

PERSONNEL COMMITTEE

Employment Contracts (Casual)

25 February 2014

Report of the Human Resources Manager

PURPOSE OF REPORT

To report to Personnel Committee the current arrangements for the employment of people on casual contractual arrangements

This report is public.

RECOMMENDATIONS

(1) That Personnel Committee note the content of the report .

1.0 Background

- 1.1 In December 2013 the Human Resources Manager provided a briefing to the Chair of Personnel on the casual working arrangements at Lancaster City Council. The Chair asked that this briefing be reported to the Personnel Committee for consideration.
- 1.2 As members may be aware there is no legal definition of a casual contract or a zero hours contract for that matter. Neither of these “contract” types confer any special status on the individual. That said, the Officers are keen reassure members that Lancaster City Council does not employ any staff on what is commonly held as the definition of Zero Hour Contracts.
- 1.3 In an effort to provide some clarity on the issue of “casual contract” this report sets out below a number of facts in relation to the casual workers the Council employs.
- 1.4 Across the Council there are around 60 active casual workers employed across a range of activities. The bulk of the casual activities being at Salt Ayre Sports Centre, The Community Pools and The Platform.
- 1.5 A few years ago the HR Team completed a review of casual activities at the swimming pools to establish who was really a casual and who had in our opinion acquired contractual rights. The outcome of this review was that four casual employees were offered permanent contracts of employment due to the characteristics of their working arrangements.
- 1.6 In April 2013 the HR Manager met with service managers from the then Wellbeing service to discuss a number of HR related issues. As part of this discussion it was clear that a more detailed understanding of when and why casual work was offered was

needed, The review which commenced has now been incorporated in to the review of Sports and Leisure Services, the outcome of which will soon be reported to the Personnel Committee. The review is by no means complete although the insight gained so far has helped officers understand more fully what is happening in relation to casual work.

- 1.7 The Chief Officer (Health and Housing) and the Sports and Leisure Manager are keen to ensure that the service structure is geared to have the optimum establishment to meet the demands of the service.

2.0 Background to casual/employee status

- 2.1 Under a casual contract, there is commonly no obligation on the employer to offer work to the individual and, crucially, no obligation on the individual to accept work that is offered. The intention behind this is often that mutuality of obligation does not arise and, therefore, the individual does not have employee status. However, looking at this in the context of the current employment law, if it can be demonstrated that, over a sustained period, an individual has accepted all the work offered, even if he or she has the contractual right to refuse it, there is a significant risk that, in the event of a claim, the Employment Tribunal will take a pragmatic view of the arrangement and find that mutuality of obligation exists and an employment relationship has been established under an overarching or "umbrella" contract.

3.0 Background to casual/employee status

- 3.1 A zero hours contract typically (but not necessarily) differs from casual worker arrangements in that, while the employer is under no obligation to offer work, the individual is usually obliged to be available and to accept the work when it is offered. This is not a characteristic of the relationship which Lancaster City Council has with any Casual workers.
- 3.2 Employers who engage a number of "bank" staff often engage those staff under this type of contract, the Council does not have any "bank" staff. In relation to employment claims The Employment Tribunal may, in certain circumstances, interpret this type of arrangement as being sufficient to fulfill the requirement of mutuality of obligation for an employment relationship to arise. The *Pulse Healthcare Ltd v Carewatch Care Services Ltd and others EAT/0123/12*, is a good example here and one which has been referred to a lot in recent months. In this case the Claimants were engaged under contracts entitled "zero hours contract agreement" but, in reality, they had worked fixed hours on a regular basis over a number of years. Once the Rota had been prepared, the individuals were required to work and the employer was required to provide that work. The Employment Appeal Tribunal concluded that the Claimants were employees. It is this information which is guiding our review of casual working activities within Lancaster City Council.

4.0 The way forward

- 4.1 The service reviews are highlighting the workforce needs. Other data from service operations is also providing valuable management information of how work is offered and accepted.
- 4.2 As part of the wider business improvement process and service development, we will continue to look at service delivery needs. This will inform the staffing needs that are required.

4.3 Although the information available so far does not suggest any intent whatsoever to exploit individuals whilst working for the council, our aim is to ensure we employ people on the most appropriate contractual arrangement as a good employer.

4.4 The need to devote resources to meet the day to day needs of the Council and support the process of service review, has taken away capacity to focus wholly on the review of contracts. However we have ensured that the service restructures that are underway incorporated a strand of enquiry to look at how the demands for work are met.

5.0 Recommendations

That Personnel Committee note the content of the report.

RELATIONSHIP TO POLICY FRAMEWORK None arising from this report	
CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing) None arising from this report	
Human Resource Implications None arising out of this report	
FINANCIAL IMPLICATIONS None arising out of this report	
SECTION 151 OFFICER'S COMMENTS The S151 Officer has been consulted and has no further comments.	
LEGAL IMPLICATIONS None arising out of this report	
MONITORING OFFICER'S COMMENTS The Monitoring Officer has been consulted and has no further comments.	
BACKGROUND PAPERS None	Contact Officer: Stuart Hampson Telephone: 01524 582076 E-mail: shampson@lancaster.gov.uk Ref: