

SLOUGH BOROUGH COUNCIL

REPORT TO: Employment and Appeals Committee **DATE:** 22nd September, 2011

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PART I **FOR INFORMATION**

ARRANGEMENTS FOR TEMPORARY WORKERS

1 Purpose of Report

This report sets out the arrangements the council has in place for the use of temporary staff. The arrangements include the process for approval and the framework for decision making, including the advantages and disadvantages of the different categories of temporary workers. The report also discusses the controls the council is developing to ensure accurate and relevant management information on temporary staff is available.

Changes to the status of some categories of temporary staff takes place in October 2011, with the introduction of the Agency Working Time regulations. A background briefing outlining these developments is appended to this report.

2 Recommendation(s)/Proposed Action

The Committee is requested to resolve:

- (a) That the report be noted.
- (b) That the tight financial and approval framework that supports the decision making on use of temporary workers be noted
- (c) That the business rationale that sits behind decision to deploy interims, contractor and temporary staff and how this supports the council to meet it's overall objectives be noted

3 Community Strategy Priorities

- Celebrating Diversity, Enabling inclusion
- Adding years to Life and Life to years
- Being Safe, Feeling Safe
- A Cleaner, Greener place to live, Work and Play
- Prosperity for All

3.1 A flexible and responsive workforce is key in achieving the council's community strategy priorities. In relation to 'Prosperity for All' the Council as a large employer in the town provides job opportunities to local residents. In addition to permanent opportunities, many residents take advantage of the flexible opportunities afforded by agency and temporary contracts. As part of the arrangements to ensure good

access to employment opportunities for slough residents, the Council has ensured that the employment agency supplier of staff is based within the Town.

4 **Other Implications**

(a) Financial

Decisions on how budgets for staffing are spent are delegated to cost centre managers throughout the organisation. As part of the approval framework for temporary staff, managers are required to obtain authorisation from the councils finance team. This authorisation ensures that sufficient funds are available and temporary staff costs are within the normal budget envelope for a particular service area. The case study below provides an example which shows how the employment of a flexible staff member for a limited period resulted in a saving to the council, when compared to a full time permanent employee. This case study does not include the additional recruitment costs that also apply to a permanent post.

Case Study short term employment of a Senior Administration Officer				
A team in the council needs to appoint a senior administration officer for 4 months to deal with an increase in workload.				
The annual costs for a permanent or fixed term staff member are				
GROSS PAY	ER's NAT INS	ER's SUPER	F.T.E.	Cost of Employee 2011/12
25,500	1,770	3,900	1.00	31,170
Agency Hourly costs for this grade of staff is approx £17.20 an hour weekly cost £636 and an Annual Cost of £29,274. This is annual saving of £1896.				

On occasions Contractors are engaged to help the council overcome particular problems or obstacles. Specialist contractors bring particular skills and knowledge, not normally found within the workforce. Use of these contractors can lead to significant savings as their skills and knowledge help drive out inefficiencies. The case study below provides an example of this in practice.

Case Study – Specialist Contractor for the Development of an ICT Strategy and Savings Plan
A specialist contractor was engaged for a limited period of 15 days to undertake a review of the arrangements for ICT across the council. Based upon his knowledge and expertise the contractor made a series of recommendations and changes that enabled the council to make savings of over £200,000 . The cost to the council of employing the contractor was £10,500, which when put alongside the savings the contractor was able to achieve, resulted in an overall return on investment ratio of 1 to 19

(b) Risk Management

The ability to deploy staff resources flexibly to meet service peaks and demands is a key element of the council overall approach to managing risk. Some areas of the council for example Children's Social Care face national recruitment shortages and high risk to children and families if work is not covered by qualified staff. Use of temporary staff is one of the ways in which the council manages risks such as these.

(c) Human Rights Act and Other Legal Implications

The new working time regulations act strengthens the rights of agency worker.

(d) Equalities Impact Assessment

None

(e) Workforce

The subject of this report is a workforce matter.

5 Supporting Information

5.1 The council's use of temporary workers falls into three categories or definitions; contractors, interims and temporary agency staff. The table below describes the categories and the advantages and disadvantages:

Category	Advantages	Disadvantages
Contractor Specialist input, usually fixed term and cost. Often short term based on a day rate (e.g. total costs £3250 = 10 days @ £320	Brings specialists skills that can help unlock efficiencies or bring substantial improvements to the organisation.	Care must be taken to ensure skills and knowledge transfer to existing staff and that the service is does not become reliant on the contractor.
Interim – Temporary Appointment to cover a gap due to vacancy , ill health etc of a Senior SML graded post	Responsiveness - ensures key senior management roles are overseen, thereby reducing risk. Interims at this level are usually very experienced and worked at a number of different authorities. Similar to Contractors this experience often leads to services improvements and efficiencies.	Perception that people in these roles may not have a long term commitment to the organisation
Temp / Agency - Again to cover an established post for ill health or maternity, often at lower than management levels or as a means of securing short term additional capacity to cover short term increases in demand.	Provides flexibility, which enables the council to adapt to changes in its role and function. Cost effective	

5.2 The major advantage to the council comes when temps, contractors and interims are deployed strategically to assist in implementing change. Reduction or in some cases an increase in the workforce may arise as a result of new or changing legislation or policy. Two current examples of this are the anticipated changes to the council workforce as a result of the proposed changes to benefits administration

and schools finance. Using interims, contractors or temps to cover vacancies in the teams currently supporting these areas of work, has the potential to save on future redundancy costs and improve the chances of finding redeployment in other council areas for the existing permanent staff.

- 5.3 To aid the council in understanding the make up and spending on the different categories. The councils HR team has developed a central monitoring system that brings together information from the main agency contractor per temps, together with information from managers and the approval process.
- 5.4 The central monitoring system will provide managers with an aggregate view of temporary staff deployment in their team/division/department. Management information generated by this system will include average cost and highest cost to enable value for money comparisons to be made. Information on assignment length, authorisation and contractual controls will also help manager make wider workforce decisions and judgment and ensure compliance with council procedures.

6 **Comments of Other Committees**

This report will be considered by the Overview and Scrutiny Committee on 13th September 2011 and any comments will be reported to the Committee at it's meeting.

7 **Appendices Attached**

'1' - Briefing Note - Agency Workers Regulations

Briefing Note - Agency Workers Regulations

Purpose of the Briefing Paper

The aim of this paper is help managers to understand the Agency Workers Regulations and the implications and responsibilities for both managers and Pertemps.

It has been produced in a questions and answer style.

1. When do the Regulations come into force?

The Regulations come into force on 1 October 2011. However, time spent working before an assignment before that date does not count for the purpose of counting the 12-week qualifying period.

2. What types of workers do the Regulations apply to?

The Regulations apply to the type of worker often referred to as 'agency temps', being workers who are placed to work at SBC through Pertemps (often called 'master vendor').

The Regulations do not apply to self-employed contractors or those employed on a service contract managed by a party other than SBC. However, they do apply to workers contracted to an "umbrella company". This means workers who work thorough a service company, but who are not genuinely self employed.

3. Will the Regulations change the employment status of agency workers?

No. The Regulations will not change the status of temporary agency workers and will not make them employees.

4. Will the Regulations give employees any rights?

No. The Regulations will not give employees any rights and therefore if an agency worker is paid more than a comparable employee, the Regulations will not give the employee the right to be paid more.

5. What rights will the Regulations give agency workers?

The Regulations will give agency workers the right to equal treatment in terms of "basic working and employment conditions", as if they had been employed directly by SBC to do the same job. In many cases this will mean that agency workers will be entitled to the same rate of pay as a comparable employee, but they are not entitled to get to all of the terms and benefits that the comparable employee gets. For details of what the entitlements are see 6 below.

Importantly, many of the rights are subject to the worker working for SBC for 12 weeks or more.

6. What does equal treatment include?

The Regulations will require equal treatment in respect of the 'relevant terms and conditions' ordinarily incorporated into the contracts of those working at SBC. This means the relevant terms and conditions in collective agreements, relevant pay scales and terms generally included in employees' contracts of employment.

'Relevant terms and conditions' are defined as:

- pay
- the duration of working time
- night work
- rest periods
- rest breaks
- annual leave.

However these rights are subject to a 12-week qualifying period (see 9 below).

The Regulations also provide for equal treatment from day one in terms of access to vacancies and collective facilities. For further details see 10 below.

7. How will pay and holiday be calculated?

In the Regulations, 'pay' means basic pay, plus any fee, bonus, commission, or other payment directly referable to the employment, such as overtime or unsocial hours payments.

The holiday entitlement includes any entitlement above the statutory minimum requirement of 28 days per annum including bank holidays, which in most cases will mean the relevant contractual entitlement applicable to SBC's employees. The Regulations allow payment to be made in lieu of holiday entitlement above the statutory minimum either as part of the daily/hourly rate or at the end of the assignment.

8. Does equal treatment include occupational pensions, sick pay, maternity pay and similar payments

No. The definition of pay in the Regulations excludes:

- occupational pensions
- occupational sick pay
- maternity, paternity or adoption leave pay
- redundancy pay

9. How will the 12-week qualifying period be calculated?

Any period of work (full or part-time) carried out by the agency worker for SBC in a calendar week will make that week count towards the 12-week qualifying period.

For the purposes of calculating the qualifying period, continuity will normally be broken by a break of six weeks between assignments in the same job, or when an agency worker takes up a new role with SBC where the whole or main part of the duties in the new role are substantially different from the whole or main part of the duties in the old role. Department for Business, Innovation & Skills are currently producing guidance on what "substantially different" means and these will be published shortly.

However breaks between assignments due to a number of specified reasons, such as sickness (of up to 28 weeks), jury service or pre-determined closure periods (e.g. school closures during holidays) will not break the qualifying period. Instead the 'clock is paused'. For example, if a worker works for 11 weeks in a school, and the school closes for six weeks, when the agency worker returns their first week back will be week 12 for the purposes of the qualifying period.

The situation is different in the case of absence related to pregnancy, childbirth or maternity during the "protected period", and for pregnancy, maternity, paternity or adoption leave. In such cases the worker is for the purposes of calculating the 12-week period deemed to continue working in their role for the original intended length of the assignment, or likely duration of the assignment, whichever is longer. The "protected period" starts at the beginning of the pregnancy and ends at the end of the 26th week from childbirth, or when the worker returns to work, if earlier.

10. Will the 12-week qualifying period be broken if the agency worker is placed with SBC for a second assignment, but through a different agency?

No, not unless the gap between assignments is six weeks or more or the new role is a substantially different to the first one. This is because the 12-week qualifying period is calculated by reference to service with SBC, irrespective of which agency places the worker.

Because of this, we will be putting in place procedures with Pertemps and agency workers to check whether the worker has worked for us in a previous assignment.

11. What about access to job vacancies and collective facilities and amenities?

Access to these is a 'day one' right and is not subject to the 12-week qualifying period.

The right to access to job vacancies means the right to be informed of relevant vacancies at SBC. In practice this means that agency workers should be provided with the same vacancy lists that comparable employees receive. Agency workers will be entitled to the same access as comparable employees receive to internal vacancies. However, SBC can still operate 'closed' processes in redeployment situations where there is a headcount freeze and consequently there are not any vacant posts.

Collective facilities include canteens, childcare facilities and transport services, and unless objectively justified, agency workers must be given the same access to those facilities as other comparable workers (not just employees) receive. BIS guidance will provide further information on what benefits may fall into the category of collective facilities and on the issue of objective justification. However, it is anticipated that transport services would not include season ticket loans and company cars, and the objective justification defence would apply where the overall terms of the agency worker's package were the same as the comparable employee's contract of employment.

12. What protection will the Regulations provide for pregnant and new mother agency workers?

Pregnant agency workers who have met the 12-week qualifying period are entitled to take paid time off for ante-natal appointments. The agency is primarily responsible for providing this right, and for paying the worker for the time off. However, SBC should ensure that practical arrangements are put in place so that the worker is able to take the time off.

We, as now, will be required to carry out risk assessment for pregnant workers, and where a risk is identified make reasonable adjustments to remove the risk. Where that is not possible, under the Regulations the agency will be responsible for offering alternative work, and where that is not possible, for paying the worker for the remainder of the assignment for any period that she cannot work due to the health and safety risk.

There is no obligation on SBC to keep a role open for an agency worker who is on maternity leave.

13. How do I work out what an agency worker will be entitled to?

The right is to equal treatment in respect of basic working terms and conditions as if the agency worker had been employed directly to do the same job (see question 6 above). Although in some cases that could mean a relatively speculative assessment of what those terms would be, the Regulations provide that equal treatment is deemed to have been provided where the worker receives the same relevant terms and conditions as a comparable employee working for SBC.

As we employ a large number of people in a variety of roles, in most cases it should be relatively straightforward to identify a comparable employee. Where incremental pay and benefit scales are in place, the default position should be that the agency worker is paid at the bottom of that pay scale, as a new employee would be. It is anticipated that the BIS guidance on the Regulations will provide further information on this issue.

14. Who will be responsible for providing equal treatment?

Responsibility for ensuring equal treatment for most of the rights will primarily be with the employment agency. However, an agency will be able to defend a claim and SBC will become liable if the agency can show that it took "reasonable steps" to obtain the necessary information from us to determine the agency workers' basic working and employment conditions. Therefore, SBC will have to ensure that we set up systems for providing Pertemps with appropriate information on the terms and conditions that are in place in our authority.

15. How will the Regulations be enforced and what are the liabilities for non-compliance?

An agency worker will be able to bring a claim in the employment tribunals to enforce their rights under the Regulations, against the agency and/or SBC. Compensation for a breach will be calculated by tribunals on a "just and equitable" basis, with no upper limit on awards. Liability for the award between the agency and SBC will be determined by the employment tribunal, according to the extent to which it finds the agency and/or SBC liable for the breach.

16. How will agency workers be able to find out whether they are receiving their rights?

After meeting the 12-week qualifying period, an agency worker can ask their agency for relevant information about the basic terms and working conditions at SBC. If the agency fails to provide the information within 28 days of the request (or the request is about access to collective facilities) the agency worker may make the request direct to SBC, who then has 28 days to respond.

Where the agency and/or SBC fails without reasonable excuse to respond or the response is late, evasive or equivocal, then in any employment tribunal proceedings that may follow, the tribunal can draw an inference from the failure or delay etc.

17. Will the Regulations mean an increase in the cost of agency workers who work in assignments for more than 12 weeks?

This will depend on whether the agency workers in question are paid less than a comparable employee. Where the agency worker is paid more, then the costs impact of the Regulations will not be substantial, although there will still in most cases be an increase in non-pay entitlements, such as holiday. Where an agency worker is paid less, the increase in costs will be more substantial, although there will still be savings in respect of pension and in some cases sick pay.

18. What does SBC need to do to prepare for implementation of the Regulations?

Although the implementation date of 1 October 2011 may seem a long way off, it is important for SBC to work out now what the potential impact of the Regulations will be on our authority.

We are carrying out an assessment of our agency worker use, looking at factors such as the normal length of assignments to see how often the 12-week qualifying period will be met. We will also need to review our agency workers' roles to see if there are comparable employee posts, and work out whether the agency worker is paid a lower rate than the comparable employee, taking into account not only basic pay but other payments such as overtime.

Having done this exercise, it may be that any increase in costs arising from the Regulations may be less than anticipated, as in certain cases agency workers are paid more than comparable employees.

We are also agreeing with Pertemps systems that can be set up for providing agencies with the appropriate information on terms and conditions that are in place in the authority, so that workers' entitlements can be met. Also looking at agreeing processes for checking whether a worker has or will soon meet the 12-week qualifying period.