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University Hospitals Bristol and Weston Foundation NHS Trust
Final Internal Audit Report: Right to Work Checks

Report Reference: UHBW25/24
June 2024

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Assurance Opinion	
Significant	
Satisfactory	✔
Limited	
No	

Executive Summary

AUDIT BACKGROUND, SCOPE AND OBJECTIVES

Background

As part of the 2023/2024 Audit and Assurance Plan, we have undertaken a review of the approach to the verification of Right to Work in the UK for employees within the Trust.

Almost a quarter of the current NHS workforce is recruited from overseas. The Trust has a legal obligation under the Immigration, Asylum and Nationality Act 2006, to ensure that employees who work for the Trust are able to demonstrate their eligibility to work in the UK. These obligations require the Trust to initially verify the potential employees' Right to Work in the UK prior to appointment, and if an employee has a time limit on their Right to Work, to carry out follow-up checks. Acceptable documents providing evidence of Right to Work must be checked, copied and stored appropriately. This provides the Trust with a defence against potential civil penalties.

The Trust is licensed by the UK Border Agency to issue Tier 2 / Skilled Worker Certificates of Sponsorship (CoS) within the Points Based System. Overall responsibility for the licence and associated duties is with the Chief People Officer, as the Authorising Officer. The Trust must maintain its sponsorship licence to recruit staff from outside the UK.

During 2023, there were approximately 379 new starters with visas, and monthly, 17 new starters with Certificates of Sponsorship.

Objectives and Scope of the Audit

The overall objective of the review was to provide assurance as to whether the Trust has implemented sound processes underpinning the verification of Right to Work in the UK for employees. We aimed to confirm the following:

- The Trust's process for undertaking Right to Work checks is appropriately documented.
- Through our review of a sample of staff recruitment/ employment records:
  - The appropriate level of Right to Work checks are identified and carried out for all prospective employees prior to appointment (for each category):
    - No Time Limit
    - Time Limit
    - Student.

- Follow-up checks are undertaken in a timely manner for employees with a time limit on their Right to Work.
- Employees on Tier 2/ Skilled Worker CoS, recruited both internally and externally, are issued with these in a timely manner.
- Copies of relevant documents are stored on file and information is accurately recorded on the Electronic Staff Record (ESR) system on appointment and at the time of renewal.

OVERALL CONCLUSION

Our review highlighted a known weakness in ensuring that appropriate pre-employment and follow-up Right to Work checks are updated in ESR. Although the Trust has an appropriate policy in place, the completion of follow-up checks is reliant on the accurate recording of visa/ CoS information in ESR. Despite various efforts and additional resource to progress this project, at the time of our review, much work remains to be done. We understand that the procurement of a new system to assist with improvements to this process is underway.

We have made a small number of 'High-Risk' recommendations which look to mitigate the risk of insufficient staffing levels if employees are later found to not have the Right to Work in the UK.

Our overall conclusion is supported by the conclusion for each area reviewed, as set out below:

Area reviewed	Rating	Conclusion
1. Pre-Employment Right to Work Checks		The Trust's process for undertaking pre-employment and follow-up Right to Work checks is appropriately documented and in line with NHS Employers and Home Office guidelines. Within our audit sample, pre-employment checks were appropriately completed for new starters, in the main. There was evidence to support the timely issue of Certificates of Sponsorship (COS) for most of the new starters with Skilled Worker Visas (where pre-employment Right to Work checks had been carried out), with supporting evidence that pre-employment Right to Work checks were independently reviewed, and that copies of relevant documents were stored on e-files. However, the key data sets within ESR (including the dates of Right to Work checks being completed, the request and receipt of work permits and visa expiry dates) was not accurately recorded. This is a known weakness for the Recruitment Team. The pre-employment Right to Work checks processed by NHSP were carried out up to 14 weeks **after** employment had commenced for all of the international nurses we reviewed, however, this was appropriately explained by the Resourcing Team.

Area reviewed	Rating	Conclusion
		There was no evidence to support the issuing of Certificates of Sponsorship (although appropriately applied for), the independent review of pre-employment Right to Work checks or evidence that this information had been accurately recorded on ESR. We understand that the recruitment of international nurses project has now been concluded.
2. Follow-up Right to Work Checks	–	The Trust's process for undertaking follow-up Right to Work checks is appropriately documented. However, in a small number of cases, our sample testing highlighted a lack of evidence to support that follow-up checks had been stored on e-files. Additionally, information was not being accurately recorded on ESR (both on appointment and at the time of renewal) and/or was missing for nearly half of the cases. This is a large-scale historical data integrity issue which the Trust is currently working to resolve.

Overall Assurance Opinion

It is our view that the overall assurance opinion on the design and operation of controls is Satisfactory as recorded in the table on the face of this report and in accordance with the opinion definitions under the *ASW Assurance - About Us* section of this report.

We would like to acknowledge the help and assistance given by the Recruitment Team and Employee Services Team during the course of this review.

Rating of Recommendations

Recommendations raised in this report have been rated in accordance with the organisation's risk matrix.

[redacted]

[redacted], Director of Audit and Assurance Services

Report Data

Date of Work Undertaken	July 2023 – February 2024
Date of Issue of Draft Report	4 March 2024
Date of Return of Draft Report	19 June 2024
Date of Approval of Final Report	19 June 2024
Lead Auditor	[redacted], Audit and Assurance Specialist
Client Lead Manager(s)	[redacted], Head of Resourcing [redacted], Head of Employee Services
Client Lead Director	[redacted], Chief People Officer and Deputy Chief Executive
Governance/Regulatory Links	NHS Employment Check Standards Immigration, Asylum and Nationality Act 2006

Action Plan

Rec no.	Recommendation	Risk rating	Agree/ disagree	Management action (SMART)	Evidence required to close action	Action lead/ manager responsible	Action date
1	The Trust should ensure that evidence of pre-employment Right to Work checks are recorded for new starters with Skilled Worker Visas (processed by the Recruitment Team) and for international nurses (processed by NHS Professionals).	High (9)	Agree	Now that the international nurse recruitment programme has been completed, moving forward, all recruitment of international candidates will be conducted by the Trust's Resourcing team. Recruitment supervisors will be briefed on this audit and the importance of recording pre-employment right to work checks before signing off the candidate as ready to start work.	Recruitment Supervisor briefing.	[redacted], Head of Resourcing	Completed
2	The Trust should ensure that accurate information is recorded on ESR (Employee Staff Record) for all new starters and for follow-up checks. This would help to identify employees with Right to Work checks due for renewal in the next three months.	High (12)	Agree	A new ESR gap report has been introduced which flags any gaps in new starter ESR records. This report is produced on a fortnightly basis and allows the Recruitment Team Leaders to work with their Recruitment Coordinators to go back and correct any ESR gaps and learn	ESR gap report.	[redacted], Head of Resourcing	Completed

Rec no.	Recommendation	Risk rating	Agree/ disagree	Management action (SMART)	Evidence required to close action	Action lead/ manager responsible	Action date
				from any errors with dedicated time for any corrective action.			
3	The Trust should record the results of the relevant online tool used to validate the International English Language Testing System (IELTS) Certificates or Occupational English Test (OET) on the employee' TRAC file.	Low (2)	Agree	This recommendation is now being adopted as routine practice for all overseas candidates requiring sponsorship. A training session was undertaken in March as part of the Resourcing teams 'Right First Time' programme. Assurance will be provided through the Recruitment Supervisor file sign-off process.	Recording of training session.	[redacted], Head of Resourcing	Completed

Detailed Findings

1. Pre-Employment Right to Work Checks

What We Checked

The Trust's "Right to Work Policy and Procedure" for undertaking Right to Work checks is appropriately documented in line with the NHS Employment Check Standards and Home Office guidance / legal requirements.

We aimed to confirm the following through our review of a sample of staff recruitment/ employment records:

- The appropriate level of Right to Work checks are identified and carried out for all prospective employees prior to appointment:
  - No Time Limit
  - Time Limit
  - Student.
- Employees on Tier 2/ Skilled Worker Certificate of Sponsorship (CoS), recruited both internally and externally, are issued with these in a timely manner (i.e. within 48 hours for "defined" / five working days for "undefined").
- Copies of relevant documents are stored on file and information is accurately recorded on the Electronic Staff Record (ESR) system on appointment and at the time of renewal.

Due to the high volume of applications with visas received each month, NHS Professionals (NHSP) have also been undertaking the pre-employment Right to Work checks. We were, therefore, also asked to compare the quality and completeness of files processed by NHS Professionals with those processed by the Trust.

What We Found

Trust Policy/ Procedure

From our comparison of the Trust's Policy and Procedure with the NHS Employers and Home Office guidance, we confirmed that the Trust's process for undertaking pre-employment and follow-up Right to Work checks is appropriately documented for manual checks, including frequency of checks, types of excuse, acceptable documents, In-Time Applications/ Time-Limited Permission and retaining evidence.

Detailed Review of Employee Records
We reviewed a sample of 25 files processed by the Trust and 10 files processed by NHSP for new starters with visas in 2023/2024.

We identified those with No Time Limit/ Time Limit/ Student by referring to "Visa Type" (for Indefinite Leave to Remain or Student) and included those with visas due for renewal within three months of start dates by referring to "Employee Latest Start Date" and "Visa Expiry Date". We identified those on CoS by referring to "Visa Type" (i.e. Skilled Worker) and included a range of medical/ non-medical staff by referring to "Position Title" and "Staff Group". However, it was not possible to distinguish between those internally/ externally recruited.

International Nurse Recruitment Programme (NHSP RTW Checks)
We were advised that international nurses recruited to the Trust are provided with a contract from the day of their arrival to the UK in order to receive a salary, however, the Home Office online right to work check can only be completed when the individual collects their BRP card (UK residence cards) and provides their "share code". BRP cards are available for collection between 1-4 weeks after their arrival. A certified copy of the passport and CoS checklist are attached to the recruitment file, together with evidence on the Home Office SMS system of issue of their CoS from their start date. The files have been overridden on the TRAC system in order to be able to issue contracts prior to the RTW checks being completed, however the recruitment process continues and the file is only closed down and downloaded when all the checks are successful, at which time ESR is fully updated and the e-staff file finalised. As part of the wind down of the international nurse recruitment programme, we understand that a full audit has been completed of RTW, ESR accuracy, file downloads and e-staff file creation.

Our findings are summarised in the table below.

Area Reviewed	Files Processed by Trust	Files processed by NHSP
Pre-employment Right to Work checks are carried out in line with Trust, NHS Employers and Home Office guidance i.e. • Step 1: Obtain Acceptable Documents • Step 2: Check the Validity of Documents	There was evidence to support that pre-employment Right to Work checks had been appropriately carried out for 21 of the 25 new starters. Two new starters with permanent residency did not have evidence of acceptable documents being obtained/ verified on TRAC or e-file at the time of review, but was subsequently located. The evidence of acceptable documents was obtained/ verified for two new starters with temporary residency via Skilled Worker Visas after their respective start dates.	There was evidence to support that pre-employment Right to Work checks had been appropriately carried out for all 10 new starters. However, these were carried out between two and 14 weeks **after** the employees had started working at the Trust (see above note).

Area Reviewed	Files Processed by Trust	Files processed by NHSP
CoS are issued in line with Trust, NHS Employers and Home Office guidance (i.e. within 48 hours for "defined"/ five working days for "undefined").	There was evidence to support that CoS were appropriately issued for the 10 new starters with Skilled Worker Visas.	There was **no** evidence to support that CoS were appropriately issued. However, CoS had been applied for less than three months before working at the Trust for all 10 new starters (see above note).
Pre-employment Right to Work checks are reviewed by a senior member of staff, e.g. "file reviewed/ ready for start date"	There was evidence to support that pre-employment Right to Work checks had been appropriately reviewed for 21 of the 25 new starters. One new starter did not have evidence of their pre-employment Right to Work check review being undertaken. The pre-employment Right to Work check was overridden to move applicant to "Employment checks OK". One new starter had evidence of their pre-employment Right to Work check being reviewed after their start date. A further two new starters checks were not reviewed.	There was **no** evidence to support that pre-employment Right to Work checks had been appropriately reviewed.
Copies of relevant documents are stored on e-files (i.e. Step 3: Retaining Evidence)	There was evidence to support that copies of ALL relevant documents had been stored on e-files for 23 of the 25 new starters. Two new starters had e-files with downloads of their TRAC applications. However, evidence of their Right to Work checks being obtained/ verified was not located at the time of review, but was subsequently located.	There was evidence to support that copies of relevant documents had been stored on e-files for 9 of the 10 new starters. One new starter had an empty e-file at the time of review (which was subsequently located).
Accurate information is recorded on ESR	22 of the 25 new starters had inaccurate information recorded on ESR and/or were missing information.	All of the 10 new starters had no information recorded on ESR.

English Language Requirements

Additionally, the Local Counter Fraud Specialist (LCFS) requested that we check how and at which point in the recruitment process International English Language Testing System (IELTS) Certificates were checked/ verified.

A person applying for a UK visa to work, study or live in the UK, is required to prove knowledge of English by passing a Secure English Language Test (SELT). The Nursing and Midwifery Council (NMC) accept two language tests as evidence that candidates have ability to communicate effectively in English: The International English Language Test System (IELTS) Academic and the Occupational English Test (OET). Candidates who opt to undertake a SELT via an IELTS test will obtain a certificate (with a minimum score) for UK Visas and Immigration (UKVI) purposes. The IELTS, therefore, allows a person to enter the country to work in the NHS in a sponsored role and to register with the NMC to obtain a PIN. The IELTS provide a free online results service, which all NHS bodies can register and routinely access to check the validity of a certificate.

Trust recruiting teams were advised to obtain verification of a passing certificate from IELTS following a Fraud Prevention Notice issued by the NHS Counter Fraud Managers Group in September 2023. A potential fraud risk was identified whereby a minority of International Trainee Nurses were alleged to have submitted false IELTS certificates.

The Recruitment Policy states that "The Trust must have regard for Code of Practice on the English language requirements for public sector workers when fulfilling their statutory duty under Part 7 of the Immigration Act 2016. This requires the recruiting manager to judge candidates' English language fluency at interview. This judgement must be recorded in the relevant section on the interview scoring paperwork completed for the applicant and returned to Resourcing. Many professional registration bodies for regulated staff will require a certain level of English language proficiency prior to registration being granted to work in regulated positions."

All of the new starters processed by the Trust and all 10 of the starters processed by NHSP had "English" documented as their preferred language, however, there was no evidence to support that IELTS Certificates had been obtained. We understand that although the relevant online tool is used to validate the IELTS or OET result, a copy of the outcome of the online check is not held in the TRAC file.

Recommendations

Risk	Risk Rating	Recommendation
If evidence of the completion of appropriate level of pre-employment Right to Work checks is not properly recorded, this could create confusion as to whether they have been completed. This could further impact the follow-up actions, if required.	Likelihood (3) X Consequence (3) = 9 – High Risk	See Recommendation 1 in the Action Plan

Risk	Risk Rating	Recommendation
The Trust may not be able to demonstrate compliance with legal requirements where information pertaining to pre-employment Right to Work checks is not accurately recorded on ESR, which may result in civil penalties.	Likelihood (3) X Consequence (4) = 12– High Risk	See Recommendation 2 in the Action Plan
A standard level of English language may not be confirmed for some applicants who are appointed, if evidence of the checks is not maintained in their records.	Likelihood (1) X Consequence (2) = 2 – Low Risk	See Recommendation 3 in the Action Plan

2. Follow-up Right to Work Checks

What We Checked

We aimed to confirm the following through our review of a sample of staff recruitment/ employment records:

- Follow-up checks are undertaken in a timely manner (three months prior to expiry) for employees with a time limit on their Right to Work in line with Trust, NHS Employers and Home Office guidance.
- Copies of relevant documents are stored on file and information is accurately recorded on the ESR system on appointment and at the time of renewal.

What We Found

We reviewed a sample of 25 employees with visas due for renewal in 2023/2024. We identified those on CoS by referring to "Visa Type" (i.e. Skilled Worker) and included a range of medical/ non-medical staff by referring to "Position Title" and "Staff Group".

Our findings are summarised in the table below.

Area Reviewed	Finding
Follow-up checks are carried out in line with Trust, NHS Employers and Home Office guidance	There was NO evidence to support that follow-up checks had been appropriately carried out for one of the 25 employees, however, it was already being investigated. Four employees did not require follow-up checks.
Follow-up checks are carried out three months prior to expiry	There was evidence to support that follow-up checks had been carried out in a timely manner for all but one, where required. One was appointed with less than three months left on Visa. We understand that Recruitment has a new process in place now to identify any Visas expiring within three months.
Copies of relevant documents are stored on e-files	Although all 25 employees had a "Visa Issue Date" and "Visa Expiry Date" recorded, indicating that Right to Work checks had been carried out (possibly on appointment), evidence obtained could not be located on e-files for three cases. - two files were created late (after appointment), but ESR was current. - one file was in in wrong location, but subsequently located. Four employees did not require follow-up checks.

Area Reviewed	Finding
Accurate information is recorded on ESR	9 of 25 employees had inaccurate information recorded on ESR and/or were missing information.

ESR Records

The reports downloaded from ESR contain lots of inaccurate and missing information. The Trust's follow-up checks are based on information from these reports. Therefore, without an accurate data, the risk of follow-up checks not being properly undertaken increases. The Head of Employee Services started a project to correct historical data inaccuracies (back to 2007) on ESR, involving both the Recruitment Team and Employee Services.

Due to periodic capacity issues, the impact of Covid and the lack of complete/ existing e-files for some staff, the project has been delayed.

As of July 2023, the Trust did not have a robust process for recording/ checking information on ESR and had not formally agreed a date for completion of the "project". There are essentially two issues: firstly, not carrying out the appropriate checks and secondly, not recording them. There are two associated risks: firstly, having the historical data issues and secondly, having not corrected the historical issues to avoid making future errors. Therefore, there are new errors and new risks on a monthly basis and manual workarounds are having to be done on a monthly basis. The Trust recently approved the procurement of a new case management system, which is expected to automate some of the processes for follow-up checks. The Trust would ideally have the historical data issues resolved before it is introduced.

Resourcing have responsibility for managing the recent gaps in ESR accuracy, as they would have originated from the Resourcing Team. It is expected that these gaps will be closed by end of February. A wider project has been initiated to look at the very historic gaps. The project to address historic data issue relating to Right to Work checks commenced early February, with some temporary resource.

Recommendations

Risk	Risk Rating	Recommendation
The appropriate level of follow-up checks may not be undertaken in a timely manner, which may impact staffing levels if employees are later found to not have the Right to Work in the UK and ultimately result in non-compliance with legal requirements and potential civil penalties.	Likelihood (3) X Consequence (4) = 12 – High Risk	See Recommendation 2 in Action Plan

ASW Assurance – About Us

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All audit and assurance assignments are conducted in conformance with the International Standards for the Professional Practice of Internal Auditing.

Confidentiality

This report is issued under strict confidentiality and, whilst it is accepted that issues raised may need to be discussed with officers not shown on the distribution list, the report itself must not be copied/circulated/disclosed to anyone outside of the organisation without prior approval from the Director of Audit and Assurance Services.

Inherent Limitations of the Audit

There are inherent limitations as to what can be achieved by systems of internal control and consequently limitations to the conclusions that can be drawn from this review. These limitations include the possibility of faulty judgment in decision-making, of breakdowns because of human error, of control activities being circumvented by the collusion of two or more people and of management overriding controls. Also, there is no certainty that controls will continue to operate effectively in future periods or that the controls will mitigate all significant risks which may arise in future. Accordingly, unless specifically stated, we express no opinion about the adequacy of the systems of internal control to mitigate unidentified future risk.

Rating of Audit Recommendations

The recommendations in this report are rated according to the organisation's risk-scoring matrix and have been arrived at by assessing the risk in relation to the organisation as a whole.

Overall Assurance Opinion Definition

The overall assurance opinion on the front page of this report is based on the following definitions:

Significant	Controls are well designed and are applied consistently. Any weaknesses are minor and are considered unlikely to impair the effectiveness of controls to eliminate or mitigate any risk to the achievement of key objectives. Examples of innovation and best practice may be in evidence.
Satisfactory	Controls are generally sound and operating effectively. However, there are weaknesses in design or inconsistency of application which may impact on the effectiveness of some controls to eliminate or mitigate risks to the achievement of some objectives.
Limited	There are material weaknesses in the design or inconsistent application of some controls that impair their effectiveness to eliminate or mitigate risks to the achievement of key objectives.
No	There are serious, fundamental weaknesses due to an absence of controls, flaws in their design or the inconsistency of their application. Urgent corrective action is required if controls are to effectively address the risks to the achievement of key objectives.

Rating of Individual Findings

The following ratings have been used to summarise our evaluation of each area reviewed and helps form our overall assurance opinion:

	Processes are appropriately designed and appear to be operating well. Any areas for improvement that were identified are not significant and are unlikely to reoccur.
	Controls and arrangements are generally appropriately designed working well but we have identified areas where these arrangements should be further strengthened. We do not have significant concerns regarding this area and any issues that were identified are unlikely to reoccur if properly managed.
	Urgent action is needed to address weaknesses in the processes which are in place to manage the task or function. We have significant concerns regarding this area and consider that issues may arise or reoccur.

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