

PRINCIPLES OF MANAGING AGENCY WORKERS

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PRINCIPLES OF MANAGING AGENCY WORKERS

Introduction:

It is this Council's policy that, although jobs are normally offered to staff on a permanent basis, there will from time to time be a need to engage an agency worker. Such a need may arise when:

- there is a need for extra workers to work for a limited duration on a one-off task or project;
- extra workers are needed to cover seasonal peaks;
- extra workers are needed on a temporary basis to cope with a surge in demand or in order to meet service delivery deadlines;
- extra workers are needed to cover the absence of permanent staff, for example with regard to long term sickness absence or maternity leave;
- cover for a permanent vacancy pending the conclusion of a recruitment campaign;
- worker(s) are required during a restructuring period to avoid undue redundancies;
- where attempts to recruit permanently have not yet been successful;
- there is a need to prevent or eliminate an excessive backlog of work.

The Council recognises that the use of short-term workers can support the smooth delivery of services by providing an element of flexibility within the workforce. This policy provides a framework for managers to enable them to use and manage agency workers effectively.

Definition of Agency Workers:

Workers engaged through, or by, an employment agency or bureau and supplied to a hiring employer on a temporary basis.

Some agencies employ their workers directly and therefore provide their staff with a contract of employment. Other agencies contract workers to provide a service to the hiring employer.

The Difference between a Worker and an Employee:

The table below outlines the key differences between a worker and an employee. You should note that an agency person is a worker and **not** an employee of the Council.

Status	Characteristics	Rights
Employee	<p>Has a contract of employment whether express or implied, which can be permanent or temporary. Factors that indicate the individual is an employee include:</p> <ul style="list-style-type: none">• is part and parcel of the employer's undertaking• is not in business on their own account• there exists mutuality of obligation between employer and employee	All rights as specified in current Employment Law and Regulations

Status	Characteristics	Rights
Worker	Workers engaged through, or by, an employment agency or bureau and supplied to a hiring employer on a temporary basis. Some agencies employ their workers directly and provide the worker with a contract of employment. Other agencies contract workers to provide a service to the hiring employer.	<ul style="list-style-type: none"> • Not to be discriminated against • Health & safety

Application:

This policy applies to **all departments** with the exception of school-based staff who, under local management arrangements are covered by procedures adopted by the Governing Body of each school. However, the policy is recommended as good practice to all other groups associated with the Council e.g. voluntary sector organisations.

For the purpose of this policy the term “agency workers” relates to individuals who are managed and, in some instances, employed by an agency to work on a time-limited basis for the Council.

Any reference to ‘you’ means the hiring manager who is responsible for managing the agency worker.

Principles:

It is important that you engage and manage agency workers in accordance with this policy.

Failure to comply with this policy could result in an agency worker claiming in an employment tribunal the following:

- unfair dismissal;
- constructive dismissal;
- redundancy (after two years continuous employment);
- notice of dismissal;
- access to the pension scheme and other benefits.

Engaging Agency Workers:

The Council has a contract with Matrix for the provision of agency workers in the categories listed below:

- Administration, clerical and secretarial
- Professional and Technical
 - Building Services & Maintenance
 - Catering & Hospitality
 - Driving
 - Environmental
 - Executive

- Finance (Support)
- Finance (Technical)
- General Industrial/Driving
- Housing
- Human Resources
- IT
- Legal
- Libraries
- Planning
- Policy
- Revenues & Benefits
- Sales & Marketing
- Sec/ Admin
- Social Care - Qualified
- Social Care – Unqualified
- Technical
- Technical (Senior)
- Technical (Support)

The following category is currently exempt from the Matrix contract:

- Education - Teachers and nursery nurses

Directly sourced candidates

In addition to managing an agency supply chain for the Council, Matrix also offer a payroll only service.

This enables the Council to engage directly sourced candidates as agency workers using the Matrix Payroll service- Client Directs LTD (CDL).

For further information please follow this link: [Matrix Payroll Brochure](#)

All agency workers should be engaged to work up to a maximum of 35 hours a week except where the worker will be required to work shift patterns. General Industrial/Driving and Care workers are exempt from the 35 hour a week maximum hour restriction.

You should also agree what if any expenses are applicable when engaging the worker. The payment of expenses to administration, clerical and secretarial agency workers does not apply.

For further information on agency workers and the guide to engaging agency workers please click [here](#).

Managing the Demand for Agency Workers:

In all cases, before deciding whether to engage an agency worker, you must consider whether there are any other suitable options for cover arrangements. This might include:

- moving an individual for a fixed period to cover the post;
- looking for a suitable candidate from the Redeployment register;
- offering a temporary increase in hours to part-time employees;
- recruiting on a temporary basis (fixed term contract);
- offering a secondment opportunity to an existing employee;
- offering additional hours (overtime) to existing staff (if feasible and work can be accomplished within budgetary constraints).

In any event the on-going use of an agency worker **must** be reviewed every 3 months.

Breach of Contract

Except for bookings for agency workers that are not in the scope of the Matrix SCM contract all bookings for Building services and Maintenance, Catering and Hospitality, Driving, Environmental, Executive, Finance, General Industrial, HR, IT, Legal, Library, Planning, Policy, Revs and Bens, Sales and Marketing, Admin and secretarial, Social care and Technical agency workers must be submitted to Matrix including when you require a replacement for an existing agency temp who is leaving.

Managers' compliance with this is key to the success of the contract.

Anyone who recruits temporary agency Building services and Maintenance, Catering and Hospitality, Driving, Environmental, Executive, Finance, General Industrial, HR, IT, Legal, Library, Planning, Policy, Revs and Bens, Sales and Marketing, Admin and secretarial, Social care and Technical workers other than via Matrix SCM will be breaching the Council's agreement and jeopardising the contract.

The recruitment of agency workers will be monitored and audited. Anyone acting in breach of contract may be subject to disciplinary action.

Service managers must ensure all agency workers/consultants are engaged via Matrix. If in exceptional circumstances and where approved by HR, it is necessary to engage a worker outside the Matrix contract services should ensure there is a clear audit trail supporting the approval to this and subsequent recruitment process.

Service managers should retain full records of documents supporting payments made to agency workers/consultants in line with the Council's agreed Retention Policy.

Induction:

As part of Enfield Council's induction policy, agency workers must complete a series of online training (see table below), via our self-service online learning and development system iLearn

Agency workers will receive an email from iLearn with a link and password in order for them to complete the induction. The email will include information to enable them to also complete the Health and safety mandatory courses. You should encourage the worker to complete this on their start date or as soon as possible.

Online Courses	Approximate time	Complete by
Enfield Council Induction	40 - 50 minutes	Day one
Cyber Security (Risk Management)	40 - 50 minutes	End of week one
General Data Protection Regulation (GDPR) - All Staff (Risk Management)	40 - 50 minutes	End of week two
General Data Protection Regulation (GDPR) - Data Owners (Risk Management)	40 - 50 minutes	End of week two
Enfield Council Freedom of Information (Risk Management)	40 - 50 minutes	End of week two
DSE Interactive (Corporate H&S)	30 - 40 minutes	End of week four
Fire Safety Interactive (Corporate H&S)	30 - 40 minutes	End of week four

Risk Assessment Interactive (Corporate H&S)	30 – 40 minutes	End of week four
Equality in the Workplace	30 - 40 minutes	End of week four
Safeguarding Children (<i>if you work with vulnerable children</i>)	30 - 40 minutes	End of week four
Safeguarding Adults – Awareness (<i>if you work with vulnerable adults</i>)	30 - 40 minutes	End of week four

Please note that agency workers have a right not to be harassed or discriminated against in the workplace.

It is therefore imperative that you read and understand the application of the Equalities in employment policy which can be found [here](#) and the Dignity at Work policy which can be found [here](#), so that you know what action to take should you receive a complaint of harassment, discrimination or bullying from an agency or temporary worker.

Failure to take action may result in the agency worker taking their complaint to an employment tribunal. Which can be found [here](#).

In the event of doubt or difficulty please contact Human Resources for further advice.

Remote and Home Working:

Under normal circumstances we would expect agency workers to be office based. Where an agency workers role requires him/her to work at various locations remote working arrangements can be agreed by the manager including working from home on an occasional basis.

If an agency worker is provided with a council laptop they must be made aware of the council's Acceptable Use policy [Acceptable Use Policy](#)

Council Equipment:

It is your responsibility to ensure that agency workers are provided with a laptop. If you are not the budget holder you should arrange to get the appropriate authorisation as the service is responsible for meeting the costs of the provision of equipment, including laptops for agency workers.

In addition, it is your responsibility to ensure that the agency worker is provided with a locker to store the laptop and any other Council equipment. An agency worker, who is forced to take Council equipment home due to lack of storage, will not be required to pay for a replacement in the event of loss or damage.

It is your responsibility to arrange for the return of the equipment when the workers placement ends. If you have any difficulty with this, please contact Matrix who will arrange the return with the workers agency.

Use of Council Equipment:

Council assets comprise not only physical objects and financial resources but also computer data and information generally. The Council must ensure that we use the public funds entrusted to us in a responsible and lawful manner, ensuring value for money to the local community.

Agency workers must be advised not take anything that belongs to the Council unless they are specifically authorised to do so. Further agency workers must ensure that they have your permission **before** they make use of Council property.

Loss of Council Property/Equipment

Where an agency worker loses Council property they may be required to pay for a replacement if it is considered that they have not acted with due care and regard.

In the event of loss or damage to Council equipment by an agency worker, please contact Human Resources in the first instance for further information and advice.

Performance Management:

You are responsible for service delivery of agency workers therefore you should ensure that agency workers are set SMART objectives, and their performance is reviewed on a regular basis. However, you must not use the formal Performance Development Review process.

Under no circumstances should you use the Council's Capability Procedure. The Capability Procedure should only be used for employees of the Council.

Where the agency worker does not perform to the required standard, you should contact Matrix who will liaise with the supplying agency to terminate the arrangement with immediate effect.

The agency that provides the worker is responsible for providing performance feedback to the worker. The agency may from time to time send a questionnaire to you, asking for feedback on the agency worker's performance. You should complete the questionnaire, based on the worker's performance, and return it directly to the agency.

It is important to note that performance feedback is not the same as a reference. You should not provide a written reference for agency workers on behalf of the Council. Only feedback directly concerned with performance should be given if requested during the workers placement.

If an agency worker asks for feedback on their performance, you may provide **verbal** comments to the individual on his/her ability to meet the requirements of the job role. However, you **must not** use the formal Performance Development Review process for providing feedback to the agency worker.

Please note, where there is a statutory requirement to manage and monitor the quality of the agency worker's performance, for example a social worker, you should provide both the worker and the agency organisation with regular feedback.

Misconduct:

There is no requirement to give notice to the agency or the agency worker, or to carry out an investigation if issues around the worker's conduct arise. Any concerns about conduct must be addressed via Matrix and not direct with the worker (who is not the Council's employee).

If an agency worker's conduct is unacceptable you should arrange to contact Matrix immediately to terminate the arrangement via the supplying agency.

Under no circumstances should you instigate or use the formal disciplinary procedure to manage conduct issues of agency workers. In the event of doubt or difficulty you should contact Human Resources.

Team Meetings:

It is not necessary to exclude agency workers from team meetings however caution should be exercised. If the meetings are to discuss team workloads then agency workers should be invited to attend.

Annual Leave Entitlement:

Agency workers are **not** entitled to contractual annual leave or payment from the Council for days that they do not work. If an agency worker asks about their holiday entitlement you should refer them to the Agency (who employs them).

You must **not** decline a request from an agency worker for annual leave. You should ask the agency worker to contact the agency. If the time requested by the agency worker is not convenient you should contact the Matrix and discuss this with them.

Flexi Time Scheme:

The Council operates a Flexible Working Hours Scheme. This scheme **does not** apply to agency workers therefore you **must not** permit agency workers to use the scheme.

Sickness Absence:

From time to time agency workers will not be able to attend work due to sickness. It is important that it is not perceived that you are holding a job open until a specific agency worker returns from sickness absence. This type of action may be construed as treating the agency worker as an employee and must be avoided.

Where an agency worker is engaged to complete a specific task and is unable to do so due to sickness absence, you should contact Matrix and ask for a replacement worker or contact the supplying agency if the category of worker falls outside the Matrix contract.

The Council does not pay agency workers sick pay. Depending on the workers contract with their agency the worker may be able to claim Statutory sick pay. The worker would need to discuss this directly with their agency.

Agency Workers Hourly Rate of Pay:

The rates of pay for agency worker is usually fixed or agreed when the agency worker is initially engaged. **Under no circumstances** should you agree to increase the rate of pay directly with an agency worker.

In the event that an agency worker asks for an increase in their hourly rate of pay, you should advise the individual to contact their Agency and discuss this with them.

Working Additional Hours:

Where you require the agency worker to work additional hours you should contact Matrix or the supplying agency if the category of worker falls outside the Matrix contract, to discuss your requirements. Matrix or the supplying agency will be responsible for relaying the request to the agency worker.

Where possible payment for additional hours should be paid at the same hourly rate of pay. In other words, the agency worker does not receive an enhanced rate of pay for working additional hours. However, it is important to check this with Matrix or the supplying agency if the category of worker falls outside the Matrix contract.

Please note agency workers **are not** included in the Council flexi hours scheme.

Agency Worker Leaving Procedures:

The 'Leaving the Council Procedures' are **not** applicable to agency workers. This means that you should **not** conduct exit interviews or ask agency workers to complete an exit questionnaire. However, where the agency worker has Council equipment and has access to email, or other systems, you should arrange to remove access by completing the [Online leaver form](#).

Where an agency worker is no longer required you should contact Matrix or the supplying agency (if the category of workers falls outside the Matrix contract) and inform them accordingly.

Under **no circumstances** should you give the agency worker formal or written notice or write to the agency worker informing that their services are no longer required or that the contract (between the Council and the agency) is to be terminated. We are not required to offer agency workers notice.

Once confirmation is received from Matrix or the agency provider (if the category of workers falls outside the Matrix contract) that the agency worker has been informed that he/she will no longer be required you should arrange to verbally relay this information to the worker.

Engaging agency worker in fixed term contracts or permanent positions:

A transfer fee **will not be payable** where an agency worker applies for a position with the Council that has been advertised **Internally** or **externally** and is offered the post in accordance with the Council's Recruitment Policy and Procedure found [here](#).

The transfer fee for suppliers that fall under the Matrix contract will be payable (where an agency worker **does not** go through the Councils recruitment process) as follows:

Temp to Perm fees	
0 – 5 weeks length of placement	10% of annual salary applies
6 – 9 weeks length of placement	5% of annual salary applies
10 – 12 weeks length of placement	2% of annual salary applies
12 weeks or over	No charge

Please note that any transfer fee will be on a pro-rata basis if the temp is employed for less than either full time or less than one year

In the event of doubt or difficulty please contact Sue Davies Resourcing Manager (Agency)
HR – 0208 132 1049.

Agency Worker Regulations

Some of the key elements Agency workers will be entitled are;

Day 1 rights for all agency workers: If you hire agency workers, you must ensure that they have access to facilities (such as canteen, car parking, etc) and information on job vacancies from the first day of their assignment (however the Council's following restrictions apply:

Agency Workers may not apply for the following positions:

- Any positions identified as ring fenced for applications from Enfield Council employees only which are a matter of redeploying existing internal staff in order to prevent redundancy situations.
- Secondments- are open to Enfield Council employees only. They are the temporary loan of an employee from one part of the organisation to another part of the organisation and rely on the secondee to return to their substantive position on completion of the secondment.

After 12 weeks in the same job: These additional new equal treatment entitlements relate to pay and other basic working conditions (annual leave, overtime, etc) and come into effect after an agency worker completes a 12 week qualifying period in the same job with the same hirer. Pregnant agency workers will now be allowed to take paid time off for ante-natal appointments during an assignment.

The 12 week qualifying period is triggered by working in the same job with the same hirer 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.

Further information about the Agency worker regulations can be found [here](#).

References:

You may at some point be asked to write a reference for an existing or previous agency worker. In this situation you must advise the requester to contact Matrix or the agency provider (if the category of workers falls outside the Matrix contract). The Council can not provide the reference as they are not the employer.

At the end of every placement via Matrix-cr.net you will be asked at the point of approval of the final timesheet to complete a quality survey relating to the worker, this will be shared via the Matrix system with the supplying agency to be used to form any references requested

It is acceptable to provide the dates that the agency worker was engaged by the Council. In the event of doubt or difficulty please contact Sue Davies Resourcing Manager (Agency) HR – 0208 132 1049

IR35:

Compliance to the IR35 (Intermediaries) Regulations

IR35 is also known as the 'intermediaries legislation' and originally came into force on 6 April 2000 to set some rules affecting tax and National Insurance contributions if an individual is contracted to work for a client through an intermediary. It ultimately determines whether an individual is self-employed and working via a contract of services with an end user, or working through 'deemed employment' for the end user (the Council). The two statuses determine two different types and levels of tax and National Insurance Contributions (NICs).

On 6 April 2017 there was a change to the determination of the IR35 Regulations. Prior to this date, an individual declared their status of being self-employed or deemed employed. After this date, the liability changed to the end user (the Council) to decide on the nature of the assignment and therefore the employment status of the role.

Why getting the tax status right is so important:

- HMRC's starting point of the engagement, is one of employment
- Establishing the correct employment relationship between the parties is critical
- It forms the basis of payment to the individual engaged in each assignment
- Consistency of treatment for particular engagements
- Allows the Council to be sure that all departments are considering issues
- To manage the reporting requirements of HM Treasury's tax assurance initiative

If we get it wrong, who is exposed to the tax/NIC liability and what are the penalties/risk?

- Self-employed – the Council
- Office holder – the Council
- Limited Company – the Company (usually, unless the Council is deemed to have been complicit in the misapplication of the rules)
- Agency – if UK then the agency; if overseas then the Council
- Even if risk sits with a third party, the Council could face reputational risk
- Penalties can include the back payment of the NICs and Tax from the beginning of the assignment, plus a level of interest up to 100% of the contributions for failure to adhere to the legislation

- The Regulations are subject to the Limitations Act in which, if the assignment continues, the financial risk can back-dated 6 years if there has been a clear and intentional avoidance of the rules.

All current job titles that are actively being used on the Matrix system have already had their IR35 status determined in the implementation of the changes to the legislation. However, it is important to note, that if there is a requirement of a new job title, the IR35 status will need to be determined by the Resourcing Manager (Agency Workers) – Sue Davies (**not provided by any potential contractor/interim/worker**). In these cases, please contact Sue Davies, who will go through the requirements of the role with you utilising the HMRC Employment Status Indicator tool. The role will then be sent out to the market (the agencies) as either in, or out-of-scope of the IR35 Regulations. **If a role has been determined as in-scope, no candidate applying to the role can change the status of that role whether they operate through a/their Ltd Company or not.**

Further explanatory information regarding the IR35 Regulations can be found [here](#) on the gov.uk website.

Further IR35 Guidance can be found [here](#).