

CONTRACTS

Caseworkers should check the relevant question on the WP1 and relevant parts of the contract between the employer and the client to ensure the employer making the work permit application is responsible for a particular job, project or piece of work, whether it is based at a client site or a the employer's own premises. Caseworkers should check that the contract clearly shows:

- The names of the parties involved (i.e. The employer and the client) and that all parties have signed it;
- The start and end date of the contract;
- Details of the job or piece of work that the employer will be responsible for (product or service deliverables);

Caseworkers should be satisfied that the employer has clear responsibility for determining the duties and functions of the post rather than merely supplying personnel. If the work shows that the person is paid by the hour (suggesting that the contract is for personnel); or that the third party employer will have responsibility for allocating duties to the permit holder (for example, in the NHS if patients are allocated by the NHS administration); then the contract should be discussed with managers. Suitable deliverables include a discrete piece of work (for example, installing a particular IT system) or project. Work that is expected to be ongoing, with no end date on the contract, should be discussed with managers to ensure that the employer is not supplying personnel.

Caseworkers should update both the individual's application and the employer's comments on GLOBE with details of the contractual arrangements, whether a full contract, pre-contract work or after sales service.

Once the contract relationship has been established and accepted, other applications that relate to the same contract should simply refer to this. It is not necessary to ask for copies of the contract or extracts from the contract for each application, unless there is reason to believe that the terms have changed significantly so as to affect the basis on which permits may be approved.

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Length of Approval

Where an overseas national is required to work on one specific contract, the period of approval should be for the period requested but limited to the end of the particular contract. Caseworkers should use paragraph P70T in the approval letter. Where an overseas national is required to work on a number of different contracts that have been established by the Border and Immigration Agency, caseworkers should put in the 'address employed at' field "on specific contracts agreed with this Department". A list of which contracts the individual will work on should be provided by the employer and recorded on the caseworker comments on gLOBE. The approval period should not exceed the expiry date of the longest running contract, which should be noted on employer comments (also see [extension applications](#)).

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Client Site

Caseworkers need to establish whether the work is taking place at a client site or on the employer's premises. Caseworkers should check the contract to ensure that it clearly demonstrates the link between the employer address and the address that the person will be working at. Caseworkers should also ensure that the overseas national would be essential to work at the third party site. If the third party client has responsibility for allocating duties to the permit holder, the contract should be discussed with managers, as this may suggest that the contract is for the provision of personnel.

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Genuine vacancy

A genuine vacancy must be established to ensure that sufficient work at the appropriate level is available for the amount of hours and period requested in the role described on the application form. Caseworkers should also check how many people are working on specific contracts if the overseas national is required to work on a contract which we have previously approved.

The post must not have been created for the purpose of recruiting a particular person. Caseworkers should check to see if the overseas national is named within the contract. References, qualifications and evidence of advertisements should also be checked closely in such circumstances. (See [advertising](#), [establishing a genuine vacancy](#), [establishing the OSN](#) and/or [qualifications of the worker](#).)

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Sub-Contracting

Where an application relates to multiple subcontracting, caseworkers need to check who is responsible for the end job. You may need to ask for an explanation of the relationships between the parties and copies of contracts between each of the parties involved. This should show the roles each party plays and indicate who is responsible for the permit holder's work. There is no limit to the number of times work may be sub-contracted, as long as the Border and Immigration Agency is satisfied that the employer making the work permit application is a UK-based employer and has responsibility for the job or piece of work.

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Overseas Contractor

Caseworkers should check that the application meets the criteria under the special [GATS arrangement](#).

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What to do if?

Contract describes supply of staff - The contract should describe the piece of work that the employer is responsible for. If it describes the supply of staff alone, the case would fall for refusal. For both Pre-contract work or After Sales Service the documents provided should describe a piece of work that the employer is responsible for. If they describe the supply of staff alone, the case would fall for refusal and P85B should be used in the refusal letter.

Where caseworkers come across evidence that we have accepted a contract for an employer who is in fact providing personnel, the employer comments should be noted and notice served by the team HEO on any future application. It is usual to issue 6 months notice, using paragraph P70P in the letter. Any subsequent applications will be subject to the employer providing a new contract that fully meets the requirements outlined above.

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The contract has not been signed - If a contract has not yet been signed we can accept a letter of intent on condition that the signed contract is provided when it is available. Employers should be able to provide the signed contract within six months. Caseworkers should limit any conditional approval to six months using an adaptation of paragraph P70R in the approval letter.

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The application is for Pre- Contract Work- Caseworkers should request a letter of intent that has been signed by both parties. Applications for an overseas national to work on pre-contract work should be approved for a maximum of six months where all other work permit criteria are met. The letter giving conditional approval should include paragraph P70R.

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The application is for After Sales Service - Where an application states that the overseas national will be providing an After Sales Service, employers should provide an agreement between their organisation and the client. Applications can be approved for the overseas national to work on that agreement and any other similar agreement. Caseworkers should look at each agreement carefully and be aware of how many overseas nationals are to work on these agreements, as there is a risk that multiple applications for overseas nationals to work on the agreement(s) may not represent genuine vacancies. P70S should be included in any approval letter.

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The fax number on the top of the fax shows that separate contracts, purported to be from different employers have been sent from the same fax machine – Caseworkers should go back to the employer/representative and ask for an explanation. Where caseworkers are not satisfied with the explanation the application may be considered for refusal on genuine vacancy grounds. Caseworkers should consult HEO were this action is proposed. P80K should be used in the refusal letter.

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The evidence provided meets the requirements of the work permit criteria – Continue the caseworking process.

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