

Casual Worker Policy

1. Introduction

This policy has been developed to assist Hampshire maintained schools engaging casual workers to support the work of their school. Academy schools are also able to adopt this policy.

This policy does not apply to staff on permanent, temporary or fixed-term contracts, volunteers, agency workers and supply staff, apprentices, or secondees – see paragraph 1.3 below for further information regarding these types of worker.

This policy does not form part of any employee's contractual terms and conditions and any links within this document to other documents are for ease of use and do not form part of this policy.

1.1 Aim

Casual workers provide a flexible and effective solution to ad-hoc staffing needs and the aim of this policy is to clarify the legal framework within which casual workers are engaged and the issues that need to be taken into consideration when schools are engaging such workers.

1.2 Purpose

The purpose of this policy is to ensure that headteachers and managers understand the nature of casual engagement, the employment implications and the processes that need to be followed when recruiting, managing and ending such casual arrangements. It also provides an understanding of the status of casual workers in the case of TUPE transfers in or out of a school.

1.3 Type of appointment

Prior to engaging a casual worker, headteachers may wish to consider the benefits and implications of other types of employment arrangement as these may provide a more appropriate solution to their recruitment needs in some instances. In order to assist headteachers with their decision making, the following guidance is available:

- permanent, temporary, or fixed term [contracts](#)
- [agency worker](#)/supply agency staff
- [volunteer](#)
- [apprentice](#)
- [secondees](#)/interim appointment for senior leadership post
- [summary chart](#)

Where it is decided that the school requires the recruitment of a permanent, temporary or fixed term employee, the school's recruitment policy will be followed.

If the person being considered for appointment is a juvenile, an overseas trained teacher, self-employed, or a migrant worker, headteachers should also follow the [guidance](#) regarding these types of employment arrangements.

2. Legal framework

2.1 Definition of a casual worker

Casual workers are not employees. They are workers, which gives them access to limited but significant employment rights. It is difficult to define a casual worker, though typically they are engaged to do temporary work:

- which occurs only once and for a short period of time, or
- which occurs more often but on an irregular or unpredictable basis, or
- where there is no obligation on the employer to offer work and no obligation on the individual to accept it.

More regular, planned work would be likely to confer permanent employment rights – see section 6 on monitoring regularity.

2.2 Rights in law

While not employees, casual workers do have rights in employment law, as set out below:

- to be paid the national minimum wage;
- not to have unauthorised deductions made from pay;
- protection under TUPE;
- not to be discriminated against, e.g. on the grounds of sex, race, disability, sexual orientation, religion or belief, or age;
- not to be treated less favourably if they work part-time;
- to receive paid annual leave;
- to have a maximum 48 hour working week and rest breaks;
- to take part in trade union activities;
- to work in a safe workplace, and other rights under health and safety legislation;
- to be safeguarded when making a protected disclosure (whistleblowing);
- to have access to a pension where entitled to do so under Pensions Auto-enrolment Regulations and the relevant scheme's rules.

2.3 Other legislation and agreements

In addition, schools and further education colleges are under a statutory duty to have regard to the DfE guidance entitled Keeping Children Safe in Education, which applies to casual workers as well as employees – see section 4.1 on vetting and safeguarding.

Hampshire County Council has a responsibility to its workers to ensure appropriate access to a work-based pension. Academies and non-Hampshire County Council maintained schools are deemed to be the employer, with responsibility for workers, for occupational pension scheme purposes.

It is also important to note that Hampshire County Council's Collective Agreement EHCC 2007 covers support staff employed in Hampshire County Council. Casual workers are explicitly excluded from the Agreement as noted at point 2.1 of the Agreement. Academies and non-Hampshire County Council maintained schools should have regard to TUPE legislation when receiving Hampshire County Council staff as part of a TUPE transfer. See also section 7 below on TUPE and the casual worker.

3. Recruitment process

Schools may need to use an individual or a pool of workers to cover emergency situations such as sickness of a member of staff. Although recruitment of casual workers often occurs through word of mouth or via other informal routes, such as an existing volunteer in a school expressing an interest in such work, it is important that schools follow the same robust recruitment process as when seeking permanent staff. A school's responsibilities under the Department of Education's (DfE) Safeguarding Children and Safer Recruitment in Education 2007 (as amended) guidance extends to casual workers; the DfE guidance also applies to academies and non-Hampshire County Council maintained schools.

Recruitment of staff takes time and effort and while the turnover of casual workers may be higher than for permanent employees, they are no less important to the smooth running of the school. The impact of an unsuccessful appointment on a school and pupils can be considerable and it is therefore important to follow the [guidance on recruitment](#).

3.1 Advertising

It is good practice to advertise locally and/or within the school in order to attract as wide a group of applicants as possible and ensure that the highest calibre of candidates is considered. Details about the school, a list of duties (or a role profile if the casual worker will be temporarily undertaking the role of a permanent employee) should be provided to applicants, and they should complete an application form in the normal way. Further [guidance on advertising](#) is available.

3.2 Selection

The selection process for casual workers should be the same as for permanent posts; the candidates should be short-listed and assessed against the requirements of the role profile, given an interview rating to determine their level of suitability, with pre-interview references and health checks being undertaken, in line with [recruitment guidance](#).

4. Engaging a casual worker

Once a preferred candidate has been selected, the process for engagement is similar to that for employing a permanent employee, but with some significant differences such as the method of payment and the need to issue an engagement letter rather than a contract; it is therefore important that schools follow the [guidance on engaging casual workers](#).

4.1 Vetting and safeguarding

Casual workers engaged directly by the school must be subject to the same pre-employment checks that are required to be carried out on permanent employees, including completion of the Single Central Record; [guidance on checks](#) is available.

Where a casual worker is employed through an agency it is the agency, as the employing organisation, that is responsible for undertaking the pre-employment checks; schools should follow the [guidance on agency workers and supply staff](#).

It is important for headteachers to ensure that individuals engaged to work with children on their premises are suitable to do so and that systems are in place to safeguard children. It is also important that any individuals working in a school, including casual workers, are aware of, and agree to work within, the school's policies, procedures and child safeguarding guidelines. Schools need to ensure that systems are in place to safeguard children and should refer to the [safeguarding guidance](#) and provide casual workers with a copy of the guidance sheet on [avoiding unnecessary contact](#). Information on [safeguarding training](#) is also available.

4.2 Contractual issues

Casual workers are not employees and must not be referred to as such. They are not required to have a formal contract of employment, but they are legally entitled to receive equivalent information on relevant working arrangements as colleagues who are employees. This is because casual workers are covered by the Employment Rights (Employment Particulars and Paid Annual Leave) (Amendment) Regulations 2018 and the Employment Rights (Miscellaneous Amendments) Regulations 2019. To meet this requirement

and to ensure that the true nature of the casual assignment is understood by the casual worker, template [casual worker engagement letters](#) are provided and should be used by schools when engaging such workers. The letter requires the casual worker to sign to confirm they understand and agree to abide by the school's procedures. This reinforces the key messages and makes it easier to tackle any issues if they do arise.

Schools should be aware of the risk of implied contractual terms. In law an implied term is what the parties (the employer and the employee) must have intended when they entered into the contract, but which is not written down. While casual workers do not have a contract of employment, implied terms could be inferred when something happens on a regular basis, e.g. the offer of regular work. Where there is an expectation that a casual worker will be offered work or will accept work, or where a regular working pattern is established over a period of time, it may be possible for the worker to argue that a contract of service exists. Similarly, where the worker can show that there has been a long-standing relationship with the employer and that there has become an expectation that work will be provided and undertaken, the casual worker may claim that a 'global' or 'umbrella' contract continues to exist during periods when they are not working for the employer and in such circumstances continuity of employment may be established.

Headteachers should also refer to section 6 below on monitoring regularity and if it is likely that the individual will be deemed to be an employee, an appropriate contract should be issued in line with the [guidance on contracts](#) and/or seek advice from EPS.

4.3 Pay and Pension

4.3.1 Pay

It is important for schools to determine at the outset whether to pay a casual worker as a teacher or on support staff terms and conditions, and where such workers are engaged via an agency, schools should follow the [agency workers guidance](#).

Non-teaching casual workers will not be linked to a role profile for pay purposes because it is unlikely that they will be undertaking the full role, however they should be paid an hourly or daily rate commensurate with a permanent or temporary worker carrying out the same or similar duties. They are entitled to statutory annual leave which equates to 28 days paid holiday including bank holidays (full-time equivalent), although annual leave entitlements for Hampshire County Council are higher. Schools which use the Integrated Business Centre (IBC) for their payroll can find further guidance regarding hourly pay rates for casual workers on the IBC website.

A casual worker who is employed as a teacher will normally be engaged either through a supply agency or directly by the school and will be paid via a claim form.

Schools employing supply teachers direct can apply a pay rate of their choosing, however they may wish to link such pay rates to a point on a range as set out in the school's Pay Policy. Directly employed supply teachers will be paid a percentage of the day worked based on the School Timetabled Teaching Week (STTW) – further information on calculating the STTW is available in [Model Pay Policy](#).

Supply teachers engaged via the Hampshire Supply Service are guaranteed the pay rate agreed with Hampshire County Council. Supply teachers engaged via an independent agency will be paid according to the terms of the contract into which the school enters with the supply agency – more information is given in the guidance on [using supply agencies](#).

Schools should also be aware that if they engage a casual worker (either direct or via a supply agency) who is a qualified teacher and whose role will be to actively teach pupils, they should be paid as a qualified teacher. After 12 weeks in the same role with the same hirer a qualified teacher in a maintained school carrying out teaching duties should be paid the appropriate salary within the statutory pay ranges for teachers. Pay is at a negotiable rate for each assignment.

4.3.2 Pension

Teaching and non-teaching casual workers employed direct by the school are able to access an appropriate pension scheme in line with pension scheme rules and pensions legislation.

For schools which use the Integrated Business Centre (IBC) for their payroll, staff engaged on a casual basis will be assessed by the IBC against the pension auto-enrolment criteria, which are based on age and earnings. If classified as an 'eligible jobholder' the casual worker will be auto-enrolled into either the Local Government Pension Scheme or the Teachers Pension Scheme, as appropriate, and notified accordingly. If classified as a 'non-eligible jobholder' the casual worker will not be auto-enrolled, but may still join the relevant pension scheme if they wish to do so. For schools which are not auto-enrolled, casual workers will receive a letter from the IBC to inform them of their pension options.

Teaching staff employed through an agency (including those within the Hampshire Supply Service) are not eligible to join the Teachers Pension Scheme as it is restricted to those teachers employed by a maintained school or academy. Under Pensions Auto-enrolment Regulations, however, dependent on age and earnings, an agency may be required to provide a supply teacher with access to a work-based pension. Schools should advise supply teachers to contact their agency regarding pensions information.

5. Managing a casual worker

5.1 Induction and training

For the time they are with the school, casual workers are members of the school's workforce and as such it is important that they receive an induction into the school, its culture, expectations regarding ways of working and their own specific role. This is important regardless of whether the casual worker is engaged once or more than once. Such workers often have little time to settle in due to the nature of their engagement and a planned induction will help maximise the opportunity for the casual worker to become effective in their role and to ensure they feel welcomed and valued, increasing the likelihood that they will wish to work again for the school at short notice.

The induction programme will vary in nature according to the role and previous experience of the casual worker, but it will always need to include setting out the boundaries and expectation of their roles and responsibilities for safeguarding and protecting children, and health and safety, written documentation about which should be included in the casual worker's engagement letter. For more information on induction, see the [induction guidance](#).

Casual workers, no less than employees, need to perform to a competent and safe standard and schools should consider the benefits of ensuring that such workers receive any necessary training or mentoring, formal or otherwise, to ensure they are able to undertake their role. This is likely to vary depending upon the nature of the work being undertaken and may incur a time and/or financial cost to the school. It will therefore be important for the school to balance the costs against the benefits of ensuring a competent worker and one who may be able to develop their skills for the future benefit of the school.

5.2 Working Arrangements

While casual workers may be with the school for only a short time, it is important to ensure that any issues that do arise are dealt with in a timely and proactive way and that these workers are managed in the same fair and equitable way as employees. Not all policies and procedures will necessarily apply to casual workers and [further guidance](#) is available on such issues as leave, performance management, absence management, maternity, discipline and grievance related issues. Schools using casual workers from an agency should have regard to the [agency worker guidance](#).

Time spent travelling to the work-base location is considered to be normal commuting, and therefore does not count as working time and cannot be claimed as mileage. Time spent travelling on school duties to a location other than the work-base location, for example to provide education to a pupil at their home address, is considered to be work which is necessary in the performance of their duties and therefore working time. For a teacher this should be classed as directed time. If a worker travels direct between home

and pupils, not calling in to their work-base location, the worker should deduct their normal commuting time, before classing their time as working time/directed time.

In respect of travel expenses, the worker is entitled to be paid for journeys which are necessary in the performance of their duties. The worker should deduct the mileage that they would have travelled from home to their base location before submitting a claim. Claims should be calculated in accordance with the Expenses Policy.

Academies which have opted not to adopt the relevant EPS policies and procedures in the Manual of Personnel Practice should make a local determination regarding whether their policies and procedures should specify whether they apply to casual workers. Non-Hampshire County Council maintained schools should ensure that they speak to their local authority to ascertain whether their policies and procedures specify whether they apply to casual workers. Where policies and procedures do not specify whether they relate to casual workers, academies and non-Hampshire County Council maintained schools are advised to approach the engagement and management of casual workers on a risk-assessed basis taking into account the rights in law as outlined in paragraph 2.2 above and the guidance contained within this policy. Further advice is available from EPS.

5.3 Performance management

Casual workers are excluded from the formal performance management process, however it is good practice to provide constructive feedback to such workers and to receive any constructive feedback that they may have regarding their work in the school. It will also be important for headteachers to promptly address any performance issues that arise, and in such situations the relevant [guidance](#) may be followed.

Headteachers should be aware, however, of the implications of the Education (School Teachers' Appraisal) (England) Regulations 2012, which apply to community, voluntary, foundation, community special, foundation special schools or maintained nursery schools. Under this legislation, a supply teacher who is engaged for a period of one school term or more is required to be part of the school's formal performance management process, regardless of whether the supply teacher is engaged directly by the school or via an agency. A supply teacher engaged for a term or more is therefore an employee and should be given an appropriate contract of employment. For more information see further guidance on [supply teachers](#) and on the [performance management of teachers](#).

Although academies are not bound by the legislation referred to above, they should have regard to the principles contained within it; Ofsted will examine the effectiveness of performance management in an academy school in the same way as in a maintained school.

5.4 Pay progression

While in law casual workers are not required to get an annual pay rise and should be on a fixed rate of pay, for pay parity reasons casual workers and supply teachers should be eligible for pay progression in line with employees. In Hampshire maintained schools these staff will not, however, be included on the annual pay progression information provided to schools by the Integrated Business Centre (payroll). Schools wishing to include such individuals in pay progression considerations will need to ensure that appropriate systems are in place to capture data on these workers and that pay decisions are communicated separately to payroll. Academies and non-Hampshire County Council maintained schools may similarly wish to ensure their systems can capture such data and that payroll is notified of any increase due.

6. Monitoring regularity and pattern of work

6.1 Reason for casual work

In schools, casual work is most likely to be used to cover ad-hoc short term sickness absence. More regular planned work such as cover for Planning, Preparation and Assessment (PPA) time or other release time would not be casual engagement. Further [guidance on PPA time](#) is available.

6.2 Rights

Under the Employment Rights Act 1996, if a casual worker is engaged on a regular basis and is therefore classified as an employee and not a worker, the arrangement may result in the worker accruing a number of employment rights, with the risk of potential financial penalties for schools. These rights may include:

- sick pay;
- maternity leave/pay, paternity leave/pay, adoption leave/pay;
- the right to be consulted when ending employment;
- the right to be consulted regarding organisational change;
- redeployment;
- notice of termination;
- redundancy pay;
- the right to claim unfair dismissal, subject to length of continuous service.

6.3 Regularity and pattern of work

It is important to note that in considering whether a person is a casual worker or an employee an Employment Tribunal will look beyond any paperwork and rely on the pattern and nature of work being carried out to determine the status of engagement. In an organisation such as Hampshire County Council, where casual workers may undertake work at more than one school or site where Hampshire County Council is the employer of the site staff, this may

include the pattern and nature of work being carried out across the span of the casual worker's engagements.

It is easy for casual workers to move into a situation of working regularly and schools should therefore ensure that they check any continuity of service that has accrued (or may be likely to accrue) before deciding to engage a casual worker. Schools considering engaging a casual worker who may already have built up a pattern or regularity of work in other Hampshire County Council schools or sites, or where engagement may trigger such a pattern of regularity, can contact EPS for further advice. This is because a casual worker in this situation may be deemed to have employee status and the would then be liable for any termination or other costs and obligations (see 6.2 above). The school may also wish to consider the implications of an alternative type of engagement such as a fixed term or temporary contract.

There is no precise definition for the term 'regular' or 'pattern' of work and each case must be assessed and considered on an individual basis. It is likely that all or some of the following would be considered either individually or in conjunction with each other to determine the true employment status (this list is not exhaustive):

- continuity of service;
- breaks in service and reason for such breaks;
- consistency of hours over the period(s) of engagement;
- nature or type(s) of work undertaken;
- work undertaken at different sites, e.g. if a worker was in a 'pool' across several sites;
- mutuality of obligation;
- absence patterns and reason for absence, e.g. annual leave.

Where a school is unsure about the casual status of a worker as a result of the past or future pattern or regularity of work, they are advised to contact EPS for advice and guidance.

It is important that headteachers ensure a regular review is in place to assess their casual workers' regularity and pattern of work, to determine if their employment status needs to change to that of employee and that they should therefore have a contract. More [guidance](#), including case studies, is available to assist Headteachers with the issues that need to be considered when reviewing casual workers.

7. TUPE and the casual worker

7.1 Legal situation

The legal status of an individual who works on a casual basis is 'worker', not 'employee'.

The TUPE Regulations 2006 provide for a wider definition of employee than that contained in the Employment Rights Act 1996 and can apply to workers, depending on the work they are doing in relation to the circumstances of the transfer and the intended end date of their engagement. It is important that the true status of any casual worker who may be affected by a TUPE transfer is determined prior to the transfer. If the true status of such a worker is an employee, they may need to be included in the transfer of staff and associated requirements for employee liability information, and inclusion in the consultation process.

Similarly, should a school be considering ending the engagement of a casual worker around the time of a TUPE transfer, it will be important to establish the true employment status of the individual before doing so. Headteachers are advised to discuss such issues with EPS at a very early stage in the process so that appropriate guidance and support can be provided.

7.2 Issues of legal challenge

Whether or not an existing casual worker is deemed to be a worker or an employee, headteachers should be aware that legal challenge may still be a possibility. When a group of staff is identified to transfer, such staff will have the right to representation from their trade union or professional association and may seek to challenge the determined position. Similarly, both the transferor (the employer who is transferring staff out) and the transferee (the employer who is receiving the transferred staff) may have reason to challenge the determined position. It is important that evidence is gathered at an early stage to support the determination of employment status, with information shared between both parties for negotiation.

8. Ending casual worker engagement

Casual workers have no statutory right to notice of termination as there is no obligation on the employer to provide work and there is no obligation on the casual worker to accept work that is offered. It is therefore important when considering ending casual worker engagement to establish the true nature of the employment status. The employment status will be critical in determining the potential for the dismissal being unfair and the likelihood of a claim being made by the individual, with subsequent costs to the school if such a claim were to be successful in an employment tribunal.

Headteachers considering ending the engagement of a casual worker alongside or as part of a restructure or reductions exercise or a TUPE transfer should contact EPS for advice.

Casual worker status can be open to challenge, either by the casual worker themselves or, in the case of a TUPE transfer, by the transferor or the transferee. It is therefore important when considering ending casual worker engagement to establish the true nature of the employment status. The

employment status will be critical in determining the potential for the dismissal being unfair and, therefore, the likelihood of a claim being made by the individual, with subsequent costs to the school if such a claim were to be successful in an employment tribunal.

Policy Governance

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