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Contracts of Employment

Introduction

This topic considers -

- The standard contract of employment.
- Atypical contracts.
- Varying contracts of employment
- Hours of work
- Job Share.

Other subjects referred to in the contract of employment document, e.g. annual leave, are included in separate topics of the business managers' handbook.

What will be done for you

HR will issue advice to business managers on changes to employment law that may effect the main types of employment contract in use at Southwark, e.g. permanent, temporary, limited engagement, casual etc.

The Council has produced a standard contract of employment document. This takes account of the legal obligations placed on employers and has been arrived at through consultation with the trade unions.

What you must do

The business unit's scheme of delegation must set out those with responsibility to authorise contracts.

You must issue each person, whose employment continues for 28 days or more, a contract of employment. Legally the contract must be issued within 2 months from the date employment begins but it is good practice to issue a contract prior to commencement, or if necessary on the date work begins. Where an employee, eligible to receive a contract, leaves before the expiry of the two month period, the employer is still bound to issue a statement of the particulars of employment if requested by the employee.

You must ensure that information referred to in the contract, but which does not necessarily form part of the main document, is readily available for employees' consideration, e.g. staff complaints procedure.

A contract of employment comes into effect automatically as soon as a job has been offered and accepted. This does not need to be written. Where a verbal offer of employment is made it must be made clear therefore when this is dependent on other information being received (e.g. medical clearance, acceptable references, police checks).

You must ensure that working arrangements comply with the requirements of the Working Time Regulations.

The Chief Officer (or nominee, which is usually the business manager) must accept any reasonable request for job sharing unless there are substantive reasons for refusal. Note service tenants are however excluded from the job share agreement.

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What you must not do

You must not use other contract documents except the Council's standard contract of employment, without the advice of HR.

You must not change contractual terms, outside variations allowed under the standard contract, without following a structured process of consultation with a view to reaching agreement with individual employees.

You must not repeatedly re-issue casual or temporary contracts without examining the contractual relationship that has developed with the person.

What you can do

Managers are advised to seek any further assistance required from departmental HR staff.

Key Information

Standard or (full time equivalent) hours are negotiated by the relevant National Joint Council.

The hours of JNC staff, i.e. those graded 14-22, have been set locally.

Reference Section

Business managers' guides to the above topics follow.

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Business Managers' Guide to Contracts of Employment

Section 1: Overview

1. Legal Basis

- 1.1 A contract of employment is a legally binding agreement under which an employer and an employee exchange certain promises. The employer promises to maintain the employment relationship, paying the employee and providing such other agreed benefits as paid holidays. The employee promises to work to a particular set of duties.
- 1.2 Wherever employment lasts for 28 days or longer, the employee is entitled to a single, principal statement of the terms of employment. Legally a contract must be issued within two months of commencement. If a person leaves before the end of the two months they are still entitled to a contract.
- 1.3 Information referred to in the contract, but which does not necessarily form part of the main document, must be readily available for employees' consideration, e.g. staff complaints procedure.
- 1.4 The contract of employment will primarily deal with "express terms", (e.g. pay), and "incorporated terms" such as those arising from collective agreements or those referring to other documents, (e.g. disciplinary code). Other contractual terms that may not be written but still apply to all employers and employees and must be followed, are: -
 - Statutory terms, anything in law which sets out the employer/employees' rights and obligations, e.g. not to be discriminated against;
 - Implied terms. The main implied terms of general principle to all employment contracts are;
 - I. the employee has a duty to comply with reasonable and lawful instructions, exercise reasonable care and skill and work safely, behave with fidelity and "good faith",
 - II. the employer has a duty to provide a safe system of working and a safe working environment,
 - III. both parties have a duty to maintain a relationship of mutual trust and confidence.

2. Further Application in Southwark

- 2.1 For the purposes of employment law, the Council is one employer. This means that managers need to act within a consistent framework when issuing contracts of employment.
- 2.2 Where an offer of employment is offered and accepted, a contract is formed – this need not be written. It is essential therefore that where any offers of employment are subject to other information being received (e.g. references, police checks etc.), that this is clearly communicated.

- 2.3 It is good practice to ensure that a written contract of employment is sent before work commences, or at the latest available on the first day of service.
- 2.4 The Council's standard contract of employment has been prepared to take account of the legal requirements placed on employers. The contract allows the insertion of specific clauses to reflect different contract types, e.g. temporary contracts and variations in working hours (etc.). In no circumstances, therefore should a different contract document other than the Council's standard be used without advice from. HR.
- 2.5 All employees must be asked to sign their contract to demonstrate acceptance of the terms. The signed contract should then be checked to ensure that no amendments have been made.

3. Who is an employee?

- 3.1 In the Council it is generally very clear who is an employee, however, casual work that does not start out as an employment relationship can, over time, turn into an arrangement that is governed by a contract of employment. Recent employment tribunal cases indicate that tribunals often see internal agency or "bank" staff (as they are sometimes called) as employees. All have implications when determining continuity of service and looking at statutory rights.

4. Continuity of Service

4.1 Continuity to Gain Statutory Rights

- 4.1.1 A court or tribunal presumes continuity unless the employer can show otherwise. Continuous service is expressed in weeks. A week will count if, during any part of it, the employee's relations with the employer are governed by a contract of employment. There is no requirement that the employee should have worked a particular number of days or hours.
- 4.1.2 For example, a Court would find that a person working on the following days, (marked 3) would have continuity of service for the purpose of statutory rights.

Su	M	Tu	W	Th	F	Sa	Su	M	Tu	W	Th	F	Sa
3	X	X	X	X	X	X	X	X	X	X	X	X	3
day													
1	2	3	4	5	6	7	8	9	10	11	12	13	14

The employee held a contract of employment in both the weeks in question - even if the contract was only for one day (or even one hour) at either end of the two weeks. All employees (permanent, temporary and casual) accrue these rights at the same rate.

4.2 Continuity to Gain Benefits under Conditions of Service

For the purpose of calculating annual leave, payments under the occupational sickness scheme, redundancy pay and entitlements under the occupational maternity scheme, previous service with any public authority to which the Redundancy Payments Modifications Officer (Local Government) 1983 (as amended) applies. The impact on this entitlement is described in the particular topic, elsewhere in the handbook. **It is worth noting, however that:-**

Notice Provisions

Under the Green Book continuous service for notice purposes is calculated on the basis of service in the current employment.

Unfair Dismissal

Under employment law the protection from unfair dismissal requires two years¹ service with the current employer.

¹ The qualifying period increased from one year to two years with effect from 6th April 2012; for those who commenced employment on or after this date.

4.3 Continuity of Service & TUPE

Where an employee is transferred to an organisation not covered by the Redundancy Payments (Modification) Order 1999, continuity of service is protected under the TUPE Regulations where there is a TUPE Transfer. However, if that employee returns voluntarily to local government service continuity is broken. Where an employee returns in such circumstances, without a break between employments, all previous continuous service will be recognised for the purposes of calculation of entitlements to annual leave, occupational maternity leave/pay and occupational sick pay. This is subject to the return to service being within five years of the original transfer.

Note: This agreement applies to all employees who have returned to local government service since 1 April 1997 however the calculation of the resulting benefits, such as additional leave, will only take effect as and from 1 April 2002.

The counting of service will include the service under the TUPE transfer. Under the backdating arrangement this provision will apply to any employee who has returned to local government employment since 1st April 1997. Where there is a series of TUPE transfers the five year service limit applies from the date of the initial TUPE contract. Any gap in service between two employments of more than a calendar week, i.e. running from Sunday to Saturday, would constitute a break with loss of continuity. Transfers as a result of legislation, e.g. Early Years' Inspections to Ofsted, are also covered by this provision.

Annual Leave, Maternity and Sickness Provisions

Under the Green Book for the purpose of calculating entitlements to annual leave and maternity and sickness leave and pay, continuous service with all employers under the Redundancy Payments (Continuity of Employment in Local Government etc) (Modification) Order 1999 (RPMO) is taken into account and as set out above continuous service under a TUPE transfer also now counts where there is a return to local government service without a break within 5 years of the transfer.

Redundancy Provisions

The change in the agreement outlined above has no effect on the redundancy and pension provisions applying in the circumstances of a TUPE transfer. Under a TUPE transfer all continuous service under the RPMO and with the TUPE employer counts for the purposes of calculating service where a redundancy situation arises during employment with the TUPE employer. If, however, the employee returns voluntarily to local government employment this is regarded under statute as a break in service for redundancy purposes, the calculation of service starts afresh with the new employer.

5. Statutory Rights

5.1 Employees enjoy the following rights that are enforceable through the Courts.

5.1.1 Immediate Rights

- The following rights are applicable from the first day of service.
- Protection from detrimental treatment on the grounds of race, sex, age, gender reassignment, marital status, disability, sexual orientation, religion or belief.
- Time off for antenatal care, public duties, trade union participation and activities, working time rules (breaks, rests, etc), young workers (to improve qualifications) and elected employee representatives including safety representatives.
- Equal pay, protection from unlawful deductions, national minimum wage.
- Maternity leave, health and safety protection during pregnancy.
- Protection from detrimental treatment over trade union/elected employee representative activities and for invoking health and safety rights.
- Protection from unfair dismissal/redundancy selection because of trade union elected representative activities, pregnancy or maternity, asserting a statutory right - including on health and safety and working time.
- Protection from unfair dismissal if the reason (or, if more than one, the principal reason) for the dismissal is, or relates to, the employee's political opinions or affiliation.

5.1.2 **Time conditional rights**

The main employment rights that are subject to a period of continuous employment are as follows:

Rights	Applicable
To an itemised pay statement.	When the employee is first paid
To a written "contract".	Within 2 months of starting employment
Not to be unfairly dismissed	After two years' service ¹
To claim a redundancy payment and take reasonable time off to seek work during redundancy notice.	After two years' service
To written reasons for dismissal	After one year's service

¹ The qualifying period increased from one year to two years with effect from 6th April 2012; for those who commenced employment on or after this date.

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6 Main Types of Contract

6.1 The main types of employment contract in use at Southwark Council are as follows:

- a) **Permanent contract.** In Southwark, a permanent contract is one which expires when either party terminates the contract with notice.
- b) **Temporary contract.** See section 2 on atypical contracts.
- c) **Fixed Term contract.** See section 2 on atypical contracts.
- d) **Multiple contracts** This is where an employee holds two (or more) discrete contracts with the Council, these may be permanent or temporary.

Issues surrounding temporary and casual contracts are discussed further in Section 2 Atypical Contracts.

In addition some staff hold a casual worker contract. Such a contract will not guarantee work; this will be offered on an as-and-when basis. The impact on service delivery of the casual nature of employment should be carefully considered and it should be noted that where work is offered regularly, a casual employee can build up a period of continuous service.

Section 2 Atypical Contracts

1. Introduction

Staff may be appointed on temporary, or fixed term, contracts in a number of circumstances:-

- To replace permanent staff who are temporarily absent; e.g. for maternity leave.
- To cover a vacancy between the departure of a permanent employee and the commencement of the new worker.
- To deal with fluctuations of workload.
- To work on a time limited project.

In considering whether a temporary worker should be engaged managers should also consider other options to address the circumstances, acting allowances, overtime etc. It is noted that the Council's trade unions favour permanent employment as a general rule.

2. Scope

2.1 This Section covers the following that most commonly fall outside the arrangements for permanent employment within Southwark

- a) **Temporary contract.** This is a contract without a specified end date but which makes it clear that the employment is temporary and can be terminated with notice by either party. In law, the contract should give whatever indication is possible of how long the employment is likely to last.

- b) **Fixed term contract.** This is a contract that contains a clause that sets an end date to the contract. The contract should also contain a clause to the effect that the contract can be terminated with notice from either party. Fixed term contracts are also sometimes called limited engagement contracts.

3. Standards

The following standards apply to the use of atypical contracts in Southwark.

- 3.1 The selection process for fixed term and temporary employment should follow the Council's formal process.
- 3.2 The grading process for temporary and fixed term employment should follow the existing process for permanent posts and should be based on clear job documentation.
- 3.3 Fixed term and temporary employees should be governed by a written contract of employment that satisfies the needs of both clarity and compliance with the law. In practice, therefore this is best achieved through the use of the Council's standard contract, which properly reflects the fixed term or temporary nature of the employment.
- 3.4 The conditions of temporary and fixed term employment should be in accordance with the relevant national conditions of employment of the local business unit conditions as properly varied. For example, these staff should receive the same annual leave entitlement as permanent employees.
- 3.5 Disciplinary, capability and appeals proceedings for fixed term and temporary staff should be in accordance with the principles of natural justice and as a minimum comply with the process outlined in 3.12. The Council's disciplinary procedure states that non-permanent staff should be treated in accordance with the spirit of the code. HR practitioners will advise managers on this issue.
- 3.6 Managers must be clear on the employment rights of atypical workers, see section 1 above.
- 3.7 Fixed term or temporary staff should receive a formal induction to the workplace that emphasises the Council's mission and the specific objectives of their business unit.
- 3.8 Fixed term and temporary employment will not commence before staff have provided the relevant documentation. This requirement comes from the Asylum & Immigration Act 1996 (as amended). The act aims to ensure that only those legally entitled to live and work in the UK are offered employment. Employers taking on staff who do not have the right to work in the UK can face prosecution and a fine.
- 3.9 At the point at which the end of a fixed term contract is considered, or as a pre-determined end date approaches, the following procedure must be followed. Notification will only apply to employees who will have 2 years' service at the point of termination, though staff can raise a complaint at any point in their employment. The timing needs to be reasonable to allow the employee to raise a complaint/appeal (as described below) and for this to be considered in accordance with the Council's standard employee complaints (grievance) procedure.

- Notify the employee in writing of the reasons for the termination of the contract. This should include inviting the employee to a meeting, at which they may be accompanied, to discuss the proposed termination.
- Following the meeting notify the employee of the decision and offer the right of appeal; via the standard employee complaints (grievance) procedure.
- If the employee wishes to appeal they must raise an employee complaint and refer to their manager within 5 working days of receipt of the letter.
- The Council's standard employee complaints procedure will then apply with stage 1 considered by the manager and, were the complainant to proceed to stage 2, by a joint manager/ trade union panel.

Section 3 Variations to Contracts of Employment

1. When to Seek Employees' Consent

There is no need to seek the specific consent of the employee to vary their contract:-

- If there is a clear express contractual term within the contract for the Council to vary the contract
- For those terms of the contract, although not express, are integral to the contract and its performance (e.g. legal obligations, reasonable instructions, custom and practice and the interests of business efficacy).
- Terms and conditions collectively agreed with recognised constituent trade unions if they are incorporated expressly or implied into the contract of employment.

2. The Council's Standard Contract

The Council's standard contract of employment includes the following provisions.

"The Council reserves a right to vary the terms of this contract at any time by using one of the following procedures, as appropriate.

[a] To implement changes as a result of National or Provincial agreements – The Council shall notify the employees in writing of the variation due to a collective agreement, which shall then be implemented from the agreed date.

[b] To implement a Council-wide or local change to the terms of employment - either by a collective agreement or, following negotiations with the recognised trade unions, by writing to the relevant employees proposing the variation and clearly specifying the reasons for the proposed variation and giving the date from which the variation will take place. Following consultation on the proposed variation, any resulting variations will then be set out in writing to all employees and be implemented from the relevant date."

Where changes have not been secured through a National or Provincial agreement, or by a collective agreement the following must be followed.

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3. Seeking a Variation in Contracts

- 3.1 Even if a collective agreement cannot be reached, manager must always seek to achieve the variation in the contract with the employees' consent. The manager should discuss the proposals with individual employees affected, either individually or in groups, and consider any comments made by them as a result of this consultation. Wherever possible, any difficulties in meeting the proposed terms raised by individual employees should be taken account of in the proposals.
- 3.2 Any agreed variation should be put in writing and details of the changes in terms of employment should also be communicated individually to the employees in writing, within one month of the change. (NB: This is not a new contract; merely a record of the change).
- 3.3 If, following consultation with the constituent trade unions and the individuals affected, agreement cannot be reached with an employee concerning necessary changes to his/her contract of employment: -
- The manager should again meet with the employees, individually or in groups, and explain again the proposed changes and why they are necessary. This should be confirmed in writing to each employee together with confirmation that the changes will be implemented following the expiry of the employee's contractual notice period.
 - At the expiry of the notice period the manager should then implement the changes and the employee either accepts the revised terms or formally objects to them.
 - If all other avenues have been exhausted, notice of termination of the contract may be served to the employee together with an offer of re-engagement under a new contract on different terms and conditions.

These actions by management will not represent unlawful dismissal as long as the employee is given the required period of notice under the contract. It is, however, a dismissal and it is inherent that such actions run the risk of a claim for damages for unfair dismissal being made by the employee to an employment tribunal. It is therefore essential that the manager can demonstrate that this dismissal was fair. In these circumstances it is likely to be for "some other substantial reason", i.e. normally a sound business reasons for making the changes to employment contracts.

- 3.4 If a manager proposes to dismiss and then re-engage 20 or more employees from one establishment within 90 days, s/he will be under an obligation to consult with "appropriate employee representatives" under the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995. Failure to do so may render the Council liable to a complaint to an employment tribunal.

Section 4 Hours of Work

1. Legal Framework

- 1.1 The Working Time Regulations (effective from 1 October 1998) established rules on working hours, night work, rest periods, rest breaks and annual leave. (Further information on annual leave is contained in the "Leave" topic"). Working practices differ significantly between departments and local HR staff can provide advice on specific implications for a particular work area. The following summarises the legal framework against which local arrangements must apply.

a) Workforce or collective agreements may modify rules applicable to the each area. Rules do not apply to workers with unmeasured working hours. Adolescent workers, (i.e. under 18 years) have increased rights in relation to rest periods and rest breaks.

b) The average weekly hours must not exceed 48. "Working hours" have been strictly defined, i.e. the person must be at employer's disposal and carrying out activities / duties.

The average to be calculated over 17 week period, but may be 26 weeks in special cases and 52 weeks where collective or workforce agreements apply.

Workers may volunteer to work longer (but must be in writing). Specific measures relate to notice periods for workers to withdraw their agreement.

Employers must keep records and/or monitor hours.

c) Night time is defined as 23.00 to 6.00 or by agreement, a period of 7 plus hours that includes 00.00 to 5.00. (Note local government conditions of service base enhanced payments on different periods, i.e. for employees, excluding residential staff, the qualifying period is 8 p.m. and 6 a.m. For residential staff the period is 10pm to 7am. See topic on remuneration)

Average hours must not exceed 8 in each 24. Actual hours must not exceed 8 in each 24 where work involves special hazards or physical or mental strain.

Free health assessments must be provided for night workers. In Southwark, this is fulfilled via referral to the Occupational Health Service before the commencement night time employment and annually thereafter. Responsibility for the referral rests with the business unit.

The facility to transfer to suitable day work where night work causes health problems. In Southwark, a health problem can only be classified as such on the advice of the OHS.

d) Rest Periods

Daily rest must be 11 consecutive hours per day.

Weekly rests must be at least 24 hours uninterrupted period in each 7 day period (may be averaged over a 2 week period, i.e. 2 days per fortnight)

Rest period may overlap only where justified by objective or technical or organisational reasons.

Rules may be excluded for shift workers and workers with split hours.

e) Rest Breaks

Workers must have a rest break of at least an uninterrupted 20 minutes where daily hours are 6+.

Rest break must be given during working time (i.e. not at the beginning or end of a working day). Payment is at the employer's discretion. In Southwark, "uninterrupted" rest breaks are unpaid.

2. National Conditions of Service & JNC Staff

- 2.1 Those staff currently on grades 1-12 of Southwark's scale are covered by the National Joint Council for Local Government Services. This NJC has brought together conditions of service for employees formerly designated as "officers" and "manual workers" with an aim to harmonise conditions including hours of work. Officers were formerly on 36 hours, manual workers and residential staff 39 hours. The 1997 National Agreement that formed this NJC, included provision that standard hours should be 37 from 1 April 1999, with a reduction to 36 in London no later than 1st April 2004, (determined through the Provincial Council).

For Southwark, this meant that from 1 April 1999 the standard (or full time equivalent hours) of staff formerly designated as manual workers and residential workers reduced from 39 to 37 per week. Employees formerly designated as officers retained the 36 hour week standard. All full time equivalents reduced to 36 on 1st April 2004.

- 2.2 In Southwark, local arrangements apply to staff on JNC conditions, i.e. grades 14-22. The basic working hours for these staff total a minimum of 36 per week, spread as agreed with the Chief Officer. The exigencies of the service determine whatever hours are necessary to fulfil the full duties of the post. Staff are required to attend meetings outside normal working hours wherever this is necessary for the effective performance of the job and the Council's general provisions for working overtime and/or flexi-time are not available to these postholders.

3. The Working Week

- 3.1 The diversity of services and roles in the Council means that a standard working week for all staff does not exist. While the most common working pattern is Monday to Friday 9am to 5pm, the NJC's (Local Government Services) conditions of service recognise that the "arrangement of the working week shall be determined by the authority in question with the recognised trade unions with a view to reaching agreement" Working time arrangements should avoid: -

- Short notices changes to rostered or expected patterns of work.
- Excessive hours in any particular week
- Unnecessarily long periods over which weekly hours are arranged.

- 3.2 Where staff work in excess of the full time equivalent hours, on a public holiday (etc.), they are entitled to additional payments as per the conditions applicable to their post, please see the topic Remuneration.

4. Annualised Hours

- 4.1 Annualised hours contracts aim to ensure that fluctuations in workload can be met by the existing staff within their contracted working hours. In Southwark an example of usage is in the Parks service where the level of work changes significantly between spring/summer months and the autumn/winter.
- 4.2 Generally these contracts show the total number of hours that an employee is contracted to work over the whole year. Term time contracts are also a form of annualised hours workings; however, in these contracts the total number of hours worked per week during terms times are stated.

- 4.3 Payment to staff remains on a monthly basis of 12 even amounts. It is essential, however, to clarify within the contract and seek advice from HR staff where appropriate:-
- Any restrictions when annual leave may be taken and how bank holidays are credited to the employee.
 - How any hours that are worked in excess of the total amount required under the scheme will be credited.
 - The accounting year for the annual calculation of hours worked –in Southwark this is the 1 April – 31 March.
 - The arrangements to be made to those employees who leave part way through a year where that employee works in excess of the standard hours (e.g. the average has exceeded 36 per week). In Southwark excess hours have in the past been paid to the employee.

Section 5 Job Share

1. Scope

- 1.1 The job share agreement covers all employees of the Council, except service tenants and those employed under LMS - where the governing body can choose to accept the principles of the agreement, or adopt alternative arrangements.
- 1.2 The underlying assumption is all posts covered by the agreement can be considered for job share and every employee covered by the agreement has a right to request taking up a job share in their post. The Chief Officer (or nominee, which is usually the business manager) will accept any reasonable request for job sharing unless there are substantive reasons for refusal.

2. Basic Principles

- 2.1 Job share is a form of permanent employment whereby the duties, responsibilities and benefits of one full time post are voluntarily shared.
- 2.2 As the job share agreement exists to enhance and promote better opportunities and to maximise the skills for staff where full time work is not practical, job sharers may only hold one post within the Council.
- 2.3 Job sharers will be able to cover all duties of a post. Splitting a job according to duties is to be avoided, as this conflicts with the philosophy of job sharing, i.e. voluntarily job sharing rather than in effect operating part time posts.
- 2.4 Job share is frequently pursued by staff to allow them to pursue a career alongside, for example, family commitments, further education, etc. People do not have to state the reason for requesting job share, subject to the conditions within the Council's code of conduct on declaring secondary/other employment.
- 2.5 Job sharers have the opportunity to revert to full time employment in the post only when the post is vacant and funded.
- 2.6 Job share will not be used as a mechanism to make changes to the establishment of a business unit. If budgetary constraints are however in force the recruitment and selection process for the job share post may not be able to commence immediately.

3. Terms & Conditions

- 3.1 All terms and conditions of service, which apply to full time employees, shall as far as possible apply to job sharers. Noting the following special arrangements for job sharers -

Public / Statutory Holidays

Job sharers will be entitled to paid leave in respect of public and extra statutory holidays that fall on a normal working day for the employee concerned. No adjustment will be made for public and extra statutory holidays that fall on a non- working day.

Overtime

No overtime is payable until the individual job sharer has worked enough additional hours to take them over the full time hours (or standard hours) for their post. Additional hours worked up to the full time equivalent will be paid at the normal hourly rate.

Evening Meetings

Where a job sharer's attendance is required at an evening meeting and time off in lieu is not applicable, the hours worked shall be compensated by the appropriate rate of overtime.