

Rotherham Metropolitan Borough Council

Temporary Agency Workers Policy

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This policy, guidance notes and supporting formwork is available in other languages and formats on request.

Introduction

In certain circumstances it is recognised the use of temporary agency workers is an acceptable option to ensure service needs are met. However usage of such workers should be managed in a cost effective and business efficient way. The Council has contracted a Master Vendor company to supply **all** its temporary agency worker requirements.

Please note that the arrangements detailed in this policy have been agreed with our incumbent Master Vendor only. Temporary agency workers sourced from agencies outside this contract will be subject to the terms and conditions of that agency.

1. Aim of the policy

This policy aims to:

- Ensure identified temporary agency worker usage clearly relates to assisting the Council meet its objectives
- Ensure a consistent approach is followed in the engagement of temporary agency workers and all outcomes are comprehensively evaluated
- Ensure all legislative requirements are addressed
- Ensure usage of temporary agency workers is cost efficient and effective
- Ensure appropriate usage so as not to compromise the Council Recruitment and Selection policy

2. Scope

This policy applies to all employees of the Council, except those in schools

3. When can temporary agency worker be used?

The Council, as an equal opportunities employer, expects open and transparent recruitment and selection of its employees. However in certain situations a full recruitment process may not be a practical option.

For example:

- Short term sickness
- Unplanned absence – e.g. for family reasons
- Short term unplanned and unforeseen work pressures
- Where there are shortages of suitably skilled workers
- To provide cover during the recruitment process of a permanent worker
- Seasonal fluctuations
- Additional flexibility.

4. When a temporary agency worker should not be used

Unless there are major recruitment difficulties, a temporary agency worker should not be used to cover:-

- Holidays
- Maternity/paternity/adoption leave
- Secondment
- Project work
- Long term sickness
- Planned unpaid absence e.g. career breaks
- Any other absence you are aware of in advance.

5. Duration of assignments

Individual temporary agency workers should not be used for any longer than a four week period. However, in exceptional circumstances this can be extended to an overall maximum of 12 weeks.

Exceptional circumstances are individual and not easy to define. An example being where a period of sickness, expected to last for no more than the four week period, has extended beyond this. In this situation please seek the advice and guidance from the directorate HR Business Partner.

The agency will inform the Council when temporary assignments are continuing beyond this period and justification and authorisation will be required as to why the assignment is continuing.

6. Recruitment and retention difficulties

If there are recruitment and retention difficulties, with certain staff/professional groups, temporary agency workers may be used to cover staff shortages. However measures to address the recruitment and retention difficulties, during the period the temporary agency workers are in place, should be actively pursued so vacancies can be offered for open recruitment as soon as possible. Advice is available from the directorate HR Business Partner.

7. Temporary Agency Workers rights

The Agency Workers Regulations (effective from October 2011) give agency workers the entitlement to the same basic employment and working conditions as if they had been recruited directly, if and when they complete a qualifying period of 12 weeks in the same or similar job. However this does not have to be for the same service it is within the Council as a whole. For example if an admin worker has completed a ten week assignment within one service and is then re-engaged by another service within the Council to undertake the same or similar role the 12 week period will be reached within two weeks in the new assignment. (The permitted break between assignments is six weeks for the 'clock' to start again but will be paused for sick leave, jury service, annual leave, industrial action and shut-downs).

From day one of the assignment it is the hiring manager's responsibility to ensure the temporary agency worker has access to the same facilities available to permanent employees

After 12 week qualifying period the temporary agency worker will be entitled to equal treatment in terms of pay and other basic working conditions.

Although it is mainly the responsibility of the agency to ensure the temporary agency worker receives all they are entitled to for each assignment (after the 12 week qualifying period), it is the responsibility of the end user (the Council) to supply all the relevant information the agency will require prior to commencement of an assignment. One key source of information which needs to be supplied to the agency at the start of each assignment is the job and person profile. This will ensure that an accurate rate of pay is being applied for the work required and the annual leave entitlement is adjusted accordingly. Do not ask temporary agency workers to undertake tasks at a higher level than those that have been agreed at time of booking.

Please see appendix A for full details.

8. Other options

8.1 Existing resources

Before engaging a temporary agency worker, resources should be sought from the existing team to see if there is the potential available to offer the option of covering the post, either the full or part range of the duties, as a personal/professional development opportunity. In addition to developing your own team it may also reduce the fees payable to the agency as the skill level requirements will be lower thus reducing cost. Offering additional hours or overtime to existing employees could also be considered. However this should be optional for employees and not forced.

This offer could be extended wider across the service where applicable

8.2 Re-deployment pool

The Council operates an internal re-deployment pool containing details of employees who are seeking redeployment opportunities. Prior to engaging a temporary agency worker, the re-deployment pool should be checked to see if there is a suitable skill match to cover the assignment. Additional support and training maybe required from the engaging manager before the full range of duties can be effectively undertaken.

9. Authorisation/booking process

Authorisation is required from three sources before the engagement of a temporary agency worker can take place. These are the manager/budget holder, the directorate HR Business Partner and the Strategic Director/Director. Firstly the skills requirements and details of the work requirements need to be clearly defined. These should be identified from the relevant job and person profile. As the post will only be covered on a short-term basis it needs to be decided if the full range of skills will be required or as a 'holding' position, can they be reduced. Higher skills requirements will affect agency costs. Prior to contacting the agency the line manager should contact the HR Resourcing team to assess whether there are any employees in the internal re-deployment pool who may have the necessary skills to cover the role in the short term.

If there is no-one suitable in the re-deployment pool, the line manager should then contact the agency directly and inform them of their exact needs. When confirmation is received from the agency that they are able to supply a suitable temporary agency worker a purchase order needs to be raised and the order number supplied directly to the agency.

Please note: The agency will not release the temporary agency worker until they have received a purchase order number.

If there is an immediate/emergency need and a temporary agency worker is required at very short notice to fulfil vital service requirements e.g. catering/cleaning authorisation will only be required from one authoriser and the agency can be contacted immediately. Also checking of the internal re-deployment pool may be omitted. However if the assignment is expected to last more than three working days the full process will need to be completed i.e. the internal re-deployment pool should be checked and the remaining two authorisations sought.

10. Extending or reducing the term of assignment

If the temporary agency worker is required for a period longer than originally stated or they are not required for the full duration of the assignment, where possible and practical within one week's notice of the end of the assignment, contact the agency directly. Do not communicate the new arrangements directly to the temporary agency worker. Also inform the Purchase to Pay team as an additional or revised purchase order will need to be raised.

11. Temporary to permanent conversion or securing a position with the Council

It is against the Council's Equal Opportunity in Employment and Recruitment and Selection policy to recruit directly from agencies. If the temporary agency worker covering the vacant post, which is out to open recruitment, submits an application for the post in the normal way, this will be considered along with other applicants for the post as part of the Council's recruitment and selection process. If the temporary agency worker is successful in securing the position an agency introduction fee may be payable. Please note that this introduction fee can also be charged for a temporary agency worker securing any post within the Council. It is not restricted purely to the post they are covering.

In extreme cases where it is known there are national shortages of certain professional groups e.g. social workers, and open external recruitment activities have not produced any suitable candidates then temporary agency workers may be considered for conversion to permanent contracts. In this instance, even if the temporary agency worker has been in situ for some time, the normal Council recruitment procedure still needs to be followed. If the temporary agency worker is assessed as suitable for permanent employment, following the recruitment and selection procedure, the recruiting manager will have to seek authorisation from the agency to convert the agency worker to permanent status using the [Temporary to Permanent Transfer of Staff Requisition form](#). Failure to gain official authorisation from the agency will incur costs which can equate to the full introduction fee irrespective of how long the agency worker has been working for the Council.

For all temporary to permanent conversions an introduction fee may be payable. This fee is usually calculated as a percentage of the annual salary for the post. This percentage can vary dependant on the length of time the temporary agency worker has been assigned to the Council. Our current contractual arrangement allows **free** transfer of agency workers to permanent status after the following time periods have been served.

- Administration and clerical –after 12 weeks
- Trades- after 12 weeks
- Social Care (and affiliated roles) – after 22 weeks
- All other professions (with a salary of £22k and above) – after 16 weeks

When a temporary agency worker converts to employed status within the Council there is no continuity of service for any purpose as the terms and conditions of the contract with the Council are independent of any previous contract with the agency.

12. Using workers from non-contracted agencies

All bookings should be made through the contracted agency. The contracted agency, acting in the master vendor capacity, has a range of second tier agencies and all jobs and professions are available. Failure to use the contracted agency will may result in higher costs, differing terms and conditions and less rigorous checking and quality procedures as to those negotiated with the contracted agency. It may also lead to the non-payment of invoices.

The Council has also agreed specified processes with the contracted agency to ensure the Agency Worker Regulations are adhered to. It is not possible to secure similar arrangements with off contract agencies so manager's need to be vigilant and ensure the Agency Worker Regulations are not breached.

In the unlikely event of the contracted agency being unable to supply advice should be sought from HR or the directorate HR Business Partner.

13. Contracts of employment

All temporary agency workers supplied by the contracted agency are employees of the agency (i.e. a contract of employment exists between the worker and the agency). RMBC managers are responsible for providing daily supervision and allocation of work. The agency is responsible for all other aspects of management.

14. Measuring performance

The contracted agency will work with the Council to continually improve the quality of service provided. To assist with this process, managers should ensure that any assessment and evaluation documentation provided by the agency, which forms part of their quality measurement procedures, is completed and/or when required take an active role in any assessment meetings with agency representatives.

Quarterly contact and review meetings will be undertaken with the contracted agency so any specific internal feedback should be provided to HR.

15. Document verification

For all temporary agency workers who are assigned a role which is considered a regulated activity (e.g. children's and adult social care) the full range of checks need to be completed as if recruiting a permanent employee e.g. right to work in the UK, id, qualifications etc. The master vendor agency will supply some of the documentation but others will need to be verified by the engaging line manager. Full details are available on the [intranet](#)

16. Induction for the agency worker

Although the contracted agency undertake the 'general' element of the induction process, it is also essential that a proper workplace induction is planned by the line manager prior to the start of the assignment and implemented as soon as possible following arrival of the temporary agency worker.

Please work through the '[Temporary Agency Worker Induction Checklist](#)' to ensure all points are covered.

Appendix A

Agency Worker Regulations

The Agency Worker Regulations come into force on 1st October 2011. The regulations will give agency workers the right to the same basic terms and conditions as employees directly employed by the Council to do the same job – once they have completed a 12 week qualifying period.

New entitlements for all agency workers

From day one

The regulations provide new entitlements giving agency workers the same access to certain facilities provided by the Council to comparable permanent employees plus the provision of information on current Council job vacancies from the first day of their assignment. For the latter it is enough to inform the agency worker where and how they can access this information. It is the Council's responsibility to provide this information to the agency worker so it has been included in the Temporary Agency Worker's Induction checklist which must be followed at the start of any assignment.

- **access to facilities** e.g.
 - canteen or other similar facilities e.g. break out areas
 - toilets/shower facilities
 - prayer room
 - food and drinks machines
 - car parking
- **access to vacancies**; the right to be notified of any job vacancies within the Council (this does not include internal vacancies which have been ring fenced to permanent employees due restructures etc.)

This is not a right to special treatment, for example, if car parking spaces are allocated as and when there are spaces available and permanent employees have to go on a waiting list, this will also apply to the agency worker.

After 12 weeks in the same/similar job

The new additional equal treatment entitlements relate to 'relevant terms and conditions', namely pay and other basic working conditions and will only come into effect after an agency worker completes a 12 week qualifying period with the Council, in the same or similar role They are:

- pay related to work undertaken on assignment (for certain posts we are already paying the agency worker at a higher rate than permanent workers)
- duration of working time
- night work
- rest periods
- rest breaks
- annual leave
- flexible working arrangements

- paid time off for ante natal appointments

Not included are:

- Contractual and statutory redundancy pay
- Occupational sick pay, maternity/paternity/adoption pay
- Notice pay (statutory and contractual)
- Occupational pension
- Compassionate leave and time off for jury service
- Payment for time off for Trade Union duties
- Travel expenses
- Any benefits requiring an eligibility period of employment (e.g. increased annual leave entitlement after five year service)

(Annual pay award - an agency worker should receive the pay increment that he or she would have been entitled to if recruited directly to do the same job.)

Calculating the 12 week qualifying period

The 12 week qualifying period is triggered by working in the same or similar job with the Council for 12 calendar weeks. A calendar week in this context will comprise any period of seven days starting with the first day of an assignment. Calendar weeks will be accrued regardless of how many hours the worker does on a weekly basis.

Therefore, even if the agency worker is on assignment for only a couple of hours a week, it will still count as a week and they will still be entitled to equal treatment after 12 calendar weeks calculated in this way.

It is **not retrospective**; an agency worker will only be able to accrue the 12 weeks qualifying period after the regulations come into force on 1 October 2011 even if the assignment started before this date.

Break between assignments – when the qualifying period clock pauses and when it restarts

If the break between assignments with the Council is less than six weeks and the role is not substantively different, generally the clock will pause and start ticking again when the agency worker resumes work with the Council.

Type of absence that affects the 12 week qualifying period	Effect on 12 week qualifying period
Any reason where the break is less than 6 weeks	Pauses the clock
Sickness absence	Pauses the clock for up to 28 weeks
Annual leave	Pauses the clock
Shut downs – e.g. school holidays	Pauses the clock
Jury service	Pauses the clock for up to 28 weeks
Industrial action	Pauses the clock
Pregnancy and maternity-related absence	Clock keeps ticking *
Statutory maternity, paternity or adoption leave	Clock keeps ticking **

* The protected period for a pregnant agency worker begins at the start of the pregnancy and ends 26 weeks after childbirth (or earlier if she returns to work)

**Where an agency worker has a contract of employment with an agency and is entitled to this type of leave

12 week assignments and anti-avoidance provisions

Managers can obviously decide not to engage agency workers beyond the 12 week qualifying period and there is nothing in the regulations to prevent an agency worker being released after 11 weeks. However, be aware of anti-avoidance provisions that have been put in place which address any situation where a pattern of assignments emerge that are designed to deliberately deprive an agency worker of their entitlements.

Definition of the same or similar job

The key factors that will determine whether a job is substantively different relate to changes in the skill set required to carry out a job and in the nature of the work and duties carried out). It can only count as a “substantively different role” when and if the manager notifies the agency that the job duties have changed and this information is passed to the agency worker.

Key basic information which needs to be supplied to the agency when requesting and agency worker

- Job and person profile
- Hours of work
- Pay rate for the job (including overtime payments and shift/unsocial hours allowances)
- Start date and duration of the assignment
- Annual leave entitlement

Performance and Development Review

The Regulations do not require the Council to involve agency workers in the PDR process (unless it is linked to pay). However it may be easier in some circumstances to fully integrate the agency worker but it is not a requirement.

Liability

Day one rights

Liability for any breaches relating to day one rights (access to vacancies and collective facilities) will rest solely with the Council.

12 week rights

The contracted agency is responsible for setting the agency worker's terms and conditions. Any breaches in relation to their pay and employment conditions will rest with the agency to the extent that the agency is responsible for the breach. The agency can only afford the agency worker the requisite pay and employment conditions however if the Council has provided the necessary and correct information in the first place. Therefore if the Council gives the agency incorrect information or fails to notify the agency of any change to any pay or working condition term the burden of liability will transfer from the agency to the Council.

If agency workers feel the new regulations have not been complied to they can take their case to an employment tribunal.