

ADVERTISING

For Tier 2 cases, the employer is required to show that a worker from within the resident labour force cannot fill the post on offer. The usual way for them to do so is to show that they have advertised the post.

- [Appropriate methods of advertising](#)
- [Contents of the advertisement](#)
- [Date and duration of the advertisement](#)
- [Responses to the advertisement](#)

What to do if?

- [The Risk Assessment grid is checked](#)
- [The employer has not advertised the post](#)
- [The post was advertised in an inappropriate medium](#)
- [The location and prominence of the advertisement does not reflect the level of the post](#)
- [The advertisement did not contain full details of post \(see contents of the advertisement\)](#)
- [The advertisement did not contain full details of the skills, qualifications and experience required for the post](#)
- [The advertisement did not ask for three years experience of doing the job for which the permit is sought](#)
- [The salary in the advertisement is quoted as a salary range rather than a specific salary](#)
- [The post was advertised on the employer's own website](#)
- [The advertisement was placed more than 6 months before the work permit application was submitted](#)
- [The employer did not allow four weeks from the advertisement being placed to the work permit application being submitted](#)
- [The responses to the advertisement show that resident workers applied for the post](#)

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- [The employer has not provided details of responses to the advertisement](#)
- [An original copy of the advertisement has not been included](#)
- [An original copy of the advertisement has not been included and no credible explanation or evidence has been provided to prove a resident labour search took place](#)
- [The employer has provided no evidence of Internet advertising having been available for at least a week](#)
- [The advertisement states responses should go to a PO Box number or an agency](#)
- [The employer has advertised the post in media aimed at specific ethnic groups or nationalities](#)
- [The employer has used a headhunter](#)
- [The employer has advertised the post via JobcentrePlus](#)
- [The advertising meets the criteria](#)

Appropriate methods of advertising

The employer must show that they have used a method of recruitment that is appropriate to the job and represents a genuine attempt to employ a suitably qualified or experienced person from within the resident labour force. The relevant occupation sheet shows some suitable methods but it is up to the employer to demonstrate that they have used the most appropriate medium by answering the relevant question on the WP1.

The employer or their representative should supply an original sample of the advertisement with the application. This should be of the whole page and should clearly show the name and date of the publication. Caseworkers should check that the prominence of the advertisement reflects the level and type of post. For example, a one-inch square advertisement in the middle of the general jobs section of a national newspaper for a managing director on £50,000 per year would be inappropriate and may not reflect a genuine attempt to recruit from the resident labour force.

A few methods of advertising that may be appropriate are that the post is advertised:

- In a medium indicated on the relevant occupation sheet
- In the correct sector-specific vacancy section of a national newspaper. (The Scotsman and The Herald are acceptable as suitable national newspapers for vacancies in Scotland and may also be acceptable for the bordering counties of England. The Western Mail for posts in Wales and

the Belfast Telegraph for posts in Northern Ireland are accepted as national advertising too.)

- In the general vacancy section of a national newspaper among other advertisements for similar posts
- In a relevant specialist publication that is readily available throughout the EEA
- On a widely used recruitment website where similar vacancies are advertised by other employers
- Via JobcentrePlus or Job and Employment Office
- Headhunters who are used to recruit certain senior level or specialist posts within a well-defined group.

NB - While the advertising may satisfy one or more of these indicators, a caseworker can still refuse an application on inappropriate advertising if they can show that other methods of advertising are more appropriate.

[\[Back to top\]](#)

Contents of the advertisement

An employer cannot refuse to employ a resident worker because of a lack of qualifications, experience or skills (including language skills), unless they were specifically requested in the job advertisement. The advertisement must include the skills, qualifications or experience needed. It should also normally include:

- the main duties and responsibilities of the job;
- the location of the job;
- an indication of the salary or salary range;
- the closing date for applications; and
- the name and address of the employer

[\[Back to top\]](#)

Date and duration of the advertisement

Caseworkers should ensure that the advertisement was placed no more than six months prior to the work permit application being made. If the post was advertised on the Internet, caseworkers should ensure that the application contains evidence that the advertisement was posted on the relevant website for at least a week.

It is also important to check that the employer has allowed four weeks from the date the post was first advertised before making a work permit application. This period allows sufficient time for resident workers to apply for the post and employers to shortlist and interview candidates.

[\[Back to top\]](#)

Responses to the advertisement

Employers must provide full details of the responses to all methods of recruitment. Caseworkers should check that the answers to the relevant questions on the WP1 include:

- a. The number of people applied;
- b. The number short-listed for interview; and
- c. For each 'resident worker' reasons why they have not been employed.

[\[Back to top\]](#)

What to do if?

The Risk Assessment grid is checked – If the advertisement box is ticked by the EO who pre-sifted the case, doubt has arisen regarding the resident labour search. Caseworkers should ensure that all the above relevant checks have been carried out fully. In most cases, the EO will have given comments and any instructions should be carried out.

[\[Back to what to do if?\]](#)

The employer has not advertised the post – The employer should have explained fully in the relevant question of the WP1 why they did not advertise the post and provide independent verification of their assertions. The pre-sifter should have assessed any reasons and evidence provided and made comments on the risk assessment grid. If caseworkers are not satisfied a legitimate reason for not advertising the vacancy has been given, the application should be refused and paragraph P83A included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application. Any approvals should include paragraph P70A and details of the approval should be noted on the employer's comments on gLOBE.

[\[Back to what to do if?\]](#)

The post was advertised in an inappropriate medium – This, on its own, is a ground for refusal, as it may not represent a genuine attempt to recruit resident workers. Paragraph P83D should be included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application. That said, if this is the only ground for refusal, caseworkers should consider the employer's explanation as to why the publication in question was used. If caseworkers accept the employer's explanation and are satisfied that a genuine attempt to recruit from the resident labour market was made, caseworkers should consult their line manager as to whether an exceptional approval is justified.

If an exceptional approval is granted, the approval letter should note the case has been approved exceptionally, waiving the advertising criteria and an adaptation of paragraph P70A included. Caseworkers should set out the reasons given by the employer on gLOBE, which were taken on board when considering the case. The approval letter should set out that this does not set a precedent and that all future applications will be required to meet the full work permit criteria. This should be noted on the employer's comments on gLOBE.

[\[Back to what to do if?\]](#)

The location and prominence of the advertisement does not reflect the level of the post - This, on its own, is a ground for refusal, as it does not represent a genuine attempt to recruit from resident labour. Paragraph P83K should be included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application. That said, if this is the only ground for refusal, caseworkers should consider the employer's explanation for the size and location of the advertisement. If satisfied that a genuine attempt to recruit from the resident labour market was made, caseworkers might wish to discuss with their line manager whether an exceptional approval is justified.

If an exceptional approval is granted, the approval letter should note the case has been approved exceptionally, waiving the advertising criteria and an adaptation of paragraph P70A included. Caseworkers should set out the reasons given by the employer on gLOBE, which were taken on board when considering the case. The approval letter should set out that this does not set a precedent and that all future applications will be required to meet the full work permit criteria. This should be noted on the employer's comments on gLOBE.

[\[Back to what to do if?\]](#)

The advertisement did not contain full details of post (see [contents of the advertisement](#))- This, on its own, is a ground for refusal, as the advertisement may not be specific to the post on offer. Paragraph P83K should be included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application. That said, if this is the only ground for refusal, caseworkers should consider the employer's explanation as to why full details of the post were not included in the advertisement. If satisfied that a genuine attempt to recruit from the resident labour market was made, caseworkers might wish to discuss with their line manager whether an exceptional approval is justified.

If an exceptional approval is granted, the approval letter should note the case has been approved exceptionally, waiving the advertising criteria and an adaptation of paragraph P70A included. Caseworkers should set out the reasons given by the employer on gLOBE, which were taken on board when considering the case. The approval letter should set out that this does not set a precedent and that all future applications will be required to meet the full work permit criteria. This should be noted on the employer's comments on gLOBE.

[\[Back to what to do if?\]](#)

The advertisement did not contain full details of the skills, qualifications and experience required for the post – From 30 April 2007, all applications where the accompanying advertisements do not include full details of the skills, qualifications and experience required for the post should be refused.

[\[Back to what to do if?\]](#)

The advertisement did not ask for three years experience of doing the job for which the permit is sought – Where no HND level or higher level qualification is required and the advertisement only states experience is 'preferred' the application should be considered for refusal, as the job is unlikely to meet the skills criteria. Where a vague amount of experience is stated in the advertisement, caseworkers should consider other elements of the application to assess whether the job meets the skills criteria. ([See skills criteria](#)) If not, the grounds for refusal should be that the job does not meet the skills criteria; in neither of these scenarios should the application be refused on the advertisement criteria not being met.

[\[Back to what to do if?\]](#)

The salary in the advertisement is quoted as a salary range rather than a specific salary - An employer can submit an advert that contains a salary range. The 'going rate' indicated on the occupation sheet should be contained within the salary range indicated on the advertisement. Caseworkers should also ensure that the salary range in the advertisement is a true reflection of the post applied for and that it is a genuine attempt to recruit for the post applied for.

Where a specific post has a salary range, the range should be realistic for the job applied for. In addition, where there are a number of jobs with the same job title in the same advert requiring various levels of experience a salary range is acceptable, providing the advert contains full details of the post for which the permit is being applied. The [occupation](#) sheets should be used where necessary to verify the levels of salary.

If the salary range is unrealistically wide, then the advertising criteria has not been met and the case should be refused on grounds that the advert does not represent a genuine attempt to recruit a resident worker.

Where there are a range of posts being advertised in one advert and a salary range covers all of them a caseworker must be satisfied that the specific post being advertised has been truly reflected in the advert and a genuine attempt has been made to recruit from the resident labour market. If the caseworker is not satisfied that is so, then the application should be refused on grounds that the advert does not represent a genuine attempt to recruit a resident worker.

[\[Back to what to do if?\]](#)

The post was advertised on the employer's own website – We do not normally accept advertising on an employer's own web site. However, if the employer can provide evidence to show that their particular site is the most appropriate site to target potential employees in the industry sector, caseworkers should discuss the case with their Line Manager and the Policy Team. For example the BBC, the NHS internet site and the Big 4 accountancy firms (Ernst & Young, KPMG, PricewaterhouseCoopers and Deloitte & Touche) normally advertise vacancies on their own websites. This

may be appropriate, as these companies are internationally well known and the company web site is the most logical place to place an advert.

[\[Back to what to do if?\]](#)

The advertisement was placed more than 6 months before the work permit application was submitted - This, on its own, is a ground for refusal, as this does not demonstrate that the employer has sought to recruit from the currently available resident labour force. Paragraph P83M should be included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application. That said, if this is the only ground for refusal, caseworkers should consider the employer's explanation as to why the post was advertised more than 6 months before the work permit application. If satisfied that a genuine attempt to recruit from the resident labour market was made, caseworkers might wish to discuss with their line manager whether an exceptional approval is justified.

If an exceptional approval is granted, the approval letter should note the case has been approved exceptionally, waiving the advertising criteria and paragraph P70V included. Caseworkers should set out the reasons given by the employer on gLOBE, which were taken on board when considering the case. The approval letter should set out that this does not set a precedent and that all future applications will be required to meet the full work permit criteria. This should be noted on the employer's comments on gLOBE.

[\[Back to what to do if?\]](#)

The employer did not allow four weeks from the advertisement being placed to the work permit application being submitted - This, on its own, is a ground for refusal, as it may indicate that the employer may not have a genuine vacancy and would like to employ the specific person for whom the application has been submitted. Paragraph P83G should be adapted and included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application. That said, if this is the only ground for refusal, caseworkers should consider the employer's explanation as to why they did not wait four weeks to allow resident workers to have their application considered. If satisfied that a genuine attempt to recruit from the resident labour market was made, caseworkers might wish to discuss with their line manager whether an exceptional approval is justified.

If an exceptional approval is granted, the approval letter should note the case has been approved exceptionally, waiving the advertising criteria. Caseworkers should set out the reasons given by the employer on gLOBE that were taken on board when considering the case. The approval letter should set out that this does not set a precedent and that all future applications will be required to meet the full work permit criteria. This should be noted on the employer's comments on gLOBE.

[\[Back to what to do if?\]](#)

The responses to the advertisement show that resident workers applied for the post – Where resident workers have applied for the post advertised,

caseworkers should request details of each person who responded and reasons why each were not offered the post. If caseworkers doubt the reasons why the vacancy has not been made available to resident workers, copies of CVs and applications can be requested using paragraph P63I in the enquiry letter.

Employers have the right to refuse to provide **personal data** (i.e. names, NI numbers, etc.) of staff who are not work permit holders. In this instance, caseworkers should advise them that they must still provide the information requested but they may remove any personal data for resident staff.

Where an advertisement has elicited a large response from resident workers, caseworkers must ask for application details and reasons for rejection of each resident worker, as there is a high probability that suitably qualified resident workers are available. The fact that an overseas national is considered the best candidate for the job is not an acceptable reason to reject a suitably qualified resident worker.

A fundamental principle of the work permit arrangements is to safeguard the rights of a resident worker to apply for the post and not be displaced by workers from non-EEA countries. If the qualifications and experience of any resident workers appear to match those required in the advertisement and the employer has not satisfactorily explained why they did not employ each of them, the application should be refused because this indicates displacement of resident workers. Paragraph P80L should be included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The employer has not provided details of responses to the advertisement – Where the employer has not provided full details of responses to the advertisement, including details of why they did not employ each resident applicant for the post, caseworkers should telephone or write to the employer requesting details of all responses (see [Responses to the advertisement](#)). Where no further information is provided the application should be refused using paragraph P83C in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

An original copy of the advertisement has not been included – Where a copy of an advertisement has not been provided, caseworkers should request an explanation from the employer or their representative as to why the original has not been included. If the original advertisement was placed by the company for a number of posts, and has been provided for another work permit applications, caseworkers should note on employer comments that the original ad was received, detailing the positions advertised for future reference.

[\[Back to what to do if?\]](#)

An original copy of the advertisement has not been included and no credible explanation or evidence has been provided to prove a resident labour search took place – If caseworkers are not satisfied that a genuine attempt to recruit a resident worker has been made or a legitimate reason for not providing a copy of the original has been provided, the application should be refused and paragraph P83A should be included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The employer has provided no evidence of Internet advertising having been available for at least a week – In such cases, the caseworker should phone or write to the employer or their representative requesting appropriate evidence. This should include any invoices and screen prints of the advertisement. Where no further information is provided the application should be refused using an amended version of paragraph P83B in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The advertisement states responses should go to a PO Box number or an agency – Where the advertisement states that responses to an advertisement should go to a PO Box number or to an agency, caseworkers should satisfy themselves that the advertisement was placed by, or on behalf of, the employer. Normally, invoices to the employer will show this. Where no such evidence is available, the application should be refused. The refusal letter should include an explanation that the employer has not satisfied us that they have a genuine vacancy for a resident worker in the UK. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The employer has advertised the post in media aimed at specific ethnic groups or nationalities – Where this is the case, caseworkers should normally expect the post to also have been advertised in English in another medium which is aimed at reaching all 'resident workers' with the required skills and which is readily available throughout the EEA. Where the employer or their representative is unable to provide any evidence of other acceptable advertising, the application should normally be refused using paragraph P83D in the refusal letter. The only exception to the above would be where the post has specific cultural and language requirements. For example, if the post is for a community centre manager whose clients will be from a particular ethnic community, we may accept advertising in an appropriate publication aimed at that particular ethnic group.

[\[Back to what to do if?\]](#)

The employer has used a head-hunter – Where a head-hunter has been used to locate a senior level or specialist worker, caseworkers should see the terms upon which the head-hunter was employed and details of all methods they used to locate the individual. If the head-hunter only looked at a list of

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names registered with them, the resident labour search requirement has not been satisfied. The application should therefore be refused and an adaptation of paragraph P83K included in the refusal letter. Caseworkers should note that all refusal reasons should be included in a refusal letter and all letters should be tailored to the individual application.

[\[Back to what to do if?\]](#)

The employer has advertised the post via JobcentrePlus – Where this is the case, caseworkers should expect to see a letter from Jobcentre Plus confirming that they have placed the advertisement on behalf of the employer. Caseworkers should note that JobcentrePlus advertising is not usually acceptable for senior level or highly specialised posts.

[\[Back to what to do if?\]](#)

The advertising meets the criteria – Caseworkers should continue the caseworking process.

[\[Back to what to do if?\]](#)

[\[Back to top\]](#)