

Title of Report:	Casual Workers - Reducing the Risk to the Council
Report to be considered by:	Personnel Committee
Date of Meeting:	03 June 2011
Forward Plan Ref:	PC2279

Purpose of Report:

1. To recommend a new HR policy to reduce the risk to the Council associated with the employment of casual workers.
2. The new policy will state that new casual workers may not be paid for more than nine consecutive months (unless written permission is given by the Head of HR).

Recommended Action:

1. To introduce centralised monitoring of periods of employment for casual workers by HR or Payroll which will prevent any new casual worker being paid for more than nine consecutive months.
2. The Budget Monitoring Panel (BuMP) to consider a report on casual workers who already have continuous service over one year.

Reason for decision to be taken:

The Council is at risk from legal challenge because some managers are not following the HR guidance on the use of casual workers. This issue needs firm action because an Employment Tribunal claim was submitted by a casual worker and the external legal advice was that the Council should settle the case because it was not winnable.

Other options considered:

Do nothing - rejected because further legal challenges are inevitable.

Key background documentation:

HR Guidance on Employment of Casual Workers (on HR intranet site).

The proposals will also help achieve the following Council Plan Theme(s):

CPT14 - Effective People

The proposals contained in this report will help to achieve the above Council Plan Priorities and Themes by:

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Date Portfolio Member agreed report:	01 April 2011

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Implications

Policy:	There will be change of policy on casual workers to prevent a casual worker being employed for more than nine consecutive months.
Financial:	None.
Personnel:	Contained in report
Legal/Procurement:	Report deals with legal issues concerning employment rights
Property:	n/a
Risk Management:	New policy will reduce risk to the Council
Equalities Impact Assessment:	To be completed.

Executive Summary

1. Introduction

- 1.1 The Council currently has approximately 230 casual workers spread across a number of services.
- 1.2 The HR policy on casual workers states there will be no mutual obligation for either the employer to provide work or the worker to accept work offered. Casual workers should be employed to address the need for ad hoc cover (to cover short term absence of a permanent member of staff for instance).
- 1.3 However a number of casual workers are working regular hours on a continual basis. These workers are building up periods of continuous service leading them to have employment rights. In truth they are Council employees and not 'casuals'.
- 1.4 The use of casual workers on a regular basis brings a number of employment rights, and potential penalties for the Council because their rights are denied. The rights include: a written statement of the contract of employment within two months; sick pay; statutory paid annual leave; paternity/maternity leave; to be consulted on ending of employment and possible redeployment; notice of termination; redundancy payment.
- 1.5 The risk to the Council issue has been highlighted by a recent case. A 'casual' worker recently submitted a claim to an Employment Tribunal for unfair dismissal and breach of a number of other statutory rights when his regular hours were stopped. External legal advice confirmed that the employee was not a casual worker and therefore the Council could not successfully defend the claim.

2. Recommendation

- 2.1 This report recommends the introduction of a new HR policy under which no casual worker will be paid for more than nine consecutive months (unless written permission is given by the Head of HR).
- 2.2 HR or payroll will write to the casual worker and manager when they are paid for the ninth consecutive month to inform them that they can no longer be employed as a casual worker.
- 2.3 HR will publish guidance for managers and new casual employees to publicise the new policy.

3. Conclusion

- 3.1 The current use of casual workers leaves the Council in a vulnerable position which, as demonstrated in the recent ET claim, cannot be defended.
- 3.2 The recommendations above will take decisive action to deal with this issue in the future.
- 3.3 The position regarding those 'casual' workers who have worked regularly for the Council for over one year will be considered by the Budget Monitoring Panel.

Executive Report

1. Introduction

- 1.1 This report explains the concerns over the current employment of casual workers within the Council.
- 1.2 This report explains how casual workers are currently used and the difficulties caused by some managers not following HR guidance on the correct use of casual staff.
- 1.3 The report recommends a solution to resolve the current position where the Council is at risk of legal challenge from 'casual' workers with employment rights. This report is presented at this time because the risk of legal challenge, which was predicted, has turned into a real legal challenge and the Council could not successfully defend the claim.

2. Current Position

- 2.1 The Council currently employs approximately 230 casual workers in a variety of posts. Many of these workers are used to cover periods of unexpected absence, holiday periods or additional work pressures at short notice.
- 2.2 The majority of the casual workers are in Community Services and Children & Young People; particularly in Cultural Services, Youth Services and Education. These workers complete timesheets on a monthly basis.
- 2.3 The HR guidance states that casual workers should be offered short term work and then a break in work should take place. There should be no mutual obligation either by the Council in promising to offer work or the worker in promising to accept the work offered. Casual workers, by the nature of their engagement, do not have to book annual leave or report sickness absence.
- 2.4 However, a large number of these casual workers are working on a regular basis with no break in employment. In some of the key areas they are being offered regular working hours and are often integrated as part of the team. They often attend team meetings and training sessions, phone in when sick and book time out for leave.
- 2.5 This integrated working has led to a number of workers accruing continuous service with the Council. This accrual means that a large number of so called 'casual' workers have actually accrued the rights to maternity leave and pay, holiday and sickness entitlements and the right to have a written contract of employment. They also have the right to join the Local Government Pension Scheme. However the Council is not giving these rights to the employees because they are wrongly labelled as 'casual'.
- 2.6 At present there are approximately 70 workers with over one year's service and a further 40 workers with over two years. This means that 110 people have the right to claim unfair dismissal if their employment ends; and 40 have the additional right to a redundancy payment.

2.7 This issue has been highlighted recently by a claim submitted to the Employment Tribunal from a former casual worker who worked in Education. He based his claim of unfair dismissal on the fact that his hours ceased suddenly. He had previously worked timetabled hours for a period of over two years. He has also claimed backdated holiday, sickness and redundancy pay. The external legal advice stated that this claim could not be successfully defended and the Council has had to settle out of court. An extract from the external legal advice is shown at Appendix A. It reads like a case study on what can go wrong when the HR guidance (on the intranet) on the employment of casual workers is not followed by managers.

3. Recommendation

3.1 Introduce a new HR policy under which no casual worker will be paid for more than nine consecutive months unless the Head of HR agrees in writing to an exception to the policy. HR or payroll will write to the casual worker and manager when they are paid for the ninth consecutive month to inform them that they can no longer be employed as a casual worker. If the worker has not been paid for each of the previous nine months (in other words there are breaks of a least one month in service) they will be able to remain on the register as casual workers.

3.2 This discipline will ensure that managers use casual workers properly. If a manager wishes to employ a casual worker beyond the nine months, and does not wish to put them on a permanent 'core' contract, the casual worker should be advised to register with an external recruitment agency. The agency would then be the employer. Under this new policy in the future no further risks in relation to casual workers will be attached to the Council.

3.3 HR will publish guidance for managers and new casual employees to publicise the new policy.

3.4 The position of the casual workers already employed by the Council for over one year will be considered in a special report to the Budget Monitoring Panel, which will examine the work undertaken and the funding of these 'casual' posts.

4. Conclusion

4.1 The current use of casual workers leaves the Council in a vulnerable position which, as we have found in the latest ET claim, cannot be defended.

4.2 The recommendation above takes decisive action to deal with this issue.

Appendices

Appendix A – An extract from the external legal advice on the ET claim submitted by a former casual worker

Consultees

Local Stakeholders: n/a

Officers Consulted: CMT, Corporate Board

Trade Union: Unison and GMB