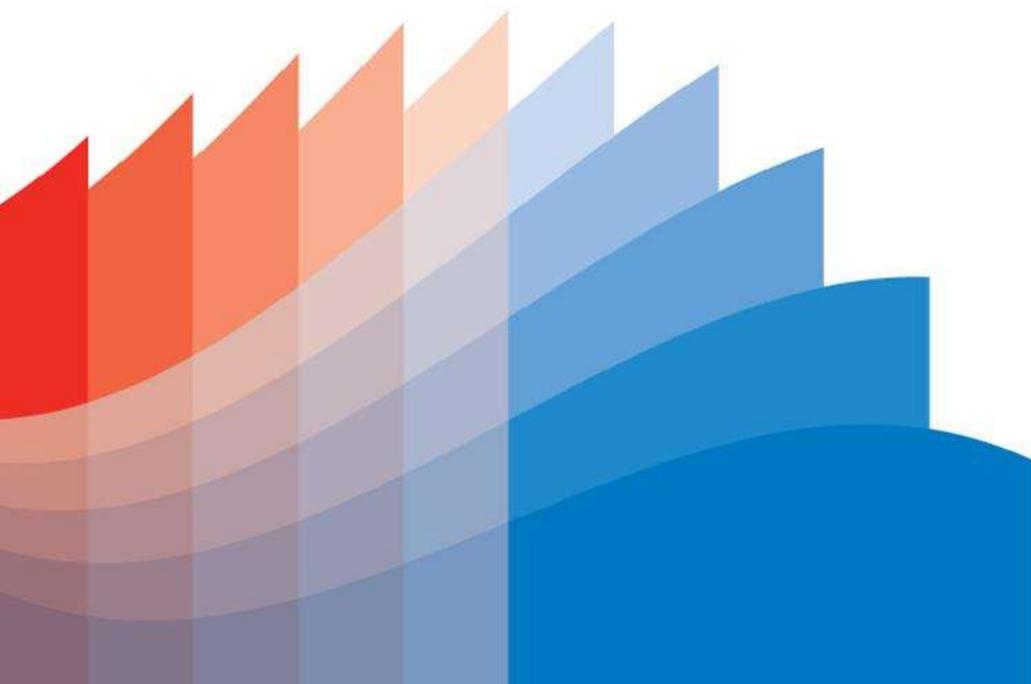


Off Payroll Policy

Version 2.0



Standard Operating Procedure	St Helens CCG Off Payroll Policy
Version	2.0
Implementation Date	November 2017
Review Date	November 2019
Approved By	Remuneration Committee
Approval Date	29/11/2017
Author	Lisa Roberts, NHS Knowsley CCG
Target Audience/ Distribution	All Staff – including Contractors

REVISIONS			
Date	Section	Reason for Change	Approved By
Nov 17	Whole Policy	<ul style="list-style-type: none"> • Reviewed and updated in line with legislation changes regarding IR35. • Sections numbered – additional separate sections for Context and Process added. • Referenced IR35 guidance and requirements throughout, along with NHSE Spending Controls – implemented 2017. • Removed Appendix 1 NHSE Requirements (at the time) and Appendix 2 HM Treasury extract. Replaced with: <ul style="list-style-type: none"> ✓ Agency Expenditure Approval Form ✓ Updated Guidance ✓ IR35 Worker Appointment Form ✓ IR35 Notification Schedule 	Remuneration Committee

POLICY OBSOLETE		
Date	Reason	Approved By

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OFF PAYROLL POLICY

1. Introduction

- 1.1 The purpose of this document is to detail NHS St Helens Clinical Commissioning Group's (the CCG) policy on off payroll working, and to ensure that the CCG identifies and correctly accounts for all off-payroll workers to avoid non-compliance with HMRC rules. Non-compliance with HMRC rules can result in substantial fines and penalties.
- 1.2 To meet business requirements, it may sometimes be necessary for the CCG to cover substantive or temporary project posts without directly employing the individuals. HMRC has enforced the off-payroll working rules (IR35) for public authorities to ensure that any income tax and National Insurance contributions (NICs) are correctly accounted for. The CCG will need to decide whether the off-payroll working rules apply because the appropriate conditions have been met, and deduct income tax and NICs from the payments made and report them to HMRC where appropriate.
- 1.3 Alongside the HMRC rules, NHS England (NHSE) has implemented spending controls for CCGs in relation to the engagement of off payroll staffing. Specifically, CCGs are required to secure advance approval from NHSE 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).
- If any of the above criteria is met then an Agency Expenditure Business Case Approval Form will need to be completed and sent to NHSE for their prior approval.
- 1.4 Off payroll engagements are also disclosed in the CCG's Annual Report and Accounts. Previously, all off-payroll engagements greater than £220 per day and lasting for longer than six months had to be disclosed. Following on from the new off-payroll working rules, which require anyone deemed to be an employee to be paid through payroll, this will include engagements at less than £220 per day or of less than six months duration. The reporting requirements for 2017-18 are expected to be issued in Public Expenditure Systems (PES) guidance in December 2017, and this policy will be updated to reflect the new reporting requirements once issued.
- 1.5 The HMRC website <https://www.gov.uk/government/organisations/hm-revenue-customs> and the HM Treasury website <https://www.gov.uk/government/organisations/hm-treasury> should be checked for any changes in guidance or new guidance that may supersede this policy.
- 1.6 This policy covers all engagements not directly employed by the CCG.

2. Context

- 2.1 The CCG, as an NHS organisation and a public body, is covered by the HM Treasury 'Managing Public Money' handbook. As an employer the CCG has a duty to ensure that tax avoidance, tax minimisation or the avoidance of NICs is not enabled.
- 2.2 The off-payroll working rules are in place to make sure that, where an individual would have been an employee if they were providing their services directly, they pay broadly the same tax and NICs as an employee and that the employers NICs are correctly applied. As a public body, the CCG needs to decide whether the off-payroll working rules apply because the appropriate conditions have been met.
- 2.3 An off payroll worker is defined by HMRC as a person who provides a service to the CCG through their own intermediary. The intermediary can be:
- a worker's own limited company - known as a personal service company (PSC)
 - a partnership
 - another individual
- 2.4 When deciding if the off-payroll working rules apply to a contract or engagement the CCG must work out the employment status of the person providing their services. The off-payroll working rules will apply if the person providing their services:
- would be an employee if there was no intermediary
 - is an office holder for the client (e.g. a statutory appointment such as a Governing Body member)

The CCG will need to assess each engagement by considering what the relationship between the client and the worker would be if there wasn't an intermediary involved. If the rules do apply, the CCG, agency or other third party responsible for paying the worker's intermediary must deduct income tax and Class 1 NICs and pay and report them to HMRC.

- 2.5 As the worker will not be a CCG employee they will not be entitled to any statutory payments (e.g. sick pay, maternity pay).
- 2.6 It is not up to the worker to decide whether they are self-employed, this policy must be followed in all cases, and even where a worker believes they have self-employed status; the CCG must go through the required checks to be assured that off payroll status applies. If the worker is deemed as an employee under IR35, they MUST be paid through payroll.

3. Process

NHSE Business Case

- 3.1 In the first instance, when a vacancy or project post is to be filled, the CCG should consider if an Agency Expenditure Business Case Approval Form (see Appendix 1) needs to be completed and submitted to NHSE to gain their approval before the worker is engaged.
- 3.2 If any of the 3 criteria detailed in paragraph 1.3 are met then the relevant manager, with assistance from the finance team, needs to complete the form in full and submit to NHSE at the following email address: England.CCGcontrols@nhs.net . Before submission the form needs to be authorised by a minimum of 2 approvers, in line with the CCG's Operational

Scheme of Delegation depending on the value of the contract. The final business case must have finance approval before it is submitted.

HMRC Off Payroll Working Rules

- 3.3 When an engagement is agreed whereby the worker is not directly employed by the CCG, then the relevant manager should liaise with the finance team to assess whether the off-payroll working rules apply to the contract. This should be done using the HMRC online calculator <https://www.gov.uk/guidance/check-employment-status-for-tax>

HMRC have confirmed that they will stand by the result given unless a compliance check finds the information provided isn't accurate. HMRC won't stand by results achieved through contrived arrangements designed to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance with associated higher penalties.

- 3.4 To assess if the rules apply, the online tool will ask for a variety of questions depending on the information provided, and the following information will be required:
- the worker's responsibilities
 - who decides what work needs doing
 - who decides when, where and how the work's done
 - how the worker will be paid
 - if the engagement includes any benefits or reimbursement for expenses

Depending on the outcome, a letter should be sent to the intermediary informing them of the decision and actions to be taken.

A copy of the outcome of the online calculator should be printed off and signed by the Deputy Chief Finance Officer or Chief Finance Officer and kept on file held in the Shared Finance Team (SFT) office.

- 3.5 If the off-payroll working rules apply and the CCG is responsible for paying the intermediary directly, then a letter should be sent to the intermediary from the manager responsible for the worker notifying them of the outcome. A PSC – IR35

Direct Engagement Off-Payroll Worker Appointment Form (see Appendix 2) should be completed by the manager and sent to HR to enable the worker to be set up on ESR and paid via payroll. The intermediary should send their invoices, once approved by the relevant budget holder, directly to the SFT by the 10th of the month to ensure that payment can be made by the 28th of the month. The SFT will complete a PSC - IR35 Notification Schedule each month (see Appendix 3) and the Principal Accountant will submit the completed schedule to payroll at the following email address by the 10th of the month: cheshiremerseyccqs.payroll@nhs.net

Employee's tax and NIC will be deducted at source and the balance paid to the intermediary, and employers NIC will also be paid. These will be reported to HMRC by payroll through Real Time Information (RTI).

- 3.6 If the off-payroll working rules apply and an agency is responsible for paying the intermediary then a letter should be sent to the agency from the manager responsible for the worker notifying them of the outcome. The letter should confirm that it is the agency's responsibility for applying the IR35 rules and to deduct tax and NICs before paying the worker. Invoices from the agency should be sent directly to NHS Shared Business

Services at the address below, and approved by the relevant budget holder to allow payment of the full invoice amount.

NHS St Helens CCG
01X Payables L475
Phoenix House
Topcliffe Lane
Wakefield
WF3 1WE

- 3.7 If the off-payroll working rules do not apply then a letter should be sent to the intermediary from the manager responsible for the worker notifying them of the outcome, and instructing them to send their invoices to the address as detailed in section 3.6.
- 3.8 If the person the CCG has a contract with asks for the reasons behind the decision to apply the off-payroll working rules in writing, the CCG must respond within 31 days. If a response is not sent within this timescale the CCG will become responsible for paying the tax and NICs due.
- 3.9 The HMRC toolkit should be run every time a new contract starts, contract is extended or if the contract is changed.

4. Approvals

- 4.1 Before any offer is made to any individual for an off payroll arrangement, this must be approved by the Remuneration Committee of the CCG.
- 4.2 Approval will be on an exceptional basis only, it is expected that in most circumstances, engagements will be through payroll, and will only be approved if it can be clearly shown that the HMRC Toolkit allows the engagement to be categorised as off payroll.
- 4.3 The Committee will always seek to be assured that the contractual relationship noted in the HMRC Toolkit represents the true working relationship that will exist between the CCG and the individual.

5. References and Associated Documentation

HMRC guidance

<https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation>

Check Employment Status

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

HMRC Starter Check List

<https://www.gov.uk/government/publications/payee-starter-checklist>

DH Group Accounting Manual

<https://www.gov.uk/government/publications/department-of-health-group-accounting-manual-2017-to-2018>

Appendix 1 - AGENCY EXPENDITURE BUSINESS CASE APPROVAL FORM

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 NHS England completion	
Reference Number	
Date received	

For CCG completion	
CCG name	
Regional (Geography)	
Date submitted	

Proposal Description

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):			
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:	
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	
<p>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.</p>	
<p>Ambition to deliver something of value, importance and relevance</p>	<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>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>Clear scope</p>	<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>
<p>Robust contract management</p>	<p><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></p>

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)	<i>Please include when expected outcome will be delivered.</i>
Robust post implementation review proposal	<i>Please outline how you will review effectiveness of the off-payroll support/Agency worker support procured.</i>

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: <i>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.</i>					
Selected provider (if known):					
Benchmarking of rates					
<i>Please provide details of agreed benchmarking rates, referencing where possible agreed framework rates.</i>					

Appendix 2 - 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.

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

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- Any proposed engagements greater than £900 per day will also require the approval of the NHS 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 Director of Commissioning Operations and their Director of Finance

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

The approval process

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

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

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

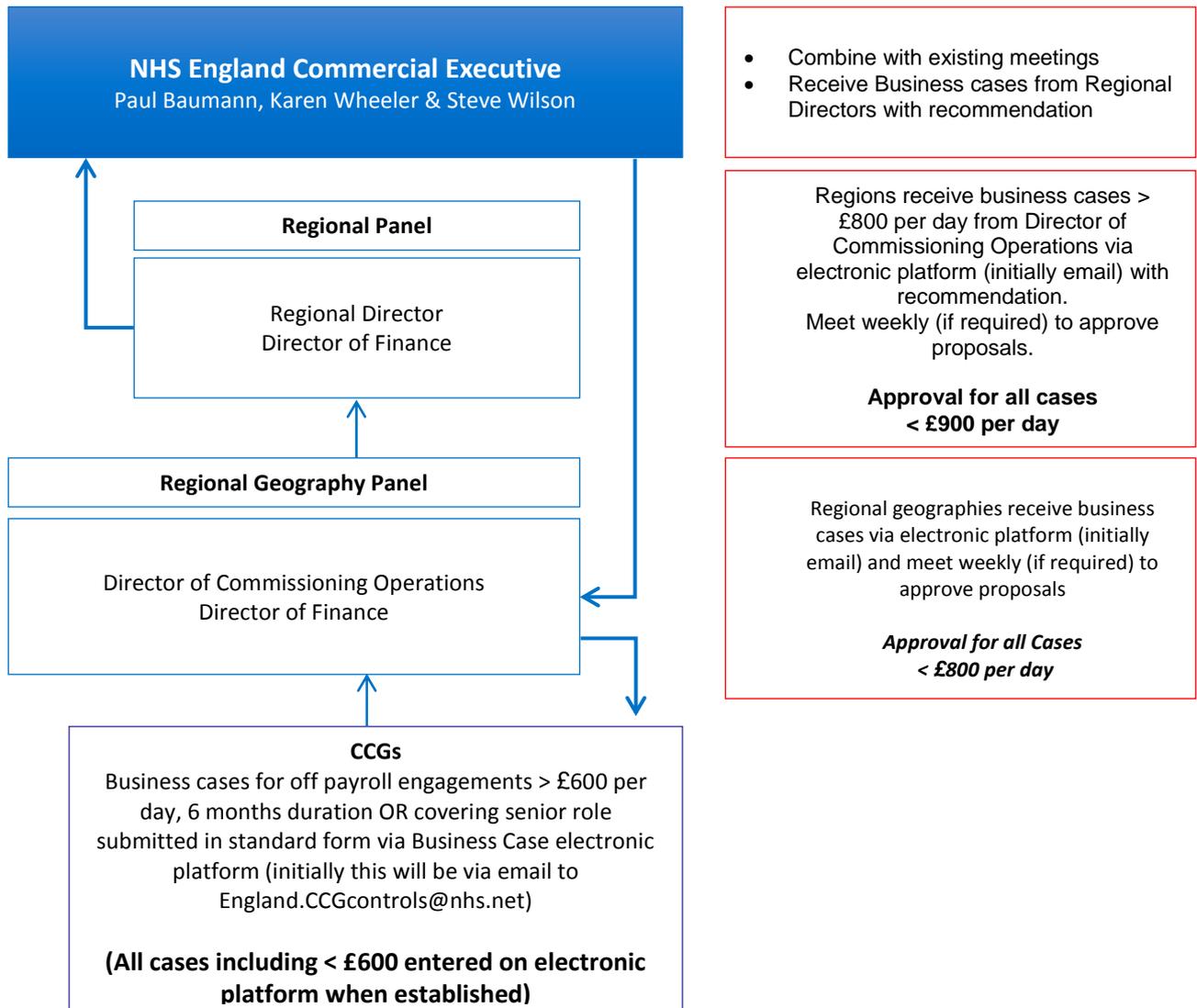
- VFM of proposed engagement
- Business need
- Reason for use of off payroll
- Role to be undertaken
- Framework compliance
- Any recruitment strategy if relevant
- Anticipated delivery start and end date

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



Appendix 3 - PSC – IR35 Direct Engagement Off-Payroll Worker Appointment Form

Organisation (Personal Service Company Name)	
Off-Payroll Worker Forename(s)	
Off-Payroll Worker Surname	
Title (Mr. / Mrs. / Miss Etc.)	
NI Number	
Date of Birth	
Address & Postcode	
Date of Commencement	
Anticipated Date of Termination	
Category of Off Payroll Worker (e.g. Doctor, Nurse, Admin)	
VAT Registered (Y/N)	
If VAT Registered – please provide VAT Registration Number	
Cost Centre being deployed to	

Bank Account	
Sort Code	
Vacant ESR Position No. being filled	
Line Manager Signature	
Line Manager Name	
Date	

Internal

Use Only:

CCG Finance: PSC Database Updated: _____

Initials: _____ **Date:** _____

HR Services:

ESR Record Created: _____

Initials: _____ **Date:** _____

Payroll Services:

Pay Period Processed: _____

Initials: _____ **Date:** _____

