

Request under Freedom of Information Act 2000

Thank you for your request for information which we received on 12 October 2018.

I am pleased to confirm the following.

- 1. Please describe the steps you took prior to April 2017:**
 - i. to review the off-payroll engagement of PSCs or other intermediaries, to decide whether the off-payroll rules would apply**
 - ii. please include an explanation of any different or additional steps taken in relation to PSCs etc that you engaged via an agency or other labour provider.**

Please see attached.

- 2. If different from 1 above, please describe the systems / processes currently in place to decide whether the off-payroll rules apply to PSCs etc, whether you engage them directly or via an agency or other labour provider. Please provide a copy of any internal guidance / operating procedures for your staff, and comment on:**
 - i. who is responsible for carrying out the checks and approving decisions**
 - ii. whether the Check Employment Status for Tax tool (CEST) is used to inform decisions as to whether the rules apply, and**
 - iii. how you ensure compliance where the PSC is engaged via an agency or other labour provider.**

No change.

- 3. For the tax year 2107/2018, if you directly engaged with and paid any worker's own PSC or other intermediary, please tell us:**
 - i. the total number of such PSCs etc that you engaged directly**
 - ii. the number of such PSCs etc that you decided were within the scope of the legislation**
 - iii. if different from (ii), the number of such PSCs etc that have been subject to deduction of tax and NIC and included in an RTI submission**
 - iv. the number of such PSCs etc that you decided were outside the scope of the legislation**
 - v. the names, addresses and a brief description of the worker role / nature of services provided by the PSCs etc within (iv) above.**

The table below includes details of the number of direct engagements and the Trust's assessment of IR35 status.

Count of IR35 Compliance		
Period	In/Out	Total
Mar-17	In	2
	Out	4
Apr-17	In	2
	Out	1
May-17	In	2
Jun-17	In	6
	Out	2
Jul-17	In	2
Oct-17	In	1
Mar-18	In	1
Grand Total		23

The Trust is unable to provide further details (names, addresses) of the workers.

- 4. For the tax year 2017/18, if you were invoiced by any agency or other labour provider for services via a worker's own PSC or other intermediary, please provide the name of each such agency or other labour provider and, or each of them, please tell us:**
- i. the total number of such PSCs etc supplied by that agency / labour provider**
 - ii. the number of such PSCs etc that you decided were within the scope of the legislation**
 - iii. whether you told the agency / labour provider that the rules applied for every PSC etc within (ii) above and if not, please explain why not)**
 - iv. the number of such PSCs etc, that you decided were outside the scope of the legislation**
 - v. the name, addresses and a brief description of the worker role / nature of services provided by the PSCs etc within iv) above.**

The Trust does not hold information on how individuals engaged through agencies are paid (i.e. whether it is via a worker's own PSC); however, the Trust has communicated the following to agencies through which it engages staff:

'The Trust confirms that in all cases of clinical workers (including, but not limited to, locum doctors, nurses, Allied Health Professionals and all roles included within the scope of the NHSCPP Clinical Staffing Framework), supplied by:

your agency; any connected agency; or any other agency under a sub-contract arrangement with your agency, the condition in 61M(1)(d) is not met.

The Trust is of the view that in the case of all clinical temporary workers supplied by you or any other agency either:

(i) if the services were provided under a contract directly between the client and the worker, the worker would be regarded for income tax purposes as an employee of the client or the holder of an office under the client,

and/or

(ii) the worker is an office-holder who holds that office under the client and the services relate to the office.

The reasons for the Trust reaching this conclusion are one or all of the following:

- *Clinical workers have no right of substitution.*
- *Other than medical consultants, clinical workers are subject to direction and control.*
- *Work has to be done on the Trust premises or other premises that the Trust may direct.*
- *Workers are not required to provide any significant items of personal equipment (e.g. doctor may provide a stethoscope, but the Trust does not consider this significant).*
- *Clinical workers either have to operate on a work-pattern decided by the Trust or a work pattern agreed with the Trust.*

5. Please identify any workers / PSCs etc that you decided were within the off-payroll rules, which have subsequently been engaged / paid via umbrella companies. Do you have any policy in place that encourages the use of umbrella companies for those found to be within the rules?

None.

6. For those not working through umbrella companies, have any workers that previously worked through their own PSC etc subsequently entered into employment contracts with your group?

Yes

7. The off-payroll rules do not apply where a public authority has fully contracted out services to a third party e.g. an outsourcing company operating under a contract where the workers do not personally provide their services to the public authority. If you believe this applies to you, please provide an explanation for the affected contract(s).

N/A

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If you need any further assistance, please do not hesitate to contact us at the address above.

Yours sincerely,

Freedom Of Information Co-ordinator
For and on behalf of Milton Keynes Hospital NHS Foundation Trust

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