



## OFF PAYROLL POLICY

SUMMARY	<p>This policy outlines NHS Leeds CCG's approach to off-payroll arrangements and provides guidance to recruiting managers on the engagement of off-payroll workers within the CCG.</p> <p>The policy has been developed in line with NHS England spending controls and HMRC IR35 legislation and guidance.</p>
AUTHOR	People and OD and Finance
VERSION	Final
EFFECTIVE DATE	July 2021
APPLIES TO	This policy applies to all individuals who are not directly employed by the CCG and provide services to the CCG through an intermediary as defined by HMRC.
APPROVAL BODY	Social Partnership Forum consulted with prior to approval by the Remuneration and Nomination Committee
RELATED DOCUMENTS	Recruitment and Selection Policy
REVIEW DATE	July 2025

### VERSION CONTROL SHEET

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Status</b>	<b>Comment</b>
1.0	July 21	People and OD and Finance	Draft	
1.0	10 <sup>th</sup> Nov 21	People and OD	Final	Agreed by SPF and RemNom.

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## **1. PURPOSE**

- 1.1 This policy aims to ensure that all CCG employees are aware of our responsibility for deciding whether the off -payroll rules for engagement apply and for paying the correct tax and NICs for the services of an individual provided through an 'intermediary' (defined as a partnership; workers own limited company known as Personal Service Company (PSC), person working on behalf of an agency or another individual) rather than an employment contact
- 1.2 The policy outlines a transparent approach to off-payroll arrangements and ensures that CCG complies with HMRC regulations regarding the engagement of off-payroll workers by way of assessing and determining whether the individual is on or off payroll.
- 1.3 The policy also sets out a framework and provides guidance for recruiting managers involved in the engagement of off-payroll workers in that best practice is adopted in ensuring that the necessary checks that meet HMRC guidance are completed with reference to employment legislation and HMRC IR35 Intermediaries Legislation and Off Payroll Working Rules for Public Authorities (<https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation>) and from April 2021 changes to Off Payroll working rules <https://www.gov.uk/guidance/april-2020-changes-to-off-payroll-working-for-clients>
- 1.4 It is a Treasury requirement for public sector organisations (including the CCGs) that off payroll engagements involving board members or those that cost more than £245 per day have to be disclosed in the CCGs Annual Reports and Accounts. It is worth noting that this information is provided in the public interest and can also be requested under the Freedom of Information Act.

## **2. SCOPE**

- 2.1 This policy applies to all individuals who are not directly employed by the CCG and provide services to the CCG through an intermediary as defined by HMRC.

## **3. EQUALITY STATEMENT**

- 3.1 In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic. A single Equality Impact Assessment is used for all policies and procedures.

## **4. ACCOUNTABILITY**

- 4.1 The Chief Executive is accountable for this policy.

## **5. IMPLEMENTATION & MONITORING**

5.1 The Remuneration and Nomination Committee is responsible for formal approval and monitoring compliance with this policy. Following ratification the policy will be disseminated to employees via the CCG extranet.

5.2 The policy and procedure will be reviewed periodically by the People and OD Team in conjunction with managers and Trade Union (SPF) representatives where applicable. Where review is necessary due to legislative change, this will happen immediately.

## **6. RESPONSIBILITIES**

6.1 Good working relations are vital for the CCG to operate successfully and provide services. There is a joint responsibility for management, Trade Unions and off-payroll workers to accept the responsibility of working together on issues in good faith and with the shared intention of facilitating good working relations.

### **6.2 Recruiting Managers**

The key responsibilities for Recruiting Managers include:

- Ensuring that this policy is observed when considering engaging with off-payroll workers and that due consideration is given when engaging with off-payroll workers and the associated costs to the CCG.
- Responsible for completing the HMRC employment status test and Status Determination Statement <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup> prior to commencing any procurement process in conjunction with support from HR and Finance.
- Ensuring that any financial implications of engaging with off-payroll workers are managed and approved in line with existing budgets.

### **6.3 Finance**

It is the responsibility of Finance to ensure that they:

- Provide advice on all financial aspects of this policy to ensure its consistent application and compliance with IR35 legislation.
- Support the recruiting manager, in conjunction with HR, who is responsible for the completion of the HMRC employment status test and Status Determination Statement.
- Ensure that copies of completed HMRC employment status tests and Status Determinations are kept on record.

### **6.4 People and OD**

The key responsibilities for People and OD are:

- Providing advice on the HR aspects of this policy to ensure its consistent application and compliance with IR35 legislation.
- Support the recruiting manager, in conjunction with Finance, who is responsible for the completion of the HMRC employment status test and Status Determination Statement.
- Responsible for providing advice around the assessment and recruitment processes and ensure that contracts are issued in line with the outcome of the HMRC employment status test.

## **7. IR35 LEGISLATION**

- 7.1 The IR35 legislation is designed to ensure that tax and NICs for individuals who are engaged in the work with the CCGs but are not paid via the CCG Payroll is appropriately accounted for. IR35 applies where:
- The individual provides services through an intermediary owned and controlled by the individual also known as a PSC, and;
  - The individual is working as an employee, examples may include but not be limited to:
    - They are required to engage with the CCG and there is a right for the CCG to reject a substitute to be provided to carry out the work;
    - The employer controls where, when and the way in which the work is carried out;
    - The individual is integrated into the organisation (for example is supervised, has a desk, phone etc.);
    - The employer must provide a certain level of work and the employee must do the work provided (i.e. there is no right to decline).

## **8. OFF – PAYROLL ARRANGEMENTS**

- 8.1 It is recognised that there may be a business need to engage with specialist skills and knowledge for temporary or substantive posts. The need for specialist knowledge and skills varies dependent upon the work and focus of the CCG at any given time, and there are a range of different types of individuals that the CCG may wish to engage with.
- 8.2. NHS England alongside HMRC regulations has enforced spending controls for the CCG when engaging the services of off-payroll workers. The CCG is required to obtain prior approval from NHS England that meets the following criteria:
- All agency resources engaged above £600 per day (excluding irrecoverable VAT and expenses, but inclusive of agency fees) but lower than £800 per day;
  - Recruited to work for a period that exceeds 6 months, or;
  - Consultancy work with a value greater than £50,000.

## **9. OFF – PAYROLL WORKERS ENGAGED THROUGH AGENCIES**

- 9.1 Recruiting through an agency does not always provide a cost-effective solution as opposed to a fixed term contract or a secondment. Where a recruiting manager has identified the need to cover a post, they must complete the establishment control form and seek the necessary approval. Recruiting managers are recommended to engage with agencies that are approved through the procurement framework and have adopted terms and conditions approved by NHS organisations. There is a list of agencies who have been awarded contracts on the NMNC (RM971) framework that cover non-clinical roles to meet organisations temporary staffing needs. The prices are agreed nationally and the list can be accessed via <http://ccs-agreements.cabinetoffice.gov.uk/contracts/rm971>.
- 9.2. Once approval is received, recruiting managers are expected to in line with the CCGs Recruitment and Selection Policy review the suitability of candidates to be shortlisted via the CV applications submitted by the agency (s). This should be followed by a selection process where possible.
- 9.3 Where the recruiting manager appoints the worker, they must inform HR of the appointments details so that HR can determine whether ESR access is required for

mandatory training. A local induction will need to be completed for all agency staff using the staff induction checklist.

- 9.4 The Agency will provide the recruiting manager with the contract documents and recruiting managers need to be aware that the Agency will be responsible for tax and NICs at source as they are the engager. It is important that the Agency declare this in writing and a record kept on file.
- 9.5 Under the HMRC IR35 Intermediaries Legislation and Off Payroll Working Rules for Public Authorities (<https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-of-intermediaries-legislation>), the CCG holds the responsibility for undertaking the HMRC employment status test <https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>
- 9.6 It is the responsibility of Finance and HR to review the completed assessment before they are shared with the Agency. If IR35 applies because the individual is engaging with the agency via their personal service company then the Agency is responsible for paying the intermediary and the recruiting manager will need to inform the agency in writing that they are responsible for the deduction of tax and NICs within 30 days of the worker starting. It is the responsibility of the recruiting manager to ensure they understand the complete 'supply chain' between worker/individual and the CCG.
- 9.7 Recruiting managers need to be aware that under the Agency Workers Regulation that came into force on 1<sup>st</sup> October 2010 gives agency workers the entitlement to the same basic employment and working conditions as if they had been recruited directly, if and when they complete a qualifying period of 12 weeks in the same job. As a line manager or supervisor, you should provide the agency with up to date information on the CCG terms and conditions so that they can ensure that an agency worker receives the correct equal treatment, as if they had been recruited directly, after 12 weeks in the same job.

## **10. OFF – PAYROLL WORKERS ENGAGED THROUGH OTHER SOURCES**

- 10.1. Recruiting managers are expected to complete the establishment control form prior to the engagement.
- 10.2. The recruiting manager will need to establish the employment status of the worker for the purposes of tax and NICs in ensuring that the CCG meets its obligations under the IR35 legislation in conjunction with HR and Finance. It is really important to note that HMRC will not support results of an assessment where the arrangements have been made to achieve a certain outcome from the Check Employment Status for Tax Service (CEST) and therefore deemed as non-compliance under the IR35 legislation.
- 10.3 Where the outcome of the test establishes that the engagement is classed as employed for the purposes of tax then the CCG becomes responsible for the deduction of tax and NICs at source. Where the outcome means IR35 applies then this must be communicated in writing to the worker that Payroll will deduct tax and NICs (see appendix 1).
- 10.4 The recruiting manager will need to complete the off-payroll worker appointment form and submit to HR who will set the individual up on ESR for the purposes of tax and NICs and issue the necessary contract in line with the engagement.
- 10.5 If the assessment is unable to determine the employment status of the worker, the Recruiting Manager will need to seek support and guidance from HMRC.
- 10.6. If the recruiting manager is unsure whether the company is PSC or not then, the recruiting manager will need to ask the individual to provide further details.

- 10.7 If the outcome of the assessments deems the worker is self-employed for the purposes of tax then the IR35 legislation does not apply in this case. It is important to note that workers do not decide whether they are self-employed and this is the CCGs responsibility to establish. Copies of all assessments will still need to be kept on record and once it is established the individual is not within the scope of IR35 the Status Determination Statement is issued.
- 10.8 The recruiting manager will need to write to the intermediary informing them that they are not within the scope of IR35 and inform them of where to send the invoices.
- 10.9 Where there is an extension to a contract, or the role has changed or a new contract starts then the recruiting manager will be responsible for undertaking the HMRC test/Status Determination each time. Working arrangements can change over time and it is important to ensure these arrangements are under review.

## **11. STATUS DETERMINATION STATEMENT**

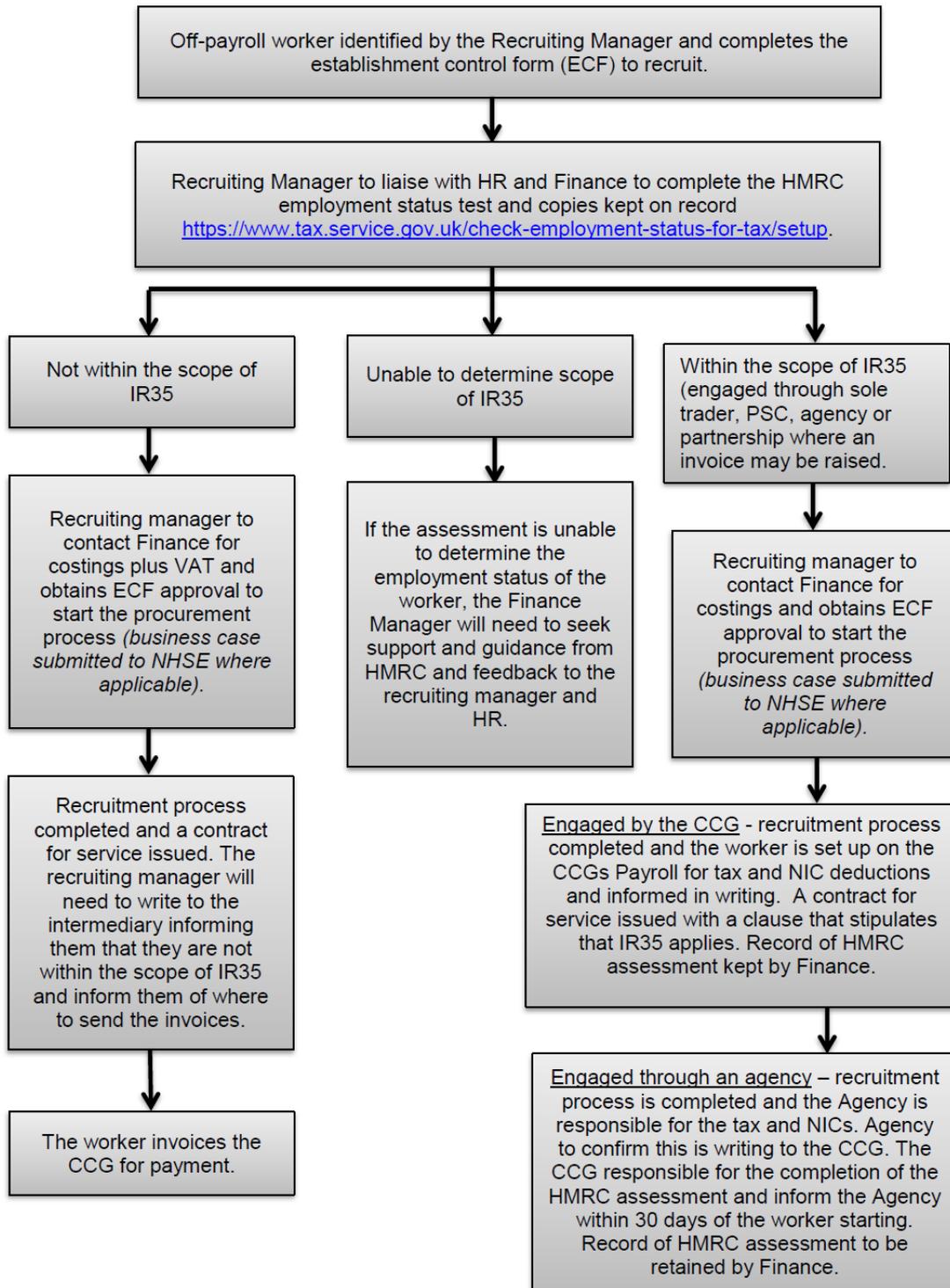
- 11.1 It will be the responsibility of the CCG to decide on the employment status of every worker who operates through their own intermediary even if they are sourced from an agency. This determination of employment status will be through a status determination statement (SDS).
- 11.2 The responsibility for deducting tax and national insurance contributions will remain with the CCG until the worker and the person or agency/organisation the CCG contracts with is made aware of the determination and reasons for it.
- 11.3 Where there are changes to working practices of the engagement or a new contract is put in place, the CCG will need to make sure that the rules are checked if they still apply. An engagement is the specific contract or piece of work that a worker is undertaking. For each engagement, whether the off-payroll working rules apply is determined by the
- Terms and conditions
  - Working practices
- 11.4 It is important to ensure that records of SDS are kept and the SDS must:-
- Be passed to the worker and the person or agency and/or organisation the CCG contracts with and confirm whether off payroll rules apply or not.
  - Provide a reason for coming to the determination.

## **12. STATUS DETERMINATION DISAGREEMENT AND COMPLAINTS PROCESS**

- 12.1 The worker or the agency/organisation that the CCG contract with may disagree with the employment status determination. Where this happens and a complaint is received the CCG's senior Finance lead or Chief Finance Officer will need to:-
- Consider the reasons for disagreeing given by the worker or agency and/or organisation paying their intermediary;
  - Decide whether to maintain the determination if you believe it is correct and give reasons why - or provide a new determination because you believe it was wrong;
  - Maintain a record of the determinations and the reasons for them;

- Confirm which date the determination is valid from.
- 12.2 A disagreement can be raised with the CCG until the last payment is made for the worker's services. The CCG must provide a response within **45 days** of receiving notification that the worker or deemed agency and/or organisation disagrees with the employment status determination. During this time the CCG should continue to apply the rules in line with the original determination.
- 12.3 After considering the disagreement, the senior Finance Lead should either:
- Tell the worker if the determination has not changed
  - Tell the deemed agency and/or organisation and the worker if the determination has changed

**Appendix 1 - Off Payroll Arrangements Flowchart**



## 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:

- Cost greater than £600 per day (excluding VAT and expenses but including agency fees)
- Engaged for a period greater than 6 months
- In roles of significant influence (e.g. member of CCG Governing Bodies).

As of 1<sup>st</sup> 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 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](mailto:England.CCGcontrols@nhs.net)

Please send all queries to [England.CCGcontrols@nhs.net](mailto:England.CCGcontrols@nhs.net)

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

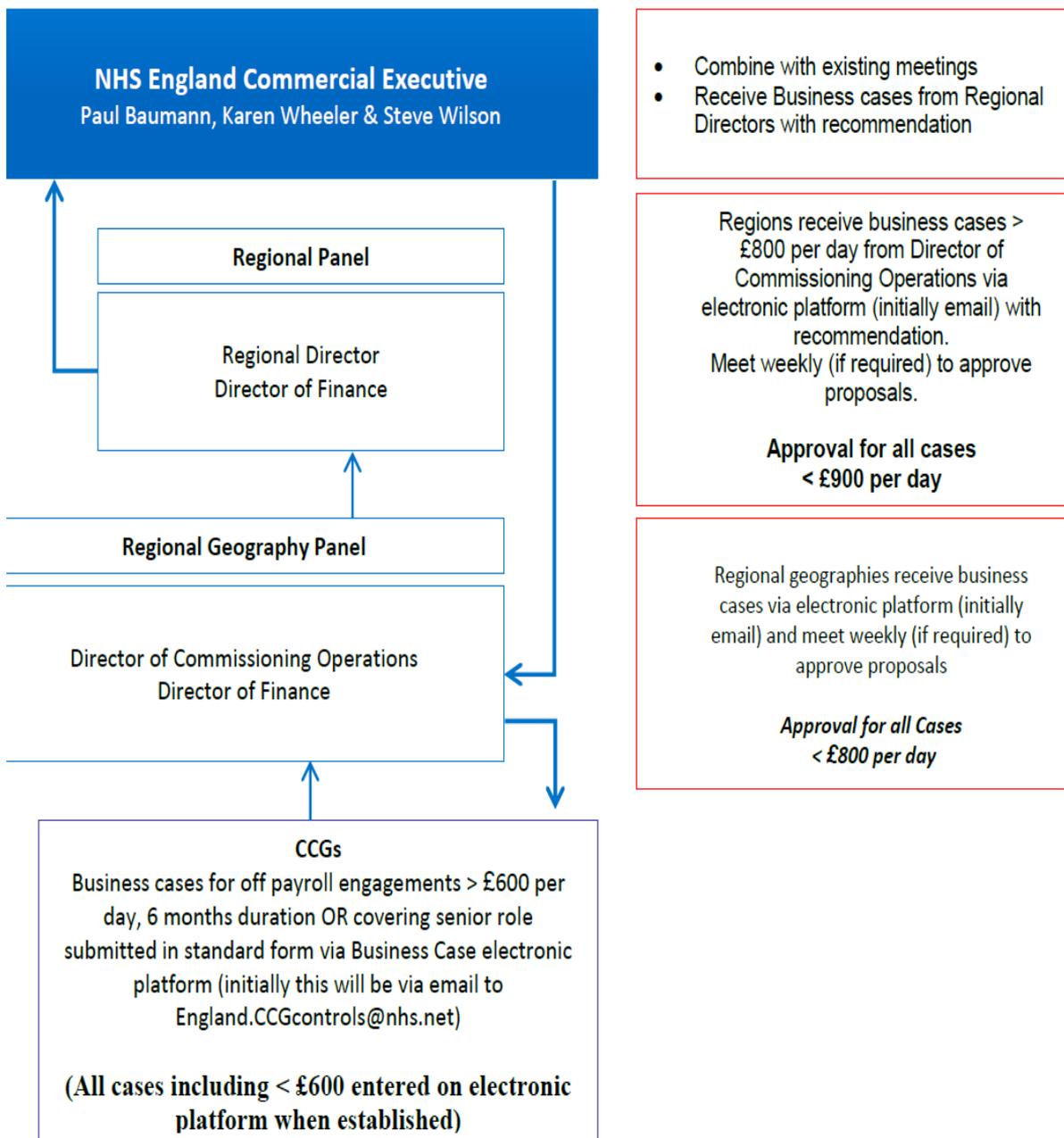
- VFM of proposed engagement
- Business need
- Reason for use of off payroll
- Role to be undertaken
- Framework compliance
- Any recruitment strategy if relevant
- Anticipated delivery start and end date

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



### Equality Impact Assessment

<b>Title of policy</b>	Off-Payroll Policy	
<b>Names and roles of people completing the assessment</b>	Ian Corbishley HR Manager	
<b><u>Date assessment started/completed</u></b>	12/07/21	12/07/21

#### 1. Outline

<b>Give a brief summary of the policy</b>	This policy outlines the CCGs approach to off-payroll arrangements and provides guidance to managers on the engagement of off-payroll workers within the CCG.
<b>What outcomes do you want to achieve</b>	The aim is to provide a transparent approach to off-payroll arrangements and to ensure that the CCG complies with HMRC regulations in the engagement of off payroll workers, satisfying its obligations around the payment of tax and NICs and the determination of employment status.

#### 2. Analysis of impact

This is the core of the assessment, using the information above detail the actual or likely impact on protected groups, with consideration of the general duty to; eliminate unlawful discrimination; advance equality of opportunity; foster good relations			
	<b>Are there any likely impacts? Are any groups going to be affected differently? Please describe.</b>	<b>Are these negative or positive?</b>	<b>What action will be taken to address any negative impacts or enhance positive ones?</b>
<b>Age</b>	No		
<b>Carers</b>	No		
<b>Disability</b>	No		
<b>Sex</b>	No		
<b>Race</b>	No		
<b>Religion or belief</b>	No		

<b>Sexual orientation</b>	No		
<b>Gender reassignment</b>	No		
<b>Pregnancy and maternity</b>	No		
<b>Marriage and civil partnership</b>	No		
<b>Other relevant group</b>	No		
<b>If any negative/positive impacts were identified are they valid, legal and/or justifiable? Please detail.</b>		No anticipated detrimental impact on any equality group. The policy is applicable to all IR35 workers and adheres to the NHS Litigation Authority Standards, statutory requirements and best practice.	

<b>4. Monitoring, Review and Publication</b>			
<b>How will you review/monitor the impact and effectiveness of your actions</b>	It makes reasonable provision to ensure equity and consistent application to all off-payroll workers		
<b>Lead Officer</b>	Ian Corbishley	<b>Review date:</b>	12/07/21

<b>5. Sign off</b>			
<b>Lead Officer</b>	Ian Corbishley		
<b>Director</b>	Sabrina Armstrong	<b>Date approved:</b>	10/11/21