Employers – legal entities

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There are two key principles that impose a legal restriction on the parties that can enter into an apprenticeship or traineeship:

- The employer of an apprentice or trainee must be a legal entity or a partnership of legal entities.
- An employer and an apprentice/trainee cannot enter into a training contract unless they are distinct legal entities.

Parties must be distinct legal entities

Sole traders

Sole traders may not register as an apprentice or trainee with their own business.

Limited liability companies

Whilst there is no outright prohibition on a company director being employed by the company as an apprentice or trainee, such arrangements may give rise to a conflict of interest. Where an application for an apprenticeship or traineeship is submitted by a person who is a director of the company that is the legal employer, the applicant should disclose on the application that they are in a business relationship with the employer. The application will then be assessed on its merits.

Partnerships

A partnership is a legally-binding relationship between persons or legal entities carrying on business in common with a view to making a profit. Unlike a company it is not a legal entity, but is simply an arrangement between the individuals or other parties who comprise it.

- It is a principle of law that a person who is a member of a partnership cannot be employed by that partnership. A partner cannot pay salary and wages to his/her partner(s).
- A person in a partnership cannot become an apprentice or trainee to that business.
- Where an application to establish a training contract between the partners of a business is received the applicants are to be advised that they are unable, by law, to enter into the agreement.

Note: It is not appropriate to ask a partner who is in a business partnership to step outside that partnership and make an application as a single legal entity.

Trusts

Unlike a company, a trust is not a legal entity in its own right and therefore cannot directly employ apprentices or trainees. In circumstances where a trust arrangement is indicated, there will be a trustee authorised to conduct the trust’s business. The trustee, whether an individual, a partnership or a proprietary company, contracts on behalf of the trust and accordingly would be the legal employer of the apprentices/trainees employed by the trust. The trust deed under which the trustee is appointed may be requested if there is any doubt as to the correct legal employer.

Note that where a unit trust arrangement is indicated, the terms of unit trusts divide the ownership of the trust into a number of equal units issued to investors, companies or other joint ventures. In the case of unit trusts, as with other trusts, the unit trust trustee should be indicated on the application as the legal employer of the apprentice/trainee.

Note: A person cannot be registered as an apprentice or trainee if the legal employer is a trust and they are the trustee of that trust, or a partner in a partnership that is the trustee of that trust.

Commissioner for Vocational Training
Related Information
- Approval requirements for apprenticeship and traineeship applications.