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Considerations

Adults may not begin their role in Scouting until they have been issued with a Provisional Appointment.

Criminal Records Bureau (CRB) check

The Criminal Records Bureau check has been introduced to replace The Scout Association's previous Confidential Enquiry check. However, the Association continues to carry out its own internal checking procedures using the information provided on the CRB Form (known as an initial enquiry). Those persons who are to have unsupervised access to young people must be checked using the CRB procedures. Such persons include Warranted Appointments, Skills Instructors, Scout Network members, Scout Fellowship members and Section Assistants. Similarly, the officers of Group, District, and County Executives (Chairman, Secretary and Treasurer) must also be checked using the CRB procedure.

The whole process of the CRB check can be seen in Appendix 1 and is described as follows:

When an adult completes the CRB form it should be passed to the District or County (as appropriate) who will send it to Headquarters. The Records Department then uses it to process an initial enquiry. It then sends the result back to the District or County (as appropriate). It also sends the CRB form to the Criminal Records Bureau.

Once the Association's initial enquiry has come back as clear, the Appointments Secretary can issue a Provisional Appointment. Adults may not begin their role in Scouting until they have been issued with a Provisional Appointment, and therefore not before the result of this initial enquiry has been received.

The initial 'cleared' enquiry must be received before the Appointments sub-Committee meets with the adult. It is important that the Appointments sub-Committee meets on a frequent basis to ensure that an adult's application is dealt with as quickly as possible.

When the disclosure from the CRB has come back as clear, the adult has completed *Getting Started* and the Appointments sub-Committee has satisfied itself with the suitability of the adult, the Appointments Secretary notifies Headquarters to request a Warrant or issues a certificate of local Appointment.

If there are any problems with the enquiry, the information is returned to the relevant Commissioner. In Scotland, these will be returned to Scottish Headquarters. Problems with a CRB enquiry must be handled very carefully and according to legal constraints. In these cases, Headquarters will issue the relevant Commissioner with detailed information on how to handle the disclosure.

A CRB check must also be completed for all members of the Scout Fellowship, parents who help on a regular basis on meeting nights, people who help at camp and anyone else who is likely to have unsupervised access to young people in Scouting. Once a 'CRB clearance' has been received, the adult should be given a copy of the Association's *Young People First* Code of Good Practice (yellow card). The relevant Leader, Group Scout Leader or Commissioner must talk them through the Yellow Card. The Appointments sub-Committee is not required to meet with these

adults, unless they go on to take up a formal Appointment.

Application

After it becomes clear that the adult wishes to take up an Appointment, the adult completes and signs the Form AA (at the same time as the CRB form if the CRB check hasn't already been carried out).

The application must be supported by the Group Scout Leader or relevant Commissioner, and the form should state the role to be undertaken. The Commissioner does not sign the form until they have held a discussion with the adult and reached a mutual agreement about the adult's role in Scouting and covered the Fundamentals and policies of The Scout Association.

References

For adults who are new to Scouting, or who are returning to Scouting after a period of absence, two references in writing must be obtained. These are requested to support the person's suitability, before any consideration by the Appointments sub-Committee takes place. The Reference Form (Form RF) must be used for this purpose. These should be sent out and returned to the Appointments Secretary.

It is important that referees are not related to the adult. If a referee does not respond, the adult should be informed and asked to nominate another person. No new Appointment is effective until references have been received and considered. If after a reasonable period of time references have still not been received, the Appointments sub-Committee should decide on what course of action to take.

Where a current post-holder is in the process of re-appointment or reassignment, further references may not be required, unless the review follows a period of formal suspension.

In the event of such references establishing that the person is not suitable, the Secretary must send full details to the Records Manager at Headquarters in a letter marked 'Private and Confidential'. The Commissioner must be informed.

The sponsoring authority


Where a Scout Group has a sponsorship agreement with a particular faith or community group, and that agreement gives the sponsoring authority a role in the appointment of adults, there should be a well-established procedure in place. It is likely that the sponsoring authority or a nominee would want to meet the adult, for an opportunity to explain the relationship between the Group and the sponsoring authority. It may also be that, as part of the sponsorship agreement, there are certain requirements of the adult that may need some explanation.

The key roles of the sponsoring authority or nominee are to:

- make the new person feel welcome and explain the role of the sponsoring authority
- work with the Group Scout Leader, when appropriate, to complete the formal Appointment process.

The discussion with the Commissioner

Policy, Organisation and Rules states that the Commissioner and the Appointments sub-committees must each and separately satisfy themselves that:



No new appointment is effective until references have been received and considered.

- the applicant is at least 18 years old
- all consultations or approvals required by the rules have been undertaken or obtained
- the applicant is suitable in all respects to undertake the responsibilities of the proposed Appointment
- the applicant has the necessary qualifications to carry out the duties of the Appointment
- the applicant understands and accepts the Purpose and Principles of The Scout Association
- the applicant understands the adult training obligations which apply to the Appointment (including ongoing learning after gaining their Wood Badge)
- the applicant agrees to abide by the policies and rules of The Scout Association.

When carrying out these discussions, the Commissioner should consider a number of practical issues, such as the number of people to be spoken to, the amount of time needed, any special needs and so on.

It is quite acceptable for the Commissioner to delegate part of this responsibility to members of the appropriate team. For example, it could be easier for the Assistant District Commissioner (Scouts) to meet with all the new Section Assistants, Instructors etc. within the Scout Section, whilst leaving the District Commissioner to interview any potential Leaders. A similar approach could be made for Administrators whereby the newly elected District Secretary discusses their role with the County Secretary.

An informal setting is recommended, possibly in someone's home, and the meeting should last no more than an hour or so. Other matters may be considered outside the discussion, but at this stage, the adult may still be getting to know the Association and how it works.


During the discussion, time is set aside to discuss and identify the:

- job the person has been asked to do (the job description)
- personal qualities needed
- functional aspects of the role
- values of Scouting as set out in the Promise and Law, Purpose and Principles
- major policies of the Association.

In looking at the personal qualities needed, the applicant is encouraged to talk about their previous experience in or outside Scouting, interests or hobbies and other spare time activities. The adult should be told about the role of the Training Adviser in supporting them, and the training that will be provided.

In addition, the details of the Appointment should be agreed between the adult and Commissioner. This mutual agreement should include:

- the length of the Appointment (when it expires)
- to whom the adult will be responsible
- for whom the adult is responsible
- what the adult will do



Applicants should see the whole appointment process as a positive exercise.

- how much time will be involved
- what support and training is available.

The final part of the discussion should concentrate on looking forward and discussing what they are aiming to achieve. It is important that applicants see the whole appointment process as a positive series of activities designed to bring them into an adult role in Scouting. At the same time, this discussion allows the Commissioner to assess the adult's suitability to undertake a particular role and to ensure that unsuitable people do not gain access to young people or to the funds of the Group, District or County.

Legal considerations

Scouting has to operate under the law of the land in both the organisational contexts of Scout Groups formed as charities and individual's responsibility for children. English law on Child Protection has until recently been limited to:

- the common law principle of the duty of care when taking action not to cause harm to others
- the duty not to act negligently or recklessly concerning people, including children, who come on to one's land, (e.g. The Occupiers Liability Act, 1957¹).

On an international level, the rights of children to protection from abuse and exploitation are set out in the UN Convention on the Rights of the Child which was approved by the British Government in 1992. The principal ethos of this convention is recognition that the interests of the child are paramount and this ethos is increasingly finding its way into English law.

For example, the Children Act 1989¹ places a responsibility on all those who work with children and young people in the context of care proceedings, local authority obligations and child minding, to promote and safeguard welfare of young persons and help protect them from harm. The Scout Association has a policy that reflects this.

The work of the Appointments sub-Committees is to ensure that as far as possible, unsuitable adults are not given authority or control over children and young people. This can therefore be seen not only as a requirement within *Policy, Organisation and Rules* but also a responsibility under developing English law.

Defamation

Under English law, a person is entitled to his or her good name and has the right not to have defamatory statements made about him or her, which would harm his or her reputation. A defamatory statement is one which tends to lower a person in the view of ordinary members of society; or which results in the person being made the subject of hatred, contempt or ridicule; or which belittles them in any office held or in their work.

There are two types of action for defamation:

- 1 **Libel** – where the defamatory statement is made in writing or in some other permanent form about a person and is communicated to another person.
- 2 **Slander** – where the defamatory statement is made by spoken words, sounds, looks, and gestures or by some other non-permanent form concerning a person

¹These Acts apply in England and Wales. Northern Ireland and Scotland and have their own equivalent legislation. (HMSO)

and made to another person.

Sometimes the Appointments sub-Committee and the Commissioner have to reject an applicant for a Scouting Appointment or cancel a Warrant for reasons which, **if untrue**, could be damaging to the reputation of the individual concerned. It is therefore important to ensure that a person's suitability for an adult Appointment in Scouting is examined carefully and accurately.

However, Commissioners and Appointment sub-Committees should not act over cautiously in seeking to avoid a possible claim of defamation if, in doing so, an unsuitable person is appointed or remains in office.

There are two defences if faced with a possible claim of defamation:

- 1** The statement is not defamatory if it is substantially true. For example, if the reason for suspending an adult Warrant is that the police are investigating the holder, it is not defamatory if this is true.
- 2** The decisions of the Commissioner and the Appointments sub-Committee are likely to be protected by 'qualified privilege'. This gives a defence against any claim for defamation unless the claimant is able to prove that the defamatory words were published with malice. To ensure that there is no abuse of qualified privilege, the reasons for a decision to reject an application or cancel a Warrant should not be communicated to anyone apart from the Commissioner, the members of the Appointments sub-Committee and Headquarters personnel.

In cases of doubt, the advice of The Scout Association's Legal Department may be sought.

The limitation period for bringing an action for defamation is one year from the date on which the claimant became aware of the existence of the defamatory statement unless the court is willing to extend the time limit in special circumstances.

Charity Trustees

Some Appointments will result in the holder becoming a member of an Executive Committee and thus a Charity Trustee. It should be noted that certain persons are disqualified from becoming or continuing as Charity Trustees. They are people who:

- have been convicted at any time or any offence involving deception or dishonesty, unless the conviction is regarded as spent
- are undischarged bankrupts
- have made composition with their creditors and have not been discharged
- have at any time been removed by the Charity Commissioners or by the court in England, Wales or Scotland from being a Trustee because of misconduct
- are disqualified from becoming company directors
- have failed to make payments under County Court administration orders.

For further information on Charity Trustee status, please contact the Legal Department at Headquarters.