



AGENCY & OTHER OFF-PAYROLL WORKING GUIDANCE

This document applies to all Council employees except:

- All school based employees

This document may not be applicable to employees who transferred into LCC under TUPE legislation and remain on the terms and conditions of their previous organisation.

Last Review	July 2017
Next Scheduled Review	July 2020
Last Updated	January 2020

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APPENDICES:

[Appendix A - Exception Report Off Contract Temporary Worker Hire Approval Form](#)

[Appendix B - In Scope of IR35 Letter](#)

[Appendix C - Out of Scope of IR35 Letter](#)

[Appendix D - IR35 Worker New Starter Form](#)

INTRODUCTION

Managers will be expected to source all off-payroll workers in the first instance through one of the two County Council's corporate agency worker contracts. Retinue provide agency workers for Social Care Social Care Staff (e.g. Qualified / Unqualified Social Workers, Residential Care Staff, Occupational Therapists) and Comensura all other staff (e.g. Business support, Finance, Legal and Engineering). These suppliers manage all the Employment Agencies (Vendors) used by the Council, are compliant with the IR35 (Intermediaries legislation - see further information on page 4) and ensure the appropriate tax and national insurance deductions are made. Where it is not possible to use one of these Corporate Contracts, managers must gain approval from the Council's Contract Management Team before entering into an alternative off-payroll working arrangement.

KEY PRINCIPLES

The Council will only use off-payroll workers to provide additional resources to allow for flexibility on a short-term basis for the following reasons:

- Cover for a permanent leaver (if not possible to appoint a member of staff through the proper recruitment process due to time restraints or lack of suitable candidates).
- To cover, or backfill, for a secondment.
- Cover for paternity/parental leave.
- To respond to planned/unplanned peak periods at work.
- Project Work - Project work requiring specialist skills.
- Holiday Cover – Short term cover for holiday absence.
- Cover for short/long term sickness.
- Cover for other unplanned absences.

Agency and other off-payroll workers should not be used for maternity cover as it is known a temporary vacancy will arise and a fair and open recruitment process to recruit to the temporary position should be undertaken.

If an additional resource is likely for a longer term then the proper Council recruitment process should be followed.

It is illegal for agency workers to be used to cover employees on strike.

Agency and other off-payroll workers should only be selected through the Council's corporate providers, Comensura or Retinue either through the respective on-line system or in emergency situations, by telephone. However:

- If a manager is unable to source an off-payroll worker through the corporate agency contracts, they may have to go 'off contract' and source elsewhere through an alternative off-payroll working arrangement. Following approval by an Assistant Director or equivalent / Executive Director, It is important this is also discussed with the Council's Contract Management Team prior to taking the step to go 'off contract' so that appropriate advice can be given. Going 'off contract' will mean that the manager is then responsible for auditing the off-payroll worker/s themselves. NB the Employers National Insurance deduction will be charged at cost to the budget holder.

- The manager may recommend to Comensura or Retinue an alternative agency and email the details of the agency to them however these occasions are expected to be rare as these providers have already procured the majority of agencies that have been used within Lincolnshire.

Where a permanent vacancy has been advertised externally and a competitive recruitment process undertaken, no 'agency worker to permanent fees' are payable.

RESPONSIBILITIES

EXECUTIVE DIRECTOR / ASSISTANT DIRECTOR LEVEL

- Will consider all requests for off-payroll working arrangements within their Director Area.
- Ensure compliance with the procedure for the use of off-payroll workers.
- Ensure monitoring reports are used.

COUNCIL CONTRACT MANAGEMENT TEAM

Will oversee the appointment of off-payroll workers including managing key processes such as changes to cost codes and timesheet approvers.

In addition they will:

- Monitor the use of off-payroll workers and the duration for which they are engaged through Comensura and Retinue reports. This information will form part of the Workforce Development Plan data provided to Service Areas.
- Producing reports to help monitor the length of assignments and the reason why an off-payroll worker is filling that position.
- Manage the 12 week qualifying period and alert managers via email, where necessary, that the agency worker is entitled to equal treatment i.e. the same basic employment and working conditions as an employee or worker who has been directly recruited to the same job.
- Approve any agreement to waive the requirement to use the corporate contract to engage an agency or other off-payroll worker and refer to Legal Services Lincolnshire if required for example to check any Contract that is outside of the corporate template and to consider issues such as Right to Work in the UK, DBS checks and safer recruitment.

MANAGERS

Will:

- Apply the provisions of this guidance in accordance with the relevant Scheme of Delegation
- Ensure the corporate agency contract is used first and foremost.
- Seek guidance and support from the Contract Management Team for use of agency or other off-payroll working arrangement outside of the Corporate Contract with Comensura or Retinue before any in depth conversations take place.
- Complete the employment status assessment tool provided by HMRC for all off-payroll workers and forward a copy of this to HR Admin for retention.
- Ensuring that roles requiring an enhanced DBS check are identified when Job Profiles are added to the system.
- Satisfy themselves about the identity of the off-payroll worker by checking photographic proof of identity. Further checks can include Enhanced DBS certificates (if relevant), Right to work documents, qualifications and professional memberships. Please note – it

is part of the corporate contract with Comensura and Retinue to ensure these checks are undertaken and they run a robust audit process to confirm this however managers must undertake these checks for any worker engaged outside of the corporate contract with Manpower.

- Ensure that agency workers in public facing roles meet the requirements of the [Fluency Duty](#) by having the ability to speak English to the necessary standard for the role they are undertaking.
- In the case of an agency worker, organise an appropriate induction to ensure that entitlements are explained. See the '[Managers Induction Checklist](#)' and provide the agency worker with a copy of the '[Agency Worker Entitlement](#)' leaflet on their first day working within the Council.
- Review the assignment where an agency worker is engaged continuously for six months to cover a single post/set of duties.
- Complete the request for authorisation form at Appendix A to gain Assistant Director approval prior to any extension of assignment, which must be based on justifiable service needs. Once approval has been given, the assignment must be extended via the Comensura or Retinue on-line system.
- Signpost to the Council Contract Management Team any communication from agencies not on the contract with Comensura or Retinue before any in-depth conversations take place.
- For vacancies - work towards replacing agency workers with employees at the earliest opportunity.

COMENSURA / RETINUE

The County Council's contracts with Comensura and Retinue manages all the Employment Agencies (vendors) used by the Council. Retinue will supply Social Care agency staff and Comensura will supply any other agency workers outside of Social Care.

A Service Level Agreement (SLA) between Comensura, Retinue and ESPO on behalf of the Council has been agreed as part of each contract. The SLA identifies the commitments made by the Council, Comensura and Retinue and the agencies they manage on the Council's behalf.

When the corporate contracts are used, Comensura and Retinue are also responsible for:

- Ensuring tax and national insurance deductions are made by themselves and any Vendor (Employment) Agencies and sent to HMRC.
- Regularly auditing the performance of all the employment agencies (vendors).
- Operating a safeguarding system in respect of certain high risk roles within the Council. These roles have been identified as roles working with children and adults or any other role which require an enhanced Disclosure & Barring (DBS) check.
- Ensuring all identification processes have taken place in respect of every agency worker put forward for an assignment.
- Ensuring all agency workers are signed up to the Council's confidentiality agreement.

VENDOR (EMPLOYMENT) AGENCIES THROUGH COMENSURA AND RETINUE

Comensura / Retinue will only refer agency workers to the Council where the vendor agency has completed all pre-employment checks. The type of checks required will vary according to the post, but will always include:

- The receipt of two satisfactory and independent references (i.e. not from a relative) of which one will be from the immediate past employer covering either 3 years, or 5 years employment, depending upon the type of role.
- An identity check.
- Evidence of eligibility to work legally in the UK.
- A check that professional qualifications are true and accurate.
- A check that the agency worker is medically fit to undertake the role.
- A check that unspent convictions are declared.
- A check that the skills of the worker match the job and person specification.
- Diversity monitoring including information regarding a worker's age, gender, religion, ethnicity, sexual orientation and disability (the diversity information provided by the worker is optional).
- That the Council's Confidentiality Statement is completed.
- Additional checks (e.g. DBS and criminal record checks) will be undertaken where agency workers come into contact with children and/or adults and therefore have safeguarding responsibilities, or when the role requires an agency worker to have access to a GCSX account. A basic criminal record check will be carried out in the circumstances of access to a GCSX account being required.

FURTHER INFORMATION

From the 6 April 2017, the Government changed the rules in relation to off-payroll intermediaries' legislation (commonly known as IR35) within the Public Sector. This change will affect any off-payroll working arrangements including agency workers, personal services companies, self-employed and Consultants and apply to payments made on or after 6 April 2017. As a consequence, the changes will affect contracts made before and after that date.

The change to legislation means that instead of the worker determining whether the IR35 rules apply to them, it will be for the Council to decide if the off-payroll rules apply using the HMRC [employment status test tool](#). Additionally, it will be the responsibility of the Council to deduct tax, employers' contributions and apprenticeship levy where appropriate where they engage a worker directly, or an agency or other third party if the worker is engaged via them.

HMRC could impose a financial penalty to the Council should these requirements not be followed and would incur both employer and employee costs.

ADVICE AND SUPPORT

Please contact Human Resources.

PROCEDURE TO BE FOLLOWED BEFORE ENTERING INTO ANY OFF-PAYROLL WORKING ARRANGEMENT

There is no requirement for AD (or equivalent) approval for "on contract" Agency Workers. The governance and management of spend will be monitored through monthly reports and Managers/ADs and Directors will be able to monitor these through DMTs.

If Managers are unable to source an agency or other off-payroll worker through the corporate contract with Comensura or Retinue, they must seek advice and support to waive this requirement with their Assistant Director. By exception, when it is necessary to go "off contract" it will be necessary to complete the off contract exception report form which can be found in [Appendix A](#).

If approval is given, hiring managers will need to carry out an assessment of the worker using the HMRC online tool to check employment status for tax
<https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>.

This assessment must be carried out in **all** cases and a copy saved with the individuals name and sent to the HR Admin Team at CorporateHRAdminSupp@lincolnshire.gov.uk regardless of whether the assessment indicates the assignment would be inside or outside of IR35.

Outcomes of assessments

- A. If the Employment Status for Tax reads, 'This engagement should be classed as employed for tax purposes' *you* will need to inform the worker that we have a statutory duty to deduct NI and Tax at source and issue the letter in Appendix B.

to the hiring manager must complete the IR35 Worker New Starter Form which can be found in Appendix D and send the form and outcome of assessment (if not done so already) to CorporateHRAdminSupp@lincolnshire.gov.uk

Tax and national insurance payments will be deducted and Accounts Payable will then make the necessary adjustments to payments against invoices.

- B. If the Employment Status for Tax reads, 'The intermediaries' legislation does not apply to this engagement' then Tax and national insurance payments will not need to be deducted.

The outcome of the assessment will need to be forwarded to the HR Admin Team at: CorporateHRAdminSupp@lincolnshire.gov.uk and the worker should be issued with the letter at Appendix C.

In either case of B or C hiring managers need to assess whether there is a suitable contract in place with the worker. If not, suitable steps need to be taken to ensure that an appropriate contract is put in place by liaising with the Council's Contract Team within Commercial Services.

- C. In some cases the Outcome may say 'The worker's employment status cannot be determined by this system'. In these cases an opinion on status should be sought from the HMRC Employment Status and Intermediaries Customer Service Team by telephone: 0300 123 2326 or by e-mail at ir35@hmrc.gov.uk. Please ensure that you keep a record of your query and the response received and send this to HR Admin: CorporateHRAdminSupport@lincolnshire.gov.uk

AGENCY WORKERS

INTRODUCTION FEES

The 'agency worker to permanent fees' are only payable up to 13 weeks from the start of a non-professional assignment and up to 26 weeks from the start of a professional assignment. After these times no 'agency worker to permanent fee' is payable. This is irrespective of role.

Any fee due is calculated as a percentage of the agency worker's projected gross remuneration which would be paid for the first year of work with the Customer. This is usually 15%.

AGENCY WORKER REGULATIONS 2010

From the first day of an assignment all agency workers will be given the same access to the organisation's collective facilities and amenities as a comparable worker who is recruited directly. Agency workers will have access, for example, to:

- Any on site canteens.
- All toilet and shower facilities in the relevant area of work.
- Staff rest rooms.
- Breastfeeding facilities.
- Information about any relevant internal job vacancies within the organisation and to have the opportunity to apply for these vacancies.
- After 12 weeks on assignment within the Council, the agency worker is entitled to equal treatment i.e. the same basic employment and working conditions as an employee who has been directly recruited to the same job. This includes:
- basic pay (including, where appropriate additional risk payments for hazardous duties /overtime pay /unsocial-hours allowance /shift allowance)
- pro-rata annual leave
- paid time off for antenatal appointments
- working hours
- rest periods

The right to equal pay does not include:

- Occupational sick pay,
- Occupational pensions,
- Maternity, paternity or adoption pay (the Regulations do not affect an agency worker's statutory entitlements),
- Redundancy pay (statutory or contractual),
- Benefits in kind, or benefits requiring an eligibility period,
- Bonuses that are not linked directly to the contribution of the individual (for example, a flat-rate bonus that is given to all direct recruits to encourage loyalty or long-term service),
- The right to participate in salary-sacrifice schemes

Managers must ensure they are satisfied that all pre-employment checks, which have been agreed by the Council, have been completed satisfactorily by agencies.

All jobs undertaken by agency workers must have the relevant job description and skills set identified for that level of post.

Rates of pay must be agreed based on the GLPC job description grade and can only be increased based on intelligence of current market conditions.

Managers must not negotiate rates directly with vendors or agency workers.

All agency workers should be treated with dignity and without discrimination and there are certain statutory protection rights in place which include:

- The right not to be discriminated against on the grounds of race, sex, age, disability, sexual orientation, religion or belief.
- Disabled candidates who meet minimum criteria should be offered an interview where a manager chooses to go through an interview selection process.
- Rights under the Working Time Regulations e.g. maximum number of hours and the right to statutory paid holidays.
- Rights under the whistle-blowing provisions to protection from detriment on making a protected disclosure.
- The right to receive Day 1 and 12 week entitlements as required under the Agency Workers Regulations 2010 (see below).

The agency worker must be given the leaflet (Agency Workers at Lincolnshire County Council) as part of their induction.

Training and development of agency workers is the responsibility of their respective agency, it is not the responsibility of the Council - neither the cost of or the time required

Appraisal meetings and/or Personal Development Plans are not the responsibility of managers. Again this is the responsibility of the respective agency.

However, all people working within the Council should be provided with a clear understanding of the work they are expected to complete and the Council's Values and Behaviours from their LCC supervisor.

Agency workers will not benefit from the Council's Flexible Working Policy – this includes working from home, compressed hours and/or flexi working.

Invitations to social events organised within an office, for example, Christmas parties, should not be extended to agency workers as they are not employees of the Council.

COMENSURA / RETINUE AUTHORISATION – NEW USERS, PROCESS FOR ASSIGNMENTS AND CHANGE CONTROL

The Council has supplied Comensura / Retinue with a list of Council Officers who are authorised to order agency workers, agree assignments and approve timesheets. (Officers can be added and removed by the Council using the correct change control process below). Managers should refer to the relevant guides - Comensura's Guide to their web based technology platform, C.net5 can be found at <http://elearning.comensura.net/std/clients.html>

- Password reset
- Requesting a new job title
- New agency request
- FAQ's
- Contact Details

Retinue's Guide can be found on the LCC George page.

Assignment extension approvals will be actioned by an Assistant Director electronically within the Retinue or Comensura system. Instructions on how to request and approve an extension can be found in Retinue's and Comensura's User Guides.

PROCESS FOR NEW ASSIGNMENTS

- After securing approval from using the form at Appendix A, the hiring manager will need to Create an order with either Comensura or Retinue..
- Comensura / Retinue will identify suitable candidates and notify hiring manager.
- Hiring manager will need to select candidates they wish to interview and inform Comensura / Retinue of interview details who will inform candidates
- Hiring manager to notify Comensura / Retinue of outcome of interviews.
- Comensura / Retinue will inform candidates of outcome, create a booking for the successful candidate and notify hiring manager when this has been completed.

TIMESHEET APPROVALS

- Comensura / Retinue will notify hiring manager once timesheet is awaiting approval
- Hiring managers will need to check and authorise timesheet by 11 am (Comensura) or midday (Retinue) on a Tuesday. Any timesheets not approved by the deadline will be automatically approved by the System for those relating to Comensura. Timesheet relating to Retinue will remain on the system until they have been approved.

TIMESHEET QUERIES

If an error is identified after a timesheet has been approved, hiring manager will need to contact the Customer Service Centre and if necessary either raise an adjustment for manager to approve or reject timesheet so that an amended timesheet can be re-submitted and approved.

CHANGE CONTROL FOR COMENSURA

- Hiring managers will need to download the Change Request form from the Comensura system with completed forms sent to Resourcing Services at recruitment@lincolnshire.gov.uk
- Resourcing Services will authorise form and forward to Comensura to update system.
- Comensura will notify hiring manager once changes have been made to system.

ADVICE AND SUPPORT

Contact the Serco Resourcing Service Team via email to recruitment@lincolnshire.gov.uk or direct contact to 01522 555441. This team is the Council's first point of contact for Comensura or Retinue.

Comensura's Customer Service Centre: 0871 977 2722.

Retinue's Customer Service Centre: 020 3837 7880 or email LCCbookings@retinue-solutions.com

MANAGER'S INDUCTION CHECKLIST FOR AGENCY WORKERS

This form is to be used by Council managers/supervisors for all agency workers and must be completed prior to the worker commencing duties and be retained by the manager.

DAY ONE INDUCTION CHECKLIST – AGENCY WORKERS

The purpose of the following checklist is to ensure the worker has an introduction to their immediate working environment.

Workers Name

Work place familiarisation	Additional Guidance	Yes/No/Partial Completed
Welcome introductions to supervisor/team leader/line manager		
Tour of immediate work area and introduction to colleagues		
Location of conveniences: <ul style="list-style-type: none"> Toilets Refreshment Designated smoking areas 	Refer to the Smoke Free Policy	
Building security: <ul style="list-style-type: none"> Car parking Access cards, codes, ID protocols. Cycle racks and security Out of hours working 	Use map of building if available for your area. Remind worker they need to have their ID card on them at all times	
Personal belongings/insurance	Explain to the worker they are responsible for security of personal belongings	
Health & Safety and Wellbeing (issues which may be encountered during first week explained)	Additional Guidance	Yes/No/Partial Completed
Safety, health and hygiene requirements specific to the location		
Emergency evacuation procedures/fire extinguishers/fire exits		
Discuss first aid and emergency policy and arrangements specific to the location		
Identify any necessary protective equipment issued and its use explained		

Conditions of employment	Additional Guidance	Yes/No/Partial Completed
Clarify aspects of Job role if required		
Discuss hours of work/flexible working arrangements		
Procedure for reporting sickness/absence notification after notification of the agency	Provide suitable contact details for worker to use to report sickness/absence.	
Code of Conduct	Refer to Code of Conduct	
Technology/Systems	Additional Guidance	Yes/No/Partial Completed
Use of Laptop/Computer/ Information Security	Refer to Information Security Policy	
Use of Intranet/Internet/how to access LCC Connects and George.	Refer to Social Media Policy Refer to Information Security Policy	
Use of Email	Refer to Information Security Policy	
Use of Telephones/Fax	Refer to Work Smarter- Communicate better on George	
Use of photocopying/postal arrangements/courier		
Worker has received Agency Worker Leaflet	Refer to Agency Worker Information Leaflet	
Worker aware of e-recruitment process and that they can apply for internal vacancies	How to log in for internal posts refer to Jobs	
Explain e-purchasing process	Refer to Guide to ordering goods & services on George	

The manager/supervisor must retain a copy of this form

Essential Manuals, Policies and Procedures		Yes/No/Partial Completed
Health and Safety manual	Refer to Health and Safety Manual	
Health and Safety Policy	Refer to Health and Safety Policy	
Safeguarding	Refer to Safeguarding Children on George Refer to Safeguarding Adults on George	
Corporate Complaints Policy	Refer to Corporate Complaints Policy on George	

Managing Information	Refer to Managing Information	
Equality and Diversity	Refer to Equality and Diversity	
Confidential Reporting Code	Refer to Whistleblowing Policy	
Information Governance	Refer to Information Governance on George	
Customer Care (work place specific)	Refer to Customer Experience Policy on George	
Discuss Audit Lincolnshire including fighting fraud	Refer to Audit Lincolnshire	

WITHIN TWO WEEKS CHECKLIST – AGENCY WORKERS

The purpose of this checklist is to highlight key policies, procedures and processes

Workers Name

Health and Safety	Additional Guidance	Yes/No/Partial Completed
A checklist and guidance covering health and safety can be found on-line	Refer to Health and Safety Checklist Refer to Terrorist Threats Refer to Fire	
Check that workers (who are DSE users) have completed the DSE e-learning training and the Praxis42 on-line DSE assessment for their workstation	Refer to health and safety at Lincs2Learn Refer to Display Screen Equipment DSE Appendix 6 DSE Employee Guide	
Highlight procedure for Service Area reporting Health and Safety problems, accidents and violent incidents		
Check any necessary protective equipment has been issued		
Director Area/Service specific information Any additional items to be covered (use this section to add any role/department related information relevant to the worker:		Yes/No/Partial Completed
Health and Safety specifics for local area e.g. job related risks, mandatory Health and Safety training as relevant		

Note: The manager and worker should sign once all sections are marked as complete.

Workers signature:	Manager's signature:
Date:	Date:
Date of two month review meeting:	

The manager/supervisor must retain a copy of this form