
Report To:	Policy and Resources Committee	Date:	22nd September 2015
Report By:	Corporate Director Environment, Regeneration and Resources	Report No:	FIN/48/15/AP/BH
Contact Officer:	Brendan Hurrell	Contact No:	01475 712654
Subject:	Preventing the Use of Suppliers and Providers who use Exploitative Zero Hours Contracts		

1.0 PURPOSE

1.1 The purpose of this report is to seek the Committee's approval to the Council implementing a policy of not providing future funding to any organisation which employs people on exploitative zero-hours contracts, as per the issue raised at the Policy and Resources Committee on 19 May 2015.

2.0 SUMMARY

2.1 The improvement of employee working conditions is a topical area with recent focus being on the Living Wage and Zero-hour contracts. Zero-hour contracts allow employers to hire staff with no guarantee of work. Employees work only when they are needed by employers, often at short notice. Employee pay depends on how many hours each employee works.

2.2 There can be a genuine need for zero-hours contracts where an employer has a temporary or changeable requirement for staff. However, there are instances where the use of zero-hours contracts is excessive and exploitative.

2.3 Zero-hours contracts should be assessed by the Council (i) during competitive tendering exercises and (ii) when awarding grant funding.

2.4 How to evaluate zero-hours contracts during a competitive tendering process is set out in the Council's Procurement Policy on Workforce matters including the Living Wage, which was approved at the Policy and Resources Committee in May 2015.

2.5 There are three main types of zero-hours contracts:

- Illegal zero-hours contracts;
- Exploitative zero-hours contracts; and
- Genuine zero-hours contracts.

This report provides guidance on how officers propose to appraise zero-hours contracts and the steps which should be taken by the Council where an employer is found to be engaging in illegal or exploitative zero-hours contracts.

3.0 RECOMMENDATIONS

3.1 That the Committee:

- notes the implications of a policy of not providing future funding to any organisation, including any partner, which employs people on exploitative or illegal zero-hours contracts;
- approves the exclusion of a tenderer from a tender selection process where it has been demonstrated to the satisfaction of the Head of Legal & Property Services that

the tenderer has committed an act of grave misconduct by engaging in illegal zero-hours contracts;

- approves the rejection of a grant where it has been demonstrated to the satisfaction of the Head of Legal & Property Services that the applicant is engaging in illegal or exploitative zero-hours contracts; and
- approves the guidance in this report on how to appraise zero-hours contracts.
- agrees that for partners/suppliers in significant arrangements with the Council that this policy is fully implemented during 2016.

Aubrey Fawcett
Corporate Director Environment, Regeneration & Resources

4.0 BACKGROUND

- 4.1 Inverclyde Council expects that organisations which deliver our contracts and those to whom we provide funding adopt fair employment practices. The improvement of employment practices and employee working conditions is a topical area. Recent focus has been on the Living Wage, following the issue of the Scottish Government's Policy Note 1/2015 on Evaluating Employment Practices and Workforce Matters, including the Living Wage.
- 4.2 The Council's Procurement Policy on Workforce matters including the Living Wage was approved at the Policy and Resources Committee in May 2015. That Policy applies to competitive tendering. Workforce matters form a percentage of the overall quality score of the tender. The use of exploitative zero hours contracts is assessed by the Council as one element of workforce matters.
- 4.3 At the Policy and Resources Committee on 19 May 2015, officers were requested to develop a policy of not providing future funding to any organisation which employs people on exploitative zero-hours contracts.
- 4.4 Zero-hours contracts, or casual contracts, allow employers to hire staff with no guarantee of work. Employees work only when they are needed by employers, often at short notice. Employee pay depends on how many hours each employee works. Some zero-hours contracts require workers to take the shifts they are offered, while others do not. Sick pay is often not included, although holiday pay should be, in line with working time regulations. Zero-hours contracts are controversial as there is concern that they do not offer enough financial stability and security and can be used when it is feasible to offer contracted hours.
- 4.5 The Office for National Statistics (ONS) says that 697,000 people were employed on zero-hours contracts for their main job between October and December 2014, based on figures from the Labour Force Survey. That represents 2.3% of the UK workforce. A survey of employers by the Chartered Institute of Personnel and Development (CIPD) found that a third of voluntary sector organisations used zero-hours contracts, along with a quarter of public sector employers and 17% of private sector firms.
- 4.6 There can be a genuine need for zero-hours contracts where an employer has a temporary or changeable requirement for staff. However, there are instances where the use of zero-hours contracts is exploitative and excessive. This report provides proposed guidance on how to appraise zero-hours contracts and the steps which should be taken where an employer engages in illegal or exploitative zero-hours contracts.

5.0 APPRAISAL OF ZERO HOURS CONTRACTS

5.1 In summary, there are three main types of zero-hours contracts:

- Illegal zero-hours contract;
- Exploitative zero-hours contracts; and
- Genuine zero-hours contract.

5.2 Zero-hours contracts should be assessed by the Council (i) during competitive tendering exercises and (ii) when awarding grant funding.

5.3 Examples of Illegal zero-hours contracts

Illegal zero-hours contracts include those where:

- Employees do not receive the National Minimum Wage;
- Employees do not receive the statutory minimum level of paid holidays;
- Employees do not receive the statutory minimum level of rest breaks; and/or
- Employers breach employee rights under the Working Time Regulations 1998.

5.4 **Examples where zero-hours contracts could become exploitative are a combination of the following:**

- The employer being unable to demonstrate that it uses zero hour contracts only where there is a temporary or changeable requirement for staff;
- The employer does not issue contracts with a regular working pattern where over time it can be demonstrated that an employee is working regular hours, unless the employee actively requests to remain on a zero-hours contract;
- Employees remaining available for work on an exclusive basis;
- Workers who refuse hours are not asked to work for the next available hours or their chances of work are reduced;
- There is no flexibility for employees to seek employment elsewhere;
- Calling employees to the workplace when there is or it transpires that there is no work for them;
- Not stipulating for how long an employee will be required that day when calling an employee to work;
- Stipulating for how long an employee will be required when calling an employee to work that day and then cancelling the shift or sending the employee home from the workplace early without warning with no pay or pay only for the hours worked, not the stipulated hours, and with no reimbursement of travel time or costs;
- No attempt being made to correlate the hours available for work with the hours actually worked;
- Employees have no access to union membership and representation.

It should be noted that taken in isolation each individual item may not be exploitative but a combination of these matters would lead to such a conclusion.

Competitive tendering

5.5 **Illegal zero-hours employee contracts and competitive tendering**

Pass/fail criteria should be included at the selection stage of a tender to determine if a tenderer has engaged or is engaging in illegal zero-hours contracts practices. Such practices would entitle the Council, in consultation with the Head of Legal & Property Services, to consider de-selecting a tenderer in a tender process on the grounds of grave misconduct.

5.6 **Exploitative zero-hours employee contracts and competitive tendering**

For those exploitative zero-hours contracts which are not illegal, there are no mandatory pass/fail criteria which can be used to stop those employers who engage in such practices from winning Council contracts. Instead, such practices must be evaluated.

How to evaluate zero-hours contracts during a competitive tendering process is set out in the Council's Procurement Policy on Workforce matters including the Living Wage, which was approved at the Policy and Resources Committee in May 2015. That Policy applies where works, goods and/or services are purchased through a tender process. Workforce matters form a percentage of the overall quality score of the tender. The use of exploitative zero-hours contracts is assessed by the Council as one element of workforce matters.

Grant Funding/direct commissioning

5.7 Grant applicants/direct commissioning partners should be asked to submit a method statement detailing their approach to zero-hours contracts.

5.8 **Illegal zero-hours employee contracts and grant funding**

Subject to due consultation with the Head of Legal & Property Services, grants/direct commissioning contracts should not be awarded to grant applicants who engage in illegal zero-hours contracts unless the applicant/partner will take immediate steps to comply with the law.

5.9 Exploitative zero-hours employee contracts and grant funding

Officers should assess whether the method statement provided by a grant applicant/direct commissioning partner contains any practice which is unethical and/or takes advantage of employees and therefore constitutes an exploitative zero-hours contract. This will be based on breaching a combination of the factors described at 5.4. Where this is considered to be the case advice should be sought from the Head of Legal & Property Services.

5.10 It will be a condition of grant/direct commissioning contract that all successful grant applicants/direct commissioning partners comply with their Method Statement for the duration of the grant/contract. Any change from such commitments will constitute a potential breach of grant/contract entitling the Council to terminate the grant/contract.

5.11 In order to give current significant partners/suppliers to comply with the requirements of this Policy it would be proposed to advise these organisations that they must demonstrate that this matter have been successfully addressed no later than by the end of 2016.

6.0 IMPLICATIONS

Finance

6.1 Financial Implications – Annually Recurring Costs/ (Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact	Virement From (If Applicable)	Other Comments
				-	

There is the potential that this Policy will lead to an increase in costs for providers and this may then be passed into the Council, however every effort will be made to ensure the organisation contains the cost.

Legal

6.2 Legal advice must be sought from the Head of Legal & Property Services before excluding a tenderer from the selection stage of a tender process on the grounds of grave misconduct or refusing a grant application on the basis of illegal or exploitative zero-hours contracts practices.

Human Resources

6.3 There are no human resources issues.

Equalities

6.4 There are no equalities issues.

Repopulation

6.5 This Policy will improve the quality of jobs provided locally and will be a positive factor in the Council’s Repopulation Strategy.

7.0 CONSULTATION

7.1 Report produced following consultation with the Corporate Management Team.

8.0 LIST OF BACKGROUND PAPERS

8.1 None.