



Employment Status of Individuals

Clare College Employment Status

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Employment Status Referral Form

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1. Introduction

1.1 Purpose

The purpose of this guidance is to set out -

- why it is important to determine correctly whether individuals engaged by the College may be paid against invoices (self-employment) or must be paid through payroll (employment);
- the College procedures for establishing the employment status of individuals; and
- the factors which influence the decision on employment status

N.B. these guidelines apply only to individuals; a Limited Company is not an individual.

1.2 Who needs to read this guidance?

Anyone involved in any stage of hiring someone for any kind of service outside of the normal recruitment procedures. In particular for one-off casual employee engagements and for personnel hired without the need to be processed through the routine College recruitment procedures.

1.3 Risks

Payments to individuals who are self employed are taxed differently from those made to employees and because of this HM Revenue and Customs (HMRC) will often check to see whether individuals have been correctly treated as being self employed.

The cost to the College of making an incorrect employment decision can amount to more than 50% of the amount already paid to the individual plus interest and penalties.

It is therefore extremely important to establish whether paying an individual directly on a self-employed basis rather than through the payroll is allowable.

1.4 Importance of Compliance

Employment status is not a matter of choice. It cannot simply be decided that someone is self-employed just because the individual wishes to be paid that way or that the College wishes to pay them that way. Unfortunately, there is no statutory definition of 'employment' or 'self-employment' so each case has to be looked at as a whole with all factors considered. It is the reality of the

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relationship between the College and the individual that matters and it is the College's responsibility (not the individual's) to determine the correct status.

It is worth bearing in mind that just because a person is self-employed in one job it doesn't necessarily mean that all their jobs will follow suit. The individual can still be considered 'employed' in another job at the same time.

It is also possible that an individual who is properly considered self-employed when they begin providing services to the College may over time become increasingly integrated into the College to the extent that their status may change to that of an employee. It is therefore important –

- that self-employed contractors are not treated as members of staff (e.g. not given a University card, not managed through the normal staff disciplinary or grievance procedures etc.);
- that if their working with the College lasts for a prolonged period that it is regularly reassessed to see if they should be paid through the payroll in future.

Where there is a relationship between an individual and the College for providing services there should be a valid written contract in place. This could be a contract of employment (for a contract **of** services) for employees or it could be a contract **for** services (non-employees).

2. College Procedures

Employment status **MUST** be agreed before the work commences and it is the College's view that all workers are employed until proved otherwise.

All students are classed as employees and cannot be self-employed.

2.1 Factors in determining status

The following factors have to be considered for each case when determining the correct status:

2.1.1 The right to substitution (personal services)

A worker is an employee if they are obliged to provide their own work and skills. If an individual is completely free (has the right) to hire someone else of entirely their own choosing and then they pay the other person from their own pocket then it may be that this individual has a status of self-employment. However, the absence of the right to provide a substitute in their absence does not necessarily mean that the worker is an employee.

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2.1.2 Right to control over the worker

Does the right to control the worker exist in any of the four following areas?

- Control over **what** work is done
- Control over **where** the work is done
- Control over **when** the work is done
- Control over **how** the work is done

The more control that exists the more likely it is that the person is a College employee.

2.1.3 Financial risk to the worker

If a worker has to incur necessary significant financial risk in order to perform their duties then it may be that the worker is self-employed. An example of this could be if a worker undertakes work for a fixed price (rather than a price for the amount of time actually spent e.g. hourly rate) and it is not absolutely certain how long the work will take.

Another measure of financial risk stems from whether the worker is required to provide major pieces of equipment that are fundamental requirements of their duties.

Again, each of these types of cases should be viewed on its own merit.

2.1.4 Business structure

If the individual has evidence of some kind of business structure, this can be a useful factor in deciding a worker's employment status. Some questions to ask could be:

- Is the worker registered for VAT?
- Does the worker operate a business bank account?
- Does the worker have the expense of running an office?
- Does the worker advertise for work?

Whilst a 'yes' to any of the above questions alone would not decide a worker's status, the answers would help to form an overall picture.

2.1.5 Length of engagement

When a worker performs duties on a strictly one-off basis and the relationship between the worker and the College is very short, it may be appropriate to class the worker as self-employed for this occasion.

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2.2 Other considerations

2.2.1 Off-payroll working rules (IR35)

The off-payroll working rules can apply if a worker (sometimes known as a contractor) provides their services through their own limited company or another type of intermediary to the client (sometimes known as a Personal Service Company or PSC)

An intermediary will usually be the worker's own personal service company, but could also be any of the following:

- A partnership
- A personal service company
- An individual

The rules make sure that workers, who would have been an employee if they were providing their services directly to the client, pay broadly the same tax and National Insurance contributions as employees. These rules are sometimes known as 'IR35'.

If the College is receiving the services of a contractor, the College must determine if the off-payroll working rules apply.

The Bursary must check the status of all new workers providing services through a Personal Service Company using the government employment status checking service. Once a decision has been made, the Bursary must then take the following action:

- Retain the decision information for as long as the College is using that supplier.
- Ensure the College either pay the worker via payroll or via the Purchase Ledger according to the decision.

Heads of Department may be asked to assist with providing information regarding their new supplier in order for Bursary to complete the necessary checks.

2.2.2 Insurance

If a worker has employee status with the College then they are automatically covered by College insurance policies. However, if we are paying a worker gross on a self-employed basis then it is very important that they have the appropriate insurances in place.

We would normally expect a self-employed worker to have:

- a) Professional Indemnity Insurance; and

b) Public Liability Insurance

If the self-employed worker does not have this insurance cover then the College could potentially be at risk. Therefore, insurance is an area that must be considered carefully when determining employment status.

2.3 Case for self-employment or, still unsure?

If you think you have a case that the worker is self-employed or you are still unsure, please complete the Employment Status Referral Form (Appendix A) and send it to the Senior Management Accountant who will give a decision within a week.

Alternatively you can use the employment status checker via the government website which can also be used to check the status of self-employed individuals: <https://www.gov.uk/guidance/check-employment-status-for-tax>

3. Immigration, Asylum and Nationality Act 2006

3.1 Procedures

Please refer to Human Resources Officer regarding these procedures in all cases of employment.



Clare College Employment Status Referral Form

Requester's
Name _____ Department _____

Is the referral for the services of a lecturer/examiner/invigilator/interviewer or for conducting supervisions?

No →

Continue filling in this form

Yes →

This kind of payment is always paid through payroll. Do not continue with this form and refer to payroll.

Case Referral Details

Surname _____ First Name _____ Title _____

Occupation _____

Does the individual have a trading name?

If yes, what is the trading name? _____

Will this individual be covering an existing employee's duties? e.g. sickness, maternity, holiday cover or other reason. YES/NO

If yes, please give details of post being covered

Will you be issuing any contract or letter? YES/NO

If yes, please attach a copy of this contract or letter

If no, please give full details of the work to be undertaken

Does the College have employees who perform this kind of work? YES/NO

Has this individual ever been employed by the College before? YES/NO
If yes, in what capacity

How will this individual be paid? Is it a) hourly rate, b) daily/weekly rate, c) fixed fee or d) other (please detail) _____
(Please circle answer)

How much do you expect to pay the individual per hour/week etc? _____

And in total? _____

How long is the engagement expected to last? _____

Do you expect to engage this individual's service regularly? YES/NO
If yes, please give details

Can the individual send another person to do their work? e.g. if they are ill or too busy YES/NO

If yes, will you have any choice about who the individual sends? YES/NO

In reality do you expect this to happen? YES/NO

Will the individual provide their own equipment? YES/NO
If yes, please give details of what type of equipment they will provide

Will the individual correct any errors made in their own time? YES/NO

Who will decide where the work will be done? Is it the a) the College or b) the individual? (Please circle answer)

Will you specify during what hours the work will take place? YES/NO

Will you be able to move this individual from task to task? YES/NO

Who will decide how the work is done?

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Does the individual carry out similar work for any other companies? YES/NO

Any other relevant information?

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Please attach any additional sheets as appropriate

<p>Now send this form to the Senior Management Accountant in the College Bursary. Unless further information is required you will be contacted within seven working days of receipt with a decision</p>

Bursary Use Only:	
Date Received:	Decision: