



## **NATIONAL TRAINERS FEDERATION**

### **Guidance for members on staff recruitment**

#### **Recruitment advice**

The following advice is to help trainers with the recruitment process including guidance upon conducting interviews and taking up references.

It aims to help employers avoid pitfalls arising from the recruitment process which could result in claims against them in the employment tribunal.

This guidance is intended to provide general advice only and is not intended to replace the need to obtain proper specific advice in relation to any matter. The NTF is not responsible for any acts or omissions arising from the use of this guidance. More detailed advice is available from the NTF office.

## **Eight recruitment topics and tips**

### **1. The starting point**

The starting point is deciding who you need to do what work – or more formally a job description and a person specification.

Why do you need these? They should help get the right person with the right skills but additionally having a job description can be of assistance to you in any performance issues which may arise once an applicant is employed and if an unsuccessful job applicant raises a complaint about their unsuccessful application you would be better placed to deal with their complaint.

This section can be particularly helpful if you are looking to recruit for a new position which has not existed in the yard before or where a job is being restructured.

For more information see **section 1 Recruitment – the starting point**

### **2. Interviews**

Do's and don'ts of interviewing, see these at **Section 2 Interviews**

Bear in mind that if the applicant has an accident during a practical interview, the potential employer could be open to a personal injury claim if negligent. For more information see **Section 2 Practical Interviews.**

### **3. Avoiding unlawful discrimination in the recruitment process**

Employers must not unlawfully discriminate against applicants because of a protected characteristic – namely age, disability, sex, race, religion, gender re-assignment, marriage and civil partnership, pregnancy and maternity or sexual orientation.

In some cases this will be very obvious but there are potential pitfalls – **See Section 3 Avoiding unlawful discrimination**

### **4. Asking about health and medical conditions**

Employers should not ask about a job applicant's sickness absence record prior to any job offer being made.

Employers can ask some limited questions pre job offer to establish if an applicant can perform the intrinsic functions of the job. To learn more about what is “intrinsic” and what you can ask, **see section 3 Avoiding unlawful discrimination.**

## **5. Offering the job**

It is important to realise that once a verbal offer of employment has been made and accepted it is legally binding.

If the job offer is accepted then it is good practice to confirm brief details in writing. If there is any probationary or trial period that should be confirmed in writing and if the appointment is subject to references or a medical again that should be confirmed in writing. **See Section 4 offering the job**

## **6. References**

The Rules of Racing require that employers seek a reference from the previous employer where an applicant has previously worked in racing. **See Section 4 references**

## **7. Don't forget those on maternity leave**

It is a legal requirement to keep a person on maternity leave informed as to relevant promotion opportunities or job opportunities.

## **8. Recruitment Policy**

A recruitment policy is not in itself a legal requirement. As outlined above an employer does have a legal responsibility to ensure that there is no unlawful discrimination in the recruitment process and having a recruitment policy which is adhered to could help ensure effective and consistently fair recruitment practices. A sample policy is set out in Appendix 1.

## Section 1 the starting point

### Advice on recruitment, selection, interview procedures and job offers

The aim of a recruitment policy is for the recruitment process to be based upon identifying the key skills, knowledge and aptitudes required by the successful candidate and to seek to ensure that unsuitable people or people with inappropriate motivation are prevented from working with young people or within the racing industry.

### Recruitment – the starting point

The starting point is a job description for the vacancy. This is simply what the job entails, the duties, the responsibilities, qualities and skills which are required for the position. Having a job description can also be of assistance to the employer in any performance issues which may arise once an applicant is employed.

The second step is deciding what skills/experience etc you are looking for in the person – so consider the qualifications, skills, training, knowledge, aptitudes and competencies the person who gets the job should ideally have. Decide whether they are essential or just desirable.

ACAS have further guidance on their website for job descriptions - go to [www.acas.gov.uk](http://www.acas.gov.uk) – hiring new staff (forms and checklists).

### Advertising

If advertising a vacancy, it is important to ensure that any existing staff are made aware of the vacancy including anyone who is on maternity leave.

***It is a legal requirement to keep a person on maternity leave informed as to relevant promotion opportunities or job opportunities.***

Adverts should ideally include the job title, the requirements of the job, the necessary and desirable criteria for any job applicant, the location of the job, and, of course, how to apply. The wage or wage band could also be included.

You should consider whether 2 applicants could job share or do part time. Whilst it is unlikely, an employer may have to justify that a job needs to be done full time if challenged.

It is good practice to put in an advert that the employer is an equal opportunity employer. This is not a legal requirement in itself but employers must ensure that adverts are not discriminatory – for example avoid the use of words such as “young” or requiring a specific number of years experience etc.

## **Application forms**

If using application forms it is advisable not to ask for the date of birth or marital status of the person. It is not unlawful to request an applicant's date of birth or marital status but if asked, then an employer must be careful not to use it to discriminate.

The employer must not ask on the application form for information about the applicant's sickness absence record. See further in Section 3 under "What can employers ask about health and medical conditions?".

Again it is not a legal requirement but it is good practice to have a statement on the application form stating that the "[name of company] is an equal opportunities employer and we are committed to treating all applicants in the same way regardless of race or colour, nationality or ethnic origin, religion or religious belief, sex or marital status, sexual orientation, disability or age".

## **Applications received**

The employer should deal with applications confidentially and circulate only to those involved in the recruitment process.

To comply with data protection legislation, application forms, letters and interview notes should only be kept for a reasonable period of time – for, say, 6 months. They should be retained for this period of time in case an unsuccessful applicant brings a claim of discrimination. The application and interview paperwork for the successful applicant should be retained for as long as appropriate.

Decide who will sift through the applications – ensure that they will not be biased or discriminatory in their selection of who to interview.

## **Arranging the interview**

You can ask questions to find out if any applicant needs reasonable adjustments for the recruitment process – for example, interviews for a new administration person are being held in an upstairs office so may disadvantage someone who has mobility problems and cannot climb stairs easily. The interview could be held downstairs instead.

You can also ask questions to find out if a person can take part in an assessment as part of a recruitment process including questions about reasonable adjustments for this purpose. Again, bear in mind that if an applicant says that they are unable to take part in some part of the recruitment process due to a protected characteristic (for example the applicant is pregnant or has a disability), then they must not be unlawfully discriminated against because of this. See practical interview and legal overview later on.

## **Section 2 Interviews**

### **Interview**

There is no obligation to interview a job applicant formally - if an employer does decide to interview that can be in person or by phone

It is acceptable to ask applicants to do a test but employers must ensure that it is not discriminatory – for example asking job applicants to do a written English test of a particular standard where that is not necessary for the job.

### **Practical interview**

Unfortunately there have been some accidents where job applicants have fallen off during a practical interview. An employer is in a vulnerable position with regards to their duty of care to an interviewee during the interview process as the trainer could be open to a personal injury claim if they have been negligent.

Job applicants who are already working in racing and registered as a paid stable employee on the Stable Employees Register with their current employer will be covered by RIABS in the event of an accident whilst riding or handling a horse during interview – for an interview period lasting up to one hour. It is recommended that if wishing to see a job applicant ride at interview that the trainer only does so if the applicant is either eligible for RIABS in current employment or has their own insurance. However, any RIABS claim or individual's own insurance is subject to the scheme rules/conditions of insurance and does not mean that the injured person will not bring a separate personal injury claim against the trainer alleging negligence.

The trainer must ensure that he has properly assessed the applicant before they ride – this will include looking at how the candidate has approached the yard, the horses, equipment, etc, their general attitude and interaction.

The employer must also see the applicant's CV or otherwise be aware of their employment history, ask appropriate questions as to the employee's experience and skills, and use all this information to assess if the applicant is capable to ride the horse being used. A written record must be made of the assessment and signed by the applicant as being true. A simple template is set out at Appendix 2.

Ideally the trainer should obtain references before deciding if the applicant rides at interview – however this is likely to be unrealistic if the applicant does not want their current employer to know they are looking to move jobs.

The trainer must ensure the applicant is using a serviceable helmet and safety vest (body protector) which meet the requirements of the BHA rules of racing. In addition the trainer must check that the applicant is wearing correct footwear for riding (or horse handling if that is the practical test), that the tack is appropriate and in good condition (i.e. stirrup irons are the correct size) and, of course,

ensure that the horse is suitable for the level of skill of the candidate and that the practical test is carried out in a safe area.

### **Do's and don'ts of applications forms and interviews**

Do ask about skills, quality, relevant experience and ability to do the job

Do ask similar job related questions of all applicants (this does not mean to say that employers have to ask exactly the same questions of all applicants)

Do keep notes of interview (advice is to keep these for 6 months)

Do not ask about marital status or childcare arrangements, though if accommodation offered is single accommodation only will need to ensure that the employee is aware of that.

Do not ask about health absence record prior to any job offer being made.

You can ask if an applicant is able to carry out a function that is intrinsic (absolutely fundamental) to the job on an application form or at interview - such questions should be asked about the person's ability to do a job with reasonable adjustments in place and consideration given to reasonable adjustments if the employee has a disability. The focus is on whether the person has the relevant skills and qualities to the job.

Do not refer an applicant to a doctor or occupational health support or ask an applicant to fill in a health questionnaire before the job offer is made.

If you ask for date of birth at recruitment or interview stage ensure that you do not unlawfully discriminate against an applicant based on their age. As the industry pay rates are based on age bands, you may instead wish to find out which pay band they fall into.

Do not make instant/personal judgments based on a protected characteristic – i.e. that a person looks too young or too old to do a job

Do not ask an employee if she is pregnant or planning to start a family. A pregnant job applicant does not have to tell a potential employer that she is pregnant but if a job applicant does, then the employer must not base any decision on that.

## **Section 3 Avoiding unlawful discrimination in the recruitment process**

### **Legal overview**

Job applicants must not be unlawfully discriminated against because of a protected characteristic – namely age, disability, gender reassignment, marriage or civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation.

This is in some cases quite obvious – for example everyone accepts that it would be unfair to say that a job is only open to men because it involves heavy lifting when women could do the lifting too.

However, in some cases of indirect discrimination where an employer has a provision or practice which unfavourably affects a particular protected group, it could be far less obvious and those responsible for recruiting are recommended to read the chapter in the NTF manual (2010 update) on discrimination.

If during the interview an applicant mentions something which relates to a protected characteristic bear in mind not to use that information to rule them out of consideration. For example, a job applicant says that they have a disabled child and may need to take some hours off here and there for caring responsibilities. It would be associative discrimination to unlawfully not offer the job to this person because of this if they are otherwise the best candidate. The employer should consider how they could work with that applicant to make reasonable adjustments to enable that person to take the job as the best candidate.

If during the interview process you ask a question which is not permitted under equality legislation that in itself is not discriminatory. However, if a candidate later makes a claim of direct discrimination because they believe that you used their reply to discriminate against them, it will be for you to show the Employment Tribunal that is not the case.

Also the Equality and Human Rights Commission can take action against you if you make enquiries that are not permitted.

### **Health and medical conditions**

#### **What can employers ask about health and medical conditions pre-job offer?**

In general, employers cannot ask questions about a job applicant's health or sickness absence prior to any job offer being made.

Employers can ask some limited questions pre-job offer to establish if an applicant can perform the intrinsic functions of the job once reasonable adjustments are in place.



Intrinsic means fundamental and a very narrow view will be taken as to what is intrinsic. Employers will also need to consider whether any reasonable adjustments can be made to the job role. To ascertain if something is intrinsic to a job role, the best advice is to focus on the function of the job and whether it can be varied. If it can be varied, it is not intrinsic. Reasonable adjustments include acquiring or modifying equipment, adjusting premises to accommodate the person or altering the person's hours of work. It may be that there are no reasonable adjustments which could enable the person to undertake an intrinsic role of the job but consideration must be given as to whether there are any. For more information on disability and reasonable adjustments, see section 12 of the NTF manual.

For example, riding is fundamental to the role of work rider. The test as to whether the employee can undertake the intrinsic function of the role is once any reasonable adjustments are in place.

Lifting is not fundamental to a secretary's job as someone else could do any occasional heavy lifting.

Employers are advised not to ask about the person's health or sickness absence record prior to the offer stage (as that will relate to their health not their ability to perform an intrinsic function) and not to ask a previous employer about the person's health or sickness absence record until after a job offer has been made (see post job offer below). Any questions should only relate to the ability to do an intrinsic function of the job as outlined above.

In practice, employers should not over focus on disability issues but ensure that that when assessing a disabled person's suitability for the job, the employer takes into account any reasonable adjustments which could enable them to do the job (very simple example, a yard stops using muck sacks and uses a wheelbarrow instead thus enabling someone with a long term back problem to take on a job as a yard worker). If after taking reasonable adjustments into account, they would not be the best person for the job, the employer does not have to offer the job to them.

### **Asking about medical and health related questions post job offer**

This can be done and it may be necessary so as to ascertain if any adjustments need to be made to enable the person to do the job. For example a secretary with a disability which causes fatigue is permitted to re-arrange some of her working day to take extra breaks.

However, employers must bear in mind that asking such questions will put the employer at a greater risk of a tribunal claim if the employer withdraws a job offer on the basis of a poor disability related attendance record. If the employer knows or believes that the job applicant may have a disability (and remember that this is wide ranging for employment law purposes) the duty to make reasonable adjustments is triggered. See further advice under "Conditional job offers – health questionnaire".

Employers are advised in particular to look at the advice in the NTF manual on disability since it covers a much wider concept than many people will appreciate – it is not simply those who are registered disabled. A simple example would be someone with a long term back problem which adversely affects their day to day activities.

## **Section 4 Offering the Job**

### **Job offers and appointment**

#### **Job offers**

The job offer can be made verbally or in writing although it is important to realise that a job offer made verbally and accepted by the applicant is legally binding.

Once the offer has been accepted, unless otherwise agreed with the applicant, the employer should confirm the appointment in writing including advising of any probationary/trial period if appropriate. If the appointment is subject to satisfactory references or a satisfactory medical report then the letter must state that. Template job offer letters can be found at [www.acas.org.uk/templates](http://www.acas.org.uk/templates).

The right not to be discriminated against unlawfully applies during a trial period, so for example if an employee during the trial period was to advise the employer that she was pregnant it would be automatically unlawful for the employer to dismiss or otherwise subject the employee to any detrimental treatment because of the pregnancy. Further information on trial periods is available on the NTF employment manual.

Employers should check that potential employees have a right to work in the UK. Again, there is detailed advice in the NTF employment manual upon this.

#### **Conditional job offers**

A job offer can be conditional upon completion of a health questionnaire or references. It is advised that if that is being done that the employee is advised that the job offer is conditional upon that and that they should not resign from their existing job until the offer has been confirmed.

#### **Contracts**

An employee must be issued with a written statement of terms and conditions of employment within 2 months of starting. This could be sent out with the job offer or later provided it is given to the employee within the two month period. Further information is given on this elsewhere in this chapter and template “statements” are available on the NTF website.

#### **References**

Applicants should be advised upon what references will be taken, when they will be taken and if the job offer is conditional upon this.

They should be advised as to what kinds of references will be taken, i.e. whether any personal referees are required in addition to employer ones.

It is a rule of racing that employers seek a reference from the previous employer where an applicant has previously worked in racing (Manual C, Schedule 2 (ii)).

If taking up references before a job offer is made and the candidate does not want their existing employer contacted, the employee's wishes should be respected.

### **Giving or receiving a reference**

A reference must be accurate and prepared with reasonable care and must not mislead a future employer who relies on it. The reference should give a fair overall impression.

A "bad" reference can be given provided it does not give an unfair or misleading impression overall and is not malicious. The employer must have taken reasonable care to ensure that the information is true – for example, if an employee had been dismissed, any statement in the reference about that must tie in with the reasons given for the dismissal.

For further information and information on data protection when giving a reference see chapter 1 of the NTF employment manual.

### **Health questionnaires**

If using a health questionnaire, the employer must bear in mind that if the replies to the health questionnaire indicate any medical problem which may amount to a disability the employer will be under a duty to consider whether any reasonable adjustments can be made and make such adjustments to enable the candidate to take up the job offer - the duty not to discriminate unlawfully still applies. The employer would also need to objectively justify any health and fitness criteria which they applied to the job.

If an employer withdraws an offer of employment because of unsatisfactory responses to a medical questionnaire and the person qualifies as disabled under the Equality Act, the potential employee (or employee if they have already started work) may bring a claim against the company.

Any employer considering withdrawing a job offer upon receipt of an unsatisfactory reference relating to sickness absence or health or because of an unsatisfactory medical report should seek advice.

### **The right to work in the UK**

Further information is set out about the right to work in the UK in chapter 1 of the NTF employment guide. Employers must ensure that a potential employee is entitled to work in the UK before employing them and should be consistent in their checking and not simply check recruits they assume would not be eligible.

## **Criminal records**

An employer can ask for details of a criminal record, and in co-operation with a prospective employee, check these by requesting a DBS (Disclosure and Barring Service) check. DBS checks have replaced CRB (Criminal Record Bureau) checks.

Under the Rehabilitation of Offenders Act 1974 many convictions have a time limit whereby they become spent and, except in very limited circumstances, it would be unlawful to consider them when recruiting a new employee. To find out more about DBS checks – see [www.gov.uk/dbs](http://www.gov.uk/dbs) or for Scotland [www.disclosurescotland.co.uk](http://www.disclosurescotland.co.uk)

## **Further information**

The ACAS website ([www.acas.gov.uk](http://www.acas.gov.uk)) has further information in its section on “Recruitment and Induction”.

## **Appendix 1**

### **Recruitment Policy**

It is the [name of business] that we are an equal opportunity employer.

The aim of the recruitment policy is to find the right person for each job based on the key skills, knowledge or aptitudes required for the job.

We will not discriminate against job applicants because of a protected characteristic and we are committed to treating all applicants in the same way regardless of race or colour, nationality or ethnic origin, religion or religious belief, sex or marital status, sexual orientation, disability or age.

## Appendix 2

Template for job applicant assessment form where applicant is going to ride as part of the interview

Name	
Address and phone number	
Emergency contact/next of kin	
Is applicant currently registered on the Stable Employees Register as a paid employee of a licensed/permit trainer?	Yes/No If No, see question below
Does applicant has his or her own accident insurance?	Yes/No If No and the job applicant is not currently registered as a paid employee on the Stable Staff Register, it is recommended that the applicant does not ride at interview.
CV checked	Yes/No If no, the potential employer must have obtained detailed employment history from the applicant
Qualifications	
Riding experience	
Yard experience	

References	

I confirm that the above information is true and that I am willing and capable of riding a racehorse as part of this interview. I have declared to the potential employer any medical information that the potential employer needs to know to be able to make any reasonable adjustments to enable me to undertake the practical part of this interview. I understand that any medical information that I have provided will be treated as sensitive data.

.....

Job applicant