

Policy and Sustainability Committee

10.00am, Tuesday, 24 October 2023

Sponsorship of non-UK nationals

Executive/routine
Wards

1. Recommendations

- 1.1 It is recommended that, going forward, the Council agrees to sponsor eligible job applicants or existing colleagues that are subject to immigration control who meet the Skilled Worker Visa criteria set out by the UK Government in line with the guidance at sections 3.22 to 3.24 below. Given the nature of immigration policy in the UK and the fact that it can change frequently along with the costs involved in sponsorship, this recommendation should be kept under review and may be subject to change.
- 1.2 It is recommended that guidance will be developed on the Council's approach to sponsorship and this this will be reviewed annually, or sooner where there are material changes issued by UK Visas and Immigration (UKVI).
- 1.3 Members are also asked to note that internal resource will be reviewed to ensure that this is adequate to ensure compliance with the organisations sponsor licence and that appropriate support is available to support colleagues and line managers dealing with sponsorship under the Skilled Worker Route.

Dr Deborah Smart

Executive Director of Corporate Services

Contact: Nareen Turnbull, Service Director, Human Resources

E-mail: nareen.owens@edinburgh.gov.uk | Tel: 0131 469 5522

Sponsorship of non-UK nationals

2. Executive Summary

- 2.1 Historically, the Council has supported sponsorship applications from colleagues and job applicants where they meet the criteria set out by the UK Government and do not have access to another type of visa or have exhausted all other visa routes.
- 2.2 In 2021 the UK Government introduced a Skilled Worker Visa (to replace the previous Tier 2 Visa). As a result, if a non-British or non-Irish national has an eligible skilled job offer from a Home Office approved employer, they can usually apply for Skilled Worker Visa and become sponsored by the employer (subject to certain additional criteria as outlined in Appendix 1). If successful, sponsorship allows skilled workers to come to the UK to work for their sponsor and live for an extended period. This route can usually lead to settlement in the UK after five years' continuous lawful residence in the UK (subject to some additional criteria including but not limited to passing a life in the UK test and still being required for the role the individual is sponsored to do etc).
- 2.3 This report recommends a new approach to sponsoring non-British and non-Irish Nationals in line with the guidance at sections 3.22 to 3.24, and answers the motion from Councillor Miller, which was approved at Council on 31 August 2023.

3. Background

- 3.1 On 31 August 2023 Council agreed a motion from Councillor Miller which requested a report to this Committee containing the following information:
- Detailed information on the number of Council employees by visa status, noting any gaps or uncertainty in our information.
 - Details of any current support and/or signposting provided to our employees regarding visas, and consideration of how support might be provided to any employee concerned about visa related issues.
 - Noting the challenging recruitment environment, in particular within the care sector, consideration of options and approaches towards international recruitment and visa sponsorship.
 - In relation to private sector providers commissioned by the Council, a summary of their visa sponsorship policies and any conditions or standards set by the Council regarding their support or treatment of employees with visas.

4. Main report

Current position

- 4.1 CEC is authorised by the Home Office to sponsor eligible individuals under the Skilled Worker route. This authorisation is known as having a “sponsor licence”. Holding a sponsor licence places a responsibility on the Council to act in accordance with the UK’s immigration laws and all parts of the Home Office’s Guidance for Sponsors (including certain record keeping and reporting obligations). The Council is required to assign a Certificate of Sponsorship (COS) to each non-UK national that it sponsors.
- 4.2 There are several conditions set by the UK Government which an individual must meet to qualify for a Skilled Worker Visa, and these are detailed in Appendix 1.
- 4.3 Currently the Council only agrees to support an application for a Skilled Worker Visa if the individual meets the conditions set by the UK Government and is unable to obtain a visa through other means, for example student visa, graduate visa, or dependant visa. The primary reason that many colleagues seek sponsorship from the Council when they have an alternative visa route available to them is that time spent in the UK under a Skilled Worker Visa counts towards indefinite leave to remain / settlement whereas some other visa routes (such as Student Visas and Graduate Route visas) usually do not.
- 4.4 Historically the number of colleagues sponsored by the Council through the Skilled Worker Visa route has been minimal. However, enquiries to HR relating to sponsorship (and questions regarding other visas) have increased significantly since the start of 2023.
- 4.5 The recent increase in enquiries can be attributed to several factors including:
- The introduction of the Skilled Worker Visa in 2021 (including the abolition of the resident labour market test and the inclusion of a much broader range of jobs which are suitable for sponsorship);
 - The impact of Brexit (for EU nationals coming to the UK for the first time, entering and working in the UK has become more difficult since 1st January 2021, as they are now subject to the same rules as third-country nationals);
 - Colleagues who hold student visas now seeking sponsorship from the Council rather than obtaining a graduate visa. A number of graduate route visas have started to expire from the summer of 2023 onwards (as this visa route opened in the summer of 2021);
 - On 22 May 2023, approximately 145 Four Seasons Health Care employees transferred to the Council under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) to provide services at Castlegreen and North Merchiston Care Homes. This included 18 colleagues who were already sponsored by the outgoing service provider and a further 24 who have student or dependent visas and have requested that the Council to sponsor them.
- 4.6 Across the Council there are 391 colleagues on various types of visas (with 12 currently sponsored under the Skilled Worker route by the Council), a breakdown is included in Appendix 2.

Guidance for colleagues

- 4.7 At present, there is no formal Council guidance available for colleagues or managers on the process for sponsorship and/or the circumstances in which the Council are willing to sponsor. Accordingly, HR colleagues support managers and colleagues as and when queries arise. However, this is a complex and frequently evolving area and it's considered that the development of guidance on the Council's approach to sponsorship would be of significant assistance for those involved in the process (see recommendation 1.2 above) and lead to increased consistency in approach across the Council.
- 4.8 If Committee agrees to the new approach to those seeking sponsorship (see recommendation 1.1 above) it is noted that the volume of work associated with the following is likely to further increase: (1) ensuring that the Council is compliant with its obligations under its sponsor licence (including but not limited to adding care homes or other places of work for sponsored skilled workers of the Council on to the sponsor licence and keeping this updated), (2) assigning and managing Certificates of Sponsorship and (3) responding to queries connected with skilled worker sponsorship from colleagues, managers and job applicants. It should be noted that this advice should not extend to providing immigration advice given the regulation of such advice.
- 4.9 Failure(s) to adhere to the Council's compliance responsibilities as a sponsor could, in the most serious circumstances lead to the Council's sponsorship licence being revoked. This would present a significant risk for the organisation both reputationally and in respect of recruitment and retention.
- 4.10 HR and Legal teams will review current service provision in terms of adequacy and expertise.

Benchmarking

- 4.11 As requested, a survey was sent to care homes currently contracted to provide services on behalf of the Council. There were seven responses with two care home service providers confirming they hold a sponsor licence. The remaining five care home service providers do not hold a sponsor licence (71%) and would therefore not be able to recruit anyone requiring a sponsorship for a Skilled Worker Visa unless they were to apply for one. It would be done to individual organisations to consider their position in applying for a sponsor licence including consideration of all risks and compliance requirements.
- 4.12 At the same time a survey was sent to local authorities across Scotland, 19 replies were received, with 12 (63%) confirming they have a sponsor licence. The remaining seven (37%) local authorities do not currently hold a sponsor licence and would therefore not be able to recruit anyone requiring a sponsorship for a Skilled Worker Visa without applying for one.
- 4.13 It should be noted that as part of the refresh of the People Strategy and Workforce Plan for 2024-2027 consideration will be given to recruitment and retention, including international recruitment.

Cost of sponsorship

- 4.14 There are costs associated with sponsoring employees to both the organisation and individuals themselves. If the recommendation is adopted, the Council will only pay for the organisation's fees in relation to sponsorship. Individuals will be expected to fund their own visa costs and those of their family members.
- 4.15 In terms of the fees that must be paid by the sponsor, these are (i) the fee to assign a COS; and (ii) the Immigration Skills Charge. The fee to assign a Certificate of Sponsorship to a migrant worker under the Skilled Worker route is a payment of £199 (rising to £239 from 4 October 2023) for each COS (in most cases an employer obtains an initial COS for 3 years and then obtains another for a 2 year extension, so £478 in total). The reason for this is to avoid the employee having to pay 5 years' worth of Health Surcharge and larger visa fees upfront. In addition, if the Immigration Skills Charge is also applicable, CEC will be required to pay £1,000 per annum per individual for the duration of the visa (which is payable upfront).
- 4.16 Individuals being sponsored to switch directly from a Student visa (before its expiry) to a Skilled Worker visa and also working in certain listed job codes do not attract an Immigration Skills Charge which can be a cost saving to the organisation.
- 4.17 A summary of the typical costs for the Council and individuals are included in Appendix 3 by way of example. However, costs for individuals may vary significantly based on their role and their own family circumstances. Employees or job applicants should seek independent advice if required.

Proposed approach

- 4.18 Before determining the preferred approach officers considered alternative options with a view to potentially reducing the sponsorship costs to the organisation.
- 4.19 One option was to limit the number of individuals the Council sponsor each year. However, it was noted that this approach could lead to disparity in treatment once quotas were reached. In addition, this could create a risk of an allegation discriminatory treatment unless such decisions could be objectively justified.
- 4.20 Another option would be to maintain the status quo (i.e. only offer sponsorship to employees once they had exhausted other visa routes). However, it was noted that, assuming a colleague remained in the Council's employment, in the case of an individual switching from a Student visa to Skilled Worker, this approach would lead to the Council paying a higher amount for sponsorship in the longer term.
Example: If a colleague on a *student visa* moves straight to a *skilled worker visa*, the cost to the Council could be as little as £199 (rising to £239 from 4 October 2023) to sponsor them for up to five years (although the fees would be higher if 2 COS were assigned over the 5-year period).

Currently we'd ask the colleague to obtain a graduate visa and there would be no charge to the Council for the first two years. However, in subsequent years it would potentially cost the Council £1,199 (including the Certificate of Sponsorship fee and the Immigration Skills Charge) for the first year and thereafter £1,000 per annum (in relation to the Immigration Skills Charge only). In reality, it is likely to be more cost

effective to sponsor someone for at least a 2 or 3 year period initially (as this will reduce the time involved for the Council and costs for the employee in extending the visa annually). Sponsorship will be provided up to the point where individuals are eligible to apply for Indefinite leave to remain – where this is not progressed then individuals will need to outline reasons for this and consideration of next steps will be on a case by case basis.

- 4.21 For those who have temporary visas which permit them to work in the UK (for example, Graduate route, Youth Mobility or those under the Ukrainian visa schemes), the Council considers that while there is no cost saving to sponsor such eligible individuals when requested, there may still be a benefit to the Council in doing so, as it will provide the individuals with the ability to accrue leave for the purposes of indefinite leave to remain. This is likely to be attractive to employees and mean that they may be more likely to remain in employment with the Council longer term, rather than leaving to work for another employer. This may help the Council attract and retain key staff.
- 4.22 Considering the potential financial costs, along with the current challenges in the recruitment market it is recommended that the Council now agrees to sponsor eligible job applicants or colleagues who meet the Skilled Worker Visa criteria set out by the UK Government. This is always subject to any budgetary constraints and the Council having the ability to review its approach and ensure that this is aligned to its People Strategy and Workforce Plan.
- 4.23 It is noted that the key benefits of this approach are:
- It demonstrates a commitment to the Council's Diversity and Inclusion strategy and in particular the ambition to attract and retain a diverse workforce.
 - After 5 years of sponsorship, employees (in most cases) will be eligible to settle in the UK. The settlement process will be quicker for employees if they are sponsored immediately rather than if they are required to exhaust other visa options first. It is understood that this is attractive for employees and could make it easier to attract and retain staff in areas of the organisation that are experiencing recruitment difficulties.
 - In the longer term, there may be cost savings to the organisation (in comparison with requiring employees to exhaust other visas before offering sponsorship). This is because the Council may benefit from the Immigration Skills Charge exemption when an individual switches directly from a Student visa to a Skilled Worker visa.
- 4.24 If recommendation 1.1 is agreed, then it is proposed that it's embedded into workforce planning which forms part of the 2024- 2027 People Strategy and associated Workforce Plan. Updates on the People Strategy will be provided regularly to this Committee over the next three years.

5. Next Steps

- 5.1 Develop sponsorship guidance for CEC.
- 5.2 Those eligible colleagues currently seeking sponsorship from the Council in line with the commitments above will be supported with immediate effect.

- 5.3 Review of internal resource to be undertaken to ensure compliance as sponsor and adequate support for colleagues and managers.
- 5.4 Regular review of the guidance and consideration of wider international recruitment strategy as part of the 2024 – 2027 People Strategy and Workforce Plan.

6. Financial impact

- 6.1 The costs of sponsoring colleagues will require to be contained within current departmental budgets. The amount spent on sponsorship will be reported to Finance and Resources Committee as part of the annual workforce update.

7. Equality and Poverty Impact

- 7.1 One of the key pillars within the Diversity and Inclusion strategy is a commitment to attract and retain a diverse workforce through our approach to talent and resourcing. Ensuring that all colleagues (current and future) who are eligible for sponsorship will be supported by the organisation would be another step to achieving this aim.

8. Climate and Nature Emergency Implications

- 8.1 None identified.

9. Risk, policy, compliance, governance and community impact

- 9.1 The Council has currently flagged recruiting and retaining a skilled workforce as a risk in it's risk register. If the recommended approach is approved this will potentially reduce the risk of turnover as those seeking sponsorship will remain the with the Council rather than choosing to work for another employer.

10. Background reading/external references

- 10.1 [UK visa sponsorship for employers.](#)
- 10.2 [Diversity and Inclusion Strategy and Plan.](#)
- 10.3 [People Strategy 2021 – 2023 and 2024 – 2027 update.](#)

11. Appendices

- Appendix 1 - Skilled Worker Visa Requirements
- Appendix 2 - Number and type of visas for current Council colleagues
- Appendix 3 – Typical costs of sponsorship

***Skilled Worker Visa Requirements**

- **Points-based System:** The visa operates on a points-based system. To qualify for a Skilled Worker Visa, applicants must score a minimum number of points based on various criteria, including job offer, skill level, English language proficiency, and salary.
- **Job Offer Requirement:** To be eligible for a Skilled Worker Visa, applicants need a valid job offer from a UK employer that holds a sponsor license. The job must meet specific skill level and salary requirements.
- **Skills and Salary Threshold:** Applicants must have a job offer that meets the minimum skill level (RQF Level 3 or above) and salary threshold, which may vary depending on the occupation and location.
- **English Language Proficiency:** Applicants must demonstrate their English language proficiency by passing an approved English language test, having being taught a bachelors degree to higher in English or providing evidence of an exemption.
- **Maintenance Funds:** Applicants may need to show that they have enough funds to support themselves (and any family members) upon arrival in the UK if it's not already covered by their employer.
- **Dependants:** Successful Skilled Worker Visa applicants can usually bring their dependents (spouse/partner and children under 18) to the UK. Relevant supporting documents must also usually be submitted.
- **Individuals must also meet the general suitability requirements and must not have recently received a scholarship from a government or international scholarship agency, a criminal record or an adverse immigration history.**
- **Individuals travelling from certain countries must also usually have a TB test undertaken at an approved centre before making an application.**

*Based on information from the UK Government website

Number and type of visas for current Council colleagues

Visa Type	Colleagues
*not specified	215
Dependant	47
Student	44
Spouse/Partner	34
Ukraine scheme	13
Skilled worker	12
Graduate	10
Refugee	7
Family member	5
Youth Mobility	4
Total	391

* Electronic Right to Work Documentation from the UK Government does not always state the type of Visa someone has, just any restrictions.

Typical costs of a 5-year Skilled Worker Visa

Example costs to the organisation

Based on a colleague requiring a five-year Skilled Worker Visa before obtaining indefinite leave to remain.

*Student Visa moving to Skilled Worker Visa – one off payment £199 (rising to **£239** from 4 October 2023).

Student Visa moving to Graduate Visa – No cost to the Council. The Graduate Visa usually lasts two years (but can be up to three if they have a PhD) but does not count towards indefinite leave to remain. Upon expiry of their Graduate Visa, colleagues are likely to move onto a Skilled Worker Visa.

*Graduate Visa to Skilled Worker Visa - The total cost for a five year visa would be £5,199 (rising to **£5,239** from 4 October 2023). It is recommended that the minimum visa we apply for initially is 2 or 3 years (if the Council does this annually, it becomes less cost effective as the COS fee will need to be paid for annually at the point of each extension and the individual will incur a new visa fee annually).

*Dependent Visa to Skilled Worker Visa - The total cost for five years would be £5,199 (rising to **£5,239** from 4 October 2023). It is recommended that the minimum visa we apply for initially is 2 or 3 years (if the Council does this annually, it becomes less cost effective as the COS fee will need to be paid for annually at the point of each extension and the individual will incur a new visa fee annually).

It is therefore more cost effective in the long term for the Council to sponsor colleagues upon expiry of a Student Visa rather than a graduate visa.

Example costs to individual

Based on a colleague with no dependants requiring a five-year Skilled Worker Visa before obtaining indefinite leave to remain.

*Skilled Worker Visa application cost - from £284 to £1,500 per person depending on individual circumstances and length of visa (additional fees also payable on extension).

**Skilled Worker Visa NHS surcharge - £624 per person per annum

*Graduate Student Visa application cost - £822 per person

**Graduate Student Visa NHS surcharge - £624 per person per annum

*Costs from 4th October 2023

**Costs will increase to £1,035 per person per year at a date yet to be confirmed by the UK Government (but expected to be Autumn 2024). Please note this doesn't apply to those on the Health and Care Visa.