

GP SESSIONAL WORKING

Version 2.1

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Responsibility for dissemination to new staff:	Managers of GPs who will be involved in sessional working
Mechanism for dissemination:	All new and revised policies are published on the CCG website and are promoted to staff through the CCG staff newsletter.
Training implications:	Managers and GPs
Resource implications:	There are no resource implications in relation to this policy. Any requests for additional GP sessions would need to be approved by the Executive Team.
Further details and additional copies available from:	Website https://westhampshireccg.nhs.uk/document-tag/finance-policies/
Equality analysis completed?	Equality analysis checklist completed. As this policy defines process for paying GPs the impact on equality is low and no other action is required.
Consultation process	Policy Sub Group Equality & Diversity Lead
Approved by:	Policy Sub Group
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Amendments Summary:

Amend No	Issued	Page(s)	Subject	Action Date
1	July 2015	8, 9 & 10	Hyperlinks updated, references to tiered employee contribution rate updated, policy review period amended and links to referenced documentation updated.	July 2015
2	Oct 2016		Addition of summary page (V1.02)	6 Oct 2016
3	Nov 2016	6, 7, 9 & 10	Sections 3 & 5 amended to reflect that locality leads are now all required to be employed (rather than self-employed) and to update links to latest legislation.	Nov 16
4	May 2017	8,11,13,14 & 15	Sections 3 & 5 and Appendix 1 amended to reflect change in responsibility of IR35 legislation from contractor to public bodies	1 May 17
5	Feb 2019	9, 10, 12, 14	Cross reference with Agency & Interim Use Policy, clarification of IR35 tax rules regarding people working in the public sector through PSC or other intermediary such as a GP practice and the CCG decision that these individuals must be placed on CCG payroll for employment tax purposes, amendment to off payroll threshold and updated equality statement / removal of EIA checklist.	Feb 2019

Review Log:

Include details of when the document was last reviewed:

Version Number	Review Date	Reviewer	Ratification Process	Notes
1.01	Jul 2015	Finance Manager	Policy Sub Group, Corporate Governance Committee and CCG Board – July 2015	
1.03	Nov 2016	Finance Manager – Accounting and Reporting	Policy Sub Group / CCG Board	
2.00	14 Mar 17	Finance Manager – Accounting and Reporting	Policy Sub Group / CCG Board	See amendment 4 above
2.01	Feb 2019			See amendment 5 above

GP SESSIONAL WORKING POLICY

SUMMARY OF KEY POINTS TO NOTE

This policy sets out the process for GP sessional working and how payment will be made. Specifically:

- The policy will apply to GPs engaged to undertake sessional work. This may be as a worker engaged directly by the CCG, as a worker working through a limited company or other body operating pay-as-you-earn (PAYE) on their whole salary or as a worker working through their own limited company.
- Occasional sessional work includes ad-hoc sessions completed by GPs.
- Due to the nature and scope of the role, all clinical leads and locality leads will be treated as employed by the CCG.
- Ad-hoc and occasional sessional work completed by GPs will be treated as self-employed if the individual is not already employed by the CCG.
- Payment will not be made for backfill of sessions where the GP is undertaking sessions for the CCG.
- Details of procedures for payment and pension arrangements are included within the policy.

GP SESSIONAL WORKING POLICY

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GP SESSIONAL WORKING POLICY

1. INTRODUCTION AND PURPOSE

- 1.1 This policy is to establish a standard set of requirements and a framework for payment of GP sessional working.
- 1.2 This policy is designed to ensure clear internal arrangements for engaging GPs as sessional workers in relation to payment of/for services.
- 1.3 This policy will establish the responsibilities of the CCG, employees and contractors with respect to complying with guidance set out by the Department of Health, NHS England and HM Revenue and Customs.
- 1.4 The policy must be used in conjunction with the Agency and Interim Use Policy to ensure that regulations under IR35 are adhered to and that the correct approval for engagement is obtained.

2. SCOPE AND DEFINITIONS

Scope

- 2.1 The policy will apply to GPs engaged to undertake sessional work. This may be as a worker engaged directly by the CCG, as a worker working through a limited company or other body operating pay-as-you-earn (PAYE) on their whole salary or as a worker working through their own limited company.

Definitions

- 2.2 Sessional workers are GPs that are engaged to work one or more sessions of half a day a week by the CCG.
- 2.3 Locality lead is defined as an individual who is contracted to provide clinical leadership and advice for the programme of work relating to their relevant localities.
- 2.4 Clinical lead is defined as an individual who is contracted to improve the quality of care for the people of West Hampshire through clinical leadership by actively involving and engaging GPs and other clinicians in commissioning decisions for the CCG.
- 2.5 Occasional sessional work includes ad-hoc sessions completed by GPs.
- 2.6 A personal service company (PSC) is usually a limited company where the contractor has majority control or owns most, if not all of the shares.

- 2.7 IR35 refers to tax rules which apply to people who work in the public sector through a Personal Service Company (PSC) or other intermediary, such as a GP surgery. Changes to IR35 rules means that those workers who are not on payroll and therefore do not pay employment taxes but are considered an employee for tax purposes must pay employment taxes in a similar way to employees. The CCG has decided that these individuals must be placed on the CCG payroll to achieve this.

3. PROCEDURE FOR PAYMENT

- 3.1 Due to the nature and scope of the role, all clinical leads and locality leads will be treated as employed by the CCG.
- 3.2 Ad-hoc and occasional sessional work completed by GPs will be treated as self-employed if the individual is not already employed by the CCG or will be assessed under IR35 legislation by the application of the Agency and Interim Use Policy if those services are being provided through a PSC.
- 3.3 A combination of employed and self-employed is possible.
- 3.4 Invoices for ad hoc sessions will be in the format as set out by Shared Business Services (SBS) in their good invoicing guide (<https://www.sbs.nhs.uk/supplier-good-invoicing-practice>) Invoices should be addressed to NHS West Hampshire CCG, 11A Payables K135. This will ensure that invoices are processed quickly so that prompt payment can be made. A proforma invoice is available using the link provided. For GPs submitting invoices who have been assessed as being within IR35, a separate procedure as set out in the Agency and Interim Use Policy should be applied (para 3.12).
- 3.5 Payment will not be made for backfill of sessions where the GP is undertaking sessions for the CCG.
- 3.6 The recommendations from the Department of Health following the HM Treasury review of tax arrangements requires the CCG seek assurance about workers' tax and national insurance contributions (NIC) obligations of workers engaged by or seconded from a GP Practice.
- 3.7 The CCG must seek formal assurance from contractors with off payroll arrangements lasting more than six months and costing more than the rate set out in the Remuneration Report of the Annual Report each year, currently £245 per day, that income tax and national insurance obligations are being met. The CCG should terminate the contract if that assurance is not provided. The requirement can be extended to other contracts as appropriate.
- 3.8 Where the CCG is being invoiced by an individual working through a limited company not assessed as within IR35 (or other organisation, for example, a partnership) and is on the payroll of that company and having PAYE and NICs deducted at source by that company, then the worker can provide evidence that all of the money they are paid by the CCG is put through that body and they are

receiving/withdrawing it with PAYE/NICs deducted at source. This can be evidenced by the production of their payslips which will show the salary, and PAYE and NICs deductions.

- 3.9 Managers must now use the guide and illustrative clauses attached in Appendix 1 and 2 to implement the recommendations of the review, ensuring they work closely with their colleagues in Finance and Human Resources, and with legal advice where necessary.

4. PENSION

Self Employed GPs

- 4.1 A qualified GP (who is already a Scheme member) who works for a CCG under a contract for services (that is, fee based/self-employed) as an individual must pension their CCG income. This includes a GP who holds CCG chair post in a self-employed capacity. However the CCG must not create an officer (or practitioner) pension record under its own EA code; the GP SOLO form must be used.
- 4.2 The tiered employee contribution rate for GPs is based on their total certified NHS pensionable income in the current year; the tiered rate must not be based solely on the CCG income. There is more information about GP (practitioner) tiered contributions on the NHS Pensions website at:
<https://www.nhsbsa.nhs.uk/sites/default/files/2017-03/2015-2016%20to%202018-2019%20Tiered%20employee%20contributions%20-%20employer%20%2803.2017%29%20V5.pdf>
- 4.3 The GP SOLO form can be downloaded from the NHS Pensions website by clicking onto 'Practitioner, Locums, Out of Hours and non-GP Providers' at the home page or at the following link. <http://www.nhsbsa.nhs.uk/4092.aspx>.
- 4.4 A GP who works and trades for a CCG as a limited company cannot pension their CCG income.
- 4.5 Where a CCG engages a GP (who is already a Scheme member) under a contract for services or service level agreement (that is, fee based/self-employed) the CCG must, in law, ensure the income is superannuated. This includes GPs who perform clinical work such as enhanced service, Directed Enhanced Services (DES), Local Enhanced Services (LES), practice based commissioning, etcetera and non-clinical work including board work and non-executive posts.
- 4.6 The CCG must not create a pensionable post even if HMRC regard the GP as an office holder for tax and NI purposes.
- 4.7 Where the GP works for the CCG as an individual the CCG must complete GP form SOLO and forward it, along with all contributions, to the local area team within seven days. The tiered employee contribution rate for GPs is based on

their total certified NHS pensionable income in the current year; the tiered rate must not be based solely on the CCG income. The GP SOLO form can be downloaded from NHS Pensions website by clicking onto the link @Practitioners, Locums, Out of Hours & Non GP Providers' on the home page of the NHS Pensions website or at the following link <http://www.nhsbsa.nhs.uk/Pensions/4199.aspx>.

- 4.8 Where the CCG enters into a contract for services or a service level agreement with a surgery (rather than a specific GP) there is no requirement to complete form SOLO or forward contributions onto the local area team. However the CCG must include the 14% employer contributions within the payment it makes to the surgery and make it clear to the surgery it has done so. The GPs will declare this income as additional pensionable income (excluding the employer contribution element) when they complete their GP provider certificate of pensionable income at year end.

Salaried GPs

- 4.9 All staff who are formally employed by the CCG (including all types of doctors) are officers in NHS pension terms.
- 4.10 The CCG is legally required to provide accurate officer pension records on an annual basis including pensionable pay details. If an employee is part time the CCG must set up a pension record showing the details of the part time hours (or sessions) worked and the whole-time equivalent standard working week (that is, 37.5 hours).

Type of employment	Officer member	GP SOLO form	Non-Pensionable
Contract OF Service/Employed			
CCG salaried/employed staff including all doctors	✓		
Employed Director under formal contract of service to a CCG	✓		
Employed Chair under formal contract of service to a CCG	✓		
Contract FOR Services/Self-employed			
GP who is already a Scheme member engaged on a fee based/self-employed basis to perform clinical work		✓	
GP who is already a Scheme member performing non-clinical work or executive work on a fee based/self-employed basis		✓	

Type of employment	Officer member	GP SOLO form	Non-Pensionable
GP who is SOLELY a freelance GP locum covering for an absent CCG GP			✓
Any GP who trades as a limited company in respect of their CCG work			✓
Any person, other than a GP, engaged on a fee based/self-employed basis			✓

5. ROLES AND RESPONSIBILITIES

Responsibilities

5.1 GPs

- To follow the principles and guidance contained within this policy
- To provide evidence of payment on Tax and NICs as appropriate on income from the CCG.

5.2 Budget Holders

- To ensure that the sessions for GPs are being paid in the correct manner
- To ensure the correct amounts are being paid in line with the CCG recommendations
- To ensure where a PSC is used that an IR35 assessment is carried out.

5.3 Commissioning Support Unit

- To provide the CCG with support in determining employment status of individuals.

6. TRAINING

6.1 GP sessional workers will be made aware of the policy on engagement with the CCG.

6.2 All budget holders will be expected to have a working knowledge of the GP Sessional Working Policy and will be familiarised with this policy at their first regular monthly budget review meeting with finance.

7. EQUALITY ANALYSIS

- 7.1 The CCG is committed to equality, diversity and inclusion for all, as well as to meeting the Public Sector Equality Duty (Equality Act 2010).
- 7.2 Both new policies, and existing policies when reviewed, come within the Public Sector Equality Duty. This means that policy authors must consider whether the policy will be effective for all patients and / or staff. This process is called equality impact assessment.
- 7.3 This policy has been assessed as having a low impact on people with characteristics protected by the Equality Act. As such a full equality impact assessment is not required.

8. MONITORING THE EFFECTIVENESS OF THE POLICY

- 8.1 The budget holder is ultimately responsible for ensuring GPs are correctly engaged as employed or self-employed.
- 8.2 Audit to ensure compliance with this policy will be undertaken regularly, normally once a year.
- 8.3 To monitor the recommendations of the review (Tax Arrangements of Public Appointees) have been successfully implemented, the Treasury and Cabinet Office carries out a monitoring process. This process will request information including:
 - a. The number of off-payroll engagements for those earning more than £245 per day for longer than six months since 23 August 2012
 - b. The number of these for whom assurance as to their tax obligations has been sought
 - c. The number who have successfully provided assurance and
 - d. Action taken against those who have not.
- 8.4 In addition, the CCG is required to report the recommendations of the review as part of the CCGs annual report and accounts.

9. REVIEW

- 9.1 This document may be reviewed at any time at the request of either staff side or management but will automatically be reviewed on a biennial basis.

10. REFERENCES AND LINKS TO OTHER DOCUMENTS

SBS Good Invoicing Guide <https://www.sbs.nhs.uk/supplier-good-invoicing-practice>

Review of the tax arrangements of public sector appointees
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/220745/tax_pay_appointees_review_230512.pdf

Appendix 1 Assurance Guide

This guide is to help the CCG seek assurance regarding the income tax and NIC obligations of their appointees, as recommended by the CST Review of Tax Arrangements of Senior Public Sector Appointees.

The CCG must have the contractual right to seek assurance that the worker is meeting their income tax and national insurance obligations if an individual (the “worker”) is engaged by the CCG for six months or longer and being paid £245 per day or more - but not being paid through the CCGs payroll (with PAYE and NICs deducted at source) or being paid under IR35.

In line with the recommendations of the CST review, the CCG should decide when to seek the assurance. For example, they may wish to seek the assurance for some contracts only. They may seek the assurance at the start of the contract, if they know it will last for six months or longer; alternatively they may seek the assurance at six-months or some other point.

Workers should be responsible for the information provided, even if it comes from their accountant or professional adviser, and given a reasonable time (for example, 20 working days) to provide information requested.

Worker engaged directly

Where the worker is engaged directly (not through a limited company or other body) it is the responsibility of the CCG to ensure that they correctly classify the status of the worker as employed or self-employed. They must do this prior to the engagement starting; this is a requirement for every UK employer. The status and tax treatment is determined by the terms and conditions under which a worker is engaged. The CCG may seek assurance about the tax obligations of workers engaged directly by following step one below.

Worker working through a limited company or other body operating PAYE on their whole salary

Where a worker is not on the CCG payroll but is working through a limited company or other body, and on the payroll of that body, there is no requirement for the department to operate PAYE and NICs unless the worker falls within the IR35 legislation. The department may seek assurance by following step two below.

Worker working through their own limited company

Where someone is working through their own limited company (a “personal service company” PSC) the CCG must consider the intermediaries legislation known as IR35.

The IR35 legislation prevents people who would be classed as an employee if the company was not in place from paying less tax by operating through a PSC than by being engaged directly by the engager (the CCG). It says that if the relationship between the worker and the engager (the CCG) would be employment if it were not

for the interposition of the company, then the CCG must treat the money from that contract as earnings and pay PAYE tax and NICs on the money. Further direction to be sought from the finance department in assessing IR35 status.

Departments may seek assurance in these circumstances by following step three below.

Step One – employment status

The CCG should use HMRC's online Employment Status Indicator (ESI) tool (<https://esi2calculator.hmrc.gov.uk/esi/app/index.html>) to determine if the worker is classed as self-employed or an employee for tax purposes. Then:

- if the worker is classed as self-employed – the CCG should confirm that the worker is registered to pay tax. For example if the worker has been working on a self-employed basis for a number of years they might provide their previous year's business accounts and filed tax return, or if they are newly self-employed they will be able to provide form SA250 as evidence that they have registered as self-employed with HMRC. Once the evidence has been provided, the department need take no further action. This evidence can be provided at the six-month point.
- if the worker is classed as an employee – they should be put onto the CCG payroll. (As explained above, if they are working through a limited company, seek assurance as set out at step two or step three below.)

Step Two – engaged by (or seconded from) a company or other organisation

If the worker is engaged through a limited company and outside of IR35 legislation (or other organisation, for example a partnership or a university) and is on the payroll of that company, and having PAYE and NICs deducted at source by the limited company, then the worker can provide evidence that all of the money they are paid by the department is put through that body and they are receiving/withdrawing it with PAYE/NICs deducted at source.

This can be evidenced by the production of their payslips which will show the salary, and PAYE and NICs deductions. (The company may deduct a small percentage for administrative costs.) The person may be the director of the company, working for a personal service company or one of many employees. This test also applies to those on secondment whose parent organisation is reimbursed for their salary. It will be possible for the worker to provide payslips at the six month point for the previous six months.

Step Three – engaged through a personal service company

Where the worker is engaged through their own limited company (a personal service company) the CCG will need to assess the workers status under IR35. The following evidence will then be required:

- a. Where the worker is outside of IR35, the worker will provide written confirmation that they pay the appropriate tax and NICs on the income from

the CCG. Provided the terms of the engagement remain the same, the services company will remain low risk for the duration of the contract.

- b. If the contract is within the scope of IR35, the CCG will deduct PAYE and NICs on the payments to the PSC.

If the CCG is not satisfied with the evidence they receive they may send details to their CRM or customer coordinator in HMRC to be considered alongside other intelligence to support HMRC's work to tackle non-compliance. Taxpayer confidentiality means that HMRC will not be able to share the results of any follow-up action with the department.

Appendix 2 Illustrative Contract Clauses

Please Note

These clauses have been drafted on an illustrative basis and are not intended to be implemented in to any contract without a thorough review involving a) the individual department's governance and (where applicable) information sharing practices and b) a review of the contracting parties in the particular circumstances (including tripartite arrangements) and termination provisions.

Generic clauses for individual worker [CCG contracts with worker, or obligation in header contract to be flowed down to worker*]

1. Where [worker*] is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
2. Where [worker] is liable to national insurance contributions (NICs) in respect of consideration received under this contract, it shall at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
3. West Hampshire CCG may, at any time during the term of this contract, request [worker] to provide information which demonstrates how [worker] complies with clauses 1 and 2 above or why those clauses do not apply to it.
4. A request under clause 3 above may specify the information which [worker] must provide and the period within which that information must be provided.
5. West Hampshire CCG may terminate this contract if-
 - (a) in the case of a request mentioned in clause 3 above-
 - (i) [Worker] fails to provide information in response to the request within a reasonable time, or
 - (ii) [Worker] provides information which is inadequate to demonstrate either how [worker] complies with clauses 1 and 2 above or why those clauses do not apply to it
 - (b) in the case of a request mentioned in clause 4 above, [worker] fails to provide the specified information within the specified period, or
 - (c) it receives information which demonstrates that, at any time when clauses 1 and 2 apply to [worker], [worker] is not complying with those clauses.

6. West Hampshire CCG may supply any information which it receives under clause 3 to the Commissioners of HMRC for the purpose of the collection and management of revenue for which they are responsible.

* *Where there is no 'direct' contract between the worker and the CCG, the CCG will need to ensure that these provisions are contained in the 'Header' contract/framework agreement and that the 'supplier' is legally obliged to flow these terms down to the worker with whom it contracts. One way to do this would be to include the provision as an annexe to the 'Header' contract/framework agreement and confirm that it must be included in any terms between the 'supplier' and the worker. There will also need to be information provisions in the Header contract to ensure that the information supplied by the worker can be provided directly to government departments to carry out any necessary assurance, and make the decision to terminate if necessary (through the correct contractual route).*