

# Finance and Resources Committee

10.00am, Thursday, 24 September 2015

## Zero Hours Contracts – External Contractors

Item number	7.13
Report number	
Executive/routine	
Wards	

### Executive summary

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Introducing criteria which allow evaluation of workforce related conditions in relation to procurement activity for external contractors who use, or attempt to use, zero hours contracts will promote employment benefits for those employees while ensuring the good reputation of the Council is maintained.

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## Zero Hours Contracts – External Contractors

### Recommendations

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- 1.1 The Commercial and Procurement Team conclude and report on the pilot procurement exercise(s) with regard to quality evaluation on workforce matters.
- 1.2 The Council adopt a policy statement in all future tender documentation stating the Council's position concerning the use of zero hours contracts.

### Background

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#### Zero Hours Contracts – Motion

- 2.1 At the Council meeting of 26 September 2013, a motion moved by Councillor Chapman, and passed by the Council, instructed an investigation into the use of zero hours contracts by the Council and by Contractors used by the Council.
- 2.2 The motion was as follows:  
“Council:-
  - 1) Notes that zero-hours contracts, where people are employed with no guarantee of work, are used in all sectors in the city;
  - 2) Believes these contracts are problematic as they offer employees no certainty of work, poor financial stability and security, and often have poorer conditions in relation to employee benefits such as sick and holiday pay;
  - 3) Calls for a report for the next Finance and Budget committee detailing:
    - the use of zero-hours contracts in the Council;
    - numbers and costs of such contracts;
    - what services are delivered by staff on such contracts;
    - implications and possibilities of ending the use of such contracts and replacing them with contracts that provide sustainable financial security and improved conditions for staff.”
- 2.3 A report was prepared in response to the motion and presented to the Finance and Resources Committee on 28 November 2013.
- 2.4 The report concerned:-
  - 2.4.1 “Type 1” zero hours contracts. These were explained as being those used primarily to prevent individuals from being designated as employees and therefore gaining employment benefits, with associated employment cost being much lower. Their relationship with their employer being one where there is no guarantee of work but the worker is expected to be available for work at any time, if offered. It was further explained that as workers

they receive few, if any, employment benefits such as annual leave and sick pay. It was confirmed that the Council does not operate any such contracts.

2.4.2 “Type 2” zero hours contracts. These were explained as being those typically used by the Council to provide a wide range of cover for absence (e.g. teachers, learning assistants, home carers etc.) by retaining individuals on a list or register and then requesting that they work. It was further explained that when they do attend work, they receive an employment contract for the period of work containing prescribed hours, an indication of the duration of the contractual period, they become employees who receive contractual benefits e.g. service related annual leave, special leave and sickness allowances. It was also explained that without the use of such contracts for supply work, to cover unpredictable staff absences or to allow services to cope with seasonal fluctuations in staffing requirements or other short term peaks of activity, Council services would be faced with a choice of only offering permanent or fixed term contracts or being unable to provide appropriate cover for unpredictable requirements.

2.4.3 A final aspect to this report concerned the use of zero hours contracts by contractors to the Council. In order to establish the use of zero hours contracts by contractors to the Council, the report confirmed that relevant contractors would require to be identified and contacted for this information once the Council’s Contract Register was up to date.

### **The Council’s Contract Register**

2.5 The Council’s Commercial and Procurement Services team worked with service areas to update the contract register and reported to the Finance and Resources Committee on 5 June 2014 and 3 February 2015.

### **Zero Hours Contracts – Briefing Note**

2.6 On 15 January 2015 a briefing note was provided (concerning the use of zero hours contracts by contractors to the Council) to members to determine whether or not the matter would be brought back to the Finance and Resources Committee.

2.7 The briefing note confirmed that (following the Council’s contract register being updated) work could be undertaken to identify contractors who provide staff services while noting that there may be difficulties in completing the outstanding action as there is no basis on which to compel contractors to release the relevant information, nor to impose unilateral changes to existing contractual conditions.

2.8 Members have requested that the matter is brought back to the Finance and Resources Committee.

## **Zero Hour Contracts – External Contractors**

- 2.9 The largest 250 external contractors of the Council were surveyed in May 2015 concerning their position in respect of the use of zero hours contracts.
- 2.10 The number and quality of the responses received was deficient for the purpose of the Council drawing appropriate conclusion(s).
- 2.11 In the absence of sufficient information from external contractors, proposals to protect the interests of contractor employees, and the Council, are outlined in the main report, below.

## **Main report**

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### **Zero Hour Contracts – External Contractors**

- 3.1 The largest 250 external contractors of the Council were surveyed in May 2015 concerning their position in respect of the use of zero hours contracts.
- 3.2 A total of 4 responses were received from the 250 external contractors in receipt of the survey.
- 3.3 Of those 4 external contractors who did respond, they indicated that the work undertaken by employees on zero hours contracts included security services, skilled labour and construction services.
- 3.4 1 response indicated that their employees on zero hours contracts:- *“tended to be individuals who had alternative employment such that the work undertaken on a zero hours basis was simply supplementing a main salary coming from elsewhere”*.
- 3.5 The number and quality of the responses is unfortunately deficient for the purpose of allowing the Council to draw appropriate conclusion(s).
- 3.6 The survey has confirmed that there are difficulties in compelling contractors to release relevant information concerning the use of zero hours arrangements. A further follow up survey [also concerning external contractors use of zero hours contracts] was undertaken during August 2015; the response to this further survey was similarly poor.
- 3.7 In line with the approach taken by the Living Wage working group, it is proposed that the Council do not undertake further work attempting to collate the views of external contractors in respect of this matter, rather the Commercial and Procurement Services team focus on using evaluation criteria for new external contractors by asking them to confirm their position on workforce matters (which would include, but not be limited to, confirmation of their living wage and zero hours arrangements). This would allow a proportionate amount of the scoring to discourage the use of such conditions. It should, however, be noted that, as with the Living Wage, whilst such matters can be taken into account as part of evaluation, the Council cannot dictate how bidders operate their businesses.

## **Pilot Procurement Exercises to Assess [External] Workforce Controls**

- 3.8 A number of pilot exercises are scheduled to allow the Council to assess workforce controls, including zero hours arrangements.
- 3.9 Responses from new contractors will be evaluated and lower scores for the relevant evaluation section would be expected where the Council determine that such organisations apply workforce controls that are to the detriment of their own employees.
- 3.10 These pilot exercises have been agreed by the Living Wage Working Group and are being led by Commercial and Procurement Services.
- 3.11 They are noted as:-
- 3.11.1 the 'Trauma and Final Clean' contract. The total contract value is £1.25 million or £250,000 per annum. Completion of the evaluation exercise is imminent;
  - 3.11.2 the 'Manned Security Services for the Corporate Estate' contract. A mini competition under a Scotland Excel framework agreement is planned for 2016; and
  - 3.11.3 the 'Provision of Communal Stair Cleaning Services' contract. The total contract value is £665,000 per annum. Contract negotiations are to proceed in respect of an extension to current arrangements.
- 3.12 The relevant workforce controls provisions in the pilot procurement exercise for the 'Trauma and Final Clean' contract are noted below:-

### ***"Workforce Matters***

*The Council recognises that the quality of a contract will often depend upon a having a properly managed, motivated and remunerated workforce. The Council therefore encourages the Living Wage as part of a package of workforce measures which includes terms and conditions such as training and development, holiday provision and family friendly policies, as well as discouraging "zero hours contracts" where they have a negative impact upon employee conditions and any practice of employee blacklisting.*

*Reported benefits from employers are enhanced quality of work, a significant reduction in absenteeism and a significant impact on recruitment and retention.*

*Describe how your organisation proposes to commit to being a best practice employer in this respect in the delivery of this contract.*

*Note: good answers will reassure evaluators that your company takes the engagement and empowerment of staff seriously, takes a positive approach to skills and training and will demonstrate organisational integrity with regards to the delivery of those policies. This reassurance should be achieved by providing tangible and measurable examples that can be monitored and reported during contract management procedures."*

- 3.13 Once the pilots are complete the Commercial and Procurement Team will be able to report on their success and financial and other implications for the Council. Any further decisions on policy direction can be taken at that time. It should also be noted that many public authorities are looking at the same issues and knowledge and advice is being shared to ensure that the Council remains at the forefront of best practice.

## **Measures of success**

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- 4.1 The reduction in the use of exploitative employment practices.

## **Financial impact**

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- 5.1 The pilot procurement exercise(s) will help the Council to identify what cost impact there may be from the implementation of these policies.

## **Risk, policy, compliance and governance impact**

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- 6.1 Maintaining workforce controls over procurement activity will reduce any reputational risks to the council from external contractors who may attempt to prevent individuals from being designated as employees and therefore gaining employment benefits (where associated employment costs would be much lower).

## **Equalities impact**

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- 7.1 There is no relationship to equalities impacts arising from this report.

## **Sustainability impact**

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- 8.1 Workforce controls over procurement activity will encourage external contractors to avoid employment provisions which may otherwise stop individuals from being designated as employees (with associated employment benefits).

## **Consultation and engagement**

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- 9.1 The ongoing work of the Living Wage Working Group has assisted the Council in the preparation of this report.

## Background reading/external references

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Report to Finance and Resources Committee, 3 February 2015 '[Living Wage and Workforce related matters in Procurement](#)'

Report to Finance and Resources Committee, 5 June 2014 '[Commercial and Procurement Service – Contract Register Update](#)'

Report to Finance and Resources Committee, 28 November 2013 '[Zero Hours Contracts – Use by Council: Update report](#)'

Minute from Council, 26 September 2013 ([item 10. Zero Hours Contract – Motion by Cllr Chapman](#))

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## Links

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### Coalition pledges

**Council outcomes** CO25 – The Council has efficient and effective services that deliver on objectives.

### Single Outcome

#### Agreement

#### Appendices