



# Employment Agency Transfer Fees

NHS employers regularly have to respond to claims from employment agencies for “introduction” or “transfer” fees relating to temporary workers. This note highlights some of the risks associated with using agencies in terms of exposure to such fees, particularly where agencies are used which are not a party to a framework agreement.

## Risks

NHS employers will be familiar with finder’s fees being charged by agencies for securing candidates for permanent roles. However, agencies sometimes try to charge fees where:

- a temporary worker has been supplied by more than one agency and there has not been a sufficient ‘gap’ between engagements;
- a temporary worker that has been supplied by an agency later transfers to permanent employment;
- a temporary worker is introduced to a third party, who employs the worker directly;
- an agency has provided information about a temporary worker, and that worker is later engaged or hired via a different agency.

Agencies sometimes send multiple CVs via email when contacted about potential vacancies (or, in some cases, on an unsolicited basis) and most of the time they attach their terms and conditions. The recipient does not necessarily have to sign the terms and conditions to be bound by them, as most agency terms include a ‘deemed acceptance’ clause.

Simply viewing the CV and/or inviting the temporary worker to an interview (even if they are not ultimately hired) can be considered as amounting to acceptance of an agency’s terms. This could result in liability for fees where the agency has seemingly provided no useful service to the recipient body.

For instance, if a Trust receives a CV from an agency, does not offer the worker a post, but a different part of the Trust uses that worker six months later through a different agency, this could trigger the right to a fee. The fact that the two events are unconnected might not prevent a fee being charged.

The fees in question are often substantial, and calculated with reference to a percentage of the worker’s annual salary, or multiple of their hourly rate.

## Framework agencies

Where temporary workers are hired through agencies that are a party to an NHS framework agreement, both parties will be subject to the terms and conditions set out within the framework agreement. These framework terms often offer greater protection when it comes to fees, and NHS employers may therefore consider it prudent to use framework agencies where possible.

## Reducing the risk

There is no restriction on the level of transfer/introduction fees which agencies can charge where they have been legitimately incurred (i.e. where there is a clearly enforceable contractual right to a fee, and the agency has complied with the relevant legal Regulations).

NHS employers may therefore wish to consider the following steps to reduce liability for these types of agency fees:

- Use framework agencies, wherever possible.
- Set up a central and searchable database to keep a record of supplies of agency workers and, if possible, the names of any workers whose CVs have been received, so that staff can identify and manage the risk of transfer fees.
- Ensure that only authorised people (perhaps only named members of HR teams) can make enquiries to agencies regarding temporary workers or seek CVs and bind your organisation in terms of agency supplies. Any limits on authority can be clearly publicised among staff. Agencies can then be informed that only named representatives can request information and bind your organisation, which should reduce the risk of agencies sending unsolicited CVs and later claiming fees.

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- Where there is no option but to use a non-framework agency, request that they establish whether the workers they offer are, or have been, registered in the past with other agencies and/or whether they have previously been “introduced” to or worked for your organisation through another agency. Appropriate steps can then be taken to assess the risk of a fee being charged, and to reduce the risk of such a fee (for example by leaving an appropriate ‘gap’ before hiring the worker).
  - If an agency claims an introduction, seek legal advice on whether that fee has been properly charged. This often involves an examination of the relevant contract terms, and the Regulations which can restrict the circumstances where these fees can be charged. Even if a fee has been legitimately charged, there may be room for reducing the fee through negotiations.

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