

**Employment Relationship Guidelines and Approval Process for Engagements**

**1. Introduction**

In accordance with employment legislation and HMRC rules the University must ascertain the employment status of individuals. This is important as it determines the statutory employment rights to which a working person is entitled and how much Income Tax and National Insurance contributions are paid and collected from the individual.

As an employer, it is the University’s responsibility to establish the correct employment status and the correct payment route for anyone it employs so that they:

* have the appropriate employment rights
* pay the right amount of Income Tax and National Insurance
* have access to the correct benefits

***Please note: Because someone has self-employed status on one job does not necessarily mean they will have self-employed status with the University.***

Broadly, a person is:

* **employed** – if they personally work under the control of the University and do not run the risk of having a business. Employees cannot substitute another person to do their work.
* **self-employed** – provide services to the employer but remains independent. They may have a business on their own account and bear the responsibility for the success or failure of that business. Whilst undertaking work for the University, they maintain control over what is delivered and how. They are likely to be able to send a substitute if they cannot do the work themselves. To help determine if an individual is self-employed, Her Majesty’s Revenue and Customs (HMRC) Employment Status Indicator tool should be completed by the Engaging Faculty/Administrator at the University (please see section 2).

**It is important to note that the University’s position is to regard any person working for the University as an employee and therefore this should apply in the majority of circumstances**. Self-employed status will only apply in a small number of cases.

Prior to any engagement, an initial ‘Intent to Engage’ form should be completed and signed by a member of the Rectorate team. Please see Appendix 1.

**2. Determining the Employment Status**

HMRC provide an on-line Employment Status Indicator Tool (ESI) to help assess individual employment status. As noted, the employment status of an individual with one employer does not determine that individual’s employment status with the University. As Liverpool Hope University regards all individuals as employees in the first instance, this tool need only be used where this status is in question, i.e. the individual or department/faculty feel the arrangement is one of self employment.

**2.1 How to use the ESI**

**The tool should be used prior to engaging an individual.** This will allow the University to indicate at the time of engagement, that the individual will be either an employee or has self-employed status. If self-employed the individual shall invoice the University for their services.

**The tool must be used for each new engagement.** As the nature of the relationship may change from engagement to engagement, we cannot rely on any previous assessment of individual employment status, a new one must be completed for each engagement. The ESI tool is completely anonymous, so no personal details about the worker or engager are requested. The tool asks a series of questions about the working relationship between the individual and the University. If you have a contract setting out the terms of the relationship, it will be useful to have it to hand.

When using the tool, the enquiry is assigned a **fourteen digit** ESI reference number.

* Outcomes will be based purely on the information provided.
* Some questions are mandatory and these are denoted by a red asterisk.
* It is important to note that the ESI tool will only provide an indicator of employment status (employed or self-employed). It will not give a definitive or legally-binding opinion. The outcome must be downloaded and printed or saved and will be used if the employment status is questioned by HMRC.
  1. **Points to Note**

There are some circumstances were it is more unlikely that the University would be liable to a charge from HMRC if the individual is deemed to be an employee. This is if the individual is delivering the services via a limited company.

**Limited Company -** The tool does not need to be used when the work is to be carried out via a Limited Company. For example if the work is being carried out by John Smith, he is acting as an employee of a company and the invoice will be sent from John Smith Ltd.

The tool should however still be used if:

* John is acting as an individual and proposes to send an invoice with his own name on the invoice, and the payment is to be made directly to him.
* John is acting as a partner in Smith & Jones Enterprises, and again the payment will be made directly to him.

**Performers at Capstone Theatre -** A separate process is in place for the engagement of performers, details can be found by contacting Neil Campbell.

With regards to engagement of companies further information considering engagement of suppliers tendering and procurement can be found at:

<https://www.hope.ac.uk/gateway/staff/stafffinance/formspoliciesprocedures/>procurement/

* 1. **What the Engager needs to do -** Log onto the ESI Tool at

<https://www.gov.uk/employment-status-indicator>

The information page gives an introduction to ESI. Under the heading ‘Who can use the tool’ at the bottom is a link ‘Access the ESI tool and further guidance’.

Under ‘Conditions of Use’, Click on ‘I accept the conditions of use – go to the ESI tool’

1. This commences the question tables.

|  |  |
| --- | --- |
| **Question** | **Drop Down Table** |
| What is the customer role? | This is always “Engager” |
| Is the enquiry in relation to a future contract? | Yes / No |
| What is the worker’s current employment status? | Employee / Self-Employed / Not Known |

1. Mandatory fields are marked with a red asterisk and the screen does not move forward until these questions have been answered.
2. Once all questions are completed the final page will provide a guide to Employment Status and levels of risk.

1. The final page showing the status and the unique reference number should be printed or saved and retained.
   * Where this indicates that an individual is an employee the normal arrangements for engaging staff need to take place via Personnel see section 3 below.
   * Where this indicates that an individual is self-employed the internal process for appointing a non-employee should be followed, see section 4 below.

**The ESI result**

When all the questions are answered, the ESI tool will provide an indication of the worker’s employment status. This may be relied upon as evidence of a worker’s status for Income Tax, National Insurance contributions and VAT purposes if both of the following apply:

* the answers to the ESI questions **accurately reflect** the terms and conditions under which the worker provides their services.
* the ESI has been completed **by the engager.**

Please note that a copy of the completed ESI report and the specification for the work should either be forwarded to Purchase Ledger team or attached to the Supplier on Agresso, this should accompany the *New Supplier Set Up* form. If the worker’s employment status is questioned in the future, HMRC will only be bound by the ESI outcome if these copies can be produced.

**3. Employee Appointments**

**3.1 Permanent Staff (including fixed term staff)**

The normal process of recruitment for this group of staff should start via the completion of an Authority to Recruit Form:

<http://www.hope.ac.uk/personnel/a-zofpoliciesandforms/a-zofforms/>

**3.2 Atypical Staff – (hourly paid, temporary, short term and casual)**

Approval for such engagements should also follow the Authority to Recruit process.

Note: be aware that failure to issue a contract and provide the correct proof of eligibility to work in the UK will prevent any payments being made. No individual should start employment without the appropriate documentation being completed.

**4. Self Employment Appointments**

Upon self-employed outcome on ETI, Faculties/Departments must follow the process as shown on process mapping document (Appendix 2)

Documentation required:-

* Intent to engage (Appendix 1)
* Unique ETI reference number
* Supplier declaration (Appendix 3)
* Valid indemnity insurance (if required) Further information can be found on the Policy of minimum insurance requirements for external suppliers (Appendix 4)

Please note: failure to follow the correct process will result in one of three outcomes:-

1. The individual will automatically be processed via the payroll and payment will be subject to tax and NI
2. The individual will not be paid
3. The individual will be paid late

**Rationale for improvement to current process**

HMRC has tightened its approach of the acceptability of employing individuals on a self-employed basis rather than as employees, as NI contributions are paid on behalf of employees but not on behalf of suppliers. Therefore, this policy and process documentation will invariably limit the risk and potential liability to the University.

Appendix 1 – **Intent to Engage**

Faculty/Department..............................................................

Departmental Contact...........................................................

Phone Number.....................................................................

Name of worker…………………………………………………………………………..

Proposed Start and end date of the engagement....................................................

Description of the type of work to be undertaken.....................................................

Home address of the worker ..................................................................................

………………………………………………………………………………………………

………………………………………………………………………………………………

Company name , if applicable..................................................................................

Company Registered address .................................................................................

National Insurance number .....................................................................................

Is the supplier filling a temporary staff vacancy? (not agency staff) Y/N

Is the supplier a former University employee? Y/N

|  |
| --- |
| Authorised by……………………………….(Rectorate Team member only)  Date…………………………………………. |

Appendix 2 - **Process mapping**



Appendix 3 – **Supplier’s Declaration**

**Supplier’s Declaration.**

I confirm that I am an Independent Contractor and as such I am solely responsible for my own National Insurance, Income tax and Value Added Tax

I enclose copy certificates for my Public or Professional Liability Insurance, for the work being undertaken.

I enclose copies of my valid driving licence and insurance and confirm that I am covered to use my vehicle for business use.

I will submit invoice(s), addressed to Liverpool Hope University, to the Finance Department.

**VAT Registration number (if applicable)…………………………………….**

**Signature ..................................................................................**

**Name (Printed) .........................................................................**

**Date.............................................................................................**

Provision of the above information does not guarantee that payments will be made gross; the University reserves the right to determine the employment status of individuals after considering all factors pertaining to the contract.

***(Failure to provide the above information will lead to payments being made under the PAYE system until the information is provided)***

Appendix 4 **– Indemnity Insurance**

**POLICY ON THE MINIMUM INSURANCE REQUIREMENTS FOR EXTERNAL SUPPLIERS**

**Introduction**

The University is exposed to various financial and legal risks in respect of its day to day activities. For example, the University can be ordered to pay compensation (also known as damages) to individuals and businesses who have suffered loss whilst on University premises or in receipt of University services, this might be for example, students or partners who work with the University. The types of claims that the University may have brought against it are for damage to property; damages for personal injury or for professional negligence such as teaching which doesn’t deliver what was promised. Consequently, the University carries insurance to cover its potential liability. University employees have the benefit of this cover when acting on University business.

Many acts and activities that take place at or on behalf of the University are performed by people who are not University employees. These people may be classed as contractors, suppliers or consultants (we will call them External Suppliers for the purposes of this policy). Because these people or businesses are not employees of the University, they do not have the benefit of the University’s insurance policies and therefore their activities can place the University in a vulnerable position. For example, if an External Supplier commits a negligent act that results in a loss to an individual, despite the error being the fault of the External Supplier, the person suffering a loss may choose to seek compensation from the University. In this case and so long as the University has carried out all of the proper checks on the External Supplier and has not contributed to the loss then the University would want to make sure that it is the External Supplier who pays any compensation to the individual. If the external Supplier does not have adequate insurance, this will not be possible. The University’s Insurers or legal advisers would wish to involve the External Supplier in any legal action as a co-defendant. However, in the absence of adequate liability insurance this option may not be viable. Furthermore, the failure of a key External Supplier could impact on the University’s service delivery and without insurance, the University may not be able to be compensated for any financial losses that arise from a service delivery failure.

The question as to whether or not an External Supplier has adequate insurance is therefore a key question in relation to the University’s risk management. Insurance should be considered in line with the principles set out in this policy before asking any External Supplier to commence any work and before agreeing a price for that work.

**The Policy**

This policy applies to all relevant Liverpool Hope University staff engaging any External Supplier, whether an individual or a corporate entity, to provide goods and/or services to the University or on its behalf.

The University requires External Suppliers to provide a minimum level of insurance cover in one or both of two principal types of insurance. These are public liability (PL) and professional indemnity (PI).

**Public Liability**

Public liability insurance provides cover for property damage and/or personal injury caused to third parties. Third parties could be students, visitors or staff members. Public liability cover should be taken out by anyone who might cause such damage or injury by reason of their presence or activity. For example, if an External Supplier is bringing equipment or goods onto University property or if they are organising activities on University premises or on behalf of the University. In some cases, product liability insurance will be necessary as part of the Public Liability cover, particularly where the External Supplier’s activity concerns the use or presence of their product in a way which could cause damage or injury.

The minimum level of Public Liability cover required for External Suppliers is **£5 million**

**Professional Indemnity**

Professional indemnity insurance covers faulty input and advice from External Suppliers on whose professional expertise the University relies, such as teachers, trainers, architects, surveyors, IT professionals, designers, financial advisers, lawyers, and contractors carrying out work for the University on research and consultancy projects. The majority of these claims fall within the area of Professional negligence (i.e. making a mistake in a piece of work). However, Professional Indemnity insurance should also be in place to cover things like

* Loss of documents or data
* Unintentional breach of copyright and/or confidentiality
* Defamation and libel
* Loss of goods or money

The minimum level of Professional Indemnity cover required is **£5 million**

**Instances of Increased Levels of Insurance**

There may be circumstances where the levels of insurance must be higher or lower than those stipulated in this policy, such as

1. where any University pre-procured framework contracts require a higher level

1. where the University has agreed or opted to use an industry-agreed form of contract (such as the JCT construction contracts) which requires a higher level. Most of these will be within the activities of the Estates Team.
2. where the insurance requirements are stipulated at a higher level (e.g. the Estates approved contractor list)
3. where the insurance requirements in the contract have been written or vetted by the Legal Services Officer
4. where the work is covered by terms of funding or sponsorship which require a higher level
5. where the work has been offered via a tendering process supported by the Procurement Manager and requires a higher level

**Waiver for Exceptional Cases**

There may be exceptional circumstances where the relevant Rectorate team member may authorise a reduced level of cover where the additional risk is acceptable because of a demonstrable and material benefit or where the reduced level of cover does not expose the University to additional risk.

A waiver is effective only where the Rectorate team member has, in good faith, assessed the risks of reducing the cover requirement and has completed and signed a risk assessment form (pro forma attached).

Completed and signed risk assessment forms must be copied to the Procurement Manager. The form is not required to be approved by the Procurement Manager but they will keep a record for audit purposes and it may need to be reported to the University’s insurer.

**WAIVER OF MINIMUM INSURANCE REQUIREMENT FOR EXTERNAL SUPPLIERS**

**Faculty / Department:**

**This document should only be used after reference to the University’s policy for minimum liability insurance requirements for External Suppliers.**

**The completed document must also be forwarded to Purchase Ledger Team.**

|  |  |
| --- | --- |
| **1** | **Name of External Supplier:** |
| **2** | **Description of Work:** |
| **3** | **Expected Start & Completion Dates:** |
| **4** | **Public & Products Liability Insurance (Policy Minimum £5m)** |
| **4.1** | **Assessment of Public Liability Risk:**  *Identify the types of person who may be exposed to the risk of personal injury and the property that could be damaged as a result of the proposed work. Also assess the possible extent and likelihood of injury or property damage.* |
| **4.2** | **Level of Public Liability Cover Accepted:** |
| **4.3** | **Reason(s) for Acceptance of Reduced Cover:**  *Explain the rationale to waive the minimum limits stated in the policy and accept an external supplier with a lower level of cover. Your comments here may relate to your assessment of the risk or other compelling reasons related to the work itself.* |
| **5** | **Professional Indemnity Insurance** |
| **5.1** | **Assessment of Professional Indemnity Risk (if applicable):**  *Not all proposed work will present a Professional Indemnity exposure. Please refer to the Policy for guidance. If the work could lead to liability due to professional negligence, enter details here including identification of parties who could suffer a loss and the level of impact that could arise. If the work does not present a Professional Indemnity risk, please note why it does not.* |
| **5.2** | **Level of Professional Indemnity cover accepted:** |
| **5.3** | **Reason(s) for Acceptance of Reduced Cover:**  *Explain the rationale to waive the minimum limits stated in the policy and accept an external supplier with a lower level of cover. Your comments here may relate to your assessment of the risk or other compelling reasons related to the work itself.* |
| **Authorised by Rectorate Team Member:** | |
| **Dated:** | |