

**Chief Executive's Department  
Town Hall, Upper Street, London N1 2UD**

**Report of: Assistant Chief Executive, Governance and HR**

<b>Meeting of:</b>	<b>Date</b>	<b>Agenda item</b>	<b>Ward(s)</b>
<b>Audit Committee</b>	28 January 2015		All

<b>Delete as appropriate</b>	<b>Exempt</b>	<b>Non-exempt</b>
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**Subject: Review of recruitment of agency workers to directly employed posts**

**1 Synopsis**

1.1 This report proposes a policy approach to recruiting agency workers to directly employed positions following consideration of past policy and practice by the Policy and Performance Scrutiny Committee.

**2. Recommendations**

2.1 To note the contents of the report.

2.2 To agree the policy approach set out at paragraph 4.

**3 Background**

3.1 In the context of its work relating to the council's use of agency staff, the Policy & Performance Scrutiny Committee at its 1 June 2015 meeting considered a report concerning the recruitment of agency workers to directly employed positions in the council. This process is commonly referred to as "temp to perm" and this description is used in the rest of this report. Arising out of that report the Policy and Performance Scrutiny Committee recommended that the Audit Committee review the council's approach to recruitment of agency workers to directly employed positions.

- 3.2 This report briefly summarises the evidence concerning past practice and policy that was considered by the Policy and Performance Scrutiny Committee and outlines the legal and HR issues relevant to the council's future approach. In paragraph 4 the report sets out a recommended approach for the future to ensure compliance with legal requirements and good human resources practice.

### **Summary of past practise and policy**

- 3.3 A Temp to Perm Strategy agreed in 2009 with the council's trade unions provided for a fast track recruitment process to individual posts which was used to fill some hard to recruit to post where specified criteria were satisfied.

- 3.4 The council's current Recruitment Guidelines provide that:

"All permanent posts must be openly advertised and the recruitment process followed. Any person employed as an Agency temporary worker may be recruited into a permanent role if they are successful as a result of the recruitment process and subject to their contractual commitments."

- 3.5 During 2010 and 2011 "Amnesty" exercises (agreed by an officer level body that considered HR and organisational development matters on behalf of the Chief Executive's Corporate Management Board) were offered to managers to address the number of individual agency assignments which had lasted for more than 12 months. The processes did not use the 2009 strategy and applied some different criteria.

- 3.6 A number of separate exercises have been undertaken in the council over recent years which have been concerned with reducing agency use in services with a very high level of reliance on agency workers felt to be detrimental to service quality and to maintaining a stable workforce. These include:

- An exercise to reduce reliance on agency workers in the cleaning service following the transfer in of cleaning services from Kier Islington on 2010.
- A reduction in the use of agency caretakers following the reintegration of Homes for Islington
- A recent exercise in the Public Realm division designed to reduce the use of agency workers following the transfer in of waste services

- 3.7 These larger scale exercises have followed processes specifically agreed with the trade unions in each case. The process adopted has depended upon the legal position in respect of recruitment practices and agency worker rights at the relevant time and the particular circumstances and use of agency workers in the service concerned.

- 3.8 Existing agency workers are currently given the same opportunity as employees to apply for internally advertised vacancies, after consideration of suitable redeployees. Posts are advertised internally prior to being externally advertised where the nature of the skills and knowledge required for the role

are such that it is likely that a high number of existing staff are likely to be suitable for consideration, or, the skills and knowledge required for the role are so specialist and scarce that there is not likely to be a significant response from the relevant local labour market. In the case of roles likely to be accessible to a significant number of existing staff, internal advertisement has the additional benefit of potentially creating vacancies elsewhere in the council which may enable compulsory redundancy to be avoided.

- 3.9 Generally speaking, agencies require a fee to be paid by their client when an agency worker is recruited as an employee. However, Human Resources has negotiated new arrangements with Comensura under which almost all agencies supplying staff to the council no longer charge these fees after the initial 12 weeks of an assignment.

### **Legal and Policy context**

- 3.10 Under s7 of the Local Government and Housing Act 1989, the council is required to make appointments based on merit. This means the best available person should be appointed to the post and will generally require a fair and open competitive recruitment process. As such, any approach which streamlines or cuts through that ordinary approach faces an elevated risk of challenge. Where particular posts have already proved difficult to recruitment to externally this will be relevant in determining whether a process not involving external advertisement is permissible.
- 3.11 Since the coming into force of the Agency Worker Regulations 2010 agency staff have, as of day one of their assignment, the right to be informed of any relevant vacancies, in order to be given the same opportunity as a 'comparable worker' to find permanent employment with their hirer. The recent case of *Coles v Ministry of Defence* has clarified that this does not give agency workers the right to be considered for vacancies on an equal footing with permanent employees.
- 3.12 In the recent case of *Smith v Carillion (JM) Ltd*, the Court of Appeal confirmed that a contract could not be implied between an agency worker and the end-user of his services, unless it was necessary to do so. Generally, where there is a contract in place between the worker and an agency then there will not be a contract of employment between the worker and hirer.
- 3.13 The council has a legal obligation to seek suitable alternative employment and redeployment for staff facing redundancy. This is reflected in the council's Organisational Change policy. Redeployees are sent details of all roles to which appointment as an employee is being considered. Redeployees must be appointed if they meet the essential requirements of a post set out in the person specification. Employees selected for redundancy whilst on maternity leave or additional paternity leave, have the right to be offered not just considered for suitable vacancies. Agency workers may be displaced by suitable redeployees.

- 3.14 Any “provision, criteria or practice” (within the meaning ascribed by the Equality Act 2010) which on the face of matters applies neutrally to all staff but in fact puts those sharing a particular protected characteristic at a particular disadvantage, could be found to be unlawful discrimination in the absence of satisfactory objective justification.
- 3.15 In addition to these legal requirements, the aspirations of existing employed staff who wish to progress or change role within the council are relevant to deciding what recruitment policies are appropriate.

#### **4.0 Future Policy Approach**

- 4.1 In the light of the factors identified in the previous paragraph, it is proposed that the council adopt the following policy approach to recruitment of agency workers to directly employed posts.
- 4.2 All vacancies will be advertised to redeployees before they are made available through general internal and/or external advertisement.
- 4.3 Agency workers will have the same access to roles advertised internally as employees who are not redeployees and recruitment will be in accordance with the council’s recruitment guidelines.
- 4.4 Where it is identified by senior managers that use of agency workers in a particular service is at a level that is leading to excessive cost and/or to impacts on the quality of service or stability of the workforce, discussions will take place with the council’s trades unions. These discussions will aim to agree a process for recruitment to the posts covered by agency workers which complies with legal requirements, is fair and takes equality implications fully into account.

#### **5.0 Implications**

##### **Financial implications:**

The recommendations in this report do not result in any additional financial implications for the council.

##### **Legal Implications:**

These are set out in the body of the report.

##### **Environmental Implications:**

None

##### **Resident Impact Assessment:**

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of

disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

A resident impact assessment has been undertaken in respect of the policy approach indicated in section 4 and no adverse impacts on groups with protected characteristics were identified arising from this report.

A resident impact assessment will be prepared as part of any exercise as referred to in paragraph 4.4 and managers should consider the equalities implications when deciding to recruit internally.

## 5.0 Conclusion

The council has used a variety of approaches over the last 6 years to enable agency workers covering establishment posts to apply to for directly employed post with the council. Processes adopted have varied depending upon the circumstances and substantial processes have been the subject of detailed discussion with the trade unions in advance. The legal context has changed in some respects over this period. The committee is asked to consider and approve the policy approach set out in section 4 of this report in the light of the current legal position and human resources best practice.

Final report clearance:

**Signed by:**   
Assistant Chief Executive, Governance and HR      Date

**Received by:**  
Head of Democratic Services      Date

**Report Author:** Debra Norman, Assistant Chief Executive, Governance and HR  
**Tel:** 020 527 6096