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Guidance for Guaranteed Minimum Contracts (GMC)

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Derbyshire County Council

Guidance on Guaranteed Minimum Contracts

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1. Introduction

In November 2016 it was approved by Cabinet to review the contractual arrangements for relief workers and offer an average Guaranteed Minimum Contract (GMC).

a. Why are we introducing GMCs

There are benefits to the Council by introducing a contractual guarantee:

- Continuity and consistency in delivering the service.
- Enhanced service delivery through trained, experienced employees remaining in post and contributing to service improvements.
- Employees are more likely to remain in the same job with the Council if they have a contractual guarantee and therefore retention of employees will increase reducing the burden of retraining and recruitment.
- As there will be a contractual obligation to accept offers of work managers will be able to cover absences more effectively to ensure continuity in delivering the service.
- Adverts for a GMC may attract a larger pool of skilled applicants reducing the number of recruitment exercises.

In addition to the benefits to the Council offering a GMC to relief workers enables employees to better plan their finances and gain certain financial privileges that are not readily available to individuals with no guarantee of hours.

b. Who does the GMC apply to?

The first phase of the project will focus on the relief workers who currently have no other contractual hours in another job with the Council. The initial exercise has been based on relief workers in post on 25th October 2016. Any relief workers who have started between 26th October 2016 and 31st March 2017 will be offered a GMC after implementation following 1st April 2017.

It is recognised there are many part time and full time employees who also have relief positions but the initial project will only include relief workers with no guaranteed hours (*ie relief only*).

c. What is a Guaranteed Minimum Hours contract (GMC) and how are the average hours calculated?

Eligible workers will be sent a variation to contract to offer a GMC based on 70% of the average hours worked over the previous three year reference period (1 October 2013 – 30 September 2016) rounded up to the nearest 15 minutes. However, if relief workers wish to accept the GMC offer but with a smaller contractual guarantee than has been offered they should speak with their line manager in the first instance.

Each individual's GMC offer has been reviewed and the hours have been adjusted where there have been artificial distortions resulting from unusual working patterns due to covering:

- maternity leave
- long term sickness
- secondments
- training
- vacancies pending recruitment
- vacancies held during restructures

This is not an exhaustive list and other artificial distortions that occur in future reviews will need to be considered on an individual basis by the relevant Strategic Director.

In addition where a three year reference period was not available because the individual had not been employed as a relief worker for the whole three year period, working hours were averaged over the period they had worked. In some circumstances, where the period was significantly shorter than three years a conservative average or best estimate will be used.

The contract start date will be 1st April for all GMCs, but the continuous service date will recognise previous continuous service with DCC/other local government service in accordance with legal requirements.

All relief workers who accept a GMC will work their total annual hours over the same period of 1st April to 31st March. Where a relief worker starts a GMC after 1st April their start date will be their appointment start date and they will have a review date of 31st March. Managers will be required to review each individual contract annually, and based on the needs of the service, the variable hours for the following year may remain the same, increase or decrease.

2. What is the difference between Relief Contracts and GMCs

Relief Workers

- Relief contracts have no guaranteed hours or pay, and workers can refuse to work when it is offered, there is no mutuality of obligation for the Council to offer regular work, or for the worker to accept it.
- Relief workers have the flexibility of being able to accept/refuse work when it is offered, and are only paid for the work they do.

Relief Workers who accept a GMC

- GMCs have guaranteed hours and therefore guaranteed pay.
- Employees will be paid every month for their GMC hours.
- There will not be a set working pattern every week, but employees are obliged to accept the work when it is offered.
- Over the year, the employee is contractually required to work the total number of annual average hours offered in the GMC.
- GMC employees will benefit from the guarantee of regular pay and work, and must be able to commit to working in line with the needs of the business.
- GMC employees will be entitled to an Annual Leave and Bank Holiday entitlement at the beginning of the year based on their GMC hours

3. Average annual hours and how GMC hours are banked

Although the guaranteed minimum contract offer is expressed as a weekly guarantee, this will be worked flexibly over the year as service needs require. Therefore, whilst over the course of the year you will be offered your minimum guaranteed hours, the hours offered to you may fluctuate from week to week.

All hours worked up to the 37 hours in any week and those hours not worked on a Bank Holiday will count towards the average contractual guarantee. The payroll system will calculate the hours worked from the 1st to the 31st of the month (the last day of the month) to work out if the hours worked are under, equal to or exceed the average monthly GMC.

The average monthly GMC is calculated by multiplying the weekly GMC by 52.14 then dividing the total by 12. For example an employee with a weekly GMC of 10 hours will have a monthly GMC of 43.45 hours as calculated below.

$10 \text{ hours} \times 52.14 = 521.40 / 12 = 43.45 \text{ hours monthly average GMC}$

When working hours exceed the average monthly GMC these will be credited on a plain time basis to the average hours balance. Once the average balance exceeds twice the weekly GMC or 37 hours whichever is the lowest (termed the additional hours threshold) any additional hours worked will be paid. For example an employee with a weekly GMC of 10 hours will have a monthly threshold of 20 hours.

Any hours accrued up to the threshold will NOT be paid and used as a reserve to offset those periods when hours have not been worked or have been worked below the average GMC.

Any hours remaining in the average hours balance at 31 March each year will be paid in the following May based on the hourly rate as at 31 March.

4. Expectancy to work

Where possible managers should agree working rotas and therefore the shifts that the GMC employee will be required to work at least three days in advance, but in some circumstances shorter notice may be given.

Relief workers who accept the GMC offer will have a contractual obligation to accept offers of work that are made within reasonable timescales and work patterns unless there are exceptional circumstances or other work commitments with the Council. Any periods where employees are not available for work should be notified to their manager in advance as far as possible.

Managers should discuss with employees what the expectations are for working times/locations in each case, recognising the service needs and balancing this with recognition of employees' commitments.

Where GMC employees work their hours seasonally it is accepted that there may be periods when they are not offered work and therefore a deficit of hours may build to a

higher than normally acceptable level. Providing the manager is confident the hours in future months will mean the employee is at a positive or neutral position by the end of the year no action is required.

It may be necessary to undertake a review of the GMC during the year and before the annual review for the following reasons:

- Where the offer has been calculated from a period of less than three years.
- Where an individual is unavailable for work due to a significant change in personal circumstances.
- Where there is a significant change to the service e.g. through base closures or restructures. If this results in a significant reduction in hours or cessation of work and therefore end of contract the normal redundancy procedures would apply.
- Where the individual is consistently unavailable for work without good reason and therefore are unable to fulfil their contractual commitment. In these circumstances informal management discussions should take place to address the reasons why the contractual commitment is not being met first. Where there is continued refusal to work this may lead to a review of the GMC hours and disciplinary procedures being invoked. There may be a need to consider whether an overpayment should be repaid for those hours not fulfilled due to a continual refusal to work.

5. Contract Information

a. Change to employment status

Workers who accept a GMC offer will be classed as part time employees.

b. Mobility contract clause and travel

GMCs will contain a conditional mobility clause that requires the employee to travel to multiple sites in order to fulfil their GMC. The existing travel payment arrangements will apply.

c. Average annual contractual hours

The minimum GMC offer will be 1 hour per week, the maximum weekly average will be 26 hours per week (70% of 37 hours full time position). Relief workers who have a 70% average of less than 1 hour will have their offer increased to minimum of 1 hour where there is a requirement of need from the service.

GMCs can be offered over a full year (52 weeks), or term time only working (38 weeks) depending on the needs of the service.

Additional hours above this can be worked and will be offered as appropriate for the service – see additional hours below.

d. Sickness reporting

Employees with a GMC will be eligible for sick pay based on their GMC hours in accordance with the Council's Sick Pay Policy

Normal employee sickness reporting principles apply and managers should follow the usual Attendance Management Procedures and where applicable record the absence in the normal way either by inputting the sickness period into SAP or by completing an absence return.

e. Pensions - auto enrolment

All relief workers accepting a GMC will be auto-enrolled on the Derbyshire LGPS pension scheme effective from 1 April 2017, however employees have the right to opt out. This is detailed in the GMC offer letter.

f. Working hours – how they are allocated

Priority will be given to GMC employees to ensure they work their average weekly hours. However where the GMC employees within that service have already worked their average hours to date, this will then be offered to another part time employee first and then a relief worker. Consideration should be given to GMC seasonal employees who will need to be offered a higher proportion of hours during seasonal peaks to ensure they have a surplus to offset during quieter periods.

As additional hours arise in a service, the manager will need to ensure that employees with GMCs are given an opportunity to work additional hours on a fair basis whilst ensuring that those with a GMC are all working their contractual minimum.

g. Multiple GMCs

If an employee has multiple GMCs, it will be expected that they are able to fulfil their contractual obligations. If an employee is continually unavailable for work on one of their GMCs due to working on another GMC, it may be necessary for the relevant managers to liaise with each other.

6. Pay and enhancements

a. Salary

Relief workers who accept a GMC will have their pay calculated with the same principles as other part time contracted employees. They will receive the same basic pay each month regardless of the number of hours worked and this will be based on the average monthly hours figure and will be increased to the Living Wage rate (currently £8.25 from 1 April 2016 to 31 March 2017) where an employee's basic hourly rate is lower.

The Council will review the decision to pay the Living Wage allowance on an annual basis. If you are affected by the outcome of this decision you will be informed separately prior to 1 April 2017.

The actual working times will be input on SAP for each shift they work by employees (who have access to Workplace) or by their managers via Time Managers Workplace. Managers who currently submit timesheets will continue to do so using the new

attendance type. Managers should use a new attendance type called 'GMC Attendance' to input the date, start and finish times of each shift worked so SAP can calculate the average hours balance and identify when enhancements are due. A separate SAP guide will be available towards the end of March 2017.

b. Additional hours

When working hours exceed the average monthly GMC the additional hours worked will be credited on a plain time basis to the average hours balance. Once the average balance exceeds twice the GMC or 37 hours whichever is lower (termed the additional hours threshold) any additional hours worked will be paid.

The payment for any hours worked above the additional hours threshold will be shown on the payslip as 'Add Hrs (GMC)' and will normally be paid a month in arrears providing these have been input/sanctioned by the manager in line with existing arrangements.

The manager should monitor the average hours balance to ensure the employee is being offered sufficient hours to meet their GMC over the year. It is important that the manager discusses the balance with the employee so that the employee understands when they are likely to receive additional hours or when it is essential to accept offers of work.

To ensure that the average hours balance is up to date and additional hours are paid a month in arrears it is important for the hours to be input and approved where necessary in a timely manner.

c. Enhancements

Enhancements for unsocial hours working, overtime over and above 37 hours per week and hours worked on a Bank Holiday are not credited to the average hours balance. All enhancements will be paid at the next available payday once input by the manager in accordance with normal pay arrangements.

All other terms and conditions relating to rates of pay applicable to hours worked and contract category for particular times of day/week are set out in the booklet *Working for Us - What you need to know*. A copy of the booklet is available on the Derbyshire Website at the following web page:

http://www.derbyshire.gov.uk/working_for_us/jobs/general-conditions/

If you are unable to access this online please contact the Shared Services Centre, Appointments Team on 01629 535119 and select option 3 or email pay@derbyshire.gov.uk who will arrange for a copy to be sent to you.

d. Annual Leave and bank holidays

Employees with a GMC will be eligible to receive an annual leave entitlement at the start of the year based on their average GMC hours and service.

Accrued annual leave is calculated and paid according to the additional hours worked up to a maximum of 37 hours per week. The accrued leave is generated on a monthly basis and each month the amount you have been paid will be displayed on your payslip.

e. Normal Holiday pay calculation

The key elements of the Holiday Pay are detailed in full in the separate Holiday Pay Framework Agreement, a brief overview is provided below.

- All elements of regular pay over and above basic pay, including overtime, enhancements not already paid and allowances are included in the calculation for normal holiday pay.
- All additional hours worked over contract up to full time equivalent (37 in any week) are excluded from this calculation on the basis that these will continue to be paid in accordance with the Council's existing accrued annual leave provisions.
- The Council's framework calculates the annual additional normal holiday pay entitlement based on a minimum 20 days annual leave required under working time regulations and 8 Statutory Bank Holidays (all pro rata for part-time staff) per annum.
- The additional normal holiday pay value will be calculated for the current year on the basis of the actual earnings for the previous year, so for 2017/18 the calculation is based on all relevant actual earnings for 2016 /17.
- Payments will be made monthly for any annual values over £25. Where the annual value exceeds £25, payment will be made monthly for the remainder of the year up to and including the March 2018 pay.
- Employees will be written to annually in June each year to inform them of their normal holiday pay value.
- Employees will have the choice to opt out of the annual arrangements as provided in the holiday pay framework and elect for a payment based on the statutory formula set out in the 1996 Employment Rights Act. This provides for receipt of holiday pay based on all relevant earnings in the 12 week period worked immediately prior to the first 20 days annual leave taken in the year. For those employees who opt out of the annual calculation, payment for bank holidays will continue as per existing arrangements.

7. Annual GMC review

Managers should monitor the balance of hours by checking information on SAP to ensure the employees are meeting their contractual guarantee. Managers will have the facility to run reports to help monitor the hours. An annual review of hours will be undertaken in December each year to analyse the hours that an individual has worked, against the GMC, and write to individuals to discuss the options for the following year (1 April – 31st March) mindful of the business needs for the following twelve months.

At the annual GMC review the options available are:

a. No change proposed to GMC hours for the following year

If an individual has worked their GMC hours and an additional 30% above their GMC, and there is a business need for this to continue, the GMC offer for the following year will remain the same.

This is because the GMC offer is based on 70% of the average hours worked previously.

b. Increase in GMC hours for the following year

If an individual has regularly worked more than an additional 30% above their GMC (ie more than 100% of their GMC hours) and there is a business need for it to continue, the GMC offer could be increased. The offer should still be 70% of the anticipated hours of work for the following year.

c. Decrease in GMC hours for the following year

If an individual has not been available to work, or there has been insufficient work to offer for their current GMC managers will be required to vary the hours of the contract for the forthcoming year, and decrease the average number of hours offered, as per the GMC contract. The Council's Buy Out of Hours Policy will not apply.

Managers must ensure they consult with the employee as soon as possible, and may be able to look if work is available in other areas. The Council's Redundancy and Redeployment Policy may apply and therefore managers must ensure that they consult with the employee and their representatives at the earliest stage if this looks like a possible outcome and to take the appropriate advice from HR.

d. Cessation of a GMC

Depending on the needs of the service, if the work has ceased or significantly reduced, it may not be possible to offer a further GMC. The manager will discuss this with the employee and take HR advice. It is possible that another position may be suitable, or that the Redundancy and Redeployment policy may apply.

Managers must ensure that they consult with the employee and their representatives at the earliest stage if this looks like a possible outcome and to take the appropriate advice from HR.

e. End of year process

Any hours that have been banked under the additional hours threshold will be paid in April each year.

f. Review of hours during the year

It may be necessary to undertake a review of the GMC during the year and before the annual review for the following reasons:

- Where the offer has been calculated from a period of less than three years.
- Where the individual is consistently unavailable for work without good reason and therefore are unable to fulfil their contractual commitment.
- Where an individual is unavailable for work due to a significant change in personal circumstances.
- Where there is a significant change to the service e.g. through base closures or restructures. If this results in a significant reduction in hours or cessation of work and therefore end of contract the normal redundancy procedures would apply.

8. Leavers

Managers need to follow the normal leavers' procedure by completing a 'Leaver's Form' on Workplace Manager Self Service, to inform the Shared Services Centre that the employee is leaving.

The normal contractual notice periods are to be followed, and any additional hours worked/banked hours and annual leave that are in credit are to be paid upon leaving.

As the GMC is an average annual hours contract, at the point of the employee leaving if there are any hours in deficit, (where the employee has not worked their average weekly hours) and has been overpaid, wherever possible the payment will be deducted from the last salary payment, unless alternative arrangements for repayment are agreed i.e. recovery from a second employment with the Council, or the hours can be worked prior to leaving.

APPENDIX A

Transitional period up until 1st April 2017

- Briefings for managers and employees are scheduled for February 2017, and the current eligible relief workers will be offered a GMC towards the end of February 2017, to sign and return by 10th March 2017 to become effective from 1st April 2017. Relief workers will receive a contract offer for each relief position they hold and should respond to each offer on the separate 'confirmation slip' attached to each contract offer.
- Relief workers will have a choice on whether or not to accept a GMC with an associated obligation to work, or to remain as a Relief worker with no obligation to accept offers of work.

Eligible relief workers who receive an offer letter will be required to complete and return a confirmation slip included with the offer letter to confirm that:

1. They **WISH** to accept the Average Guaranteed Minimum Contract OR
2. They **DO NOT WISH** to accept the Average Guaranteed Minimum Contract and wish to continue in employment with the Council on a 'Relief' basis.

If relief workers wish to accept the GMC offer but with a smaller contractual guarantee than has been offered they should speak with their line manager in the first instance.

If relief workers wish to remain as relief they will not be allocated hours with the same priority as those individuals who accept an average GMC.

Interim advert and recruitment process

- At present interim wording has been included in all relief adverts as follows:

The position you are applying for is on a Relief basis that currently has no guaranteed hours or fixed working pattern. Derbyshire County Council is however in the process of reviewing the contract arrangements for its regular relief staff. The intention is to introduce a new framework from April 2017 that offers an average contractual guarantee of hours that will be worked flexibly over the year.

- Prior to April 2017 managers can continue to recruit new Relief workers with no guaranteed hours where required, following the Recruitment and Selection procedure.
- After 1st April 2017 managers can recruit to new GMCs at any point of the year, in line with the needs of the business, following the Recruitment and Selection procedure. Individuals recruited to a GMC will be included in the annual review in line with those employees included in the initial GMC offer.

- To continue in the spirit of the initial offer it is envisaged that all advertising after 1 April 2017 will be on the basis of a GMC. This decision will be reviewed in March 2017 once there is an appreciation of the take up of offers.

APPENDIX B

Frequently asked questions

- **Why have I not been sent a GMC offer?**
 - Cabinet agreed that the first phase of the project would focus on relief employees with no other guaranteed hours in the Council i.e. another part time or full time job.
 - Some groups of employees have been excluded from the exercise due to different work requirements and fluctuations based on School terms rather than academic years.
 - Relief workers with a 70% average of less than 1 hour a week have been offered a minimum contract of 1 hour where the service is confident that the work is available and feasible within current budgets. Therefore some employees who have not worked on a regular basis or have been in employment for less than 3 years may not receive an offer.
 - Relief workers who have started since October 2016 have not been included in the initial exercise but will be offered a GMC following the initial implementation in April 2017.
 - If you feel you have been excluded from the initial phase in error please raise this with your line manager or trade union representative in the first instance who should escalate the query to departmental HR if necessary.
- **How was my GMC offer determined?**
 - Your GMC offer was determined by taking the relief hours worked over a 3 year period (1 October 2013 to 30 September 2016) and calculating this to a weekly average. This has then been reduced to 70%. If you have not been in post for 3 years, the average will be based on the data available and pro rata'd for the actual period of employment. Where a 3 year reference period is not available and the period of employment is short, the average may have been reduced to remove any artificial distortion to better reflect the requirement of the service.
- **Why have I only been offered 70%?**
 - The GMC offer of 70% was agreed as a precautionary measure to avoid contracting for hours not actually worked. You may be offered additional hours as they become available but there is no guarantee further hours will be available.
- **I disagree with the GMC I have been offered, what do I do?**
 - Speak to your line manager or trade union representative who can discuss the process and explanation for the calculation of hours with you further and if necessary escalate the query to departmental HR for further investigation.

- **What happens if I don't work my GMC hours because I am not available?**
 - If you have accepted the GMC offer, you have agreed to work the average weekly hours for the year and there is an obligation for you to accept work when asked.
 - If you continually refuse work, without good reason it will be necessary to instigate informal management discussions to address the reasons why the contractual commitment is not being met. Where there is continued refusal to work this may lead to a review of the GMC hours and disciplinary procedures being invoked. There may be a need to consider whether an overpayment should be repaid for those hours not fulfilled due to a continual refusal to work.
 - If you have concerns that you are not able to work your GMC hours due to a significant change in personal circumstances following the initial acceptance, then you should speak to your manager as soon as possible to consider if an earlier review of your GMC is required to potentially reduce the hours of your contract prior to the annual review.
- **What happens if I am not offered enough work to cover my GMC hours?**
 - If you are not offered enough hours to cover your GMC hours then your manager may review your GMC and potentially reduce the hours of your contract.
- **What happens if I work more hours?**
 - When working hours exceed the average monthly GMC these will be credited on a plain time basis to the average hours balance.
- **Why do I not get paid for all the hours I have worked in a month?**
 - If you have a GMC you are paid for these hours each month, as there is likely to be some variation in the hours you work, as part of the agreement there will be 'additional hours threshold' (this is where the equivalent hours of you GMC will be kept, to allow for weeks when you work less than your GMC). Once the average balance exceeds twice the GMC or 37 hours whichever is lower (termed the additional hours threshold) any additional hours worked will be paid. For example an employee with a weekly GMC of 10 hours will have a monthly threshold of 20 hours and will receive a payment for additional hours once they have first met this threshold.
- **What happens if I start my GMC, but get another job before March 2018?**
 - The hours you have worked will be consolidated. You will be paid for any additional hours worked. If you are in deficit with the hours, you can work the hours before you leave if the work is available or if no work is available an overpayment will be recouped.

- **Can I keep my GMC if I get another part time contract?**
 - You will need to discuss the expectation to work with your GMC manager, as your hours are variable this may not fit in with another job working hours.
- **Will I get a redundancy payment or Buy Out of Hours, if my GMC hours are reduced next year?**
 - Your GMC is a variable hours contract, which stipulates the requirement to work may stay the same, increase or decrease. You will not receive a Buy Out of Hours payment as your contract stipulates your hours may vary with business need. Managers must ensure they consult with the employee as soon as possible, and may be able to look if work is available in other areas. The Council's Redundancy and Redeployment Policy may apply and therefore managers must ensure that they consult with the employee and their representatives at the earliest stage if this looks like a possible outcome and to take the appropriate advice from HR.
 - If however the work ceases completely, your manager will discuss this with you in line with the redundancy and redeployment policy and undertake the appropriate consultation and involve your representatives. A redundancy payment may be payable.

APPENDIX C

The example below demonstrates the accrual and deduction that will occur as the work fluctuates throughout the year.

The employee below has a GMC of 10 hours per week and an average monthly GMC of 43.45 hours.

April

In April 2017 they work 53 hours between 1st April and 30th April.

53 hours (April) – 43.45 hours (Monthly GMC) = 9.55 to go into the bank (capped to 20 hours)

May

In May 2017 they work 72 hours between 1st May and 31st May

72 hours plain time (May) – 43.45 hours (Monthly GMC) + 9.55 (Current banked hours) = 38.10

The 'banked' hours would cap at 20 hours and pay 18.10 hours at plain time under the wage type 'Add hrs (GMC)'

They would also be paid the 3 hours worked on a bank holiday at double time.

June

In June they work 3 hours between 1st June and 30th June

3 hours (June) – 43.45 hours (Monthly GMC) + 20 (Current banked hours) = -20.45

The banked hours will go into a negative as the number of hours worked over the 3 months is considerably less than the average monthly GMC.

July

In July they work 56 hours between 1st July and 31st July

56 hours (July) – 43.45 hours (Monthly GMC) - 20.45 (Current banked hours) = -7.9