

DERBYSHIRE COUNTY COUNCIL

CABINET

22nd November 2016

Report of the Strategic Director of Corporate Resources

**INTRODUCTION OF AVERAGE MINIMUM GUARANTEED HOURS
CONTRACT ARRANGEMENTS FOR RELIEF EMPLOYEES**

1 Purpose of the Report

To approve the introduction of average guaranteed minimum hours contract arrangements for those relief employees who currently have no contractual hours guaranteed with the Council.

2 Information and Analysis

There are currently in excess of 2,800 employees (excluding individuals employed in schools) who are employed on existing “as and when” relief contract arrangements. Of these approximately 1,300 hold other appointments with the Council that do attract guaranteed hours, which means there are presently in the region of 1,500 workers who work to varying degrees of regularity and levels of hours that currently have no guarantee of work. These contracts do not include any “exclusivity” or “work refusal continuity” clauses, which would mean the workers are prevented from working for other employers or cannot refuse hours without potentially compromising their future use and so do not technically represent “zero hours” contracts. It does however mean that there is a significant number of the Council’s existing relief workforce who are required to work regularly without any contractual guarantee.

The initial focus has therefore been given to the 1,500 or so staff who have no contractual hours guarantee recognising that arrangements for relief workers with other part-time contract(s) and existing part-time workers who pick up additional hours on a regular basis will need to be considered under subsequent phases of this project and will therefore be subject to a separate future report(s) to Cabinet. In developing this initial phase of the project much work has been undertaken with operational management across the Council to develop a contractual hours framework that provides a level of guaranteed hours without compromising the delivery of services and increasing costs by providing a commitment to working hours that are not actually required.

The basis of the proposed framework is to offer an average minimum contractual hours guarantee based on 70% of the average hours actually worked over the previous 3 year period or where the period of employment is less, pro-rata to the period worked. The contract hours will be expressed as a weekly figure averaged over the year and will be adjusted to reflect any artificial distortions arising from particular events such as maternity leave, long term sickness, extended training cover etc. The arrangements will also include an average minimum contractual guarantee offer of 1 hour per week for those employees whose figure is up to 1 hour, where future use is agreed following local discussions between management and the employee.

All relief staff groups will be included with the exception of relief Adult Tutors (270) employed within the Derbyshire Adult Community Education Service and Home Tutors (27) within the Out of School Tuition Service. The reason that these employees (297) are excluded is that work requirements and / or client base fluctuate on a term by term basis depending upon demand and both groups have different existing contract arrangements that have been agreed with the recognised trade unions.

Existing relief workers will have the opportunity not to accept the new arrangements recognising that those who do accept the average minimum contractual guarantee will receive priority within any future allocation of work. Depending upon the level of take up of the new average guaranteed minimum contract arrangements, all future vacancies from April 2017 will be recruited to in accordance with the new framework offering an average minimum contractual guarantee. Any employees appointed on a relief basis between the offer being made and the implementation date will be picked up shortly after general implementation to offer the same contractual guarantee.

The new contract will be subject to an annual review which will take into account the number of hours actually worked over the previous year and the general pattern of work against the hours offered. As part of this review contract hours may be increased or reduced within the general variable nature of the contract depending upon the circumstances evident.

The detailed framework proposed is set out at **Appendix 1**.

The table set out below shows the distribution of existing relief staff by department and job family that are covered by the framework proposals under this phase of the project.

Department	70% Average Weekly Hours					
	0 - 5	6 - 10	11 - 15	16 - 20	21+	Total
Adult Care	171	41	31	9	2	254
Children Services	489	60	13	6	4	572
Corporate Resources / Office to Chief Executives	112	36	20	10	0	178
Economy, Transport and Communities	155	16	2	1	0	174
Total	927	153	66	26	6	1178

* The figures shown in the chart exclude the 297 Relief Tutors employed in Childrens Services that are excluded for the reasons identified in the report.

The proposed time line for implementation of the new framework arrangements is set out in **Appendix 2** which includes a period mid – January to 31st March 2017 to ensure managers are familiar with and fully briefed on the new arrangements and associated guidelines and have access to all appropriate data.

It is intended that SAP will be configured to provide a fully automated recording, payment and monitoring process. If however, this does not prove feasible to deliver prior to April 2017 a “work around” contingency solution has been developed for use in the interim.

Following agreement of the underlying principles by Corporate Management Team the proposed framework has been subject to extensive and detailed consultation through a cross departmental working group comprising operational management, HR colleagues and representatives from the recognised trade unions. The proposed framework is based on a general consensus agreed through the joint working group following extensive discussions as to the relative merits

and potential disadvantages associated with introduction of an average minimum contractual hours guarantee, as set out below:

- A potential for hours to be guaranteed that are not actually required. The fact that a 3 year period is representative and that the offer is to be based on 70% of hours worked and excludes artificial distortions as described in the report, is seen to provide the necessary re-assurance. Managers will also have access to monthly reports on hours worked against the contractual guarantee as part of a robust monitoring process.
- A concern that some employees may refuse working hours offered and hence will accumulate a deficit and a negative balance at year end. It is acknowledged that such occurrences can be addressed through normal management procedures and the annual review process.
- A view that some employees may not be prepared to wait until year end for payment of hours worked over minimum contract and hence would be deterred from accepting the new contract offer. This has been addressed through the introduction of a monthly threshold, the detail of which is set out in Appendix 1.
- The introduction of average guaranteed minimum contractual hours will provide some certainty of earnings for employees who make a valuable contribution to the delivery of public facing services, which it is envisaged will encourage improved staff retention rates and in turn service continuity.

3 Legal Considerations

The average hours and annual review arrangements proposed are not dis-similar to the provisions applied to other work groups subject to banked / seasonal hours e.g. craft workers and landscape and variable hours e.g. catering service resulting from periodic changes in service need. It is also intended to introduce the new arrangements via voluntary acceptance rather than a compulsory variation to contract process. Existing employees wishing to remain on current arrangements will have opportunity to do so although priority in the allocation of work will ordinarily be given to those who have accepted the average guaranteed contract and the mutuality of obligation to work. The other main terms and conditions proposed under the new guaranteed hours arrangements are as provided under the Derbyshire Package and mirror those applied to other employee groups contracted on established terms and conditions.

An appropriate clause will be included in the employee's contracts that will enable the Council to annually review the guaranteed hours.

In the event that employees fail to work their guaranteed number of hours (without reasonable cause) it will be appropriate to follow the Council's usual management processes.

4 Financial Considerations

There are no direct costs arising from these revised arrangements as they in effect consolidate a proportion (70%) of the actual hours currently worked. Savings may accrue if the anticipated reduction in the turnover rate is achieved and further savings may result from an associated reduction in agency spend.

5. Equality of Opportunity Considerations

The development of these proposals does represent the provision of guaranteed minimum contract hours for an existing relief work group that is pre-dominantly low paid and of a female gender.

6 Social Value Considerations

The Public Services (Social Value Act) 2012 asks commissioners to think about securing extra social, environmental and economic benefits for their area when they are buying services. Whilst the introduction of average minimum guaranteed hours contract arrangements for relief employees does not involve the direct procurement or commissioning of a service, it will contribute to the improvement of economic, social and environmental well-being by ensuring that affected employees have a minimum guaranteed income and as a result more stable employment conditions. This will impact directly on the ability of affected employees to plan for the long term through for example, improved access to financial products and services which will increase resilience and is likely to lead to less reliance on benefits in the longer term. Increasing the stability of its workforce and improving continuity, through for example reduced reliance on agency contracts is also likely to support the Council in being able to plan more effectively, creating efficiencies whilst also improving the quality of services on offer.

7 Other Considerations

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, environmental, health, property and transport.

8 Key Decision

Yes

Public

9 Call-In
No

10 Background Papers
The file is held in the HR Division, County Hall, Matlock.

11 Officer's Recommendations

That Cabinet approve:

1. Adoption of the average guaranteed minimum contract framework for former relief employees as set out in **Appendix 1**;
2. The implementation of the new framework arrangements on the basis set out in the proposed time line detailed at **Appendix 2**;
3. A review of arrangements relating to the future recruitment of relief workers in light of the take up of the contract offers to existing staff and prior to operation of the new arrangements as from April 2017.

Judith Greenhalgh
Strategic Director of Corporate Resources

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Framework Agreement for the Introduction of a Guaranteed Average Minimum Hours Contract for Relief Employees

- Employees who currently have no contractual hours will be offered the choice of opting for a contract which will guarantee average hours over an annual period. There will be no minimum number of hours or proportion thereof pre-requisite to qualify for a GMC offer, but following verification of the need for future use following local discussion between management and employee any offer made will be for an average of at least 1 hour per week. Hours above this number will be rounded to the nearest 5 minutes per week as per normal practice.
- In accepting a contract offer the individual will assume part-time employee status and a contractual obligation to work when required, up to their contractual guarantee, but will have the choice of working beyond that if asked to do so. As a part-time employee any individual who accepts the GMC offer will be subject to normal management processes and procedures.
- Managers and staff will need to balance service delivery requirements with the application of reasonable work patterns and the recognition of employee needs, in establishing what is a reasonable expectancy to work and acceptable notice of a requirement to work.
- The average guaranteed minimum contract (GMC) will be based on a 70% percentage of the average hours worked over a 3 year reference period (if available) and will be subject to annual review. The offer of a GMC will apply to all employees who currently have no contractual hours, unless other arrangements which are equally, or more, beneficial, are identified.
- Any individual disagreements as to the accuracy of the calculation of the 70% average GMC hours over the relevant reference period, normally 3 years, will be addressed through normal management processes and the proposed timeline set out at Appendix 2 allows sufficient opportunity for resolution.
- Where employees hold more than one existing relief post (without any guaranteed hours) each appointment will be dealt with separately in its own right, unless particular service regulations specifically prevent this.
- Where the employee has not worked for 3 years, the average will be based on available data and pro rata'd for their actual period of employment.

- Newly appointed employees will be offered an average GMC from commencement of their employment in the job. Their average will be based on data available from one of the following:
 - the preceding employee's average hours;
 - where there has been a realignment of hours in a 'pool' situation, an assessment based on that reallocation of hours;
 - In circumstances where it is difficult to determine an average, a conservative average, or best estimate will be used initially and reviewed subsequently to reflect actual working hours.
- All hours worked up to the fte (37 hrs) in any week will count towards the average contractual guarantee. Any overtime hours worked over and above 37 per week will be paid as worked following input by the manager in accordance with normal pay arrangements and will not count towards the annual average.
- A small threshold of 2 weeks' worth of the average GMC up to a maximum limit of 37 hours can be 'banked'. Once an employee has reached this threshold, all additional hours will be paid on a monthly basis and in most cases this will be a month in arrears. If an employee works under contract any surplus in the 'banked' working time will be balanced against this.
- It is the primary responsibility of the manager to ensure that the individual has been offered and worked sufficient hours to ensure they have met their average guarantee and do not have a negative balance at the end of the financial year. Any credit hours remaining should be paid up and the employee will build a new threshold from the start of each year which will also ensure any surplus hours are paid at the appropriate hourly rate (pre pay award).
- The GMC relates to basic hours worked and does not include enhancements for unsocial hours, weekend or bank holiday working etc which will be paid at the time they are worked and input by the manager in accordance with normal pay arrangements.
- An employee's average GMC will normally be reviewed on an annual basis, and could go up, down or remain the same, depending on the hours worked over the past year. Given that the average GMC is based on only a percentage of the hours worked, there is protection from extreme fluctuation for both the Council and employee. The annual review and potentially variable nature of the contract will be made very clear in the contract offer.

- Where a 3 year reference period is not available to assist in determining an employee's average hours or the employee's situation changes and they cannot therefore commit to the same level of hours, it may be necessary in exceptional circumstances, to review the GMC before the annual review, to ensure both the employee and the Council are protected from over, or under, payment.
- Employees will qualify for annual leave, maternity leave and pay and sick pay, in line with other established employees rather than being subject to a separate set of provisions as is currently the case. In order to qualify for sick pay for covering for an employee who themselves are employed on an average GMC, there will be a general eligibility expectancy of 5 days prior notification of work.
- Any existing employee who chooses not to accept the offer of a GMC will remain as a 'true' relief, with no GMC, and will have no obligation to respond when work is offered. Employees who have accepted an average GMC are however likely to assume first priority in the future allocation of work in order to ensure that their minimum guarantee is met.
- The percentage applied to average hours worked will be consistently applied across the Council. Some exceptions have been identified for the reasons explained in the main text of the Cabinet report. In some services additional flexibility, such as mobility clauses for multi-site working, may be attached to the offer of an average GMC in order to provide additional assurance that hours are not guaranteed that will not be required to be worked.
- In recognition of individual changes in circumstances existing relief employees will be able to exercise a choice to opt into, or out of, an average GMC, but only on an annual basis and this will be addressed as part of the annual review. The general objective regarding any newly appointed average GMC employees is that they will remain on the average GMC and will not have opportunity to become reliefs, but this will be reviewed in light of the general take up of the average GMC offers.

Relief Contracts Framework – Implementation Timeline

Key Date	Activity	Action	Resources
W/C 24 th October 2016	Refreshed data issued to departments based on hours worked up to 30 th September 16 (3 year average for period prior to this)	Dept'l Mgt / HR to liaise with managers and agree the individual GMC offers.	Departments Managers / HR
22 nd November	Cabinet Report	Obtain Cabinet approval & formally release to TU's	
28 th November 2016	Departments return spreadsheet template	One spreadsheet to be returned per department updated in agreed format	Departments / HR
7 th November 2016	Draft contract offer template	Draft contract offer to share with Relief contracts working group / TUs	SC/PB/Relief contracts working group
13 th November 2016	Employee and manager briefing content	Draft, agree and finalise content for employee and manager briefing content	TBC
By no later than 28 th November 2016	Finalise contract offer template	Provide template to SSC for preparing the offer letter merge	SC/PB/Relief contracts working group
28 th Nov – 12 th Dec 2016	Conduct area briefings with employees and managers. TU reps to be invited.	Arrange representatives at each session Arrange locations Publicise to affected groups	TBC
W/C 12 th December 2016	Issue contract offer responses required by 16 th January 17	Cleanse and finalise information Merge and generate contracts Liaise with BC to print and distribute Consider scanning returns to record receipt.	SSC Business Centre
W/C 2 nd Jan 2017	Chase response	Update and maintain a return list (if cannot be scanned)	Business Centre SSC

Appendix 2

		Generate a chase letter Disputes resolution process	Line Mgt / Dept'l HR
W/C 9 th Jan 2017	Final Chase for Response	Update and maintain a return list (if cannot be scanned) Generate a chase letter	Business Centre SSC
Prior to Feb / March 2017	Manager and employee guidelines	Arrange content Arrange distribution following briefings	TBC
Feb / March 2017	Management briefings	Arrange content Arrange representatives at each session Arrange locations Publicise	TBC
6 th March 2017	Agree final list of those accepted for migration	Check for leavers Prepare migration information	TBC
1 April 2017	Go live	Ensure SAP transports all moved to live system	SAP dev team