

London Borough of Bromley

Report HHR14002

PART I – PUBLIC

Agenda Item No.5a

Decision Maker: LOCAL JOINT CONSULTATIVE COMMITTEE

Date: 19th March 2014

Decision Type: Non-Urgent Non-Executive Non-Key

TITLE: EMPLOYMENT CONTRACTS

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Chief Officer: Director of Human Resources

Ward: N/A

1. REASON FOR REPORT

- 1.1 At the last meeting of this Committee, Members asked for a brief report on employment contracts in the Council.
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2. RECOMMENDATION(S)

- 2.1 Members to note and comment on the contents of the report.

Corporate Policy

1. Policy Status: Existing Policy
 2. BBB Priority: Excellent Council
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Financial

1. Cost of proposal: N/A
 2. On-going costs: N/A
 3. Budget Head/Performance Centre:
 4. Total current budget for this Head:
 5. Source of Funding:
-

Staff

1. Number of staff (current and additional):
 2. If from existing staff resources, number of staff hours:
-

Legal

- 1) Legal Requirement: Statutory Requirement
 - 2) Call In: Call in is not applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected)
-

Ward Councillor Views

- 1) Have Ward Councillors been asked for comments: Yes/No/N/A
- 2) Summary of Ward Councillors comments:

3. COMMENTARY

3.1 Employment – Contract Types

- 3.1.1 In general employment contracts whether standardised or non-standardised contracts including casual, zero hours and variable contracts, etc. are determined by business managers based on a number of factors, including the following:-
- a) budget/funding pressures including funding being linked to external sources.
 - b) service demand fluctuations
 - c) service/organisation redesigns
 - d) addressing workforce challenges including succession planning
- 3.1.2 The majority of the Council's employees have a standard contract of employment which may be permanent or temporary.
- 3.1.3 Permanent employment is for an indefinite period and ends when either party decides to terminate the contract. It therefore follows that employers have greater need for flexibility in the deployment of staff during periods of uncertainty and transition.
- 3.1.4 Temporary contracts are used where the contract is not expected to be indefinite. There is likely to be a temporary need, e.g. pending an anticipated service change, or to cover the absence of another employee, to undertake a specific project, or cope with a peak in workload.
- 3.1.5 Where business demand is unpredictable greater flexibility in the deployment of staff may be needed without the obligations and duties associated with employing individuals on fixed hours. Where the need for staff fluctuates from week to week "zero hours" or "variable hours" contracts may be used. Where business demand fluctuates and is not continuous casual or "bank" staff may be used. As stated in paragraph 3.1 above managers generally offer the right employment contract to reflect the demands and pressures on their services. This is vitally important given the unprecedented financial context and the challenge of recruiting and retaining the right mix of staff on the right terms and conditions of service. HR work with managers on the legal implications of employment contracts ensuring the right balance between the Council's business and legal interests. As part of the Special Recruitment Measures agreed by the Chief Executive, the Director of Human Resources scrutinises every vacancy request to it is the right fit for the organisation.
- 3.1.6 Who is an employee is a legal and factual question. There is a significant difference between an employee, a worker and a self-employed person. The difference is in the level of employment rights associated with each of these 3 categories. As stated above there are different types of employees, and their employment rights in most cases are linked to the issue of 'continuity of service' and not necessarily the label on the contract. Employment rights derive mainly from an employee's continuous service. For some rights no service is required e.g. the right to paid annual leave, to be paid the national minimum wage and to protection under the Whistleblowing and Equalities legislation. For other rights a continuous period of employment is needed

e.g. redundancy pay (2 years) unfair dismissal (1 year or 2 years if started after 6 April 2012).

- 3.1.7 If an employee holds more than one contract of employment at the same time the start date of each contract will determine the length of continuous employment under that contract. Hence s/he may be eligible for something under one contract e.g. redundancy pay, but not under the other.
- 3.1.8 Continuous employment accrues from week to week. If an employee works any part of a week (even one day) the whole of the week counts in calculating continuous service. On this basis if a casual employee is asked to work regularly s/he can build up continuous service and accrue employment rights even if s/he turns down work in a week in which s/he has already done some work.
- 3.1.9 In reality “types” of worker or employee do not always have a specific definition in law and it will depend on the terms of the contract that is put in place. Clear and express contract terms are important but even when a contract is drafted in a particular way the tribunal/court may override this if they decide the terms do not properly reflect the true nature of the relationship between the parties.
- 3.1.10 The definitions given in the table below are as they are typically used in the Council.

Contract Type	Description/Comments	Notice Requirement	Number Currently in LBB (not schools)
Temporary (open ended)	Not indefinite but the date on which the contract will terminate is not known/specified	Yes, based on length of continuous service under the contract	0
Fixed term	A contract with a specified start date which ends on a specified date or on the occurrence of a particular event (e.g. loss of external funding) or completion of a task (e.g. return to work of absent colleague, on completion of a project or piece of work).	Only if either party wishes to end the contract earlier than the date/event specified in the contract itself	137 (including 21 TTO Temporary)
Zero hours	Individual has a continuous contract but is not contracted to work a set number of hours and is paid only for the hours that s/he works. The Council has no obligation to offer any hours but the employee is normally	Yes (in LBB) based on length of continuous service under the contract	15

	<p>obliged to be available and to accept the work offered.</p> <p>May also be for a fixed term (see above)</p> <p>No guaranteed regular fixed income and fluctuating hours may present practical difficulties for employees with other responsibilities.</p>		
Variable hours	<p>Individual has a permanent or temporary contract. Hours may vary from week to week but with a specified minimum and/or maximum number of hours per week. The Council has an obligation to pay not less than the minimum number of hours stated in the contract. The employee is required to work the hours they are given each week/month within the stated range.</p>	Yes unless for a fixed term.	197
Casual	<p>No “mutuality of obligation” i.e. no obligation on the Council to offer work and no obligation on the individual to accept the work if offered.</p> <p>No contract of employment during non-work weeks.</p> <p>Favoured by employees who require/like flexibility and can choose when they work</p>	No	294

<p>Term-time only</p>	<p>May be indefinite or temporary. Employee works during term-time and is not required to work during part or all of the school holidays.</p> <p>Payment is spread over the 12 months of the year and continuity of employment continues during the weeks when there is no requirement to work.</p> <p>Attractive to employees with childcare responsibilities.</p>	<p>Yes unless for a fixed term</p>	<p>115 (including 21 TTO Temporary)</p>
<p>Annualised hours</p>	<p>Employee agrees to work for a specified number of hours per year for an indefinite or temporary period.</p> <p>Gives flexibility in how work is scheduled. Some working time may be specified, with the remaining hours kept in reserve.</p> <p>Contract continues during weeks in which there are no requirement to work.</p>	<p>Yes unless for a fixed term</p>	<p>0</p>

4. POLICY IMPLICATIONS

4.1 The Council is unequivocally committed to recruiting and retaining a motivated and flexible workforce on competitive local terms and conditions of service. Every employment contract will reflect the prevailing challenges and opportunities in the organisation.

5. FINANCIAL IMPLICATIONS

5.1 None arising from this report

6. LEGAL AND PERSONNEL IMPLICATIONS

6.1 As set out in the report.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	