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Fitness and Suitability for Work Policy: dealing with unsatisfactory pre-employment checks for new (external) appointments

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1. Introduction

This policy applies to all new external appointments at Crofton School.

“New external” appointments means that there is no previous continuous service with the same employer.

This policy should be used in conjunction with the school’s recruitment policy.

This policy does not form part of any employee’s contractual terms and conditions and any links within this document to other documents are for ease of use and do not form part of this policy.

The policy has been developed to assist Headteachers and Governing Bodies in understanding what to do when a candidate’s fitness or suitability for work is in question because pre or post conditional offer employment checks are unsatisfactory. Such situations may require the withdrawal of the conditional offer of employment.

For the purpose of this policy, pre-employment checks fall into two categories:

1. Health clearance checks, including post-conditional offer health references (see section 3 of the policy)

2. All other pre-employment checks e.g. non-health references, Identity, Right to Work, Children's Barred List, Disclosure and Barring Service, Childcare Disqualification Declaration form checks etc. (see section 4 of this policy).

In line with the school's recruitment policy, all offers of employment must be made conditional upon completion of satisfactory pre-employment and health checks and it is on this basis that this policy is written. However, if a firm/formal (i.e. not conditional) offer of employment has been made prior to receipt of unsatisfactory pre-employment checks (including health checks), the Headteacher should seek advice from EPS.

1.1 **Aim** – the aim of this policy is to:

- support Hampshire County Council's (HCC) commitment to supporting the wellbeing of employees and reducing sickness absence by promoting attendance at work
- protect schools from recruiting new staff with unacceptable levels of sickness absence
- provide a framework for schools to use when dealing with unsatisfactory pre-employment checks, both health and non-health related

1.2 **Purpose** – the purpose of this policy is to:

- ensure staff that are recruited are fit and able to perform the duties of their role and meet the necessary legal, employment and child protection requirements
- ensure that appropriate safeguards are in place to ensure there is no adverse impact on applicants with a protected characteristic under the Equality Act 2010
- ensure that robust processes are in place to support Headteachers and Governing Bodies in their decisions regarding withdrawal of conditional offers of employment

2. **Roles and Responsibilities**

When considering whether to proceed to a formal offer of employment or to withdraw a conditional offer of employment, it is important that Headteachers consider views/evidence from all parties involved when making the final decision. Each of the parties has a particular role to play, as follows:

Governing Body – *setting appropriate standards; final decision maker where powers are not delegated*

- responsible for setting and ensuring adherence to appropriate standards for recruitment, selection and employment of individuals within their school
- responsible for recruitment and selection of suitable candidates for employment where powers have not been delegated to the Headteacher.

Headteacher – *final decision maker where powers are delegated*

- recruits and selects suitable candidates for employment within their school, in conjunction with Governing Body as appropriate (see Governing Body roles and responsibilities).

- ensures that the school applies this policy, and follows the guidance on fitness and suitability for work contained in the Manual of Personnel Practice.
- on receipt of relevant information (gathered from the pre-employment checks) makes an informed decision, on whether to proceed to confirm the conditional job offer or withdraw the conditional offer of employment. This may involve the use of risk assessment.
- seeks advice and guidance at the earliest opportunity from EPS in cases where the withdrawal of a conditional offer is being considered.

Applicant – provider of information / evidence

- discloses appropriate and accurate information during the selection process
- sends or submits their completed Health Declaration, and Post Offer Medical Questionnaire (POMQ) if required

Occupational Health Team – assessor of medical information as it relates to role

- where appropriate provides the Headteacher/Governing Body with an assessment, and clear and robust guidance about the applicants' suitability for employment. This is based on information provided by the applicant on their POMQ, and takes into consideration any information provided by the Headteacher as a result of post-offer health references
- will, in the case of sickness absence that has hit the trigger points defined in this policy, notify the Headteacher whether or not the sickness absence can be linked to a protected characteristic under the Equality Act 2010.

3. Post Conditional Offer Health Checks

Under the Equality Act 2010, which replaced all previous equality legislation, it is now unlawful for employers to:

- ask health-related questions of applicants before a conditional job offer has been made, unless the questions are specifically related to an intrinsic function of the work.
- ask health related questions of referees prior to a conditional job offer.

There are three parts to the pre-employment health check process;

Health Declaration

Provided by the Headteacher to the preferred candidate, after a conditional job offer has been made

Post Offer Medical Questionnaire

Provided by the Headteacher to the preferred candidate only if

- a) the candidate answered “yes” to any questions on the Health declaration
OR
- b) the candidate’s self-reported absence on the Health Declaration meets or exceeds the trigger in this policy OR
- c) Post offer references indicate a health concern OR

The post is subject to statutory Health Surveillance

Post Offer References

This will be Requested on behalf of the Headteacher from the nominated referees, which solely ask about health and absence

he standard recruitment process will assess an applicant's sickness absence levels at the pre-employment (post-conditional offer) stage and the withdrawal of a conditional offer of employment may be considered where levels exceed the following;

Sickness absence in excess of 11 working days over three or more instances in the previous 12 month period.

The process for dealing with unsatisfactory pre-employment checks is detailed in the Flowchart in Appendix 4.

A risk assessment decision sheet is available to Headteachers when considering whether or not to withdraw a conditional offer of employment and is available in the guidance in the Manual of Personnel Practice

4. Other Pre-employment Checks

Any unsatisfactory (non health related) pre-employment checks may give rise to consideration of withdrawal of a conditional offer of employment, and the Headteacher should always seek advice from EPS as to the risk-assessed options available, before making a decision. Possible reasons are likely to be:

- an unsatisfactory reference
- a positive DBS disclosure
- a positive Childcare Disqualification Declaration form

If the Headteacher is considering withdrawing an offer on the basis of other, non health related) pre-employment checks, advice should be sought from EPS.

5. Steps for dealing with unsatisfactory pre-employment checks for new (external) appointments

Step 1 – Shortlisting candidates

- The Headteacher/ Governing Body, in liaison with the interview panel as appropriate, will short-list candidates and invite them for interview

Step 2 – Pre-interview references

- Prior to issuing invitations to interview, the Headteacher will request pre-interview (non-health related) references for all interviewees
- As a result of interviews, the Headteacher and/or interview panel, will determine a preferred candidate

Step 3 – Making a conditional offer of employment

The Headteacher will make a verbal conditional offer of employment to the preferred candidate, ensuring that the verbal offer and offer letter that follows, states that the offer is made conditional upon receipt of satisfactory pre-employment and medical health checks.

Step 4 – Request post conditional offer references and other pre-employment checks

Once a conditional offer of employment has been made to the preferred candidate, the Human Resources Team will request all the pre-employment checks required for that position, using the pre-employment checklists and guidance in the of the Manual of Personnel Practice.

Step 5 – Notify Occupational Health of any additional information

(a) Where the candidate is not required to complete a Post-Offer Medical Questionnaire

Where the candidate has responded “no” to all questions on the Health Declaration and their self-reported absence does not meet the trigger in this policy, there is not normally a requirement for the candidate to complete a Post Offer Medical Questionnaire (POMQ).

Therefore if any information contained on the post-offer reference from the previous employer indicates that;

- The trigger points have been exceeded (as defined in 3.0), or
- There may be a behavioural issue that may be linked to a mental health related illness, or
- there is other cause for concern

then the Headteacher will request that the candidate completes a POMQ explaining that information from a reference may indicate that there are health-related issues that need to be explored.

The Headteacher will ensure that Occupational Health are made aware of the nature of the concerns raised in the post-offer reference and will provide a copy of the health declaration, in order to ensure an accurate assessment of the preferred candidate’s health can be provided.

(b) Where the candidate is required to complete a Post-Offer Medical Questionnaire

Where the candidate has

- responded “yes” to at least one question on the Health Declaration, or
- their self-reported absence meets or exceeds the trigger in this policy, or
- the post to which their have been conditionally offered employment is subject to a statutory Health Surveillance programme,

then the candidate will be asked to complete a Post Offer Medical Questionnaire.

If any additional information contained on the post-offer reference from the previous employer indicates that;

- the school’s trigger points have been met or exceeded (as defined in 3.0) or

- there may be a behavioural issue which may be linked to a mental health related illness, or
- there is other cause for concern

then the Headteacher will ensure that Occupational Health are made aware of the nature of the concerns raised in the post-offer reference, in order to ensure an accurate assessment of the preferred candidate's health can be provided.

Step 6 – Assess information gathered from the pre-employment checks and determine whether to confirm or withdraw the conditional offer

The Headteacher / interview panel will assess all information gathered from pre-employment checks as the information is received. Where the information indicates that the check may be unsatisfactory, the Headteacher / lead of the interview panel will alert the individual as to why the check may be unsatisfactory and offer them the opportunity to comment on the information received. The individual must be advised to seek the advice of their professional association or trade union representative if they wish to do so before responding.

Having considered any comments the candidate wishes to raise, the Headteacher/interview panel will assess whether the information does mean that the check has been unsatisfactory.

a) Unsatisfactory checks

If the assessment is that the check is unsatisfactory, the Headteacher / interview panel will determine whether this means the conditional offer should be withdrawn. Risk assessment decision sheets and additional guidance are available to assist this decision and EPS should be contacted for advice.

Once a decision has been made, the decision must be communicated in writing to the individual as soon as possible, normally including the reasons for the decision. There is no right appeal against this decision.

b) Satisfactory checks

If the determination is that the check is satisfactory, then the Headteacher / interview panel will either

- proceed with outstanding pre-employment checks, or
- if all checks are now complete, to make a formal offer of employment to the preferred candidate