

Use of Casual and Fixed Term Employees and Agency Workers

Reference: *
Version No: *.
Issue Date: *

Document Control

Document Ref:	HRAN CAFTW	Date Created:	April 2008
Version:	1.5	Date Modified:	
Revision due			
Author:	Jane Milone	Sign & Date:	May 2011
Head of Service:		Sign & Date:	
Equality Impact Assessment: (EIA)	Date undertaken:		
	Issues (if any):		

Change History

Version	Date	Description	Change ID
1.1	Apr 09	Take account of changes to Statutory Dispute Regulations	
1.2	Jun 10	Take account of redundancy costs for fixed term contracts	
1.4	Mar 11	Linked to pre-employment checks procedure	
1.5	May 11	Include policy on casual employees	
1.6	May11	Amend policy on casual employees	ROR v2

Related Documents – follow hyperlinks in text

Contents

1.	Purpose	3
2.	Applicability	3
3.	Definitions	3
4.	What sort of temporary worker do you need?	4
5.	Policy on the employment of casual employees.....	4
6.	Appointing and employing casual employees	5
7.	Appointing and employing fixed-term employees	5
8.	Termination of fixed term employment contracts	6
9.	Fixed-term contracts with a redundancy liability.....	7
10.	Engaging agency workers	8
11.	Use of consultants	9
12.	Appendix A – deciding which sort of temporary worker to employ	10

1. Purpose

- 1.1. This guidance sets out how the Council will employ or engage workers other than on on-going (permanent) contracts of employment.

2. Applicability

- 2.1. This guidance applies across all services within the Council. Schools are advised to comply with the guidance.
- 2.2. Employees will normally be employed on permanent contracts of employment, terminable by notice from either party. However, there may be some circumstances where it is appropriate to employ staff on a temporary basis. In some circumstances, a line manager can employ staff through an agency, or use casual or fixed term workers.
- 2.3. Some reasons for using additional temporary employees could include;
 - 2.3.1. short term increases in business activity (e.g. Visitor Centre open for the summer months)
 - 2.3.2. to act as cover when permanent staff are away (e.g. maternity leave, sickness absence, secondment)
 - 2.3.3. during a period of change when the need for a permanent member of staff has not been properly established but there is still work to be done.
 - 2.3.4. need for specific skills/expertise for a fixed period of time (e.g. to implement a specific project)

3. Definitions

3.1. Casual Worker

- 3.1.1. Someone who supplies a specific need for work and has periods of employment with breaks in between where no work is performed
- 3.1.2. There is no mutual obligation for either the employer to provide work or for the worker to undertake the work
- 3.1.3. In some areas of the Council it is the practice to hold a 'bank' of casual employees who have been through a selection process (and sometimes training) and who have signalled their willingness to work at short notice on an irregular basis.

3.2. Agency Worker

- 3.2.1. Someone who is supplied by an employment agency to carry out agreed tasks for the Council.
- 3.2.2. Agency workers are not employees of the Council and may or may not be employees of the agency.
- 3.2.3. The Council pays the agency for the services of the individual and the agency is responsible for paying the individual. If the individual is also an employee of the agency, the agency will also be responsible for paying holiday pay and sick pay.
- 3.2.4. Note that changes to the Agency Worker Regulations will introduce additional obligations on the Council as the contractor for agency workers later in 2011.

3.3. Fixed Term Worker

- 3.3.1. Someone who works on a time-limited contract which ends either on a specified date in the future (e.g. 'on 31st August 2012'), or which is expected to end when a specified event takes place (e.g. 'when the post holder returns from maternity leave').
- 3.3.2. Fixed term employees are employees of the Council and are entitled to all the benefits of employment offered by the Council (i.e. they should be treated no less favourably than a comparable permanent employee of the Council).

4. **What sort of temporary worker do you need?**

- 4.1. Use the examples at appendix A to help you decide whether you need to employ a casual worker, or a fixed term employee, or to engage someone from an agency.
- 4.2. Generally you should consider using;
 - 4.2.1. a casual employee when you have immediate, short term, unplanned fluctuations in demand – for example, to cover leave or sickness – and you do not need to rely on a particular individual to be available for the work.
 - 4.2.2. a fixed term employee where you have work planned for a specific period (e.g. a time-limited project), and you need to rely on the worker to be available personally for the work, but you have time to plan a recruitment process.
 - 4.2.3. an agency worker where you have planned work as above, but you need someone to start work immediately (e.g. long term sick leave which must be covered immediately for operational reasons, or a project of a very short duration).

5. **Policy on the employment of casual employees**

- 5.1. If a casual worker is used regularly, or can demonstrate that he/she can rely on the availability of work, or can demonstrate the employer expects him/her to be available for work when the need arises, there is a risk that an employment contract will develop by default, even if this is not in writing. In these circumstances, the

worker can make a claim for full employment status and full employment rights (e.g. the right not to be unfairly dismissed). This is regardless of the number of hours worked.

- 5.2. It is WBC policy that no casual employee may be engaged and paid for more than nine consecutive months.
- 5.3. The period of nine months will commence on the date on which the employee first works in paid employment with the Council
- 5.4. HR will monitor employment of casual employees and will inform the line manager when a casual employee is paid for the ninth consecutive month. HR will then write to the casual employee to inform him/her that he/she can no longer be employed as a casual worker by the Council.
- 5.5. The Head of HR may agree exceptions to this policy upon submission of a case by a Head of Service. An exception will only be agreed where this will not put the Council at risk of employment rights claims by a casual worker. Gaps in service where no work was offered to the casual worker may not break continuous service (as they may be a temporary cessation of work).

6. Appointing and employing casual employees

- 6.1. Casual workers are paid through the WBC payroll, on completion and submission of a [timesheet](#).
- 6.2. The line manager should complete a '[Casual Worker Letter Request form](#)' for each casual worker which should be returned to the Recruitment Team in Human Resources.
- 6.3. Casual workers are subject to the same pre-employment checks as permanent members of staff. These include references, right to work in the UK, medical clearances and Criminal Records Bureau checks. These must be undertaken before an individual can undertake work on behalf of the Council and must be built into the appointment process. See the [Pre-employment Checks Procedure](#) for further information.
- 6.4. Casual employees will be eligible to apply for posts advertised in the internal vacancy bulletin if they have been paid for three consecutive months.
- 6.5. The Human Resources Recruitment team can provide advice and assistance on all aspects of appointing casual workers.

7. Appointing and employing fixed-term employees

- 7.1. Standard recruitment practices apply when making a fixed term appointment. This includes advertising the vacancy, following the appropriate procedures for shortlisting and interviewing, and ensuring the appropriate pre-employment checks are undertaken. See the [Recruitment and Selection Policy and Procedure](#) and the [Pre-employment Checks Procedure](#) for further information. For further advice contact the Human Resources Recruitment team.

- 7.2. Fixed term employees should be employed on terms that are no less favourable than a comparable permanent employee. That is to say, the fixed term employee should have the same pay rate and benefits as permanent employees, which includes access to the pension scheme (where employed for over three months) and car user allowances.
- 7.3. There may be some benefits that are not practical to offer to a fixed term employee (e.g. car lease scheme, where the fixed term contract is for less than three years). In which case it is reasonable to compensate the fixed-term employee by offering alternative benefits so that the value of the total package is equal to a comparable permanent employee.
- 7.4. The reason for making an appointment fixed-term (rather than permanent) must be genuine and must be detailed in the employment contract. Genuine reasons for making an appointment on a fixed term basis could include;
- providing cover for a permanent employee who is absent (e.g. maternity leave, long term sick leave, secondment);
 - working on a project where the funding is time-limited, or a project with a finite timescale;
 - providing interim support during a short-term period of organisational change.
- 7.5. It is not good practice (and lays the employer open to challenge) to offer an employee a fixed term contract where there is no genuine reason – for example, where the post is permanent, but is offered to an applicant on a fixed term basis because the recruitment interview raised some doubts about the candidate's ability to undertake the role. In such circumstances, the choice should be either not to appoint, or to appoint on a permanent basis and ensure that the perceived shortcomings are taken into account when planning the induction process, and the probationary period if applicable.
- 7.6. Although there is no limit on the duration of a first fixed term contract, when a fixed-term contract is renewed or another offered without a break in service, and the employee acquires four years' continuous service, the fixed term contract will become permanent from the date on which the employee acquired the four years continuous service. This will be the case unless the employer can justify the continued employment of the employee under a fixed-term contract on objective grounds. However, this will be difficult to demonstrate, so the general expectation in West Berkshire Council is for a contract to become permanent once four years' continuous service has been reached. If a new/extended fixed term contract has an expiry date, the expiry date will no longer have an effect if the employee has more than four years' continuous service.
- 7.7. Employees on fixed term contracts are eligible to apply for jobs advertised in the internal vacancy bulletin.

8. Termination of fixed term employment contracts

- 8.1. Expiry of a fixed-term contract without renewal is a dismissal in law. It follows that there must be a fair reason for the dismissal and the line manager should consult the employee before the contract expires. Please contact the Human Resources Operations team for further advice on the termination of fixed term contracts.

- 8.2. Employees with more than one year's continuous service are able to claim unfair dismissal if the reason for the dismissal is deemed unfair. However, there can be fair reasons for dismissal (e.g. redundancy or 'some other substantial reason') provided that correct procedures are followed.
- 8.3. The employment contract must specify the reason for the fixed term nature of the contract and the reasons for the expiry of the contract. This will be used in determining whether the dismissal is fair (e.g. 'the contract is fixed term to cover the absence of the substantive post holder on maternity leave. The contract will last for no longer than one year and will expire on the return of the absent employee. The exact expiry date is not yet known.').
- 8.4. Where an employee has more than two years' service, it will be possible for him/her to claim a redundancy payment if the reason for ending the contract is redundancy. These costs are to be met by the service area and should be built into the budget at the point of recruitment (see section 9). Employees are not legally able to 'waive' their right to a redundancy payment.
- 8.5. If the reason for the fixed term appointment is to cover the absence of a permanent member of staff, and the fixed term contract ends when this employee returns, the reason for dismissal is not redundancy and a payment cannot be claimed.
- 8.6. If a fixed term contract is terminated before the agreed end date, it is possible for an employee to claim breach of contract unless the reason for dismissal is misconduct. For this reason a notice period is always included in WBC fixed term contracts and termination of the contract before the expiry date may take place by giving appropriate notice on either side. However, the Council must still have a fair reason for dismissal if it gives notice, and may be subject to a claim if the dismissal is unfair.
- 8.7. Where a fixed term contract is to be terminated at the agreed end date, and the reason for the dismissal is not redundancy the line manager should send a letter to the employee a few weeks prior to the expiry date, outlining the reasons for the non-renewal of the contract, and inviting the employee to a meeting to discuss the termination of the contract. It is helpful for the manager to undertake an exit interview (see [West Berkshire Council - Leavers, Retirement and Resignation](#)).
- 8.8. Human Resources can provide information and advice at all stages of the expiry of a fixed term contract.

9. Fixed-term contracts with a redundancy liability

- 9.1. Where the reason for dismissal at the expiry of a fixed term contract is redundancy, any potential costs should be built into the full cost of the appointment.
- 9.2. If the reason for the expiry of the fixed term contract is that a project has come to an end or funding has run out, this would normally meet the definition of redundancy¹. This should be established at the point of recruitment. When the contract is coming to an end, regardless of the length of service, it is important the correct redundancy procedures are followed as this will ensure the dismissal is fair (See [West Berkshire](#)

¹ as defined in S139 of the Employment Rights Act 1996

Council - Managing organisational change). Procedures will include providing assistance with seeking alternative employment for employees at risk of redundancy.

- 9.3. Liability to pay a redundancy payment occurs where the employee has been employed continuously in any local government² employment for a period of two or more years at the date of termination of employment. This means that an employee appointed for one year with WBC, immediately following employment with another authority or school, will be entitled to a redundancy payment based on the total continuous local government service that they hold.
- 9.4. Where the funding source is external, there must be an agreement that WBC may use the funding to meet the costs of any redundancy. If the costs of the fixed term appointment cannot be fully met, the post should not be approved for recruitment. Recruiting managers must consult both the Head of Service and the relevant Finance Manager before proceeding with such appointments.
- 9.5. The recruitment process should select the most suitable candidate for the post, regardless of the potential for redundancy costs, but these costs can be offset by reducing the term of the employment contract.
- 9.6. Where the reason for the expiry of the contract is likely to be redundancy, the wording for the job advertisement must say 'up to' the expected duration of the contract (e.g. 'the post is available for up to one year'). This will provide the flexibility to reduce the contract term if required.
- 9.7. The Human Resources Recruitment Team can provide advice on the potential redundancy costs, once the recruiting manager has a preferred candidate.
- 9.8. Once redundancy costs are known, the precise duration of the fixed term contract can then be offered to the candidate. It is recognised that reducing the duration of the contract to cover exit costs may mean that the preferred candidate turns down the offer. The recruiting manager may wish to have a second choice candidate in case this happens (Note: Human Resources will also need to calculate the potential for redundancy costs for this candidate also).
- 9.9. The recruiting manager should ensure the relevant Finance Manager sets aside funding to meet the potential redundancy costs.
- 9.10. Where redundancy costs are significant, and the contract term would be reduced to the point where it would no longer be viable, advice should be sought from the Human Resources Recruitment Manager.

10. Engaging agency workers

- 10.1. All administrative agency staff requirements **must** be processed through Human Resources (Recruitment team). The Council has agreed preferential rates with a designated employment agency.
- 10.2. When appointing non-administrative agency staff (e.g. technical or specialist staff), managers can approach an appropriate agency directly. However, managers

² Meaning - employment with a related employer under the terms of the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999

should check with the Contract and Procurement Officer in Legal and Electoral Services to ensure that the agency provides terms and conditions favourable to the Council.

- 10.3. The costs of using agency staff are met by the service area. This includes the any costs associated employing the agency worker directly (e.g. 'temp to perm' fees).

11. Use of consultants

- 11.1. In some circumstances, managers may decide it is more appropriate to engage the services of a consultant.
- 11.2. Before engaging self-employed consultants, managers must confirm with their Head of Service that they have the authority to do so.
- 11.3. There are specific rules and procedures that apply when using consultants and advice must be obtained from the Contract and Procurement Officer in Legal and Electoral Services.

12. Appendix A – deciding which sort of temporary worker to employ

- 12.1. A casual employee – when you have immediate, short term, unplanned fluctuations in demand and you do not need to rely on a particular individual to be available for the work.
- 12.1.1. This is particularly useful for some service areas, where there may be a need to acquire a 'bank' of workers who can be used to accommodate short term fluctuations in demand (e.g. staff absences). As there is no obligation to offer work you can choose the most suitable person for the work available.
- 12.1.2. However, if the worker is used regularly or can demonstrate he/she can rely on the availability of work, or can demonstrate the employer expects him/her to be available for work, there is a risk an employment contract will develop, even if this is not in writing. The worker can make a claim for full employment status and full employment rights, regardless of the number of hours they have worked.
- 12.1.3. Someone who is needed to work every Friday and Saturday during the Summer months, for example, will **not** meet the definition of a casual worker
- 12.2. A fixed term employee – where you have work planned for a specific period (e.g. a time-limited project), and you need to rely on the worker to be available personally for the work, but you have time to plan a recruitment process.

- 12.2.1. Fixed term workers are directly employed by the Council therefore may offer higher levels of commitment.
- 12.2.2. It is usually a cheaper option than using staff from an agency, particularly when employing someone over a longer period of time (e.g. over 3 months) and is usually the most viable option if there is the possibility the contract may be extended or become permanent.
- 12.2.3. However, the recruitment process may be lengthy (requires advertisement, shortlisting, interviews etc)
- 12.2.4. The person will be a Council employee with employment rights and these may include redundancy costs when the contract comes to an end.
- 12.3. An agency worker – where you have planned work as above, but you need someone to start work immediately (e.g. long term sick leave which must be covered immediately for operational reasons, or a project of a very short duration).
- 12.3.1. Agencies can usually supply someone at short notice. Agencies are also often useful where specialist skills are needed.
- 12.3.2. The worker remains the responsibility of the agency and any complaints regarding conduct, attitude, capability etc would be referred to the agency. If the worker is unsatisfactory, or becomes unavailable for work, the agency would be expected to find a replacement.
- 12.3.3. However, agency workers can be expensive as the agency will charge a fee over and above the costs of the worker. If the agency worker subsequently becomes a Council employee, a further sizeable fee may also be payable. If the post is long term, or likely to be permanent, use of an agency worker may not be cost effective.
- 12.3.4. A full external recruitment process must be undertaken before an agency worker can become a permanent employee. Agency workers are not eligible to apply for jobs via the internal bulletin.