

## Consultant, Interim & Agency Worker Policy

### 1. Introduction and purpose

- 1.1 The overall objectives of this policy are to:
- Ensure consistent application in the use of Consultants, Interims and Agency Workers across the council;
  - Ensure correct procedures are followed when sourcing a Consultant, Interim or Agency Worker, and as a result ensuring there is appropriate transparency;
  - Minimise the use of non-payrolled workers to reduce overall spend; and
  - Ensure the council complies with all HMRC regulations.
- 1.2 Officers should, wherever possible, seek to fill senior management posts with a permanent employee where it is beneficial for the council and consider all other available options (e.g. internal employees acting up) before seeking to recruit an interim to a managerial position.
- 1.3 Where it is not possible to fill posts with a permanent or temporary employee this policy provides Peterborough City Council managers with clear instructions in respect of the engagement and management of Consultants, Interims & Agency Workers (referred to throughout this policy as ‘non-payrolled workers’).
- 1.4 The council aims to ensure that value for money is received from all non-payrolled workers. Internal resources should always be used where they are available.
- 1.5 This policy does not apply to interim employees where that interim is employed under a fixed term employment contract, and paid via the payroll to carry out work which is “business as usual”.

### 2. Definitions

#### 2.1 Non-payrolled workers

The council defines non-payrolled workers as either:-

##### Consultant

Consultants are any party, whether an individual or a firm, with expertise that is typically not available internally. A Consultant is engaged for a limited period or for short-term projects to provide professional advice or services and will usually specify an endpoint to their involvement in a project. A Consultant transfers skills and/or expertise to the council which, it either does not possess in-house, or which require an independent evaluation/assessment to be made.

Consultants are not held against an existing post on the establishment.

**Engaging a Consultant is a procurement activity, therefore Serco Procurement must be contacted in the first instance. It is important that any expenditure in relation to engaging Consultants must be in accordance with the Council’s Contract Rules.**

##### Interim/Agency Worker

An Interim and/or Agency Worker is an individual supplied by a temporary work agency to work temporarily for and under the supervision of the council.

Interims are further defined as senior grade managers covering a substantive post within the council and are concerned with the fulfilment of a particular professional function or senior management position within the organisational structure. They usually cover business-as-usual activities/providing cover for a role and are ideally engaged on a short term basis.

Interims/Agency Workers are usually fulfilling a substantive post on the establishment or undertaking a temporary increase in workload.

**Under no circumstances must a Council Officer engage an Interim/Agency Worker without going through either of the Council’s Corporate Framework Agreements for all Agency Workers (social care AND non-social care). The council’s Recruitment and Retention Manager must be contacted in respect of all Interim/Agency Worker engagements.**

### 3. Process that must be followed when engaging non-payrolled workers

- 3.1 The council has Corporate Framework Agreements in place for the provision of all (i) Social Care and (ii) Non-Social care roles. Under no circumstances must an Interim/Agency Worker be engaged without attempting to utilise these frameworks in the first instance. Alternatively, Manor Drive Solutions may be utilised.
- 3.2 Engaging a Consultant is a procurement activity. It is important that any expenditure in relation to engaging a Consultant must be in accordance with the council’s Contract Rules.
- 3.3 The following table will assist managers to understand the correct process for engaging a non-payrolled worker, and clearly differentiates between consultants, interims and agency workers.

Description	Payment Method	Engagement Process
Consultant	Paid through invoice. Fixed piece of work.	1. A business case must be written and approved on Verto 2. Serco Procurement must be contacted in order to determine the most appropriate solution: (i) Tendering process to invite bids, in accordance with the Contract Rules: <a href="http://democracy.peterborough.gov.uk/documents/s33018/Part%204%20Section%2010%20Contract%20Rules%20Version%20006.pdf">http://democracy.peterborough.gov.uk/documents/s33018/Part%204%20Section%2010%20Contract%20Rules%20Version%20006.pdf</a> OR (ii) Call off from partnership contracts where the appointment falls within the scope of these contracts, OR (iii) Call off from public frameworks or other frameworks where the council is permitted to call off 3. Determine IR35 status

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		4. Governance approve award. Full details are provided in the flowchart at Appendix A.
Interims & Agency Workers	Paid through invoice to Agency. Short-term or fixed length employment.	1. Appointed through the council's framework arrangements for agency staff, or 2. Use of Manor Drive Solutions / Business Support work requests.  Full details are provided in the flowchart at Appendix B.

#### 3.4 Exemption from the engagement process - only in consultation with Legal and Serco Procurement

Where it is not possible to engage a Consultant/Interim/Agency Worker in accordance with the engagement process stipulated above, a Council Officer may request an exemption from the process. The fundamental principles of exemptions are that they should be used only in exceptional circumstances and are granted entirely at the discretion of the Corporate Director of Resources, in consultation with the Director Law & Governance. Legal and Serco Procurement must be consulted in all instances where an exemption from the above process is sought.

#### 3.5 Before any consultant begins an assignment a business case must be approved on Verto.

### 4. IR35 Status (HMRC regulations) Consultants/Interims/Agency Workers

4.1 IR35 is the reference used to describe a piece of tax legislation which aims to differentiate between genuine businesses and workers who are *for all intents and purposes* a temporary employee.

#### 4.2 **IR35 Status (HMRC regulations) Interims/Agency Workers**

The council will adopt a blanket approach in respect of the tax status of each interim/agency worker. All interims/agency workers will be classed as within the IR35 regulations. IR35 status need not be considered further unless the status is disputed by the interim/agency worker.

#### 4.3 **IR35 Status (HMRC regulations) Consultants**

A decision will be required for each consultant engaged. HMRC provide an Employment Status (ESS) tool that enables employers to check what the employment status of each consultant should be (that is whether they are employed or self-employed for tax, National Insurance contributions (NICs) or VAT purposes). This must be used to determine the exact status for each individual. (This tool was previously known as the Employment Status Indicator tool).

#### 4.4 Before starting to use the ESS tool, HMRC recommends that their guidance on employment status has been read. This explains the factors that determine whether a worker is considered employed or self-employed. (These tools cannot be used to check the employment status of agency workers or anyone providing services through an intermediary).

[Read more guidance about employment status](#)

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Click [here](#) to access the ESS tool. For further advice and guidance contact your HR Business Partner or the Senior Reward Advisor.

Following the test it is essential to keep an electronic copy of the result.

- 4.5 Officers who choose not to follow this policy and/or process will face disciplinary action which could result in dismissal for a first offence.

## 5. Skills Transfer

- 5.1 'Skills transfer' must be a written contractual requirement for appropriate professional skills contracts for Consultants, to enable officers to develop expertise which will directly benefit the council.

5.2 The Consultant shall where required identify the required knowledge and skill set to carry out the services and impart the necessary skills and knowledge to the council's employees with whom the Consultant has contact in the performance of their duties. **This should be undertaken with a view to increasing and consolidating the skills base within the council.**

5.3 In addition the Consultant shall deliver training including a Question and Answer Session to those workers and employees with whom the Consultant has had contact together with such others as are nominated by the council. The training shall be of such duration and timing as specified by the council and shall focus on those areas identified by the council that arise from the delivery of the Consultancy Services to the council.

## 6. Conflicts of Interest

- 6.1 Officers must ensure that any contract with the consultant contains a requirement that any conflicts of interest which arise during the course of the contract (including those of any sub-contractor engaged) will be notified to an officer of the council. Standard conditions of contract in respect of Conflicts of Interest are included within the Council's Consultancy Agreement.
- 6.2 The principles of the Code of Conduct for Officers applies to those engaged as Consultants, Interims/Agency Workers.

### Examples of potential conflicts of interest

- 6.3 The following are matters which could potentially give rise to a conflict between the Consultant and the council's interest. This list is not exhaustive but it might assist in identifying whether any potential conflict of interest arises:
- The Consultant's financial interests are affected by the outcome of the contract (but this does not include the salary paid to the Consultant).
  - The Consultant is a member of a body or holds a position of responsibility in a body whose interests may conflict with those of the council.
  - The Consultant is personally known to the officer or member awarding the contract (this is not necessarily fatal to the contract if the contract has been obtained through fair competition but should be declared in any event).

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- The Consultant owns shares or has an interest in any company which is affected by the outcome of the contract.
- The Consultant has another contract which conflicts with the council's interests.

## 7. Reporting and Monitoring

- 7.1 The Line Manager responsible for engaging a Consultant will be required to complete progress reports on Verto to demonstrate that the objectives of the original business case are being achieved.
- 7.2 Any known breaches of this process will be reported to Corporate Management Team on a monthly basis by the Recruitment & Retention Manager. A monthly report on Consultant usage will be submitted to the Corporate Director Resources and the Cabinet Member for Resources for their information and scrutiny.
- 7.3 The ongoing monitoring role at Member level is undertaken by Audit Committee. Regular reports will be produced for the Audit Committee.
- 7.4 Senior managers will be expected to confirm that they have complied with IR35 requirements in respect of engaging consultants and office holders, as part of the annual statement of accounts assurance process.

## 8. Further support for Managers

- 8.1 Managers will be encouraged to source internal skills, expertise and resources before preparing a business case for consultancy resources (including Consultants in interim positions). This will include checking the council's 'at risk' register of redundant and re-deployed staff.
- 8.2 HR will provide the necessary advice and support to ensure appointments are made via the payroll in the first instance.
- 8.3 Where appropriate, HR should be involved in the recruitment process for Interims occupying managerial positions to ensure that advice can be given on suitable candidates from amongst existing employees and in-house expertise, skills or knowledge utilised in accordance with the council's equality policies.
- 8.4 Legal Services will provide a standard form of Consultant Agreement for use by the council.
- 8.5 Further guidance and support can be obtained from the contacts below:

Area	Contact
Business cases and Verto	Susan Baxter Portfolio Governance Officer (01733) 452569 <a href="mailto:pmo@peterborough.gov.uk">pmo@peterborough.gov.uk</a>

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Procurement	Darren Ford Senior Contracts & Partnerships Manager (01733) 452465 commercialandprocurement unit@peterborough.gov.uk
Legal advice	Israr Ahmed Contracts and Procurement Lawyer (01733) 452326 israr.ahmed@peterborough.gov.uk  Natalie Moulton Contracts and Procurement Assistant Lawyer (01733) 452527 natalie.moulton@peterborough.gov.uk
Finance	Nick Hutchins / Fiona Chapman Head of Finance (01733) 863823 / (01733) 863917 nick.hutchins@peterborough.gov.uk fiona.chapman@peterborough.gov.uk
Human Resources	Mandy Pullen / Karen Craig AD Human Resources (01733) 863628 / 01733 384514 mandy.pullen@peterborough.gov.uk karen.craig@peterborough.gov.uk
Corporate	James Fordham Recruitment and Retention Manager (01733) 864581 james.fordham@peterborough.gov.uk

## 9. Review of policy

This policy will be reviewed by Legal and HR on an annual basis.

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**Appendix A**  
**Process flow chart for Consultants**

**Appendix B**  
**Process flow chart for Interims/Agency Workers**

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