



FCSA Code of Compliance

**Professional Employment
Organisation 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 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

FCSA expect Members to provide a clear and transparent onboarding process for all prospective employees. The following section covers FCSA's requirements when employing a contractor into the professional employment organisation model.



Deborah Murphy
Head of Operations, 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 you clearly identify the company who is the worker's employer (PEO) and that they will be solely employed by the PEO for the purposes of the relevant engagement and that the employee is aware of their statutory employment and agency worker rights;
- c. Confirmation that the employee will not be engaged through any other intermediary or third party and that there will be no joint employment;
- d. That the employee will be subject to a proof of identity check;
- e. That the employee will be subject to a right to work check;
- f. The employee will be required to enter into employment related agreements such as an employment contract;
- g. 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.

Any documentation provided will be assessed to ensure that joint employment is not being offered.

A2.

A financial illustration is optional, though where provided to a potential employee confirm:

- a. Clearly states that it is only an estimate;
- b. Does not use unquantifiable savings or benefits (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)
- c. Is based on 52 weeks;
- d. Does not include expenses within the calculation;
- e. Clearly shows the gross pay rate;
- 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 the tax code used, with a specific explanation when:
 - ▶ A Week 1/Month 1 tax code is used - this should only be used where YTD figures are unavailable
 - ▶ A personal allowance is reduced for high rate earners

A3.

Do you provide a financial illustration to all prospective employees:

- a. In all cases
- b. Only when requested
- c. Never

Documentation required: If a. or b. above, provide a copy of a template financial illustration based on the following examples: £562.50 a week (£15ph x37.5hours), £961.54 a week (£50,000pa), £1442.31 a week (£75,000pa), £10,000 a month (£120,000pa)
Please also provide cross referencing to where the above are included within the financial illustration.

FCSA 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.

Confirm your marketing literature, web pages, scripts and training material all support the PEO employment model and include:

- ▶ Clear explanation that the model being used is a PEO single employment model;
- ▶ Explanation of the employment relationship with the worker;
- ▶ No fee to the worker;
- ▶ VAT on invoice;
- ▶ Does not refer to employees as clients.

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

A5.

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.

A6.

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 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 which are legally compliant.

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

A7.

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 initial rate of pay and when the employee will/how often the employee 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. The hours and days of work including whether these hours and days are variable;
- g. Holiday leave and entitlement (and if that includes public holidays) and how holiday pay will be calculated;
- h. Where the employee will be working;
- i. If an employee works in different places, where these will be and what the employer's address is;
- j. How long any probation period is and what its conditions are;

- k.** Any training the employee is required to undertake, whether or not this is paid for by the employer;
- l.** Sick pay arrangements and procedures;
- m.** Other paid leave (for example, maternity leave and paternity leave)
- n.** Notice periods;
- o.** Information about disciplinary and grievance procedures;
- p.** 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;
- q.** Pension and pension schemes;
- r.** Any additional benefits (including non-contractual benefits) the employee may be entitled to;
- s.** No end date to the employment.

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

A8.

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 you to provide evidence and cross referencing to where the above is included within the respective employment documentation.

A9.

Confirm that:

- a.** throughout the holiday year and when an employee is approaching the holiday year end (at least four weeks prior), you remind your employees to take holidays;
- b.** As a responsible employer, you should ensure all employees take and are paid for holidays during the holiday year, or payment in lieu of holiday entitlement on termination of the employment is made. Any exceptions to this policy should be logged internally, raised and discussed with the FCSA assessors.

FCSA require you to provide process and evidence of payslip, email, letter, portal etc. including any exceptions to this policy.

A10.

Does your employment contract include appropriate clauses covering:

- a.** Salary payments;
- b.** Holiday entitlement. Holidays can be taken during and between assignments and the basis on which holiday is accrued;
- c.** Mutuality of obligation between assignments;
- d.** Grievance/discipline procedures;
- e.** Appropriate termination provisions.

FCSA require a copy of employment contract. FCSA also require you to provide cross referencing to where the above are included within the employment contract (referencing to the appropriate clauses).

A11.

Please provide:

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

FCSA require copies of the above.

A12.

Do you have a process or 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 or paternity, Available for and seeking work;
- b.** You confirm in writing the employees last day of employment in accordance with contractual notice periods or any agreed waiver 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 supporting evidence in respect of the above and cross reference where appropriate.

A13.

- 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 worked in respect of the variable amount of wages or salary either as:
 - i.** a single aggregate figure,
 - ii.** or separate figures for different types of work or different rates of pay."
- c.** Confirm that your payslip clearly shows:
 - Gross payment;
 - Hours/days worked (for each different type of work or rate of pay);
 - Holiday pay (applicable when paid out);
 - Taxable pay;
 - Niable pay;
 - Employee deductions (including any variable and/or fixed deductions from the gross amount stating the description of the deduction);
 - Net Pay;
 - Expenses;
 - Year to date figures (including Taxable pay, Niable pay, Tax & NI deductions).

- d.** Confirm that this General (shown on the payslip and/or reconciliation statement if separate pages) information is shown:
- Company name & PAYE reference;
 - Employee details (name, address, NINO, employee number);
 - Pay date & pay period/s;
 - Holiday pay (Amount brought forward & Amount taken).

FCSA require a copy of a template statutory payslip.

A14.

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 you to provide a copy of a template payslip or other document made available. If the accrued holiday balance is not provided on the payslip, FCSA require you to provide the template document issued to the employee to advise them of the accrued balance.

A15.

Confirm the termination of an assignment does not automatically lead to the termination of employment?

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

SECTIONS B-D

These requirements ensure that payments are properly made, that there are proper grievance procedures in place and that the appropriate insurance policies are taken out.



Chris Bryce
Chief Executive, 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 all payments to employees paid into accounts in the employee's name only?

B6.

Is the employee a shareholder in the company?

- ▶ If so, are dividends paid to the employees?

If yes to above, FCSA require you to provide a schedule of the company's share register.

B7.

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?

B8.

Is the wage always paid per hour to employees against signed timesheets irrespective of any other factors e.g. non-payment by an agency or end-hirer?

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 employee 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.

Where a salary sacrifice agreement is in place, what process is in place to ensure the revised pay level is still meets National Minimum Wage pay levels?

B11.

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 you to provide evidence you have an appropriate process for the calculation and payment of holiday pay.

B12.

Is your holiday pay mechanism contained within the employee's employment contract?

B13.

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

B14.

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

FCSA require you to provide 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.

Confirm that even if an agency does not pay you for any reason when you have signed timesheets, that your employees are entitled to receive their wage on their normal pay day?

B16.

Do you provide for the accrual of holiday during periods of maternity, paternity, adoption, shared parental leave (or other family leave) and sickness absence? (The accrual for holiday pay during periods of family leave is calculated based on the employee's normal gross salary payment as a proportion of the full leave entitlement as stated within the employment contract and/or assignment schedule. The employer should pay this to the employee, but it may be charged back in accordance with your commercial arrangement with the agency or client.

FCSA require you to provide 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.

SECTION C: DISCIPLINARY**C1.**

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

FCSA require anonymised evidence of such instances in last 12 months.

SECTION D: INSURANCE**D1.**

Confirm you hold the following insurances:

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

FCSA require supporting evidence, certificates and full policies.

SECTIONS E & F

Section E covers expectations of Members when operating a workplace pension which allows for automatic enrolment, and section F explains the requirements for comparing data under the Agency Worker Regulations.



Deborah Murphy
Head of Operations, FCSA

SECTION E: PENSIONS ACT 2012

E1.

Do you operate a qualifying auto-enrolment pension scheme?

FCSA require copies of your duty start date, evidence of such a qualifying scheme and your most recent redeclaration.

E2.

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.

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 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.

E6.

Do you offer a salary sacrifice option for pension contributions?

If so, FCSA require a copy of any illustrations, any sacrifice agreement used , if applicable, any obtained HMRC clearance where they have confirmed you operate the salary sacrifice scheme correctly.

SECTION F: AWR

F1.

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

F2.

- 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 a sample of all letters/communications requesting comparator data, and your process for requesting 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;
- g.** Rest breaks; and
- h.** Entitlement to paid time off for ante natal appointments where a pregnant worker has completed the 12-week qualifying period.

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

F4.

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 your comparator pay calculation supporting the above.

F5.

Do you advise the agency/end-hirer when the pay rate is unacceptable?

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

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: BILLABLE EXPENSES

G1.

Confirm that the only type of expenses that you process are billable / client reimbursed expenses. If you process any other expenses, this must be disclosed to the assessors for consideration.

G2.

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 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.
- i. Confirm that you apply the correct VAT rate to the billable/chargeable expense line on the invoice;
- j. 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;
- k. In respect of G2j above, further confirm the following in respect of your assessment of SDC:
 - i. You check that the worker is subject to SDC via a questionnaire with the worker;
 - ii. You receive documented evidence from the end client prior to processing the expense claim that SDC (or the right thereof) does not exist. **The person confirming this status must have authorisation to do so;**
 - iii. You cross reference all written documentation pertaining to the assignment including the Contract of Employment and agency contract 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;
 - iv. You document conclusions as to whether there is SDC (or the right thereof) and can evidence sign off/review;
 - v. You have 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;
 - vi. There are no financial incentives based on SDC 'pass rates' for staff that complete the assessments of SDC.
 - l. Confirm that where you allow a claim that relates to travel to a permanent workplace, the payment is subject to PAYE and NIC
 - m. 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 you to attach a copy of your expenses policy in relation to travelling to temporary workplaces/multiple sites.

FCSA also require you to provide an overview/confirmation of your process with regard to the G2k above, including a copy of your questionnaire and evidence of the findings of discussions with appropriate and authorised persons at the agency, end client and worker.

G3.

Confirm employees can only be paid expenses once they have accepted/signed their employment agreements and expenses policy.

FCSA require you to attach a copy of your expenses policy.

G4.

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

FCSA require you to provide a copy of the process you follow to support such claims.

G5.

Confirm you only allow expense claims for subscriptions that appear on the HMRC approved list.

G6.

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.

G7.

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)?

G8.

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.

G9.

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).

G10.

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

G11.

Any reimbursed driver overnight allowances must be consistent with the amounts agreed between the RHA and HMRC.

SECTION I: AUDIT

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.)

FCSA require you to provide 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.

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

J3.

Confirm that where you charge an agency or end client a fee, it is inclusive of VAT.

J4.

As a single employment PEO model, confirm that you include VAT on the full invoice.



integrity • independence • influence

[fcsa.org.uk](https://www.fcsa.org.uk)