



# **FCSA Code of Compliance**

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## **Umbrella Questions & Worker Addendum Questions**



FCSA is dedicated to raising standards and promoting supply chain compliance for the temporary labour market. A key way we do that is to publish our Charter and Codes. We do this so that all industry stakeholders and, importantly, all the workers who use our Members' services can be assured that FCSA Members are fully compliant with the laws and regulations surrounding employment rights, personal taxation and corporate compliance with the off-payroll rules. All FCSA Members undertake to abide by our Charter and Codes as a condition of their membership and are contractually obliged to maintain these high standards throughout their membership.

Our Codes, which sometimes go above and beyond what is lawfully required, are formulated by FCSA working closely with independent experts in these areas and changes are reviewed prior to publication by a wide variety of industry stakeholders and official bodies. The Codes cover complex issues and that is why our they are constantly under review and are updated as often as is required to keep them relevant and reflective of not only the regulations but also industry best practice. We believe our Codes set the highest standards of compliance and are industry-leading in their comprehensive scope. Members are assessed against FCSA's Codes not by in-house staff or inexperienced evaluators but by a panel of fully independent and nationally renowned professional services firms, lawyers and accountants, with an authoritative level of expertise in these specialist areas. This assessment for FCSA accreditation is rigorous and stringent and, as a result, it is recognised as the industry's compliance gold standard.

I'd like to thank you for taking the time to read our Charter and Codes.



**Chris Bryce**

**Chief Executive**  
**Freelancer & Contractor Services Association Ltd**

# SECTION A

In many ways the onboarding process sets the scene for the provider's relationship with their employee, that's why FCSA stipulates what needs to be done up front and maintained during the employment.



**Chris Bryce**  
**Chief Executive, FCSA**



## SECTION A: TAKE ON PROCEDURES

### A1.

Do you supply potential new employees with an introduction letter or email which contains the following?

- a. An explanation as to the basis on which your business operates, i.e., as an employer providing its employees with work;
- b. That the worker is an employee of the umbrella employer and is aware of their statutory rights;
- c. That the worker will be subject to a proof of identity check;
- d. The worker will be required to enter into employment related agreements such as an overarching employment contract;
- e. The basis upon which the employee can claim expenses is explained.

FCSA require a copy of introduction letter or email. FCSA also require you to provide cross referencing to where the above are included within the introduction letter or email.

### A2.

Confirm a financial illustration is provided, or made available, to all prospective employees. All illustrations must comply with A3 a-j.

### A3.

Confirm that your financial illustration provided to every potential employee:

- a. Clearly states that it is only an estimate;
- b. Is based upon 52 weeks;
- c. If it includes expenses in the calculation they are representative of the usual level of expenses claimed and reflect the individual's actual circumstances;
- d. Clearly shows an explanation of how the gross pay is calculated;
- e. Clearly states deductions including but not limited to: Employer's NI, Apprenticeship Levy, Employee's NI, Income Tax (If there is reference to Company deductions or Employment costs, the illustration must clearly state what these are), Student or Post Graduate loan (if provided);
- f. Clearly states the default holiday position as either advanced or accrued;
- g. Clearly lists the assumptions used including if pension contributions have been excluded from the illustration;
- h. Clearly shows your company margin;
- i. Does not use unquantifiable savings (such as potential P87 claims, employee discount schemes or similar) to increase the worker's pay; (Any unquantifiable savings should not be included on the illustration)
- j. Clearly shows that the illustration is based on providing a weekly, monthly and/or annual estimate.  
Estimates should clearly show any additional tax liability arising within the illustration, where the annualised taxable pay would exceed £100,000, as a result of the personal allowance tapering by £1 for every £2 in excess of £100,000 (or £0 where in excess of £125,140, or as amended from time to time), based on the information available and assumptions used at the time.
- k. Where an online calculator is provided, it should clearly state that it is an estimate and all assumptions used must also be clearly listed and consistent with all code A3 requirements. In addition, where expenses are included, this should not as a default position, but input by the contractor directly (subject to the standard SDC checks).
- l. If it is known at onboarding that the contractor wishes to salary sacrifice, any employment costs saved and retained by the Member must be clearly displayed.

FCSA require a copy of a template financial illustration based on the following examples:

£487.50 a week, £975 a week, £9,750 a month.

FCSA also require you to provide cross referencing to where the above are included within the financial illustration.

Note: please be aware that if financial illustrations are inaccurate, misleading or are deemed to be used for competitive advantage, it may jeopardise future FCSA membership



**A4.**

Do you supply/have a process to supply the agency with a Key Information Document (KID)?

FCSA require your policy or an overview of the process you follow to support with the above including a sample KID document.

**A5.**

Optional Remuneration Arrangements rules:

- a. Do you operate any salary sacrifice arrangements?
- b. Do you offer salary sacrifice for benefits other than pension contributions to a registered pension scheme, cycle to work schemes, childcare vouchers and low emission cars (CO2 emissions below 75g/km)?
- c. If so, have these been considered in line with the Optional Remuneration Arrangements rules introduced post 6 April 2017?
- d. For all salary sacrifice arrangements, how do you ensure NMW regulations are complied with?
- e. Are pension salary sacrifice arrangements compliant under auto-enrolment?

FCSA require you to list and describe how the above have been considered and also list any other arrangements you have in place and provide details

- f. Do you check that the worker is subject to SDC via a questionnaire with the worker and clarification from the end client?
- g. If yes to f.) do you also confirm that the assignment will not exceed 24 months, it does not exceed the '40%' rule, it is for a temporary purpose and the employee has an intention to continue contracting?
- h. Do you sacrifice salary to reimburse expenses to employees?
- i. If yes to h.) are these limited only to authorised mileage claims?
- j. Does your contract split income into NMW + discretionary bonus / additional pay or equivalent?

If yes to j.) above, FCSA require you to evidence how you communicate a discretionary bonus/additional pay element to employees, including supporting narrative of your process and evidence.

AMAPS: <https://www.gov.uk/guidance/how-to-tax-mileage-payments-for-employees-480-chapter-16>

- k. Do you offer different employment packages that vary the margin you retain?

If yes to k.) above, FCSA require you to confirm how you communicate this to employees, including an explanation for how and why you do this for each employment package this applies to.

- l. Confirm that where a salary sacrifice arrangement is in place, your organisation calculates the employment costs after consideration of the salary sacrificed value each pay period and therefore the worker's taxable/NICable pay is reduced commensurately. All RTI returns to HMRC should also reflect the same values as the payslip. Any employment cost savings (including but not limited to apprenticeship levy and employer's NI) retained by an FCSA Member must be clearly displayed on the payslip/reconciliation page as appropriate.



**A6.**

Confirm your marketing literature, web pages, scripts and training material all support the employment model and make no references to the employee being a client, to fixed expenses being acceptable, to them being able to earn 'free weeks', 'margin free weeks' or reduced charges to them. Where you offer different models which require a different margin, these are properly explained to potential employees and do not make reference of different levels of service or charges for products unless those charges are deducted from net pay and VAT accounted for as required. Where variable margins are allowed, please confirm that this is properly explained to the individual, the individual is clear as to what is included with the higher margin and that they have a choice as to which offering and the associated margin they wish to go with.

FCSA require you to attach copies of ALL current promotional and/or marketing material and provide your website URL..

If you provide an illustration with your marketing material it needs to state:

- a. the take home pay should be separate for both umbrella without expenses and with expenses.
- b. clearly states the amount of expenses used in the illustration.
- c. clearly states only applicable for workers not subject to SDC, a test will be completed

**A7.**

Does the employee's employment contract include with regard to mutuality of obligation between the employee and the employer:

- a. A guarantee of at least 336 hours work in any 12-month period (or the pro rate equivalent if the employments terminates before 12 months) commencing on the employee's start date of continuous employment and each anniversary thereof.
- b. An obligation that the employer will assist the employee to secure future assignments during periods when the employee has no assignment
- c. An obligation that the employee cannot unreasonably decline work offered to them
- d. Employment termination procedures/notice periods/disciplinary procedures.

FCSA require a copy of employment contract, with cross referencing to where the above are included within the employment contract (include referencing to the appropriate clauses).

**A8.**

Does your employment documentation (Contract of Employment together with any Assignment Schedules) contain all information required in a Statement of Employment Particulars as set out in the Employment Rights Act, including (but not necessarily limited to):

- a. The employer's name;
- b. The employee's name;
- c. A job title or brief job description;
- d. The start date of the employee's employment;
- e. The employee's rate of pay/minimum statutory wage/salary payments and when/how often the employee will be paid;
- f. Bonus or similar mechanism (where applicable) including how it is calculated
- g. The hours and days of work including whether these hours and days are variable;
- h. Holiday entitlement (and if that includes public holidays) during and between assignments;
- i. Where the employee will be working;
- j. If an employee works in different places, where these will be and what the employer's address is;
- k. How long any probation period is and what its conditions are;
- l. Any training the employee is required to undertake, whether or not this is paid for by the employer;
- m. Sick pay arrangements and procedures;



- n.** Other paid leave (for example, maternity leave, paternity leave and parental bereavement leave);
- o.** Notice periods;
- p.** Information about disciplinary and grievance procedures;
- q.** Any collective agreements that affect the employment terms and conditions or if there are no collective agreements that affect the employment terms and conditions, a statement to that effect;
- r.** Pension and pension schemes;
- s.** Any additional benefits (including non-contractual benefits) the employee may be entitled to;
- t.** No end date to the employment.

FCSA require appropriate employment documentation, this should include cross referencing to where the above are included within the respective employment documentation (referencing to the appropriate clauses).

#### A9.

Confirm that your contract clearly states that any accrued entitlement for holiday must be taken within the holiday year, as stated within the employment contract, and any accrued but untaken holiday will be paid in lieu at termination of the contract, whichever occurs first.

FCSA require evidence which includes cross referencing to where the above is included within the respective employment documentation.

#### A10.

- a.** Workers and employees in the UK are entitled to a statutory minimum of 5.6 weeks' paid holiday per year (28 days for someone who works 5 days a week). This is primarily driven by a concern for a worker's health & safety/wellbeing and as such FCSA requires members, as responsible employers, to regularly encourage all employees to take holidays to which they are entitled, e.g. reminders on payslips and/or reconciliation statements, please confirm you operate this way.
- b.** Confirm that you have a clear and prominent explanation of holiday entitlement and holiday year on pre-contract documentation and within the employment contract.
- c.** Confirm that regularly throughout the holiday year and when an employee is approaching the holiday year end (at least eight weeks prior), you remind your employees to use any remaining holiday entitlement by means of clear and prominent communication such as email, SMS, reminder notes on payslips and/or reconciliation statements or other prominent means which do not require proactivity on the part of the employee. These reminders should include informing the employee that any unused annual leave and any holiday pay balance may be lost.
- d.** Confirm that you make reasonable effort to ensure that employees receive their full holiday entitlement each holiday year, including any entitlement accrued whilst on statutory leave. If an employee's employment terminates part-way through a holiday year and they have not taken their full accrued holiday entitlement, they must be paid in lieu of their outstanding entitlement on termination of their employment. FCSA permit the carry-over of unused holiday entitlement under regulation 13A(7) WTR (or a more generous carry over if specified in the contract of employment with your employee).
- e.** Confirm that where a carry-over of holiday entitlement into the following year has occurred, that on termination, any accrued entitlement (including all carry-over from a previous year) will be paid in lieu.
- f.** Any exceptions to these requirements must be logged internally with a clear explanation of why the exception arose, and this log kept available for FCSA to inspect. Exceptional reasons can include but are not limited to death, unable to trace the worker by reasonable effort, the worker's refusal to accept.

FCSA require you to provide process details and evidence of pre-contract communication, employment contract, payslip, email, letter, portal, reconciliation statement etc.

For clarity FCSA understands the difficulties in this area caused by the Working Time Regulations, however FCSA does not hold the view that the "use it or lose it" principle is a desirable outcome of the legislation.



**A11.**

Please provide copies of the following documentation:

- a. Sample assignment schedule;
- b. Employee handbook;
- c. Policy on Working time directive (unless included in the employment contract);

FCSA require copies of the above as required. Such documentation should be readily available/accessible to employees.

**A12.**

Do you reimburse expenses to employees on the basis that they are not subject to, (or to the right of) supervision, direction or control?

**A13.**

If you do reimburse expenses to employees on the basis that they are not subject to, (or to the right of) supervision, direction or control, do you have processes in place to review and document this, which includes:

- a. An initial sifting process based on umbrella rate of pay and job role in line with latest FCSA best practice (see self-employed code in relation to job roles and rates of pay)?
- b. Documented evidence received from the end client prior to the start of the role to state that SDC (or the right thereof) does not exist and to confirm that that worker/role or any other worker performing the same role has not already been assessed as inside IR35 or they are not aware of any assessment.

In respect of b. above:

A Service Provider must get written clarification which confirms if the employee is not subject to SDC from the end client. The person confirming this status must have authorisation to do so. This written clarification can be obtained from the end-client via the agency if required.

A Service Provider must also cross reference all employment documentation including the Contract of Employment and the Assignment Schedule to ensure the employee is not subject to SDC. On its own, a worker just saying that they are not subject to SDC is not acceptable. FCSA require you to provide an overview/confirmation of your process with regard to the above.

- c. Use of a document (to be undertaken each time you are advised that a new assignment is in place) to evidence the findings of discussions with appropriate and authorised persons at the agency, end client and worker surrounding SDC specifically covering the following areas:
  - ▶ Can the worker decide how the work is done?
  - ▶ Can the worker be told what to do (as to the manner)?
  - ▶ Can the worker be moved depending on priorities?
  - ▶ Can the worker decide when the work is done?
- d. A documented conclusion as to whether there is SDC (or the right thereof) and evidence of sign off/review?
- e. A full re-review carried out at least once every 6-month period for all workers who have been actively working for you for 6 months continually on the same assignment and/or on every new assignment and that this full re-review complies with all points listed in section c.) above?
- f. Evidence of an internal audit process where sample checks are performed regularly by persons not responsible for the initial SDC decisions. All internal audits should be documented for subsequent external audit review?
- g. Are there any financial incentives based on SDC 'pass rates' for umbrella staff that complete the assessments of SDC.

If you employ workers who are not subject to, (or to the right of) supervision, direction or control and as a consequence you reimburse expenses to those employees for their journeys from home to temporary workplaces, FCSA require you to provide a copy of your policy describing how you review and document whether or not they are subject to, (or to the right of) supervision, direction or control.

FCSA also require you to provide a copy of your standard documents evidencing your review of whether an employee is or is not subject to, (or to the right of) supervision, direction or control.



**A14.**

- a. If you reimburse any expenses to employees, do you have processes to ensure that the correct contractual terms appropriate to the employee's circumstances are issued and that they are referred to the relevant sections of the expenses policy, e.g., whether they are subject to supervision direction or control, (or the right thereof), vs. expenses still claimable via their tax return, etc.
- b. Confirm you do not offer and are no longer operating a fixed expense pot arrangement for workers

FCSA require a copy of any standard contractual terms issued to employee's regarding expense claims that reflect their circumstances. From the 1st October 2022, FCSA Members must not onboard new employees into a fixed expenses model, and must not offer or advertise a fixed expenses model. FCSA members who currently offer or provide Fixed Expenses are required to wind down those operations by 1st October 2023.

**A15.**

Do you have a process or any standard documents to deal with the following:

- a. You seek to ascertain the employees work status when the employee is not on assignment, e.g.
  - ▶ Taking annual leave;
  - ▶ Unavailable to work through sickness, maternity, paternity, adoption or shared parental leave;
  - ▶ Available for and seeking work.
- b. Separately to issuing of a P45, you confirm in writing the employees last day of employment in accordance with their contractual notice periods or any agreed waiver (or payment in lieu of notice) of the same if a shorter notice is agreed.
- c. You confirm you pay any outstanding financial holiday entitlement where the employment ends, as part of the final payment.
- d. Where holiday pay is accrued, you confirm that you supply the employee with access and visibility to their accrued holiday pay summary
- e. Where holiday pay is accrued, you confirm that you supply the employee with a summary detailing the accrued entitlement before paying the balance at termination of their employment.
- f. If employment has already been terminated, you confirm that you provide a separate payment for all outstanding financial holiday entitlement

FCSA require you to provide supporting evidence in respect of the above and cross reference where appropriate.

**A16.**

- a. Do your employees receive a statutory payslip?
- b. Do your employee payslips meet the regulatory requirements introduced from April 2019 for them to include "where the amount of wages or salary varies by reference to time worked, the total number of hours workers in respect of the variable amount of wages or salary either as:
  - i. a single aggregate figure, or
  - ii. separate figures for different types of work or different rates of pay."

FCSA require a copy of a template statutory payslip.



**A17.**

Confirm the pay reconciliation you provide to the employee transparently show an itemised breakdown of all employer costs, including but not limited to the Apprenticeship Levy.

**A18.**

Confirm the payslip or portal provided to employees displays the accrued holiday entitlement balance or if 'advanced' the amount is clearly visible on the payslip.

FCSA require a small sample of payslips and any reconciliation documents, or other document made available. If the accrued holiday balance is not provided on the payslip, provide template document issued to employee to advise them of the accrued balance.

**A19.**

Do you have processes to support employees find suitable work at the end of their assignment?

FCSA require a copy of your policy explaining what steps you take to help facilitate employees to find suitable work at the end of their assignment.

An example of reasonable behaviour is to refer the employee to the Jobs Board or back to their agency.

**A20.**

Does the termination of an assignment automatically lead to the termination of employment?

FCSA require a copy of your policy in relation to the termination of an assignment.



# SECTION B

In the following section, FCSA outline their requirements for Members when making PAYE payments to Contractors.



**Deborah Murphy**  
**Head of Operations, FCSA**



## **SECTION B: PAYMENTS**

### **B1.**

Do you offer payments to or for the benefit of employees other than as employment income?

### **B2.**

Are all payments made to employees working even partly in the UK subject to PAYE/NIC as required, e.g., under the Offshore Intermediary legislation?

### **B3.**

Are any transactions, funds or payments, or any part thereof, made or held outside the UK?

### **B4.**

Do you have a policy that all payments to employees are made into UK based bank accounts except in exceptional circumstances?

### **B5.**

Are dividends paid to the employees?

### **B6.**

Are any payments (save for authorised expenses and HMRC approved salary sacrifice payments such as childcare vouchers) made to employees free of tax and NIC?

### **B7.**

Is the statutory minimum wage always paid per hour to employees against signed timesheets irrespective of any other factors?

### **B8.**

Do you limit the payment of outstanding expenses if the employee's minimum statutory wage will be affected?

### **B9.**

Do you exclude the following payments made by workers from National Minimum Wage (NMW)/ National Living Wage (NLW) calculations where required contractually or set out within an Employee Handbook:

- a.** Payments that shouldn't be included for the employer's own use or benefit, i.e., if the employer has paid for travel to work;
- b.** Items the worker has bought for the assignment and is not refunded for, i.e., tools, uniform, safety equipment;
- c.** tips, service charges and cover charges;
- d.** extra pay for working unsocial hours on a shift.

### **B10.**

Is holiday pay at or above the minimum statutory level of days and calculated on the full taxable gross pay each pay period?

FCSA require evidence that you have an appropriate process for the calculation and payment of holiday pay. FCSA also require you to provide a small sample of payslips (both accrued and advanced as applicable).

### **B11.**

Is your holiday pay calculation set out within the employee's employment contract?



**B12.**

Do you provide for the accrual of holiday during periods of maternity, paternity, adoption, shared parental leave (or other family leave) and sickness absence?

Note: Holiday pay should be calculated based on the average of the worker's total remuneration (gross pay) in the previous 52 weeks. Any weeks in which no remuneration is payable by the employer have to be ignored and earlier weeks must be brought into the calculation. The FCSA's view (in line with BEIS guidance) is that statutory payments such as SSP do not count as "remuneration", so any weeks in which statutory payments are paid should be ignored and earlier weeks must be brought into the calculation. The umbrella company should fund this holiday pay as the employer.

FCSA require you to provide evidence that you have an appropriate process in place to accrue and then pay out the holiday balance. Including the process for advising the employee what they have accrued and their total balance. Please also provide a small sample of payslips/reconciliation statements evidencing that there is holiday accrued, whilst on a period of family leave or sickness absence.

**B13.**

Do you allow for 'advanced' holiday pay? If so, please explain.

**B14.**

If you do 'advance' holiday pay, is this shown as a separate item on the payslip?

FCSA require supporting evidence of request, payment made and also transparency of process and calculation in the contract i.e., weekly payslips alongside cross referenced section of Contract of Employment

If the default position is accrued and 'advanced' holiday pay is allowed, the employee must give explicit instruction to evidence their request. You should also remind the employee of the need to take time off work in line with the Working Time Regulation.

**B15.**

Do you allow eligible employees who have completed the 12-week qualifying period:

- a. to take paid time off to attend their own ante natal appointments
- b. to take time off (which does not have to be paid) to accompany a pregnant woman to an ante natal appointment

Note: this is in accordance with the statutory requirements

**B16.**

If an agency does not pay you for any reason when you have signed timesheets or completed electronic/timesheet portal equivalent, are your employees entitled to receive at least NMW on their normal pay day?

**B17.**

Do you operate and pay all statutory payments (e.g., SSP, SMP, SPP, PP, etc.) during and between assignments?

FCSA require supporting evidence, i.e., small sample of payslips where operated in the last 3 months and associated assignment schedules to show if on assignment or not.

**B18.**

Do you allow or provide support for contractors to claim expenses on a P87 / annual HMRC self-assessment form?

**B19.**

Do you allow Payroll Giving? If so, please explain your process



# SECTIONS C-E

An FCSA Member, as the employer, must hold relevant insurances for their employees, the contractors. They must also have a workplace pension scheme which allows for automatic enrolment.



**Deborah Murphy**  
**Head of Operations, FCSA**



## SECTION C: DISCIPLINARY

### **C1.**

Confirm you are/would be the employer in any disciplinary/grievance situations and are/would be the employer in all Employment Tribunal matters.

FCSA require, if applicable, anonymised evidence of such instances in last 12 months, including any ET claims where judgement was made against you.

## SECTION D: INSURANCE

### **D1.**

Confirm you hold the following insurances:

- a.** Professional indemnity; and
- b.** Employer's liability; and
- c.** Public liability covering both head office employees and employees on assignments.

FCSA require supporting evidence, certificates and full policies.

## SECTION E: PENSIONS ACT 2012

### **E1.**

Do you operate a qualifying auto-enrolment pension scheme?

FCSA require copies of correspondence with The Pensions Regulator determining your staging date and also evidence of such a qualifying scheme.

### **E2.**

Confirm that where a pay illustration is provided, it makes it clear that it includes the financial implications of membership of the company's pension scheme or explicitly states that pension contributions have not been included in the pay illustration.

### **E3.**

Confirm that you automatically enrol your employees into a workplace pension.

### **E4.**

Confirm you pay at least the minimum pension contribution as required by law.

### **E5.**

Confirm your payments are paid across to the pension provider in good time.

FCSA require evidence of payments, if late, FCSA will require you to provide an explanation.

### **E6.**

Confirm none of your processes or practices, including any financial illustration provided, would be considered as an inducement for employees to opt out of the pension scheme.



# SECTION F

**FCSA expect Members to request comparative data in line with the Agency Worker Regulations. Section F covers the areas which should be compared.**



**Deborah Murphy**  
**Head of Operations, FCSA**



## SECTION F: AWR

### **F1.**

Please confirm you operate the 'match permanent pay' model on all employees? If not, please explain why.

### **F2.**

In operating 'match permanent pay':

- a.** Do you request/have a process to request comparator data for all assignments which last or are expected to last more than 12 weeks?
- b.** Do you request/have a process to request up to date comparator data at least every 12 months where an assignment lasts for more than 12 months?

FCSA require a sample of all letters/communications requesting comparator data.

### **F3.**

When requesting comparator data, do you ask for the following?

- a.** Comparator salary;
- b.** Standard working hours and days per week;
- c.** Bonuses and any other relevant payments;
- d.** Annual leave entitlement;
- e.** Night work;
- f.** Rest periods; and
- g.** Rest breaks;

FCSA require a sample comparator request as supporting evidence of the above.

### **F4.**

When calculating the assignment rate for pay comparator purposes, do you exclude the employer pension, any non-client reimbursed expenses and the retained company margin, Employers National Insurance and Apprenticeship Levy?

FCSA require you to provide your comparator pay calculation supporting the above.

### **F5.**

When comparing the assignment rate to the comparator rate, do you do so on a 'like for like' holiday basis, i.e., both rates either include holiday pay or exclude holiday pay?

FCSA require you to provide your comparator pay calculation supporting the above.

### **F6.**

Do you advise the agency when the contract rate for the assignment is unacceptable?

Where the assignment rate does not match the pay comparator, FCSA require you to outline the procedures you follow with the employee and recruitment agency (or provide your process).

### **F7.**

Do you recalculate matching permanent pay rates as per AWR where non-chargeable expenses have been paid to the worker?

### **F8.**

Confirm you do not offer and are no longer operating Regulation 10 'pay between assignments' (Swedish Derogation) method?



# SECTIONS G-J

Expenses and VAT, and how they're handled, are a complex issue and FCSA's requirements in this area are designed to ease both the clarity of process and the roles of both the provider and their employees.



**Chris Bryce**  
**Chief Executive, FCSA**



## SECTION G: GENERAL EXPENSES

### **G1.**

Confirm that for all allowable expense claims:

- a.** The expense has been incurred wholly, exclusively and necessarily in the course of performing employment duties
- b.** You have a receipt or, where not possible, in exceptional circumstances and in line with HMRC guideline, other sufficient evidence to prove the cost was incurred
- c.** All receipts are manually validated as a genuine receipt;
- d.** You only accept original or scanned receipts, not credit card receipts.
- e.** You only allow expenses to be claimed for periods covered by actual assignments;
- f.** You do not allow expenses to be claimed for future periods (even if covered by an a assignment);
- g.** You have a system to ensure expense claims cannot be duplicated, e.g., by the submission of an original receipt and a scanned or credit card receipt for the same expense.
- h.** You confirm to the employee that the receipt should be sent to you for verification and also kept by the employee for audit purposes.

### **G2.**

Do you pay any expenses to employees determined to be subject to (or the right of) SDC?

If yes, do these include:

- a.** Relocation;
- b.** International travel;
- c.** Mileage to temporary workplaces;
- d.** Mileage to permanent workplaces;
- e.** Billable/ client chargeable expenses;
- f.** Any others.

FCSA require details and supported reasoning.

### **G3.**

Do you have a policy for ensuring that travel expenses cease when it can be reasonably expected that the '24-month rule' or '40% rule' will be broken (applicable only to employees who are not subject to, (or to the right of) supervision, direction or control)?

FCSA require a copy of your expenses policy (include cross referencing).

### **G4.**

Confirm that you do not allow any home to temporary place of work travel expenses to be claimed once you and/or an employee knows or has a reasonable expectation that they will be at the same workplace for more than 24 months.

### **G5.**

Confirm that you obtain from the employee their confirmation that they have already, or their expectation is to undertake more than one assignment for you.

FCSA require supporting evidence that such a confirmation is obtained with appropriate cross referencing.

### **G6.**

Confirm that you require each employee to confirm that their current assignment will not be their last on their expense claim.

FCSA require a copy of your expense claim template with appropriate cross referencing.



**G7.**

Confirm that when an employee claims for business mileage you:

- a.** Reimburse only tax-free mileage if it is at or below current HMRC approved mileage rates;
- b.** Verify the mileage claimed using a postcode checker or equivalent.
- c.** Require employees to submit VAT receipts to you in support of the claim.

**G8.**

Confirm that you ask each employee when they join you whether they have previously worked at the same site within the last 3 months.

FCSA require a copy of your process to determine whether or not a new employee has previously worked at the same site.

**G9.**

Confirm that you advise employees that if they are found to be falsifying expense claims they will face disciplinary action.

FCSA require supporting evidence, for example where potentially set out within your Expenses Policy, with appropriate cross referencing.

**G10.**

Confirm that with respect to valid claims (where the employee is entitled to make a claim) your systems ensure an employee does not claim for travel expenses on a day he/she did not work (i.e., have a valid timesheet for).

FCSA require a copy of your expenses policy (include cross referencing).

**G11.**

Confirm you ensure the employee is aware they must hold appropriate insurance to drive the vehicle in respect of business use.

**G12.**

Confirm that you only allow scale rates, where the expenses are separately billable/chargeable to the end client. In each case confirm you receive appropriate receipts to verify the expenditure has been incurred.

**G13.**

Confirm that you do not re-imburse expenses for workers who are (a) doing the same role as a permanent member of staff with the end client, (b) replacing a permanent member of staff who is on holiday, sick or on maternity or paternity leave, or the permanent employee will be returning to their permanent role with that end client in the future.



## SECTION H: OTHER EXPENSE CATEGORIES

### H1.

Further to your confirmations provided in section A in relation to your SDC assessment and checks:

- a. Do your systems flag the type of contract under which the employee is employed?
- b. Confirm expenses to/from a permanent workplace are only allowable following the necessary assessment of SDC and a no SDC (or right of) outcome.
- c. Confirm the employee has accepted/signed their employment contract, expenses policy and expenses claim forms.
- d. Where it is established that SDC is not present, confirm you only reimburse genuine business mileage claims, except for expense claims that are billable/chargeable to the end client and not paid out of the umbrella contracting rate.

FCSA require a copy of your expenses policy in relation to employees not subject to SDC.

### H2.

Confirm that where expenses are billable/chargeable to the end client you always:

- a. Collect the supporting receipt/evidence to prove the expense was incurred
- b. Do not allow any claim that relates to the employee's commute (home to workplace or workplace to home), unless the employee is not subject to SDC (or right of) - this includes mileage from home to first work site and from last work site to home, any subsistence, any accommodation expenses or any other associated expenditure related to travel
- c. Confirm that you apply the correct VAT rate to the billable/chargeable expense line on the invoice

FCSA require a copy of your expenses policy in relation to billable/chargeable expenses.

### H3.

Confirm that where expenses are incurred for travel to one or multiple temporary workplaces you:

- a. Do not allow any claim that relates to the employee's commute (home to permanent workplace and return to home) unless the employee is not subject to SDC - this includes mileage, subsistence, any accommodation expenses or any other associated expenditure
- b. Only allow mileage for these journeys and you deny any claims for related subsistence and accommodation expenditure, unless billable/chargeable to the end client
- c. If the Employee is not travelling to multiple locations in any given day, then ensure detailed checks/processes are in place to ensure the workplace does not become permanent, including by monitoring the 40% rule.
- d. Ensure that the end client is consistent across the temporary workplaces on the claim

FCSA require a copy of your expenses policy in relation to travelling to temporary workplaces/multiple sites.

### H4.

Confirm you only allow expense claims for subscriptions that appear on the HMRC approved list and are additional client billable expenses.

### H5.

Confirm that if you reimburse travel expenses to the UK for overseas employees, you only do so where there is a clear employment relationship established before the individual arrives in the UK and these are separately billable to the end client.



**H6.**

Confirm that where you allow capital expenditure claims only where such claims are separately billable to the end client, and where you have a policy and signed agreement with the employee which sets out:

- a. That permission must be obtained in advance of the capex purchase;
- b. That any item must be for the purposes of the current assignment;
- c. That the item is not for private use and any personal benefits gained will be minimal;
- d. That the employee buys the item on behalf of the Umbrella company and that it will remain the property of the company;
- e. That the item is expected to be returned at the end of their employment;
- f. That at the end of employment, a fair market price might be agreed to transfer ownership from the company to the employee.

**H7.**

Any reimbursed driver overnight allowances must be consistent with the amounts agreed between the RHA and HMRC and must only be reimbursed as client billable expenses that are not reimbursed out of the umbrella contracting rate.

**SECTION I: AUDITS****I1.**

Do you audit expense claims?

**I2.**

Confirm that where a full audit is not conducted prior to an expense being paid, you carry out retrospective manual audits to ensure an expense has been validly incurred by the employee and is appropriate to his/her personal circumstances (This is in addition to the normal processing checks completed on all receipts).

**I3.**

Confirm that where client billable expenses for any home to work travel are processed, you have assessed and received written confirmation from the end client that the employee is not subject to SDC.

**I4.**

Confirm the number of expense claims audited in a year equates to approximately 10% of the average number of employees who claim expenses during the year.

FCSA require a copy of your expense auditing policy and process.

**SECTION J: VAT****J1.**

Are any chargeable transactions to employees subject to VAT, e.g., same day CHAPS payments?

**J2.**

Do you operate the VAT flat rate scheme?

FCSA require the last 12 months of VAT returns to allow check whether Flat Rate VAT was or was not operated.

**J3,**

Do you include standard rate VAT on all invoices issued to UK agencies or other UK intermediaries or end clients regardless of any other factors?



# **ADDENDUM**

## **Worker Questions**

### **Section L onwards**

The FCSA recognises that, in addition to employment, there are other ways Members may wish to compliantly provide the services of the workers they engage with, and to this end, in addition to the FCSA's codes of compliance for Umbrella / PEO, we have developed our codes to allow the use of a Contract for Service.

Given that our members recognise that the reimbursement of non-billable expenses is now far less frequent, the FCSA recognise that the usefulness to members of mutuality or relationship between assignments is reduced.

Members may therefore wish to use a contract for service to engage the worker that allows for a simpler contract to be presented.

Under a contract for service each assignment operates as a separate period of engagement with no obligation on either party to offer further assignments.

The worker's main workplace will be regarded as their permanent place of work. Travel and subsistence expense claims to/from the permanent workplace should not be accepted. This is the case regardless of whether the worker is subject to (or the right of) supervision, direction or control (SDC) in the manner they perform their duties.

The below code outlines our expectation of how this model can be delivered and operated compliantly.



# SECTION I

In many ways the onboarding process sets the scene for the provider's relationship with their worker, that's why FCSA stipulates what needs to be done up front and maintained during the assignment.



**Chris Bryce**

**Chief Executive, FCSA**



## SECTION L: TAKE ON PROCEDURES

### **L1.**

Do you supply potential new workers with an introduction letter or email which contains the following?

- a.** An explanation as to the basis on which your business operates, I.e., as a business offering temporary work to workers
- b.** That the worker is a worker of the Umbrella and is aware of their respective statutory rights as an agency worker;
- c.** Confirmation that the worker will not be engaged through any other intermediary or third party;
- d.** That the worker will be subject to a proof of identity check;
- e.** That the worker will be subject to a right to work check;
- f.** The worker will be required to enter into an agreement with the Umbrella such as a contract for services;
- g.** The basis upon which the worker can or cannot claim expenses is explained;

FCSA require a copy of introduction letter or email. FCSA also require cross referencing to where the above are included within the introduction letter or email.

### **L2.**

Do you supply/have a process to supply the agency with a Key Information Document (KID)?

### **L3.**

Do you confirm to a potential worker:

- a.** The rate of pay;
- b.** Your margin clearly stated;

### **L4.**

Does your engagement documentation (Contract for Services together with any Assignment Schedules) contain all information required in a Statement of Employment Particulars as set out in the Employment Rights Act, including (but not necessarily limited to):

- a.** The engager's name;
- b.** The worker's name;
- c.** A job title or brief job description;
- d.** The date the worker's engagement began;
- e.** The worker's initial rate of pay and when the worker will/how often the worker will be paid (any future rates will be shown in assignment schedules as the rate of pay will be set on an assignment by assignment basis);
- f.** Bonus or similar mechanism (where applicable) including how it is calculated
- g.** The hours and days of work including whether these hours and days are variable;
- h.** Holiday entitlement (and if that includes public holidays) and how holiday pay will be calculated;
- i.** Where the worker will be working;
- j.** If a worker works in different places, where these will be and what the engager's address is;
- k.** Any training the worker is required to undertake, whether or not this is paid for by the engager;
- l.** Sick pay arrangements and procedures;
- m.** Other paid leave (for example, maternity leave, paternity leave and parental bereavement leave) where the worker has a contractual entitlement to it. For clarity, the worker's contract should include confirmation as to whether the worker is entitled to paid statutory leave or not.
- n.** Notice periods;



- o.** Information about complaints procedures;
- p.** Any collective agreements that affect the engagement terms and conditions or if there are no collective agreements that affect the engagement terms and conditions, a statement to that effect;
- q.** Pension and pension schemes;
- r.** Any additional benefits (including non-contractual benefits) the worker may be entitled to.

FCSA require you to provide appropriate engagement documentation. FCSA also require cross referencing to where the above are included within the respective engagement documentation (referencing to the appropriate clauses).

## L5.

Does your contract for service include appropriate clauses covering:

- a.** Minimum statutory salary payments;
- b.** Holiday pay (during assignments);
- c.** Complaints procedures.
- d.** Appropriate termination provisions.
- e.** A statement that the individual is a worker and not an employee.
- f.** A statement to the effect that no contractual relationship shall exist between the Umbrella and the worker between assignments.

FCSA require a Copy of contract for service . FCSA also require cross referencing to where the above are included within the contract for service (referencing to the appropriate clauses).

## L6.

Please provide:

- a.** Assignment schedule;
- b.** Worker handbook or similar code of conduct document;
- c.** Policy on Working time (unless included in the engagement contract);

FCSA require copies of the above.

## L7.

- a.** Do your workers receive a statutory payslip?
- b.** Do your worker payslips meet the regulatory requirements introduced from April 2019 for them to include “where the amount of wages or salary varies by reference to time worked, the total number of hours workers in respect of the variable amount of wages or salary either as:
  - i.** a single aggregate figure, or
  - ii.** separate figures for different types of work or different rates of pay.”

FCSA require a copy of a template statutory payslip.



# SECTION M

In the following section, FCSA outline their requirements for Members when making PAYE payments to Contractors.



**Deborah Murphy**  
**Head of Operations, FCSA**



## SECTION M: PAYMENTS

### **M1.**

Do you offer payments to or for the benefit of worker other than as employment income?

### **M2.**

Confirm that all payments made to workers working in the UK subject to PAYE/NIC as required, e.g., under the Offshore Intermediary legislation.

### **M3.**

Confirm that no transactions, funds or payments, or any part thereof, made or held outside the UK.

### **M4.**

Confirm that you have a policy that all payments to workers are made into UK based bank accounts except in exceptional circumstances?

### **M5.**

Confirm that all payments to workers are paid into accounts in the worker's name only.

### **M6.**

Confirm that dividends are not payable to workers

### **M7.**

Are any payments (save for authorised reimbursable expenses and HMRC approved salary sacrifice payments such as childcare vouchers) made to workers free of tax and NIC?

### **M8.**

Confirm that the statutory minimum wage is always paid per hour to workers against signed timesheets irrespective of any other factors e.g. non-payment by an agency.

### **M9.**

Where National Minimum Wage (NMW)/National Living Wage (NLW) applies, do you exclude the following payments made by workers from National Minimum Wage (NMW)/National Living Wage (NLW) calculations? And where required contractually or set out within an Worker Handbook:

- a.** Payments that shouldn't be included for the worker's own use or benefit, i.e. if the engager has paid for travel to work;
- b.** Items the worker has bought for the assignment and is not refunded for, i.e. tools, uniform, safety equipment;
- c.** tips, service charges and cover charges; and
- d.** extra pay for working unsocial hours on a shift

### **M10.**

Is holiday pay at or above the minimum statutory level of days and calculated on the full taxable gross pay for the relevant pay period?

FCSA require evidence you have an appropriate process for the calculation and payment of holiday pay. FCSA also require you to provide a small sample of payslips.

### **M11.**

Is your holiday pay mechanism contained within the worker's engagement contract?

### **M12.**

Do you allow for 'advanced' holiday pay? If so, please explain.



**M13.**

If you 'advance' holiday pay, is this shown as a separate item on the payslip?

FCSA require supporting evidence of request, payment made and also transparency of process and calculation in the contract i.e., weekly payslips alongside cross referenced section of Contract for Service.

If the default position is accrued and 'advanced' holiday pay is allowed, the worker must give explicit instruction to evidence their request. You should also remind the worker of the need to take time off work in line with the Working Time Regulation.

**M14.**

Confirm that even if an agency does not pay you for any reason when you have signed timesheets, that your workers are entitled to receive at least NMW on their normal pay date.

**M15.**

Confirm that you operate and pay all statutory payments (e.g., SSP and SMP) during active assignments. NB, whilst workers are not entitled to statutory leave, they can be entitled to statutory payments if they meet the eligibility criteria.



# SECTIONS N-P

**FCSA require their Members have the relevant procedures in place for workers to make a complaint if necessary.**

**FCSA also require Members to hold the correct insurance products and comply with all pension requirements.**



**Deborah Murphy**  
**Head of Operations, FCSA**



## **SECTION N: COMPLAINTS PROCEDURE**

### **N1.**

Confirm you are responsible for dealing and resolving any complaint situations and, where applicable, are a Respondent in all Employment Tribunal matters.

If applicable, FCSA require you to provide anonymised evidence of such instances in last 12 months.

## **SECTION O: INSURANCE**

### **O1.**

Confirm you hold the following insurances:

- a.** Professional indemnity; and
- b.** Employers' liability; and
- c.** Public liability covering both head office employees and workers on assignments.

FCSA require supporting evidence, certificates and full policies.

## **SECTION P: PENSIONS ACT 2012**

### **P1.**

Confirm that you operate a qualifying auto-enrolment pension scheme.

FCSA require copies of correspondence with The Pensions Regulator determining your staging date and also evidence of such a qualifying scheme.

### **P2.**

Confirm that where a pay illustration is provided, it makes it clear that it either includes/excludes the financial implications of membership of the company's pension scheme.

### **P3.**

Confirm that you automatically enrol your workers into a workplace pension.

### **P4.**

Confirm you pay at least the minimum pension contribution as required by law.

### **P5.**

Confirm your payments are paid across to the pension provider in good time.

FCSA require evidence of payments, if late, please provide an explanation.

### **P6.**

Confirm none of your processes or practices would be considered as an inducement for workers to opt out of the pension scheme.



# SECTION Q

**FCSA expect Members to request comparative data in line with the Agency Worker Regulations. Section Q covers the areas which should be compared.**



**Deborah Murphy**  
**Head of Operations, FCSA**



## SECTION Q: AWR

### **Q1.**

Confirm that you operate the 'match permanent pay' model.

### **Q2.**

- a.** Do you request comparator data for all assignments which last or are expected to last more than 12 weeks?
- b.** Do you request up to date comparator data at least every 12 months where an assignment lasts for more than 12 months?

FCSA require an anonymised sample of all letters/communications requesting comparator data.

### **Q3.**

When requesting comparator data, do you ask for the following?

- a.** Comparator salary;
- b.** Standard working hours and days per week;
- c.** Bonuses and any other relevant payments;
- d.** Annual leave entitlement;
- e.** Night work;
- f.** Rest periods; and
- g.** Rest breaks;

FCSA require a sample comparator request as supporting evidence of the above.

### **Q4.**

When comparing the assignment rate to the comparator rate, do you do so on a 'like for like' holiday basis, i.e., both rates either include holiday pay or exclude holiday pay?

### **Q5.**

Do you advise the agency whether the contract rate for the assignment is unacceptable?

FCSA require, where the assignment rate does not match the pay comparator, you to outline the procedures you follow with the worker and recruitment agency (or provide your process).

# SECTIONS R-S

VAT and how it is handled is a complex issue and FCSA's requirements in this area are designed to ease both the clarity of process and the roles of both the provider and their workers.



**Chris Bryce**  
**Chief Executive, FCSA**



## SECTION R: AUDITS

### **R1.**

Do you audit expense claims?

FCSA require a copy of your expense auditing policy and process.

## SECTION S: VAT

### **S1.**

Are any chargeable transactions to workers subject to VAT, e.g., same day CHAPS payments?

### **S2.**

Do you operate the VAT flat rate scheme?

FCSA require the last 12 months of VAT returns to allow check whether Flat Rate VAT was/was not operated.

### **S3.**

Do you include standard rate VAT on the full amount of the invoices issued to UK agencies or other UK intermediaries or end clients regardless of any other factors?





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