

REVISIONS TO THE FAIR WORK (LONG TERM AGENCY WORKER) POLICY

**FINANCE, MODERNISATION AND PERFORMANCE
(COUNCILLOR CHRIS WEAVER)**

AGENDA ITEM: 7

Reason for this Report

1. To ask Cabinet to approve the revisions to the new Fair Work (Long Term Agency Worker) Policy to promote the employment of long-term agency staff by the Council.

Background

2. Decent work can help achieve a stronger, modernised, more inclusive economy. It contributes to national growth and prosperity and assists in addressing inequality, reducing poverty and promoting well-being. In March 2019, The Fair Work Commission published 'Fair Work Wales', which defines fair work, identifies levers for promoting it, and includes recommendations to help deliver it in Wales.
3. Fair work is defined in Wales where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected.
4. Cardiff Council made a commitment as part of its 2022/25 Corporate Plan to be a 'Fair Work' employer by reviewing long-term agency placements and taking appropriate actions to reduce the use of agency workers on long-term assignments.
5. On 14th July 2022 Cabinet approved the Fair Work (Long Term Agency) Policy which provided temporary employment for agency workers after 2 years continuous assignment and permanent employment after 4 years combined service.

Issues

The Fair Work (Long Term Agency Worker) Policy

6. The Fair Work (Long Term Agency Worker) policy has been successful in bring onto Council employment over 136 agency workers since its inception.
7. The Fair Work (Long Term Agency Worker) Policy continues to uphold the Council's current policy of acquired rights for temporary contract employees (including those employed through Cardiff Works). It confirms that temporary contract employees with 4 years' continuous service with the Council will be treated as if permanent. Those with four or more years' service in the same role will be made permanent in that role without having to go through any recruitment process.
8. Following engagement with our Trade Unions as part of the Council's Trade Union Partnership process, discussions have taken place to reduce the initial 2 year period for gaining temporary employment to 12 months. There has also been a commitment to look further at Council policy on the period for temporary employees to gain permanent employment once the requirements for Council budget savings over the next financial year are fully known and mapped out.
9. Agency Workers with more than 12 months continuous assignments in the same or very similar role (with breaks equivalent to annual leave), but less than 4 years, a temporary contract will be offered, subject to relevant pre-employment checks.
10. Agency Workers offered temporary contracts as set out in paragraph 9 above, their previous Agency assignment within the Council will be added to their temporary contract service, and when this exceeds 4 years in total, paragraph 7 above will apply. This will also apply to agency workers who gained employment prior to this policy coming into being.
11. The revisions to the policy will be commended to Schools.
12. As part of the Policy there is a requirement that managers must not engage Agency Workers on assignments that they believe will be for longer than 12 months, but instead they must advertise the role through the Council's normal recruitment channels. The only exception to this is where the normal recruitment channels have been exhausted.
13. It is the intention to work with Trade Unions over the next 6 months to review the clause in the policy that relates to permanent employment to see whether this period of time can also be reduced. This will be dependent on the situation that the Council finds itself in with regards to any employee savings as part of the budget setting process.

Reason for Recommendations

14. To comply with the Council's commitment to be a Fair Work employer and reduce the number of long-term Agency worker assignments.

Financial Implications

15. The Council's budgetary framework permits spend on agency employees where there is a budgetary allocation for employees or specifically agency. On that basis, any changes arising from the implementation of this policy such as moving staff from agency to employees will not contravene the council's budgetary framework. It remains the responsibility of directorates to ensure that their staff establishment can be contained within their overall directorate employee budget.

Legal Implications

- 16 Agency workers do not qualify as employees under the Employment Rights Act 1996. Agency workers are however afforded "equal treatment" to permanent employees after 12 weeks of continuous assignment under the Agency Worker Regulations 2010. Equal treatment for the purposes of these Regulations means equal pay, automatic pension enrolment and paid annual leave.
- 17 The implications of the revised Policy on contractual terms are set out in the body of the report.
- 18 In considering this matter, regard should be had to:
 - (a) Public sector duties under the Equalities Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties, when making decisions, Councils must have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are a. Age; b. Gender reassignment; c. Sex; d. Race – including ethnic or national origin, colour or nationality; e. Disability; f. Pregnancy and maternity; g. Marriage and civil partnership; h. Sexual orientation; i. Religion or belief – including lack of belief. An Equalities Impact Assessment (EIA) should be carried out to assess the equalities impact of any proposed changes to policy and due regard should be given to the outcomes of the EIA; and
 - (b) the Well Being of Future Generations (Wales) Act 2015. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') is about improving the social, economic, environmental and cultural well-being of Wales. The Act places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language and is globally responsible. In discharging their respective duties under the Act, each public body listed in the Act must set and published

wellbeing objectives. These objectives will show how each public body will work to achieve the vision for Wales set out in the national wellbeing goals. When exercising its functions, Cabinet should consider how the proposed decision will contribute towards meeting the wellbeing objectives set by the Council and in so doing achieve the national wellbeing goals. The wellbeing duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Cabinet must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, Cabinet must:

- look to the long term.
- focus on prevention by understanding the root causes of problems.
- deliver an integrated approach to achieving the 7 national wellbeing goals.
- work in collaboration with others to find shared sustainable solutions.
- involve people from all sections of the community in the decisions which affect them.

HR Implications

- 19 The review of the Fair Work (Long Term Agency Worker) Policy is intended to reduce the number of Agency Workers on long term assignment with the Council.
- 20 This will benefit Agency Workers and provides a more stable workforce.
- 21 The trade unions have been consulted on the revised policy and are supportive of the proposed changes.

Property Implications

- 22 There are no property implications.

RECOMMENDATIONS

Cabinet is recommended to:

- (1) Approve the revisions to the Fair Work (Long Term Agency Worker) Policy (Appendix 1) and note its ongoing review; and,
- (2) Delegate responsibility to the Corporate Director, Resources in consultation with the Chief Executive and the Cabinet Member for Finance, Modernisation and Performance, with advice from the Director of Governance and Legal Services (or authorised representative) to make any further revisions to the Fair Work (Long Term Agency Worker) Policy,

which are considered appropriate in order to reflect the Council's commitment to being a 'Fair Work' employer.

SENIOR RESPONSIBLE OFFICER	Chris Lee Corporate Director Resources & Section 151 Officer
	8 December 2023

The following appendix are attached:

Appendix 1: The revised Fair Work (Long Term Agency Worker) Policy