

RESOURCE REQUEST: PROCESS GUIDANCE & FLOW CHART

Kernow Clinical Commissioning Group

This guidance has been updated to reflect the requirements/letters from Jeremy Hunt 6/2015 & David Williams 2/6/15 DOH, and Finance Directorate NHS England 3/6/15

Purple Text indicates where you should seek further guidance or can find further information

EMPLOYING CONSULTANTS

Factors to consider:

VAT

If we are using consultants for specialist advice we are able claim back VAT. The ability to recover VAT will depend on the role undertaken – as VAT regulations are always changing you need to discuss the position with finance as it will vary from case to case.

Specialist Advice / specific project or piece of work

- Consultants should be used only when very specialist expertise is required that can't be recruited elsewhere, this may be evidenced by having already tested the market and been unable to recruit
- Consultant costs vary significantly and consultancy is the often the most costly way of meeting a resource requirement so robust consideration to ensure best value eg quotes / tendering process should be undertaken wherever possible. Advice from **Category Management** should be sought as to the appropriate contract and tendering process.
- From June 2015 Department of Health requires that CCGs need to secure advance approval from Director of Commissioning Operations and Director of Finance at NHS England before procuring, letting or extending a consultancy project over £50,000. Where approved this a subsequent report will be required post implementation detailing the benefits and added value.
- Contracts above £250k will require additional approval from Regional Directors of Finance
- Contracts greater than £1m will required approval of the NHS England Efficiency Controls Committee.

Employee or consultant?

We need to be really clear about the terms consultants are engaged on. If they are working with us more like employees this can cause a number of issues with HMRC, aspects to consider include:

- **Do they work set hours, or a given number of hours a week or a month?**

Often the number of hours to complete a specific project is agreed up front with consultants

- **Do they have to do the work themselves rather than hire someone else to do the work for them?**

If they can get someone else to do the work, this doesn't indicate a specialist skill or advice requirement

- **Can someone tell them at any time what to do, when to work or how to do the work?**

RESOURCE REQUEST: PROCESS GUIDANCE & FLOW CHART

Kernow Clinical Commissioning Group

Consultants have an agreed brief or outcome, how they approach or when they work is down to them

- **Are they paid by the hour, week or month? Hour**

As above when given the specification for a piece of work, the consultant will usually calculate how many hours they think it will take them, and submit their fees based on that

- **Can they get overtime pay?**

Fixed price, if they underestimate the amount of time to do the piece of work, then this is at their own cost

- **Do they work at the premises of KCCG, or at a place or places they decide?**

Again as with hours, it's up to the consultant how they manage their work

- **Do they generally work for one client at a time, rather than having a number of contracts?**

Typically consultants have a number of clients that run currently. One contract or client at a time is more suggestive of interim contracts eg employed on a Fixed Term Contract or engagement through an agency

Advice from Finance and HR can be sought on whether or not the role fits that of an employee or consultant.

It is very important that the contractual status is agreed with HR/finance before the engagement starts as HMRC have the ability to levy substantial penalties for non-compliance with PAYE regulations

The Business Entity Test is useful for assessing whether or not it's likely to be considered an employment situation or not:

<Sharepoint link to Business Entity Test>

Standard contract / terms of engagement

NHS Kernow has a standard contract that should be used when engaging consultants.

- The terms of engagement must be clear and specific so that performance can be monitored, outcomes should be agreed so are clear when achieved and contract comes to end. Terms of engagement must also be **communicated with Finance with regard to VAT** but also prior to commencement to ensure SBS can be set up ready to pay invoices when received.
- Advice on managing / setting up the contract can be sought from **Category Management Team**
- Template contract will be issued by HR/Finance (TBC)
- **Before a Consultant can begin work they must be able to provide a written declaration of their tax compliance satisfactory to NHS Kernow**

RESOURCE REQUEST: PROCESS GUIDANCE & FLOW CHART

Kernow Clinical Commissioning Group

Staff Communication

Acknowledging that sometimes there may be confidential or business sensitive work being undertaken, wherever possible the appointment of consultants should be communicated to staff. This would include for example; who they are, what they're doing, how it links to organisational priorities and how long they are there for.

This transparency will help allay any concerns about consultants taking roles or work that could be done by others within the organisation and if our staff feel more assured and understand about the what / why we're using consultant this will support effective team-working and communication with those engaged.

Induction

Consultants will still need to undertake an induction eg Fire procedures if working on NHS Kernow sites. IG requirements will still apply if they are working with patient or staff data. These elements should also be covered within the contract. Advice on what the particular consultant will need to cover can be sought from **Human Resources**. Induction Checklist for Consultant and Agency should be completed on their first day wherever possible. The tax declaration will also need to be in place before they can commence work.

[**<sharepoint link to Consultant/Agency Induction checklist>**](#)

RESOURCE REQUEST: PROCESS GUIDANCE & FLOW CHART

Kernow Clinical Commissioning Group

USE OF AGENCY

Factors to consider:

Cost

Agencies cost more than employing direct in most cases, though not all subject to rates agreed, so please be clear about the cost benefit. Recent Department of Health communication (June 2015) states that daily rates for interim board members should not exceed what would be paid to substantive appointments

When to use agency

Recent legislation also means that they have a number of employment rights similar to those of substantive workers. We wouldn't normally look to use agency to meet resource requirements in the first instance. Agencies can be useful when there is a very urgent need and we can't wait for normal recruitment process, but in all cases you **wouldn't expect to use agency for more than 3 months**. After this timeframe, agency workers begin to accrue additional rights and **HR advice** should be sought if they contract is likely to exceed this timeframe. [<sharepoint link to Guidance on Agency Workers Rights>](#) This provides plenty of time, to review requirements source the more permanent solution. Where there have been difficulties in recruiting and it's possible that there may be a temp to perm situation the contract with the agency should be such that extended temporary placements shouldn't also incur a finder's fee.

Standard contract / terms of engagement

There are number of agencies that already meet the standards required by the NHS who are on the framework and these should be used wherever possible. The Framework can be accessed via http://ccs_agreements.cabinetoffice.gov.uk

NB Engagements cannot commence until the relevant tax declaration have been made, and where relevant that DBS checks have been undertaken by the agency. Please seek advice from HR on both aspects

Induction

Agency staff working on our premises will need many of the same induction activities that permanent or FTC employees would. This will enable them to become effective in their role as quickly as possible.. Advice on what the particular consultant will need to cover can be sought from **Human Resources**. Induction Checklist for Consultant and Agency should be completed on their first day wherever possible.

[<sharepoint link to Consultant/Agency Induction checklist>](#)

Managing Agency

Agency staff are often a quick fix, so be realistic about expectations and clear what elements of the role are the priority for the short term that the agency member of staff needs to be familiar with. Also be clear with the agency so if there are any issues they are able to support you in dealing with them

RESOURCE REQUEST: PROCESS GUIDANCE & FLOW CHART

Kernow Clinical Commissioning Group

USE OF FIXED TERM CONTRACTS

A fixed term contract is often the most suitable option for a limited time resource requirement, and employing some direct rather than via agency is often more cost effective.

Fixed Term Contracts / Secondments will always be advertised externally with the following exceptions:

- When there are individual members of NHS Kernow staff on the Redeployment Register who are entitled to priority consideration for vacancies
- Where there is a previously agreed Team Development Plan in place and particular roles have already been identified as development opportunities to support succession planning and/or talent development
- Where there is a genuine immediate operational need for resource for a limited (short) period of time. Eg needed now for a period 3 months or less, and that waiting for external recruitment timescales means the need will have expired

Secondments

NHS Kernow staff or staff from other organisations with substantive contracts can be used for fixed term contracts – this is known as a secondment.

When staff are seconded from their substantive roles, they, their line manager and the recruiting manager should be clear about the terms of return for that individual when the secondment is complete please see [link to secondment policy](#) and then discuss with HR any queries you may have.

Acting Up

Where there is a vacancy eg a Team manager, often a member of the team might be considered as suitable for acting up. When this occurs Agenda for Change T&Cs requires that the individual must be doing the majority of the role in order to be paid at the higher band.

Where the band or role to be covered is significantly higher and therefore the acting up doesn't fully reflect that post to the same degree, but nevertheless has increased responsibility and remit above the current post, then there maybe other job descriptions that could be used which match these interim requirements. This would be likely where the vacant post is more than one band higher than the current team roles.

Where the acting up in a team lead situation for a limited period of time, the advert could be restricted to internal only in the first instance, however if it is likely that this will be an extended period of acting up eg 6m+ then this should be advertised externally as FTC. [Advice from HR](#) should be sought regarding [advertising](#) internal secondment opportunities, so that all potential candidates have the opportunity to be considered