing that evidence?**

The guidance in the Employer's guide to right to work checks says that, firstly, Right to Work checks must be carried out for staff working the supplemental hours.

The guidance also recommends the following:

"You should also take steps to ensure the supplementary employment meets the above requirements by, for example, asking the worker to provide a letter or other evidence from their sponsor confirming:

- *They're still working for their sponsor;*
- *The job description and occupation code of their sponsored employment (if their supplementary employment is not in on the Immigration Salary List);*
- *Their normal working hours*

You should also ask the worker if they are doing any other supplementary employment with another employer to ensure they will not be doing more than 20 hours a week in total of supplementary employment."

So essentially, it's recommended that reasonable enquiries are made by the supplemental employer to ensure that the worker meets the requirements for the supplemental work.

24. Would a share code confirm that an individual has got a certificate of sponsorship?

A share code only confirms an individual's Right to Work, which is not necessarily in real time. For example, if their sponsorship has been cancelled, but that hasn't yet been processed by UKVI, then those details wouldn't have been updated on the Right to Work records. That's not going to be conclusive evidence as to whether they are still sponsored or not.

25. We have a situation where we are trying to bring somebody in from overseas on a certificate of sponsorship, however the processing is taking some time (in excess of 12 months). We have been trying to onboard this candidate and we have been told it's going to be minimum of another 10 weeks potentially to get the results of TB medical. At this point, is it acceptable to withdraw the offer?

If the individual hasn't signed their contract yet, that would be acceptable given the significant amount of time it is taking them to comply with the requirements. If the individual had signed the contract, or otherwise accepted employment, you may be contractually bound to pay them their notice if you withdrew the offer.

26. If a manager has made a verbal offer of a job "no matter what" to a candidate, and it then transpires they are not eligible to work in the UK following checks and there is no budget for sponsorship, can the offer be withdrawn?

This will depend on the circumstances. With verbal offers, there is a risk that an offer may be deemed to be unconditional if it was made "no matter what". It's recommended hiring managers are trained to consider Right to Work when making offers of employment, and to make offers in writing stating that it's conditional on them satisfying Right to Work and Regulation 19 requirements.

If the offer was unconditional, the maximum amount of liability would typically be a week's pay which would be statutory notice to dismiss, unless the contract provides differently.

27. We have an applicant that we applied for a Certificate of Sponsorship for. On our system it's showing that it has expired, but the individual is telling us that they are waiting for the visa to be approved and they are struggling to get any feedback on progress. Is there anything we can do to find out what's happening?

As long as you have the application number for the visa, that is sufficient proof of Right to Work whilst a visa application is ongoing.

28. We are looking to recruit some newly qualified social workers who are due to qualify later this year. Do we need to request the certificate now for them to be ready to start then?

I would advise to do it as soon as possible to avoid delays.

29. Is there anything that we need to consider if we make automated rejections to job applications based on the candidate requiring sponsorship?

If it's a role where a business decision has been made that isn't eligible for sponsorship or it's a role that you know is not viable or a business decision that sponsorship is not to be granted, that's justifiable.

30. In terms of those organisations that do have sponsorship, is there anyone that would be comfortable and happy to share some of the benefits and learning points that you have had for other organisations that are considering sponsorship?

These are some of the learning points shared:

- Ensure up to date and specialist advice is available around immigration and international recruitment law and practices.
- Consider the various costs to the business and educate hiring managers on this ahead of advertising to avoid any downstream impacts/delays.
- Establish an internal policy/process for managing international recruits such as the recruitment process, name/address, change in circumstance when work begins to ensure compliance with sponsorship requirements.
- Consider the wider onboarding/settlement support when recruiting people from overseas such as cultural considerations, peer and community support to welcome individuals.

31. If you need to suspend an employee, how do you report this on the Sponsorship Management System?

If it's a short suspension, then you don't necessarily have to report it but if it's a longer suspension of more than 4 weeks, then you must 'report a change of circumstances' on the Sponsorship Management System.

32. What is the process when the worker visa runs out?

If an employee's Right to Work has expired, you can't legally employ them any longer. However, if they have applied for a new visa and provided you with a visa application reference number, then you can use this as evidence of their Right to Work until their application has been approved or rejected.

33. Can a pregnant COS worker request reduced working hours? Is that possible under their contract?

Yes, but this will need to be supported by an occupational health assessment and reported to UKVI via the Sponsorship Management System.

34. With regards to sponsored members of staff, if there are a number of issues in terms of attitude/work/lack of performance/rejection of shifts because they do not want to travel to a particular location or work with specific service users, can the sponsorship be revoked or is there a danger of risks for unfair dismissal due to sponsorship being the reason for their employment contract?

This will depend on how long they have been employed. If they have been employed for less than 2 years, you do not need a fair reason for dismissal and can dismiss with notice. If they have more than 2 years' service, you will need to follow a fair disciplinary process.

35. What are the rules in relation to maternity leave? E.g. length of time and does it affect their contract?

The rules regarding statutory maternity leave are the same for employees who don't require sponsorship. Eligible employees can take up to 52 weeks' maternity leave (26 weeks as Ordinary Maternity Leave and 26 weeks as Additional Maternity Leave)

36. We are trying to get a share code using a BRP that says asylum; however, we can't get a share code. Is that normal?

Not all overseas staff have share codes. Where they do not, you will need to conduct a manual right to work check. However, the new eVisa system means that all staff will have share codes in the near future.

We have staff members on CoS who are declining domiciliary shifts due to childcare responsibilities. How can we effectively manage this situation, if we don't have block hours?

If you cannot meet your sponsorship obligations due to an individual's refusal to work, you will no longer be able to sponsor them and should dismiss them.

37. What happens when a staff member on maternity leave requests an additional three months leave?

If they are entitled to statutory leave for that additional period, this is permitted. If not, they could take annual leave. Otherwise, they can take up to 4 weeks' unpaid leave before you are required to end their sponsorship. You should update the Sponsorship Management System with any change in their circumstances.

38. Could you confirm when someone is sponsored, which date they are able to work up to? Is it the expiry date on the Certificate of Sponsorship (CoS) or the Right to Work expiry, which is normally 2 weeks after the CoS expiry.

If the CoS date expires, this means that it cannot be reassigned until it is renewed. The date that you will need to comply with is the Right to Work date.

39. If an employee was supposed to be back to work after some leave but not responding, should we inform home office as it's been more than 10 working days?

Yes, you should inform UKVI via the Sponsorship Management System within 10 working days.

40. In terms of human resources, smaller organisations do not always have the staff to have a panel of interviewers so how do we work around this?

Panel interviews are recommended to avoid the risk of unconscious bias in the recruitment process, but aren't a legal requirement. If your organisation is unable to do this, consider other possible ways that can reduce these risks.

Additional International Recruitment Related Support

You can find lots of advice and guidance via our [International Recruitment Hub](#). We'd also like to signpost you to:

- **HR & Legal Webinars**

If you are a Care Provider in the West Midlands and would like details about our future International Recruitment Human Resources & Legal Webinars, please email our team at hello@wmca.international

- **Legal & HR Advice**

If you need additional legal support please reach out to Lester Aldridge, who have been contracted to provide support until the end of September 2025: <http://irwestmids.co.uk/hr-legal-services-support/>

- **Recruitment & Immigration Support**

Free sponsorship licenses and funding for recruitment and immigration support

Lifted, a Technology platform and expert immigration team, have been commissioned to help Care Providers recruit and retain sponsored workers who are already here in the UK, as part of the International Recruitment Programme 2024/25. They can support with Certificate of Sponsorship applications, compliance and much more. [You can find out more here.](#)