

SUPPLEMENTARY 1



THE CABINET

Tuesday, 21 October 2014

**Agenda Item 14a Amendment to Temporary and Agency Worker
Policy (Pages 1 - 12)**

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CABINET**21 October 2014**

This report is submitted under Agenda Item 14. The Chair will be asked to decide if it can be considered at the meeting under the provisions of Section 100B(4)(b) of the Local Government Act 1972 as a matter of urgency in order to ensure transparency and fairness in the appointment of temporary and agency workers and to introduce new measures to ensure value for money and tight budget control in the light of the Council's financial position.

Title: Amendment to Temporary and Agency Worker Policy	
Report of the Cabinet Member for Central Services	
Open Report	For Decision
Wards Affected: None	Key Decision: No
Report Author: Martin Rayson, Divisional Director of Human Resources and Organisational Development	Contact Details: Tel: 02082273113 E-mail: martin.rayson@lbbd.gov.uk
Accountable Divisional Director: Martin Rayson, Divisional Director of HR and OD	
Accountable Director: Graham Farrant, Chief Executive	
Summary: The Council has had a policy in place to guide managers in their use of temporary and agency staff for two years. It is appropriate for an organisation of this size to need to use temporary staff in order to cope with peaks and troughs in workload, cover for sickness absence and bring in specific skills as and when we need them. The changes made to this policy are largely in sections 8 and 9. A copy of the revised policy is attached at Appendix A . These changes require consultation on any new consultant or interim manager appointments with relevant Cabinet Members. It also requires an auditable selection process to take place prior to appointment.	
Recommendation(s) The Cabinet is asked to agree the revised Temporary and Agency Worker Policy as presented at Appendix A.	
Reason(s) As part of our efforts to minimise costs and maximise career opportunities for the permanent staff of the Council (and potential applicants from the community), we wish to strengthen the process for appointing temporary staff, notably, more highly-paid consultants and interim staff.	

1. Purpose of Policy

- 1.1 Using temporary workers enables the Council to access resources, specific qualifications, experience and skills to fill short-term requirements and resource-specific projects without engaging or entering into a permanent employer/employee relationship.
- 1.2 To achieve best value, the Council must have a consistent approach to the use of temporary workers with appropriate controls in place to address risks. This Policy sets out the basis on which people should employ non-permanent members of staff. The types of non-permanent staff covered by this policy are:
 - People on casual contracts
 - Fixed or short-term contracts
 - Consultants
 - Agency staff
- 1.3 The policy sets out the reasons for using the different categories of staff, as an alternative to employing people on permanent contracts and the process for their engagement.

2. Casual or “Zero Hours” Contracts

- 2.1 There has been a lot of media attention on the use and perceived mis-use of “zero-hours” contracts. This Council has reviewed its use of such contracts and has reduced the number of people currently employed on them (around 150 at July 2014). We have, where possible looked at alternative employment arrangements. However in certain circumstances their use is appropriate, such as in our Leisure Centres. We will continue to keep the use of casuals under review in the Council.
- 2.2 The strongest criticism of zero-hours contract in the media (leading to legislation currently before Parliament) is the use of exclusivity clauses in zero-hours contracts, preventing employees from supplementing income from other work. LBBD has never used such exclusivity clauses.

3. Agency Staff

- 3.1 This administration is committed to using agency staff and consultants only where essential, as a means of reducing costs and maximising opportunities for staff working in the Council and potential employees in the community. The main changes made to this policy are to strengthen the process whereby the employment of consultants and agency staff is agreed in consultation with appropriate Cabinet Members, to ensure that there is an auditable recruitment process for any consultants retained and to ensure that there is regular review (again in consultation with appropriate Cabinet Members), to ensure that they are retained only for as long as is necessary.
- 3.2 There are areas in the Council where there is extensive use of agency staff, such as in Children’s Social Care. We are not unusual as a Council in having difficulty in recruiting experienced permanent social workers. There is however a real focus on

re-packaging our offer to full time roles, so that we can get a better balance in that service area between permanent and temporary staff.

- 3.3 The main changes to the policy are in Sections 8 and 9 and relate to the appointment and retention of consultants and areas where there are high numbers of agency staff.

4. Implementation

- 4.1 This revised policy is already being applied at the request of the Chief Executive, but it is important that Cabinet formally agree it.

5. Financial Implications

Implications completed by: Carl Tomlinson, Group Manager, Finance

- 5.1 The decision to employ staff on a temporary basis must be taken in the context of available funding and budget management. Temporary staff can be more costly compared to permanent employees, therefore, effective management of temporary staff and consultants can contribute towards wider spend control.
- 5.2 Decisions on employing temporary or agency staff are taken by service managers and when an Interim Manager or Consultant is appointed, consultation is extended to include the Cabinet Member responsible for that service area. In all cases it is recommended by Finance that consultation is extended to the appropriate finance business partner to ensure that there is adequate capacity to fund the appointment.
- 5.3 Where an appointment is to cover a vacant post in the interim, it is expected that the allocated budget for the permanent post will be used to fund the appointment and will need to be maintained within the constraints of this budget.
- 5.4 Where an appointment is not covering a vacant role and is required to carry out a specific ad-hoc task, it is recommended by Finance that an Employment Variation Form be completed, following Finance sign off, to ensure that there is adequate budget for this appointment.

6. Legal Implications

Implications completed by: Chris Pickering, Principal Solicitor

- 6.1 The changes to the policy detailed in this report clarify the process around the use of temporary and agency staff rather than making changes to the effect of the policy. As such, there are no direct legal implications from this report. There is also new legislation in the form of the Zero Hours Contracts Bill 2014-2015 (awaiting its second reading in the Commons) which will necessitate further changes if it is eventually passed.

7. Other Implications

- 7.1 **Risk Management** – We ensure that all temporary staff are appropriately vetted and understand our policies around information management and health and safety so that the risks to the organisation and its customers are minimised.

7.2 **Staffing Issues** – The staffing issues are fully explored within the main body of the text

Background Papers Used in the Preparation of the Report: None

List of appendices:

Appendix A – Temporary and Agency Workers Policy (2014)

Temporary & Agency Workers Policy

1. Policy Statement

- 1.1 Using temporary workers enables the Council to access resources, specific qualifications, experience and skills to fill short-term requirements and resource-specific projects without engaging or entering into a permanent employer/employee relationship.
- 1.2 To achieve best value, the Council must have a consistent approach to the use of temporary workers with appropriate controls in place to address risks. This Policy sets out the basis on which people should employ non-permanent members of staff. It specifically sets out the processes for acquiring agency staff.

2. Scope

- 2.1 This Policy applies to all managers and staff of the London Borough of Barking & Dagenham (LBBD) who are involved in recruiting non-permanent workers. It applies to schools which have specifically chosen to adopt it.
- 2.2 A former employee of LBBD can only be appointed as a temporary worker if:
 - They are re-engaged as a LBBD employee on a fixed-term contract of employment, or
 - They are appointed as an employee of another organisation, such as an agency, after at least two years have passed since they left the Council's employment (unless prior written consent is given by the Divisional Director – HR & OD, which will follow consultation with the relevant Director).

3. Aims and Objectives

- 3.1 LBBD aims to ensure:
 - There is adequate workforce flexibility in times of changing demand, including access to temporary resources;
 - The opportunity for permanent posts to be filled will not be jeopardised by our use of temporary staff, nor opportunities for redeployment;
 - The use of temporary and agency staff is optimized and balanced in terms of efficiency, cost-effectiveness and risk.

4. Types of Temporary Staff

- 4.1 To ensure that resourcing is always cost effective a variety of alternatives to permanent contracts exists and these are outlined in the tables below. These all offer temporary staffing solutions. Each should be considered as a need arises and the most suitable option should be chosen. Managers should consult their Human

Resources Business Partner for advice on which types of staffing would be most suitable in the circumstances.

4.2 “Suitable” in this context means:

- The most cost effective method to acquire the right skills and knowledge;
- The best means to achieve the desired result within the time scale;
- The method which allows best use of Council skills and other resources including developing existing staff to strengthen our skill bank for the future.

4.3 The following categories of staff without permanent contracts are covered by this Policy:

Casual Contract
The contract is with LBBB and is an employer/employee agreement
Examples of Use (n.b. not comprehensive) <ul style="list-style-type: none">- When work availability is not regular (a discernible pattern of work, e.g. every Monday, would be considered regular work).- To cover short-term absences e.g. holiday, sickness or training days on an ad-hoc basis.- To deliver programmes of activities in Leisure Centres
Benefits <p>No contractual obligation to provide work. No contractual obligation to provide sick pay (unless sufficient NI contributions have been made over the preceding eight week period) or other benefits, except for holiday pay. Continuous service will not, ordinarily, be applicable.</p>
Considerations <p>The individual is under no obligation to accept work when offered. The individual has no job or earning security and commitment cannot be assumed. Depending on the level of use envisioned, a fixed or short-term contract may be a better option (see below).</p>

Fixed-Term or Short-Term Contract
The contract is with LBBB and is an employer/employee agreement
Examples of Use (n.b. not comprehensive) <ul style="list-style-type: none">- When a project or task will take a fixed amount time.- Where the individual is contracted to work an agreed number of hours over a specific period.- When funding for the work will cease at a pre-arranged date.- To cover pre-arranged long-term leave e.g. maternity leave, long-term sickness absence, secondment.- When working arrangements are to an agreed pattern of days or shifts.

Benefits

Clarity from the start for both employer and employee.
Contract will be linked to specific outcomes and have termination clauses.
Security for the individual for that period of time

Considerations

The individual may become eligible for statutory rights
Contracts have to be monitored as continuous extensions by default may become permanent contracts.
If the individual is from local government, continuous service may apply.

Consultant / Interim

This is a supplier / provider contract, not an employment relationship

Examples of Use (n.b. not comprehensive)

The same as for fixed-term contracts, but when a specific skill set is needed and is the most cost effective or only method of obtaining those skills.

Benefits

No employer obligation as there is no employment relationship.

Considerations

HMRC have specific requirements for self-employed consultants and interims. If these are not met LBBB may be seen in law as the employer.
Use of consultants and interims must be agreed by the relevant Director

Agency Worker

The individual is employed by the agency

Examples of Use (n.b. not comprehensive)

Engagement should normally be for short periods only, i.e. days or weeks. Only in certain circumstances should agency workers be engaged for months, e.g. where the Council is unable to recruit or it isn't feasible to provide short-term cover with a fixed-term contract.

Examples:

- Covering vacant posts
- Increased pressure on a service
- Specific project work (where a fixed-term contract is not a viable option)
- Staff sickness
- Cover for maternity absence/paternity leave
- Other short-term cover

Benefits

All employer obligations are met by the agency.
LBBB is under no obligation to continue to provide work and can terminate the contract at short notice.

Considerations

Can be expensive, particularly after 12 weeks.

Managers must be aware of the implications of the Agency Workers Regulations 2010.

Staff members could be denied valuable developmental experience

All agency staff should be acquired through the Adecco contract.

5. Hiring Agency Workers Through Adecco

- 5.1 The supply of agency temporary workers to LBBB is covered through the M-Star framework agreement by the Adecco Group under a contract dated 11 June 2012. Adecco have keen knowledge of the local market with branches in Barking and Romford and are highly experienced in the supply of temporary labour.
- 5.2 Hiring managers' sole method of placing an order for temporary cover should be via Beeline, Adecco's IT solution or using telephone numbers provided for out-of hours service and emergencies. The Beeline system is user friendly and when used correctly saves time as all processes are done on line (candidates' selection, interview setting, making an offer, on-boarding, timesheet approval, etc).
- 5.3 Adecco should be able to meet nearly all the requirements of the Council for agency staff, but there may be some occasions where this is not the case. Only where Adecco have indicated that a post cannot be filled should hiring managers place an order with another supplier. Except in these circumstances, acting outside the Adecco contract and inappropriate use of the contract has serious implications, among which contract compliance liability issues for LBBB and delay in payments being made to the temporary staff for work undertaken. Failure to follow the Council's arrangements for engaging agency workers via the Adecco contract may be considered a disciplinary matter.
- 5.4 Guidance on how to use the Beeline system correctly, out of hours and emergency service, contact details for the LBBB contract manager and the Adecco dedicated staff are available on the intranet.

6. Implications of the Agency Workers Directive

6.1 Definition of an agency worker

An agency worker is a person supplied by an employment agency to work temporarily for, and under the supervision and direction of, the Council. They have a contract of employment with their employment agency, rather than the Council. Limited Company workers are not included.

6.2 Entitlements of agency workers - from day one

From the first day of an assignment, agency workers are entitled to access the same benefits as comparable Council workers in the following areas:

- an induction pack
- catering facilities
- other collective amenities and facilities, e.g. child care and eye tests
- transport services, e.g. transport between sites
- toilets, shower facilities, rest rooms etc.
- car parking (they will have to purchase a ticket or permit)

- information about permanent vacancies (a job advertisement on the intranet or notice board is sufficient, providing agency workers are given the same access to these facilities as other, comparable staff members)
This does not include details of post that are matched for assimilation or ring-fenced when restructuring or for redeployees

6.3 Entitlements of agency workers - after 12 weeks

After completing 12 weeks in the same role on an assignment, agency workers are entitled to the same benefits as Council workers in the following areas:

- basic rate of pay
- overtime and shift pay
- hours of work, rest and breaks
- holiday entitlement
- paid time off for antenatal appointments

Pay must be calculated the same way as it is for comparable Council employees, taking into account the worker's qualifications, skills and experience, as appropriate. The agency worker will also benefit from any incremental progression applicable to Council employees (subject to performance criteria).

6.4 The 12 week qualifying period

The Agency Workers Regulations come into effect on 1st October 2011. This is the earliest date from which the 12 week qualifying period can start, which means that no agency worker could claim the 'entitlements after 12 weeks' described above, before 25th December 2011. There is no minimum amount of work which must be completed each week in order for it to count as one of the 12 for qualification purposes, e.g. even if only one day has been worked in a week, the week will still count.

6.5 Meaning of 'the same role'

When on an assignment, a worker's duties will be deemed 'the same role' unless:

- the agency notifies the worker in writing of the type of work they will be required to carry out in a new role, and
- the whole or main part of the assignment is, in practice, 'substantively different'

Any change of agency during the 12 week period will not affect qualification if the work undertaken is not 'substantially different'.

6.6 Breaks between assignments

If a worker takes a break from an assignment of under six weeks it will put on hold, rather than break, the continuity of the assignment as far as the 12 week qualifying period is concerned. If the break from an assignment is six weeks or greater, the 12 week period will reset other than in certain cases where breaks can extend beyond six week. These are:

- sickness, up to a maximum of 28 weeks (subject to medical evidence, if requested)
- a temporary cessation of work which affects all comparable employees, e.g. the school holidays for workers covering term-time only duties
- time off which relates to a statutory or contractual entitlement, e.g. annual leave and jury service

- a strike or lock-out When any of the above happens, the 12 week qualifying period will be put on hold, not reset.

For maternity, paternity and adoption leave, the qualifying period is not put on hold but continues to run for either (i) the original, intended duration of the assignment; or (ii) its likely duration, whichever is longer.

6.7 How the 12 week qualifying period ends

Once an agency worker has completed the qualifying period, they will remain qualified for equal treatment, as described above, until:

- there has been a break of six weeks since they last worked on the assignment; or
- they are engaged to undertake a significantly different role, either at the same or a different organisation

When either of the above occurs, the 12 week qualifying period must be completed from the start before the worker becomes eligible again for the benefits described in 'entitlements after 12 weeks' above.

6.8 Exemptions from the legislation

Temporary agency workers are not eligible for equal treatment to Council employees in the following areas:

- occupational sick pay
- membership of the Local Government Pension Scheme
- maternity, paternity and adoption pay
- redundancy pay
- any loan scheme run by the Council, e.g. season ticket loans
- any payment in respect of expenses, e.g. subsistence allowances

Any entitlements to the above will, instead, come under the contractual agreement reached between the worker and their agency.

6.9 Non-compliance with the regulations

Deliberate attempts to structure assignments in ways which prevent agency workers from qualifying or continuing to qualify for equal treatment are classed as avoidance tactics and are unlawful. The Council could be held wholly or jointly (with the agency) liable for such actions. It is not, for example, acceptable to hire an agency worker for just short of 12 weeks, terminate their contract and then re-employ them on a similar basis seven weeks later in order to avoid the 12 week qualifying period.

7. Control Mechanisms

7.1 In order to achieve its goals around the appropriate use of agency workers (and other non-permanent staff), LBBB needs to have in place appropriate controls. A bi-monthly record of the agency staff and employees on temporary contracts engaged by the Council will be considered by the Corporate Management Team and EJCC and will also be sent to the Trade Unions.

7.2 The Recruitment and Redeployment Panel will also have a role in assessing whether there are opportunities for people on the redeployment register to take roles currently being filled by agency staff, consultants and fixed term contracts.

8. Engaging above 20 Agency Workers

- 8.1 Where there is need for any service area to engage up to 20 agency workers and above, a written business case setting out the reasons should be submitted to the Divisional Director of HR and Organisational Development for approval. The Divisional Director of HR and OD will consult with the Cabinet Member for Finance and the relevant Cabinet Member.
- 8.2 The engagement should be reviewed every three months by the relevant Chief Officer in consultation with the Cabinet Member for Finance and the relevant Cabinet Member to ensure that the need for continuous engagement of 20 agency workers and above is still valid.

9. Recruitment of Consultants and Fixed Term Appointees

- 9.1 The recruitment and retention of any consultant either on a daily rate or on a fixed term contract should be preceded by a written business case setting out the reasons for the appointment. The document should include the scope of works to be undertaken by the consultant, the duration and rate of pay as well as the source of funding. It should specifically clarify why the function is required to be carried out by a consultant and cannot be delivered in-house by the current work force. The contracts **MUST** be for a maximum of 1 year for a fixed term contract and three months if on a daily rate.
- 9.2 This should be agreed by the relevant Chief Officer, advised by the officer initiating the request for a consultant, and a copy should be approved by the Divisional Director for HR and Organisational Development, in consultation with the relevant Cabinet Member for the service area and with the Cabinet Member for Finance.
- 9.3 The interview for the proposed appointee should be by a panel consisting of no less than three officers appropriate for the grade. The assessment / questions and outcome of the interview should be recorded and where it results in an appointment, the records should be kept on the contract employee file for the duration of three years.
- 9.4 The only exception to 9.1 - 9.3 above would be in cases of emergency, in which case the Chief Executive may dispense with the above procedure and appoint immediately, as they see fit, having consulted with the Leader and Cabinet Member for Finance, unless that is not possible. Thereafter the relevant Chief Officer (or the Chief Executive in their absence) should notify the Divisional Director of HR and OD who will advise the relevant Cabinet Member and the Cabinet Member for Finance.
- 9.5 All contracts should be reviewed every three months by the relevant Chief Officer, in consultation with the relevant Cabinet Member and the Cabinet Member for Finance, to ensure that the need for the consultant or fixed term appointee is still valid.
- 9.6 Before any extension or renewal is agreed, the relevant Chief Officer must review the structure to confirm that it is still appropriate and that all posts are required. Any decision to extend a fixed term contract must be taken by the relevant Chief Officer

in consultation with the Cabinet Member for Finance and the relevant Cabinet Member.

- 9.7 The above process shall be effective immediately to ensure that there is transparency and fairness in the appointments of these categories of workers and to deter the excessive use of such appointments ensuring value for money and tight budget control. LBBB is committed to building its own in-house expertise through training and a career development programme based on equality of opportunity for all employees.

(1 September 2014)