

This policy applies to all casual workers  
Including Supply Teachers

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## **APPENDIX: 1 DISCIPLINARY CODE FOR CASUAL WORKERS**

This is a Council Policy which has been subject to consultation with the Joint Trades Unions. Any review of amendment by the Council will be following consultation with the Trades Unions.

## **1. Introduction**

- 1.1 East Lothian Council recognises that a number of services rely on having a pool of people available to respond to immediate, short-term staffing difficulties or deliver services where the level of demand is uncertain. A variety of titles or descriptions are used for these workers including “casuals”, “supply”, “locum” and “relief”. Within East Lothian Council and in this Policy the generic term “Casual Worker” will be used.
- 1.2 Casual Workers are an essential part of service provision in a variety of areas, particularly in frontline services such as schools, residential and domiciliary care. The Council recognises that, while the contractual relationship with Casual Workers is fundamentally different, they work alongside permanent and temporary staff in delivering services and, as far as possible, need to be integrated into the workforce as valued members of a team.
- 1.3 The aims of this Policy are to:
- (a) define the nature of casual work and the respective rights and obligations of the Council and Casual Workers; and
  - (b) ensure that Casual Workers are recruited and used appropriately and receive pay and other entitlements related to their employment status.
- 1.4 For Teachers, this Policy should be read in conjunction with the Agreement on the Employment of Teachers on a Temporary Contract and Supply Basis (LNCT 2006/1) agreed by the East Lothian Local Negotiating Committee for Teachers and the SNCT circular 14/42 Agreement on Short term Supply; <http://www.snct.org.uk/library/1703> .

## **2. Definition of Casual Workers**

- 2.1 The defining characteristic of Casual Workers is that they typically work on an ad hoc, intermittent, short-term, “as and when required” basis. In practice, casual work can be in two distinct forms: -
- Where someone is needed, often at very short notice, to cover the absence of another employee and in circumstances where the need for cover is expected to be for a short duration.
  - Where the service provision is customer-driven and reflects demands that may be difficult to predict may fluctuate or may be subject to rapid change

In both situations there is no stable, ongoing requirement for casual workers to fulfil these needs.

### **3. Employment Status and Rights**

- 3.1 The nature of casual work means that there is no obligation on the Council to offer work and none on the individual to accept work. Casual Workers may therefore accept or reject an offer of work and the Council may offer work at any time or end a period of work immediately if the person is no longer needed. In contractual terms this means that there is no “mutuality of obligation” in the working relationship and consequently no continuing contract of employment between the Council and the Casual Worker.
- 3.2 Casual Workers have a different status in law to permanent and temporary employees. Casual Workers are not engaged under the terms and conditions of employment applicable to permanent or temporary employees under national or local agreements.
- 3.3 Casual Workers are sometimes engaged for a short period for one reason e.g. sickness absence, and then are offered and accept further work for a different reason e.g. a resignation. This may result in a relatively longer period of continuous working i.e. weeks rather than days but, provided each offer and acceptance of work is for a distinct reason, their status as described above will be unchanged.
- 3.4 If the period of work is extended for the original reason e.g. the sickness absence becomes long-term, the engagement should no longer be treated as casual, if it exceeds eight weeks. In that event, the manager must arrange for a temporary contract of employment to be issued to the individual.
- 3.5 Where it is anticipated from the outset that the requirement for temporary cover will be for more than eight weeks, appointment of a temporary employee would need to be in line with the Council’s normal recruitment process. This requirement does not apply to periods of casual work that reflect customer demand for specific services in the circumstances described in bullet point 2, paragraph 2.1 above.
- 3.6 Workers are entitled to certain employment rights, including:
- getting the National Minimum Wage
  - protection against unlawful deductions from wages
  - the statutory minimum level of paid holiday
  - the statutory minimum length of rest breaks
  - to not work more than 48 hours on average per week or to opt out of this right if they choose
  - protection against unlawful discrimination
  - protection for ‘whistleblowing’ - reporting wrongdoing in the workplace
  - to not be treated less favourably if they work part-time
- (Source: <https://www.gov.uk/employment-status/worker> )

## **4. Recruitment**

- 4.1 Where appropriate, Departments will establish a “bank” or register of people who are both available at very short notice and have the relevant skills and, where necessary, qualifications (including registered status and PVG or Disclosure Scotland check if appropriate) to carry out specific jobs/tasks.
- 4.2 In general the procedures set down in the Council’s Recruitment and Selection Policy and Disclosure Policy will be applied to the recruitment of Casual Workers In particular: -
- Casual Workers will normally be recruited through open advertisement and application process on “myjobscotland” initiated as required by departments/services. Applications by individuals to be added to a register of Casual Workers can however be considered at any time.
  - Only individuals who meet the essential requirements in the Person Specification for the post will be selected.
  - All aspects of the recruitment and selection process shall be free from bias and discriminatory practice.
  - Skills/competency tests may be used in accordance with the requirements of the Recruitment and Selection Procedure.
  - The normal validation checks will be applied including health screening, references, qualification checks and, where necessary, PVG or basic Disclosure Scotland criminal record checks prior to any engagement.
- 4.3 Casual Workers will not be engaged /undertake any work with the Council until the relevant checks outlined above have been validated or complied with.

## **5. Pay and Other Entitlements**

### **5.1 Pay**

5.1.1 Casual Workers are paid only for the time they work.

5.1.2 The rate of pay for Casual Workers will be as follows: -

- Other than for Teachers, casual workers will normally be paid the hourly rate for the minimum point on the evaluated grade for the post. However casual workers within the Local Government Employee Group are eligible for one increment where they can evidence that they have, since appointment in their current casual worker capacity, worked for 46 weeks or more with the Council. These 46 weeks can be worked up to a maximum of 2 years. The casual worker cannot apply for more than one increment retrospectively within each rolling year and can only be awarded 1 increment in a year i.e. 12 months from previous increment. Evidence of this e.g. copies of claim forms submitted should be submitted to HR by the worker for verification and application of the incremental progression.

- Current fixed-term or permanent employees to the Council (other than teachers) who undertake additional work in the same type of post but on a casual basis within the Council at any location, will be paid on their current scale point. They should claim for these additional hours, making it clear on the claim form at which location these hours have been worked. Managers should note that after these employees work 37 hours in any week, premium rates will apply.
- For teachers the salary provisions contained in the SNCT Handbook on Conditions of Service as amended in circulars SNCT 17/61 (<http://www.snct.org.uk/library/2424/SNCT-17-61>) and SNCT 14/42 (<http://www.snct.org.uk/library/1703>) will apply.

This means that:

- All periods of cover teaching for periods of 2 days or fewer are defined as short term supply. Where an hourly rate of pay is applied this will be calculated on the basis of 1/1645 of the appropriate annual salary. With effect from 1 January 2018 the rate of pay for short-term supply teachers will be based on the individual's appropriate point on the main grade scale.
- During these engagements teachers may be available for the whole pupil day and will receive an additional payment in recognition of additional time spent on preparation and correction. This payment will automatically be for 10% of the actual hours undertaken on each short term engagement.
- When a short term engagement requires to be extended beyond 2 days and becomes a fixed term appointment, the hours already spent teaching on short term supply will not form part of the weekly class contact time hours which can be undertaken during the first week of the fixed term appointment.

5.1.3 Hourly rates will be increased in line with national pay awards.

5.1.4 Casual Workers must submit an authorised claim form on a monthly basis. Payments will be made at the same intervals.

## **5.2 Leave**

5.2.1 Except for Teachers, Casual Workers are not entitled to contractual leave entitlements as specified in national and local collective agreements.

5.2.2 Teachers working on a casual basis will accrue paid leave on the basis of 0.2051 of an hour for each hour worked in a school session in accordance with the provisions contained in the SNCT Handbook on Conditions of Service.

5.2.3 All other Casual Workers have a statutory entitlement to 5.6 weeks paid annual leave (pro rata based on casual hours worked). Casual Workers therefore accrue entitlement to paid annual leave at the rate of 0.1207 hours for every hour worked.

### **5.3 Sickness**

- 5.3.1 Casual Workers must notify the relevant manager in advance if unable to attend for work on a day they were expected to work.
- 5.3.2 Casual Workers are not entitled to receive Occupational Sick Pay. All casual workers are entitled to Statutory Sick Pay if they satisfy the normal conditions, at the end of their contract of service. However, there must be enough days left in the contract for a Period of Incapacity for Work to exist and for any waiting days before SSP is payable.
- 5.3.3 Casual Workers who are engaged on a series of short term contracts may qualify for SSP. Advice regarding this may be obtained from Payroll.

### **5.4 Recognition of Service**

- 5.4.1 Continuity of service for statutory purposes e.g. statutory sick pay, statutory maternity pay, statutory paternity pay, statutory adoption pay and shared parental pay may accrue from periods of casual work.
- 5.4.2 Casual Workers will not normally accrue any service-based entitlements e.g. sick pay and increase in annual leave entitlement re completed years' service from periods of casual work due to the nature of their engagement.
- 5.4.3 For Teachers, periods of casual work will count as qualifying service for incremental progression purposes in accordance with the salary provisions contained in the SNCT Handbook on Conditions of Service.

## **6. Induction, Learning and Development**

- 6.1 All new Casual Workers can access the Council's online induction pack. If a new casual worker does not have access to a computer, their manager should arrange for a paper copy to be available. Managers will provide relevant information according to the needs of individual workers and will provide on-the-job induction within each location.
- 6.2 Casual Workers will not participate in the Personal Review and Development (PRD) Scheme (or Professional Review and Development arrangements for Teachers). However, teachers working on a casual basis do need to carry out Career Long Professional Learning (CLPL) and Professional update to maintain full Registration with the GTC Scotland (GTCS). It is essential, however, that the learning and development needs of Casual Workers are addressed by managers particularly where specific learning requirements arise e.g. where changes to service standards, statutory requirements (e.g. revised health and safety requirements) or working methods are being implemented.
- 6.3 Wherever practicable, Casual Workers may be given access to learning and development opportunities relevant to their job-related personal development needs. Participation in these opportunities will not be considered as working time and will not be paid.

- 6.4 It may be necessary on occasions to provide mandatory or approved learning activities (as defined in the Council's Learning at Work Policy) for Casual Workers to ensure they have the skills required to meet service standards and/or as a condition of remaining on a Casual Worker register. On other occasions, whilst the learning activity may not be essential, it may be considered mutually beneficial to both the service and the worker. In these circumstances Casual Workers will be paid for the hours they attend the learning activity.

## **7. Equalities**

- 7.1 In line with the principles contained in the Equal Employment Opportunities Policy, the Council will seek to prevent all forms of discrimination against Casual Workers.
- 7.2 The Council will not tolerate any threatening, bullying, discriminatory or violent behaviour towards Casual Workers. If subjected to such behaviour Casual Workers should report the matter using the procedures established under the relevant policy e.g. Grievance Policy.
- 7.3 As part of induction, Casual Workers must ensure that they are conversant with and must conduct themselves in accordance with the Council's equalities policies and practices and must ensure that they do not discriminate against any other person in carrying out their duties.

## **8. Health and Safety**

- 8.1 The Council owes Casual Workers the same duty of care as permanent and temporary employees. This means that arrangements deemed necessary to protect employees are also required for Casual Workers. Line managers must therefore ensure that all Casual Workers are provided with sufficient information, instruction, training and supervision to enable them to carry out their duties safely and without risk to others.
- 8.2 In carrying out risk assessments managers should recognise and implement measures to control the risks associated with using Casual Workers.
- 8.3 Casual Workers are likely to require specific training immediately following recruitment to ensure they carry out their duties safely e.g. manual handling training. The detail of the training required should be identified through the risk assessment process.
- 8.4 Casual Workers must comply with the Council's health and safety policies and practices in the same way as Council employees and must ensure that, through their actions at work, they do not place themselves or others at risk. Details of the relevant responsibilities are contained in the Council's Health and Safety Policy and the Workplace H&S and Welfare policy.

## **9. Conduct**

- 9.1 Casual Workers are expected to meet the same standards of conduct as Council employees. Managers must ensure therefore that Casual Workers are informed of all the relevant rules and standards of behaviour for their job. The Disciplinary Code for Casual Workers is attached at Appendix 1.
- 9.2 The Council's Disciplinary Procedures do not apply to Casual Workers. Instead, where the conduct or performance of a Casual Worker is not acceptable, the relevant Service Manager at the Council shall arrange a meeting giving a minimum of five days notice in writing and advising the Casual Worker of the nature of the concerns. The Casual Worker is entitled to be accompanied at the meeting by a trade union representative, colleague, friend or family member. The Disciplinary Code – Casual Workers (Appendix 1) provides further information.
- 9.3 Where unacceptable conduct or performance has been established, the Service Manager at the Council may terminate the engagement forthwith and shall inform the Casual Worker in writing within five working days of the meeting that he/she will be removed from the relevant Council register of Casual Workers and will no longer be offered casual work. The Casual Worker will have a right of appeal to the Depute Chief Executive/Head of Service or other nominated senior officer.
- 9.4 Should a Casual Worker who is required to be registered with an external Professional Body in order to practice in that role e.g. a Teacher, a Social Worker etc be removed from the relevant Council register of Casual Workers, the Council will inform the relevant Professional Body as a matter of course.

## **10. Grievances**

- 10.1 The Council's Grievance Procedures do not apply to Casual Workers. The Disciplinary Code – Casual Workers (Appendix 1) outlines the process that should be followed. Generally Casual Workers should seek to resolve any concerns about their work through informal discussion with their line manager.
- 10.2 Where a Casual Worker submits a written grievance, the relevant Service Manager should arrange to meet the Casual Worker, normally within ten working days, to discuss the matter. The Casual Worker is entitled to be accompanied at the meeting by a trade union representative, colleague, friend or family member.
- 10.3 Following the meeting, the Service Manager shall provide a written response to the grievance within five working days. If the Casual Worker does not agree with decision they will have the right of appeal to the relevant Depute Chief Executive/Head of Service.

## **11. Pension**

- 11.1 Casual Workers have the option to join Lothian Pension Fund. A joining form can be obtained from the pension fund website [www.lpf.org.uk](http://www.lpf.org.uk). However, DWP Auto-enrolment earning thresholds exist that may result auto-enrolment to the Lothian Pension Fund. Teachers employed on a casual basis automatically become members of the Teachers Superannuation Scheme. The necessary deductions



from pay for employee contributions will therefore be made.

## **12. Monitoring Casual Work**

- 12.1 All periods of casual work must be monitored to ensure that the reason for engaging the Casual Worker is still relevant and the worker's continuing casual status is justified. Casual work should not be continued where the need no longer exists.
- 12.2 Departments should monitor overall levels of casual work to ensure there is no dependency on Casual Workers to maintain service levels. Where there is significant level of casual work in a particular service, staffing needs should be reviewed and alternative staffing arrangements considered.
- 12.3 The number of recruited Casual Workers will be reviewed by Payroll every six months. Casual Workers who have not worked for the Council during the preceding six months will be removed from the payroll system and will be required to complete the application process again before being reinstated to a Casual Worker register.

## **13. Review**

- 13.1 This is a Council Policy which is subject to review and amendment by the Council following consultation with the recognised Trade Unions.

**Head of Council Resources**  
**Updated December 2018**

## Appendix 1

### DISCIPLINARY CODE – CASUAL WORKERS

Applies to All Casual Workers

#### 1 INTRODUCTION

- 1.1 The Council believes that discipline is essential for the conduct of the Council's affairs and for the safety and well-being of all Casual Workers. The Council further believes that disciplinary rules and procedures are necessary for promoting fairness and order in the treatment of individuals.
- 1.2 In recognition of its responsibility to determine the standards of conduct required from Casual Workers, the Council has drawn up a Disciplinary Code which details the types of misconduct which are considered to be in breach of the Council's rules and will normally result in action as indicated. This Disciplinary Code is issued by the Council and is not an agreement with the Trade Unions.
- 1.3 The Council will take reasonable steps to inform Casual Workers of the standards of conduct expected of them. In turn all Casual Workers should familiarise themselves with the rules governing their work in particular as contained in: -
- (a) their letter of acceptance onto a Casual Worker Register;*
  - (b) the Casual Worker Policy;*
  - (c) the Council's Induction Pack for Casual Workers; and*
  - (d) other relevant documents issued by individual Services.*
- 1.4 It is recognised that rules should be enforced in a fair and consistent manner. It is essential however that each case is treated on its merits and that decisions are taken which are reasonable in all the circumstances. In this regard it is the intention of the Council that, in applying the guidance contained in the Disciplinary Code, due consideration be given to a Casual Worker's general work record, personal and domestic circumstances etc.

## 2 GROSS MISCONDUCT

2.1 Gross misconduct is behaviour of such nature that the Council is entitled to conclude that it is unable to tolerate *any further engagement* of the individual concerned. Decisions regarding gross misconduct and removal from the supply/locum register may be taken by the Depute Chief Executive, Head of Service or another nominated Senior Officer

2.2 The following list is neither exhaustive nor exclusive but is indicative of the types of misconduct which will normally result in a Casual Worker's engagement being terminated forthwith and their being removed from the relevant bank register:-

- (a) theft of Council property;
- (b) theft of property not belonging to the Council whilst engaged, or purporting to be engaged on Council business;
- (c) wilful damage to, or misuse of, Council property or resources;
- (d) wilful damage to, or misuse of, property or resources not belonging to the Council whilst engaged, or purporting to be engaged, on Council business;
- (e) physical or indecent assault on any person whilst engaged, or purporting to be engaged, on Council business;
- (f) grossly indecent assault on any person whilst engaged, or purporting to be engaged, or purporting to be engaged on Council business;
- (g) fighting at work;
- (h) serious breach of specified safety rules, Council safety policies, approved guidelines and associated documentation;
- (i) serious breach of a *worker's* responsibility in respect of Health and Safety and related legislation;
- (j) dishonest or fraudulent acts e.g. deliberate falsification of time sheets, clock cards or other attendance records, work records, expenses claims or other records, whether manual or computerised, relating to the financial transaction of the Council;
- (k) unauthorised access to the Council's computer system(s) for seriously inappropriate and /or dishonest and /or fraudulent purposes;
- (l) wilful provision of false or misleading information, or wilful non-disclosure of information, either during the recruitment process or in subsequent engagement, which materially affects the working relationship between the Council and the Casual Worker;
- (m) wilful breach of confidentiality or abuse of authority vested in a post;

- (n) wilful non-disclosure of an interest, whether direct or indirect, in a contractual arrangement between an external agency and the Council;
- (o) criminal conviction /civil liability or other unacceptable conduct which renders the Casual Worker unsuitable to carry out the duties and responsibilities of the post, whether or not the conduct occurred whilst on duty;
- (p) incapacity to carry out the duties of the post due to intake of alcohol or unprescribed use of drugs;
- (q) gross carelessness or negligence in carrying out the duties and responsibilities of the post;
- (r) violent, abusive or threatening behaviour towards any person whilst engaged, or purporting to be engaged, on Council business;
- (s) serious discriminatory acts or omissions contrary to, or inconsistent with, the Council's Equal Employment Opportunities Policy, including any form of harassment, victimisation or intimidation;
- (t) falsification (by omission of fact or otherwise) of documentation or failing to inform the relevant Council Department of any change in circumstances which might affect entitlement to any financial award from the Council.
- (u) unauthorised use of Council property;
- (v) unauthorised use of property not belonging to the Council whilst engaged or purporting to be engaged on Council business;
- (w) refusal to obey reasonable instructions or otherwise fulfil the responsibilities of the post;
- (x) persistent bad timekeeping;
- (y) unauthorised disclosure of personal information in breach of the Council's policies and / or data protection legislation.

### **3 OTHER TYPES OF MISCONDUCT**

- 3.1 There are other types of misconduct, which, although not acceptable, will not normally result in the termination of the current engagement and/ or the removal from a Casual Worker register in the first instance. Regular or repeated misconduct of this nature will however result in removal from the register. Exceptionally, these forms of misconduct may be regarded as gross misconduct depending on the particular circumstances.
- 3.2 The following list is neither exhaustive nor exclusive but is indicative of the types of misconduct which, if occurring on more than one occasion, will normally result in removal from a Casual Worker register:

- (a) careless damage to Council property;
- (b) careless damage to property not belonging to the Council whilst engaged, or purporting to be engaged, on Council business;
- (c) unauthorised absence from or failure to report non-attendance at work ;
- (d) carelessness or negligence in carrying out the duties and responsibilities of the post;
- (e) less serious discriminatory acts or omissions contrary to, or inconsistent with, the Council's Equal Employment Opportunities Policy;
- (f) less serious breaches of safety rules, Council Safety Policies, approved guidelines and associated documentation;
- (g) less serious breach of a worker's responsibility, in respect of Health and Safety and related legislation;
- (h) unauthorised access to the Council's computer system(s) for less serious inappropriate purposes;
- (i) being in or moving into arrears with any debt due to the Council and failing to make an effective payment arrangement with the Council.

#### **4 SERVICE SUPPLEMENTS TO DISCIPLINARY CODE**

- 4.1 In certain circumstances, it may be appropriate for a Depute Chief Executive or Head of Service to supplement this Disciplinary Code in recognition of particular requirements relevant in the Department. In particular, a Director or Head of Service may wish to indicate other types of misconduct in relation to a specific group of Casual Workers and /or in a specific situation or circumstance. Where such a supplement is required, it shall be circulated to the relevant Casual Workers as an Appendix to this Disciplinary Code.

#### **5 REVIEW OF DISCIPLINARY CODE**

- 5.1 This Disciplinary Code will be kept under review and may be amended from time to time. Appropriate measures will be taken to bring any amendments to the attention of Casual Workers.

Head of Council Resources  
Updated December 2018