

Agency Workers Policy

July 2022 - July 2025

| CONTROL RECORD | | | |
|--|---|------------------------|---|
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| | | | Team Human Resources and Organisational Development |
| Title | Agency Workers Policy | | |
| Amendments | None | | |
| Purpose | This policy provides information and guidance for staff and managers regarding the processes to be followed for the engagement of interims, agency workers and off-payroll workers. | | |
| Superseded Documents | None | | |
| Audience | All staff in Nottingham and Nottinghamshire Integrated Care Board | | |
| Consulted with | Integrated Care Board Senior Leadership Team and Staff Engagement Group | | |
| Equality Impact Assessment | See Appendix B | | |
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| <p>This is a controlled document and whilst this policy may be printed, the electronic version available on the ICB's document management system is the only true copy. As a controlled document, this document should not be saved onto local or network drives.</p> | | | |

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1. Introduction

- 1.1. This policy applies to the NHS Nottingham and Nottinghamshire Integrated Care Board, hereafter referred to as 'the ICB'.
- 1.2. The ICB recognises that from time-to-time workers may need to be engaged outside of the formal staffing structure to, for example, undertake work for short periods of time, to undertake occasional or ad-hoc duties, or to cover a vacancy in the structure for a limited period only.
- 1.3. This policy is designed to ensure that the ICB adopts good and consistent practice when engaging with staff on terms other than an employment contract.
- 1.4. Temporary staffing should not be viewed as a long term solution. Where managers have or are considering interim/temporary staff in roles that are likely to extend beyond three months, these should be considered for fixed term or permanent recruitment. Please contact the HR Team for further information.
- 1.5. For policy guidance on the recruitment and selection to permanent posts, please refer to the Recruitment and Selection policy.

2. Purpose and Scope

- 2.1. The policy provides information and guidance for staff and managers regarding:
 - The processes to be followed for the engagement of interims, agency workers and off-payroll workers.
 - Ensuring compliance with HMRC rules and legislation covering the payment of temporary staff and workers including off-payroll workers, the self-employed and the involvement of intermediaries.

3. Roles and Responsibilities

| Roles | Responsibilities |
|-----------------|---|
| Managers | It is the responsibility of managers to: <ul style="list-style-type: none">• Consider alternatives and the costs incurred appointing an agency worker and how this fit in with their overall budget, liaising with finance colleagues where required.• Adhere to IR35 legislative requirements |

| Roles | Responsibilities |
|------------------------|---|
| | <ul style="list-style-type: none"> • Maintain evidence of the necessary pre-engagement NHS checks relevant to the post carried out by the agency. • To notify any issue over an individual e.g., sickness absence, punctuality, competence etc. to the recruitment agency. and link with the HR team. • Work in accordance with this policy treating all individuals fairly and equitably seeking support from Human Resources as appropriate. |
| Human Resources | <p>It is the responsibility of Human Resources to:</p> <ul style="list-style-type: none"> • Maintain and update the Agency Workers Policy in line with any organisational or legislative change. • Provide ongoing support for managers in appointing agency workers in line with the policy. • Provide advice and support to ensure that the policy is applied fairly and equitably to all employees. |

4. Identifying a Vacant Post

4.1. Before deciding to fill a vacancy and progressing it to the next stage of the recruitment process, there are a number of things to consider:

- Can the work itself be eliminated?
- Can the work be absorbed by re-organising existing resources?
- Is there still a job to be done?
- Is it the same job as was done previously?
- Can skill mix be considered as an alternative?
- Will the job be permanent or temporary?
- Can the vacancy be covered with a temporary secondment?
- Is this one vacancy or can a single process be used to fill this and subsequent vacancies?
- Are you recruiting solely to fill this particular post or are you looking for somebody with promotion potential?

- 4.2. Once it is clear that there is a vacancy, you will need to seek approval. For guidance on the vacancy control process, please refer to the Recruitment and Selection policy.
- 4.3. The process must be followed to obtain the relevant level of authorisation to recruit, and is applicable to both funded and unfunded positions, including the engagement of interims, the utilisation of agency workers or off-payroll workers.

5. Sourcing Temporary Staff

- 5.1. Temporary staff may be sourced through advert (e.g. via NHS Jobs), from employment agencies, or through networking/internal recommendation. Potential workers should in all cases be interviewed by an appropriate ICB manager before any agreements are entered into regarding their engagement for work, and proper assessment of their suitability (including checking of qualifications and relevant previous experience) must be undertaken.

6. Employment Check Standards

- 6.1. Regardless of the duration of the engagement, it is essential for the necessary NHS employment checks standards to be followed.
- 6.2. A temporary worker checklist is available at **Appendix A** to ensure that the checks have been undertaken.
- 6.3. Completed checklists should be issued to the HR Team via the HR Inbox – nnicb-nn.hr@nhs.net.
- 6.4. Workers must not commence in a role or start work for the ICB without the above checks being undertaken and responses that are satisfactory to the ICB have been received.
- 6.5. Guidance from the HR Team should be sought should any questions regarding the eligibility or suitability of a proposed worker arise during the check process, in particular, where questions arise regarding right to work status, professional registration or their disclosure and barring service (DBS) information.
- 6.6. Reference should also be made to the Recruitment and Selection Policy.

7. Employment Status

- 7.1. Prior to commencing any work with the ICB, the employment status for tax purposes of a temporary worker and the work they will undertake must be determined by the ICB to ensure that it complies with HMRC rules regarding the payment of workers. Guidance should be sought from Head of HR at the earliest opportunity regarding this.
- 7.2. Under HMRC rules, the ICB as a public body, may face fines and penalties should it wrongly apply HMRC rules associated with the payment of workers.
- 7.3. The ICB anticipates that most of the work undertaken will need to be paid through the PAYE payroll processes as opposed to by payment of invoice and with contracts for service.

8. Employment Agencies and Agency Worker Appointments

- 8.1. In certain circumstances the ICB may need to use the services of external recruitment agencies to provide short-term cover. Using agency staff can be costly and this must be considered carefully. Prior to approaching agencies, managers should establish the requirement for interim support and have the relevant approval.
- 8.2. On seeking an agency worker, the recruiting manager must ensure that the agency they approach is listed on the Non Clinical/Non-Medical approved framework, as off-framework arrangements will only be permitted in exceptional circumstances. Framework approved agencies have agreed to adopt contract terms that are acceptable to NHS organisations. Non-framework agencies are likely to charge higher commissions with less favourable contractual terms.
- 8.3. The ICB is required to comply with NHS rules in relation to price caps on agency rates as published by NHS England/Improvement. Managers must ensure that the agency will charge the ICB no more than the Agenda for Change maximum hourly charge amount (NHSI price caps rate) for the worker for the pay band of the role they are working in. Details of the rates can be found here - [Reducing expenditure on NHS agency staff: rules and price caps.](#)

- 8.4. These price caps represent the maximum that the ICB's should pay and are not to be interpreted as the standard or default rates.
- 8.5. Breaches to the price caps will be reported to the Senior Leadership Team and are monitored by the ICB's Audit and Risk Committee. Further to this, any payments made in excess of the price caps have to be reported by the ICB to NHSE/I who scrutinise all breaches. NHSE/I reserves the right where they deem there to be disproportionate usage in excess of the price caps; to make rapid improvements to workforce management and to take regulatory action in response as appropriate. Details of the NHSE/I price caps information can be found here: <https://www.england.nhs.uk/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/#rules-and-price-caps>
- 8.6. When contacting agencies the role requirements should be outline to include:
- The role details
 - The banding
 - The daily rate available
 - The period to be covered
 - A copy of the checklist to be completed by the agency.
- 8.7. The list of approved agencies that can be approached are on the Crown Commercial Services Framework which can be found online.

9. Employment Checks and Agencies

- 9.1. As identified in section 5, a completed temporary worker checklist must be received for all temporary workers before they are engaged for work by the ICB.
- 9.2. The responsibility to carry out identity checks for agency workers lies with the recruitment agency that provides the agency worker or interim, however, identification documentation should also be witnessed directly by the recruiting manager and/or HR either before, or on the agency worker's first day.
- 9.3. Agencies must provide recruiting managers and/or HR with written assurances that health checks have been undertaken as relevant to the role. Agencies need to provide information to the ICB in respect of any reasonable adjustments that may be required when engaging any agency worker or interim.
- 9.4. Registration details (where the position requires professional registration) must be carried out in the same way as for permanent staff. The recruitment agency

will monitor the professional registration of its agency staff, but ICB managers in conjunction with HR should check prior to the agency worker starting that the registration meets the requirements of the position. In all cases, registration checks should be undertaken against the online register of the relevant professional body and details of the check should be confirmed and retained on file.

- 9.5. If working in a role that requires a disclosure and barring service (DBS) check, agency staff, locums and independent contractors will be required to provide evidence of a recent (within one year) DBS check before work commences. When employed through an agency, the recruiting manager will request evidence from the agency for a manager's responsibility to ensure that a worker has a valid DBS check in place before they commence work for the ICB. Evidence should be confirmed to the HR Team.

10. Temporary Agency Worker to Fixed Term or Permanent Employee Process

- 10.1. Agencies are entitled to charge the ICB a fee in certain circumstances where the ICB go on to appoint an agency worker onto an employment contract. Details of when this will apply and information regarding the fee must be described in the contract with the agency.
- 10.2. Agencies may agree to waive the fee in some circumstances, for example where it is agreed by the ICB to engage the agency worker via the agency for a specified period of time or to provide the agency with a specified notice period during which the worker will remain engaged by the ICB through the agency before being moved onto a ICB employment contract.
- 10.3. Prior to moving an agency worker onto an employment contract with the ICB, the normal ICB appointment process must be applied, i.e., the vacancy must be advertised and available to staff to apply for and the agency worker must then be the preferred candidate following the completion of the recruitment selection (interview) process. The appointment and checklist process for the appointment of staff as set out in the ICB's Recruitment and Selection Policy must be undertaken prior to the worker moving on to a ICB contract.

11. Engagement of off-Payroll Workers and Contract for Service

- 11.1. In line with current HMRC rules, the ICB expects to pay most of its workers via on-payroll arrangements and with contracts for service. In certain circumstances, HMRC rules may allow off-payroll arrangements to be entered into with certain workers and for certain work.

11.2. The number of cases where off-payroll arrangements will apply are expected to be minimal. HR guidance must be sought in all cases before any off-payroll agreements are made. Senior HR staff will review on a case-by-case basis the circumstances in accordance with HMRC guidance tools and rules. Instances of proposed off-payroll working will be reported to the Senior Leadership Team (SLT) for approval and the numbers and details of the work will be monitored by the Audit and Risk Committee.

11.3. As a public body the ICB must ensure it follows and applies HMRC rules regarding the correct and proper payment of workers otherwise it risks receiving fines.

11.4. Any invoices received by the ICB for work undertaken where VCF approval for off-payroll working has not been given, will not be taken forward for payment.

12. Equality and Diversity Statement

12.1. The Nottingham and Nottinghamshire ICB pays due regard to the requirements of the Public Sector Equality Duty (PSED) of the Equality Act 2010 in policy development and implementation as a commissioner and provider of services as well as an employer.

12.2. The ICB is committed to ensuring that the way we provide services to the public and the experiences of our staff does not discriminate against any individuals or groups on the basis of their age, disability, gender identity (trans, non-binary), marriage or civil partnership status, pregnancy or maternity, race, religion or belief, gender or sexual orientation.

12.3. We are committed to ensuring that our activities also consider the disadvantages that some people in our diverse population experience when accessing health services. Such disadvantaged groups include people experiencing economic and social deprivation, carers, refugees and asylum seekers, people who are homeless, workers in stigmatised occupations, people who are geographically isolated, gypsies, roma and travellers.

12.4. As an employer, we are committed to promoting equality of opportunity in recruitment, training and career progression and to valuing and increasing diversity within our workforce.

12.5. To help ensure that these commitments are embedded in our day-to-day working practices, an Equality Impact Assessment has been completed for, and is attached to, this policy.

13. Communication, Monitoring and Review

- 13.1 The Agency Workers Policy will be highlighted to new employees at staff induction and is stored on the ICB's HR/OD Intranet pages and by the ICB's HR&OD Team.
- 13.2 The HR Team will share this policy via the normal staff communication channels and will ensure that it is highlighted to those individuals in posts who require registration.
- 13.3 This Policy will be reviewed periodically every three years (or earlier if changes in the law or any other circumstances require it) and will be approved by the Remuneration Committee.
- 13.4 Any individual who has queries regarding the content of this policy, or has difficulty understanding how this policy relates to their role, should contact the HR department via email nnicb-nn.hr@nhs.net.

14. Staff Training

- 14.1 All staff will be offered relevant training commensurate with their duties and responsibilities. Staff requiring support should speak to their line manager in the first instance. Support may also be obtained through their HR Department.
- 14.2 Any individual who has queries regarding the content of this policy, or has difficulty understanding how this policy relates to their role, should contact the HR Team via email at nnicb-nn.hr@nhs.net.

15. Interaction with other Policies

- 15.1 This policy should be read in conjunction with the following ICB policies:
- Recruitment and Selection Policy.

16. References

- 16.1 The following legislation and guidance has been taken into consideration in the development of this procedural document:
- Equality Act 2010.
 - NHSE/I price caps information - <https://www.england.nhs.uk/reducing-expenditure-on-nhs-agency-staff-rules-and-price-caps/#rules-and-price-caps>

Appendix A: Temporary Worker Checklist

| Appointment of Temporary Workers | | |
|--|-----------|-------|
| Checklist | Completed | Notes |
| Authorisation sought via trac process | | |
| Agency included on approved Framework | | |
| Role description or project specification provided | | |
| Working hours | | |
| Length of engagement | | |
| Rate of pay | | |
| Exit strategy/costs involved | | |
| Employment Status (for tax purposes in conjunction with HR Team) | | |
| Identity and eligibility to work documentation seen | | |
| Qualification confirmation | | |
| Confirmation of health check | | |
| DBS certificate held (if applicable) | | |
| Satisfactory references sought (covering three years) | | |
| Professional registration (if applicable) | | |
| Recruitment Agency Terms of Business (if required) | | |
| Notified HR of start date | | |
| Declaration of Interest completed | | |
| Emergency Contact details sought | | |
| Access to IT, intranet and ESR/ELfH for mandatory training | | |
| ID badge and access to building(s) | | |

Appendix B: Equality Impact Assessment

| | | | | |
|--|---|---|--|---|
| Date of assessment: | June 2022 | | | |
| For the policy, and its implementation, please answer the questions against each of the protected characteristic and inclusion health groups: | Has the risk of any potential adverse impact on people in this protected characteristic group been identified, such as barriers to access or inequality of opportunity? | If yes, are there any mechanisms already in place to mitigate the adverse impacts identified? | Are there any remaining adverse impacts that need to be addressed? If so, please state any mitigating actions planned. | Are there any positive impacts identified for people within this protected characteristic group? If yes, please briefly describe. |
| Age¹ | None identified | N/A | No | No |
| Disability² | None identified | N/A | No | No |
| Gender identity (trans, non-binary)³ | None identified | N/A | No | No |
| Marriage or civil partnership status⁴ | None identified | N/A | No | No |

¹ A person belonging to a particular age (for example 32 year olds) or range of ages (for example 18 to 30 year olds).

² A person has a disability if she or he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.

³ The process of transitioning from one gender to another.

⁴ Marriage is a union between a man and a woman or between a same-sex couple.

Same-sex couples can also have their relationships legally recognised as 'civil partnerships'.

| | | | | |
|--|---|---|--|---|
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| Pregnancy or maternity⁵ | None identified | N/A | No | No |
| Race⁶ | None identified | N/A | No | No |
| Religion or belief⁷ | None identified | N/A | No | No |
| Gender⁸ | None identified | N/A | No | No |
| Sexual orientation⁹ | None identified | N/A | No | No |
| Carers¹⁰ | None identified | N/A | No | No |

⁵ Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

⁶ Refers to the protected characteristic of race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

⁷ Religion refers to any religion, including a lack of religion. Belief refers to any religious or philosophical belief and includes a lack of belief. Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

⁸ A man or a woman.

⁹ Whether a person's sexual attraction is towards their own sex, the opposite sex, to both sexes or none. <https://www.equalityhumanrights.com/en/equality-act/protected-characteristics>

¹⁰ Individuals within the ICB which may have carer responsibilities.