

**Guidance on Determining Employment Status**

1. **Introduction**

1.1 There may be occasions when the University needs individuals to undertake work on a short-term or one-off basis (e.g. to deliver a lecture on a specific topic, contribute expertise to a particular project or undertake a service or task).

1.2 In these circumstances, the University is required to ensure that the appropriate employment status is applied. BU would ordinarily enter into an employment relationship and by exception in accordance with the [Workforce Planning & Recruitment Control Process](https://intranetsp.bournemouth.ac.uk/policy/Workforce%20Planning%20%20Recruitment%20Process.docx) contract for services (i.e. a non-employment relationship). **Appendix A** summarises examples of typical roles carried out at the University within this group and the procedures that should be followed to engage these individuals.

1.3 It is the responsibility of Faculty/Service managers, with the guidance of Human Resources, to ensure that the employment status is established, and to appoint using the correct form of contract and other relevant employment checks, **prior to** engaging an individual to undertake work for the University.

1.4 The decision regarding which employment group an individual falls into will depend on the relationship between the individual and the University and is determined by a number of legal tests, which will include:

* Whether the individual is required to provide services personally;
* The degree of control over the service provided – who decides when and how the work is done; and
* Whether there is a mutuality of obligation between the University and the individual, i.e. whether the University is obliged to offer work and the individual is obliged to carry it out.
* Whether there is a contract at all between the University and the individual.

**2. Why do we need to establish employment status?**

2.1 There is a risk of inadvertently forming an employment relationship with someone engaged as a ‘contractor’ and as such giving them a legal entitlement to service conditions and employment rights. ‘Contractors’ are not subject to the usual recruitment processes and checks required of employers such as immigration checks. This also represents a significant risk.

2.2 Self-employed and external contractors undertaking work for the University are not covered by the University’s insurance in general, and, in particular, by its liability and professional indemnity insurance.

2.3 HMRC has tightened its approach on the acceptability of hiring individuals as self- employed ‘contractors’ rather than as ‘employees’, as employer National Insurance contributions (NICs) are payable for employees but not for contractors. Failure to comply with the HMRC regulations could result in the University facing a claim for underpayments of National Insurance contributions and substantial fines by HMRC.

1. **Engagement Options**

3.1 Work at BU is normally carried out by an employee (under a ‘contract of service’), and by exception by a self-employed independent contractor (under a ‘contract for service’), by an individual engaged in a non-employment working relationship or by an agency worker.

1. **Employees**

4.1 An employee is an individual who works for the University under a contract of employment, which is known as a ‘contract of service.’ Under a contract of employment, there must be ‘mutuality of obligations’ between the employer and the employee i.e. the employer is obliged to offer and pay the employee for the work, and the employee is obliged to turn up and undertake the work personally. Employees are entitled to all statutory employment rights and are protected by a whole range of legal provisions e.g. payment of wages.

4.2 Employees and workers are paid through payroll and the University is responsible for operating PAYE in full and according for tax and NICs in full. The rate of pay is determined in accordance with role undertaken the University pay and grading structure. The majority of employees are on established or fixed-term contracts and employed following approval via the [Workforce Planning & Recruitment Control Process](https://intranetsp.bournemouth.ac.uk/policy/Workforce%20Planning%20%20Recruitment%20Process.docx) and [Recruitment and Selection procedures](https://intranetsp.bournemouth.ac.uk/policy/Recruitment%20and%20Selection%20Procedures%20-%20version%203.docx). Some individuals may also be employed on an hourly paid basis as a lecturer or as professional and support staff. The [Workforce Planning & Recruitment Control Process](https://intranetsp.bournemouth.ac.uk/policy/Workforce%20Planning%20%20Recruitment%20Process.docx) and [Hourly Paid Lecturers guidance](https://intranetsp.bournemouth.ac.uk/policy/Guidance%20G%20-%20Hourly%20Paid%20Lecturer%20-%202017.docx) and [Hourly Paid Professional and Support guidance](https://intranetsp.bournemouth.ac.uk/policy/Guidance%20G%20-%20Hourly%20Paid%20Professional%20Support%20roles%20-%202017.docx) must be followed to appoint these individuals.

4.3 A guaranteed minimum number of hours will be offered. BU do not engage employees via zero hour contracts.

4.4 **Appendix A** summarises examples of typical roles carried out at the University and the procedures that should be followed to engage these individuals.

**5. Agency Workers**

5.1 An agency worker is an individual who is employed and paid by an employment agency, but works temporarily in a role for the University, who in turn pay the agency.

5.2 The Agency Workers Regulations (2010) introduced the entitlement for an agency worker to receive the same basic working and employment conditions as they would have if they were working directly for the University. The [Guidelines for Engaging Agency Workers](http://intranetsp.bournemouth.ac.uk/policy/Guidelines%20for%20Engaging%20Agency%20Workers.docx) and the [Workforce Planning & Recruitment Control Process](https://intranetsp.bournemouth.ac.uk/policy/Workforce%20Planning%20%20Recruitment%20Process.docx) provide further details.

**6. Self-employed (Contract for Services)**

6.1 A self-employed individual (often referred to as a contractor) provides the employer with his or her services, but remains independent. The contract between the individual and the employer is ‘a contract for services.’ Typically there may be an ability for the self-employed workers to provide alternative individuals to carry out the work in question. Services may also be provided through a company. Self-employed workers are not entitled to statutory employment rights.

6.2 For income tax and national insurance purposes, the employment relationship is ultimately determined with specific reference to HMRC regulations. To determine if individuals are self-employed, please follow the [Determining Employment Status Guidelines](http://intranetsp.bournemouth.ac.uk/policy/Determining%20Employment%20Status%20Guidelines.doc) and if required, contact Human Resources for further advice.

6.3 Self-employed individuals are responsible for registering as self-employed and for completing tax and NI self-assessment returns.

6.4 Contracts for Services are subject to the [Workforce Planning & Recruitment Control Process](https://intranetsp.bournemouth.ac.uk/policy/Workforce%20Planning%20%20Recruitment%20Process.docx) and will only be approved in exceptional circumstances where specialist skills are required which the University has been unable to obtain via the normal recruitment process.

6.5 They must be issued a contract for service by Legal Services and are paid following receipt of a valid invoice in accordance with employment legislation and HM Revenue and Customs (HMRC) regulations. Please contact Legal Services to appoint a self-employed individual.

7**. Volunteers**

7.1 Volunteers are individuals who undertake irregular activity at the University on a voluntary basis. Volunteering may offer individuals the opportunity to gain new skills or to use the expertise they already have on a temporary basis. Volunteers do not receive pay from the University and they may or may not receive expenses. They may or may not require access to BU’s facilities and IT systems.

7.2 Prior to engaging a Volunteer please contact Legal Services to issue a Volunteer Letter.

7.3 Please note if you are engaging a Student / Tier 4 visa holder as a volunteer, restrictions regarding the conditions of their visa must be adhered to, for example their working hours (whether paid or unpaid) may be limited. Please contact Human Resources (pthp@bournemouth.ac.uk) prior to engaging a Student / Tier 4 visa holder in volunteer work, to ensure that any immigration restrictions are adhered to.

**8. Determining Employment Status**

8.1 It is the responsibility of managers, with the guidance of Human Resources and involvement of Legal Services to ensure that the employment status is established prior to engaging an individual to undertake work for the University. Whether someone is employed or self-employed depends on the nature of the work being undertaken. It is not a matter of choice and is not determined by an individual being registered with HMRC as being self-employed (i.e. holding a Unique Tax Reference number). Just because a worker is self-employed in one role does not necessarily mean s/he will be self-employed in another.

8.2 To determine the employment status of an individual the Faculty/Service manager must follow [Determining Employment Status Guidelines](http://intranetsp.bournemouth.ac.uk/policy/Determining%20Employment%20Status%20Guidelines.doc). Further advice can be obtained from Finance.

**9. Summary of employment relationship determining factors:**

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| --- | --- |
| Employee | Self-Employed |
| Employer obliged to offer and pay the employee for work  | Can decide how, when and where to do the work |
| Employee is obliged to turn up and undertake the work personally | Can hire someone else to do the work at their own expense |
| It is (using old fashioned language) a ‘master and servant’ relationship | They risk their own money/are in business on their own account |
| They work under the control and/or supervision of a manager or supervisor | Agree to do the work for an all-inclusive fee and usually have to correct unsatisfactory work in their own time and at their own expense |
| They are more likely to be paid a salary but may be paid an hourly or piece rate basis | Provide the main items of equipment they need to do the work. |

Please note some individuals may not fall clearly into any of these categories. For further advice **please contact Human Resources.**

**10. CONTACTS**

If you have any queries regarding this Guidance please call Human Resources on extension 61133 or email hrenquiries@bournemouth.ac.uk.

**Appendix A:**

Examples of typical roles carried out at the University and the employment group they are likely to fall into.

**Employees**

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| Employment group | Example Roles | Characteristics | Contract Type | Further Guidance |
| Established | Lecturers, administrators etc. | Standard University employment. This should be the most frequently used form of University employment. | Full employment contract issued by HR | All appointments to established contracts are subject to the [Workforce Planning & Recruitment Control Process](https://intranetsp.bournemouth.ac.uk/policy/Workforce%20Planning%20%20Recruitment%20Process.docx), [Recruitment and Selection procedures](https://intranetsp.bournemouth.ac.uk/policy/Recruitment%20and%20Selection%20Procedures%20-%20version%203.docx)[Immigration Regulation (Guidance)](https://intranetsp.bournemouth.ac.uk/policy/Immigration%20Regulations%20%28Guidance%29.docx) |
| Fixed-term | Research staff, maternity cover, secondment cover etc. | Fixed-term may be used where work has been agreed as temporary but with a requirement to work a regular number of hours for a period that is likely to be more than 12 weeks, but not established. The use of fixed-term contracts must be objectively justified and in line with the [Code of Practice – Use of Fixed-term contracts.](http://intranetsp.bournemouth.ac.uk/policy/code-of-practice-use-of-fixed-term-contracts.doc)  | Full employment contract issued by HR | All appointments to fixed-term contracts are subject to the [Workforce Planning & Recruitment Control Process](https://intranetsp.bournemouth.ac.uk/policy/Workforce%20Planning%20%20Recruitment%20Process.docx) and the [Recruitment and Selection procedures](https://intranetsp.bournemouth.ac.uk/policy/Recruitment%20and%20Selection%20Procedures%20-%20version%203.docx)[Immigration Regulation (Guidance)](https://intranetsp.bournemouth.ac.uk/policy/Immigration%20Regulations%20%28Guidance%29.docx)[Academic pay spine](https://intranetsp.bournemouth.ac.uk/policy/NSS%20BU%20SPINE%202017-18%20ACADEMIC.xlsx)[Professional Support pay spine](https://intranetsp.bournemouth.ac.uk/policy/NSS%20BU%20SPINE%202017-18%20PROFESSIONAL%20AND%20SUPPORT%20HOURLY%20RATES.xlsx) |
| Hourly paid Lecturers | Hourly paid teaching staff | Normally employed to,Cover during; peak workload periods, to respond to changes in student numbers, sickness absence or maternity absence, where there may be a skills shortage, to teach specialist areas, teach subjects and programmes where demand is highly variable or unknown, cover for full time employees unavailable in the short-termin a particular area or for some specialist ad hoc knowledge required teach specialist modules  | Hourly paid lecturers contract and terms and conditions issued. A guaranteed minimum number of hours will be offered. BU do not engage employees via zero hour contracts. | All appointments are subject to the [Workforce Planning & Recruitment Control Process](https://intranetsp.bournemouth.ac.uk/policy/Workforce%20Planning%20%20Recruitment%20Process.docx) and [Hourly Paid Lecturers guidance](https://intranetsp.bournemouth.ac.uk/policy/Guidance%20G%20-%20Hourly%20Paid%20Lecturer%20-%202017.docx)[Immigration Regulation (Guidance)](https://intranetsp.bournemouth.ac.uk/policy/Immigration%20Regulations%20%28Guidance%29.docx)[Academic pay spine](https://intranetsp.bournemouth.ac.uk/policy/NSS%20BU%20SPINE%202017-18%20ACADEMIC.xlsx) |
| Hourly paid professional and support roles | Administrative assistance, technical assistance, research assistance, exam invigilators etc. | Engaged where it is necessary to fill a short term vacancy or to cover peak workload periods.  | Hourly paid professional and support contract to be issued.A guaranteed minimum number of hours will be offered. BU do not engage employees via zero hour contracts. | All appointments are subject to the [Workforce Planning & Recruitment Control Process](https://intranetsp.bournemouth.ac.uk/policy/Workforce%20Planning%20%20Recruitment%20Process.docx) and [Hourly Paid Professional and Support Roles guidance](https://intranetsp.bournemouth.ac.uk/policy/Guidance%20G%20-%20Hourly%20Paid%20Professional%20Support%20roles%20-%202017.docx)[Immigration Regulation (Guidance)](https://intranetsp.bournemouth.ac.uk/policy/Immigration%20Regulations%20%28Guidance%29.docx) |

**Self Employed**

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| Employment Group | Example Roles | Characteristics | Contract Type | Further Guidance |
| ConsultantsContractors | IT contractors | Individuals normally engaged on an independent consultancy basis through a company for expertise that cannot be gained via normal recruitment processes. | Contract for Services issued by Legal Services | All appointments are subject to:[Determining Employment Status Guidelines](http://intranetsp.bournemouth.ac.uk/policy/Determining%20Employment%20Status%20Guidelines.doc)[Workforce Planning & Recruitment Control Process](https://intranetsp.bournemouth.ac.uk/policy/Workforce%20Planning%20%20Recruitment%20Process.docx)  |
| Guest Speaker | Guest Speaker within a Faculty | One off presentation. Whilst the University may specify a broad topic the speaker determines the detail.  | May be paid a one-off Fee and/or expenses via a Consultant/Single Payment Form.  | Subject to:[Determining Employment Status Guidelines](http://intranetsp.bournemouth.ac.uk/policy/Determining%20Employment%20Status%20Guidelines.doc) |