

TRANSFER FEE GUIDANCE

RM6161: Provision of Clinical and Healthcare Staffing

OJEU Reference: 2019/S 157-388075

When determining if a 'Transfer Fee' is due to a supplier under the Conduct of Employment Agencies and Employment Business Regulations 2003, along with the Terms of the Framework, a Trust has 3 options, whereby only one will be applicable to you:

Option 1 – Under the Conduct of Employment Agencies and Employment Business Regulations 2003, Section 10 (1) Restrictions on Charges to Hirers, the Trust may provide an extended hire period to the agency the temporary worker is engaged via, at which point when this period has elapsed the Trust may:

- employ the worker, including to own staff bank – *temp-to-perm*
- the worker can transfer to another agency – *temp-to-temp*
- the worker may work via Trusts External Staff Bank – *temp-to-third party*

Once the appropriate extended Hire Period has been agreed then you can employ the worker/the worker can transfer with no fee to yourself.

The extended hire period within the terms of the framework is 4 weeks minimum, up to a maximum of 12 weeks. If the candidate has worked for the Trust for less than 12 weeks. The table below shows the relevant no. of weeks extended hire period that must be given:

Period worked at Contracting Authority	Extended Hire Period Notice to be served
1 Week	11 Weeks
2 Weeks	10 Weeks
3 Weeks	9 Weeks
8 Weeks +	4 Weeks

The worker should continue to work via the supplier during this extended hire period, unless the worker is due to be on holiday, is sick, etc.

Once the extended hire period ends there will be no fees to pay.

If an 'Extended Hire Period' as in Option 1 hasn't been given, and a worker decides they do not wish to continue working via the supplier, the worker cannot continue to work with you via any other route and you will need to refer to Option 2:



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Option 2 – Under the Conduct of Employment Agencies and Employment Business Regulations 2003. Section 10 (5) a Transfer Fee is unenforceable whereby the 14/8-week rule applies (*this only works if the worker hasn't worked for the Trust within the last 8 weeks as there needs to be an 8-week gap, longer if worked at the trust for less than 6 weeks prior to the 8-week gap*)

Example:

Worked 1 week at trust = 13-week gap = 14 weeks passed – employ FOC
 Worked 2 week at trust = 12-week gap = 14 weeks passed – employ FOC
 Worked 3 week at trust = 11-week gap = 14 weeks passed – employ FOC
 Worked 4 week at trust = 10-week gap = 14 weeks passed – employ FOC
 Worked 5 week at trust = 9-week gap = 14 weeks passed – employ FOC
 Worked 6 week at trust = 8-week gap = 14 weeks passed – employ FOC
 Worked 7 week at trust = 8-week gap = 14 weeks passed – employ FOC
 Worked 8 week plus at trust = 8-week gap = 14 weeks passed – Employ FOC

Once the appropriate gap has been left then you can employ the worker/the worker can transfer with no fee to yourself.

If neither Option 1 nor Option 2 are applicable, you will have to pay a Transfer Fee, per Option 3:

Option 3 – If no extended hire period provided to the agency per Option 1 and no break in service per Option 2, the Trust will pay a modest transfer fee. This is calculated on the supplier fee element of the total charge rate and calculated in accordance with the Table below:

Period worked at Contracting Authority	Fee to be paid to Agency
1 Week	Equivalent to 11 Weeks Suppliers Commission Only
2 Weeks	Equivalent to 10 Weeks Suppliers Commission Only
3 Weeks	Equivalent to 9 Weeks Suppliers Commission Only
8 Weeks +	Equivalent to 4 Weeks Suppliers Commission Only

Please note: Under the Conduct of Employment Agencies and Employment Business Regulations 2003. Section 10 (6) *In determining the first day on which the work-seeker worked for the hirer pursuant to the supply of that work-seeker to that hirer by the employment business, no account shall be taken of any supply that occurred prior to a period of more than 42 days during which that work-seeker did not work for that hirer pursuant to being supplied by that employment business.*