

Delegated Decision – International Campaign Year 3

Legal Advice – Employment Law

Existing Consultant Roles

1. It is understood that the services of each of the three existing consultants are provided by way of contractual arrangements with service companies (services of Jason Yu and Rob Avery Phipps provided through MYIK and services of Sam Hopwell provided through Space4work).
2. Taking into account that the individuals are carrying out full-time roles in their work with NCC, it is likely that, for tax and other purposes, they will be treated as employees of the service companies referred to above (as opposed to NCC) (assuming that there are appropriate terms and conditions in place between NCC and each of the service companies). Subject to appropriate terms and conditions being in place between NCC and each service company, this is a matter for each service company including in relation any liability to HM Revenue and Customs for income tax and national insurance contributions (and any related IR35 arrangements).
3. It is advised that the written contract with each service company should clearly address the legal status of the arrangement including:
 - a. That the clear arrangement is between NCC and the service company;
 - b. That the provisions regarding substitution are clearly laid out;
 - c. That the arrangement is an independent contractor arrangement and not one of employer-employee; and
 - d. That it is clearly stated that all matters relating to income tax and national insurance are the responsibility of the service company (including an indemnity from the service company to NCC in relation to any potential income tax/other liability arising from any deemed employment/worker status of the individuals).

Proposed Employment

4. With regard to the proposed conversion of roles into direct employment roles, these roles should be evaluated through the Council's job evaluation scheme. Under Section 7 of the Local Government and Housing Act 1989, any new appointments to such roles should be made on merit. However, please note the potential TUPE implications referred to below.
5. Taking into account that the current the arrangements in relation to the roles in question are by way of service agreements with service companies for the provision of services, these are currently effectively outsourced services. The decision to convert the roles to directly employed NCC roles (if it amounts to

largely the same ongoing work) will effectively amount to the insourcing of services. In the circumstances, any employees of the service companies (potentially the current consultants referred to at 1 above) who are wholly or mainly engaged in the provision of the sources being brought in-house may be deemed to be part of an organised grouping of employees for the purposes of TUPE and will therefore automatically transfer to Nottingham City Council under their existing terms and conditions. In order to be able to properly assess the scenario, we would need full details regarding the employment status of the individuals and the related arrangements and organisational structure of the service companies.

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Legal Services

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