

## YourWorld Agency Staff

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Reference Number: F4645  
Date of Response: 22 July 2022

Further to your Freedom of Information Act request, please find the Trust's response, in **blue bold text** below:

### **Royal Devon's Eastern FOI Office Response**

- 1) Is it a policy of Royal Devon University NHS Foundation Trust that any nurse or healthcare practitioner who has worked for a third-party employment agency in providing services for any establishment of the Trust will not be allowed to work for another agency in providing services for the Trust?

**An agency worker cannot provide services to the Royal Devon through two different agencies at the same time.**

- 2) Is there a cooling-off period between the end of direct employment by Royal Devon University NHS Foundation Trust and working as a third-party agency nurse or healthcare practitioner in providing services to any establishments of the Trust?

**The Trust does have a cooling-off period between the end of direct employment by the Trust. This is for a period of 12 months unless specifically authorised by an appropriate senior manager.**

- 3) Is there a cooling-off period between the end of employment by YourWorld agency and working as another third-party agency nurse or healthcare practitioner in providing services to any establishments of the Royal Devon University NHS Foundation Trust?

**If an agency worker ends employment with an agency, there is a four-week cooling off period before they can work for Royal Devon. To the best of the Trusts knowledge, we do not believe that there is a cooling off period if an agency worker leaves one agency and joins another.**

- 4) Is it a policy of Royal Devon University NHS Foundation Trust that any nurse or healthcare practitioner who has worked for YourWorld agency in providing services for any establishment of the Trust will not be allowed to work for another agency in providing services for the Trust?

**Please see response to Question 1.**

- 5) Is there a cooling-off period between the end of employment by a third-party agency nurse or healthcare practitioner in providing services to any establishments of the Royal Devon University NHS Foundation Trust and working for another agency in providing similar services?

**Any nurses wanting to move agency to agency is entitled to do so, however, they would be refused if they were moving to a more expensive agency.**

6) Is there a cooling-off period between the end of employment by YourWorld agency as a third-party agency nurse or healthcare practitioner in providing services to any establishments of the Royal Devon University NHS Foundation Trust and working for another agency in providing similar services?

**Please see response to Question 5.**

7) Does Royal Devon University NHS Foundation Trust share with YourWorld agency the identity of and information relating to nurses and other healthcare practitioners proposed by other third-party agencies to provide services to any of the establishments of the Trust?

**The Royal Devon does not share the identity and information relating to nurses and other healthcare practitioners proposed by other third-party agencies with YourWorld agency or any other agency.**

8) Does YourWorld agency have the authority of Royal Devon University NHS Foundation Trust to exclude or suspend nurses and healthcare practitioners from working for any of the establishments of the Trust?

**If there is an issue with the practice of an agency nurse or healthcare practitioner, this is highlighted by the Trust and reported to the agency. The Trust would then determine whether they stop the agency nurse or healthcare practitioner from working for the Trust. If there is a fitness to practice issue, then the Trust would liaise with the agency involved and the relevant professional body as required.**

9) What proportion of third-party agency services for the Royal Devon University NHS Foundation Trust was provided by YourWorld agency in the past five years?

**52% for nursing only shifts from 1<sup>st</sup> January 2017 to 31<sup>st</sup> December 2021 for the Trust was provided by YourWorld agency. (These figures are based on Eastern services use only).**

10) What proportion of third-party agency services for the Royal Devon University NHS Foundation Trust was provided by YourWorld agency in 2022?

**62% for nursing only shifts from 1<sup>st</sup> January 2022 to 30<sup>th</sup> April 2022 for the Trust was provided by YourWorld agency. (These figures are based on Eastern services use only).**

11) Has Royal Devon University NHS Foundation Trust or either of its predecessor Trusts received complaints by nurses and healthcare practitioners about the policies and actions of YourWorld agency in the preceding five years and, if so, how many?

**The Trust has not received any complaints by nurses and healthcare practitioners about the policies and actions of YourWorld agency in the preceding five years. Complaints should be raised to the relevant framework and not the Trust.**

12) Has Royal Devon University NHS Foundation Trust or either of its predecessor Trusts received complaints by nurses and healthcare practitioners about the policies and actions of YourWorld agency since January 2022 and, if so, how many?

**The Trust has not received any complaints by nurses and healthcare practitioners about the policies and actions of YourWorld agency since January 2022. As per Question 11 complaints should be raised to the relevant framework and not the Trust.**

13) Are there linkages and personal relationships between the ownership and management of YourWorld agency and Royal Devon University NHS Foundation Trust or either of its predecessor Trusts?

**The Trust operates within its Conflict of Interest process. The Trust currently has no registered interest declared between YourWorld agency ownership personnel and employees of the Royal Devon University Healthcare NHS Foundation Trust.**

14) Does Royal Devon University NHS Foundation Trust have any policies for dealing with a third-party agency providing services to the Trust that harasses, exploits, intimidates or otherwise engages in harmful conduct against or towards the agency's workers, the Trust's workers or workers of other third-party agencies?

**The Trust works with the frameworks that govern Agency behaviour. Problems between agency workers and the agency they work through should be reported through to the relevant agency framework which handles the parameters in which the agency has secured its position on the framework. Should poor behaviour of an agency be raised via the framework to the Trust, the Trust reserves the right to review the continuation of its relationship with that agency. Please find attached a copy of the Trust's Temporary Worker Policy which is our relevant policy concerning dealing with third-party agencies.**

<b>Temporary Worker Policy (including Bank, Locums &amp; Agency Workers)</b>	
Post holder responsible for Procedural Document	██████████ Head of Workforce Planning & Development
Author of Policy	██████████ Resourcing Manager
Division/ Department responsible for Procedural Document	Transformation & Organisational Development/Workforce Planning & Development
Contact details	Ext ██████████
Date of original document	December 2015
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Review date (and frequency of further reviews)	October 2019 (3 yearly)
Expiry date	March 2020 (extension until May 2022)
Date document becomes live	18 <sup>th</sup> April 2017

Please *specify* standard/criterion numbers and tick ✓ other boxes as appropriate

<b>Monitoring Information</b>		<b>Strategic Directions – Key Milestones</b>	
Patient Experience		Maintain Operational Service Delivery	
Assurance Framework		Integrated Community Pathways	
Monitor/Finance/Performance		Develop Acute services	
CQC Fundamental Standards - Regulation: <b>18,19</b>		Infection Control	
Other (please specify):			
<b>Note:</b> This document has been assessed for any equality, diversity or human rights implications			
<b>Controlled document</b>			
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*Temporary Workforce Policy- Extension granted until May 2022 by the Governance Committee on 30 April 2021*

Ratified by: *Workforce Governance Committee – 13.02.17*

Review date: *March 2020*

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Full History		Status: Final	
Version	Date	Author	Reason
1.0	Dec 2015	Head of Workforce Planning and Development	New policy

<b>Associated Trust Policies/ Procedural documents:</b>	<ul style="list-style-type: none"> <li>• <a href="#">Recruitment and Selection Policy</a></li> <li>• <a href="#">Equality and Diversity Policy</a></li> <li>• <a href="#">Corporate and Local Induction Policy</a></li> <li>• <a href="#">Professional Registration (Clinical Roles) Policy and Procedure</a></li> <li>• <a href="#">Disciplinary &amp; Appeals Policy</a></li> <li>• <a href="#">Managing Performance (Capability) Policy</a></li> <li>• <a href="#">Counter Fraud Policy</a></li> <li>• <a href="#">Maintaining High Professional Standards</a></li> </ul>
<b>Key Words</b>	Temporary worker, Bank, Locums, Agency
<b>In consultation with and date:</b>	
<p>Policy Expert Panel (PEP) - 29.04.16            Senior HR Managers – 17.05.16            Hospital Operating Board (HOB) – 17.06.16            Joint Staff Committee (JSCNC) – 16.12.16            Workforce and Governance Committee (WGC) – 08.02.17</p> <p>Workforce and Governance Committee (WGC) Chair approval – 13.02.17.            Policies Administrator 01.03.17            Policy Expert Panel (PEP) Chair 01.03.17 approval.</p> <p>Workforce Information Manager – 11.03.17            Head of HR Service Centre – 11.03.17</p>	
<b>Contact for Review:</b>	Head of Workforce Planning & Development
<b>Executive Lead Signature:</b>	 Director of Transformation & Organisational Development

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## 1. INTRODUCTION

- 1.1 The Royal Devon and Exeter NHS Foundation Trust (hereafter referred to as the Trust) acknowledges that from time to time, departments may experience staffing difficulties and, in order to maintain service provision, may need to secure temporary resource. Due consideration should be given to viable alternative options before temporary workers are engaged. It is essential that managers minimise the use of high cost temporary workers. Only when all options to cover teams within substantive resources are exhausted should a request for temporary workers be considered. Further, the Trust recognises that for enhanced service user experience and continuity of care it is preferable to use current Trust employees and Bank workers, who bring the added benefit of local experience. It is neither desirable nor clinically effective to use temporary workers if care can be provided more effectively through staff who are competent and familiar with the caseload/acuity of the patient mix specific to the clinical environment.
- 1.2 Temporary Workers refers to the engagement of Bank Workers, Medical Locum Workers, Agency Workers (individuals registered with recruitment agencies) and individuals who the Trust contracts to work through a Limited or Personal Services Company or Sole Trader.
- 1.3 This policy applies to all individuals engaged in temporary work. This policy does not apply to self-employed contractors or companies. Where the engagement of a self-employed Contractor or a Company is required, referral must be made to the Procurement Department.
- 1.4 This policy also excludes those who work under an honorary contract and paid via another organisation or are not paid i.e. whilst training, work experience or work placements, whether on an ad-hoc or regular basis.
- 1.5 This policy has been developed in line with NHS Improvement Agency rules issued in March 2016 <https://www.gov.uk/guidance/rules-for-all-agency-staff-working-in-the-nhs> to support Trusts in reducing their agency expenditure. These rules require Trust to comply with a ceiling for total expenditure, procure agency workers at or below price caps and wage rates, and use approved framework agreements to procure all agency workers. Inappropriate overriding of the rules, or deliberate action to circumvent the rules will have a bearing on NHS Improvement regulatory judgements, on the basis that a Trust may not be achieving value for money, which may indicate wider governance concerns

## 2. PURPOSE

- 2.1 The purpose of this policy is to ensure that all relevant staff have guidance on the actions required to address staffing shortages in their area and that, where additional temporary resources are required, appropriate recruitment and booking procedures are followed which minimises risk and avoids unnecessary cost to the Trust. The policy:
  - Outlines the Trust's approach to the use of overtime
  - Outlines the Trust's approach to using temporary workers in order to meet the needs of patients and the service



- Ensures that the use of temporary workers is appropriately authorised at a senior management and clinical level.
  - Provides control and monitoring systems within the Trust.
  - Minimises agency costs thereby ensuring cost effective use of resources and value for money in terms of the appropriate level of staff/workers/skills required to deliver the service.
  - Minimises risk to patient safety and protects patients by ensuring that NHS Employers recruitment checks are carried out when using temporary workers.
  - Outlines the Trusts approach to compliance with the NHS Improvement Agency Rules 2016.
- 2.2 It clarifies roles and responsibilities for booking temporary workers and establishes a line of clear responsibility for management of temporary workers and accountability for budget control.

### 3. DEFINITIONS

- 3.1 **Temporary Worker** – an individual who does not have a contract of employment with the Trust. This includes bank workers, agency workers, and individuals working via their Limited, Personal Services Company or as a Sole trader. The individual is requested to work on an ad hoc casual basis to cover staff shortages. There is a mutuality of understanding between the Trust and each temporary worker that there is no contractual obligation on the Trust to offer work. Equally, there is no obligation on the temporary worker to accept the offer of work. Due to the no obligation nature of temporary working, those who enter into a bank working agreement or are engaged through an agency are not classed as employees but are ‘workers’ under employment law.
- 3.2 **Bank Worker** – an individual who is registered on the Trust’s bank. The bank is a register of individuals who can be called upon in the event of staff shortages as outlined in section 1.1 above. The agreement between the Trust and Bank Worker does not guarantee the Bank Worker with a fixed number of hours work per week or month and that work, if offered, is on an ‘as and when with no guarantee that basis’, work will be available.
- 3.3 **Locum Bank Worker** – a doctor/consultant who is registered on the Trust’s bank of locums. The bank is a register of individuals who can be called upon in the event of staff shortages as outlined in section 1.1 above. The agreement between the Trust and the Locum Bank Worker does not guarantee the Locum Bank Worker with a fixed number of hours work per week or month and that work, if offered, is on an ‘as and when basis’ and with no guarantee that work will be available.
- 3.4 **Agency Worker** – an individual who is supplied to the Trust by a third party employment agency. The Trust will request the provision of an appropriately qualified person from the agency on an ad hoc casual basis to cover staff shortages. There is no obligation on the agency to supply an individual or on the individual to accept work. Agency workers are not employees of the Trust. Their terms and conditions are provided by the employment agency.
- 3.5 **Agency Locum Worker** – a doctor/consultant who is supplied to the Trust by a third party employment agency. The Trust will request the provision of an appropriately qualified person from the agency on an ad hoc casual basis to cover staff shortages. There is no obligation on the agency to supply an individual or on the individual to accept work. Agency Locum workers are not employees of the Trust. Their terms and conditions are provided by the employment agency.

- 3.6 **Limited or Personal Services Company or Sole trader** - Individuals whom the Trust may engage directly via a contract to work i.e. not through an agency and who require payment by invoice arrangements to an entity of which they are a director. NHS Improvement Agency rules (8.3) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/510391/agency\\_rules\\_23\\_March\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/510391/agency_rules_23_March_2016.pdf) stipulate that Trusts are encouraged not to engage individual workers via these routes.
- 3.7 **Honorary Contract** – A contract issued to authorised workers who are unpaid or paid by another non-NHS organisation and whose employment remains with that other organisation e.g. for the purposes of training, work experience and/or placements. Without an honorary contract the worker will not be covered by NHS indemnity.
- 3.8 **Central Bank Office** – the Central Bank Office is a team within Human Resources (HR) responsible for coordinating the demand and supply of temporary workers to service areas in relation to nursing, Allied Health Professionals (AHP) and administrative roles.
- 3.9 **Escalation process** – is the process designed to control the authorisation of agency usage where difficulties in resourcing are found and there may be a need to engage resource outside of this policy.
- 3.10 **Conditions of Registration** – a document given to every Bank Worker and Locum Bank Worker which sets out the basis upon which the worker will work for the Trust.
- 3.11 **Contract for Services** – A formal document which sets out the terms and conditions upon which the Trust and an individual engaged via a Limited or Personal Services Company or Sole Trader.
- 3.12 **Overtime** - Overtime is any hours worked in excess of full time (37.5 hours). If additional hours to be worked are agreed in advance, employees will be entitled to overtime at a payment of time and a half for hours worked over 37.5 hours.
- 3.13 **Supernumerary shifts** – a shift that is arranged for an individual to shadow a competent member of staff to obtain experience of the work involved. The individuals are paid for attending these shifts.
- 3.14 **NHS Improvement (NHSI)** – is responsible for overseeing foundations trusts, NHS trust and independent providers.
- 3.15 **Approved Framework Agencies**  
Are agencies which have nationally negotiated terms of business and have proved their ability to meet NHS requirements including obtaining and checking an individual's identity, health, qualifications, references and Disclosure and Barring Service status. Rates will also have been nationally negotiated. The frameworks are approved by NHS Improvement.
- 3.16 **Non-approved framework agency** - an agency which has not been awarded a nationally agreed & negotiated contract and therefore has not met the full requirements of the NHS.
- 3.17 **Preferred agency** - an appropriate preferred agency is an agency which the Trust has agreed will be the only Agency or first Agency from which managers can obtain temporary workers. This will have been negotiated formally through Procurement.
- 3.18 **Expenditure ceiling** – NHS Improvement have set ceilings on the total amount individual trusts can spend on agency staff. This ceiling will apply to expenditure on all staff groups.

- 3.19 **Price caps** – are hourly rates set by NHS Improvement which apply to the total (maximum) amount a trust can pay per hour for an agency worker. Trusts must not pay more than the price caps to secure an agency worker. Trust can override the price caps in exceptional circumstances only. Price caps do not apply to substantive staff, bank staff, overtime payments or staff employed on fixed term contracts. Price caps are calculated at 55% above basic pay rates taking into account National Insurance (NI) contributions, pensions contributions and a modest agency fee. Price caps include all expenses such as travel and accommodation.
- 3.20 **Maximum wage rates** – Trusts are required to comply with maximum hourly wage rates from 1 July 2016. Trust should seek confirmation from agencies that workers are not paid more than the maximum wage rates and, where rates exceed these, must report these instances to NHS Improvement from 1 July 2016.

#### **4. DUTIES AND RESPONSIBILITIES**

- 4.1 **Executive Director of Transformation & Organisational Development.**  
The Executive Director of Transformation & Organisational Development is responsible for promoting and supporting the aims and objectives of this policy and is the accountable officer (NHS Improvement Agency rules) in place for agency expenditure and compliance with agency rules.
- 4.2 **Head of Workforce Planning & Development**  
The Head of Workforce Planning & Development is responsible for ensuring the content of this policy is applied fairly and consistently across the Trust. The Head of Workforce Planning & Development has responsibility for monitoring compliance with this policy, and for advising the Trust Board on the effectiveness of this policy, in addition to recommending revisions and developments of the policy and associated procedures and guidance as appropriate.
- 4.3 **Deputy Chief Nurse/Midwife**  
The Deputy Chief Nurse/Midwife is the Trust's Temporary Staffing Lead for Nursing, midwifery & AHPs and is responsible for ensuring that this policy is implemented within the nursing midwifery & AHP workforce.
- 4.4 **Medical Director**  
The Medical Director is the Trust's Temporary Staffing Lead for Medical staff and is responsible for ensuring that this policy is implemented within the medical workforce.
- 4.5 **Deputy Director of Human Resources**  
Is responsible for confirming sufficient controls are in place prior to allowing service areas to manage their own specific bank workers directly and for recording this decision with the Central Bank team.
- 4.6 **Finance Operations Director**  
Is responsible for ensuring sufficient accounting and reporting controls are in place and monitoring takes place against the NHS Improvement expenditure ceiling highlighting concerns via monthly Hospital Operations Board (HOB) meetings and to the Board if necessary.
- 4.7 **Deputy Chief Nurse/Midwife Associate Medical Director, Assistant Director of Nursing, Divisional Director, Heads of Service** – responsible for assessing risk and approving use of a non-framework agency, or the payment of more than the price cap to secure an agency worker, if there is a requirement to override the price cap because of exceptional patient safety reasons. Inappropriate overriding of the

rules or deliberate action to circumvent the rules will have a bearing on NHS Improvement regulatory judgements, on the basis that a Trust may not be achieving value for money, which may indicate wider governance concerns.

#### 4.8 **Finance Department**

Are responsible for implementing robust accounting processes to ensure that agency expenditure is recorded accurately. The Finance Department is also responsible for monitoring and reporting agency expenditure against the Expenditure Ceiling spend threshold set by NHS Improvement on a monthly basis, and for highlighting concerns via monthly HOB meetings and to the Board if necessary. The Trusts performance will be monitored by NHS Improvement and all Trusts will be held to account against their annual expenditure and monthly profile.

#### 4.9 **Resourcing Team / Human Resources**

Will provide advice and guidance on recruitment and resourcing strategies when Line Managers are experiencing difficulties in recruiting to permanent positions.

4.9.1 Will co-ordinate in conjunction with Procurement the list of agreed Agencies which Line Managers are able to use to request Agency Workers.

4.9.2 Will complete weekly reporting to the NHS Institute for Innovation and Improvement (NHSI) of price caps or wage rate overrides and/or the use of off-framework agencies in accordance with NHSI Agency Rules.

#### 4.10 **Procurement**

Procurement are responsible for monitoring that all agencies utilised are part of the approved frameworks. They are also responsible for updating the Approved List of Agencies. They will put in place the necessary arrangements and documentation between the Trust and an Agency in order to be able to use the Agency.

Procurement will oversee the process of approving any Agency which the Trust agrees will be a Preferred Agency i.e. the only or first Agency from which managers can obtain temporary workers. Procurement will be the central contact for any requests by Agencies to visit the Trust or for meetings with them.

#### 4.11 **Line Managers**

Line Managers are responsible for adhering to this policy and ensuring that all staff are aware of this policy and adhere to its requirements.

4.11.1 Line Managers must ensure they do not ask a member of staff to work overtime if that member of staff is absent due to sickness within the preceding **ten days** or during a phased return to work/rehabilitation programme.

4.11.2 Line Managers must be aware of the limits on working hours laid down in the Working Time Regulations when asking staff to work overtime, especially the requirement not to exceed the average 48 hours per week and the need for minimum daily rest periods.

4.11.3 Line Managers should only use NHSI Approved Framework agencies. Agencies will specialise in providing particular roles, therefore Line Managers should check that the agency they use is approved to supply against the role required. These are detailed on the Approved List of Agencies published on the Trusts intranet site. If there is an exceptional need to use a Non-approved Framework agency, prior to use, they must follow the Agency Escalation process and gain authorisation first from the Deputy Director of Nursing, Associate Medical Director, Assistant Director of Nursing or Heads of Service as appropriate to the role.

- 4.11.4 Line Managers must not pay more than the price cap or wage rates to secure an agency worker. If there is a requirement to override the price cap because of exceptional patient safety reasons the line manager must follow the escalation process, with authorisation gained from Deputy Director of Nursing, Associate Medical Director, Assistant Director of nursing, Heads of Service as appropriate to the role. Inappropriate overriding of the rules, or deliberate action to circumvent the rules will have a bearing on NHS Improvement regulatory judgements, on the basis that a Trust may not be achieving value for money, which may indicate wider governance concerns.
- 4.11.5 Line Managers should complete an Agency Checklist for every agency worker engaged (unless they are engaged through the Central bank team) and retain on file for record purposes.
- 4.11.6 Line Managers should not agree to a previous employee of the Trust, working for the Trust as an agency worker, within 12 months of leaving the Trust's employment unless specifically authorised by the Deputy Director of Nursing, Associate Medical Director, Assistant Director of Nursing or Heads of Service as appropriate to the role.
- 4.11.7 Line Managers in charge of shifts must verify the personal identity of a temporary worker either Bank worker or Agency / Locum worker by checking their photo identification (ID) at arrival at the start of each temporary assignment.
- 4.11.8 Line Managers should not negotiate any terms and /or agreements with Agencies or meet with Agencies unless agreed by Procurement. Any request by Agencies to visit the Trust or for meetings should be directed to Procurement.
- 4.11.9 If a Line Manager engages a worker via a limited company or personal services company/sole trader arrangement they should obtain assurance that the worker is complying with IR35 legislation and must facilitate obtaining proof from the worker that they have complied with the obligations set out in HMRC guidance.
- 4.11.10 Line Managers should not allow an existing substantive member of staff or a member of staff on a Fixed Term Contract to work for an external agency in any department of the Trust.
- 4.11.11 Line Managers should assess and reassure themselves that for each temporary worker they engage, the workers statutory / mandatory training (for Agency Workers provided by the Agency) is up to date and meets the role requirement.
- 4.11.12 Line Managers should also assess for each temporary worker they engage what further role specific training requirements are required and arrange further training as appropriate. This should include local induction, and should also include attendance at Corporate Induction if the length of engagement is likely to exceed 6 weeks.
- 4.11.13 Line Managers must check that timesheets, Claim Forms and invoices for payment are an accurate reflection of the hours worked, that the hours claimed match against those booked and are at the agreed rate. Claim forms and Invoices should be coded to the correct subjective code and cost centre for accurate accounting purposes.
- 4.11.14 If a Temporary Worker is engaged continuously in a single post for more than three months, the line manager should review the situation and make a decision on whether to continue engagement based on justifiable service need. Further reviews

should occur at three monthly intervals. Reviews must be documented and retained on file.

4.11.15 Line Managers should keep sufficient records regarding the engagement of Temporary workers to provide evidence of the initial and on-going terms of engagement, competency, local induction and statutory / mandatory training and also role specific training.

#### 4.12 **Employees**

Employees should not work overtime if they have been absent due to sickness within the preceding ten days or during a phased return to work/rehabilitation programme.

4.12.1 Employees wishing to work on a bank arrangement must discuss this with their substantive manager prior to joining a bank to ensure that the European Working Time Directive is not breached when bank work is undertaken

4.12.2 Employees have a responsibility to ensure that they comply with the Working Time Regulations when working either overtime, via the Trust's Bank arrangements or via an Agency's, and whether for the Trust or externally for other organisations. Particular attention should be paid to the requirement not to exceed the average 48 hours per week and the need for minimum daily rest periods.

4.12.3 Employees must not undertake temporary bank work if they are absent, due to sickness, from their substantive post.

4.12.4 Under no circumstances should an existing substantive member of staff or a member of staff on a Fixed Term Contract work for an external agency in any department of the Trust.

#### 4.13 **Bank Workers / Locum Bank Workers**

Bank Workers have a responsibility for the security of NHS resources, equipment and property. They also have the responsibility for keeping themselves, their colleagues, patients, service users and their families safe and for following Trust policies and procedures that are in place to manage such activity.

4.13.1 In the event that a Bank Worker accepts an assignment but is subsequently unable to work the hours agreed because of sickness, they must notify the Central Bank Team or their appropriate line manager of the reason for absence as soon as possible on the first day of absence. For 1 to 7 days a Self-certification form should be completed and sent to the Central Bank Team. On the eighth day of sickness, a Statement of Fitness for Work (Med 3) certificate from the workers doctor to certify sickness should be produced and sent to the Central bank team.

4.13.2 Bank Workers / Locum Bank workers have a responsibility to ensure that they comply with the Working Time Regulations when working either overtime, via the Trust's bank arrangements or via agency's whether for the Trust or externally for other organisations, especially the requirement not to exceed the average 48 hours per week and the need for minimum daily rest periods.

4.13.3 Bank Workers have a responsibility to ensure that they attend statutory and mandatory training, including updates commensurate with their post and, if appropriate, keep their clinical practice skills up to date, provide evidence of continuing professional development to maintain the relevant professional registration and comply with their professional Code of Conduct when this applies.

- 4.13.2 It is the responsibility of the Bank Worker / Locum Bank Worker to accurately complete Bank claim forms and to obtain the necessary signatures in a timely fashion in order for the HR Service Centre to process payment.
- 4.13.3 If a Bank Worker / Locum Bank Workers becomes pregnant, they must inform the Central Bank Team (for Locum Bank Workers the ward/ area of work) so that a risk assessment can be undertaken.
- 4.13.4 Workers who are registered with the Trust Bank are unable to work shifts in the Trust via an agency, they must only work bank shifts in the Trust.
- 4.14 **Agency Workers / Agency Locum Workers**  
Agency Workers / Locums have the same responsibility for the security of NHS resources, equipment and property as substantive employees. They also have the responsibility for keeping themselves, their colleagues, patients, service users and their families safe and for following Trust policies and procedures that are in place to manage such activity.
- 4.14.1 Agency Workers / Agency Locum workers must notify their Line Manager within the Trust if they are not well enough to attend work, as well as notifying their agency.
- 4.14.2 Agency Workers / Agency Locums have a responsibility to ensure that they comply with the Working Time Regulations when working for the Trust or externally for other organisations, especially the requirement not to exceed the average 48 hours per week over the relevant period applicable to the staff group and the need for minimum daily rest periods.
- 4.14.3 If an Agency Worker / Agency Locum is investigated, arrested, charged or have allegations brought against them by an external organisation or agency e.g. the police, social services, the Disclosure and Barring Service, Her Majesty's Revenue and Customs, the Child Support Agency or their professional body; they must notify the relevant line manager immediately.
- 4.14.4 If, in the course of duty, an Agency Worker / Agency Locum comes into possession of information regarding patients or personnel employed by the Trust, this should be regarded as confidential. As such, this information must not be divulged to anyone who does not have the right to this information in line with the Trust's [Information Governance Policy](#). Contravention of this will result in the withdrawal of agency work.
- 4.15 **Limited, Personal Services Company or Sole trader**  
Individuals engaged via a Limited, Personal Services Company or as a Sole Trader have the same responsibility for the security of NHS resources, equipment and property as substantive employees. They also have the responsibility for keeping themselves, their colleagues, patients, service users and their families safe, and for following Trust policies and procedures that are in place to manage such activity.
- 4.15.1 They must notify their Line Manager within the Trust if they are not well enough to attend work.
- 4.15.2 They have a responsibility to ensure that they comply with the Working Time Regulations when working for the Trust or externally for other organisations, especially the requirement not to exceed the average 48 hours per week over the relevant period applicable to the staff group and the need for minimum daily rest periods.

- 4.15.3 If they are engaged for 6 months (or are likely to be engaged for more than 6 months) at a day rate of more than £220, they must provide sufficient evidence when requested to give assurance to the Trust regarding their Income tax and National Insurance Contributions (NIC) obligations.
- 4.15.4 If they are investigated, arrested, charged or have allegations brought against them by an external organisation or agency e.g. the police, social services, the Disclosure and Barring Service, Her Majesty's Revenue and Customs, the Child Support Agency or their professional body; they must notify the relevant line manager immediately.
- 4.15.5 If, in the course of duty, they come into possession of information regarding patients or personnel employed by the Trust, this should be regarded as confidential. As such, this information must not be divulged to anyone who does not have the right to this information in line with the Trust's [Information Governance Policy](#). Contravention of this will result in the withdrawal of work.

## **5. MINIMISING THE DEMAND FOR TEMPORARY STAFFING**

- 5.1 The Trust aims to minimise the use of temporary staff, particularly from agencies, due to associated risks, uncertain supply, and the additional costs. Agency engagements should never be considered as a routine or long-term solution. Nonetheless the Trust recognises the important contribution of temporary staff in sustaining short-term cover.
- 5.2 Each Department has an obligation to take into account planned absence such as annual leave, as well as a certain amount of unexpected leave such as sickness, compassionate leave, carers' leave, study leave etc. when calculating their daily workforce needs. Temporary staffing should only be engaged as a last resort after considering other staffing alternatives and should never be used as a permanent staffing solution.
- 5.3 Temporary staff should not be automatically booked to cover annual leave, short term sickness or study leave. The leave should be managed to ensure adequate cover from existing staff.
- 5.4 Prior to deciding whether there is a need to book a temporary worker, managers should:
- Review rosters, including considering flexible working options and time balances to enable existing staff to cover the shifts and offering additional work to part-time staff (at standard hourly rate)
  - Consider if the work can be reallocated or delayed
  - Offer additional hours and time off in lieu to full-time staff without compromising working time regulations
- 5.5 Other alternative methods of filling staffing needs include:  
Offering existing employees additional hours whether on an ad-hoc basis or by increasing their contracted hours.
- Secondments
  - Fixed term contracts to cover absences, e.g. Maternity leave
  - Job share or role splitting
  - Utilisation of staff from other areas within the Department/Trust on a temporary basis
  - Employing staff on annualised hours contracts to provide cover in peak times
  - Re-working procedures to save time and staffing needs



- 5.6 If a manager is experiencing difficulties in recruiting to permanent positions they should seek advice from the Resourcing Manager.

## **6. PROCESS OF SECURING TEMPORARY WORKERS**

- 6.1 The most cost effective methods for providing adequate cover / resource to meet service needs must be considered a priority.
- 6.2 When all alternative internal options have been exhausted by the relevant manager, in most situations the following should be considered in order:
- Additional hours for existing staff
  - Bank worker / Locum Bank worker
  - Agency worker / Agency locum
- 6.3 There may be very rare occasions when for financial reasons Agency Workers may be secured in preference to overtime / Bank Workers.

## **7. USE OF OVERTIME**

- 7.1 Overtime are hours that are worked in excess of full time (37.5 hours) and therefore if additional hours worked are agreed in advance employees will be entitled to overtime at a payment of time and a half for hours worked over 37.5 hours. If an employee is working extra hours under a separate arrangement for the Trust, for example via the Bank, this is not defined as overtime. For employees who are part time additional hours will be paid at plain time rates until their hours exceed standard contracted hours of 37.5 hours a week.
- 7.2 Overtime must always be considered the exception not the rule. All alternative internal options must be considered by the relevant manager before overtime is considered.
- 7.3 Only staff in bands 1-7 are eligible for overtime payments. Staff in pay bands 8 or above or on Very Senior Managers (VSM) pay scales are not entitled to overtime payments.
- 7.4 Staff may request to take time off in lieu as an alternative to overtime payments.
- 7.5 For specific rates of pay, for time off in lieu and overtime please refer to [Agenda for Change Terms of Conditions](#).
- 7.6 All overtime must be approved prior to the work taking place by the budget holder.
- 7.7 Managers must bear in mind the limits on working hours laid down in the Working Time Regulations when asking staff to work overtime, especially the requirement not to exceed the average 48 hours per week over the relevant period applicable to the staff group and the need for minimum daily rest periods.
- 7.8 If a member of staff is absent due to sickness, they will not be eligible to work overtime for ten days or during a phased return to work/rehabilitation programme. Managers must ensure they are not asking staff to work in such situations.

## 8. BANK WORKER / LOCUM BANK WORKER - OVERVIEW

- 8.1 **Who can undertake** - Bank work can be undertaken by employees as additional work on top of their contracted hours or by Bank Workers / Locum Bank Workers who work solely via a Bank Worker arrangement and do not have a contract of employment with the Trust.
- 8.2 **Basis** - Bank work should be completed on an ad-hoc basis. The agreement between the Trust and the Bank Worker / Locum Bank Worker does not guarantee the individual with a fixed number of hours work per week or month and that work, if offered, is on an 'as and when basis' and with no guarantee that work will be available. It is expected, however, that approximately 15 shifts will be worked on an ad-hoc basis over a 3 month period (not including attendance for statutory / mandatory training) assuming that work is available. Failure to meet this may result in terminating the arrangement between the Trust and the Bank Worker.
- 8.3 **Recruitment** - All Bank Workers / Locum Bank Workers, whether managed by the Central Trust Bank or directly in service areas, must be recruited via the Trust's recruitment process and in accordance with the Trust's Recruitment & Selection policy to provide assurance that the engagement of the individual meets NHS Employment Check standards. All applicants for roles will be asked to provide evidence of identification, employment history, references and qualifications to meet requirements specified in the person specification of each job description. Individuals are obliged to disclose a criminal record and a full Disclosure and Barring Service (DBS) check will be processed by Recruitment for all roles requiring a DBS check. Advertisements will be displayed on the Trust internal website and accessible also through <http://www.jobs.nhs.uk>
- 8.4 All Bank Workers / Locum Bank Workers must sign and return a Conditions of Registration which sets out the basis upon which the individual will work for the Trust.
- 8.5 Employees who have a substantive contract with the Trust and wish to join the register of Bank Workers / Locum Bank Workers will be required to formally apply to register with the Bank by completing an Internal Application Form available on the Trust's intranet site.
- 8.6 The Bank Worker / Locum Bank Worker's records are held on Electronic Staff Record (ESR). For those who also have contracts of employment with the Trust, a separate bank assignment is set up on ESR against which all bank work will be recorded and payment made. Bank Workers / Locum Bank Workers who work solely via a Bank Worker arrangement will have an assignment set up on ESR against which all bank work will be recorded and payment made. It is possible for a number of assignments to be set up where different bank roles may be worked by the same person.
- 8.7 Most Bank Workers are registered via the Trust's Central Bank, however, there are occasions when some service areas are permitted to manage their own specific Bank Workers directly. Where this is the case, a record will be held by the Central Bank team. Permission will only be granted after consideration and upon authorisation from the Deputy Director of Human Resources who will confirm sufficient controls are in place to manage the Bank Workers / Locum Bank Workers effectively.
- 8.8 **Payment and Claim Forms** - All bank work including payment for locum bank work will be paid via ESR at the rates agreed by the Trust. Further details are contained within the Conditions of Registration. All bank work must be claimed for on the Bank

Payment Claim form or on the white ward-based Bank Claim forms. On wards where there is a live link from Rosterpro to ESR, a ward-based bank payment claim form will be used to record hours worked.

- 8.8.1 At the end of each shift /period of work it is the responsibility of the individual worker to ensure their Bank Claim form/ward form is checked and signed by the manager/person in charge of the area/department/ward. The individual worker must inform the Central Bank if moved during a shift.
- 8.8.2 It is the responsibility of the Bank Worker / Locum Bank Worker to accurately complete Bank claim forms and to obtain the necessary signatures in order for payroll to process payment. It may affect payment to the individual if the correct process is not followed
- 8.8.3 Bank claim forms for Administrative and Clerical Bank Workers should be fully completed and sent/brought to the Central Bank office as soon as possible and on or by the 2<sup>nd</sup> of the month. If the 2<sup>nd</sup> of the month falls on a bank holiday it should be completed up until the second last day prior to the bank holiday, normally a Thursday to be given to the Bank office to be input onto Rosterpro by the 2<sup>nd</sup> of the month.
- 8.8.4 Bank claim forms for Locum Bank Workers should be fully completed and sent to HR Service Centre by the 2<sup>nd</sup> of the month.
- 8.8.5 Bank claim forms which appear fraudulent will be referred to the Local Counter Fraud Specialist for investigation in accordance with [Trust Counter Fraud Policy](#) and may result in disciplinary action.
- 8.8.6 All Bank Workers and Locum Bank Workers are paid monthly on the 27<sup>th</sup> of each month, unless the 27<sup>th</sup> falls on a weekend in which case it will be the last working day prior to the 27<sup>th</sup>.
- 8.9 **Substantive staff** - who work bank hours in addition to their contracted hours can work up to 50% of their leave allowance entitlement to cover bank shifts.
- 8.10 **Statutory and Mandatory training** - All Bank Workers / Locum Bank Workers must attend statutory and mandatory training including updates commensurate with their post and keep training up to date, failure to do so will result in the withdrawal of all offers of work or potential removal from the bank. Bank Workers / Locum Bank Workers will be paid to attend statutory and mandatory training.
- 8.11 **Professional registration and revalidation** - All Bank Workers / Locum Bank Workers have an obligation to maintain the relevant professional registration when this applies and comply with their professional Code of Conduct.
- 8.12 **Clinical practice skills** - All Bank Registered nurses / Locum Bank Workers must keep their clinical practice skills up to date, in addition to statutory and mandatory training and be able to provide evidence of continuing professional development.
- 8.13 **NHS Pension Scheme** - The Trust will comply with its obligations relating to auto-enrolment as required under the [Pensions Act 2008](#). Bank Workers / Locum Bank Workers are eligible to join the NHS Pension Scheme or National Employment Savings Trust (NEST) scheme. Remuneration will be subject to contribution deductions in accordance with the scheme unless an opt-out is received. Further information can be sought from the Trust's Pensions Manager. It will only be

possible to pay contributions into the pension scheme up to the equivalent of full time hours of employment.

- 8.14 **Sickness** - In the event that a Bank Worker / Locum Bank Worker accepts an assignment but is subsequently unable to work the hours agreed because of sickness, they must notify the Helpdesk Manager/Central Bank Team or, for Locum Bank Workers, the ward/area of work of the reason for absence as soon as possible on the first day of absence. Bank workers / Locum Bank Workers may be entitled to receive statutory sick pay (SSP) at the prevailing rate if they satisfy the qualifying conditions in respect of any period of sickness or injury during an assignment, but will not be entitled to any other payments from the Trust during such period.
- 8.15 **Pregnancy** - If a Bank Worker / Locum Bank Worker become pregnant, they must inform the Central Bank Team (for Locum Bank Workers the ward/ area of work) so that a risk assessment can be undertaken. It may be the case that following the risk assessment that work cannot be offered to the individual in some services. Bank workers / Locum Bank Workers may be entitled to Statutory Maternity Pay (SMP), Statutory Paternity Pay (SPP) or Statutory Adoption Pay (SAP) if they satisfy the qualifying conditions but not maternity, paternity leave and shared parental leave.
- 8.16 **Management of Complaints / Poor performance** - where appropriate, the member of staff in charge of the area will address an incident or complaint with the Bank Worker / Locum Bank Workers at the time of occurrence and the Central Bank Manager must be informed as issues occur.
- 8.16.1 For registered professional bank workers an appropriate member of staff will be involved with the management of complaints, poor performance or discipline issues. If there are issues which may affect performance the manager concerned can request the individual is not allocated work until the concerns are addressed.
- 8.16.2 Employees who are also registered with the Bank, in respect of bank work will be treated as Bank Workers / Locum Bank Workers. Any impact on their substantive role will be treated on an individual basis subject to [Trust Disciplinary and Appeals Policy](#) and [Managing Performance \(Capability\) Policy](#) or for medical professions the Maintaining High Professional Standards Policy. If there is any cause for concern this should be referred to the substantive line manager. If there are performance or disciplinary issues with individuals, advice should be sought from the Human Resource team.
- 8.16.3 In cases of gross misconduct involving Registered Nurses, Midwives or other registered professional Bank Workers the Deputy Chief Nurse / Medical Director reserves the right to inform the appropriate professional body of any outcome of any investigation should they be substantiated. If the Bank Worker / Locum Bank Worker leaves before the end of a misconduct investigation then the Trust reserves the right to continue the investigation in the absence of the Bank Worker / Locum Bank Worker.
- 8.16.4 Bank Workers / Locum Bank Workers who do not hold a contract of employment with the Trust do not have the right of appeal.

## 9. BANK WORKERS - CENTRAL TRUST BANK

- 9.1 The Trust operates a Central Bank for all nursing and administrative roles.

- 9.2 For nursing roles, supernumerary shifts, up to a maximum of three shifts, will be arranged with an established Bank Worker or permanent member of staff. Payments for shifts will not be set up on the Electronic Staff Record (ESR) until the Bank Worker has worked the equivalent number of regular bank shifts. All shifts undertaken prior to being set up must be worked within 3 months of attending Induction. If the complete induction process is not adhered to Bank Workers will not be paid for work undertaken. Supernumerary shifts will also be offered to Bank Workers who have been off work for a significant period of time i.e. maternity leave or who have been working in a specialised area for a period of time i.e. outpatients, theatres.
- 9.2.1 It is the Bank Workers responsibility to ensure that they do not exceed the working time limits set out in the Working Time Directorate regulations of a maximum 48 hour working week, based over 17 weeks, reference section 27 [Agenda for Change NHS Terms and Conditions of Service Handbook](#). If a Bank Worker has alternative work alongside the bank work performed for the Trust he or she must advise the Central Bank office of this and keep the Staff Bank up to date as to the number of hours worked for other work providers.
- 9.3 Workers who are registered with the Trust Bank are unable to work shifts in the Trust via an agency: they must only work bank shifts in the Trust.
- 9.4 **Booking a Bank Worker** - All requests for nursing and midwifery bank workers must be booked via Rosterpro through the Central Bank office or requested by email if unable to access Rosterpro.
- 9.5 Requests must be made by an authorised member of staff, either the ward manager or person in charge of the ward/area/department using the Rosterpro system. If Rosterpro is not accessible, requests must be made by email. If cover is required at less than 24 hours' notice then the request must also be phoned through to the Central Bank Office directly.
- 9.6 All requests for Bank Workers by email or phone must contain the following information:-
- Name of department/area/ward
  - Date and time of cover required
  - Reason for cover i.e. sickness, vacancy
  - Any special skills required
  - Band of worker required
  - Name of person authorising request
- 9.7 Requests for Bank Workers out of hours must be made to ward support which operates 4.45 pm – 8am weekdays and all weekend. This service is provided to assist with cover only relating to the out of hours period.
- 9.8 Before offering an assignment, the Central Bank Manager and relevant line manager must be satisfied that the Bank Worker:
- Has the relevant skills and qualifications necessary for the specific assignment
  - Has the requisite qualifications and up to date registration for the assignment; and,
  - There is no other reason why they should not be considered for the assignment

9.9 Bank Workers who also have a substantive contract with the Trust will have a personal development plan and objectives that they have agreed with their line manager. Where there are documented areas of concern and the individual is being managed under the Trust's Managing Performance (Capability) Policy, they will not be permitted to undertake bank work. Managers must inform the Central Bank Manager if they are aware that this is the case with any of their team.

#### 9.10 **Allocating work to Bank Workers**

9.10.1 **For Nursing Bank Workers** - Bank Workers must add their availability on to the Rosterpro system which will then be married up with available shifts. Bank Workers should check each week the shifts that have been allocated to them on Rosterpro or by telephoning the Staff Bank Team. Shifts will be confirmed on Rosterpro no more than 1 week in advance i.e. each Thursday shifts are confirmed for the following week, Sunday to Saturday.

9.10.2 Assigned shifts will be available to view 6 weeks in advance. Any changes to the roster in a 1 week period will be phoned through to the person/people concerned.

9.10.3 Any changes to arrangements by the wards should be phoned through to the Central Bank office as soon as possible.

9.10.4 When allocating night shifts to new Bank Workers, it will be necessary for them to have worked in the Trust for a 3 month period or for a minimum of 10 shifts before undertaking a night shift. For new Bank Workers who have previously worked in the Trust a reference from a matron will be required to confirm they are clinically safe to work at night.

9.10.5 Nursing Bank Workers will be expected to work in all areas of the Trust and to be flexible to change location when asked to do so to ensure safe staffing levels are maintained in the Trust. Failure to comply with this could result in being removed from the Bank.

#### 9.10.6 **Administrative and Clerical (A&C) Workers**

9.10.7 To book work, A&C Workers must notify the Central Bank of the dates and times they are available to work either by email or by phone. They will then be booked to an appropriate assignment (if an assignment is available) and notified by the Central Bank team of the booking.

9.10.8 A&C Bank Workers must complete blue Bank Payment Claim forms and submit to the Central Bank Team no later than the 2<sup>nd</sup> of each month to reach Payroll in a timely manner

#### 9.10.9 **Cancellation of shifts / assignments by ward/department/area**

9.10.10 Cancellation of a Bank Worker must be made at least 8 hours prior to the start of the booked shift/assignment and to give 12 hours' notice if it's a night shift, this must be done via the Central Bank or out of hours through Ward Support.

9.10.11 Cancellations of bank work by the department of less than 8 hours, or 12 hours for a night shift, will incur the full cost of the Worker to the department/area if other suitable work is not available.

9.10.12 On arrival to the dept/ward/area, if the Bank Worker is surplus to requirements, the department must contact the Central Bank team during working hours. Out of office hours the Site Management team/Ward Support should be contacted, to find other suitable work. If other suitable work is declined by the Bank Worker they will not be paid for attending for work.

#### 9.11 **Cancellation of shifts / assignments by the Bank Worker**

9.11.1 Cancellations should be notified to the Central Bank team as soon as possible. For reasons other than sickness this should be not less than 24 hours prior to the start of the shift/assignment. Frequent cancellations without good reason could result in being removed from the Central Bank register. Further information can be obtained from the Central Bank Team.

9.11.2 If a Bank Worker has to cancel a shift at short notice due to sickness the Central Bank office should be notified and the department/ward/area should be notified directly. Out of hours, Site Management / Ward Support should be contacted along with the ward.

9.11.3 Any Bank Worker who has a sickness period of more than 3 days should advise the Central Bank Team and the appropriate medical certificates will need to be submitted to the Central Bank.

9.11.4 Bank Workers must provide at least one week's indication that they would like to end their registration with the Central Bank in order to allow time for work areas to book alternative cover. If they are not booked to work on a ward or department, registration can be ended immediately

9.11.5 If a Bank Worker is investigated, arrested, charged or has allegations brought against them by an external organisation or agency e.g. the police, social services, the Disclosure and Barring Service, Her Majesty's Revenue and Customs, the Child Support Agency or their professional body they must notify the relevant bank manager/line manager immediately. The relevant manager must also be notified of the outcome of any investigations, hearings or court proceedings as soon as the Bank Worker is notified. Failure to disclose will result in permanent removal from all Trust Banks.

9.11.6 If, in the course of duty, a Bank Worker comes into possession of information regarding patients or personnel employed by the Trust, this should be regarded as confidential. As such, this information must not be divulged to anyone who does not have the right to this information in line with the Trust's Information Governance Policy. Contravention of this will result in the worker being removed from all Trust Banks.

9.11.7 Movement of Bank Workers - Temporary work may be offered to cover a clinical area either within the ward or group of wards in which the Bank Worker is based under the management of a particular line or service manager. The area of work may also be within their team or specialist team under a particular team leader. If there is a need to place Bank Worker more flexibly elsewhere within the Trust, then this may be done, ensuring the correct cross-charging process is carried out between budget-holders.

9.11.8 Bank workers may be asked to move to another area to meet service delivery needs. Every effort will be made to inform the Bank Worker before the start of the shift but at times this will not be possible. Bank Workers are not able to refuse to move. Wherever possible the move will be kept within the Division or Specialty. Refusal to move could result in removal from the Bank register.

## **10. AGENCY WORKERS - APPROVED FRAMEWORK AGENCIES / PRICE CAPS & WAGE RATES**

10.1 Due to the high cost of employing temporary staff, the Government Procurement Service (an executive agency of the cabinet with an overall priority to provide procurement savings for the public service and to deliver centralised procurement for central government departments) and now part of the Crown Commercial Service have negotiated terms of business with certain private employment agencies via framework agreements.

10.1.1 The framework agreements provide NHS organisations with best possible value for money when sourcing temporary staff from a commercial supplier. They offer assurance that temporary staff supplied are of sufficient quality, having undergone the required employment checks in accordance with NHS employment check standards. Factors relating to patient safety and clinical governance are major drivers in setting up the framework agreements. All pointed suppliers undergo on-going performance monitoring. The framework agreements set out terms of business such as the conditions of contract, and provide legal protection to NHS organisations.

10.1.2 While the frameworks offer the Trust assurance, the final responsibility for safe working practices lies with the Trust to ensure that the relevant information has been checked on the temporary worker supplied, or are convinced through the Trust's own monitoring that the chosen provider has reliably done so on the Trust's behalf.

10.2 The benefits of these National Agency Framework Agreements include enhanced quality standards which have been audited by the Crown Commercial Service (CCS) to ensure that their temporary workforce are compliant with all national guidelines including: occupational health, identification security, validation of qualifications, validation of professional registration, employment history, referencing, DBS status. Other benefits include: competitive pricing with a simplified structure and some flexibility with regards to hard to fill; discounts in relation to volume/e-invoicing/length of placement; ready to use agreement with no need for separate tender and NHS specific conditions. In order to use the agencies the Trust has to enter into an agreement with the agency. This is completed via Procurement.

10.3 Line Managers should only use NHS Improvement Approved Framework agencies. A list of these agencies can be found on the Trust's intranet. Certain agencies will specialise in providing particular roles, therefore line managers should check that the agency is approved to supply against the role required.

10.4 The Trust reserves the right to select an appropriate preferred agency(s) from the National Agency Framework. This will be the only agency(s) from which managers can obtain temporary staff.

10.5 Line Managers should not negotiate any terms and /or agreements with Agencies or meet with Agencies unless agreed by the Deputy Director of Human resources. Any



request by Agencies to visit the Trust or for meetings should be directed in the first instance to the Procurement Department.

- 10.6 Line Managers should complete an Agency Worker Checklist for every agency worker engaged (unless they are engaged through the Central Bank team) and retain the Checklist on file for record purposes. The Checklist ensures that all appropriate checks are completed and appropriate information is obtained regarding the individual prior to them working at the Trust.
- 10.7 If there is an exceptional business need to use a non-approved framework agency prior authorisation must be sought using the escalation process, with authorisation gained from the Deputy Chief Nurse, Associate Medical Director, Assistant Director of nursing, Divisional Director, Heads of Service as appropriate to the role.
- 10.8 Line Managers must not pay more than the price cap or wage rates to secure an agency worker. If there is a requirement to override the price cap because of exceptional patient safety reasons the line manager must follow the escalation process , with authorisation gained from Deputy Chief Nurse, Associate Medical Director, Assistant Director of Nursing, Heads of Service as appropriate to the role. Inappropriate overriding of the rules, or deliberate action to circumvent the rules will have a bearing on NHS Improvement regulatory judgements, on the basis that a Trust may not be achieving value for money, which may indicate wider governance concerns
- 10.9 Under no circumstances will an existing substantive member of staff be allowed to work for an external agency in any department of the Trust.
- 10.10 Staff who have left the Trust will not be permitted to work for the Trust as an agency worker within 12 months of leaving the Trust's employment unless specifically authorised by the Deputy Chief Nurse, Associate Medical Director, Assistant Director of nursing, Heads of Service as appropriate to the role.

## **11. AGENCY WORKERS**

- 11.1 Engagement of Agency Workers is regulated by the Agency Workers Regulations 2010. These Regulations came into effect on 1<sup>st</sup> October 2011 entitling agency workers to the same or no less favourable treatment with respect to basic employment and working conditions after a 12 week qualifying period.
- 11.2 The right to equal treatment will not apply until an agency worker has worked in the same (or significantly similar) role for a hirer for 12 qualifying weeks. The qualifying period is analogised as a clock which can be reset, paused or continue to "tick". For guidance on calculating the 12 week qualification.
- 11.3 The legislation entitles agency workers, from day one of working at the Trust, access to the same facilities as substantive employees e.g. canteen, childcare facilities and parking, and the entitlement to be informed of permanent vacancies where they are working. Vacancies are informed via advertisements placed on NHS jobs and via advertisements displayed on recruitment notice boards throughout the Trust.
- 11.4 Further information regarding the [Agency Workers Regulations](#) can be found at APPENDIX 1: THE AGENCY WORKER REGULATIONS 2010 (SI 2010/93).

- 11.5 If an Agency Worker is recruited into a fixed term contract or substantive post within the Trust there may be a liability to pay certain charges to the Agency such as a 'finders' fee. Details will be contained within the national framework agreement.
- 11.6 Agency Workers including Agency Locum Doctors should not be allowed to work until an 'Agency Worker Placement checklist' has been completed. This checklist is the Trust's evidence that appropriate checks have been completed regarding the suitability and competency of the individual to carry out the work they are required to do. This will include, for example, obtaining confirmation on the individual's right to work in the UK, qualifications/ experience, training, DBS, professional registration status and will include confirmation from the agency that they have completed suitable checks in accordance with NHS employment standards. A copy of this checklist must be retained on file.
- 11.7 Line Managers should assess and reassure themselves that for each agency worker they engage, the workers statutory / mandatory training (for Agency Workers provided by the Agency) is up to date and meets the role requirement. Line Managers should also assess for each Agency worker they engage what further role specific training requirements are required and arrange further training as appropriate. This should include local induction, and should also include attendance at Corporate Induction if the length of engagement is likely to exceed 6 weeks.
- 11.8 Agency Workers must notify their supervisor within the Trust if they are not well enough to attend work, as well as notifying their Agency.
- 11.9 If an Agency Worker is engaged continuously in a single post for more than three months a review must be undertaken by the relevant Line Manager and a positive decision made on whether to continue engagement based on justifiable service need. Further reviews should occur at three monthly intervals.
- 11.10 Agency Workers are not eligible to join the NHS pension scheme but individual Agencies may have their own arrangements
- 11.11 Line Managers should keep sufficient records regarding the engagement of Agency Workers to provide evidence of the initial and on-going terms of engagement, competency, local induction, statutory / mandatory training and also role specific training.
- 11.12 Where an incident or complaint involving an Agency Worker or Agency Locum Doctor occurs, the member of staff in charge of the area will address the incident or complaint with the temporary worker at the time of occurrence. All complaints or incidents should be logged via Datix as per the Incident Reporting, Analysing, Investigating and Learning Policy and Procedures. Any subsequent investigation should include the Human Resource Department and should be reported to the Agency. Dependant on the outcome of the investigation it may be appropriate to also notify the organisation responsible for negotiating the national framework agreement and therefore this should be discussed with the Human Resource Department.
- 11.13 Cases of gross misconduct involving Registered Nurses, Midwives or other registered professional Agency Workers need to be investigated in conjunction with the Deputy Chief Nurse/ Medical Director as appropriate. The Deputy Chief Nurse/ Medical Director reserves the right to inform the Nursing and Midwifery Council (NMC) or other professional body of any outcome of any investigation should they be substantiated. If the Agency Worker leaves before the end of a misconduct

investigation then the Trust reserves the right to continue the investigation in the absence of the Agency Worker.

## 12. INDIVIDUALS ENGAGED VIA THEIR LIMITED, PERSONAL SERVICES COMPANY OR AS A SOLE TRADER

- 12.1 NHS Improvement Agency rules (8.3) stipulate that Trusts are encouraged not to engage individual workers via these routes. Only in exceptional circumstance should an individual be engaged directly via their Limited Company, or via a Personal Services Company or as a Sole Trader. If the Trust engages directly in this way, to comply with NHS Improvement Agency rules, assurance must be received that the worker is complying with IR35 legislation and the Trust must seek proof from the worker that they have complied with the obligations set out in Her Majesty's Revenue and Customs (HMRC) guidance. If a worker cannot provide adequate assurance that they are operating within the law the Trust must not engage with the worker via this arrangement.
- 12.2 The verification processes detailed within the Trust's Recruitment & Selection policy must be followed to provide assurance that the engagement of the individual meets NHS Employment Check standards. All individuals will be asked to provide evidence of identification, employment history, references and qualifications to meet requirements specified in the person specification of each job description. Individuals are obliged to disclose a criminal record and a full DBS check will be processed by the Recruitment Team the role to be completed requiring a DBS check.
- 12.3 The individual must be given, sign and return a Contract for Service Agreement which sets out the basis upon which the individual will work for the Trust.
- 12.4 There are additional requirements for engagements which are likely to last for more than 6 months, and payment is made at a rate which is more than a daily rate of £220.
- 12.4.1 HM Treasury published (May 2012) their review of tax arrangements for public sector appointees. This included provisions for engagements of people who are **not** directly employed by the Trust but who work for the Trust for more than **6 months in duration, and for more than a daily rate of £220**. The review stipulated that contracts should be put in place with these individuals that allow the Trust to seek assurance regarding the Income tax and National Insurance Contributions (NIC) obligations of the person appointed, and to terminate the contract if that assurance is not provided.
- 12.5 The Trust should retain copies of the evidence provided by the individual as part of the assurance process. Employers are not expected to see assurance in every case but in enough to provide an effective disincentive to avoiding tax - 20% should be adequate for this purpose.
- 12.6 It is important therefore that before anyone is engaged on this basis that recruiting Managers should contact the ESR Team to ensure that the correct checks are completed and the correct Contract of Engagement is issued.

The ESR Team will keep a record of:

- The number of off payroll engagements for more than £220 per day and more than 6 months
- The number of those from whom assurance has been requested

- The number of those who have successfully provided assurance
  - Action taken against those who have not provided assurance.
- 12.7 Engagement of the individual is similar to that of an Agency Worker and therefore section 11 also applies to these individuals. Payment is completed via the individual submitting an invoice which is paid through Agresso using the Trust's normal payment process.

### **13. THE EUROPEAN WORKING TIME DIRECTIVE**

- 13.1 The Working Time Regulations state an 11 hour rest break between shifts. Where there are staff who are on-call are called in to work during the on-call period, arrangements should be made to ensure the 11 hour break/compensatory rest is given.
- 13.2 Staff will not be able to work more than 48 hours a week except in exceptional circumstances (eg. Flu pandemic). Any request to work more than 48 hours a week must be reached in agreement with the line manager and the Human Resources Department for an agreed period of time and review.
- 13.3 All workers working a 6 hour day or longer are required by the Working Time Regulations to take a minimum 20 minutes unpaid break during the working day, and should not be taken at either the beginning or end of the working day. Longer breaks can be agreed locally with the line manager.
- 13.4 Substantive staff wishing to work via a Trust bank must discuss this with their substantive manager prior to joining the bank to ensure that the European Working Time Directive is not breached when bank work is undertaken.
- 13.5 Employees hours will be monitored to ensure that Working Time Regulations are complied with and, as such, they must declare to the Trust and their Line Manager any employment that they have outside of the Trust.

### **14. ARCHIVING ARRANGEMENTS**

The original of this policy will remain with the Head of Workforce Planning & Development. An electronic copy will be maintained on the Trust Intranet, (A-Z) P – Policies (Trust-wide) – T – Temporary Workforce Policy. Archived electronic copies will be stored on the Trust's "archived policies" shared drive, and will be held indefinitely. A paper copy (where one exists) will be retained for 10 years.

### **15. PROCESS FOR MONITORING COMPLIANCE WITH AND EFFECTIVENESS OF THE POLICY**

- 15.1 To monitor compliance with this policy, the auditable standards will be monitored as follows:

No	Minimum Requirements	Evidenced by
1.	Reasons of requesting temporary workers will be assessed via Rosterpro	Reports produced by Workforce Information & Finance
2.	Weekly NHS Improvement (NHSI) Reporting	Divisional reporting to HR and from HR to NHSI
3.	Monthly Reporting	Report from HR to Board
4.	Monthly Financial Reporting	Reports from Finance
5.	Quarterly Reporting	Report to Workforce Governance Committee
6.	The Workforce Information Team will produce reports for each Workforce Governance Committee	Reports produced and Discussion at Workforce Governance Committee

#### 15.2 Frequency

See table above

#### 15.3 Undertaken by

See table above

#### 15.4 Dissemination of Results

Issues arising from the monitoring the reports will be discussed at the Workforce Governance Committee which is held every six months.

#### 15.5 Recommendations/ Action Plans

Implementation of the recommendations and action plan will be monitored by the Workforce Governance Committee, which meets every six months.

15.6 Any barriers to implementation will be risk-assessed and added to the risk register.

15.7 Any changes in practice needed will be highlighted to Trust staff via the Governance Managers' cascade system.

### 16. REFERENCES

European Working Time Directive (1988)

[Pensions Act 2008.](#)

[Agency Workers Regulations 2010 \(SI 2010/93\)](#)

Employment Standards NHS Employers  
[www.nhsemployers.org/Pages/home.aspx](http://www.nhsemployers.org/Pages/home.aspx)

[NHS Improvement Agency Rules 2016.](#)

## **APPENDIX 1: THE AGENCY WORKER REGULATIONS 2010 (SI 2010/93)**

### **Introduction**

The new European Regulations on Agency Workers took effect in the UK from 1<sup>st</sup> October 2011 and gave new rights to all agency workers. Managers need to be aware of these rights, as they may affect the conditions and cost of having an agency worker in their department. Some rights apply immediately and some after 12 weeks.

The Trust must meet its compliance requirements ensuring appropriately trained and competent agency staff are used, so **only** those agencies approved on the national framework lists should be used.

### **Changes brought about by the legislation**

**From their first day** all agency workers are entitled to the same access to relevant job vacancies as substantive staff. This excludes ring-fenced vacancies due to restructuring etc. They are also entitled to access to facilities, including canteen, childcare, transport, car parking where they exist.

#### **Action for managers to take from the first day**

- Ensure agency workers are aware of NHS Jobs and the Trust's internet and intranet sites where they can look for vacancies
- Also inform agency workers of any local arrangements regarding facilities, including canteen, childcare, transport, car parking.

**After working 12 weeks** in the same position agency workers have further entitlements. These concern being treated equally in terms of pay and basic working conditions:

- Pay (this includes basic, holiday and overtime pay as well as shift allowances etc) Pay is determined as compared to the substantive post.
- Annual leave and bank holidays should be given to the agency worker in accordance with Agenda for Change terms and conditions based on NHS service.
- It should be noted though that the agency rates paid to the agency worker from the first day, already include a percentage for annual leave WTD.
- Rest breaks are in accordance with Working Time Regulations (ie. 20 minute break after 6 hours) but also would be the same as for the substantive post.
- Pregnant agency workers will be allowed to take reasonable paid time off for ante-natal appointments. A workplace risk assessment must also be undertaken together with the worker and the agency.
- The rights do not extend to some wider benefits enjoyed by permanent staff, such as occupational sick pay and pensions.
- The Regulations make provision for penalties for employers trying to avoid implementing equal treatment or anti-avoidance rules.

#### **Guidance on calculating the 12 week period**

The right to equal treatment will not apply until an agency worker has worked in the same (or significantly similar) role for a hirer for 12 continuous weeks. However, this qualifying period is analogised as a clock which can be reset, paused or continue to "tick".

The qualifying weeks can be made up of part and full time weeks. There is no minimum amount of work that needs to be completed in order for a week to count as one of the twelve for qualification purposes. Therefore, even if the agency worker is on assignment for only a

few hours a week, it will still count as a week and they will still be entitled to equal treatment after 12 calendar weeks.

A new qualifying period will **only** begin if the new assignment with the Trust is substantially different and/or there has been a minimum of 6 weeks break between assignments.

The general rule under the Regulations is that any break between assignments of 6 weeks or less, in the same role, shall not break 'continuity' for qualification purposes.

An agency worker can qualify for equal treatment after 12 weeks in the same role with the same hirer, regardless of whether they have been supplied by more than one agency for part of that period of time.

### **The qualifying clock**

The 12 week provisions can best be explained by thinking of the qualifying period as a clock which runs from 0 to 12. Sometimes a gap between assignments will mean that the clock is reset to 0 and must start again. In other circumstances a break will merely 'pause' the clock which will then continue to tick when the agency worker returns. In some limited circumstances, the clock will continue to tick even if the agency worker is not working on an assignment.

There are reasons where the qualifying clock is reset to 0. Most commonly it will be because an agency worker begins a new assignment with a new hirer. Other instances are when an agency worker remains with the same hirer but is no longer in the same role, and if there is a break between assignments with the same hirer of 6 weeks or more (which is not one which 'pauses' the clock or during which it continues to 'tick').

### **Qualifying clock to 'pause'**

There are specific types of break which will cause the qualifying clock to 'pause':

- A break for any reason where the break is no more than 6 calendar weeks
- A break of up to 28 weeks because the agency worker is incapable of work because of sickness or injury
- Any break which is for the purpose of taking leave to which the agency worker is entitled, including annual leave
- A break up to 28 calendar weeks to allow the agency worker to perform jury service
- A break caused by a regular and planned shutdown of the workplace by the hirer
- A break caused by a strike or other industrial action at the hirer's establishment

### **Qualifying clock to continue to 'tick'**

There are breaks where the clock continues to tick. These are breaks due to pregnancy, childbirth or maternity which take place during pregnancy and up to 26 weeks after childbirth; and any breaks due to the worker taking adoption or paternity leave (which is provided for through his or her relationship with the agency).

Absences that fall outside the above will normally have the effect of breaking service.

## APPENDIX 2: COMMUNICATION PLAN

### Communication Plan

The following action plan will be enacted once the policy has been approved.

<b>Staff groups that need to have knowledge of the policy</b>	All staff and managers Bank Workers, Agency Workers and others not covered by the term employee Substantive staff who also undertake bank assignments Staff Side
<b>The key changes if a revised policy*</b>	Replaces the Operational Policy for Staff Bank  Includes all temporary workers into one policy – Bank, Locum and Agency  Inclusion of NHS Improvement (NHSI) Agency Rules, NHSI Price Caps and NHSI Approved Framework Agencies  Inclusion and guidance on use of individuals engaged via a limited, personal services company or as a sole trader  Change to deadline submission date to Central Bank Office of 2 <sup>nd</sup> of the month for processing Admin & Clerical Worker Bank forms
<b>The key objectives</b>	This policy sets out the standards and procedures required to ensure that those individuals undertaking temporary assignments are appropriately engaged, trained and deployed in a manner which is cost effective and supports the delivery of high quality services.  To ensure a clear and consistent approach to the engagement of all temporary workers.  Ensure the Trust complies with its obligations in accordance with NHSI Agency Rules
<b>How new staff will be made aware of the policy, e.g. induction process, cascade etc.</b>	Induction, Trust Intranet
<b>Training available to staff</b>	Updates on Trust Intranet HUB



### APPENDIX 3: EQUALITY IMPACT ASSESSMENT TOOL

<b>Name of document</b>	Temporary Worker Policy
<b>Division/Directorate and service area</b>	Transformation & Organisational Development/Workforce Planning & Development
<b>Name, job title and contact details of person completing the assessment</b>	Mark Gill, Head of Workforce Planning & Development
<b>Date completed:</b>	March 2016

**The purpose of this tool is to:**

- **identify** the equality issues related to a policy, procedure or strategy
- **summarise the work done** during the development of the document to reduce negative impacts or to maximise benefit
- **highlight unresolved issues** with the policy/procedure/strategy which cannot be removed but which will be monitored, and set out how this will be done.

**1. What is the main purpose of this document?**

To provide standards and guidance under which temporary staffing placements may occur to cover all shortfalls within the Trust. The intended outcome is to ensure that temporary workforce placements are standardised, co-ordinated, appropriate and managed within budget and without detriment to the service delivery.

This is a new policy and all staff have a responsibility for ensuring that the principles outlined within this document are universally applied. It is not a national requirement but has links to the Agency Workers Regulations October 2011.

**2. Who does it mainly affect? (Please insert an “x” as appropriate:)**

Carers     Staff     Patients     Other (please specify)

**Who might the policy have a ‘differential’ effect on, considering the “protected characteristics” below?** (By *differential* we mean, for example that a policy may have a noticeably more positive or negative impact on a particular group e.g. it may be more beneficial for women than for men)

**Please insert an “x” in the appropriate box (x)**

Protected characteristic	Relevant	Not relevant
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sex - including: Transgender, and Pregnancy / Maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Religion / belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sexual orientation – including: Marriage / Civil Partnership	<input type="checkbox"/>	<input checked="" type="checkbox"/>

3. **Apart from those with protected characteristics, which other groups in society might this document be particularly relevant to...** (e.g. those affected by homelessness, bariatric patients, end of life patients, those with carers etc.)?

N/A

4. **Do you think the document meets our human rights obligations?**   
*Feel free to expand on any human rights considerations in question 6 below.*

**A quick guide to human rights:**

- **Fairness** – how have you made sure it treat everyone justly?
- **Respect** – how have you made sure it respects everyone as a person?
- **Equality** – how does it give everyone an equal chance to get whatever it is offering?
- **Dignity** – have you made sure it treats everyone with dignity?
- **Autonomy** – Does it enable people to make decisions for themselves?

6. **Looking back at questions 3, 4 and 5, can you summarise what has been done during the production of this document and your consultation process to support our equality / human rights / inclusion commitments?**

Full consultation with JSCNC and Workforce Governance Committee.