

SUBJECT: MONMOUTHSHIRE CC ZERO HOURS CONTRACTS

SOURCE: Audit Committee

MEETING: Council

DATE: 29th June 2017

DIVISION/WARDS AFFECTED: All

1. PURPOSE

To provide a report, as requested, to the Council, from the Audit Committee, on the use of non guaranteed hours/casual contracts used by the Council with specific regard to the use of 'Zero Hours Contracts'.

2. RECOMMENDATION

2.1 The County Council should note that the Audit Committee is satisfied that MCC does not use Zero Hours Contracts for anyone it employs according to the definition: 'A flexible contract where an employer does not guarantee set hours of work for an employee. The employee is contracted to that employer and cannot work for another employer'.

2.2 MCC does employ casual workers who are not obliged to do any work for the Authority if they choose not to. It is accepted that this is helpful both to the Authority, when organising work patterns and suits many of the casual workers who have other commitments or do not wish to be committed to fixed hours.

2.3 It is recommended the use of casual employment should continue to be monitored. Managers and Service Areas should take ownership of this for their own areas. The Human Resources Business partnering approach will help, making use of annual information on the use of casual employment.

2.4 Where appropriate, MCC should continue to offer casual employees fixed term contracts, if the work has become a regular commitment, for example.

3. KEY ISSUES

3.1 Council, at its meeting of 20th October 2016, received a report from the Head of People Services and Information Governance outlining the use of zero hours/non-guaranteed hours/casual contracts across the organisation.

3.2 Following debate a motion was put and agreed that “Audit Committee look at the zero hour contracts within Monmouthshire County Council and a report be presented to Council at the earliest time possible”.

3.3 This paper is intended to provide the Council with an account of the enquiries which the Audit Committee carried out into the matter, to provide an account of the conclusions arrived at, and to highlight any issues of concern.

4. CONSIDERATIONS

4.1 Members of the Council were concerned that the Council may be employing individuals in such a way that could be to the detriment of the employee. Council asked for information regarding the number of employees who were employed on zero hours/casual hour contracts within the council.

4.2 Information on the number of those employed with no contracted hours was provided by the Head of People Services and Information Governance to the Council at the meeting on 20 October. There were 318 persons employed with no contracted hours (9% of the workforce). These statistics included 67 Exam Invigilators and 35 Supply Teachers. If these were removed the figures would be 216 or 6%

4.3 Members of the Audit Committee asked for trend information for previous years. The Audit Committee were told that historic trend information was not available, but that People Services could monitor the position annually using the information provided as a baseline.

4.4 The Head of People Services told the Audit Committee that a Zero Hours Contract is a flexible contract where an employer does not guarantee set hours of work for an employee. The employee is contracted to that employer and cannot work for another employer. The Committee was told that Zero Hours Contracts of this type are not used in Monmouthshire County Council. The Audit Committee found no reason to dispute this.

4.5. The Committee was informed that the Council uses specific contracts that are either temporary or permanent for a set number of part time or full time hours. If an employee is not employed on that basis they are issued with a casual letter and the employee has no obligation to work. When offered work, the individual can choose whether or not to take up the offer. This arrangement allows the Council flexibility to employ people on a casual basis, where appropriate, e.g. play scheme workers who are typically students looking for summertime employment. The Audit Committee did not dispute that there would be casual workers for whom it is mutually beneficial to the individual and the organisation to operate in this way.

4.6 The Head of People Services had informed the Council, at the 20th October meeting, of the principles for the employment of persons on non guaranteed hours arrangements as provided by The Public Services Commission for devolved public services in Wales.

4.7 The principles in the guidance, which the Audit Committee have been informed are adhered to by MCC, are:

1. Where organisations need to introduce new non-guaranteed hours arrangements or consider changes to their current arrangements they will engage at the earliest opportunity with their recognised trade unions.
2. Organisations will make clear which non-guaranteed hours arrangements they use and for what purposes
3. Staff engaged through non-guaranteed hours arrangements will have access to appropriate induction, training and development support to enable them to undertake their roles effectively.
4. Organisations will ensure that they comply with employment law and collective bargaining agreements and provide their staff with the required rights, terms and benefits.
5. Staff engaged through non-guaranteed hours arrangements will have terms and conditions of service broadly similar to those of their permanent staff

4.8 These principles include a regular review of the appropriateness of arrangements for organisations and staff, to involve both the individuals involved and the Trade Unions. When the review leads to a change in the contractual relationship a revised contract setting out the new arrangements will need to be issued. This will set out in a clear accessible language the revised relationship between the organisation and the individual. It was understood by the committee that where an individual is employed on a basis without guaranteed hours, but where the nature of the arrangements suggests that a fixed hours contract would be appropriate, then a fixed hours contract should be arranged. In all cases, subject to the particular hours worked and pattern of work, arrangements for holiday pay, sickness pay, pension and other employment terms should be comparable to employees with fixed hours contracts.

4.9 Information had, however, been supplied to the Council and to the Audit Committee in the People Services document 'Employing People & Contracts of Employment Protocol Guidance for Managers' which contains the following reference to casual employment:

Casual / Relief Employees

Casual/ Relief employees should be recruited as a way of dealing with a variable need for work - which can often not be predicted or planned for by the business or service area. Employees recruited on this basis should only be used on an ad hoc basis and will not work regularly and consistently. No contractual or implicit hours should be stipulated as part of relief or casual work.

Casual/Relief employees will not be entitled to annual leave, sick pay or bank holiday entitlements. Casual/Relief employees do not benefit from the range

of entitlements to which other employees of the Local Authority are entitled, due to the fact that they do not work a regular pattern of hours.

Managers should regularly monitor the hours that are worked by any casual/relief employees employed in their business/service area and termination paperwork completed routinely when the employee is no longer required, to ensure there is an accurate record of all current employees. If casual/relief employees start to work a regular and consistent pattern of hours then a manager needs to review the requirement for the work being undertaken, and if necessary, a temporary contract of employment be issued. If casual/relief employees build up regular and consistent hours then this will mean that they will be entitled to annual leave, sickness pay and a redundancy liability may be incurred for the business area.

4.10 The second paragraph from this extract implies that casual employees do not benefit from many of the entitlements which a contracted employee would expect, although the third paragraph does suggest that the Public Services Commission guidelines (fifth principle, see 4.7, above) could be met by issuing a temporary contract of employment. Indeed the paragraph implies that failure to do this might result in a liability being incurred should, for example, an employment tribunal rule that a worker without contracted hours would be entitled to holiday pay, redundancy rights or other rights under employment law.

4.11 The Guidance for Management document also contains the following reference to agency workers:

The Local Authority has a contract to source all agency workers. All requests for agency workers must be approved by the relevant DMT. All administration relating to annual leave and sick pay will be administered by the contractor directly. It should be understood that Agency Workers are not employees of the Local Authority.

The Chair of the Audit Committee offered his opinion that the employment practices of employment agencies could cause a risk to the reputation of MCC if the agency were found to be using certain employment practices. It is understood that MCC does use agency workers in some roles, such as supply teachers.

4.12 The Audit Committee has noted that People Services HR has introduced a business partnering approach with managers (using a specific template for meetings held between HR and Managers/Head-teachers) which will provide challenge on a range of people management issues, and which will provide a 'governance' framework which will enable regular review of the type and use of contracts of employment.

4.13 In the course of obtaining evidence from People Services, a number of issues were discussed, or further information requested. Some of the issues raised were covered in correspondence between the Head of People Services and Councillor Frances Taylor, which was made available to members of the Audit Committee. Other information was provided directly to the Audit Committee. Matters considered included:

Two posts identified as having no contracted hours were nevertheless described as '600 hours' posts. In practice the Audit Committee was told that only one is current. The post is based in Tourism, Leisure and Culture and is casual and there is no obligation for the employee to work. The post title is understood to be a reference to a possible requirement when the post was set up, but is now considered to be an outdated reference. Other job titles may not be up to date.

The rights of some Teaching Assistants were queried, raising the question of term time only employees with no pay in school holidays and re-employed for the next term. The Head of People Services has advised that best practice is for bank holidays and annual leave entitlements to be honoured (on a pro rata basis for part time employees) but that a very limited number of schools will attempt to end temporary contracts at the end of Summer Term, i.e., in July and re-employ in September, resulting in a break in service and a saving to the school budget. HR advisers have advised Head Teachers that there may be implications regarding pension entitlement and redundancy entitlements arising from such 'Break in Service' arrangements, creating an obligation for the schools.

Some schools employ Teaching Assistants on a school term basis due to special needs funding. As the funding doesn't cover the full year, schools can only afford to employ them until the end of the school term. Most employees are believed to understand the position and agree to the employment.

Audit Committee members queried if the casualization of workers was due to budget constraints. Some information was provided on redundancies in schools, where schools found themselves with a deficit. The Committee has been told that none of these staff were re-employed.

4.15 Examples have been provided of the use of casual employees in Leisure Services, which illustrate the position in that department. Information provided by the Manager of Leisure Services is attached at annex 1.

4.16 A Member asked if the Trade Unions were satisfied with the Council's arrangements. It was noted that part of the guidance suggests that negotiation with Trade Unions is undertaken. It was noted that two Members of the committee attend a national joint employer and trade union seminar twice a year and nothing about Zero Hours Contracts has been raised. One trade union has raised the issue of casual contracts of employment at a Joint Advisory Group meeting some time ago. This was in relation to the Alternative Delivery Model and making sure that the Authority knows the position in relation to contract of employment position of all staff affected. A member pointed out that many people on such contracts would not be members and that unions would not necessarily be sighted on the matter.

5 CONCLUSION

5.1 The author offers the following conclusions on behalf of the Audit Committee.

MCC does not use Zero Hours Contracts for anyone it employs according to the definition: 'A flexible contract where an employer does not guarantee set hours of work for an employee. The employee is contracted to that employer and cannot work for another employer'.

MCC does employ casual workers who are not obliged to do any work for the Authority if they choose not to. It is accepted that this is helpful both to the Authority, when organising work patterns and suits many of the casual workers who have other commitments or do not wish to be committed to fixed hours.

It is the policy of MCC to monitor the use of casual employment and, where appropriate, offer fixed term contracts, if the work has become a regular commitment, for example.

It is recommended the use of casual employment should continue to be monitored. Managers and Service Areas should take ownership of this for their own areas. The Human Resources Business partnering approach will help, making use of the annual information described at 4.3.

Few concerns have been raised through Trade Union channels about the use of casual workers at MCC. It has been queried, however, whether casual workers are effectively represented through such channels.

Although the Authority aims to provide equivalent working conditions to casual workers as apply to employees on fixed hours contracts it is acknowledged that casual arrangements can result in there being differences in terms and conditions of employment e.g. annual leave, sick pay or bank holiday entitlements if hours worked/pattern of work do not entitle the worker to same terms and conditions of employment.

A small number of schools may be using temporary contracts to cause a break in service in order to reduce the cost on the school budget. Advice is that this may create financial obligations for the school (e.g., redundancy and pension entitlements payments, if challenged).

6 RESOURCE IMPLICATIONS

None.

7 CONSULTEES

Head of People Services and Information Governance
Audit Committee

8 AUTHOR AND CONTACT DETAILS

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ANNEX 1

Information provided to Head of People Services by H Dymond, leisure Manager.

“Leisure services have casual leisure assistants that work in the 4 leisure centres across the authority, less now in Monmouth as there is no swimming pool in operation.

- These attendants are virtually all education based students either completing A Levels, BTEC's or Degrees at University. The casual position offers them flexibility that they can have a couple of weeks off to complete school work, go on field trips or work placements that they are required to do.
- Some have other part time jobs and are looking for an extra bit of money and some have retired from other careers but do not wish to have the commitment of another post as enjoy the flexibility of their retirement without the constraints of only so many days/weeks holiday per year.
- These staff are not looking for a regular set pattern to enable them to pay rent/take out mortgages or start families but to help pay their ways through education or semi-retirement
- We regular review work patterns on site and ensure that they have regular breaks if they wish to continue as a casual employee and where necessary ensure they have a break in service.
- The posts are beneficial for suiting the business when we require staff but more importantly benefits the staff as they are not obligated to work and can say no (something a contracted shift they wouldn't be able to do). Take the following example last Saturday 8 members of staff went to Winter Wonderland in Cardiff and didn't work and had the opportunity to say no when asked. In September 10 went on a long weekend to West Wales in a Cottage and all had the weekend off they didn't work and turned down shift, they enjoy this freedom so they can do this. If they were contracted only 1 or 2 would have been able to have the shift off on a day in line with all out FT and PT contracted staff.
- This sometimes is a pain for us as it means that we have on occasions had to have a number of FT and PT staff work extra or come in on days off to cover and open a building/facility. Even Nick and Myself have had to cover weekends different roles outside our remit to ensure that service still operates – this Saturday I will be serving in a bar and stripping down after an event as staff are having a Christmas party so aren't available.
- Where possible we have asked the staff if they wish to have some fixed contracts and they have been given that opportunity those that wanted have taken it up, but as for the reasons above there are several that do not wish to commit. One example is a member of staff who is student doctor and doesn't

want anything except casual employment, she will leave if we say she needs to be contracted.

- As a service we invest in our staff, the leisure assistant post requires a specific qualification that is not readily available and attracts a younger member of staff, as managers we spend time inducting them in to the site and taking them through Safeguarding training, Manual Handling and other H&S training, Emergency planning training etc. It's not a question of giving them a mop and bucket with no guidance/mentoring and qualifications and letting them lose in a leisure centre.
- We allow them to be casual to fit in with their lives and also allow us to run a service without them the service would probably cease to exist in the same way as we wouldn't have enough members of staff to open services or we would be required to limit numbers to areas such as swimming in the pool.
- In many ways all shifts being contracted would be easier for Nick and I as less time would be spent on rotas, checking payroll against rotas and uploading casual hours as not contracted."