



Casual Workers Policy June 2019

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Ratified

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1 Introduction

- 1.1 This policy is based on the 2017 model policy provided by Hampshire Education personnel Services.
- 1.2 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.
- 1.3 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.

Aim

- 1.4 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 recruiting such workers.

Purpose

- 1.5 The purpose of this policy is to ensure that the Headteacher 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.

Type of Appointment

- 1.6 Prior to deciding to engage a casual worker, the Headteacher will 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 in the Manual of Personnel Practice:
 - Permanent, Temporary, or Fixed-term contracts: <http://www3.hants.gov.uk/education/mopp/manage-staff/pay-policy/contracts-of-employment.htm>
 - Agency workers / Supply agency staff <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/agency-workers.htm>
 - Volunteer <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/recruit-volunteers.htm>
 - Apprentice <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/apprentice.htm>
 - Secondee / Interim Appointment for senior leadership posts <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm>
 - Summary Chart – '[What type of employment arrangement do I need?](#)'
- 1.7 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.
- 1.8 If the person being considered for appointment is a juvenile, an overseas trained teacher, self-employed, or a migrant worker, the Headteacher will also follow the guidance in the Manual of Personnel Practice regarding these types of employment arrangements: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm>

2 Legal Framework

Definition of a casual worker

- 2.1 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', however 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

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- where there is no obligation on the employer to offer work and no obligation on the individual to accept it

2.2 More regular, planned work would be likely to confer permanent employment rights – see Section 6 on Monitoring Regularity and Pattern of Work.

Rights in Law

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

- To receive 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
- Paid annual leave, 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 (whistle-blowing)
- To have access to a pension where entitled to do so under Pensions Auto-enrolment Regulations and the relevant scheme's rules

2.4 In addition:

- Schools and FE 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 paragraph on Engagement – vetting and safeguarding issues.
- The school has a responsibility to those it employs to ensure appropriate access to a work-based pension.
- It is also important to note that Hampshire County Council's Collective Agreement EHCC 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. As an academy, Priestlands will have regard to TUPE legislation when receiving HCC staff as part of a TUPE transfer. See also Section 7 below on TUPE.

3 Recruitment process

3.1 Priestlands School 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 we follow the same robust recruitment process as when seeking permanent staff. Our responsibilities under the Department of Education's (DfE) Safeguarding Children & Safer Recruitment in Education 2007 (as amended) guidance extends to casual workers.

3.2 Recruitment of staff takes time and effort and whilst 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 on the school and our students of an unsuccessful appointment can be considerable and it is therefore important to follow the guidance in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm>

Advertising

3.3 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 are 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 is available in the Manual of

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Personnel Practice: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/recruitment-advertising.htm>.

Selection

- 3.4 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. Guidance is available in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm>

4 Engaging a casual worker

- 4.1 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 issuing of an engagement letter rather than a contract, and the method of payment; it is therefore important that the school follows the guidance in the manual of personnel practice: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/recruit-casual-workers.htm>

Vetting and safeguarding

- 4.2 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 is available in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/pre-emp-who-needs-which-check/pre-emp-casual-workers.htm>
- 4.3 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; the school will follow the guidance in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/pre-emp-who-needs-which-check/pre-emp-agency-supply-staff.htm>
- 4.4 It is important for the Headteacher to ensure that individuals engaged to work with children on school premises are suitable to do so and that systems are in place to safeguard children. It is also important that any individuals working in the school, including casual workers, are aware of, and agree to work within, the school's policies, procedures, and child safeguarding guidelines. The school will ensure that systems are in place to safeguard children and will:
- refer to the Safeguarding guidance in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/eps-safeguarding-culture.htm>
 - provide casual workers with a copy of the Guidance sheet, [Do's and Don'ts of Working with Children](#)

Contractual issues

- 4.5 Casual workers are not employees and must not be referred to as such. They are not required to have a formal contract of employment, however in order to ensure that the true nature of the casual assignment is understood by the casual worker, a template Assignment Letter is available in the Manual of Personnel Practice, and will be used by the school when engaging such workers. It is best practice to provide something in writing which outlines the key elements such workers need to be aware of, and which the individual must 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.
- 4.6 The school will 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. Whilst casual workers do not have a contract of employment, implied terms could be inferred when something happens on a regular basis, eg the

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offer of work. Where, in reality, there is an expectation to be offered work or an expectation to 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.

- 4.7 The Headteacher will also refer to Section 6 below on Monitoring Regularity and Pattern of Work and if it is likely that the individual will be deemed to be an employee, the Headteacher will refer to the guidance in the Manual of Personnel Practice regarding different types of contract <http://www3.hants.gov.uk/education/mopp/manage-staff/pay-policy/contracts-of-employment.htm> and/or seek advice from EPS.

Pay

- 4.8 It is important for the school to determine at the outset whether to pay teacher or support staff terms and conditions when engaging casual workers, and where such workers are engaged via an agency, schools should follow the guidance in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/agency-workers.htm>
- 4.9 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 will 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 in accordance with the Working Time Directive, which equates to 28 days paid holiday including bank holidays (full-time equivalent), although annual leave entitlements for HCC are higher.
- 4.10 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.
- 4.11 When the school employs supply teachers direct we can apply a pay rate of our choosing, however we will link such pay rates to a point on the school's pay policy framework. Directly employed supply teachers will be paid a percentage of the day worked based on the Schools Timetabled Teaching Week (STTW) – further information on calculating the STTW is available in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/manage-staff/pay-policy.htm>
- 4.12 Supply teachers engaged via an agency on Hampshire's Supply Framework are guaranteed the pay rate agreed with Hampshire County Council in accordance with the Framework Agreement tender: <http://intranet.hants.gov.uk/eps/eps-supply-teachers.htm>
- 4.13 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 – guidance on using supply agencies is available in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/manage-staff/alternative-workforce-models.htm>.
- 4.14 The school will also be aware that if we engage a casual worker (either direct or via a supply agency) who is a qualified teacher and whose role will be to actively teach students, 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 now a negotiable rate for each assignment. Further guidance is available in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/agency-workers.htm>

Pension

- 4.15 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.
- 4.16 Teaching staff employed through an agency (including those within the Hampshire Framework Agreement) are not eligible to join the Teachers' Pension Scheme as it is restricted to those

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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. As the Pensions Auto-enrolment Regulations have a phased introduction the school will advise supply teachers to contact their agency regarding pensions information.

5 Managing a casual worker

Induction and Training

- 5.1 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 also 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.
- 5.2 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 [Assignment letter](#).
- 5.3 Further guidance about induction is available in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/manage-staff/eps-induction.htm>
- 5.4 Casual workers, no less than employees, need to perform to a competent and safe standard and the school will 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 dependent 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.

Working Arrangements

- 5.5 Whilst 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 in the Manual of Personnel Practice regarding such issues as leave, performance management, absence management, maternity, discipline and grievance related issues, and allegations of harassment and bullying. Schools using casual workers from an agency should have regard to the guidance in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/agency-workers.htm>).
- 5.6 Time to travel to the base location is considered to be normal commuting, and therefore does not count as working time and cannot be claimed as mileage.
- 5.7 Time to travel on school duties to a location other than the base location, for example to provide education to a student 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 students, not calling into their base location, the worker should deduct their normal commuting time, before classing their time as working time/directed time.
- 5.8 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.

Appraisal

- 5.9 Casual workers are excluded from the formal appraisal 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 the Headteacher to promptly address any performance issues that arise, and [further guidance](#) in such situations is available in the Manual of Personnel Practice. Guidance is also available on the use of agency workers: <http://www3.hants.gov.uk/education/mopp/recruit-staff.htm/agency-workers.htm>
- 5.10 As an academy, we are not bound by The Education (School Teachers' Appraisal) (England) Regulations 2012. However, the school notes the provisions of these regulations (which apply to community, voluntary, foundation, community special, foundation special schools or maintained nursery schools). Therefore, supply teachers (whether engaged directly by the school or via an agency) who are engaged for a period of one school term or more will be invited to be part of the formal appraisal process.

Pay Progression

- 5.11 Whilst 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 /supply teachers should be eligible for pay progression in line with employees. As an academy, we will ensure our systems can capture such data and that payroll is notified of any increase due.

6 Monitoring Regularity and Pattern of Work

- 6.1 Casual work is most likely to be used to cover ad-hoc short term sickness absence and any more regular, planned work such as cover for other release time would not be casual engagement. Further guidance is available in the Manual of Personnel Practice: <http://www3.hants.gov.uk/education/mopp/school-remodelling/planning-preparation-assessment.htm>
- 6.2 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 can bring about a number of employment rights and potential financial penalties for schools, including:
- a written statement of the contract of employment within 8 weeks of commencement
 - sick pay
 - paternity / maternity / adoption leave and pay
 - the right to be consulted when ending employment
 - the right to be consulted regarding organisational change
 - possible redeployment
 - notice of termination
 - redundancy pay
 - the right to claim unfair dismissal, subject to length of continuous service
- 6.3 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.
- 6.4 It is easy for casual workers to move into a situation of working regularly and the Headteacher will therefore ensure that they check any continuity of service that has accrued or may be likely to do so before deciding to engage a casual worker.

- 6.5 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 however, that some or all 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, eg if a worker was in a 'pool' across several sites
 - mutuality of obligation
 - absence patterns and reason for absence (eg annual leave)
- 6.6 Where the Headteacher is unsure about the casual status of a worker as a result of the past or future pattern or regularity of work, he will contact EPS for advice and guidance.
- 6.7 It is important that the Headteacher ensures a regular programme of reviewing 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. Further guidance is available in the Manual of Personnel Practice.

7 TUPE and the casual worker

Legal situation

- 7.1 The legal status of an individual who works on a casual basis is Worker, not Employee.
- 7.2 The TUPE Regulations 2006 do provide for a wider definition of Employee than that contained in the Employment Rights Act 1996 and can, therefore, 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.
- 7.3 For this reason it is important that the true status of any casual worker (who may potentially be affected by a TUPE transfer) is determined prior to the transfer. If the true status of such a Worker is actually an Employee then they may need to be included in the transfer of staff and associated requirements for employee liability information, and inclusion in the consultation process.
- 7.4 Similarly, should the 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. The Headteacher is advised to discuss such issues with EPS at a very early stage in the process in order that appropriate guidance and support can be provided.

Issues of legal challenge

- 7.5 Whether or not an existing casual worker is deemed to be a Worker or an Employee, the Headteacher must be aware that legal challenge may still remain 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. For this reason it is important that evidence is gathered at an early stage to support the determination regarding employment status and shared between both parties for negotiation.

Ending casual worker engagement

- 7.6 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, therefore, the likelihood of a claim being made by

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the individual, with subsequent costs to the school if such a claim were to be successful in an employment tribunal.

- 7.7 If the Headteacher is considering ending the engagement of a casual worker alongside or as part of a restructure or reductions exercise or a TUPE transfer, he should contact EPS.
- 7.8 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.

APPENDIX ONE: CASUAL ASSIGNMENT LETTER –used in Hampshire Maintained Schools

Personal & Confidential

DATE

NAME & ADDRESS

Dear **Name**

CASUAL ASSIGNMENT

I am pleased to advise you that your name has been placed on the list of people available to carry out assignments at **[name of school]** on a casual basis.

You need to be aware that each time you are assigned work your engagement is subject to satisfactory vetting and safeguarding checks, and that if at any time these are unsatisfactory your engagement will cease. You also need to be aware that although work may be offered to you if it is available, the school is under no obligation to do so, and you are under no obligation to accept any work from us. **[name of school]** is a Hampshire County Council school, but neither the school nor the Authority undertake to offer any guaranteed regularity of work and any work you will carry out is on a casual basis, as and when it is required. These arrangements are not regarded as having any permanency and as such there is no intention to create or establish a Contract of Employment.

Rate of Pay:

The rate of pay applicable will be notified to you at the commencement of any assignment. Rates of pay may be reviewed from time to time and may change as determined by the County Council.

Annual leave entitlement for support staff is contained within the hourly rate of pay and comprises 12.1 % of the hourly rate.

Teaching staff are paid 1/195 for each full day worked, inclusive of statutory entitlement to annual leave.

Method of Payment:

You will be paid monthly in arrears. Monies owed will be paid by credit transfer on submission of an authorized timesheet.

You must maintain a bank/building society account into which payment for assignments completed will be made and provide details of this account to Hampshire County Council.

As an Authority, we are required by the Inland Revenue and Department of Employment and Education to deduct Tax and National Insurance contributions, at the appropriate rate, at source. Consequently, Hampshire County Council will hold a P45 Income Tax Form on your behalf. If you already hold one you will be asked to submit it to Hampshire County Council or inform the County Council which other Employer may hold it on your file.

Pension

[Insert paragraph as applicable:

Either – for schools that are already auto-enrolled]

Staff engaged on a casual basis will be assessed against the pension auto-enrolment criteria, which are based on age and earnings. If classified as an eligible jobholder you will be enrolled into the Local Government Pension Scheme or Teachers Pension Scheme, as appropriate, and notified accordingly. If

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classified as a non-eligible jobholder you will not be enrolled but may join the relevant pension scheme if you so wish. Further information can be obtained from your Headteacher.

[Or – for schools not yet auto-enrolled]

You will shortly receive a letter from Pension Services informing you of your pension options.

Health and Safety:

In carrying out assignments you must at all times conform to the Health and Safety procedures set by **[name of school]**. A copy of the school's Health & Safety Policy is enclosed.

Safeguarding:

In carrying out assignments you must at all times conform to the Safeguarding procedures set by **[name of school]**. A copy of the school's Child Protection Policy is enclosed, together with a copy of guidance entitled 'Do's and Don'ts of working with Children'.

You should retain the above policies / procedures for reference and sign the enclosed copy of this letter, which must be returned to the school within two weeks of receiving this documentation. Please do not hesitate to contact me if you have any queries regarding the contents of this letter.

Yours sincerely

Headteacher

- Enc. School's Health & Safety Policy / Procedures**
School's Child Protection Policy / procedures
Guidance sheet – Do's and Don'ts of Working with Children
Copy of Casual Assignment Letter for return to school

I have read and understood the school's information regarding Health & Safety and Safeguarding and accept my casual engagement at the school on the basis outlined in the above letter

Signed Date

Name (please print)