

Immigration compliance

Recent immigration changes have seen a greater burden for compliance transferred to employers and sponsors. The Home Office is now taking a particular interest in charities.



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Chetal is a partner in our Immigration department and is recognised as a Next Generation Lawyer in the Legal 500 2018 directory. She has a particular interest and expertise in sponsor-related matters and the prevention of illegal working. She regularly advises organisations on matters relating to applying for, maintaining or renewing sponsor status.

Chetal Patel explores the issues that the Home Office has identified across the charity sector

There have always been risky sectors for immigration compliance, including hospitality and information and communications technology. More recently, charitable organisations have come under the Home Office's scrutiny.

The Home Office places significant trust in organisations that hold sponsor licences, and can take action against them if they fail to comply with their responsibilities as sponsors. In some cases, this can see the Home Office suspending or revoking sponsor licences, with the potential for significant disruption to the organisation concerned.

We have advised a number of charitable organisations that have been the subject of Home Office compliance visits and a few key themes have emerged.

Job descriptions

The Home Office and decision-making centres overseas have analysed the job descriptions on assigned Certificates of Sponsorship (CoS) to assess whether – in their view – work placements directly assist with the charities' aims. There is no requirement for sponsors to provide their mission statement on CoS, but we recommend that charities provide details of their purpose and how the roles are contributing to advancing it.

Pocket money

Section 44 of the 1998 National Minimum Wage Act permits subsistence payments to volunteers, but 'subsistence' is ambiguous. In practice, the Home Office expects to see a list of likely expenses, including a breakdown of the figures. Ideally, you should keep receipts for all expenses, but for many charities this would be a significant administrative burden.

Compliance visits and visa refusals

A number of compliance visits to UK organisations were prompted by intelligence from the Home Office's overseas enforcement counterparts. In some cases,

there was a concern that sponsored non-EEA migrants had not left the UK.

The Home Office guidance states that a report must be made within 10 working days if a sponsored migrant does not turn up for work on their first day – the example given is a missed flight. A number of sponsors have inadvertently breached sponsor duties, as they were unaware of the need to report to the Home Office if a sponsored migrant does not arrive at work because their visa has been refused.

Disclosure and Barring Service (DBS)

Home Office guidance states that if a DBS check is required, such as for those undertaking a regulated activity with children, the sponsor must ensure that the check is carried out.

The first step is for sponsors to assess whether or not a DBS check is required. A potential hurdle is that a UK residential address is required for a DBS check, which means in some cases it will not be possible to obtain the check until an individual is in the UK.

The situation has now changed for charitable organisations placing non-EEA volunteers with other organisations. In the past, the placement organisations would have arranged for DBS checks. The Home Office now expects sponsors to have control and oversight of DBS checks. Sponsors should also have safeguarding policies in place.

It is vital that charitable organisations that are sponsors revisit their current practices to avoid any unpleasant surprises.

Find out more

For information and advice on any aspect of sponsorship and your responsibilities as a sponsor, please contact a member of our Immigration team <https://www.bwblp.com/services/immigration/>