



PERSONNEL COMMITTEE

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To: Councillors Barkley (Chair), Draycott (Vice-Chair), Hampson, Morgan, Poland, Shepherd and Snartt (For attention)

All other members of the Council
(For information)

You are requested to attend the meeting of the Personnel Committee to be held in Committee Room 2 - Council Offices on Tuesday, 4th December 2018 at 6.00 pm for the following business.

Chief Executive

Southfields
Loughborough

26th November 2018

AGENDA

1. APOLOGIES
2. MINUTES OF THE PREVIOUS MEETING 3 - 7

To confirm as a correct record the minutes of the meeting held on 3rd October 2018.

3. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

4. QUESTIONS UNDER COMMITTEE PROCEDURES 12.8

No questions were submitted.

5. PAY POLICY STATEMENT 2019/20 AND LOCAL GOVERNMENT PENSION SCHEME DISCRETIONS 8 - 34

A report of the Head of Strategic Support is attached.

6. TEMPORARY AGENCY WORKERS POLICY AND GUIDANCE 35 - 56

A report of the Head of Strategic Support is attached.

7. GUIDANCE ON THE RECRUITMENT AND EMPLOYMENT OF CASUAL WORKERS 57 - 67

A report of the Head of Strategic Support is attached.

FUTURE MEETING DATES

Please note further meetings of the Committee for 2018-19 are scheduled as follows:

12th March 2019

PERSONNEL COMMITTEE 3RD OCTOBER 2018

PRESENT: The Chair (Councillor Barkley)
The Vice Chair (Councillor Draycott)
Councillors Morgan, Poland, Shepherd and Snartt

Strategic Director of Corporate Services
CBC HR Manager (Strategy)
Democratic Services Officer (LS)

The Chair stated that the meeting would be recorded and the sound recording subsequently made available via the Council's website. He also advised that, under the Openness of Local Government Bodies Regulations 2014, other people may film, record, tweet or blog from this meeting, and the use of any such images or sound recordings was not under the Council's control.

8. MINUTES OF THE PREVIOUS MEETING

The minutes of the meeting held on 12th June 2018 were confirmed as a correct record and signed.

9. DISCLOSURES OF PECUNIARY AND PERSONAL INTERESTS

No disclosures were made.

10. QUESTIONS UNDER OTHER COMMITTEE PROCEDURES 12.8

No questions had been submitted.

11. AMENDMENTS TO POLICIES ON THE HUMAN RESOURCES A-Z INTRANET PAGE

A report of the Head of Strategic Support was submitted to inform the Committee of amendments to various policy documents published on the Human Resources A – Z intranet page (item 5 on the agenda filed with minutes).

Summary of discussion:

- (i) It was confirmed that the amendments had been agreed by SMT and JMTUM.
- (ii) It was agreed to make a further minor amendment to add the wording "will be made" at the end of the final bullet point on page 81 of the agenda (Redundancy Compensation section), for clarity.
- (iii) The importance of mental health issues among staff was raised. It was explained that a mental health issue was likely to be classed as a disability and, therefore, reasonable adjustments were appropriate. An Attendance Management guidance document had been agreed by the Personnel Committee in 2015 when it had agreed the Attendance Management Policy and Procedure.

That document included detailed information and advice about managing employees with all disabilities and specific triggers relating to workplace stress.

RESOLVED that the revisions to the Attendance Management Guidance, Job Profile Template, Organisational Change Policy and Procedure and Guidance on the Recruitment and Employment of Apprentices be noted, and the further minor amendment set out in (ii) above be made.

Reason

The policy and document amendments have been made to take into account of legislative changes and best practice. Further minor amendment made by the Committee for clarity.

12. MANAGING EMPLOYEE PERFORMANCE NJC AND JNC POLICIES AND PROCEDURES

A report of the Head of Strategic Support was submitted to gain approval to implement revised Managing Employee Performance Policies and Procedures (NJC and JNC Grade) and a revised Employee Performance Guidance document (item 6 on the agenda filed with minutes).

Summary of discussion:

- (i) It was agreed to make two corrections to the heading on page 118 of the agenda, to label the Appendix as Appendix A (rather than just Appendix) and to correct the typographical error in the word “Monitoring”.
- (ii) Emphasis on the informal stages of the process was welcomed, also the additional rigour that would come with a greater clarity of process. It was hoped that the revised process would encourage managers to address matters at an early stage, leading to improvement.
- (iii) The issue of manager confidence and training to implement the Policy was raised. In response, the support available to managers and training provision, including that to be undertaken in respect of the revised Policy, was briefly outlined. Support was available to managers from HR at all times and managers would be made aware of the importance of seeking that support if needed.
- (iv) Reference was made to the importance of ensuring that improved performance was sustained. It was agreed to add the words “and sustain” to the first sentence of paragraph 1.4 on page 103 of the agenda, to read “All employees have a contractual responsibility to achieve and sustain a satisfactory level of performance at work”.
- (v) In response to a concern that some managers may allow matters to remain in the informal stages for too long, it was stated that, in particular, the support the process provided for managers from senior managers should prevent that.
- (vi) There was brief discussion regarding a recent reminder to staff of security matters (security badges and visitors to the building, including children) and the position in those respects.
- (vii) The variations set out on page 118 of the agenda related only to the three specific officers of the Council listed. Stage 2 there set out correctly referred to the full Personnel Committee (and not a Panel of the Committee).

(viii) A consistent approach across the Council was essential to ensuring fairness.

RESOLVED

1. that the implementation of revised Managing Employee Performance Policies and Procedures (NJC and JNC Grade) and a revised Employee Performance Guidance document be agreed, subject to the corrections and amendment set out in (i) and (iv) above;
2. that an update report be submitted to the Committee in 12 months' time, setting out how the revised Policy and Procedure has been implemented, in particular whether managers have been trained and supported and felt confident to implement the new arrangements and whether the Council's performance managing employee performance has improved.

Reasons

1. To outline the process in relation to employee performance for NJC and JNC employees and the additional process in relation to the Council's three Statutory Officers (Chief Executive, Strategic Director of Corporate Services and Head of Strategic Support). Corrections and further amendment were made by the Committee for clarity and to ensure correct emphasis on importance of sustaining performance respectively.
2. The Committee wished to be updated on these matters at an appropriate point in time.

13. CHIEF EXECUTIVE'S PERFORMANCE AND DEVELOPMENT REVIEW

A report of the Head of Strategic Support was submitted to clarify the process by which the Chief Executive's Performance and Development Reviews were undertaken (item 7 on the agenda filed with the minutes).

Summary of discussion:

- (i) A clearly set out process and identified responsibility for ensuring that process was arranged were welcomed.
- (ii) The view was expressed that the effectiveness of the review was of most importance and the process should not be so formal as to prevent discussion and innovation.
- (iii) The Committee noted that experience of the process this time could inform the process in future, enabling improvements to be made where necessary.
- (iv) In response to a request for clarity as to why the Chief Executive's PDR had not been undertaken as required, it was confirmed that objectives had been set at the beginning of 2017/18 by the previous Leader and performance against those would be assessed by the Panel now in process. Reference was also made to the long term objectives set out in the Corporate Plan. The change of Leader was one of the reasons why the appraisal for 2017/18 and target setting for 2018/19 had not yet been completed, but the process set out in the report would ensure that that was rectified, also moving forward.

- (v) It would be useful if members of the Committee who had been appointed to the Panel were supplied with details of the 2017/18 objectives as a matter of urgency, as they had been asked to supply comments on the Chief Executive's statement of performance by 5th October 2018.

RESOLVED

1. that the Democratic Services Manager be asked to arrange Panel meetings to undertake the Chief Executive's PDR covering the appraisal for the 2017/18 municipal year and the target setting for the 2018/19 municipal year as soon as convenient;
2. that details of the objectives set for 2017/18, referred to in (iv) and (v) above, be sent to members of the Chief Executive's PDR Panel as a matter of urgency.

Reasons

1. To ensure that the process relating to the Chief Executive's PDR is followed in respect of these municipal years.
2. To assist Panel members in providing useful comments on the Chief Executive's statement of performance by 5th October 2018.

14. NEW NATIONAL JOINT COUNCIL PAY SPINE - 1ST APRIL 2019

A report of the Head of Strategic Support was submitted to obtain approval to implement the proposal relating to how the new national Joint Council (NJC) pay spine, which would be effective from 1st April 2019 would be implemented within the Council (item 8 on the agenda filed with these minutes).

Views were expressed that the report was clear, that the work had been complex and that it was good to see that there would be no losers as a result of the proposal and that the Trade Unions were in agreement. The fact that the Council paid a living wage to all its employees was welcomed.

RESOLVED that the implementation of a revised NJC pay spine effective from 1st April 2019, as set out in Option 1 in the report of the Head of Strategic Support, be agreed.

Reason

The national 2018 pay scales and allowances were agreed in April 2018 between the National Employers and the NJC Trade Union side. In order to comply with the principles of the pay agreement the Council needs to review and alter its local pay structure.

15. DATE OF NEXT MEETING

RESOLVED that the next meeting of the Committee (11th December 2018) be rescheduled to Wednesday, 5th December 2018 at 6.00pm*.

Reason

In accordance with the request of the Chair prior to and at this meeting.

**The Chair has since decided that the next meeting on 5th December 2018 should commence at 7.00pm, to accommodate members of the Committee who are Leicestershire County Councillors and will be required to attend a meeting taking place at the County Council that afternoon.*

NOTES:

1. No reference may be made to these minutes at the Council meeting on 5th November 2018 unless notice to that effect is given to the Democratic Services Manager by five members of the Council by noon on the fifth working day following publication of these minutes.
2. These minutes are subject to confirmation as a correct record at the next meeting of the Personnel Committee.

PERSONNEL COMMITTEE – 4TH DECEMBER 2018

Report of the Head of Strategic Support

Part A

ITEM 5 PAY POLICY STATEMENT 2019/20 AND LOCAL GOVERNMENT PENSION SCHEME DISCRETIONS

Purpose of Report

To gain Personnel Committee approval on the Council's Pay Policy Statement covering the period 1st April 2019 to 31st March 2020.

Recommendation

That the Pay Policy Statement for 2019/20, attached at Appendix A, proceed to Full Council for formal approval and adoption.

Reason

To ensure that the Council meets its obligations under Section 38 of the Localism Act 2011.

Policy Justification and Previous Decisions

Under Section 38 of the Localism Act 2011, local authorities in England and Wales are required to produce an annual Pay Policy Statement, which must be approved by Full Council and published on the Council's website before the commencement of each financial year.

Implementation Timetable including Future Decisions

The Pay Policy Statement will be submitted for consideration by Full Council at their meeting on 25th February 2019. If approved, the statement will be published on the Council's website either on or before 1 April 2019.

Report Implications

The following implications have been identified for this report

Financial Implications

There are no immediate financial implications arising from this decision.

Risk Management

There are no specific risks associated with this decision.

Background Papers: None

Annexes: Annex A – Pay Policy Statement 2019-2020
Annex B – Pension Discretionary Policies Information Sheet

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Part B

Background

1. On 15th November 2011 the Localism Act received Royal Assent. Under Section 38 of the Act, local authorities in England and Wales are required to produce a Pay Policy Statement for each financial year, which must be approved by Full Council.
2. The statement must set out the Council's policies in relation to:
 - i. The remuneration of its chief officers;
 - ii. The remuneration of its lowest-paid employees; and
 - iii. The relationship between the remuneration of its chief officers and the remuneration of its employees who are not chief officers.
3. For the purposes of this statement, remuneration includes basic salary, bonuses and other allowances or entitlements related to employment.
4. This is the eighth Pay Policy Statement published by Charnwood Borough Council since the Localism Act was implemented. The Pay Policy Statement for 2019/20 will be consulted on and it will also be presented at a meeting of JMTUM and Personnel Committee before going to Full Council for final approval.
5. The Pay Policy Statement for 2019/20 has been updated to provide a more comprehensive account of the Council's approach to the remuneration of its workforce.
6. The Council is required to publish the Pay Policy Statement for 2019/20 on or before 1st April 2019.

Key Points

8. The proposed Pay Policy Statement attached sets out:
 - The Council's approach to job evaluation and grading of posts;
 - Additional payments that employees are eligible to receive, such as overtime, enhancements etc.
 - The Council's pay multiple (the ratio between the highest paid employee and the median average salary of the Council's workforce), which remains at 5.31. It is considered that this figure has remained the same as the percentage increases have been similar in scope to those awarded in the previous pay award.
 - The Council's approach to pay progression, honorariums, market supplements, salary protection and the re-engagement of employees;
 - That there is no distinction between chief officers and other employees in relation to pension benefits and severance payments.
 - Pension Scheme Discretionary Arrangements – Regulation 60 of the LGPS Regulations 2013 (as amended) require each scheme employer to publish and keep under review five policies explaining how it will

apply certain discretions. The pension discretions have been published in accordance with pension requirements.

9. The sections which have been added in the Pay Policy Statement for 2019/20 are:

- Overtime and additional hours' holiday pay following recent case law relating to holiday pay that can be claimed when overtime is worked.
- Additional clarification in relation to Standby and Callout, Standby and Advisory or Emergency Contact Scheme.

10. Section that may be subject to an amendment in light of proposed legislative changes following agreement at Personnel Committee:

- The statement currently outlines that Full Council have the opportunity to vote on severance packages over £100,000 before they are approved. The information presented will clearly set out the components of the severance package (e.g. salary paid in lieu, redundancy compensation, pension entitlements, holiday pay and any bonuses, fees or allowances paid). It is anticipated that a cap on Public Sector exit payments at £95,000 under the Small Business, Enterprise and Employment Act 2015 will come into force in the near future. This has also been referenced within the current Pay Policy Statement.

11. Pension Discretions

Recent amendments to the LGPS regulations have expanded the period in which many deferred members can claim their pension without the need for employer consent. Since 2014, members who leave and are over age 55 may claim an actuarially reduced pension without employer consent. It has now been extended to all deferred leavers between 1 April 1998 and 31 March 2014 and some, but not all, who left before 1 April 1998.

The LGPS advised that there were 2 relevant areas for which policy decisions need to be made. The Council had the option to retain the current decision or not. Appendix B will need to be treated as an addendum to the Council's pre 2014 member policies.

The discretionary policies for decision are:

- Waiving any actuarial reduction for deferred members accessing their pension benefits, for compassionate reasons.

Current Position (Discretion not applied)
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The Council will not apply this discretion, unless there are exceptional circumstances.

The Personnel Committee and the Director involved will consider any cases and will decide whether the actuarial reductions should be waived. In all cases the financial position of Charnwood Borough Council must be considered.

- The Discretionary policy to switch on the rule of 85.

Current Position (Discretion not applied)
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The Council will not apply this discretion, unless there is a business case to support this as an alternative to a redundancy situation.
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It is recommended to simplify this approach that the current position is amended to state only that “The Council will not apply this discretion”.

Consultation

8. The statement was agreed at the SMT meeting on 29th August 2018 and JMTUM on 18th October 2018.

Pay Policy Statement 2019/2020

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Purpose

As a responsible employer Charnwood Borough Council is committed to delivering a fair, equitable and transparent policy covering pay and other employee benefits which improves flexibility in delivering services and provides value for money.

Within the framework of its terms and conditions of employment, the Council aims to develop and maintain appropriate pay systems and benefit packages to attract and retain motivated, flexible people who take responsibility, work as a team, improve performance and acquire new skills.

This Pay Policy Statement sets out the Council’s policies relating to the pay of its workforce for the period from 1st April 2019 to 31st March 2020, in particular the:

- Remuneration of Chief Officers;
- Remuneration of the lowest paid employees;

- Relationship between the remuneration of chief officers and employees who are not chief officers.

The statement meets the Council's obligations under the Localism Act 2011 and will enable the elected members of the Council to make decisions on pay.

The Council's Pay Policy Statement will be agreed by Full Council before the beginning of each financial year and will then be published on Charnwood Borough Council's website. The statement may also be amended by Full Council during the course of the year if necessary.

Scope

This statement applies to all employees of Charnwood Borough Council employed under the conditions of service of the following bodies:

- National Joint Council for Local Government Services (Green Book);
- Joint Negotiating Committee for Chief Officers of Local Authorities;
- Joint Negotiating Committee for Local Authority Chief Executives;
- Joint Negotiating Committee for Local Authority Craft and Associated Employees (Red Book).

Employees who have TUPE transferred across from other organisations will remain on their existing terms and conditions unless agreed otherwise.

Definitions

For the purposes of this Pay Policy Statement the following definitions will apply:

Remuneration

This includes three elements:

- Basic salary;
- Pension;
- Any other allowances arising from employment.

Chief Officers

Under the Localism Act 2011 a Chief Officer is defined as:

- The head of the Council's paid service designated under section 4(1) of the Local Government and Housing Act 1989;
- Its monitoring officer designated under section 5(1) of that Act;
- A statutory chief officer mentioned in section 2(6) of that Act;
- A non-statutory chief officer mentioned in section 2(7) of that Act;
- A deputy chief officer mentioned in section 2(8) of that Act.

In Charnwood Borough Council this definition would apply to the posts set out in [Appendix A](#).

Lowest Paid Employees

The Council currently employ apprentices who are paid at the applicable apprenticeship rate. Additionally Joint Negotiating Committee for Craft and Associated Employees (Red Book) apprentices are paid in accordance with the requirements of that agreement.

For all other posts, this refers to employees on Scale 1, Pay Point 10. This definition has been adopted as it is the lowest level of remuneration attached to a post within the Council, other than apprenticeship posts.

On 1 April 2013 the Council adopted the Living Wage rate applicable at that time. It was agreed that all pay awards after this date for all spinal column points within the Council, would be in line with the applicable percentage increase of the national pay agreement for local government.

Pay and Grading Structure

The grading of all posts within Charnwood Borough Council is determined using the nationally recognised Hay Job Evaluation Scheme. This is in order to ensure that all posts are graded and therefore rewarded financially through a fair and non-discriminatory process, that there is consistency in treatment between posts and that the Council complies with equal pay legislation. The scheme is an analytical one that takes into consideration three key elements of a post:

- Know How - the levels of knowledge, skill and experience (gained through work experience, education and training) which are required to perform the job successfully;
- Problem Solving - the complexity of thinking required to perform the job when applying Know How;
- Accountability - the impact the job has on the organisation and the constraints the job holder has on acting independently.

The Council follows the NJC national agreement on pay and conditions of service (the Green Book) which includes the use of national pay scales. Advice was taken from Hay during the implementation of the job evaluation scheme in order to determine the relationship between the scoring of posts under the scheme and the relevant pay grade.

However a small number of staff employed under the Joint Negotiating Committee for Local Authority Craft and Associated Employees (Red Book) are paid on a different pay scale, a copy of which is attached at [Appendix B](#).

Basic pay is paid in accordance with the evaluated grade of the post. Each grade comprises a range of scale points. A copy of the Council's pay and grading structure is attached at [Appendix B](#).

This NJC pay claim for 2018-2019 is made by the Joint Trade Union Side (UNISON, GMB and UNITE) to the Local Government Association. The existing pay award for

all employees up to and including P04 (SCP 49) follows the national award made by the National Joint Council for Local Government Employees and covers the period 1 April 2018 to 31 March 2020. The Craft Pay Rates for 2018 – 20 cover the period 1 April 2018 – 31 March 2020. A pay award covering the same period has been agreed for employees on Joint Negotiating Committee (JNC) terms and conditions for Chief Officer's. The same agreement was reached for employees on JNC for Chief Executives of Local Authorities.

Any future pay awards for all Charnwood Borough Council employees, including senior management on JNC grades and the Chief Executive will be administered as appropriate, if and when that pay award is agreed.

A copy of the Council's organisation chart, showing grades of posts, can be found on the [Council's website](#).

Details of senior management remuneration are published annually in the [Council's Statement of Accounts](#) which are available on the website.

The 'pay multiple' - the ratio between the highest paid salary (Chief Exec scale - spinal point 90) and the median average salary of the Council's workforce is 5.31.

The figure has remained the same as last year's pay multiple as the percentage increases were similar in scope to those awarded in the previous pay award.

Remuneration on Appointment

All employees are usually appointed to the minimum scale point applicable to the grade of the post. Managers have discretion in some circumstances to appoint to a higher scale point, subject to the maximum of the grade.

Full Council will be given the opportunity to consider remuneration packages over £100,000 per annum (including salary, any bonuses, fees or allowances routinely payable to the appointee and any benefits in kind to which the officer is entitled as a result of their employment) before new posts are established and advertised.

Market Premia

There is provision for the award of a market premium (i.e. a temporary additional payment) where it can be shown that the salary level of a job is having an adverse impact on the Council's ability to recruit and retain the appropriate calibre of employee into a post. The award of a market premium is subject to the agreement of the relevant Strategic Director. If approved, market premia are awarded for a maximum period of three years. It is anticipated that market premia will be awarded on very limited occasions. Details of the scheme can be found in the Council's Market Premia Policy and Procedure.

Incremental Progression

Chief Officers

Progression through the pay grade for Chief Officers is dependent on them achieving set criteria and objectives which are agreed at the officer's annual Performance Development Review. This does not apply to the Chief Executive as this role is on a spot salary and therefore does not have grade progression.

Other Employees

Subject to satisfactory service, employees covered by the conditions of service of the National Joint Council for Local Government Services and the Joint Negotiating Committee for Local Authority Craft and Associated Employees are eligible to receive annual increments on 1st April each year until they reach the maximum scale point for the grade of their job. If the employee's start date is between 1st October and 31st March then their first increment will be paid after completing 6 months in post. Any subsequent increments, until the maximum of the grade is reached, will be paid on 1st April thereafter.

The Joint Negotiating Committee for Local Authority Craft and Associated Employees operates a system of progression through the grade, which is subject to performance related criteria.

Enhancements

From 1 January 2014 the Council agreed a change in rate of enhancement for evening, weekend and bank holiday working for employees at Grade 6 and below. Employees required to work on Saturdays, Sundays and Bank Holidays as part of their normal working week will be recompensed at time and a quarter for evenings and Saturdays, and time and a half for Sundays and Bank Holidays.

Overtime Payments

'Overtime' is defined as hours worked in excess of 37 per week. However, part-time employees are entitled to the additional hours enhancements in circumstances in which full-time employees in the establishment would qualify. Employees in posts graded up to Scale 6 who work additional hours are eligible to receive payment at double time rate for hours worked on Sundays, bank holidays or extra statutory days and time and a half for hours worked at any other time.

Employees in posts graded SO1 and above, who work additional hours are not eligible for payment, but may receive time off in lieu.

Heads of Service are also authorised to make payments, within existing budgets, for overtime to employees graded SO1 to PO4 for time limited projects of a non-repetitive nature as follows:

- (a) Plain time up to an agreed maximum number of hours for a particular project and over a certain number of weeks/months; or
- (b) A lump sum to cover completion of a particular project by an agreed deadline.

Where the payment of a lump sum is agreed in accordance with (b) above, it should not be made in full unless the project is completed by the due date and that provision for claw back considered for inclusion in the scheme. Payments for overtime cannot be authorised retrospectively.

Overtime and Additional Hours Holiday Pay

Claims for overtime or additional hours (for part time employees) will receive a 12.07% increase for the hours worked. This increase is calculated on the relevant hourly flat rate.

Example – if you work for 2 hours overtime @ time plus ½ you will receive 3 hours pay. 12.07% will be added to 2 hours of that pay only as the flat rate element of pay.

Additional hours which have been agreed on a temporary basis as a variation to contract will not attract this uplift. The annual leave entitlement will be increased for the period that an employee works these additional hours.

Other Allowances

All Chief Officers receive allowances as detailed in the Conditions of Service of the Joint Negotiating Committee for Chief Officers of Local Authorities and the Joint Negotiating Committee for Local Authority Chief Executives. However, where these conditions are silent or do not cover an allowance or process, the Chief Officer / Chief Executive will receive the same as those employees covered by the National Joint Council for Local Government Services.

Copies of the conditions of service for all employees covered by this statement can be requested from the [Local Government Employers website](#).

Essential Car User

Posts that are designated as essential car user, including those of Chief Officers, receive a monthly allowance and are eligible to claim mileage allowances as per the NJC Conditions of Service.

Broadband

Employees who meet the criteria for home working are able to claim a broadband allowance. Details of the scheme can be found in the Council's Home Working Policy and Procedure.

Professional Fees

The Council will pay the annual fee for membership of a professional body if it is considered an essential requirement of the employee's post.

First Aid Allowances

Employees who are classified as a 'designated first-aider' are eligible to receive an allowance.

Standby and Call-Out Payments

Employees who are required to provide out of hours responsibilities or work for essential services that they undertake are eligible to receive a standby and call out, standby and advisory or emergency contact scheme payment. Employees graded at PO1 or above will not normally receive payment, unless there is a requirement for them to participate in a formal regular Standby and Call Out or Standby and Advisory Scheme arrangement. Those graded at JNC A or above are expected to respond as part of their role and will not receive any additional payments. Details of the scheme can be found in the Council's Policy for Standby and Call-Out, Standby and Advisory, and Emergency Contact Scheme Policy and Procedure.

Emergency Planning

Employees who volunteer to respond in emergency situations are eligible to receive a payment.

Subsistence

Employees who are eligible to claim subsistence do so in accordance with the rate agreed locally for subsistence.

Bonus Payments

The Council does not pay any group of employees a bonus.

Pension Benefits

All employees under the age of 75 are eligible to join the Local Government Pension Scheme. The scheme is a statutory scheme with contributions from employees and employers. Details of the scheme can be found on www.leics.gov.uk/pensions.

The scheme allows for the exercise of discretion by employers. A copy of the Council's approach to these discretionary regulations can be found at [Appendix C](#). The Council will consider each case on its merits, but has determined that its usual policy is not to enhance benefits for any of its employees.

The scheme provides for flexible retirement. To be eligible to request flexible retirement, the Council normally requires that an employee either reduce their working hours by a minimum of 40% and/or be appointed to a post on a lower grade. In applying this provision no distinction is made between employees.

Under the Local Government Pension Scheme there is no abatement (i.e. reduction or suspension) of pensions for employees who return to work after drawing their pensions except in the circumstance where they have previously been awarded "added years".

Honoraria

Subject to certain conditions, employees who are temporarily required to undertake some or all of the duties of a higher graded post are eligible to be paid an honorarium. Details of the scheme can be found in the Council's Honoraria and Acting-Up Policy and Procedure.

Salary Protection

Employees are eligible to receive salary protection for a period of up to three years if they are redeployed into a lower-graded post. Details of the provisions can be found in the Council's Organisational Change Policy and Procedure.

Severance Payments

Early Retirement (Efficiency of Service)

The Council has discretionary provisions for employees to seek early retirement on the grounds of efficiency of service. Details of the scheme can be found in the Council's Retirement Policy and Procedure.

Redundancy

The Council has a single redundancy scheme which applies to all employees. Redundancy payments are calculated in accordance with the Employment Rights Act 1996 and the 2006 Discretionary Compensation Regulations and are based on the employee's age, length of continuous local government service and salary. The payment mirrors the statutory table but provides a multiplier of 2. Details of the redundancy scheme can be found in the Council's Organisational Change Policy and Procedure.

Employees have the option of using their redundancy payment, in excess of the statutory redundancy payment, to purchase a period of membership in the Local Government Pension Scheme. The amount of membership purchased by the cash sum will vary depending on the age of the employee and the number of years' service.

The Council does not provide any further payment to employees leaving the Council's employment other than in respect of accrued annual leave.

Employees who have TUPE transferred into the Council on redundancy terms which are more favourable than those details above will retain these provisions as per TUPE legislation.

Full Council have the opportunity to vote on severance packages over £100,000 before they are approved. The information presented will clearly set out the components of the severance package (e.g. salary paid in lieu, redundancy

compensation, pension entitlements, holiday pay and any bonuses, fees or allowances paid).

N.B - It is anticipated that a cap on Public Sector exit payments at £95,000 under the Small Business, Enterprise and Employment Act 2015 will come into force in the near future.

Re-Engagement of Employees

Employees who have been made redundant are eligible to apply for vacancies which may arise after they have left the Council's employment. Any such applications will be considered together with those from other candidates and the best person appointed to the post. Any necessary adjustments to pension would be made in accordance with the scheme regulations.

Employees who are offered another post with the Council, or another employer covered by the Redundancy Modifications Order, prior to their redundancy leaving date and commence this post within 4 weeks of that date are not eligible to receive their redundancy payment.

Election Duties

The Chief Executive receives additional payments as the Returning Officer (or equivalent) for elections taking place within the Borough, to which role he has been appointed by the Council. These payments are funded by the organisation responsible for each election, which can include the Borough Council, County Council, Parish and Town Councils, and the Government.

Election fees and expenses for Borough, Town and Parish Council elections are agreed annually by Full Council. For other elections, the scale of fees and expenses is specified by the relevant organisation.

The Chief Executive may also, on appropriate occasions, require officers, which may include Chief Officers, to undertake Deputy Returning Officer roles and other election duties. They will be remunerated for undertaking these roles.

Publication and Access to Information

This Pay Policy Statement will be published on the Council's website, together with the Council's pay and grading structure and information relating to senior management remuneration.

Appendix A - Charnwood Borough Council's Chief Officers

<u>POST TITLE</u>
Chief Executive
Neighbourhood and Community Wellbeing
Strategic Director - Neighbourhoods and Community Wellbeing
Head of Cleansing and Open Spaces
Head of Leisure and Culture
Head of Neighbourhood Services
Corporate Services
Strategic Director - Corporate Services
Head of Finance and Property Services
Head of Customer Experience
Head of Strategic Support
Housing, Planning, Regeneration and Regulatory Services
Strategic Director - Housing, Planning, Regeneration and Regulatory Services
Head of Strategic and Private Sector Housing
Head of Landlord Services
Head of Planning and Regeneration
Head of Regulatory Services

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Appendix B - Pay and Grading Structure

Effective from 1st April 2018

Grade	Scale Point	Annual Salary (£)
1	10	17252
	11	17289
2	12	17347
	13	17391
3	14	17681
	15	17972
	16	18319
	17	18672
4	18	18870
	19	19446
	20	19819
	21	20541
5	22	21074
	23	21693
	24	22401
	25	23111
6	26	23866
	27	24657
	28	25463
SO1	29	26470
	30	27358
	31	28221
SO2	32	29055
	33	29909
	34	30756
PO1	35	31401
	36	32233
	37	33136
	38	34106
PO2	39	35229
	40	36153
	41	37107
	42	38052

Grade	Scale Point	Annual Salary (£)
PO3	43	39002
	44	39961
	45	40858
	46	41846
PO4	47	42806
	48	43757
	49	44697
JNC A	50	46675
	51	47877
	52	49065
	53	50267
JNC B	54	51467
	55	52657
	56	53976
	57	55286
JNC C	58	57470
	59	58768
	60	60081
	61	61381
JNC D	62	66005
	63	67651
	64	69303
	65	70953
JNC E	66	72599
	67	74270
	68	75491
	69	77614
	90	118958

Pay Grades for Joint Negotiating Committee for Local Authority Craft and Associated Employees

	Scale Point	Annual Salary (£)
Group 1	25	23111
	27	24657
	31	28221
Group 2	25	23111
	26	23866
	28	25463
Group 3	23	21693
	24	22401
	27	24657
Group 4	18	18870
	19	19446
	20	19819

Levels of Apprenticeship	NJC Salary	
Intermediate	Year 1 Year 2 to completion	NMW Rate for 18 – 20 year olds Appropriate NMW age rate for those aged 21 and above
Advanced	Year 1 Year 2 to completion	NMW Rate for 18 – 20 year olds Appropriate NMW age rate for those aged 21 and above
Higher	Year 1 Year 2 to completion	NMW Rate for 18 – 20 year olds Scale 1 – 2 with annual incremental progression
Degree	Year 1 Year 2 to completion	NMW Rate for 18 – 20 year olds Scale 2 – 3 with annual incremental progression

The rates for Apprentices appointed under the Joint Negotiating Committee for Local Authority Craft and Associated Employees (Red Book) are in accordance with that agreement.

Appendix C - Pension Scheme Discretionary Arrangements

Local Government Pension Scheme (LGPS) Regulations Policy Statement on all Eligible Employees

Under Regulation 60 of the LGPS Regulations 2013, (as amended), each scheme employer must publish and keep under review a Statement of Policy to explain how it will apply certain discretions allowed under the Pension Regulations.

This statement is applicable to all employees of Charnwood Borough Council who are eligible to be members of the LGPS.

The Council is required to publish the following five policies.

LGPS Regulations – Regulation 31: Power of employer to award additional pension

Explanation and Employer's Policy

An employer may resolve to award a member additional pension of not more than £6,500 (figure as at 1 April 2014) a year within 6 months of leaving to a member whose employment was terminated on the grounds of redundancy or business efficiency.

The Council will not normally agree to award an additional pension under this regulation

LGPS Regulations 2013 – Regulation 16(2)(e) and 16(4)(d) : Funding of additional pension contributions (shared cost)

Explanation and Employer's Policy

An active member in the main section of the scheme who is paying contributions may enter into arrangements to pay additional pension contributions (APCs) by regular contributions of a lump sum.

Such costs may be funded in whole or in part by the member's Scheme employer.

The employer will need to determine a policy on whether it will make a contribution towards the purchase of extra pension.

This does not relate to cases where a member has a period of authorised unpaid leave of absence and elects within 30 days of return to work to pay a shared cost APC to cover the amount of pension "lost" during that period of absence. In these cases the employer MUST contribute 2/3rds of the cost (Regulation 15(5) of the LGPS Regulations 2013.

The Council has not adopted this discretion.

LGPS Regulations 2013 – Regulation 30 (6):Flexible Retirement

Explanation and Employer's Policy

An active member who has attained the age of 55 or over who reduces working hours or

grade of an employment may, with the Scheme employer's consent, elect to receive immediate payment of all or part of the retirement pension to which that member would be entitled in respect of that employment if that member were not an employee in local government service on the date of the reduction in hours or grade, adjusted by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.

The Council has agreed to release pension where there is no costs and not to waive any reduction.

Members must reduce their hours by a minimum of 40% and/or reduce their grade.

The Council may however allow the release of pension where there is a cost or waive reduction in a potential redundancy situation, where a reduction may occur through redeployment, or in other exceptional circumstances supported by a business case.

LGPS Regulations 2013 – Regulation (paragraph 1(1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014): Switching on rule of 85

Explanation and Employer's Policy

A member who has not attained normal pension age but who has attained the age of 55 or over, may elect to receive immediate payment of a retirement pension in relation to an employment if that member is not an employee in local government service in that employment, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.

In these circumstances (other than flexible retirement) the 85 year rule does not automatically apply to members who would otherwise be subject to it who choose to voluntarily draw their benefits on or after age 55 and before NPA.

The employer has the discretion to "switch on" the 85 year rule for such member (paragraph 1 (1)(c) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014.

If the employer does agree to switch back on the rule of 85, the cost of any strain on the fund resulting from the payment of benefits before age NPA would have to be met by the employer.

The Council will not apply either discretion.

LGPS Regulations 2013 – Regulation (paragraph 2(1) of Schedule 2 to the LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014): Waiving of actuarial reduction

An employer has the discretion, under a number of retirement scenarios, to waive actuarial reductions on compassionate grounds. The cost of which would fall upon the employer. "Compassionate grounds" is not defined in the regulations.

The Council will not apply this discretion, unless there are exceptional circumstances.

The Personnel Committee and the Director involved will consider any cases and will

decide whether the actuarial reductions should be waived. In all cases the financial position of the Charnwood Borough Council must be considered.

Under Regulation 66 of the LGPS Administration Regulations 2008, (as amended), each scheme employer must publish and keep under review a statement of Policy to explain how it will apply certain discretions allowed under the Pension Regulations.

LGPS Benefits Regulations - Regulation 30: Early payment of retirement benefits at the member, or former members request

Explanation & Employer's Policy

A scheme member or former member can request that the Employer grant early retirement between 55 & 60 years old.

It is possible that, where a member's pension is introduced early, these benefits will be reduced. The reduction is calculated in accordance with guidance issued by the Government Actuary. As an employer you may determine not to apply any reduction.

The Council will not consider the premature retirement of an employee except on compassionate grounds. To qualify for consideration, an employee must be entitled to a pension under the LGPS. The Council will not consent to a request for early retirement where capital costs are applicable unless there are exceptional circumstances. The Council will, in principle, consider a request for early retirement as an application of early retirement arising from redundancy where the request would result in the same cost, a lower cost, or nil cost to the Council. In all cases, early retirement will only be considered when supported by a justifiable business case.

LGPS Benefits Regulations - Regulation 18: Requirements as to time of payment (Flexible Retirement)

Explanation & Employer's Policy

A member who is 55 or over, and with their employer's consent, reduces their hours and/or grade can, but only with the agreement of the employer, make an election to the administering authority for payment of their accrued benefits without having retired from employment. It is possible that, where a member's pension is introduced early, these benefits may be reduced. The reduction is calculated in accordance with guidance issued by the Government Actuary. As an employer you may determine not to apply any reduction.

Whilst a request which result in a cost to the Council will generally not be approved there may be instances where granting flexible retirement will enable departments to review their requirements, e.g. succession planning, managerial or specialist skills development, or ultimately achieve other efficiency savings through staff movement/structure changes etc. That is to say, there must be a significant organisational benefit to the Council.

In considering any request for flexible retirement the following business reasons are to be taken into account:

- Cost to the Council in releasing the scheme member's pension
- Requirement/ability to recruit to the vacated hours or grade

- Additional costs as a result of recruitment/training to the vacated hours or grade
- Capacity to re-allocate work amongst co-workers
- Impact on service delivery and work performance
- Suitability of individual's proposed working arrangements, i.e. days, hours etc.

This scheme will not apply where there are formal conduct or performance issues and the appropriate procedures should be invoked in those circumstances.

LGPS Administration Regulations – Regulation 25 (3) and LGPS Benefits Regulations – Regulation 15 (3): Shared Cost Additional Contribution Facility

Explanation & Employer's Policy

This discretion allows the Employer to maintain and contribute to an employee's Additional Voluntary Contribution Scheme.

The Council has not adopted this discretion. This will not have any effect on the existing AVC facility available where the employee only is able to make such contributions.

LGPS Benefits Regulations - Regulation 12: Augmentation (increase of scheme membership)

Explanation & Employer's Policy

An employer may resolve to increase the total membership of an active member.

The Council has not adopted this discretion. This decision does not affect the discretion available to the employer to allow a scheme member to convert a lump sum discretionary payment using the augmentation factors. (See Early Termination of Employment Discretionary Compensation).

LGPS Benefits Regulations - Regulation 13: Power of employer to award additional pension

Explanation & Employer's Policy

An employer may resolve to award a member additional pension of not more than £5000 a year payable from the same date as his pension payable under any other provisions of these Regulations. Additional pension may be paid in addition to any increase of total membership resolved to be made under regulation 12.

The Council has not adopted this discretion.

The Local Government (Early Termination of Employment) (Discretionary Compensation) Regulations 2006

New provisions provide local government employers with the powers to consider making a one off lump sum payment to an employee which must not exceed 104 week's pay. The regulations no longer provide for the award of compensatory added years.

This statement is applicable to all employees of Charnwood Borough Council who are eligible to be members of the LGPS.

Regulation 5: Power to increase statutory redundancy payments

Explanation & Employer's Policy

The Employer may decide to calculate a redundancy payment entitlement as if there had been no limit on the amount of a week's pay used in the calculation.

The Council has decided to adopt this discretion and base redundancy payment calculations on an unrestricted week's pay.

Regulation 6: Discretionary Compensation

Explanation & Employer's Policy

A "one off" lump sum compensation payment may be awarded to an employee up to a maximum value of 104 weeks' pay, inclusive of any redundancy payment made. If the above Regulation is adopted, employees who are members of the LGPS can be given the option of converting compensation payments, (less the statutory redundancy payment), into additional pensionable service, in accordance with the augmentation factors provided by the authority. An employer should specify whether they intend to provide this option.

Employees who have been continually employed for two years or more by members of the modification order will receive a redundancy payment. The payment is based on the statutory formula with a multiplier X 2 applied. The maximum number of weeks an individual can receive is 60 weeks. Employees have the option of using their redundancy payment, in excess of the statutory redundancy payment, to purchase a period of membership in the LGPS.

Discretionary Policies

Employer: Charnwood Borough Council

Local Government Pension Scheme, (LGPS), Regulations Policy statement on all eligible former members effective 14th May 2018

Under the pertinent LGPS Regulations, each scheme employer must publish and keep under review a Statement of Policy to explain how it will apply certain discretions allowed under the Pensions Regulations.

This statement is applicable to all former employees of the above named employer who are eligible to be members of the LGPS and are required following the introduction of the LGPS (Amendment) Regulations 2018 in the following areas:

LGPS Benefits Regulations – Early payment of retirement benefits at a former member’s request.

Election for early payment of deferred benefits at age 55 for leavers before 1 April 1998

Original Regulation 24(a) and 30(d)

Regulations amended/inserted or deleted **LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014:**

New reg 3(5A)(a)

Election for early payment of deferred benefits from age 55 for leavers between 1 April 1998 and 31 March 2008

Original Regulation 24(a), 30(e) and 30(f)

Regulations amended/inserted or deleted **LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014:**

New reg 3(5A)(b)

New para 1(1)(e) of Sch 2

New para 1(1)(f) of Sch 2

Amends para 1(2) of Sch 2 and para 2(3) of Sch 2

Election for early payment of deferred benefits from age 55 for leavers between 1 April 2008 and 31 March 2014

Original Regulation 24(a), 30(a), 30(c), 30(e) and 30(f)

Regulations amended/inserted or deleted **LGPS (Transitional Provisions, Savings and Amendment) Regulations 2014:**

New reg 3(5A)(c)

Amends para 1(1)(a) of Sch 2

New para 1(1)(aa) of Sch 2

Amends para 1(1)(c) of Sch 2, para 1(2) of Sch 2 and para 2(3) of Sch 2

Discretionary Policies

I. Affirmation of existing policy in this area required:

Explanation	Employer's Policy
<p>Where the former member elects for voluntary early retirement before their normal pension age (NPA), the deferred benefits will be reduced for early payment.</p> <p>The scheme employer may, in respect of deferred members who can under the relevant regulations (details above) voluntarily draw their benefits on or (if regulations allow) after age 55 and prior to NPA, choose to waive on the grounds of compassion any reduction for early payment.</p> <p>The cost of which would fall upon the employer.</p> <p>n.b. "Compassionate grounds" is not defined in the regulations</p>	<p>In relation to waiving any reduction which may apply on compassionate grounds, the policy is that:</p> <p>The discretion in this area is:</p> <p>The Council will not apply this discretion, unless there are exceptional circumstances.</p> <p>The Personnel Committee and the Director involved will consider any cases and will decide whether the actuarial reductions should be waived. In all cases the financial position of Charnwood Borough Council must be considered.</p>

Discretionary Policies

2. Additional new decision required to cover former members who left after 1 April 1998 but before 31 March 2014 regarding Switching on ‘Rule of 85’

Explanation	Employer’s Policy
<p>A former member who has not attained normal pension age (NPA) but who has attained the age of 55 or over, may elect to receive immediate payment of a retirement pension in relation to an employment if that member is not an employee in local government service in that employment, reduced by the amount shown as appropriate in actuarial guidance issued by the Secretary of State.</p> <p>In these circumstances (other than flexible retirement) the 85 year rule does not automatically apply to members who would otherwise be subject to it who choose to voluntarily draw their benefits on or after age 55 and before NPA.</p> <p>The employer has the discretion to “switch on” the 85 year rule for such a member.</p> <p>If the employer does agree to switch back on the rule of 85, the cost of any strain on the fund resulting from the payment of benefits before NPA would have to be met by the employer.</p>	<p>In relation to early retirements with employer's consent, policy on ‘Switching on Rule of 85’ is that:</p> <p>The discretion in this area is:</p> <p>The Council will not apply this discretion.</p>

Discretionary Policies

Employer declaration sheet:

I confirm that the above policies have been approved by the delegated person/committee.

I confirm that should any of the decisions change in the future the Pensions Section will be notified immediately.

The attached statements therefore provide a summary of the policies which have been adopted and certify that they are correct on behalf of:

Employer's Name:

Print Name:

Position:

Signed:

Date:

Please sign and copy. Keep one for reference and return the other to carol.haywood@leics.gov.uk

PERSONNEL COMMITTEE – 4TH DECEMBER 2018

Report of the Head of Strategic Support

Part A

ITEM 6 TEMPORARY AGENCY WORKERS POLICY AND GUIDANCE

Purpose of Report

To gain the Personnel Committee's approval to introduce a revised Temporary Agency Workers Policy and Guidance. These changes were agreed with SMT on 18th October 2018 and discussed at JMTUM on 19th April 2018.

Recommendation

That the revised version of the Council's Temporary Agency Workers Policy and Guidance be approved and adopted. This document will replace the current Agency Worker Regulations Guidance.

Reason

The Temporary Agency Workers Policy and Guidance has been reviewed to include the latest legislation and best practice relating to Agency Workers. This includes information on the IR35 regulations. The revised policy is intended to support managers in greater detail when employing agency workers.

Policy Justification and Previous Decisions

The Council implemented a guidance document on 28th September 2011 outlining Agency Worker Regulations. The proposed Temporary Agency Workers Policy and Guidance document has been reviewed and revised to ensure it complies with legislation and recommended best practice.

Implementation Timetable including Future Decisions

It is recommended that the Temporary Agency Workers Regulations be published on the intranet and the current Agency Workers Regulations be deleted, following approval by Personnel Committee.

Financial Implications

There are no immediate financial implications arising from this decision.

Risk Management

There are no specific risks associated with this decision.

Background Papers: none

Annex A: Temporary Agency Worker Policy and Guidance

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Head of Strategic Support
Telephone: (01509) 634573
Email: adrian.ward@charnwood.gov.uk

Part B

Background

1. The Council implemented a guidance document on 28th September 2011 outlining Agency Worker Regulations.
2. The proposed Temporary Agency Workers Policy and Guidance document has been reviewed and revised to ensure it complies with legislation and recommended best practice.
3. The revised Temporary Agency Workers Policy and Guidance clarifies in greater detail, the information already contained within the current Agency Workers Regulations Guidance. In addition, it introduces the following new areas:

Corporate Contract: Matrix

This section outlines information regarding Matrix as the Managed Service Provider and reference to the online ordering system.

Exceptional Circumstances (Other Agencies)

It is recognised that there may be occasions where use of an agency outside the corporate contract is necessary. In this circumstances approval would be needed from a Head of Service.

IR35 – Intermediaries Legislation

The intermediaries Legislation comprises a set of HMRC rules relating to the treatment of Income Tax and National Insurance contributions for individuals who are supplied to the Council via an intermediary. As a public sector organisation, in accordance with the IR35 rules the Council is required to determine whether IR35 applies to an agency worker. This section outlines the requirements under IR35 for managers.

Candidate Vetting

Pre-employment checks must be completed prior to assigning an agency worker and this is normally the responsibility of the agency. Managers must take steps to ensure this is completed, as highlighted in this section.

Verifying and Agency Worker's Identity

All agency worker must be checked by the manager to confirm that they are the actual person put forward for the role by the agency at the start of the first day of an assignment. This is especially important where the role is considered to be a "regulated activity".

Managing Agency Workers

The proposed policy outlines the following key areas for managers to be aware of when appointing and managing agency workers:

- Induction
- Conduct, Performance and Attendance
- Complaints and Grievances
- Investigations
- Referral to a Professional Organisation
- Notice Periods
- Changing the Terms of an Assignment
- Reasonable Adjustments

Industrial Action

This section outlines that the Council will not engage agency workers specifically to provide cover where employees are absent due to industrial action, as it is unlawful to do so.

Health and Safety

Health and Safety requirements are covered within this section as both the Council and agency are responsible for providing a safe working environment for the agency worker.

Employing or Engaging Agency Workers Directly

If a manager appoints an agency worker to a post within the Council, the agency may charge a fee, if this is outside of the Matrix Corporate Contract.

Retention of Agency Worker Records

Managers need to retain information about an agency worker as there are no central records kept. The information retained must be held securely in accordance with the Retention and Disposal Guidance outlined by the LGA.

Public Sector English Fluency

As a public sector employer, the Council has a statutory duty as part of the Immigration Act 2016 to ensure that individuals employed or engaged in “public facing” roles have a sufficient level of fluency in spoken English to properly carry out their duties. It is outlined within the guidance document that the duty applies to the engagement of agency workers.

Appendix B (in the guidance document attached) – Example Communication to Agencies

In line with the IR35 – Intermediaries Legislation the Communication to Agencies document has been produced to inform an agency of the manager’s determination regarding the IR35 status of a particular assignment.



Temporary Agency Workers Policy & Guidance

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Information about this Policy and Guidance

Managers should ensure that they are familiar with the latest version of the Agency Workers Policy & Guidance, along with the associated [Recruitment and Selection Guidance](#) and Casual Workers.

Managers should refer to these sources of information in the first instance.

Charnwood Borough Council has appointed MatrixSCM as its Managed Service Provider for the supply of agency workers. All agency worker requirements must be referred to MatrixSCM in the first instance.

Purpose

The purpose of this guidance is to assist managers to identify situations in which use of an agency worker may be appropriate, to fulfil their legal responsibilities in relation to the use of agency workers, and to provide information about managers' contractual obligations regarding Charnwood Borough Council's corporate contract with Matrix which covers the supply of all agency workers including niche and sector specialist requirements.

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Definition of an Agency Worker

An agency worker is employed or engaged by an employment agency, for the purpose of being assigned to a client of the agency on a temporary basis to carry out a particular role or piece of work. The term 'agency worker' is a general one which applies to all temps, interims, contractors and consultants supplied by an agency.

Agency workers are usually used for a short period of time to cover work that, for some reason, cannot be done by the regular workforce and/or using the regular recruitment and selection procedure will not immediately meet the needs of the service. A report will be submitted to Senior Management Team periodically for information regarding the use of agency workers within the Council. SMT will review cases where an agency worker is engaged for a period in excess of 6 months.

Pay rates are normally agreed based on an hourly or daily rate, and the agency worker will be paid by the agency upon receipt of a timesheet authorised by the manager supervising their assignment.

It is important to note that agency workers are not employees of the Council, although they are under the supervision of the manager.

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Alternative Options

Where a manager identifies a situation in which they are considering engaging an agency worker, they must first give consideration to whether it would be more appropriate to cover the work using existing resources, or by recruiting an employee. This is especially important if the period during which cover is required is expected to be significant, e.g. during maternity or adoption leave.

Examples of alternative options include:

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- Employing someone using normal [recruitment and selection procedures](#), on a permanent or fixed-term basis;
- Reallocating work within the team;
- Offering extra hours by agreement, if appropriate;
- Using a casual worker; or:
- Offering a secondment.

Using agency workers is usually the most expensive option and may not offer value for money in comparison to alternative means of covering the work to be done. Managers must be able to justify the additional cost of using agency workers against the needs of the service.

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Corporate Contract: Matrix

Charnwood Borough Council has appointed Matrixscm as its Managed Service Provider for the supply of agency workers for all roles including consultants and interims.

All agency worker requirements must be referred to Matrix, using their online ordering system ([matrix-cr.net](#)) which is also used to manage timesheets. Matrix will work with their network of carefully chosen supplier agencies to fulfil managers' orders. Further details about how to engage with Matrix, including requesting a registration to use [matrix-cr.net](#), can be found on the [Intranet](#).

The contract with Matrix has been structured to ensure compliance with the [Agency Workers' Regulations 2010](#), and with robust safeguarding and safer recruitment procedures. Matrix carry out regular audits of their network of suppliers to ensure the agencies they work with operate to high standards of compliance.

Agency charge rates have been agreed as part of the contract, and are intended to be competitive in comparison with the cost of sourcing agency workers directly from employment agencies, offering the Council value for money.

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Exceptional Circumstances

While all requirements for agency workers must be referred to the Council's Managed Service Provider, there may be rare occasions on which use of an agency outside the corporate contract is appropriate. This may occur for example where the Managed Service Provider has been unable to fill a role despite all efforts being made on both sides to resolve the situation. Authorisation from a Head of Service

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must be obtained in each case before using any agencies outside the corporate contract.

Where approval from a Head of Service has been granted, the manager will select the agency to be used on a strictly ad-hoc basis. Managers must ensure that they have carefully read the terms and conditions of the agency. Additionally, the manager needs to consider the implications under IR35 – Intermediaries Legislation.

The selection must be carried out in accordance with the Council's [Contract Procedure Rules](#). Managers should seek further advice from the Finance Section.

The manager will be fully responsible for managing the relationship with the agency for the duration of the assignment, and this will include provision of any information that the agency requires as well as carrying out ongoing checks to ensure that the agency acts in accordance with all relevant legislation. The manager will need to verify that the agency applies stringent candidate vetting procedures which at least meet the standards outlined in the [Recruitment and Selection Guidance](#), along with any other service-specific requirements. The manager will also need to ensure that arrangements are made for timesheets to be authorised and reconciled against the agency's invoices, and for the agency's invoices to be paid in accordance with the Council's normal payment processing times. Further advice on payment of invoices can be obtained from the Finance Section.

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Agency Workers' Regulations 2010

The Agency Workers' Regulations 2010 (AWR) give agency workers the right to equal treatment in certain terms and conditions compared to employees of the Council, but do not change the status of agency workers - they do not automatically become employees of the Council.

Agency workers will be entitled to certain rights from the first day of an assignment, while others require a 'qualifying period' of 12 weeks to be served. Further information can be found at [Appendix A](#).

The Council's Managed Service Provider will be kept informed of the minimum general terms and conditions of employment but managers must provide any additional information required promptly upon request.

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IR35 – Intermediaries Legislation

The Intermediaries Legislation comprises a set of HMRC rules relating to the treatment of Income Tax and National Insurance contributions for individuals who are supplied to the Council via an intermediary. Further information about IR35 and intermediaries can be found on the [Gov.uk website](#).

As a public sector organisation, in accordance with the IR35 rules the Council is required to determine whether the Intermediaries Legislation applies to each separate agency worker assignment. If the IR35 rules apply to the assignment, it is deemed to be 'inside IR35' and deductions for Income Tax and National Insurance contributions must be made. Where agencies are used, the agency which engages the worker will be responsible for the making the appropriate deductions in respect of the individual for Income Tax and National Insurance contributions, unless the manager does not notify the agency of the IR35 status of the assignment within 31 days.

HMRC have developed an online [Employment Status Service \(ESS\) Tool](#) to help managers decide whether the IR35 rules apply to an assignment. However, managers must not rely solely on the outcome of the tool; other evidence must be available to support the decision in order for the manager to be able to show that they have taken 'reasonable care' in identifying the correct IR35 status. This may include taking specialist advice. It is not sufficient to rely upon information provided by the agency or the agency worker.

If the outcome of the online [Employment Status Service \(ESS\) Tool](#) is 'indeterminate', managers must take specialist advice to obtain confirmation of the correct status.

Managers are required to:

- Carefully consider all the information available to make an evidence-based assessment of the IR35 status of each assignment;
- Inform the agency of their decision regarding an assignment's IR35 status (see [Appendix B](#) for an example communication) within 31 days;
- Provide any further information or supporting evidence requested by the agency in response within 31 days;
- Request written assurances from the agency that they will apply the correct deductions for Income Tax and National Insurance contributions;
- For any assignments falling outside IR35, refer the written assurance from the agency to the Council's [Finance Section](#) upon receipt along with a copy of the outcome of the HMRC online [Employment Status Service \(ESS\) Tool](#) and any specialist advice taken;

- Keep records locally of any contact and correspondence with the agency and regarding specialist advice taken in regard to IR35;
- Where an assignment is extended or changed, carry out a re-assessment and inform the agency of the outcome of the re-assessment within 31 days.

Compliance

Failure to inform the agency of an assignment's IR35 status, to be able to demonstrate that reasonable care was taken in determining the correct IR35 status of an assignment, or respond to an agency within the timescales above may lead to the Council becoming liable for making deductions for Income Tax and National Insurance contributions in respect of the agency worker. These will be charged to the manager's budget along with interest, fines or additional costs imposed by HMRC.

Internal Review of Income Tax and National Insurance Determinations

Each engagement of an agency worker may be subject to review to verify the basis on which the IR35 determination has been made. The review will take into account all the information provided to the agency but further details may be needed, and managers must be prepared to provide this upon request. Following the review, it may be necessary for the manager to complete an updated HMRC online [Employment Status Service \(ESS\) Tool](#) and instruct the agency to amend the role's IR35 status. Written confirmation must be obtained from the agency that the appropriate arrangements for Income Tax and National Insurance contributions will be applied.

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Candidate Vetting

It is normally the responsibility of the agency which engages the worker to carry out any vetting of candidates' suitability for the role prior to an agency worker starting an assignment with the Council, upon instruction from the manager.

The Council's Managed Service Provider ensures that its supplier agencies are aware of the Council's requirements in regard to pre-employment checks. The Managed Service Provider will then audit its suppliers on a regular basis to verify that pre-employment checks are being completed.

When ordering agency workers, managers must take steps to satisfy themselves that the agency has carried out the necessary pre-employment checks as detailed in the [Recruitment and Selection Guidance](#); however, it may not be possible for the agency to send copies of all documentation due to confidentiality obligations. The Council's Managed Service Provider will notify managers once all checks have been completed, and this can be retained on file by the manager in case of inspection.

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Verifying an Agency Worker's Identity

When an agency worker arrives at the start of the first day of an assignment, the manager must confirm that the individual who attends is the person who was put forward for the role by the agency. This is especially important where the role is considered to be a '[regulated activity](#)'. Where a manager is unable to verify the agency worker's identity, they must contact the Council's Managed Service Provider or the agency supplying the worker immediately before allowing the individual to start work.

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Managing Agency Workers

Induction

Managers should ensure that agency workers who are new to the Council and/or new to their service area are given an [induction](#) to familiarise them with the work that they will be expected to complete, their colleagues and Council procedures.

Conduct, Performance and Attendance of Agency Workers

It is acceptable for a manager to communicate their expectations of an agency worker while they are working in an assignment for the Council. Managers must not attempt to apply the Council's employment policies and procedures, for example regarding Disciplinary-, Capability- or Attendance-related matters, as agency workers are not employees of the Council; however, managers should act quickly to address concerns in an appropriate way.

Where there are indications that the concerns may be of a more serious nature, the manager should contact the Council's Managed Service Provider or the agency which supplied the worker straight away.

Managers should contact Human Resources in the first instance for advice in specific and complex cases.

Duration of Assignment

Managers should review, at 6 monthly intervals, the length of time an agency worker has been assigned to a position and assess whether continuing the assignment is the most appropriate solution for the service area.

Complaints and Grievances

The manager should contact the Council's Managed Service Provider or the agency which supplied the worker as soon as possible, even if the manager is not currently

considering terminating the agency worker's assignment, if any of the following occur:

- A grievance is raised about an agency worker by an employee of the Council;
- A complaint is raised about an agency worker by someone else, for example a service user or member of the public; or
- The agency worker attempts to raise a grievance.

It is not appropriate for managers to use the Council's Grievance Policy and Procedure to deal with a grievance raised by an agency worker, but it may be necessary for the manager to investigate to some degree and take action internally.

A general complaint raised by an agency worker should be addressed according to normal complaint resolution procedures.

Investigations

It is acceptable for a manager to make enquiries and gather sufficient information about an agency worker to enable them to take a decision about how to address a particular situation. In some cases, it may be necessary for the manager to conduct an investigation for internal purposes, for example if a complaint is raised in connection with health and safety concerns.

Managers should co-operate with any investigation undertaken by the Managed Service Provider or the agency which supplied the worker, but managers must be aware that some information may be confidential and it may not be possible to release it. Similarly, managers may not always be informed of the outcome of any investigation conducted by the Managed Service Provider or the agency which supplied the worker; however, the manager should satisfy themselves that the matter has been addressed appropriately.

Referral to a Professional Organisation

In some cases, concerns may be serious enough for the agency or the manager to consider whether it is appropriate to make a referral to a professional organisation such as the [Disclosure and Barring Service \(DBS\)](#). Managers considering taking this step should initially discuss the matter with the agency.

Notice Periods

Agency workers supplied by the Council's Managed Service Provider are not subject to a minimum period of notice, should the manager feel it is necessary to terminate their assignment before the expected end date. If an agency worker has been supplied outside the corporate contract, managers should check with the agency whether they have agreed a minimum period of notice.

Changing the Terms of an Assignment

Where it becomes necessary to make changes to a current assignment, for example extending or shortening its expected duration, managers should contact the Council's Managed Service Provider or the agency which supplied the worker in the

first instance. The agency will liaise with the worker regarding the revised arrangements. Managers should not agree the changes directly with the agency worker, as this can lead to payment issues and may result in the agency withdrawing the agency worker. Managers must ensure that notification regarding the [IR35 status](#) of the revised assignment is provided to the agency.

Reasonable Adjustments

Managers may receive requests for reasonable adjustments to be made in respect of agency workers who have a disability, and it is the responsibility of both the agency and the Council to put them in place. A request may be received directly from an agency worker or from the agency who supplied them. Managers should initiate contact with and work closely with the agency to identify any reasonable adjustments which can be implemented. For further advice, managers should contact Human Resources.

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Industrial Action

The Council will not engage agency workers specifically to provide cover where employees are absent due to industrial action e.g. strikes, as it is unlawful to do so. The Council's Managed Service Provider will be made aware of dates of planned industrial action, and will be entitled to refuse requests for agency workers if they are made to cover employees on strike on the given dates.

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Health & Safety

Agency workers are covered by health and safety-related legislation, such as the Health & Safety at Work Act 1974 and the Working Time Regulations, and both the Council and agency are responsible for providing a safe working environment. Managers and agencies must work together to ensure that any workplace risks, including work-related stress, are minimised. Managers should take a proactive approach and initiate contact with the agency where it becomes apparent that there may be a concern.

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Employing or Engaging Agency Workers Directly

Managers should follow [normal recruitment procedures](#) if they intend to employ someone to fill a role covered by an agency worker. This applies even if the agency worker covering the role is interested in being considered for employment with the Council.

Where agency workers are offered employment or an engagement directly with the Council, managers must be aware that the agency may charge a fee, if they are outside of the Matrix corporate contract. This is sometimes known as a 'temp to perm' or 'introduction' fee, regardless of the basis on which employment is offered e.g. permanent/fixed-term, casual or self-employed contractor.

Fees may also be payable if an agency worker ceases to be supplied to the Council by a particular agency and is subsequently supplied to the Council by a different agency or company.

These fees may apply even if the roles undertaken are not the same.

Managers should check with the agency whether they will be expected to pay a fee before making any offer of employment.

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Retention of Agency Worker Records

As no central records are kept relating to agency workers who have been assigned to work at the Council, managers will need to hold information locally about the agency workers they have used. This information must be retained securely and in accordance with the [Local Governments Associations \(LGA\) Retention and Disposal Guidance](#). The manager may be required to produce details about agency workers in the event that the service is inspected by an external body e.g. the Care Quality Commission or OFSTED, or where a request is received under the Freedom of Information Act 2000.

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Appendix A: Key Legislation concerning Agency Workers

Agency Workers' Regulations (AWR) 2010

'Day One' Rights

From the first day of an assignment, the manager must ensure that agency workers are informed of and are able to access:

- The Council's 'collective facilities' which are available to employees. This includes for example canteen facilities, shower facilities, car parking and access to any Multi Faith facilities.
- Details of any relevant vacant posts. This includes vacancies that are advertised internally only, and ensuring that all agency workers have access to [Charnwood's Job Page](#) available on the intranet.

Rights on Completion of the Qualifying Period

If an agency worker completes at least 12 calendar weeks in an assignment, which can be full or part-weeks, they will become entitled to the same minimum 'basic working and employment conditions' as if they had been recruited directly by the Council. Basic working and employment conditions only include terms in relation to pay, duration of working time, night work, rest periods, rest breaks, annual leave and certain pregnancy-related entitlements.

Terms relating to pay include:

- Basic pay;
- Holiday pay;
- Overtime payments;
- Enhanced payments for working on a public holiday;
- Additional premium for working at night;
- Any other allowance eg shift premium.

Once the qualifying period has been served, the agency worker will also be entitled to incremental salary increases within the grade for their role (if available) if they are in assignment for a long enough period of time to qualify for this.

Note that agency workers whose agreed rates of pay exceed those which a regular employee would receive for the same work will not be entitled to further payments as detailed above.

Pay does not include:

- Contractual sick pay;
- Contractual maternity, paternity or adoption pay;
- Expenses;

- Redundancy or other termination payments;
- Pensions.

Agency workers may be entitled to receive pension contributions from the agency that employed or engaged them to be supplied to the Council, and if this is the case pension contributions may be included in the agency's charge rates to the Council.

Annual Increments

Once the qualifying period has been served, the agency worker will also be entitled to incremental salary increases within the grade for their role (if available) if they are in assignment for a long enough period of time to qualify. Pay will not be increased if the agency worker is already in receipt of a rate that exceeds the normal pay for the role.

Pension Contributions

Agency workers may be entitled to receive pension contributions from the agency that employed or engaged them to be supplied, and if this is the case pension contributions may be included in the agency's charge rates.

Apprenticeship Levy

Agencies are required to comply with rules regarding payment of the Apprenticeship Levy where their payroll bill for workers supplied to clients on a PAYE basis exceeds the minimum threshold set by Central Government. The Apprenticeship Levy charge, currently set at 0.5% of the payroll bill, will in most cases be passed onto clients.

Pregnancy-Related Entitlements

On completion of the qualifying period, or from the first day of an assignment if the agency worker is an employee of the agency, an agency worker is entitled to:

- Have changes made to their working conditions if the agency worker is pregnant and a health and safety risk to the agency worker and/or their baby is identified;
- Be offered alternative work by their agency if suspended on maternity grounds
- Be paid while suspended on maternity grounds;
- Receive reasonable time off during their normal working hours with pay to attend antenatal appointments, except for the first appointment;
- Receive reasonable unpaid time off during their normal working hours to accompany a pregnant woman to up to two antenatal appointments of maximum 6½ hours each, provided that the agency worker is the father of the baby, or in an enduring relationship with the expectant mother, or is one of the intended parents in a formal surrogacy arrangement.

For agency workers who are not entitled to reasonable paid time off to attend antenatal appointments, the manager must give consideration to allowing the agency

worker to take unpaid leave during normal working hours if required, subject to the needs of the service.

Calculating Service for Agency Workers for AWR Purposes

The qualifying period of 12 weeks need not be continuous under certain circumstances. An agency worker's service is broken if:

- They begin a new assignment with a different hirer;
- They remain with the same hirer, but take up a 'substantially different' assignment;
- There is a break between assignments with the same hirer of more than six weeks that is not one which must be disregarded for the purpose of calculating the agency worker's service, as detailed below.

The types of break to that will not break the agency worker's service, but will not be counted towards the 12 week qualifying period, are:

- Breaks for the purpose of taking any leave to which the worker is entitled, such as annual leave;
- A break of no more than six calendar weeks for any reason, when the agency worker returns to a role that is not substantially different with the same hirer;
- A break of up to 28 calendar weeks due to the agency worker being incapable of work due to sickness or injury;
- A break of up to 28 calendar weeks to allow the agency worker to attend for jury service;
- Breaks caused by planned shutdown or industrial action at the hirer's workplaces.

Note that during any breaks due to maternity leave, adoption leave, paternity leave, or due to pregnancy or childbirth, the agency worker's service will continue to accrue for the originally intended or likely duration of the assignment, whichever is longer.

An agency worker could have more than one qualifying period in operation at any time, for example if they are working in one or more substantially different assignments.

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Anti-Avoidance Provisions

The AWR include a series of deterrents, known as the 'anti-avoidance provisions', which are intended to prevent hirers from avoiding their obligations under AWR, for example by arranging assignments in such a way that the agency worker is deliberately prevented from completing their qualifying period.

Anti-avoidance provisions will apply if the agency worker:

- Has been moved to more than two substantively different roles with the hirer, or:

- Has completed two or more successive assignments with the hirer, and:
- The most likely reason for the termination of an assignment or moving the agency worker to a different assignment was to prevent the agency worker from becoming eligible for equal treatment under AWR, and:
- The agency worker would have qualified for equal treatment under AWR had they not been moved to a different assignment.

The agency worker may apply to the Employment Tribunal on the grounds that the Council and agency have breached AWR. If successful, the Employment Tribunal can make an award of up to £5,000 to the worker.

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Equality Act 2010

Agency workers are protected by the provisions of the Equality Act 2010. Managers and agencies must therefore work together to ensure that agency workers are not subjected to unlawful discrimination, and managers should not wait for the agency to make contact in the event that concerns arise.

The Council may become liable for the actions of an agency working on their behalf, if the agency operates in a discriminatory manner and the manager does not take steps to address this with the agency, and vice versa.

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Public Sector English Fluency

As a public sector employer, the Council has a [statutory duty](#) as part of the Immigration Act 2016 to ensure that individuals employed or engaged in 'public-facing' roles have a sufficient level of fluency in spoken English to properly carry out their duties. This duty applies to the engagement of agency workers as well as regular recruitment exercises.

Definition of a 'public-facing' role

These are roles which require postholders to speak with members of the public as a 'regular and intrinsic' part of the job, in person and/or using the telephone. Although some roles may involve a degree of interaction with the public, this may not be enough to qualify as 'regular and intrinsic'. Managers will need to consider the purpose of roles and consider factors including:

- The extent to which the job requires or necessitates contact with members of the public in order to achieve its purpose;
- Whether contact with members of the public is regular and planned;

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- The amount of time spent interacting with members of the public;
- The level of service quality and responsiveness expected by the public.

Managers should note that ‘members of the public’ does not include colleagues who are internal to the Council and working in other teams or departments.

Determining the required level of English fluency

The level of English fluency applicable to each role will need to be assessed based on the type of role and the nature of the interaction required in order to carry out the duties. Factors which managers will need to take into account will include:

- The frequency and amount of time spent speaking with members of the public;
- The subject(s) that the postholder will need to talk about, and whether this will include technical or specialist vocabulary;
- The likely audience;
- The extent to which communication is essential to the purpose of the role.

It is unlikely that managers will need to specify a minimum standard of spoken English fluency in the job profile; however, where there are indications that the post will fall within the statutory duty, the person specification must include the following as an essential criterion:

‘The ability to converse with ease with customers and provide advice and information in accurate spoken English is essential for the post’.

Some public-facing roles may already be subject to a standard of English fluency set externally by a professional or regulatory body, such as those set out in the Teachers’ Standards. It is not likely that the level of English fluency required for these roles will need to change.

Assessing English fluency

The interview stage is key in providing shortlisted candidates with an opportunity to demonstrate their ability to converse in English, and for this skill to be assessed.

Applying tests to candidates or asking specific questions relating to English fluency is not likely to be necessary, as this can be adequately assessed during the course of an interview.

Managers may find it useful to refer to the [Common European Framework of Reference for Languages](#) for further guidance on levels of language fluency.

As a guide, indicators of a candidate’s level of English fluency may include:

- Speaking with confidence and accuracy;
- Use of appropriate vocabulary;

- Sentence structures;
- Smoothness and flow of conversation;
- Ability to listen and understand.

The following must be disregarded, as they are not indicative of fluency:

- Accents and dialects;
- Speech impediments;
- Tone of conversation.

Carrying out the duty fairly

Candidates' English fluency must only be assessed if the post is within scope of the duty. As the level of English fluency should be appropriate to the role, a high level of fluency may not always be required.

The same assessment must be applied to all candidates, including candidates who speak English as a first or main language.

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Appendix B: Example Communication to Agencies

DRAFTING NOTES

Purpose: This communication is to be used to inform an agency of the manager's determination regarding the IR35 status of a particular assignment. If the agency has requested this information, it must be supplied within 31 days of the request.

This communication may be emailed, or issued by letter. If drafting as a letter the text outlined below must be transferred onto CBC letterhead. Please remove all drafting notes, headers and footers before finalising the draft.

- The text is coded as follows:
 - Plain text and **bold text**: should be included.
 - *[Italic text in square brackets]*: must be replaced with information as described.
 - Text in CAPITALS: remove when drafting.
 - Underlined text: remove text that does not apply.
- Please ensure that any *[italic]* or underlined text is formatted to normal text, and brackets and watermarks are removed.
- The communication must demonstrate that the manager has taken 'reasonable care' in sourcing information and evidence, and has used this to make an informed decision. This means there must be an explanation of what information has been taken into account and why this points to a particular determination regarding the IR35 status of the role.

STRICTLY PRIVATE AND CONFIDENTIAL

[Agency Contact Person Name]

[Agency Address]

[Date]

Dear *[Agency Contact Person Name]*,

IF NOT USING AN AGENCY WORKER SOURCED BY REED: I recently contacted you regarding an order for a temporary agency worker to cover the assignment of *[Enter job title or short description of the assignment]*. I am required to inform you that Charnwood Borough Council is a public sector employer and has a duty to

advise you of this, and to provide you with my determination regarding the IR35 status of this assignment.

OR:

IF USING AN AGENCY WORKER SOURCED BY MATRIX: I recently contacted you regarding an order for a temporary agency worker to cover the assignment of [Enter job title or short description of the assignment], and I am writing to provide you with my determination regarding the IR35 status of this assignment.

Having carefully considered the role and our requirements, I believe that this assignment falls inside the IR35 rules. This is because [Enter reasoning and include all relevant details – for example, this role would normally be undertaken by an employee, and/or I require a high degree of control over the work and how it is done, and/or I would not accept a substitute etc.].

OR:

Having carefully considered the role and our requirements, I believe that this assignment falls outside the IR35 rules. This is because [Enter reasoning and include all relevant details – for example, niche or highly specialist requirements, the degree of control over how, when and where the work is done, willing to accept the worker sending a substitute at their own expense, worker will provide their own equipment and materials, amount of time spent working for the Council etc.].

I have consulted HMRC's online Employment Status Service (ESS) Tool regarding this particular assignment, and the outcome suggests that *[the IR35 rules do OR do not apply OR IR35 status is indeterminate]*. Please find enclosed OR attached a copy of the outcome of the HMRC online Employment Status Service (ESS) Tool for your reference.

Also enclosed are the following documents to which I have referred when making my determination:

- *[Enter itemised list]*
- [Copy of the HMRC online Employment Status Service (ESS) Tool outcome completed for this assignment, OR:
- Advice received regarding the status of the assignment for Income Tax and National Insurance purposes obtained from specialist advisor.]

I would appreciate if you would confirm that your agency will apply the appropriate payroll arrangements in respect of the agency worker(s) assigned to this role.

Should you require any further information, please do not hesitate to contact me.

Yours sincerely,

[Manager's Name]

[Manager's Job Title]

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Temporary Agency Workers Policy & Guidance
Version: 2018 - 1
Agreed at:
Date agreed:
Review date:

PERSONNEL COMMITTEE – 4TH DECEMBER 2018

Report of the Head of Strategic Support

Part A

ITEM 7 GUIDANCE ON THE RECRUITMENT AND EMPLOYMENT OF CASUAL WORKERS

Purpose of Report

To obtain Personnel Committee approval on the amended Guidance for the Recruitment and Engagement of Casual Workers.

Recommendation

That the revised Guidance on the Recruitment and Employment of Casual Workers be agreed by Personnel Committee.

Reason

That the guidance document is updated in line with recommended best practice to ensure its effectiveness for employees of the Council.

Policy Justification and Previous Decisions

The guidance document was last updated by the Council and agreed at Personnel Committee on 14th June 2016. The proposed Guidance on the Recruitment and Employment of Casual Workers has been reviewed and revised to ensure its continued compliance with legislation and recommended best practice.

Implementation Timetable including Future Decisions

It is recommended that the Guidance on the Recruitment and Employment of Casual Workers be published on the intranet and the current policy be deleted, following approval by Personnel Committee.

Report Implications

The following implications have been identified for this report

Financial Implications

There are no immediate financial implications arising from this decision.

Risk Management

There are no specific risks associated with this decision.

Background Papers: None

Annex A: Guidance on the Recruitment and Employment of Casual Workers

Officer to Contact: Adrian Ward
Head of Strategic Support
Telephone: 01509 634573
Email: Adrian.ward@charnwood.gov.uk

Part B

Background

1. The purpose of the Guidance on the Recruitment and Employment of Casual Workers is to provide recruiting officers and managers with advice and guidance on the use of casual workers within the Council and the circumstances when the contract for services should be used.
2. A further review has been undertaken by Human Resources and it is considered that the policy would be improved by making some minor amendments to the sections outlined within it.
3. The minor changes are recommended to the sections on:
 - Contract for services
Additional clarification is provided in this area including confirmation that casual workers should only be paid for the hours actually worked, and managers should regularly review casual worker arrangements to ensure a casual contract is the correct contract.
 - Additional factors for advertising
Additional factors should be identified in the job profile and advert, including DBS checks, where appropriate.
 - Recruitment process
An extra section has been included regarding safer recruitment requirements for casual roles.
 - Pre-engagement checks
This section has been updated to ensure that the policy is compliant for the criteria relating to safer recruitment checks.
 - Annual leave
A revision has been made to the policy in relation to casual workers requesting to take annual leave to confirm the legislative entitlement to permit leave if requested by the casual worker.
 - Pensions
Further information has been outlined relating to auto enrolment for casual workers.
 - Sickness
The process regarding sickness has been further outlined within the policy, to include confirming that casual workers should not claim for any hours worked during sickness and the absence should not be recorded as sickness absence.

Current HR Policies

4. The Council's current Guidance on the Recruitment and Employment of Casual Workers was revised and agreed by Personnel Committee on 14th June 2016.

Consultation

5. The amended policy was agreed at the SMT meeting on 3rd October 2018 and JMTUM on 18th October 2018.



Guidance on the Recruitment and Employment of Casual Workers

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Further advice and guidance	Error! Bookmark not defined.

Purpose

The purpose of this guidance is to provide recruiting officers and managers with advice and guidance on the use of casual workers within the Council and the circumstances when the contract for services should be used.

Casual Workers: Contract for Services

This type of contract is based on the understanding that:

- The Council is under no obligation to provide any work and is able to withdraw any work offered at any time and without notice.
- The Worker is under no obligation to accept any work offered and is able to withdraw from any work previously accepted at any time and without notice.
- “At any time and without notice” includes during an agreed assignment. The Council will be required to pay the casual worker only for the hours actually worked, regardless of who withdrew from the assignment or when it occurred.

Guidance on the Recruitment and Employment of Apprentices

Version: 2018 v1

Date Agreed:

Agreed at:

Managers must ensure that casual workers who exercise their right to refuse or withdraw from work are not subjected to detriment as a result of doing so. It is recommended that casual workers should only be used when there is a need to cover ad-hoc periods, or short term occasional absence, and where the work undertaken as part of their assignment is not critical to service delivery.

Managers should regularly review casual worker arrangements to check whether it would be more appropriate to seek approval to recruit an employee on either a permanent or fixed term basis.

Casual Workers should only be used when there is a need to cover ad hoc periods or a one-off absence/event up to a maximum of 10 weeks'. For example:

- To cover the first or second day of sickness absence of an existing employee for a period that initially is indeterminate. When it is known how long the sickness absence will be e.g. more than one month, a fixed term contract must then be used.
- To cover a short period of other absence e.g. less than 10 weeks'. Longer periods of absence, e.g. more than 10 weeks', must be covered by a fixed term contract.

Crucially with this type of contract both parties can withdraw from it at any time without notice.

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Advertising

Managers must obtain prior permission from their relevant Head of Service to appoint a casual worker using the [Recruitment Approval Request Form](#).

It is recommended that in circumstances where managers use casual workers on a regular basis that they periodically advertise and appoint casual workers they can call upon as and when required.

Where managers require a number of casual workers to carry out a specific piece of work, it is recommended for the post(s) to be advertised.

In circumstances where managers only require an occasional casual worker, it may not always be necessary to advertise. Managers may seek to arrange this locally or approach Job Centres to identify any suitable candidates.

Additional Factors

These will need to be identified in the role profile and advert, as appropriate. The manager should establish whether:

- The post is politically restricted.
- A Disclosure and Barring Service check will be required.
- The post will fall within the scope of the public sector English fluency duty.

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Recruitment

The general principles contained in the [Recruitment and Selection Guidance](#) must be followed when recruiting a casual worker. The manager must decide dependent on the length of time the casual worker is required (up to a maximum of 10 weeks'), the nature of the post and any other risk factors, to what degree the recruitment process is followed.

Managers are advised to interview the individual(s) to assess that they have necessary skills and experience and are competent to carry out the role. This should include checking whether there have been any gaps in their employment history. If any gaps are identified, the reasons for these should be established. It is also important to assess whether they have an understanding of the role being offered and that they are suitable for the role.

In order to comply with safer recruitment requirements, individuals appointed to be engaged in casual roles that are designated as a '[regulated activity](#)' and/or falling within the scope of the public sector English frequency duty must be interviewed prior to their appointment to ensure that they meet the essential requirements of, and are suitable to undertake the duties of, the role.

Managers should refer to the [Recruitment and Selection Guidance](#) for further information.

Managers must follow the steps below:

For new casual workers

Managers must consider whether it is appropriate to use a casual worker by referring to this guidance. If the work to be undertaken constitutes [casual work](#), the manager should complete the [Recruitment](#) Approval Request Form and submit this to their Head of Service for approval. If approval is granted, the manager should determine the recruitment process to be followed. When an appointment has been made, the manager should complete the new starter e-form and forward this to HR, who will then issue a contract for services to the casual worker.

Guidance on the Recruitment and Employment of Apprentices

Version: 2018 v1

Date Agreed:

Agreed at:

For existing casual workers

Manager wishing to use an existing casual worker will need to ensure that a [casual contract](#) is the most appropriate in line with this guidance. If the work available does constitute a [casual contract](#) they will need to complete the [new](#) starter e-form as a contract for services needs to be issued to ensure that all existing casual workers have received the correct contract.

For new and existing casual workers

- 1) Casual workers (new and existing) will receive one contract for services for each role that they work on a casual basis. For example if an individual works as a Sports Coach and a Clerical Assistant on a casual basis, they should receive a separate contract for services for both of these roles.
- 2) When managers engage the casual worker again for the same role, they are required to complete another new starter e-form.
- 3) If the work undertaken is in a role designated as a '[regulated activity](#)' managers must ensure that if the worker has not been used within the last 3 months a new DBS check is carried out.
- 4) The manager is responsible for advising the worker of the hourly rate of the assignment that they will be undertaking prior to the start of the assignment.
- 5) Casual workers are required to complete the casual workers monthly claim form, which must be approved by their line manager before being submitted for payment. Hours worked must be correctly entered in the plain time column, the timesheet is fully completed with the payroll reference number and then submitted to Payroll by the payroll deadline calendar.

If after reading this guidance, it is felt that a temporary/fixed term or permanent contract would be more appropriate then managers must obtain permission from their Head of Service through the Recruitment Approval Request Form. If approval is granted, the manager should determine the recruitment process to be followed. When an appointment has been made, the manager should complete the new starter e-form and forward this to HR, who will then issue a contract to the employee.

Pre-Engagement Checks

The manager must ensure that all pre-engagement checks are completed for each casual worker assignment. Managers MUST ensure that the [New Appointment Checklist](#) is completed and all the required documentation (including the checklist) are collated before being sent to HR.

Casual workers must not be offered any work unless all pre-engagement checks have been satisfactorily completed. In particular, it is a criminal offence to employ or engage someone who does not have the right to work in the UK – if a casual worker cannot fully demonstrate they have this right, they must not be engaged.

The minimum pre-engagement checks for casual workers reflect those which apply to newly-appointed employees, specifically:

- Eligibility to Work in the UK ([Prevention of Illegal Working Guidance](#))
- Proof of Identity/Qualifications / Professional Registrations
- Two Satisfactory Written References (one from current or most recent employer)
- Disclosure and Barring Service Check (if applicable)
- Childcare Disqualification Declaration Form (if applicable).

Where a casual worker has not undertaken any assignments for the council for at least 3 months, and is to be engaged in a role which is designated as '[regulated activity](#)' a further Disclosure and Barring Service Check must be carried out before any further work can be offered to them. Depending upon the circumstances, it may also be necessary to carry out some of the pre-engagement checks again, e.g. if the casual worker has not completed any assignments for an extended period of time or has been employed or engaged by another organisation in the intervening period.

Resident Labour Market Test

Roles categorised as Tier 2 (General) by the [UK Visas and Immigration](#) (UKVI) Service may require a successful candidate to be issued with a Certificate of Sponsorship before they are able to start work. This includes opportunities for casual work. The Certificate of Sponsorship cannot be issued unless the [Resident Labour Market Test](#) has been met, and this includes a requirement for the role to be advertised with the JobCentre Plus and/or JobCentre Online for a minimum of 28 days.

Inactive Casual Workers

Where a casual worker undertakes no assignments during a 12 month period, they will be treated as a leaver. Their payroll record will be closed and they may be issued with a P45.

If the casual worker is subsequently re-engaged, they must be considered to be a new casual worker and a new contract for services will be issued once all of the pre-engagement checks have been completed again.

Annual Leave

Casual workers are entitled to the statutory amount of annual leave, which is pro-rated equivalent to a full time entitlement of 28 days per year. Due to the nature of the work, it is difficult for casual workers to take their leave, therefore, casual workers automatically receive payment for these, by i-trent enhancing the hours worked by 12.07%.

Casual workers' payslips identify the payment made for the hours worked and a separate amount showing holiday pay entitlement for those hours.

Managers must be aware that employment law allows casual workers the right to take leave during any period they have agreed to work. It is recognised that this is not always practical, but as it is a legal requirement it is necessary to permit this if requested by the casual worker. On the rare occasion that a casual worker does request to take annual leave, managers must ensure that the casual worker does not claim the hours they were not due to work.

Pay

The rate of pay for casual workers should be the same as the minimum of the scale for the job they are carrying out.

The worker will not be entitled to incremental progression but will receive increases to their hourly rate based upon any nationally agreed increases to the spinal column point.

Casual workers with the exception of Bank Holidays will receive plain time for all hours worked including Saturday and Sunday.

For hours worked on a bank holiday a casual worker will receive double time.

Pension

Casual workers may join the Local Government Pension Scheme, and will be automatically enrolled if their assignment continues for longer than three months, and the employee is under 75 years of age. Casual workers who do not wish to continue to be members of the Local Government Pension Scheme may opt out at any time by following the instructions on the Leicestershire County Council Pension Fund website.

However, a casual worker has the right to opt to join the Local Government Pension Scheme from the commencement of their contract and should notify payroll services if they wish to take this option.

Sickness

Casual workers are not entitled to occupational sick pay. However, where a casual worker falls ill on a day when they were due to work, this must not be recorded as sickness absence and the manager must ensure the casual worker does not claim for any hours not worked. However, in some cases, casual workers may not be entitled to Statutory Sick Pay if the qualifying conditions are met.

Continuous Service

Each offer of work by the Council shall be treated as an entirely separate and severable engagement (an assignment). There shall be no relationship between the parties after the end of one assignment and before the start of any subsequent assignment.

Undertaking more than one assignment should not be regarded as establishing an entitlement to regular work or confirming continuity of employment.

Record Retention

The manager is responsible for collating all of the appropriate documentation and sending to HR, together with the completed New Appointment Checklist.

The manager must also record the start and end dates of a casual worker assignment so that the length of time between assignments can be determined to identify whether any additional checks are required before a casual worker can be offered further assignments, of their payroll record should be closed.

For posts designated as a '[regulated activity](#)', the manager must retain evidence of the DBS Disclosure number and the date the certificate was issued, but must not retain the original certificate or make a copy of it. Managers should refer to the Guidance on the Retention of DBS Disclosure Certificate Information for more information.

To ensure that a contract is issued and payment is made to the employee a copy of the [New Appointment Checklist](#) must be sent to HR.

In circumstances where a casual worker undertakes no assignments during a 3 months' period the name of the casual worker will be removed from the payroll system. If after this period a previously used worker is re-engaged they will be treated as a new casual worker meaning that all of the [pre-employment checks](#) detailed above will be required.