Yorkshire & Humber Region
ASC International Recruitment Fund

30th July 2024

Market Support and Training Package

LONDON CARE AND SUPPORT FORUM

social care, personal support and health services across the Capital

International Recruitment guidance & support for Social Care Providers:

Navigating Employment Checks and Documentation (including Visas)





INTERNATIONAL RECRUITMENT GUIDANCE
FOR SOCIAL CARE PROVIDERS & MANAGERS

LONDON CARE AND SUPPORT FORUM
social care, personal support and health services across the capital



WHO WE ARE

- The London Care and Support Forum, is part of the Care Association Alliance – national group of care associations.

- We work with commissioners, providers and other stakeholders, such as Skills for Care to provide a supportive facility for the exchange of information, the creation of a better understanding of user requirements in a constantly changing marketplace and to encourage higher quality standards through workforce development, enhanced management and good leadership.

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What is Required & Why?

- Ensuring that you recruit the right people
- Keeping them once they are with you
- Building an integrated workforce structure
- The role of Organisational Culture
- Why Equality, Diversity & Inclusion training is vital
- Staff development, career pathways for your talent
- Supervisions and appraisals

Obtain Check Copy

Right to Work Checks



You should conduct a right to work check **BEFORE** you employ a person to ensure they are legally allowed to do the work in question for you.

Employers must do one of the following before the employee commences employment which if conducted properly will provide you with a statutory excuse:

- Manual right to work check
- A right to work check using IDVT via the services of an IDSP
- A Home Office on-line right to work check.

Employ someone: step by step

Show all steps

1 **Check your business is ready to employ staff**

Show

2 **Recruit someone**

Show

and **Check they have the right to work in the UK**

Hide

Find out how to check an applicant's right to work

and **Find out if they need a DBS check**

Show

3 **Check if they need to be put into a workplace pension**

Show

4 **Agree a contract and salary**

Show

5 **Tell HMRC about your new employee**



Pre-Employment Checks

- Providers should apply the same process for staff recruited from abroad as they would for other staff.
- Employers must do all they can to ensure that people they appoint from overseas are suitable to work with adults who use care services and/or children
- DBS Checks and Overseas Criminal Record Checks
- Ensuring overseas job applicants have the necessary experience, qualifications and permits to work in a UK care setting





RIGHT TO WORK CHECKS

Question:

“I have conducted a Home Office Right to Work check on the employee. It confirms that the prospective candidate has a valid Skilled Worker Visa and is permitted to work an additional 20 hours a week.

Surely, I would be covered if I have followed the correct Right to Work processes to employ them?”



RIGHT TO WORK CHECKS



- Whilst conducting a Right to Work Check correctly provides you with a statutory excuse from any civil liability; the definition of illegal working is '***knowingly employing an illegal worker or having reasonable cause to believe the employee has no right to work'.***

- Where you are '***aware***' that a prospective candidate may be in breach of the conditions of their Skilled Worker visa you could potentially be employing them illegally.

- It could also open the ***risk of a fine for illegal working***, which is increasing to £60,000 per employee from January 2024 (£45,000 for first time offenders).

- Whilst in practice it may be difficult for the Home Office to prove you were aware they may not be working in compliance with their Skilled Worker Visa it is important to ensure you protect you and your organisation from any risk of a fine. This could include obtaining a copy of their Certificate of Sponsorship and Work Rotas with their current employer and having a strict Right to Work clause in your employment contracts.

- There is also a risk that the prospective candidate's Skilled Worker visa could be curtailed by the Home Office, which could affect their continued ability to remain employed with you.

Part of
Employ someone: step by step

Checking a job applicant's right to work

You must check that a job applicant is allowed to work for you in the UK before you employ them.

You can:

- check the applicant's right to work online, if they've given you their share code
- check the applicant's original documents

You can also check an applicant's right to work by using an identity service provider that offers Identity Document Validation Technology (IDVT). You can find out more about IDVT in the employer's guide to right to work checks: 28 February 2023.

Part of
Employ someone: step by step

Show all steps

1 Check your business is ready to employ staff
Show

2 Recruit someone
Show



TAKE CARE

- **You could face a civil penalty if you employ an illegal worker and have not carried out a correct right to work check.**

- **You must not discriminate against anyone because of where they're from**.

Checking the applicant's original documents:

1.Ask to see the applicant's original documents. You can no longer accept biometric residence cards or permits. Ask the applicant for a share code instead.

2. Check that the documents are valid with the applicant present.

3. Make and keep copies of the documents and record the date you made the check.

If the job applicant cannot show their documents

- You must ask the Home Office to check an employee's or potential employee's immigration status if they cannot show their documents or online immigration status.
- This could be, for example, because they:
- have an outstanding appeal, review or application with the Home Office
- arrived in the UK before 1989 and do not have documents to prove their immigration status or right to work
- You must also ask the Home Office to check their status if they have:
- a digital or non-digital Certificate of Application that says you need to ask the Home Office to check their right to work
- an Application Registration Card

- **If you need more help**
- Read the employer's guidance on right to work checks if you need more help.
- You can also contact the Home Office.
- Employer Enquiry helpline
  Telephone: 0300 790 6268
  Monday to Thursday, 9am to 4:45pm
  Friday, 9am to 4:30pm

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Care Quality Commission

NAVIGATING INTERNATIONAL EMPLOYMENT, CHECKS AND DOCUMENTATION WITH THE REGULATOR CQC

Person Specification

Background checks

There are many processes that the provider must consider when recruiting internationally. International candidates require various background checks that will allow them to become eligible to gain a Health and Care visa.

Under regulation 19 of Care Quality Commission (CQC) standards, employment checks employees are required.

- To be of good character
- Have the qualifications, competence, skills and experience which are necessary for the work to be performed by them
- Be able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the work for which they are employed.

Candidates applying for a Health and Care visa must submit a criminal record certificate from any country that they have resided in for 12 months or more in the last 10 years. The application process for criminal record checks varies from country to country, with the certificate being issued upon request from the relevant embassy. If it is not possible to obtain a certificate, e.g. if a country does not have a functioning criminal record regime, then an explanation must be provided with the visa application. UKVI will consider the explanation and decide whether to waive the requirement. If waived, employers must obtain as much information as possible from references before making a formal offer.

Further to this, a DBS check must be undertaken on the basis that an individual may have a UK criminal record or come from a country where the DBS has sharing arrangements. Staff working with adults can only start work before a DBS certificate is received if they have been subject to an Adult First Check and subject to the following safeguard:

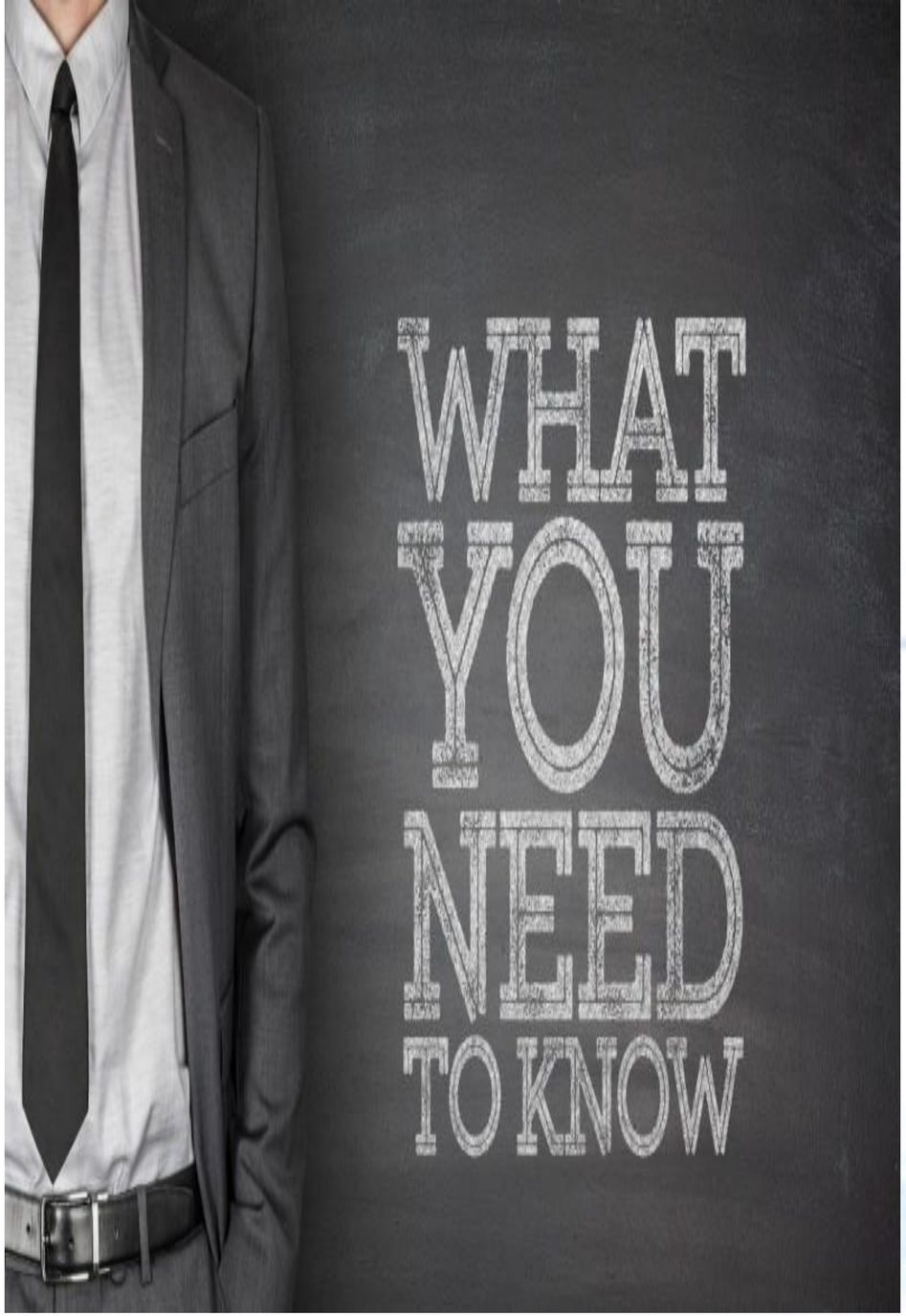
- An appropriately qualified and experienced member of staff is appointed to supervise them.
- Where possible, the supervisor is on duty at the same time as the new worker or is available to be consulted.
- New workers do not escort people away from the premises unless accompanied by a member of staff who has a full DBS certificate.



Language assessment

- Employing organizations are responsible for ensuring that everyone involved in the delivery of services has the required level of English language competence to enable them to communicate effectively with people who use services and colleagues.

- The visa language requirement, as outlined below, is a general requirement to be eligible for the Skilled Worker visa. It does not guarantee that an applicant has the necessary level of English to do the job you are offering, and so you should ensure you review English language proficiency in your selection process.



What will a Home Office Compliance Offer consider when conducting a Compliance Audit?

- ✓ Candidate Visa expiry dates have been recorded and you have their up-to-date contact information.
- ✓ Salary being paid in accordance with Certificate of Sponsorship
- ✓ Employees day to day tasks are in line with their Certificate of Sponsorship
- ✓ Online Right to Work Checks correctly completed and on HR files
- ✓ Any changes in migrant circumstances have been reported to the Home Office
- ✓ This is not an exhaustive list!

Preparing for a Home Office Compliance Audit



Employers should ensure their immigration related records are up-to-date:

- Sponsored employees' human resources files contain all relevant documentation in accordance with the requisite government criteria;
- Where a recruitment campaign has been used to support any Skilled Worker application, all documentation is available;
- Right to work checks are available for all employees (including non-sponsored/European Economic Area /British nationals and Skilled Workers);
- All relevant Sponsor Management System updates following changes of migrant circumstances have been reported to UKVI and
- All details listed regarding the company are correct on the Sponsor Management System (i.e. address, company name, key personnel).



Supporting documents

The follow up email that you are required to send should include the following documents:

1. Covering letter
2. Hierarchy chart for your organisation
3. Employers liability insurance certificate
4. CQC registration evidence
5. Corporate business bank statement
6. Audited annual accounts

Any further 2 documents from the following list if required

1. HMRC Registration – PAYE Reference Number/Account Office Reference Number
2. Proof of business premises ownership/Fixed Asset ownership/ Lease
3. Supporting letter from your bank manager
4. HMRC Registration – VAT
5. HMRC Company Tax Forms CT603 AND CT600



Application process for the Ethical Recruiters List

Information on the application process for the Ethical Recruiters List, how the list is monitored, and the appeals procedure.

2 January 2024



UK care firm charged workers from Africa thousands more than cost of visa



Compliance:

UKVI will monitor your sponsorship licence and use of Certificates of Sponsorship. They reserve the right to inspect businesses to ensure that you are aware of your responsibilities and are carrying out your duties as a sponsor.

In a situation where acts of non-compliance are found, there are some penalties that may be put in place for the sponsor:

- Reducing your CoS allocation
- Downgrading your licence to a B-rating
- Suspending your licence
- Revoking your licence
- Cancelling the permission of your sponsored workers to remain in the UK
- In an instance where criminal offence has taken place, reporting this to the police or other relevant authorities.

Full guidance on sponsor duties and compliance can be found on gov.uk - Workers and Temporary Workers: https://www.gov.uk/government/publications/workers-and-temporary-workers-guidance-for-sponsors-part-3-sponsor-duties-and-compliance

UKVI – recent licence suspensions and revoked licence reasons

Based on notifications to London ADASS

1. Supplying staff to a 3rd Party – 66% of suspension/ revocations mention this
2. Genuineness of vacancies – 40% of suspensions/ revocations mention this .
    1. Based on the checks undertaken there was no evidence that the providers had the need for the agreed level of COS issued by the Home Office, in some cases, the provider was a startup or had only ever employed a small number of staff, and no evidence of contracts with local authorities could be found.
3. Salary or pay issues – 20% of suspensions and revocations mention this .
    1. Providers are achieving the 40 hours of paid work for recruits by giving them work over a long day and not paying them for the ‘gaps’ in their roster when there is not work available – ie being available for 12 hours but only being paid for 6 or 7 hours. Therefore, this contravenes the HMRC rules and the previous working time directives
4. The maintenance of the SMS with up-to-date info and within the timescales required - 20% of suspensions and revocations mention this
5. There are now newer (in the last month or so) terms being used such as ‘Threat to Immigration Control ‘ which is mentioned 6 times, and the providers inability to pay the recruits, mentioned 4 times. As well as ‘Misuse of the COS’

Sanctions against illegal working

If you are found to be employing someone illegally and you have failed to carry out the prescribed checks, you may face the following sanctions:

- A civil penalty of up to £20,000 per illegal worker (Rising to £60,000 in January 2024 (£45,000 for first time offenders)
- A prison sentence of up to 5 years and an unlimited fine
- Closure of the business and disqualification as a director
- Not being able to sponsor migrants
- Seizure of earnings made as a result of illegal working



https://changestoukcompanylaw.campaign.gov.uk/

Changes to UK company law

Economic Crime and Corporate Transparency Act.

The Economic Crime and Corporate Transparency Act received royal assent on 26 October 2023.

The act gives Companies House the power to play a more significant role in tackling economic crime and supporting economic growth. Over time, the measures will lead to improved transparency and more accurate and trusted information on our registers.

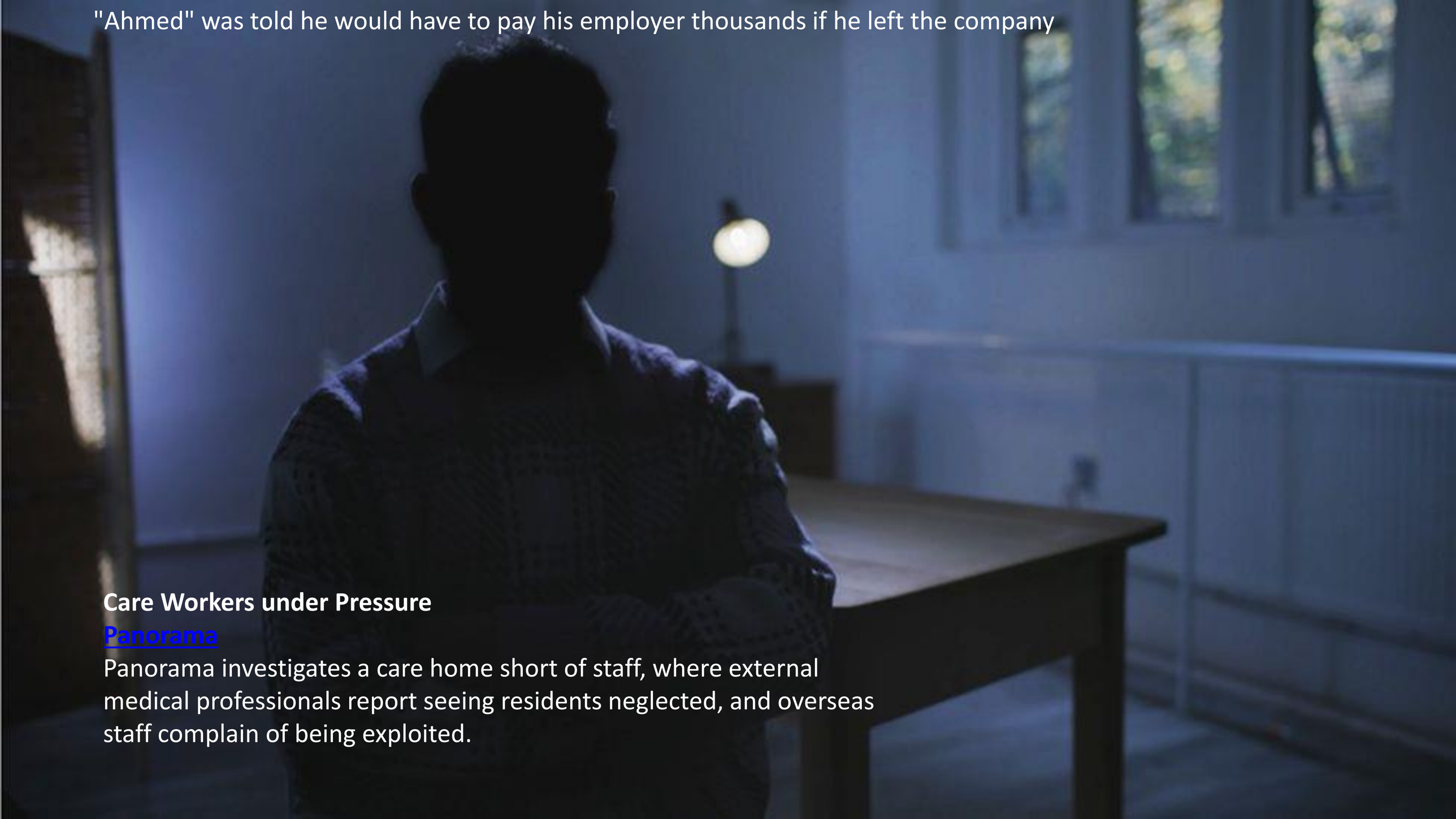
There'll be new responsibilities for:

- all new and existing company directors
- people with significant control of a company (PSCs)
- anyone who files on behalf of a company

What is CQC's remit:

Modern Slavery and Unethical International Recruitment is present in all sectors.

What we cannot do	What we can do
Investigate/assess/inspect concerns relating to • modern slavery • immigration and visas • international recruitment	**CQC will refer to and share the information with relevant partner agencies – Home Office UKVI – GLAA etc** **Regulate as per Health and Social Care Act & Regulations** • 19 Fit and Proper persons employed • Schedule 3 • Regulation 18 Staffing • Regulation 17 Good Governance • Regulation 12 Safe Care and Treatment Assess the risk and determine there is a need for a regulatory response.



Care Workers under Pressure

Panorama

Panorama investigates a care home short of staff, where external medical professionals report seeing residents neglected, and overseas staff complain of being exploited.

CQC - Modern Slavery and International Recruitment

- **We will use our powers to take regulatory and enforcement action** against registered providers where we identify a risk of harm and breaches of regulations

- Our **new assessment framework** will allow us to routinely assess how a provider is managing the risks of modern slavery and ensuring the wellbeing of internationally recruited staff.

- **We expect providers to have**:
    - safeguarding policies and procedures with clear support and guidance for staff
    - safe, thorough, and effective recruitment processes that prevent modern slavery
    - clear processes when using a recruitment agency, including checking the agency is carrying out the recruitment checks that they would normally do

MODERN SLAVERY
International Recruitment

Sources of information and support

Local Government Association

Overseas recruitment bite-size guide for social care providers in England | Local Government Association

Skills for Care

International recruitment (skillsforcare.org.uk)

DHSC

Code of practice for the international recruitment of health and social care personnel in England - GOV.UK (www.gov.uk)

Home Office – Skilled Workers List

Skilled Worker visa: eligible occupations and codes - GOV.UK (www.gov.uk)

Applying for health and social care jobs in the UK from abroad - GOV.UK (www.gov.uk)

INTERNATIONAL RECRUITMENT GUIDANCE

FOR SOCIAL CARE PROVIDERS & MANAGERS



Q & A

LONDON CARE AND SUPPORT FORUM

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