

# Notice of Meeting

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## Personnel Committee

**Friday, 3rd June, 2011 at 10.00 am**  
in Committee Room 2 Council Offices  
Market Street Newbury

Date of despatch of Agenda: Wednesday, 25 May 2011

For further information about this Agenda, or to inspect any background documents referred to in Part I reports, please contact Moira Fraser on (01635) 519045  
e-mail: [mfraser@westberks.gov.uk](mailto:mfraser@westberks.gov.uk)

Further information and Minutes are also available on the Council's website at  
[www.westberks.gov.uk](http://www.westberks.gov.uk)



**To:** Councillors Adrian Edwards, Tony Linden, Mollie Lock (Vice-Chairman), Andrew Rowles and Quentin Webb (Chairman)

**Substitutes:** Councillors David Allen, Peter Argyle, Jeff Beck and Jeff Brooks

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# Agenda

## Part I

Page No.

1. **Apologies for Absence**  
To receive apologies for inability to attend the meeting (if any).
2. **Minutes** 1 - 4  
To approve as a correct record the Minutes of the meeting of the Committee held on 04 February 2011 and 17 May 2011.
3. **Declarations of Interest**  
To receive any declarations of interest from Members.
4. **Casual Workers (PC2279)** 5 - 24

Andy Day  
Head of Policy and Communication

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If you require this information in a different format, such as audio tape, or in another language, please ask an English speaker to contact Moira Fraser on telephone (01635) 519045, who will be able to help.



Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

**PERSONNEL COMMITTEE****MINUTES OF THE MEETING HELD ON  
FRIDAY, 4 FEBRUARY 2011**

**Councillors Present:** Brian Bedwell (Substitute) (In place of Tony Linden), Paul Bryant (Chairman), Adrian Edwards and Quentin Webb

**Also Present:** Robert O'Reilly (Head of Human Resources) and Spencer Scott (Risk & Safety Manager), Robert Alexander (Policy Officer)

**Apologies for inability to attend the meeting:** Councillor Tony Linden and Councillor Keith Lock

**PART I****24. Minutes**

The Minutes of the meeting held on 12 November 2010 were approved as a true and correct record and signed by the Chairman.

**25. Declarations of Interest**

There were no declarations of interest received.

**26. West Berkshire Council Health, Safety and Welfare Policy Update  
(PC2208)**

The Committee considered a report (Agenda Item 4) concerning West Berkshire Council's Health, Safety and Welfare Police Update. The report highlighted the need to update the Council's Health, Safety and Welfare Policy in line with legislative changes. Spencer Scott informed the Committee that Corporate Board and Management Board had both seen the report, and recommended option 3 be adopted. Spencer Scott highlighted those sections of the policy that had been amended for example the new section of the policy specific to managers.

Councillor Adrian Edwards was concerned about the length and detail of the policy, and thought that a policy should be a short statement with procedures attached which he accepted could be lengthy documents. Spencer Scott replied that it was a seven page document in comparison to the eight pages of the previous version. Spencer Scott mentioned that all employers with five or more employees had to create a Health, Safety and Welfare Policy and it had to accord with a prescribed format.

Councillor Edwards asked whether CRB checks would be included within the section concerned with Elected Members. Robert O'Reilly replied that this was not a Health, Safety and Welfare Policy issue and that it fell under the remit of Human Resources. Robert informed the Committee that if a Member's role brought them into contact with children or vulnerable adult then a CRB check would be carried out, however this prescription was set out in a separate document.

Following a question from Councillor Edwards, Spencer Scott said that it was compulsory for all new staff to undertake Health & Safety training, and that managers were required to undergo further training. Staff were required to undertake a refresh course every three years.

**PERSONNEL COMMITTEE - 4 FEBRUARY 2011 - MINUTES**

Councillor Edwards enquired why on page 5 it did not mention near misses, however it mentioned near misses needing to be reported to line managers. Spencer Scott said that only the most serious near misses required investigation. Councillor Paul Bryant asked if there had been a requirement to include near misses in the previous policy. Spencer Scott said that it was not necessary.

Councillor Edwards' final question was related to the policy implementation in schools. Spencer Scott informed Members that the policy was sent to schools, however because schools operated differently, the governors and head teachers would have the final sign off. And the Council could not force them to abide by its policies.

Councillor Quentin Webb asked why the document was referred to as a live document and further questioned whether it would be best to review it every three years? Spencer Scott replied that it would be reviewed annually; however it would only come back to the Personnel Committee if any major changes were made to the document.

Councillor Paul Bryant queried whether Members undertook Health and Safety training. Robert O'Reilly said it was not mandatory, but was highly recommended. Robert suggested that Spencer Scott speak to Andy Day to see if it should be made compulsorily. Councillor Bryant agreed.

Councillor Brian Bedwell enquired whether incidents were recorded in a way that would highlight whether the policy had resulted in positive outcomes. Spencer Scott said that this was difficult to do as performance management could result in certain incidents not being recorded. Councillor Bedwell said that to have it as a comparison it would be possible to compare year on year. Spencer Scott responded that there were already quarterly reports which were considered by Corporate Board and Management Board.

Councillor Paul Bryant asked apart from the change to see if Members were included in receiving compulsory training whether Members of the Committee were happy to approve the report. All Members present agreed.

**27. Exclusion of Press and Public**

**28. Employment of staff aged over 65 - implications of the ending of the default retirement age on 31st October 2011**

The Committee considered an exempt report (Agenda Item 7) concerning Employment of Staff aged over 65. Robert informed the committee that Corporate Board and Management Board both supported Option 3.

Councillor Adrian Edwards said that his heart went for option one, as there were many capable people out there who could still carry on with their job. However the Councillor said at these times his head would have to go for option 3.

At the vote all Members of the Committee voted unanimously to adopt Option 3.

*(The meeting commenced at 2.00 pm and closed at 3.00 pm)*

**CHAIRMAN** .....

**Date of Signature** .....

# DRAFT

Note: These Minutes will remain DRAFT until approved at the next meeting of the Committee

## PERSONNEL COMMITTEE

### MINUTES OF THE MEETING HELD ON TUESDAY, 17 MAY 2011

**Councillors Present:** Adrian Edwards, Tony Linden, Mollie Lock, Andrew Rowles and Quentin Webb

**Apologies for inability to attend the meeting:** None.

#### PART I

**1. Election of Chair**

**RESOLVED that** Councillor Quentin Webb be elected Chairman of the Personnel Committee for the 2011/12 Municipal Year.

**2. Apologies for Absence**

There were no apologies received for inability to attend the meeting.

**3. Appointment of Vice-Chairman**

**RESOLVED that** Councillor Mollie Lock be appointed Vice-Chairman of the Personnel Committee for the 2011/12 Municipal Year.

*(The meeting commenced at 8.28 pm and closed at 8.29 pm)*

**CHAIRMAN** .....

**Date of Signature** .....

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

Portfolio Member Details	
<b>Name &amp; Telephone No.:</b>	Councillor Anthony Stansfeld - Tel (01488) 658238
<b>E-mail Address:</b>	astansfeld@westberks.gov.uk
<b>Date Portfolio Member agreed report:</b>	01 April 2011

Contact Officer Details	
<b>Name:</b>	Robert O'Reilly
<b>Job Title:</b>	Head of HR
<b>Tel. No.:</b>	01635 519358
<b>E-mail Address:</b>	roreilly@westberks.gov.uk

### **Implications**

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



## **Executive Summary**

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### **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

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## 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**

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

### **Consultees**

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**Local Stakeholders:** n/a

**Officers Consulted:** CMT, Corporate Board

**Trade Union:** Unison and GMB

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# Report to Personnel Committee on ‘Casual Workers – reducing the risk to the Council’.

## Appendix A

### Ex Employee “X” v West Berks Council Review on merits of claim to the Employment Tribunal

#### Summary of legal advice received from external solicitors

#### Introduction

X was engaged by the Council as a casual worker. X is claiming unfair dismissal, breach of contract, breach of the working time regulations and a redundancy payment. His claim depends firstly on whether he has employment status and secondly if he has continuity of service.

#### 1. Employee status

X was engaged directly by the service, rather than through an agency. There is no scope to argue that he is employed by an agency. The correct respondent to the claims is therefore the Council.

He was paid through the pay roll with tax and NI deducted at source, he was an employee, rather than an independent contractor or freelance worker.

X was not able to substitute another individual if he did not attend work. He had regular working hours. A letter advised X that if he works any additional hours, these should be agreed in advance. There is no suggestion from this letter that these arrangements are in place for a limited fixed period but rather this is part of a steady, ongoing relationship.

X attended staff meetings. It is assumed that he would have contacted the service if he was unable to attend due to ill health.

Tribunals can use a generous interpretation of employee status to ensure that legal protection is afforded to individuals. I would suggest on the basis of the information that we have, that X had employee status.

#### 2. Continuity of service

X states his employment ended without notice on (DATE). There is a legal presumption in favour of continuity of service. Assuming that he worked regularly during the year, the key issue is whether there was one week’s break in service (lasting from Sunday to Saturday) during this time. There are specific provisions as to what constitutes a week’s break in service.

There could be an agreement that he would be provided with work at a future date and this could be considered to create an overarching ‘umbrella’ contract. .

On the basis of the information that we have, it seems likely that X will have continuity of service.

### 3. Claims

#### 3.1 Unfair dismissal and notice

Assuming he can establish employee status and continuity of service, as explained above, his claim for unfair dismissal is likely to be successful as no procedure was followed in relation to his dismissal. *HR comment: the maximum compensation for unfair dismissal is £84,000.*

He would be entitled to a notice payment and a redundancy payment, if he can establish two years' continuous employment.

#### 3.2 Sick pay

If he is able to establish that he was an employee, the Tribunal may need to determine what his terms and conditions of employment are. In the absence of any express terms, he could argue that the JNC terms and conditions of employment ("the Green Book") would apply to his contract of employment. Under the Green Book he would be entitled to contractual sick pay.

Even if he does not convince the Tribunal that he should have been engaged on Green Book he should have been paid Statutory Sick Pay as an employee.

The amount owed to him would depend on how many days' sickness he took and whether he complied with the reporting procedures of the school.

#### 3.7 Other claims

The Tribunal could decide to award him damages for failure to provide a statement of particulars of employment, if he can establish that he is an employee.

### 4. Conclusion

Based on the information that we have received, he is likely to be able to establish that he is an employee with over one year's service. **He would therefore be able to pursue his claim for unfair dismissal and the other claims in the Employment Tribunal.**

# Use of Casual and Fixed Term Employees and Agency Workers

Reference: \*

Version No: \* \*

Issue Date: \*

## Document Control

<b>Document Ref:</b>	HRAN CAFTW	<b>Date Created:</b>	April 2008
<b>Version:</b>	1.5	<b>Date Modified:</b>	
<b>Revision due</b>			
<b>Author:</b>	Jane Milone	<b>Sign &amp; Date:</b>	May 2011
<b>Head of Service:</b>		<b>Sign &amp; Date:</b>	
<b>Equality Impact Assessment: (EIA)</b>	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**

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## **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 redundancy<sup>1</sup>. 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](#)

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<sup>1</sup> 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 government<sup>2</sup> 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

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<sup>2</sup> 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.

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