

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

Report of: Assistant Chief Executive, Governance and HR

Meeting of:	Date	Agenda item	Ward(s)
Policy and Performance Scrutiny Committee	5 Oct 2015		All

Delete as appropriate	Exempt	Non-exempt
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Subject: Recruitment of agency staff to directly employed posts

1 Synopsis

- 1.1 This report provides information concerning the recruitment of agency staff to permanent posts as requested by the committee and arising out of the report the committee received on the council's use of agency staff in June 2015.

2. Recommendations

- 2.1 To note the contents of the report.
- 2.2 To consider whether to recommend that the Audit Committee review the Council's approach to recruiting agency staff to permanent posts.

3 Background

- 3.1 Following a review of the council's use of agency staff by the Policy & Performance Scrutiny Committee, the Executive agreed that the committee should be provided with bi-annual update reports on agency use. The most recent such report was received by the committee on 1 June 2015. Arising out of the content of that report, and mention of a relevant policy from 2009 during discussion of it, the committee asked for a report providing further detail concerning the recruitment of agency staff 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.

- 3.2 This report sets out the current policy position in respect of temp to perm recruitment and the steps the council intends to take to clarify the process. It also outlines the legal and HR context which is relevant to this issue for the future.

Provisions in Policy Documents

- 3.3 In 2009, a document entitled Temp to Perm Strategy was developed. This is contained in Appendix 1. The document refers to discussion with the trade unions prior to implementation. It is believed that this discussion did take place and the strategy was implemented. It is unclear whether there was ever a formal review of the strategy.

- 3.4 The strategy states that use of the process it sets out is conditional on, among other things:

1. the vacancy being covered by the agency worker must be an established, permanent vacancy, supported by signed establishment maintenance forms
2. the manager has interviewed the agency worker to assess suitability for a permanent position and confirmed that the agency worker wishes to become permanent.

- 3.5 Historically, the purpose of the strategy is understood to have been to encourage agency staff covering posts to which it has been difficult to recruit, for example social workers, to become direct employees. In principle, the strategy commends a fast-tracked approach for the direct appointment of suitable agency workers.

- 3.6 The council's Recruitment Guidelines contain the following statement in respect of recruitment and agency staff:

"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."

This (as detailed below) reflects a number of legal obligations imposed upon the council and is directly at odds with aspects of the 2009 strategy.

Information as to past practice

- 3.7 2009 Strategy - A number of individual agency staff obtained permanent contracts relying on the 2009 strategy. No central record was kept of the occasions on which this was the case and so it is not possible to say how many cases there were. It is believed that the posts concerned were generally hard to recruit to posts such as social work posts.

- 3.8 "Amnesty" exercises

In 2010, the People Board (an officer level body that considered HR and organisational development matters on behalf of the Chief Executive's Corporate Management Board) agreed that a "temp to perm" exercise be offered to managers to address the number of agency assignments which had lasted for more than 12 months. The average assignment at the time was over a year and more than half of the agency staff workforce had been at LBI for at least 6 months. The exercise was subject to compliance with the council's obligations to redeployees. The amnesty did not use the 2009 strategy. The criteria were:

- Agency worker has been in assignment for 12 months.
- A vacant permanent post or funding for a permanent post exists.
- Financial analysis shows that it is cheaper for the worker to be employed directly by LBI.
- The redeployment process has been exhausted.
- No restructures or headcount reductions are planned for the service area in question.
- The post does not belong to someone who is on an extended period of absence through maternity, career break etc.

A similar "amnesty" was offered in September 2011 in the period leading up to the introduction of the Agency Worker Regulations.

- 3.9 Cleaning services - 1 November 2010 the council in-sourced its cleaning services from Kier Islington on the ending of the municipal buildings cleaning contract. The service had made a high use of agency staff (49% of the workforce) and a decision was taken to move to a more directly employed workforce. The Agency Workers Regulations did not come into force until 24 December 2011 and so at this time agency staff would not have been able to apply for an internally advertised job. The process for selecting which agency staff to appoint to directly employed roles agreed with the trade unions and implemented in early 2011 was instead based on the redundancy selection criteria in the council's organisational change procedure.
- 3.10 Housing management – following the reintegration of Homes for Islington, an exercise to reduce reliance on agency caretakers was undertaken. The number of agency staff in the service did not exceed the number of available permanent posts. The process agreed was therefore that the agency staff would be interviewed for those available posts.
- 3.11 Public Realm – in a recent exercise in the Public Realm division designed to reduce the use of agency staff in that service, the following process was followed:

Step 1 – Human Resources checked the redeployment pool for possible candidates.

Step 2 – no suitable redeployees were identified, the roles were advertised internally and open to existing agency workers and permanent staff.

Step 3 – A shortened application form was agreed. Support was provided to workers in Street Environment Services on completing the application process.

Step 4 – Managers shortlisted staff for interviews.

Step 5 – Managers conducted interviews/testing (such as vehicle check) and appointments were made. The panel in each case consisted of at least 2 relevant managers.

A second phase of appointments based on this process is being implemented.

- 3.12 The process followed was that provided for in the council's Recruitment and Selection Policy. On the basis that there were more agency staff than available established posts, thus requiring some form of selection process, practically the situation did not lend itself to the application of the 2009 strategy. In addition, the exercise offered an opportunity for promotion and it would have been unfair to exclude permanent staff who may have been waiting for the opportunity to seek a promotion.

Legal and Policy context

- 3.13 Under s7 of the Local Government and Housing Act 1989, the council is required to make appointments based on merit. This will generally require a fair and open competitive recruitment process.
- 3.14 The 2009 strategy document pre-dated the coming into force of the Agency Worker Regulations 2010 and was introduced at a time when agency workers did not have access to internally advertised posts. The position now is that 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.
- 3.15 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 permanent appointment is being considered. Redeployees must be appointed if they meet the essential requirements of a post set out in the person specification. Post are available for other applicants (existing employed staff, agency staff and, where applicable, external applicants) subject to the council complying with its obligations to redeployees.

- 3.16 The aspirations of existing employed staff who wish to progress or change role within the council are also relevant to deciding what recruitment policies are appropriate.
- 3.17 To the extent that the discrete provisions of the 2009 Temp to Perm Strategy would undoubtedly constitute a “provision, criteria or practice” within the meaning ascribed by the Equality Act 2010, the council would need to reflect upon the extent to which the strategy, or any new policy, could be found to operate in an unlawfully discriminatory manner, in the absence of satisfactory and objective justification.
- 3.18 Further resident impact assessment may well be necessary to determine the indirectly discriminatory impact of the strategy, or any new policy, which whilst on the face of matters applying neutrally to all staff, may in fact put those sharing a particular protected characteristic at a particular disadvantage.

The Comensura contract

- 3.19 The 2009 Strategy document refers to fees payable under the Comensura contract where someone supplied to the council via an agency is recruited as a permanent employee. Since the strategy was adopted, 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.

4.0 Implications

Financial implications:

None arising directly from this report.

Legal Implications:

None arising directly from this report.

Environmental Implications:

None

Resident Impact Assessment:

No resident impacts arise directly from this report.

A member of the Committee has queried whether equality observers should be included on recruitment panels. This is understood to mean employees who do not participate in the interviews (and are not part of the decision making process) who are trained in equalities requirements relating to recruitment and observe interviews to check that equalities requirements are complied with. The council does not have employees with this responsibility. However, all staff receive training in equalities issues and the council’s recruitment and selection training provides training on equalities specifically in the context of taking part in a recruitment panel. All panel members are required under the Recruitment and Selection Guidelines to have had recruitment and selection training. The council’s recruitment guide contains

guidance on how to ensure that equalities issues are properly addressed and taken into account in the recruitment process.

5.0 Conclusion

The council has used a variety of approaches over the last 6 years to enable agency staff covering establishment posts to apply to be directly employed by 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 Policy and Performance Committee may consider it appropriate to propose to the Audit Committee that a new policy to govern recruitment of agency staff to directly employed posts be developed.

Final report clearance:

Signed by:

Assistant Chief Executive, Governance and HR Date

Received by:

Head of Democratic Services Date

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Appendix 1



TEMP TO PERM STRATEGY

CONTENTS

- 1 Background
- 2 Current position
- 3 Benefits of permanent employment
- 4 Comensura
- 5 Process
- 6 Equalities Impact Assessment
- 7 Recommendations

TEMP TO PERM STRATEGY

1. Background

Recruitment difficulties in the various areas of the council have led to extensive use of agency staff, which represents a significant cost to the authority of £18.3M in 2007/8. The highest spend on agency staff fell into the secretarial and administrative grades of almost £5M during the same period.

One of the 5 people priorities for the council is to monitor the use of agency staff in an effective and consistent manner and to improve compliance and to reduce long-term use of agency staff.

A strategy is therefore needed to encourage agency staff to become permanent employees, thus reducing costs and ensuring continuity of knowledge and expertise.

2. Current position

As at 30 September 2008, there were 605 live assignments logged on to the Comensura system with a corresponding spend of £1.6M for that month.

3. The benefits of permanent employment

- Annual leave: Agency staff receive the statutory entitlement of 24 days paid annual leave from their agency, including bank holidays. Working for LBI, they would be entitled to 25 days, plus 5 days for long service (after five years) and five privilege days, as well as eight bank holidays.
- Other leave: generous maternity, paternity, adoption and special leave, plus family friendly policies, remote and smart working
- Sickness:

- Agency staff: SSP only
- Permanent staff: Generous paid sickness absence.
- Training: Permanent staff have access to a wide range of training and development opportunities, including a minimum of 5 days training per annum
- Access to the Local Government Pension Scheme
- Zone 1 & 2 Travel Card (for hard to recruit posts)
- Child Care Vouchers
- Interest free season ticket loans (for hard to recruit posts)
- Employee Assistance Programme
- Access to keyworker housing (for hard to recruit posts)
- Access to Occupational Health Service, free eye tests and contribution towards glasses.
- Discounted rates for leisure and other facilities in the borough.

4. Comensura

Comensura manage the agencies that supply staff to the council. All bookings and temporary staff are managed through this contract. Comensura introduced set pay rates in July 2007 to ensure consistency across the council in agency pay rates and to help control hourly pay costs. Comensura have agreed the following temp to perm fees, according to length of service:

Temp to Perm Fees

For all categories of Temporary Workers excluding Legal, Finance or Executive Roles:

Length of Service	Temp to Perm Fee (%)
Up to 2 weeks	15%
2 - 4 weeks	12.5%
4 - 6 weeks	10%
6 - 8 weeks	7.5%
8 -10 weeks	5%
10 - 12 weeks	2.5%
12 - 14 weeks	2.5%
14 weeks and above	no fee payable

For all qualified Temporary Workers engaged in Legal, Finance or Executive Roles:

Length of Service	Temp to Perm Fee (%)
Up to 13 weeks	15%
13 - 25 weeks	7.5%
26 weeks and above	no fee payable

5 Process to be followed

Where an agency worker has been employed for a minimum continuous period of 3 months and the manager can confirm a good appraisal/supervision rating, the manager can apply this policy if he/she wishes to make the role permanent.

The following conditions must apply:

1. the vacancy being covered by the agency worker must be an established, permanent vacancy, supported by signed establishment maintenance forms
2. the manager has interviewed the agency worker to assess suitability for a permanent position and confirmed that the agency worker wishes to become permanent
3. the manager should advise the agency worker of the benefits of becoming a permanent employee with Islington (see para 3 above)
4. the manager and worker should agree a start date with Islington - the worker will need to give the requisite notice to the agency and the manager will need to notify Comensura that the temp to perm strategy applies
5. the manager should advise the worker that employment via the agency will not count towards continuous service with Islington; this will only begin from the start date of a permanent employment contract.

6. Equality Impact Assessment

The application of this strategy will be monitored to ensure there is no adverse impact on any particular groups of staff.

7. Recommendations

1. That this policy be discussed with the trade unions and implemented from a date to be agreed.
2. The implementation of this strategy is reviewed after six months.

January 2009