

# Surrey Heath Borough Council Human Resources

## Policy and Procedure for Fixed term, Casual & Temporary workers



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# Policy and Procedure for Casual, Fixed-Term and Temporary Workers

## 1 Introduction

The Council is committed to creating employment stability wherever possible; therefore, there are certain circumstances in which it is more appropriate to employ people on a temporary contract. This policy and procedure sets out when such contracts should be used in place of permanent contracts, and will ensure that such contracts are used only when it is both fair and justifiable to do so.

Such a need may arise when:

- there is a need for extra members of staff to work for a limited duration on a one-off task or project;
- extra members of staff are needed to cover seasonal peaks (so as to avoid the need for permanent staff to work excessive overtime);
- extra members of staff are needed on a temporary basis to cope with a surge in demand or in order to meet a client deadline;
- extra members of staff are needed to cover the absence of permanent staff, for example with regard to holiday, sickness absence or maternity leave;
- there is a need to prevent or eliminate an excessive backlog of work.

The process for engaging consultants can be found in the guidance notes for the Use of Consultants on the Council's intranet. [In the Equalities Action Group we were requested to make reference to IR35. SHBC will need to check whether a Contractor falls within scope of IR35 which would result in their tax and National Insurance being processed through our payroll systems. The enclosed link is a guide and not a definitive ruling on whether the individual should be treated as an employee or self employed](#)

<https://surreyheath.box.com/s/h09rk15ahbwaqqorby0viny7yvacc9gp4>

## 2 Definitions

### 2.1 Casual worker

A casual worker is a worker employed directly by the Council on an, as and when basis. A casual worker is used for covering absence but not on a regular basis. There will be no mutual obligation for either the employer to provide work or for the worker to undertake the work. Work offered may be refused by the casual worker.

From 6 April 2020 workers are entitled to receive a written statement of terms and conditions of employment which must include information on certain terms of employment, including benefits to which the worker is entitled.

Casual workers are protected from unlawful discrimination under the Equality Act 2010. Therefore, employers should deal thoroughly with grievances or complaints that they bring where there is a suggestion of discrimination or harassment.

## 2.2 **Fixed-term worker**

A fixed-term worker is a person with a limited-time contract of employment with the Council which is due to end:

- after a specific project or when a task is complete
- at a specific date (other than retirement)
- after a specific event

Fixed-term workers are employees of the Council, and are therefore entitled to terms and conditions of employment that are no less favourable than the terms and conditions of a comparable permanent employee, unless there is an objective reason for offering different terms. Under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034), a fixed-term contract is automatically converted by law into a contract of indefinite duration (i.e. a permanent contract) once the employee has completed four years continuous employment under it or renewals of it (unless an exception applies).

## 2.3 **Temporary or Agency worker**

An temporary worker is someone who has a contract with a **Temporary Work Agency (TWA)** (an employment contract or a contract to perform work personally) but works temporarily for and under the direction and supervision of a hirer (**the Council**).

A worker employed for a limited duration for the Council not on a fixed term contract:

- work experience
- sponsor schemes
- apprentices
- agency workers

Temporary workers may be engaged in one of two ways, these being:

- directly by the Council
- through an approved Temporary Work Agency.

~~2.3.1 An agency worker is someone who has a contract with a **Temporary Work Agency (TWA)** (an employment contract or a contract to perform work personally) but works temporarily for and under the direction and supervision of a hirer. Details of the policy and procedure for hiring an agency worker can be found in the **Policy and Procedure on the Use of Agency Workers**.~~

~~2.3.1 The Agency Workers Directive (Appendix 1) gives agency workers the entitlement to the same basic employment and working conditions as if they had been recruited directly, if and when they complete a qualifying period of 12 calendar weeks in the same job. It is not retrospective and for those agency workers already on assignment, the 12 week qualifying period will start from day one of employment at SHBC.~~

#### 2.3.4 Temporary Agency Workers must:

- Comply with all requests for the necessary pre-engagement and safeguarding checks.
- Provide evidence of professional qualifications where required by the role.
- Participate fully in induction and training and comply with Council Policies and Procedures.

#### 2.3.5 The Temporary Worker agency will:

- Comply with all requests for the necessary pre engagement and safeguarding checks. Additional safeguarding checks are required for agency workers working with vulnerable people.
- Provide evidence of professional qualifications where required by the role.
- Follow the procedure outline in Appendix 1 referring to **Equal Treatment**.
- Notify the agency worker, in writing, when there is a change of work or duties with the following:
  - notification that the role is a new one that is substantially different from the previous role;
  - a description of the new role; and
  - an explanation that the qualifying period will start again.
- during a strike or industrial action temporary worker agencies may not lawfully assign a temporary worker to the Council that is seeking to obtain temporary cover for the duties normally performed by an employee taking part in the strike or industrial action.

### **3 Scope**

This guidance on casual, fixed-term and temporary workers applies to all hiring managers. This policy and procedure should be read in conjunction with the following policy and all other relevant policies will apply:

- Employment Stability Policy

## 4 Policy Statement

The Council will use casual, fixed-term and temporary workers only to provide additional resources and allow for flexibility on a short-term basis from time to time.

## 5 Facilities and relevant vacancies

A worker who believes that he/she has not been provided with equal access or is being treated less favourably in relation to collective facilities or relevant vacancies may make a written request to the Council for information about such access.

Within 28 days of receiving such a request, the Council will provide the worker in writing with:

- relevant information about access to collective facilities and/or access to vacancies; and
- reasons for the treatment of the worker in relation to access to collective facilities and/or access to vacancies.

## 65 Equality Assessment

This policy applies to all hiring managers. This policy will apply to all line managers, Executive Heads Service and workers at the Council.

## 76 Principle and Aims

This policy sets out when such temporary contracts should be used in place of permanent contracts and will ensure that such contracts are used only when it is both fair and justifiable to do so.

## 7 Policy and Procedure

### 7.1 Line Manager

The Line Manager must:

- Consider the Employment Stability Policy and consult Human Resources prior to any decision to engage a fixed-term, agency worker or casual worker to ensure existing employees are considered.

- Set out a written request to the Executive Head of Service for additional resources to include:
  - the worker's intended start date;
  - approximate length of the assignment;
  - reason why additional resources are required;
  - appropriate rate of pay (based on current market conditions);
  - job description and advert; and
  - details of any preferred agency worker, if a choice of worker is offered by the agency.
- Not liaise directly with the agencies but should contact Human Resources with their approved temporary hiring request.
- Contact Human Resources with their approved fixed-term or casual worker hiring request.
- Consult with the Executive Head and Human Resources in advance of any proposed extension to the contract.
- Ensure that all necessary **CBS DBS** and safeguarding checks are conducted for fixed term workers, agency workers and casuals where required for the role (i.e. working with vulnerable people).
- Ensure that a Declaration of Interest form is completed and forwarded to Human Resources in all cases where the person is authorised to act on behalf of the Council.
- In line with Council policy the Corporate Management Team are authorised to grant extensions of agency workers in excess of 12 weeks.
- If the agency worker's assignment is extended an Additional Resourcing Form should be completed to prevent additional costs accruing. The form is located under the HR tab on SHBC's intranet. This process will enable HR to differentiate between initial requests and extensions.
- Inform Human Resources, ICT and Facilities promptly of all leavers, to ensure all Council property, passes etc. are returned and IT access is terminated.
- ~~Set out a written request to the Head of Service and Management Board for additional resources for either a fixed-term or casual worker to include:~~
  - ~~intended start date;~~
  - ~~approximate length of the assignment;~~
  - ~~reason why additional resources are required;~~
  - ~~appropriate rate of pay (based on current market conditions);~~
  - ~~job description and advert.~~

- ~~Contact Human Resources with their approved fixed-term or casual worker hiring request.~~
- ~~Consult with the Head of Service and Human Resources in advance of any proposed extension to the contract.~~
- ~~Ensure that all necessary CRB and safeguarding checks are conducted for fixed-term or casual workers where required for the role (i.e. working with vulnerable people).~~
- ~~Ensure that a Declaration of Interest form is completed and forwarded to Human Resources in all cases where the person is authorised to act on behalf of the Council.~~
- ~~Inform Human Resources, ICT and Facilities promptly of all leavers, to ensure that Council property, passes etc. are returned and IT access is terminated.~~
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## 7.2 Executive Head Head of Service

The Executive Head Head of Service must:

- ~~Approve all requests for fixed-term, temporary agency and casual workers prior to any contract commencing, and ensure that it is approved by the Management Board.~~
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- In conjunction with Human Resources review and monitor the continued business need for fixed-term, agency workers and casual workers.
- Ensure that all temporary agency workers are assigned from an approved suppliers list. The approved supplier list is available from Human Resources.
- Ensure compliance with this process.

## 7.3 Management Board Corporate Management Team (CMT)

It was agreed that this section referring to CMT should be removed as they do not have budgetary control for Casual, Agency or Fixed Term Workers

Corporate Management Team Management Board will:

- Review and approve as appropriate all fixed-term and agency workers.
- Review and approve any extensions of fixed-term and agency workers to prevent additional costs being accrued and to differentiate between initial requests and extensions.

- Review and approve any extensions of agency worker assignments beyond 12 weeks.

#### 7.4 **Fixed-Term, ~~and~~ Casual Workers and Agency Workers**

Fixed-term, ~~and~~ casual workers and Agency Workers must:

- Comply with all requests for the necessary pre engagement and safeguarding checks.
- Provide evidence of professional qualifications where required by the role.
- Participate fully in induction and training and comply with Council Policies and Procedures.

#### 7.5 **Human Resources**

Human Resources will:

- Provide advice to line managers on all requests for Fixed Term, Casual and temporary agency workers to ensure that internal processes have been followed and employees have been considered first.
- Contact the appropriate temporary agency worker agency on the preferred suppliers list once the written request has been approved and forwarded to Human Resources. (This point should be deleted as HR will not contact the agency. This is the responsibility of the Line Manager)
- In conjunction with Legal Services, will review negotiate and agree all temporary worker agency terms and conditions prior to the engagement of a temporary agency worker. This will ensure that all costs associated with the assignment and any subsequent employment are identified and minimised e.g. introduction fee. ( Delete this point as Legal Services are not involved)
- Notify the temporary agency if the temporary agency worker's work or duties have changed and this information must be passed to the temporary agency worker. (Delete this point as it will be the Line Manager to contact the agency)
- ~~Provide line managers with advice on all requests for fixed-term and casual workers with line managers to ensure that internal processes have been followed and employees have been considered first.~~
- Advertise all roles and produce paperwork accordingly.

This policy is available in large print if requested.

## Document revisions

Document revised (date)	Details of revisions made	Version

### Appendix 1

#### The Agency Workers Regulations

1 The Agency Workers Directive provides agency workers the entitlement to the same basic employment and working conditions as if they had been recruited directly, if and when they complete a qualifying period of 12 calendar weeks in the same job. Calendar weeks will be accrued regardless of how many hours the worker does on a weekly basis.

It is not retrospective and for those agency workers already on assignment, the 12 week qualifying period will start from day one at SHBC Agency workers should receive the basic terms and conditions that are equivalent to a person recruited directly by the Council to do the same job.

#### 2 From Day 1

Certain new rights apply from the first day that an agency worker is engaged by the Council. These include:

- Access to car parking
- Access to information on relevant external job vacancies

From day one agency workers will have access to vacancies. The effect of this may be that the temporary worker agency may require an introduction fee even if the application is for a completely different part of the Council. This may vary from temporary worker agency to temporary worker agency and will require hiring managers to check the terms and conditions of the temporary worker agency.

#### 3 After 12 weeks in the same job

3.1 When an agency worker completes the 12 week qualifying period in the same job, they are entitled to equal treatment of basic working and employment conditions including:

- The basic pay/salary
- Overtime payments;
- Shift/unsociable hours allowances and risk payments for hazardous duties;
- Annual pay increments;
- Vouchers or stamps that have a monetary value and are not “salary sacrifice schemes” e.g. luncheon vouchers, child care vouchers;

- Annual leave entitlement (including that in excess of statutory entitlement, this leave entitlement will be pro-rated to the length of the assignment).

They will also be entitled to equal treatment in relation to:

- Working time duration;
- Night work;
- Rest periods;
- Rest breaks

In addition, pregnant agency workers who have completed the 12 week qualifying period will be entitled to paid time off for ante natal appointments.

### 3.2 The basic terms and conditions do not include:

- Occupational sick pay (in excess of the statutory entitlement)
- Occupational pension contributions or scheme
- Occupational maternity, paternity or adoption pay in excess of statutory entitlement
- Redundancy pay (statutory and contractual)
- Notice pay (statutory and contractual linked to loss of employment)
- Guarantee payments as they apply to directly recruited staff if laid off
- A bonus or reward that is not directly attributable to the amount or quality of the work they have done
- Advances in pay or loans e.g. for season tickets
- Expenses such as accommodation and travel expenses
- Overtime or similar payments where the agency worker has not fulfilled qualifying conditions required of someone directly recruited
- Majority of benefits in kind
- Any payment for carrying out trade union duties
- Any payments that require an eligibility period of employment/service.

## 4 Absence procedure

The 12 week period does not need to be continuous. Certain breaks will pause the time during which the worker accrues service, and he or she will resume accumulating service on return from the break.

Absences during the qualification period which will pause are those due to:

- Breaks between assignments of not more than six weeks;

- Jury service of up to 28 weeks;
- For the purpose of taking annual leave;
- Organisational closure caused by a regular and planned shutdown of the workplace, which for the Council is the Christmas period; or caused by industrial action, for example a strike.
- Pregnancy:

If an agency worker is absent for a reason related to pregnancy or maternity during a protected period due to maternity, paternity or adoption leave the 12 week period will continue to accrue throughout the absence period. Absences that fall outside the above will normally have the effect of breaking service.
- More than one of the reasons listed above but excluding no more than six calendar weeks.

## 5 Family friendly rights and procedures

If the agency worker is pregnant, has given birth within the previous six months or is breastfeeding, she should inform her agency and the Council in writing as soon as possible. The Council will carry out a risk assessment in relation to the role carried out by an agency worker who is pregnant, has given birth within the previous six months, or is breastfeeding. If any potential risk to health and safety is identified, the Council will, where possible make reasonable adjustments to the role. If it is not possible to make reasonable adjustments to the role to remove the identified risks, the Council will inform the temporary worker agency and the temporary worker agency should seek alternative work for the agency worker. It is the temporary worker agency's responsibility to seek alternative work for the worker if a health and safety risk means that the assignment is unsuitable, and to pay her for the duration of the assignment if no suitable alternative work is available.

The agency worker's qualifying period continues to run (i.e. the qualifying period continues to accrue during the absence) if the break is due to pregnancy, childbirth or maternity and takes place during pregnancy or up to 26 weeks after childbirth (for example, pregnancy-related sickness absence or absence because there is a health and safety reason why the employee cannot carry out the role).

After the qualifying period, pregnant agency workers are also entitled to specific rights, including paid time off for antenatal care and, potentially, paid time off during an assignment if it is unsuitable for pregnant workers. The Council may request written evidence of the antenatal appointment (except for the first appointment).

## 6 Continuation of rights on completion of the qualifying period

When an agency worker has completed the qualifying period with a hirer, he or she will continue to be entitled to the rights under **Section 3.1** unless the agency worker:

- is no longer working in the same role with the hirer; or
- has a break during an assignment or between assignments, when he or she is not working and the break is not for a reason set out in **Section 4.**