

Policy Number: HR/0033/v3(2)

Issue / Version No: 3

Temporary Agency and Self- Employed Workers Procedure

Current Status: Ratified

Compliance

All members of Tees, Esk and Wear Valleys NHS Foundation Trust will adhere to the parameters of trust Policies and Procedures. The consequences of non-compliance may include disciplinary action and / or legal action.

DOCUMENT CONTROL

| | | |
|--|--|--------------------------------------|
| Application | This procedure applies to all staff who appoint temporary agency workers or self-employed workers within Tees, Esk and Wear Valleys NHS Foundation Trust | |
| Associated policy reference and title | Recruitment and Selection Procedure CRB Policy and Procedure Professional Registration Policy Learning and Development Policy NHS Employers Employment Standards NHS Government Procurement Service website www.buyingsolutions.gov.uk | |
| Date of Ratification | 10 September 2012 | |
| Date of Review | 31 March 2024 (extended) | |
| Replacing | HR/0033/v3(1) Temporary Agency and Self-Employed Workers Procedure | |
| Lead | Beverley Brown | |
| Members of working party | Beverley Brown Kay Hodgson | |
| This procedure has been agreed and accepted by: | | |
| Name | Designation | Date |
| David Levy | Director of Human Resources, Organisation Development and Communications | |
| This policy has been ratified by: | | |
| Trust Board or Trust Board Sub Committee (specify) | | Date of Trust Board or Sub Committee |
| Workforce Development Group | | 10 September 2012 |
| This policy has gone through an equality analysis (EA) | | Date of EA |
| | | February 2012 |

Amendments

September 2012 – Induction form in Appendix 3 changed
 January 2016 – Review date extended to 31 December 2017
 January 2017 – Minor amendment. References to recruiting agency changed from Core People to Reed.
 07 February 2019 - Document under review, review date extended from 31 December 2017 to new review date of 30 April 2019 allow review work to be done.
 24 April 2020 – Review date extended to 31 September 2020.
 09 December 2020 – Review date extended to 31 March 2021
 29 March 2021 – Review date extended to 30 September 2021
 2022 – Review date extended to 31 March 2022
 May 2023 – Review date extended to 31 July 2023
 Feb 2024 – Review date extended to 31 March 2024

KEY POLICY ISSUES

- When followed this procedure addresses a gap in the assurance processes when recruiting temporary staff through agencies or self employed individuals directly or through agencies.
- All staff who recruit temporary agency staff or recruit self employed workers are required to follow the procedure

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1. INTRODUCTION

- 1.1 From time to time the Trust may experience extreme staffing difficulties, and after considering all alternatives, need to secure the use of temporary agency or self employed workers to maintain service provision.
- 1.2 This procedure ensures an auditable approach to compliance of those requirements throughout the lifetime of any temporary working arrangements.
- 1.3 Due to the high cost of employing temporary staff, the Government Procurement Service (formally PASA and Buying Solutions) provide procurement savings in the UK public sector to deliver centralised procurement for central government departments. These are known as approved agencies.
- 1.4 Government Procurement Service agencies provide a range of temporary staff groups such as nursing, allied health professionals, medical and administrative workers.
- 1.5 Where temporary agency workers are required, authorising managers should use Government Procurement Service approved agencies only. In exceptional circumstances due to business need that a non-approved agency is required, then managers may use a different agency only if they retain evidence of all the necessary employment checks have been carried out by the agency.
- 1.6 A full list of Government Procurement Service agencies can be found at their website at <http://www.buyingsolutions.gov.uk> under the “suppliers” section.
- 1.7 This procedure ensures that the Trust is compliant with the Agency Workers Regulations (AWR) 2011.

2. PRINCIPLES

- 2.1 Situations can arise which may require additional temporary agency workers including:
 - Covering vacant posts on a temporary basis whilst recruiting to them, or that have proven to be difficult to fill.
 - Increased additional national pressures on the service e.g. maintaining/reducing waiting times
 - Short term funding for specific projects where other employees are not available through secondment or a re-alignment of work.
 - Covering essential work where staff are unavoidably absent

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- 2.2 Independent contractors and self employed workers can only be appointed with the explicit authority of the Service Director. There are strict requirements relating to liability insurances which must be checked and contractual documentation must be in line with legal requirements. It is essential that contract documentation is agreed with Human Resources.
 - 2.3 The Agency Workers Regulations were introduced 1st October 2011 entitling agency workers to the same or no less favourable treatment with respect to basic employment and working conditions after a 12 week qualifying period. The legislation also entitles workers access to facilities e.g. canteen, childcare facilities and parking, and the entitlement to apply for internal job vacancies from day one of the assignment.
 - 2.4 The right to equal treatment will not apply until an agency worker has worked in the same (or significantly similar) role for a hirer for twelve qualifying weeks. The qualifying period is analogised as a clock which can be reset, paused or continue to “tick”. For guidance on calculating the twelve week qualification, please see appendix 3 or contact the HR Assurance team for advice.
 - 2.5 The Trust have agreed to procure all non-medical and non-clinical staff through a sole provider agency which is Reed. Recruiting managers of staff groups such as admin and clerical, finance, HR and IT must contact Reed in the first instance to source an appropriate temporary agency worker.

3. DEFINITIONS

- 3.1 For the purposes of the regulations, an agency worker is defined as an individual who has a contract with a temporary work agency and who is supplied by that agency to work temporarily under the supervision and direction of a “hirer” (the Trust).
- 3.2 A temporary agency is defined as an organisation that is in the business of supplying individuals to work temporarily for hirers.
- 3.3 A self employed person is an individual who is registered with the Inland Revenue in their own right or as a business and is responsible for paying their own tax and national insurance and who has their own insurances.
- 3.4 It is important to distinguish between whether those working are “employees” or “workers” because there are important legal rights that only apply if an individual is an employee e.g. protection from unfair dismissal and the right to statutory payments such as sick, maternity or redundancy pay.#
- 3.5 Qualifying period – this is described further in appendix 4.

4. RESPONSIBILITIES

Recruiting managers

- 4.1 To follow local protocols relating to the use of agency staff.
- 4.2 To consider alternatives before employing agency or self employed workers.
- 4.3 To maintain evidence that the necessary NHS pre-engagement checks relevant to the post have been carried out e.g. pre employment health clearance, Criminal Records Bureau (CRB) disclosure and current professional registration before commencement.
- 4.4 To maintain a record of the personal details, skills and competences of the worker. This is usually in the form of a CV.,
- 4.5 To maintain a copy of any driving licence and/or insurance certificates that may persist during the life of the contract if the role requires it.
- 4.6 To ensure that the temporary worker completes the information governance online training (Available at: www.connectingforhealth.nhs.uk/igtrainingtool).
- 4.7 To review the duration and cost effectiveness of the agency or self employed worker assignment, and retain evidence of the authority to recruit and reasons for any agreed extension to the original request.
- 4.8 To authorise invoices in a timely manner.
- 4.9 To notify any issue/concern over an individual e.g. sickness absence, punctuality, competence etc to the recruitment agency and link with the Human Resources operational department where necessary.
- 4.10 To ensure that relevant notice has been provided to the recruitment agency if a temporary worker has subsequently recruited as an employee of the Trust, so that an introduction fee will not be charged

Human Resources Department

- 4.11 The human resources assurance team will monitor all the agencies being used by the Trust to assure the Trust that the agencies are able to meet NHS pre-engagement requirements. Medical staffing will maintain a separate record of medical agency staff.
- 4.12 To highlight to Executive Management Team any agencies who cannot assure the Trust that they are able to meet NHS pre-engagement requirements and take appropriate measures.
- 4.13 To maintain a database of all agency staff in the Trust to ensure compliance with the AWR (2011).

- 4.14 To provide regular reports on agency usage and compliance with the AWR (2011).
- 4.15 To provide advice on the AWR (2011) and the implementation of this procedure

Finance Department

- 4.16 To ensure that appropriate contract terms are proposed for self employment
- 4.17 To agree appropriate rates for self employed workers.
- 4.18 To monitor Trust expenditure on agency and self employed workers to ensure value for money.
- 4.19 To process invoices in a timely manner and in accordance with standing financial instructions.
- 4.20 To provide monitoring reports for directorates and the Trust and make recommendations relating to those reports.

5. PROCEDURE TO ENGAGE AGENCY WORKERS

5.1 Appointing Manager:

- a. Consider all alternatives to using agency or self employed workers before hiring
- b. Consider the duties and duration of the placement
- c. Identify the appropriate pay band by producing a job description and person specification (existing job descriptions should be used where possible) to achieve an Agenda for Change band outcome. If the post is a new post that does not exist in the Trust e.g. bespoke one-off projects, this will not require a full evaluation, unless it is later recruited on a substantive basis in line with the Job Evaluation Policy and Procedure. If the post is new, email a copy to the HR Assurance team who will make an assessment of the provisional Agenda for Change banding
- d. For non-medical and non-clinical roles, complete Appendix 1 and contact Reed (contact details on page 9) and provide a copy of the form to the HR Assurance team.
- e. For medical or clinical roles, complete Appendix 1 and contact an approved agency from the GPS website (www.buyingsolutions.gov.uk) and provide a copy of the form to the HR Assurance team.

- f. Ensure that all necessary checks associated to the post are evidenced.
- g. Interview where appropriate and necessary
- h. Agree a mutual commencement date. Once a mutual start date is agreed, the agency will email a copy of the contract.
- i. Books mandatory training including IT network access training unless there is evidence of previous Trust network access training
- j. Create a personnel file containing the information in appendices and any other relevant information.
- k. Undertakes a local induction using the template at Appendix 3.
- l. Retain all signed documentation relating to induction and timesheets, with copies to the HR Assurance team where required
- m. If the temporary agency assignment exceeds the 12 week qualifying period, the recruitment agency will contact the recruiting manager to discuss what entitlements the agency worker will now be entitled to
- n. Communicate with the recruitment agency when the contract is to be terminated and provide any relevant notice in line with the contract conditions
- o. If a current temporary agency worker is successful at interview and consequently becomes a permanent employee, provide due notice to the agency to avoid the Trust paying a placement (finders) fee

6. PROCEDURE TO ENGAGE SELF EMPLOYED WORKERS

6.1 Appointing Manager:

- a. Consider why alternatives to using self employed workers are not available or appropriate.
- b. Agree the scope of work, requirements and duration.
- c. Identify and agree the appropriate rates with finance
- d. Starts to complete the record at Appendix 1
- e. Create a file containing the information in appendix 1 and any other relevant information.

-
- f. Contacts the relevant self employed worker with the details and requirements of the work and the contract terms and insurance requirements.
 - g. Carries out face to face interviews where appropriate and necessary.
 - h. Ensures that all necessary checks associated with the work are processed and evidenced e.g. identity, right to work in the UK, professional registration, CRB, health.
 - i. Ensures that evidence of self employment status e.g. Certificate of Incorporation, VAT registration, or other appropriate Inland Revenue documentation is seen and copies held on file.
 - j. Ensures that contract terms have been signed and that insurance certificates including employers liability, public liability, professional indemnity are appropriate and copies are held on file.
 - k. Undertakes an appropriate and robust local induction programme using Appendix 3.
 - l. Books mandatory training including IT network access training unless evidence of completion in previous assignments.
 - m. When the contract is terminated it is carried out in a legal manner with any relevant notice provided in the correct format in line with the contract conditions to the appropriate self-employed worker.

7. MONITORING AND CONTROL

- 7.1 Audits to monitor and measure compliance with the requirements of the policy across the organisation will be conducted in line with the approved audit cycle. The audits will be conducted on a six monthly basis with reports being submitted to the Workforce Development Group in line with the audit cycle. Where deficiencies are identified as part of the audit an action plan will be developed and progress against the action plan will be monitored by the Workforce Development Group. All agencies will be monitored for compliance by the Human Resources department for assurance against the Government Procurement Service and NHS employment standards.
- 7.2 The recruiting manager should review assignments on an on-going basis. This review should address:
 - The continuing need for the work
 - Whether alternatives have now become available that can be considered
 - The standard of work performance
 - Progress against agreed targets and requirements
 - The expenditure incurred

8. REVIEW AND AMENDMENT

- 10.1 This procedure will be reviewed from time to time to ensure continued suitability.

9. APPENDICES

Appendix 1: Temporary Agency Request Form
Appendix 2: Employment standards checklist
Appendix 3: Induction checklist
Appendix 4: Guidance on calculating the 12 week qualifying period

10. RELATED POLICIES AND DOCUMENTS

Recruitment and Selection Policy Procedure
CRB Policy and Procedure
Professional Registrations Policy
NHS Employers Employment Standards
Government Procurement Service website <http://www.buyingsolutions.gov.uk>
Reed – www.reed.co.uk or 01642 256400.

11. AUTHOR

Beverley Brown
Head of Workforce Information and Assurance

APPENDIX 1

TEMPORARY AGENCY OR SELF EMPLOYED WORKERS REQUEST FORM

| RECRUITING MANAGER'S DETAILS | |
|--------------------------------------|-------------------|
| Recruiting Manager: | Job title: |
| Recruiting Manager Job Title: | Dept/Team: |
| Address: | Telephone: |
| | Email: |

| VACANCY DETAILS | |
|---|--------------------------------|
| Position: | Address: |
| Reason: | |
| Duties/Skills/Experience: | Dept/Team: |
| | Line manager/report to: |
| | Telephone: |
| Anticipated start date: | Anticipated end date: |
| Hours per week: | Hours of work: |
| Pay band: | Spine point: |
| Please indicate if overtime, on-call or shift/unsocial hours are applicable: | Is a CRB required?: |
| Additional information: | |
| I confirm that I am authorised to provide this information for and on behalf of Tees Esk and Wear Valleys NHS Foundation Trust | |
| Signature: _____ | Date: _____ |

[PLEASE SEND COMPLETED FORMS TO THE RECRUITMENT AGENCY AND A COPY TO THE HR ASSURANCE TEAM OR MEDICAL STAFFING TEAM](#)

APPENDIX 2

AGENCY WORKERS PRE-ENGAGEMENT STANDARDS CHECKLIST

| AGENCY WORKERS DETAILS | | |
|--|-----------------------------------|---------------------|
| Name: | Home address: | |
| Position: | | |
| Date of birth: | Emergency contact details: | |
| National insurance number: | | |
| Please tick if the following have been seen | | |
| | Details | Tick if seen |
| Identity check | | |
| Evidence of qualifications/experience | | |
| Occupational health assessment | | |
| Professional registration body | | |
| Professional registration pin number | | |
| Professional registration expiry date | | |
| Work permit number (if applicable) | | |
| Work permit expiry date (if applicable) | | |
| CRB disclosure level (if applicable) | | |
| CRB disclosure number | | |
| CRB disclosure date | | |

SIGNED:

TITLE:

DATE:

[RETAIN ON AGENCY WORKER'S PERSONAL FILE](#)

APPENDIX 3

LOCAL INDUCTION CHECKLIST AND MONITORING FORM FOR TEMPORARY AGENCY STAFF

| | |
|--|--|
| Completion of this document is a MANDATORY REQUIREMENT for staff who have been contracted from another organisation to carry out work within Tees Esk and Wear Valleys NHS Foundation Trust in order to comply with the NHSLA and CQC standards and the Agency Workers Regulations 2011 | |
| Timescales: | Local induction must be completed within 24 hours of a person commencing a piece of work with the Trust. |
| Who with: | The line manager or person assigned by the line manager. |
| Storage: | A copy of the whole document must be stored by the appointing/line manager locally in a secure place in line with Trust Policies and Procedures. |

| | |
|------------------------------------|--|
| Name of agency worker | |
| Employer/Agency Name | |
| Job title | |
| Directorate | |
| Ward/Department | |
| Start date | |
| Estimated contract end date | |

I confirm that the above person has completed a local induction programme that meets the standards for induction

Line Manager Signature:

Date:

Line Manager Name (print):

Agency worker signature:

Date:

Agency worker name (print):

[PLEASE RETAIN A COPY ON THE AGENCY WORKER'S PERSONAL FILE](#)

| Induction list (Please complete the column on the right to acknowledge that the following have been completed, provided or discussed) | Signature & date of temporary staff member |
|--|---|
| Induction to trust/department | |
| Network access course has been arranged/attended – <i>all staff requiring access to the network must attend this training course</i> | |
| You are aware that you need to complete the mandatory information governance e-learning course via the Connecting for Health website within 14 days of commencement | |
| You have successfully completed the information governance mandatory training and have printed the certificate for your manager/supervisor | |
| You have been introduced to work colleagues and their roles | |
| You have had a tour of your department or service area, including security arrangements i.e. door codes, keys, fobs | |
| You have been shown how to access appropriate IT systems, email, databases, intranet etc where appropriate | |
| You have been shown the location of toilets | |
| You have been shown the location the kitchen, drink making facilities, canteen etc | |
| You have been made aware of the car parking facilities and any local parking enforcements in place | |
| You have been advised of your entitlement to apply for internal Trust vacancies via NHS Jobs | |
| Working practices and procedures | |
| You have discussed the description of duties | |
| You understand the arrangements relating to management of time, your hours of duty and rest break arrangements | |
| You are aware of the appropriate uniform or dress code | |
| You understand that you need to wear appropriate identification at all times on Trust premises | |
| You understand how to report sickness and make annual leave requests | |
| You are aware of the timesheet authorisation process | |
| You have been shown the location of Trust policies and procedures relevant to your role | |
| You have discussed confidentiality and how it applies to your role | |
| Health and safety procedures | |
| You have been shown the following: <ul style="list-style-type: none"> • Procedure in the event of a fire • Location of emergency exits, fire panels and alarms • Location and use of fire extinguishers • Location of first aid box and nominated first aiders | |
| You have discussed the reporting of incidents procedure | |

| | |
|--|--|
| You understand infection control guidelines | |
| You have discussed personal safety e.g. alarms where necessary, bleep systems, lone working procedures | |
| Social and welfare | |
| You are aware of the Trust's no smoking policy and location of smoking facilities | |
| You are aware of the Trust's childcare facilities where available | |

APPENDIX 4

GUIDANCE ON CALCULATING THE 12 WEEK QUALIFYING PERIOD

The right to equal treatment will not apply until an agency worker has worked in the same (or significantly similar) role for a hirer for twelve continuous weeks. However, this qualifying period is analogised as a clock which can be reset, paused or continue to “tick”.

There is no minimum amount of work that needs to be completed in order for a week to count as one of the twelve for qualification purposes.

The entitlements that are activated once the qualifying period has been met include:

- pay related to work undertaken on assignment
- duration of working time
- night work
- rest periods
- rest breaks
- annual leave
- paid time off for ante-natal appointments
- Other payments include overtime (where qualifying hours have been completed) and annual pay award if relevant.

There are exclusions that are not covered under the regulations such as occupational sick pay from the hirer, occupational pensions (agency workers will be covered by new automatic pension enrolment which will be phased in from October 2012), occupational maternity, paternity or adoption pay, redundancy pay, notice pay, time off for trade union duties, expenses and the majority of benefits in kind.

Calculating the twelve week qualification

The twelve week qualifying period is triggered by working in the same job (or significantly similar) with the same hirer for twelve calendar weeks. Therefore, even if the agency worker is on assignment for only a few hours a week, it will still count as a week and they will still be entitled to equal treatment after twelve calendar weeks calculated in this way.

A new qualifying period will only begin if the new assignment with the same hirer is substantively different and/or there has been a minimum of six weeks break between assignments.

An agency worker can qualify for equal treatment after twelve weeks in the same role with the same hirer, regardless of whether they have been supplied by more than one agency for part of that period of time.

The general rule under the Regulations is that any break between assignments of six weeks or less, in the same role, shall not break ‘continuity’ for qualification purposes.

The qualifying clock

The twelve week provisions can best be explained by thinking of the qualifying period as a clock which runs from zero to twelve. Sometimes a gap between assignments will mean that the clock is reset to zero and must start again. In other circumstances a break will merely 'pause' the clock which will then continue to tick when the agency worker returns. In some limited circumstances, the clock will continue to tick even if the agency worker is not working on an assignment.

There are reasons where the qualifying clock is reset to zero. Most commonly it will be because an agency worker begins a new assignment with a new hirer. Other instances are where an agency worker remains with the same hirer but is no longer in the same role, and if there is a break between assignments with the same hirer of six weeks or more (which is not one which 'pauses' the clock or during which it continues to 'tick').

Qualifying clock to "pause"

There are specific types of break which will cause the qualifying clock to "pause":

- A break for any reason where the break is no more than six calendar weeks
- A break of up to 28 weeks because the agency worker is incapable of work because of sickness or injury
- Any break which is for the purpose of taking leave to which the agency worker is entitled, including annual leave
- A break up to 28 calendar weeks to allow the agency worker to perform jury service
- A break caused by a regular and planned shutdown of the workplace by the hirer (for example at Christmas)
- A break caused by a strike, lock out or other industrial action at the hirer's establishment

Qualifying clock to continue to tick

There are breaks where the clock continues to tick. These are breaks due to pregnancy, childbirth or maternity which take place during pregnancy and up to 26 weeks after childbirth; and any breaks due to the worker taking adoption or paternity leave.