

Our Ref: GB/EC
Date: 5 February 2015
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To: All Head Teachers and Chairs of
Governors of maintained Schools.

LMS Document No. 2015/04

Dear Colleague

Re: Use of Consultants and compliance with HMRC rules

I am writing to highlight a serious issue that has been drawn to my attention. It appears some individuals are being paid directly via invoices and in some cases petty cash when many of them should be treated as employees for Tax and National Insurance purposes. This practice cannot continue.

Section 7.3 of the [Scheme for the Financing of Schools](#) clearly sets out the requirements regarding payment for work done:

All payments for work done by employees must be made through the payroll to ensure PAYE is applied correctly.

Schools cannot make payments to individuals (non-employees) without considering their employment and income tax status. An Employment Status Indicator Check (ESI) on the job being undertaken by these individuals is required and should be completed using the on-line HMRC tool for all individuals.

The school has a statutory duty to ensure PAYE is operated where applicable and schools should obtain professional advice before authorising work to be done where appropriate.

Non-compliance will result in the school being liable to pay both the individuals and the employers tax and National Insurance and also any penalties imposed by HM Revenue and Customs.

A recent HMRC audit of Suffolk County Council has highlighted some non-compliance with rules and regulations in relation to the payments to individuals. The HMRC audit highlighted several individuals who had been engaged as self-employed when they should have been engaged as employees of the Council.

This has resulted in the County Council being required to pay tax and National Insurance contributions (NIC) (both the individual and employer elements) to HMRC. The County Council has also received a penalty notice from HMRC; after consultation HMRC agreed to suspend the penalty, subject to certain conditions. The conditions relevant to schools are that the County Council must ensure:

- All individuals undertaking work at the school are included on the payroll to enable the appropriate deductions of Tax and NIC to be made;
- Managers involved in the engagement of staff are aware of the up-to-date guidance and it is properly cascaded to their own employees; this includes advice that they consult the HMRC website; A six monthly review is carried out by Internal Audit to ensure the payments made to individuals working at/for the school are being processed correctly with records being maintained and guidance updated.

As a result of the HMRC conditions, Audit Services has recently reviewed a sample of payments to individuals and found non-compliance.

In order to ensure future compliance please check that the school's local procedures include the following requirements (and update where appropriate):

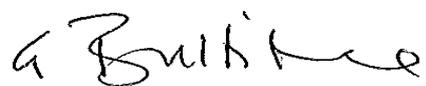
- An Employment Status Indicator Check (ESI) on the job (not the individual) being undertaken by these individuals is required. The on-line HMRC tool is available and should be completed for all individuals; [HM Revenue & Customs: Employment Status Indicator](#)
- Once completed the results supplied by the HMRC must be implemented.
 - If the results state that the job being undertaken is an employee then the individual must be paid via payroll.
 - If the results state that the job role can be paid by invoice then a contract of service should be implemented and guidance should be sought from Schools Choice HR (0345 606 6046) or your HR service provider.
 - If the results are inconclusive then HMRC will need to be contacted for further advice HRMC helpline 01522 884206
 - The results supplied by the ESI check MUST be retained;
- The school will need to carry out a review of all individuals currently working at the school but not paid through payroll (including individuals deemed 'self-employed') to ensure that these requirements are being met in each case.

In future payments should only be made to individuals in line with the guidance above. This includes 'self-employed' individuals engaged by the school to undertake one-off services, for example visiting authors, consultants etc. If you have any queries please contact your HR business partner or your HR service provider in the first instance.

The correct treatment of taxation and national insurance is critical to avoid penalties, more onerous audits from HMRC and reputational damage to the County Council and individual schools. Any penalties arising from non-compliance at a school will be charged to the school's budget, in addition to any unpaid Tax and National Insurance.

I would be grateful if you could draw this letter to the attention of your Bursar and Business Managers and other relevant staff to ensure that they comply with the requirements set out in this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gavin Bultitude'. The signature is written in a cursive style with a large initial 'G'.

Gavin Bultitude
Assistant Director Resources and Support