

NHS CASTLE POINT AND ROCHFORD CLINICAL COMMISSIONING GROUP

TEMPORARY STAFFING POLICY

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Temporary Agency and Self- Employed Workers Policy

1. Introduction

- 1.1 NHS Castle Point and Rochford CCG (hereafter referred to as “the CCG”) has a responsibility to ensure that proper governance is in place and is in accordance with best practice in corporate, clinical and financial governance. It is important to ensure that the CCG manages the use of off-payroll workers, in the interest of complying with HMRC regulations, the NHS guidance regarding the use of agencies and also the internal values of the organisation.
- 1.2 From time to time the CCG may experience extreme staffing difficulties, and after considering all alternatives, need to secure the use of temporary agency or self- employed workers/contractors to maintain service provision.
- 1.3 This policy ensures an auditable approach to compliance of those requirements throughout the lifetime of any temporary working arrangements.
- 1.4 The policy includes the IR35 legislative changes that came into effect in April 2017.

IR35 originally came into force in April 2000 and applies where the services of an individual are provided to a client organisation (the CCG) through an intermediary (for example a Personal Service Company) rather than a contract of employment.

From April 2017, where the client receiving the individual’s services is a ‘public authority’ (including the NHS), responsibility for determining whether IR35 applies will move from the intermediary to the public authority; or any agencies/third parties making the payment to the intermediary.

In this instance and where the legislation applies, the responsibility for operating PAYE and accounting for income tax and national insurance will fall on the CCG (or relevant third party i.e. if an agency worker attached via a recognised agency).

The CCG are responsible for understanding whether IR35 applies in all cases when appointing temporary agency or self-employed workers and evidence must be retained in respect of the check undertaken. In order to make the assessment managers will need to undertake an assessment using the HMRC online toolkit –

<http://www.gov.uk/guidance/check-employment-status-for-tax/>

A key change as a result of the application of the revised legislative changes is that the CCG are prevented from appointing a self-employed worker who would have previously have been considered as an 'off-payroll worker/contractor'. The legislation now requires that 'contractors' engaged directly (rather than via an agency) will need to be paid via the CCG payroll to ensure various deductions (PAYE, NI and the Apprenticeship Levy) are deducted correctly.

- 1.5 Due to the high cost of employing temporary staff, the Crown Commercial Service (formerly known as the Government Procurement Service "GPS" and PASA Buying Solutions before that) provide procurement savings in the UK public sector to deliver centralised procurement for central government departments. These are known as approved agencies.
- 1.6 Crown Commercial Service agencies provide a range of temporary staff groups such as nursing, allied health professionals, medical and administrative workers.
- 1.7 Where temporary agency workers are required, authorising managers must use Crown Commercial Service approved agencies only and non-approved agencies cannot be used.
- 1.8 A full list of Crown Commercial Service agencies can be found at their website at <http://ccs-agreements.cabinetoffice.gov.uk/suppliers>

If you need to source non-clinical staff, you will need to select the Non-Medical Non-Clinical (NMNC) agreement on the Crown Commercial Service agencies website as it is the only approved framework to compliantly source non-clinical staff.

- 1.9 This policy ensures that the CCG is compliant with the Agency Workers Regulations (AWR) 2011.
- 1.10 This policy ensures that the CCG is compliant with IR35 legislation.

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
- 2.2 Independent contractors and self employed workers can only be appointed with the explicit authority of the Corporate Management Team (CMT) and consideration must be given to the IR35 requirements and NHS England approval. Individuals will also need to be paid via the CCG's payroll and as such recruitment processes will need to be adhered to.
- 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 4 or contact the HR Business Partner for advice.
- 2.5 On 23rd November 2015, NHS Improvement (formerly known as Monitor and the NHS Trust Development Authority (TDA) introduced a cap on the total amount NHS providers can pay per hour for an agency worker. Full details can be found at <https://improvement.nhs.uk/resources/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/>.
- 2.6 From 1st April 2016, the same cap will apply for junior doctors, other clinical staff and non-clinical staff, which is +55%.
- 2.7 This cap represents the absolute maximum that the CCG could pay, but the default approach should be to pay the same rate for agency staff as would be paid to a direct employee of the CCG in the same role. Advice on agency workers spending caps can be obtained from the AGEM CSU

HRBP Team.

- 2.8 Managers using agency workers are responsible for checking the rates of pay of agency staff to ensure that they comply with the caps outlined in 2.5.
- 2.9 Approved agencies (please refer to sections 1.4 to 1.6) are responsible for paying their agency staff placed in the CCG and agencies operate by invoicing the CCG. Under no circumstances can any agency worker invoice the CCG directly. All payments must be received from the approved agency.
- 2.10 on 1st August 2016, NHS England published guidance requiring CCG's to complete a business case to be submitted to NHS England prior to engaging an off payroll worker if certain criteria are met as shown in the following table:

Off payroll workers/agency workers	
Daily rate	Approval requirements
<£600 and less than 6 months	Not required, unless categorised as a role of significant influence
< £600 and greater than 6 months	NHS England DCO and Director of Finance (DoF)
£600-£800	NHS England DCO and DoF
>£800-£900	NHS England DCO, DoF, Regional Director and Regional DoF AND NHS England Commercial Executive Committee
Role of significant influence	In accordance with daily rate or NHS England DCO and DoF under £600 per day

- 2.11 The business case is provided by NHS England and applies to all new off payroll workers engaged from 1st August 2016 onwards. Please note that retrospective business cases were also required for off payroll workers meeting the above criteria who were engaged by the CCG prior to 1st August 2016 and who were still engaged by the CCG 1st August

2016. A briefing note on business cases has been issued by NHS England and advice can be obtained from the AGEM CSU HRBP team.

- 2.12 Reasonable travel expenses (excluding home to base commuting) incurred whilst performing CCG business will be reimbursed in line with Agenda for Change rates. Agency workers themselves will be responsible for maintaining an accurate record of any mileage incurred and make sure it is authorised in a timely manner.

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 CCG).
- 3.2 A recruitment or 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 own personal liability indemnity insurances to the appropriate limits circa £5-10m.

Please Note: IR35 Legislation (April 2017) now requires these individual’s to be paid via the CCG’s payroll.

- 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. Agency staff are not employees.
- 3.5 Guidance on calculating the 12 week qualifying period is attached at Appendix .

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 such as secondments, temporary acting up/interim arrangements for existing staff.
- 4.3 To ensure that, if required, a Business Case is completed and submitted to NHSE and approval is granted before engaging an off-payroll worker (see **Appendix 5**).
- 4.4 To adhere to IR35 legislative requirements.
- 4.5 To consider how the costs of an agency worker will be managed within the overall budget, i.e. it is likely that the agency costs will be higher than the budget allocated for a permanent employee due to having to pay a fee to the agency. This could be managed through the agency worker working fewer days/hours, or for a shorter period of time, or doing slightly different duties at a lower band.
- 4.6 To be responsible for agreeing with the recruitment agency the terms of the introduction fee. The recruiting manager must provide the agency with written confirmation of when an introduction fee will be chargeable/non-chargeable which will be depending on the length of time an agency worker was at the CCG prior to being subsequently recruited as an employee of the CCG. This will vary depending on the agency used and their terms and conditions.
- 4.7 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 disclosure, DBS disclosure and current professional registration before commencement.
- 4.8 To maintain a record of the personal details, skills and competences of the worker. This is usually in the form of a CV.
- 4.9 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.

- 4.10 To ensure that the agency worker completes the relevant information governance online training as required (Available at: www.connectingforhealth.nhs.uk/igtrainingtool). Please note that managers can request for agency workers to have access to statutory/mandatory training through ESR. Further information can be obtained from the AGEM CSU HRBP team.
- 4.11 To ensure that the agency worker is aware of the requirement to inform the CCG if they are employed or engaged in, or wish to be employed or engaged in, any employment or consultancy work in addition to their work with the CCG where it creates a conflict of interest with CCG business, policies or activities.
- 4.12 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.
- 4.13 To authorise invoices in a timely manner.
- 4.14 To ensure the agency worker reads, understands and signs the confidentiality agreement.
- 4.15 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 Business Partner where necessary.
- 4.16 To report any suspicions of fraud, bribery or corruption to the CCG's nominated NHS Local Counter Fraud Specialist or Chief Finance Officer in accordance with the CCG's Anti-Fraud, Bribery and corruption Policy, or to NHS Protect via the National NHS Fraud and Corruption Reporting Line 0800 028 40 60 or website <https://www.reportfraud.nhs.uk/> Examples could be possible false identity documents, false references or employment histories, non-declared criminal convictions or cautions on DBS checks, or potential breaches of Computer Misuse Act 1990.

Assurance Team

- 4.11 To maintain a database of all agency staff in the CCG to ensure compliance with the AWR (2011).

- 4.12 To provide regular reports on agency usage and compliance with the AWR (2011).
- 4.13 To ensure that appropriate contract terms are proposed for self-employment taking account of the IR35 legislative requirements and undertaking in conjunction with the recruiting manager the HMRC online test and retaining the required evidence to confirm status.
- 4.14 To agree appropriate rates for self employed workers taking account of the NHS England requirements.
- 4.15 To monitor CCG expenditure on agency and self employed workers to ensure value for money.
- 4.16 To process invoices in a timely manner and in accordance with standing financial instructions.
- 4.17 To provide monitoring reports for CMT, Remuneration Committee and Audit Committee and make recommendations relating to those reports.
- 4.18 To report any suspicions of fraud, bribery or corruption to the CCG's nominated NHS Local Counter Fraud Specialist or Chief Finance Officer in accordance with the CCG's Anti-Fraud, Bribery and Corruption Policy, or to NHS Protect via the National NHS Fraud and Corruption Reporting Line 0800 028 40 60 or website <https://www.reportnhsfraud.nhs.uk/> Examples could include possible false timesheets or contracted hours not being worked.

5 Procedure to Engage Agency Workers

5.1 Appointing Manager:

- Consider all alternatives to using agency or self-employed workers before hiring.
- Consider the duties and duration of the placement.
- 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 CCG 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 Business Partner who will make an assessment of the provisional Agenda for Change banding

- Complete the Temporary Agency or Self-Employed Workers Request Form - Appendix 1 and submit for approval.
- Once approval gained contact an approved agency from the GPS website (www.buyingsolutions.gov.uk) and provide a copy of the form to the Finance team.
- Ensure that all necessary checks associated to the post are evidenced.
- Interview where appropriate and necessary
- Agree a mutual commencement date. Once a mutual start date is agreed, the agency will email a copy of the contract.
- Books mandatory training including IT network access training unless there is evidence of previous Trust network access training
- Create a personnel file containing the information in appendices and any other relevant information.
- Undertakes a local induction using the template at Appendix 3.
- Retain all signed documentation relating to induction and timesheets.
- 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.
- Communicate with the recruitment agency when the contract is to be terminated and provide any relevant notice in line with the contract conditions.
- 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 CCG paying a placement (finders) fee.

6. Procedure to Engage Self Employed Workers

6.1 Appointing Manager:

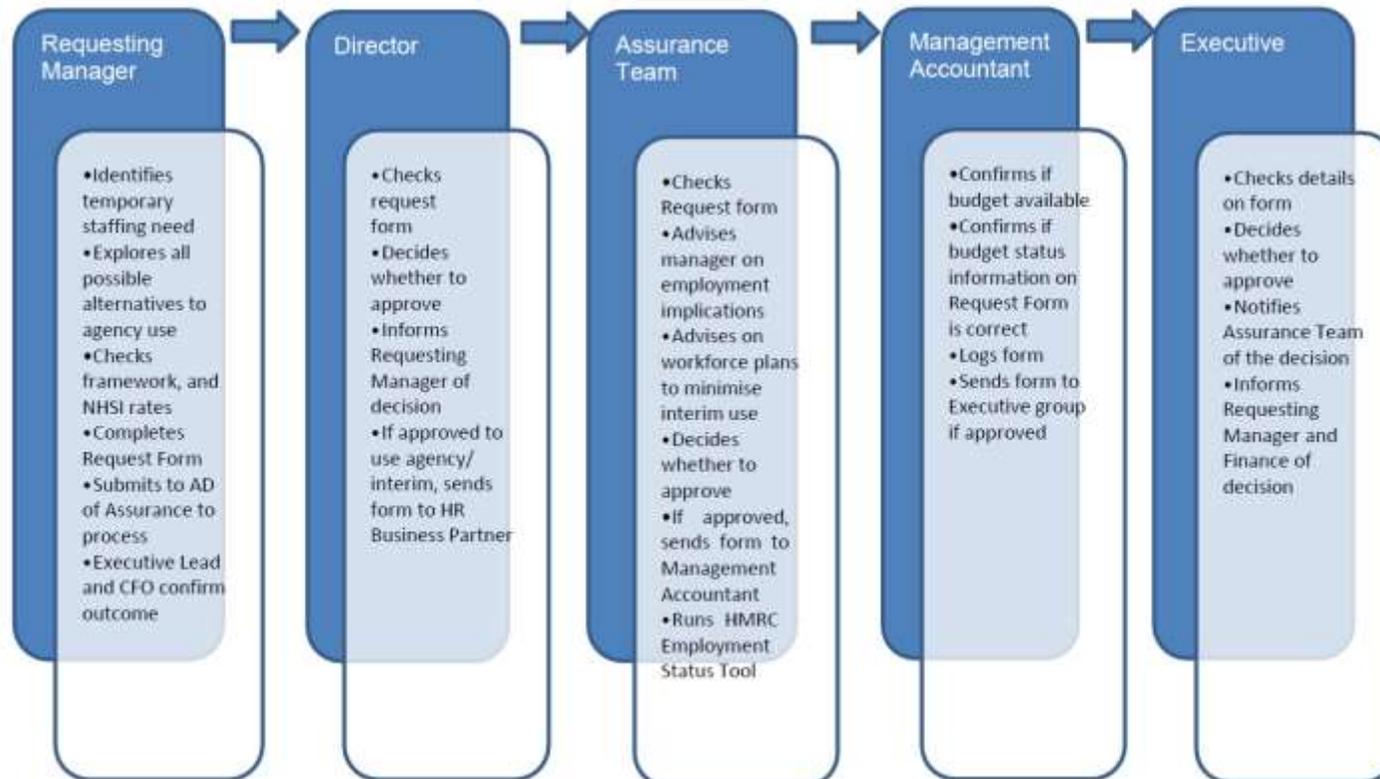
- Follow Temporary Staffing Flow Chart noted below in **Figure 1**.
- Consider why alternatives to using self-employed workers are not available or appropriate.
- Agree the scope of work, requirements and duration.
- Identify the appropriate pay band by producing a job description and person specification (existing job descriptions should be used where possible) to achieve an Agenda for Change band outcome.
- Check whether or not approval is required from NHS England for the agency worker based on cost and duration, if so, a Business Case must be submitted to NHS England and permission received before engaging the off-payroll worker.
- Complete the Temporary Agency or Self-Employed Workers Request Form Appendix 1 and submit for approval.
- Once approval is gained, contact an approved agency from the Crown Commercial Services agencies website.
- Identify and agree the appropriate rates with finance
- Create a file containing the information in appendix 1 and any other relevant information.
- Contacts the relevant self-employed worker with the details and requirements of the work and the contract terms and insurance requirements.
- Carries out face to face interviews where appropriate and necessary.
- In addition to checks undertaken by the Agency, managers must also carry out their own recruitment checks. Evidence that these checks have been processed and e.g. identity, right to work in the UK, professional registration, DBS check, health clearance.
- 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.

- 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.
- Undertakes an appropriate and robust local induction programme using Appendix 3.
- Books mandatory training including IT network access training unless evidence of completion in previous assignments.
- Ensure that the individual is aware of the requirement to inform the CCG if they are employed or engaged in, or wish to be employed or engaged in, any employment or consultancy work in addition to their work with the CCG where it creates a conflict of interest with the CCG business, policies or activities.
- If the temporary agency assignment exceeds the 12 week qualifying period, the recruitment agency will contact the appointing manager to discuss what entitlements the agency worker will now be entitled to.
- 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 agency or self-employed worker.
- Ensure that the rate of pay agreed for the agency worker complies with the cap outlined as per NHS England requirements.

Fig. 1

Temporary Staffing Flowchart



7. MONITORING AND CONTROL

- 7.1 Compliance with this policy will be monitored through regular reports to the Audit and Risk Committee. Managers/administrators will be expected to provide authorisation forms and IR35 documentation (where relevant) for any off-payroll workers engaged in the previous 12 months.

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 and;
- The total duration – please note that if the duration exceeds 6 months, NHS England approval is always required.

8. REVIEW AND AMENDMENT

8.1 This policy 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

Appendix 5 NHSE Agency Expenditure Business Case Approval Template

10. RELATED POLICIES AND DOCUMENTS

Recruitment and Selection Policy Procedure

DBS Policy and Procedure

Professional Registrations Policy

NHS Employers Employment Standards

Crown Commercial Services website:

<https://www.gov.uk/government/organisations/crown-commercial-service>

NHS Improvement (formerly known as Monitor and Trust Development

Authority): Price caps for agency staff rules

NHS England Consultancy Expenditure Business Case Approval Form

11. Equality Statement

In applying this policy, the organisation will have a due regard for the need to eliminate unlawful discrimination, promote equality of opportunity and provide for good relations between people of diverse groups. In particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation, in addition to offending background, trade union membership or any other personal characteristic.

12. Appendices

APPENDIX 1 -

TEMPORARY AGENCY OR SELF EMPLOYED WORKERS REQUEST FORM

Reason for request <i>(please circle)</i>	Vacant post	Staff absence cover	Project work	Other (please specify)
POST INFORMATION				
Job title				
Team				
AfC Band / Salary (hourly or daily) Substantive equivalent	Band:	Point:	Salary (£)	
Base location			Hours per week (1 - 37.5)	Hours
Predicted length of assignment (weeks). The maximum assignment length is	1 - 6	7 - 12	13 – 18 *	19 – 26 *
	If longer than 12 weeks please provide an explanation (Agency Workers)			

26 weeks or 6 months <i>(please circle)</i>	Regulations apply to contracts over 12 weeks in length):		
Is a professional membership required?	Yes (if yes, state type/body):		
	No		
Is a Disclosure and Barring Service (DBS) check required?	Yes**		No
Date Substantive Vacancy Advertised (if vacant post box circled)		(Explanation required if not yet advertised).	
Please justify why the post needs to be filled/amended			
What are the risks of not recruiting to the post?			
Current / previous post holder's full name			

FINANCIAL INFORMATION				
Cost centre & subjective				
If the post is to be recharged across organisations, please confirm details	Organisation	% Recharge	Basis of Recharge	N/A
	Has authorisation been granted from each organisation?		Yes	No
If yes, please confirm details of authorisation organisations	Organisation	Name of Authoriser		N/A
FILLING THE POST				
Name of recruitment agency used to fill				

assignment				
<p>*It is a mandatory requirement that the Recruitment Agency is approved for use. (Please refer to current list of approved agencies)</p>				
Contact email address		Contact number		
Interview date (if applicable)				
Interview panel names and email addresses	Chair of the panel			
	Other panel members			
Names of other approved recruitment agencies to be contacted if the primary recruitment agency listed above is unable to provide a suitable agency worker	1. 2. 3.			
APPROVALS				
	Name	Signature	Date	Contact number
Recruiting Manager				
Finance				
Authorised signatory (1)				
Authorised signatory (2)				

** *The Recruitment Agency will be the employer of the Agency Worker, only the employer can request a DBS Check.*

Please send a completed form to the Assurance Team.

APPENDIX 2 - NON SUBSTANTIVE ROLE – AUTHORITY TO OFFER FORM

SECTION 1: DETAILS OF THE POST			
Job title of Non-Substantive Post			
Team / Directorate			
Base location (full address including postcode)			
Reason for request			
Cover for substantive post	<table border="1"> <tr> <td>Yes</td> <td>No</td> </tr> </table>	Yes	No
Yes	No		
Title of substantive post			
Start Date			
Hours/sessions per week			

Predicted length of assignment (weeks). The maximum assignment length is 26 weeks or 6 months	1 - 6	7 - 12	13 – 18 *	19 – 26 *
	If longer than 12 weeks please provide an explanation:			
<i>*Agency Workers Regulations apply to contracts over 12 weeks in length</i>				
Anticipated total cost including VAT				
Values exceeding £50,000 before VAT also require Director of Commissioning Operations and Director of Finance Area Team approval and value exceeding £250,000 also require NHS England Regional Director and Regional Finance Director Approval				
Post Banding of work to be undertaken	Hourly rate of banding if appointed substantively	Maximum Hourly Rate permissible as per the Agency Spending Cap	Hourly Rate negotiated including fees and VAT	
DBS required *Recruitment Agency to provide evidence of DBS check as they are the employer	YES*		NO	
Professional membership registration required?	YES		NO	
If yes, please state professional membership organisation				

SECTION 2: SUCCESSFUL CANDIDATE	
Full name	
Hourly Rate negotiated with the Recruitment Agency	
Essential	

Qualifications - <i>Please confirm qualifications applicant holds or alternative relevant experience that you are accepting</i>		
Disability adjustments	YES	NO
If yes, please provide details		
Has candidate got rights to work in the UK? <i>* If no, please contact the Recruitment Agency</i>	YES*	NO

SECTION 3: AUTHORISATION

Line Manager – I confirm that the originals of the ID Checks and qualifications have been seen and checked (if applicable).

Budget Holder - I authorise the processing of the appointment detailed above.

	Name	Signature	Contact number	Date
Line Manager				
Finance				
Authorised Signatory / Budget Holder (1)				
Authorised Signatory / Budget Holder (2)				

Please send completed form to the Assurance Team.

APPENDIX 3 - AGENCY WORKERS STANDARDS CHECKLIST

Agency Worker Details		
Name	Position	
Start Date	End Date	
Agency	Email	
Agency Contact	Contact Number	
Please tick to confirm that the following have been seen		
	Details	Tick if seen
Identity Check		
Proof of address		
Right to work in UK		
Professional Registration (if applicable)		
Professional Registration PIN Number (if applicable)		
Professional Registration expiry		

date (if applicable)		
Confirmation that the Recruitment Agency has completed an appropriate and satisfactory DBS check (if applicable)*		
Relevant qualifications		
Satisfactory references		
Confirmation that the Recruitment Agency has made the agency worker aware of the requirement to inform the CCG if they are employed or engaged in, or wish to be employed or engaged in, any employment or consultancy work in addition to their work with the CCG which creates a potential conflict of interest.		

*The Recruitment Agency is the employer of the Agency Worker and only the employer has the right to request a DBS check.

NAME:

SIGNATURE:

ROLE:

DATE:

RETAIN ON AGENCY WORKER'S FILE

APPENDIX 4

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 CCG 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 CCG.
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	
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 CCG / department	
Network access has been arranged	
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 code	
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	
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 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 CCG 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 CCG policies and procedures relevant to your role	
You have discussed confidentiality and how it applies to your role	

Health and safety procedures	
<p>You have been shown the following:</p> <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 CCG's no smoking policy and location of smoking facilities	
You are aware of the CCG's childcare facilities where available	

APPENDIX 5 - 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 12 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 12 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, occupational maternity/paternity/adoption pay, redundancy pay, notice pay, time off for trade union duties, expenses and the majority of benefits in kind.

Calculating the 12 week qualification

The 12 week qualifying period is triggered by working in the same job (or significantly similar) with the same hirer for 12 calendar weeks. Therefore, even if the interim 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 12 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 12 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 12 week provisions can best be explained by thinking of the qualifying period as a clock or a stop watch which runs from zero to 12. 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 interim returns. In some limited circumstances, the clock will continue to tick even if the interim is not working on an assignment.

There are reasons where the qualifying clock is reset to zero. Most commonly it will be because an interim begins a new assignment with a new hirer. Other instances are where an interim 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.

APPENDIX 6: CONFIDENTIALITY AGREEMENT

This agreement describes the responsibilities of individuals undertaking agency work under the NHS Confidentiality Code of Practice 2003 and the Data Protection Act 1998 when undertaking work for or with Castle Point and Rochford / Southend CCGs.

For the purposes of this document the term agency worker applies to anybody undertaking work for or with CCG who receive payment via a recruitment agency.

All personnel who may come into contact with any Person Confidential Data (PCD) or business confidential data of CCG, or its customers held electronically, manually or overheard must abide by this agreement.

Rationale

The CCG is under common law duty to ensure that confidential information is protected from inappropriate disclosure. Furthermore, under Principle 1 of the Data Protection Act 1998 personal information must be processed (disclosed) lawfully. CCG will only be able to comply with these conditions where it has ensured that third parties with whom they have contracts with are subject to, and comply with, patient confidentiality, information security, freedom of information and data protection requirements.

What is confidential information?

A duty of confidence arises when one person discloses information to another (e.g. patient to clinician; colleague to colleague; employee to employer; commissioner to agency worker, customer to CCG) in circumstances where it is reasonable to expect that information will be held in confidence. Confidentiality:

- is a legal obligation that is derived in case law;
- is a requirement established within professional codes of conduct;
- must be included within NHS employment contracts as a requirement linked to disciplinary procedures.

The public entrust the NHS with, or allow us to gather, sensitive information relating to the clinical and business activities of the NHS. They do so in confidence and they have a legitimate expectation that all persons who may be exposed to, or process information will respect the confidentiality of that information and act appropriately. It is essential, if the legal requirements are to be met and the trust of the public retained, that the NHS provides, and is seen to provide, a confidential service in all of their clinical and business activities.

CCG's responsibilities

CCG's Senior Manager (person supervising the agency worker) is responsible for ensuring the agency worker is fully aware of their responsibilities as stated in this agreement.

CCG will take all reasonable steps to ensure that the agency worker and support organisations to whom information is disclosed comply with their contractual obligations to keep personal and business information secure and confidential, for example, by making policies available on the intranet and operating access control systems.

In addition to the contractual performance requirements above, CCG must also ensure that any third party agency worker is aware of the possible impact of the Freedom of Information Act 2000 on the documentation connected with that contract.

For example, many agency workers will categorise all contracting documentation as confidential and not for disclosure outside of the contracting parties. In the light of the Freedom of Information Act this “confidentiality” may not apply. CCG should ensure that the any agency worker are aware that even though they may have categorised a document as confidential, CCG may be obliged to disclose the document, or parts of it, to an applicant making a request under the Freedom of Information Act.

CCG should ensure that contracts are explicit as to which documents are appropriate for disclosure and ensure that the confidential categorisation is not used inappropriately.

Related legislation

- Data Protection Act 1998
- Freedom of Information Act 2000
- Human Rights Act 1998
- Confidentiality: NHS Code of Practice 2003
- Caldicott Principles
- Common Law Duty of Confidentiality

Agency worker responsibilities

Agency workers must ensure that they have read and comply with relevant CCG policies and procedures on confidentiality and security which are available on the intranet.

The volunteer must ensure compliance with the above policies and procedures and ensure the reliability of its staff who has access to any confidential information held by CCG or its customers. In addition, if the agency worker is required to access or process confidential information held by CCG or its customers, the agency worker shall keep all such information secure at all times (e.g. in a locked cupboard, or where stored electronically encrypted) and shall only process such data in accordance with instructions received from the respective organisations.

The agency worker must be aware of the possible impact of the Freedom of Information Act 2000 on the documentation connected with a contract.

Information will, at all times, remain the property of CCG and its customers. The original information must be returned to CCG by the agency worker in its entirety on completion of the task for which the information was provided or on termination of this agreement. No copies of information may be kept by the agency worker without the approval of CCG or the relevant customer.

Information should not be removed from CCG without the appropriate authorisation; subject to the necessary approval electronic information needs to be encrypted to the required standard. The agency worker must only use and process the information for the purpose for which it has been supplied.

The agency worker must obtain authorisation for use of their laptop on CCG or customer premises. This should be obtained through the CCG manager to whom they are reporting to, who will co-ordinate the request with the Service Desk. The laptop needs to be encrypted to the approved level; this can be verified with the Service Desk. Any requirement to store CCG or customer's data on the laptop must have been specifically authorised by the CCG manager.

This Statement of Confidentiality must be signed by the agency worker and a senior member of CCG staff who is responsible for the agency worker.

I, (Name of the individual)

Of
(Address)

.....

am aware of the relevant legislation, best practice guidelines and related CCG policies and procedures and agree that:

- I understand within the course of my work with CCG I may have access to or hear confidential information about patients, members of staff or other business activities of CCG and its customers.
- I understand that no information of a personal or confidential nature concerning individuals, CCG or its customers may be disclosed without proper authority having first been given.
- I understand that failure to comply with the above rules will be regarded as serious misconduct, which could result in action being taken against myself by my company/organisation, or from legal action by others.

AGENCY WORKER NAME:	SENIOR MANAGER NAME:
SIGNATURE:	SIGNATURE:
TELEPHONE NUMBER:	JOB TITLE:
DATE:	DATE:

Once complete, CCGs Senior Manager responsible for the agency worker should retain a copy of this form for secure storage and retention. This will be subject to audit. **This form can be completed electronically; provided it has been signed electronically and/or has been sent via the agency worker's and the CCG's senior manager's mailboxes for audit purposes.**

APPENDIX 7: INTRODUCTION FEE LETTER

Date

Private & Confidential
Agency Address

Re: Appointment of “Name of Agency Worker”

Dear **Name**

Following on our conversation on **DATE**, this is just to confirm that **Name of Agency Worker** has been appointed in the role of **ROLE** from **DATE** to **DATE**.

As agreed, after a period of **NUMBER** months, if this individual were to be recruited as an employee of the CCG, no introduction fee will be charged.

I would ask that you sign and date both copies and return one copy to myself, retaining one copy for your own personal records as this is a change to the national agreed contract.

If you have any further queries regarding the contents of this letter please do not hesitate to contact me on **PHONE NUMBER**.

Yours sincerely

**Recruiting Manager Name Recruiting
Manager Job Tittle NHS Castle Point and
Rochford Southend CCGs**

Cc: Agency Worker File

ACCEPTANCE FORM

PLEASE DO NOT DETACH

I acknowledge receipt of this letter.

Name:

Signed: Date:

Appendix 5
GATEWAY NUMBER: 05656

Introduction

NHS England is implementing spending controls for CCGs in relation to the engagement of off payroll staffing. The controls described below build on the controls on CCG consultancy spend introduced in June 2015 which led to a significant reduction in CCG consultancy spend in 2015/16.

Specifically, CCGs are therefore required to secure advance approval from NHS England before engaging off payroll staff/agency staff who meet **any** of the following criteria:

- Cost greater than £600 per day (excluding VAT and expenses but including agency fees),
- Engaged for a period greater than 6 months, or
- In roles of significant influence (e.g. member of CCG Governing Bodies).

As of 1st August 2016, approval for all expenditure meeting the above criteria will be requested via this CCG Agency Business Case Approval Form. Approvals will be at the following levels:

- All agency resources engaged above £600 per day (excluding irrecoverable VAT and expenses, but inclusive of agency fees) but lower than £800 per day will require approval from the relevant NHS England Director of Commissioning Operations and their Director of Finance
- Engagements above £800 per day will require **additional** approval from Regional Directors and Regional Directors of Finance
- Any proposed engagements greater than £900 per day will also require the approval of the NHS England Commercial Executive Group.
- Expenditure below £600 per day but greater than 6 months in duration or covering areas of significant influence will require sign off from the Director of Commissioning Operations and their Director of Finance.

CCGs must complete the pro forma on the following page.

Further guidance and the chart in Appendix 1 show the flow of business case approvals

Business Case Approval Forms are to be sent to: England.CCGcontrols@nhs.net .

Please send all queries to England.CCGcontrols@nhs.net.

CCGs will also be asked to provide information on **current engagements** meeting any of the three criteria above by their local NHS England office. They will need to go through this process within 2 months for regional/national approval levels and 3 months for local approval levels. If subsequent approvals are not forthcoming then arrangements should be terminated within 4 weeks maximum unless there is a contractual commitment for longer; in which case it should be the earliest of 4 weeks or the contractual commitment.

For pre-existing arrangements, if a contractor has a fixed period say with 3 months' notice, that notice should be served pending approval to reduce the time required.

NB: NHS England reserves the right to review appointments where circumstances change

AGENCY EXPENDITURE BUSINESS CASE APPROVAL FORM

For CCG completion	
CCG name	
Regional (Geography)	
Date submitted	

Proposal Description
<p><i>Please give a high level summary of what this requirement entails (250 words)</i></p> <p><i>What is the reason for needing the role?</i></p> <p><i>What is the post there to do?</i></p> <p><i>Is the role to cover a substantive post? If so what at what band?</i></p> <p><i>Is the role time limited?</i></p> <p><i>Is the role full-time or part time?</i></p>

Reference Information			
Title of the Requirement:			
Name of requestor:		Job role of requestor:	
Email address of requestor:		Date submitted for approval:	
Tel number of requestor:		Day Rate including irrecoverable VAT, agency fees and other costs e.g. expenses and Total contract value (£)	£
Required duration (days):	No: of days per wk or (No: of hours if ad-hoc) e.g. 5 or (e.g.12.5 wk)	No: of working days total (do not deduct for public or other holidays/absences) e.g. 258 (e.g. 87 days @ 650hrs/7.5hpd)	

Proposed Start date. NB: It should be noted that a minimum of six weeks must be allowed for approvals process before start date of assignment.		End date:	Including proposed notice period of x days
Expenditure type (please tick ✓)			
New Business Case		Extension to Business Case	

Nature of business resource required for (please tick ✓)			
Clinical resource		Non-Clinical Resource	

Expenditure type	Please tick	Details (Please select one from the following list: Strategy; Finance; Organisational and Change Management; IT; Property and Construction; Procurement; Legal Services; Marketing and Communications; HR, Training and Education; Programme and Project Management; Technical; Other)
All Professional Services	<input type="checkbox"/>	[e.g. Strategy]
Nominated Contractors		
Specialist Contractors		
Interim Managers		
Other professional services		

Authorisation (two internal authorisations required as a minimum)		
Authorisers ²	Please tick (<input type="checkbox"/>)	Name and Date
[Specify job role]		By: [Specify name]; Date: [Specify date]
[Specify job role]		By: [Specify name]; Date: [Specify date]
[Specify job role]		By: [Specify name]; Date: [Specify date]
[Specify job role]		By: [Specify name]; Date: [Specify date]
[Specify job role]		By: [Specify name]; Date: [Specify date]

Assessment criteria
Please demonstrate the value of the proposed contract against the following criteria.

Please limit answers to max. 350 words per question. Answers should be self contained within this table, but further evidence and analysis can be submitted as an annex for consideration.	
Ambition to deliver something of value, importance and relevance	<p>What strategic or operational objectives does this request support? <i>Please provide a short description of how your organisation's strategic and operational objectives are supported by this procurement, referring where relevant to your operational and five year strategic plan. Where appropriate, please also provide assurance that this work aligns with LHE strategy.</i></p>
	<p>What outputs or specific deliverables are required, and how do they support the overall objectives? <i>Please provide details of the outputs or deliverables required from the consultancy service. Outputs should be capable of objective evaluation.</i></p>
	<p>Why do you need external resources to deliver these outputs or deliverables? What skills can or will be transferred to permanent CCG staff? <i>Please explain why the services set out above cannot be resourced internally or sourced from peer organisations. What skills will be transferred to permanent staff, and how will this be done?</i></p> <p><i>Why is this now the only feasible option?</i></p> <p><i>What other options were explored and why were they discounted (e.g. FTC, secondment, permanent appointment)?</i></p> <p><i>Was it attempted to fulfil substantively and what was the result?</i></p>
	<p>Please describe what the impact will be on CCG objectives and on patient care if approval is not given for this business case?</p> <p><i>Why is this post critical? What is the impact if not covered?</i></p>
Clear scope	<p><i>Please ensure the scope is clear and defined and provide information on how the scope was developed, including any engagement undertaken with relevant stakeholders</i></p>

Robust contract management	<i>Please explain steps you will take to manage the supplier to deliver value for money, including steps you will take to ensure the delivery of the scope as planned. Please include detail of payment structure including detail of approaches to link payment to deliverables</i>
Capacity to implement findings/recommendations	<i>Please demonstrate your capacity to implement findings/recommendations of the procured support including details of steps taken. Please support your response with details of any relevant previous examples, such as specific examples of benefits realisation. Please note whether there are any contractual restrictions to sharing the outcomes of this work with the wider sector.</i>
Timeframe of Assignment (s)	<p><i>Please include when expected outcome will be delivered.</i></p> <p><i>Are arrangements in place to ensure the required outputs are delivered to this timescale</i></p> <p><i>category; what will happen once post ends? : is the project expected to be fully completed/embedded within in-house team? Or if expected to continue, what is the intention to cover e.g. will be picked up by in-house staff, fixed term contract, permanent appointment?</i></p> <p><i>If recruiting, what is the timescale for this and what progress has been made in this respect? When is advert expected to be out, timescales for interviews to be held and when expecting to have someone in post permanently?</i></p>
Robust post implementation review proposal	<p><i>Please outline how you will review effectiveness of the off-payroll support/Agency worker support procured.</i></p> <p><i>List monitoring procedures which will be in place, including an objective frequency e.g. weekly, monthly, quarterly not “regular” or “on-going”</i></p>

Procurement route if relevant (please tick ✓)				
Framework [Insert which one if known] NB: In addition to the controls described above CCGs will be expected to use existing framework arrangements to source interim staffing.		Open tender		Other

Procurement method and value on price: Provide details of the proposed procurement/resourcing method, including how you reached the decision that this is the best way to meet your business requirements, evidence of sourcing the best value resource. Please evidence any efforts to negotiate on day rates and agency fees. Please also provide details of the basis of payment (e.g. details of fixed fee) and why this will achieve best value.

*Where other interims were considered how did the rates compare?
Details of any rate reduction negotiated, either prior to the start or during the contract if retrospective?*

Selected provider (if known): *and whether via an Agency, or direct with Ltd Co or Sole-trader
If via agency need evidence that Agency have followed the new IR35 checklist. If Direct the CCG needs to follow new IR35 Checklist for Ltd Co or declaration of IR compliance from sole-trader*

Benchmarking of rates

Please provide details of agreed benchmarking rates, referencing where possible agreed framework rates.

How does the rate compare to the substantive post or equivalent role?

Financial case

Please provide details of how you have calculated the cost of the resource for the service required, by reference (as relevant) to bench-marked costs, and provide justification for the number of days required and/or mix of resources. Please provide evidence of the market engagement you have undertaken to calculate the financial case. You should also provide details of additional costs.

If the post is to undertake work across a number of CCGs, list which CCGs and any cost split?

Breakdown of expenditure (expand as necessary)

Resource, Role(s) and Grade(s) (or equivalent)	Unit Cost or daily rate	Discount agreed (%)	Units Required	FY Expenditure Due		Sub Total (£)
				19/20	20/21	
Example Band 8c Cover	400	10 (included in rate)	258		103,200	103,200
					1000	1000
					500	500
					20,840	20,840
					125,540	125,540

NB: It is the responsibility of the requestor to ensure that approval information is retained for audit purposes.

Business Case Approval Forms are to be sent to: England.CCGcontrols@nhs.net

Please send all queries to England.CCGcontrols@nhs.net NHS England will aim to respond to queries within 10 working days.

Guidance:

NHS England is implementing the introduction of spending controls for CCGs in relation to the engagement of off payroll staffing. The controls described below build on the controls on CCG consultancy spend introduced in June 2015 which led to a significant reduction in CCG consultancy spend in 2015/16.

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In addition to the controls described above CCGs will be expected to use existing framework arrangements to source interim staffing.

The approval process

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The relevant panel will review each business case against a number of assessment criteria.

- VFM of proposed engagement
- Business need
- Reason for use of off payroll
- Role to be undertaken
- Framework compliance
- Any recruitment strategy if relevant

- Anticipated delivery start and end date

Approval will be given to business cases which clearly demonstrate good value for money against the assessment criteria.

Compliance

All CCGs are expected to comply with this controls process. A failure to do so may be taken to indicate, for assurance purposes, that a CCG does not have adequate expenditure controls in place.

Flow Chart for CCG Off Payroll/Agency Controls Process

