

SUBCONTRACTOR POLICY

Date of Last Review: February 2019

Date of Next Review: February 2022

Responsibility: Mr R Carling

Advisory Body Signature: *R Carling*



1. INTRODUCTION

- a) The purpose of this document is to detail E21C's policy on subcontractors and off payroll working, and to ensure E21C identifies and correctly accounts for all such arrangements to avoid non-compliance with HMRC rules. Non-compliance with HMRC rules can result in substantial tax and national insurance liabilities, penalties and interest.

2. SCOPE

- b) This policy applies to any engagement where they are not directly employed by E21C. applies to any contract under which E21C engages a person whom it does not directly employ or place on its payroll.
- c) All E21C staff, trustees and governors are ~~also~~ required to comply with this policy
- d) This policy should be read in conjunction with all other finance policies including procurement, and all trust delegated authorities must be complied with.

3. CONTEXT

- a) As is usual business practice, there will be instances when sub-contractors are required to deliver certain services or functions in the trust. Care must be taken however to ensure that there is compliance with the Academies Financial Handbook, and relevant legislation from HMRC.
- b) Academies Financial Handbook (AFH)
The AFH (2018) specifically mentions that the academy must ensure that its senior employees' payroll arrangements fully meet their tax obligations and comply with HM Treasury's guidance about the employment and contract arrangements of individuals on the avoidance of tax. Review of the tax arrangements of public sector appointees is referenced in the AFH. <https://www.gov.uk/government/publications/review-of-the-tax-arrangements-of-public-sector-appointees>. This policy will also need to comply with any subsequent AFH. All arrangements must demonstrate value for money and approval of any transactions that are novel, contentious or repercussive must follow the correct procedures as set out in the AFH.
- c) HMRC guidance
The relevant HMRC guidance and law to be considered is Off-payroll working through an intermediary (IR35) (<https://www.gov.uk/guidance/ir35-find-out-if-it-applies>) and Employment status (<https://www.gov.uk/employment-status/selfemployed-contractor>). This legislation is designed to ensure that individuals cannot minimise their tax bill through using a Personal Service Company, or acting in a self-employed capacity, and that similar

levels of tax are paid whether on or off payroll. If the HMRC guidance is updated, then the new guidance must be used in this policy.

- d) As an academy trust, E21C is covered by the HM Treasury 'Managing Public Money' handbook. As an employer E21C has a duty to ensure that (it does not enable) tax avoidance, tax minimisation or the avoidance of NICs is not enabled.
- e) HMRC defines an off payroll worker as a person who provides a service through their own intermediary. This could be:
 - A limited company owned by the worker – (Personal Service Company – PSC)
 - A partnership
 - A sole trader (this includes any individual in a self-employed capacity).
- f) Procedures must be put in place to identify when the rules may apply, to enable the trust to conduct the required tests and checks.

Off-payroll rules applies where:

1. services are provided by an individual via an intermediary owned or controlled by the individual (as defined in 3.e), and
2. the individual is for all intents and purposes working as an employee, i.e.
 - a. they are required to provide personal service (i.e. there is no right to provide a substitute to do the work),
 - b. the employer must provide a certain level of work and the employee must do the work provided (i.e. there is no right to decline work),
 - c. the employer controls the way in which the work is carried out, where and when,
 - d. the person is integrated into the organisation (e.g. has a desk and phone, supervises staff and/or is supervised, is covered by employee policies, can access employee benefits et cetera), and
 - e. the individual does not bear personal risk (e.g. they do not pay for their own equipment and staff or fund their own training, et cetera).

4. STEPS TO COMPLETE

- a) For all existing suppliers, E21C will review the nature of the arrangements, to identify any that may be in the scope of the legislation. If any are identified, then the same steps and checks as required for new contractors will need to be undertaken.

New contractors

- b) Where a new contractor is identified, these steps should be undertaken before entering into any contract.

1. Ensure that the role is suitable for a contractor arrangement, and that employment is not an option.
2. Request from the supplier details of their legal structure and business structure, to consider if IR35 could apply.
3. If any of the 3 situations in 3(e) apply, further steps and review must be undertaken.

Further steps

4. Obtain copies of the proposed contract
 5. Review for details as noted in 3.f above
- c) Once the details have been obtained, they should be assessed using the HMRC online employment status tool. This is available <https://www.gov.uk/guidance/check-employment-status-for-tax>.
- d) Once completed, before any contracts are signed or approved this check should be reviewed and signed as authorised by the trust AO and CFO.
- e) If there is any doubt or concern over the status, the trust must seek independent advice to ensure compliance.
- f) No work will be commissioned or started by anyone potentially subject to this policy until all checks have been completed.

5. NEXT STEPS

- a) For contractors operating through a limited company owned by the worker – (Personal Service Company – PSC) if the contractor is considered to fall under the provisions, then the trust must ensure that they are notified of the decision, and all taxes and deductions made as required. Instructions for calculating the deduction can be found here (<https://www.gov.uk/guidance/off-payroll-working-in-the-public-sector-reform-for-fee-payers>) The net payment shall be made to the contractor under the normal payment terms. Deductions will be paid over to HMRC under usual channels together with any employers NIC with the usual PAYE submissions.
- b) For contractors operating a partnership or a sole trader (this includes any individual in a self-employed capacity) the individuals should be added to the payroll in the usual way. The amounts due for labour, net of VAT, should be treated as the gross taxable pay for payroll purposes. VAT should not be charged by the contractor. Additional expenses incurred by the contractor incurred wholly, exclusively and necessarily for the purposes of their employment can be reimbursed (where the existing expenses policy allows) and any necessary entries included on a form P11D. If reimbursement is not within the existing expenses policy, the contractor can consider making their own claim to HMRC.

- c) The Finance committee must perform an annual review of all subcontractor arrangements to ensure full compliance with current legislation and AFH.