

Agenda Item	Additional Urgent Item
Report No	HC/31/20

Committee: Highland Council

Date: 7th September 2020

Report Title: Compensation Payments for SJC Casual Workers

Report By: Head of HR

1. Purpose/Executive Summary

- 1.1 **SJC-62 Guidance for COVID-19 Casual Worker Compensation for Lost Pay** (see Appendix 1) covering non-teaching staff outlines national guidance from Cosla for the payment of casual workers during this period of COVID. The guidance does not apply to employees with contracts of employment and agency workers. The guidance does not take the form of a National Agreement and so it is up to each Council to decide how or whether to apply in consultation with our trade union partners. Payment for Supply Teachers was agreed nationally as part of the SNCT bargaining group and it is proposed that consistency should apply across both staff groups.
- 1.2 This paper provides additional detail and background information to help inform Members' consideration of three possible options.

2. Recommendations

- 2.1 Members are asked to:
- i. Agree **Option 3** as outlined in section 4 of the report. To compensate all Casual Workers affected ie casual workers who have received some or no payment for work undertaken, however less than they would normally receive due to COVID and bring their earnings up to the average of the previous 3 pay periods. This could amount to c£136,000.
 - ii. Approve the period for payment should cover 3 months only.

3. Implications

- 3.1 Resource –The financial cost associated with the options around the application of SJC-62 Guidance for COVID-19 Casual Worker Compensation for Lost Pay is between **nil or £45.4K** per month, depending on which option is agreed. The recommended Option will cost in total **circa £136k**. This figure reflects all employment costs including the 3% pay increase applied from April 2020. Provision had already been made for the cost of the casual workforce in Service budgets and the settlement agreed with NHS

Highland to deliver Adult Care. In effect, options 1 and 2 represent savings on the budgeted position.

- 3.2 Legal – Although the SJC-62 circular, clearly states it is issued as guidance, there may be legal challenges if staff identified as a Casual Worker has accrued rights ie can demonstrate a regular work pattern and expect payment during the COVID period.
- 3.3 Community (Equality, Poverty, Rural and Island) – There are potential equality issues if the decision is made not to apply SJC-62. The majority (89%) of casual workers are female and low paid staff compared to the non-casual workforce. There are also likely to be poverty implications if casual workers are not to be paid for work they would otherwise have undertaken where this makes a significant contribution to the household income.
- 3.4 Climate Change, Carbon Clever or Gaelic - There are no implications arising from this report.
- 3.5 Risk – There are potential reputational and employee relations risks to the Council as there is an expectation from the trade unions that there will be a similar approach to paying casual workers to that of supply teachers. It should be noted no such commitment has been made to the unions in any discussion which has taken place.

4. Application of the SJC-62 Circular

- 4.1 This circular was issued by COSLA on 17 April covering non-teaching casual workers and outlines criteria for the payment of casual workers during this period of COVID. The circular suggests a casual worker receives compensation if, due to COVID-19, they have not been offered work because of service disruption; been offered and accepted work but less work than normal; cannot accept work because of being symptomatic or ill, or they are self-isolation in line with medical guidelines including ‘shielding’.
- 4.2 All Councils in Scotland were contacted to establish if they were continuing to pay casual workers and if so whether they were using discretion on the method of calculating compensation. All of the 13 Councils who responded confirmed they were arranging to make payment to casual workers. The majority of Councils have confirmed they will use an average payment calculated over the last 3 full months. One has indicated payment would be worked out on the basis of salary paid in January. Three Councils have indicated they will deal with any anomalies as and when they arise.
- 4.3 Although the guidance goes some way to defining casual workers it does not recognise the complex pattern of employment in Councils. Many employees and workers have multiple posts, with a mixture of contracted posts, casual appointment and additional hours. For this exercise Casual Workers have been defined as those workers who have no contracted hours with the Council. They are therefore exclusively Casual Workers with all their basic earnings being paid on the variable Pay Element 1080. Almost all workers affected are schools based. The job titles of workers predominantly affected include:
 - Early Years Practitioners
 - Pupil Support Assistants
 - Social Care Workers
 - Support Workers (Early Years)

- Escorts

4.4 Analysis of payroll data over the qualifying period has identified Casual Workers who had casual earnings between January and March 2020 and could be considered eligible for such a scheme. Of these 100 had earnings equal to or greater than the average of their earnings over the previous 3 pay periods and would require no further compensation. 146 had some earnings but lower than their average and would require a top up. 43 have no earnings at all.

4.5 There are 3 options to respond to **Circular SJC-62**:

Option 1 Not to apply the circular and provide no compensation to casual workers adversely affected by the pandemic lockdown.

Option 2 To compensate only Casual Workers who have received no earnings as a result of the pandemic.

Option 3 To compensate all Casual Workers affected ie casual workers who have received some or no payment for work undertaken, however less than they would normally receive due to COVID and bring their earnings up to the average of the previous 3 pay periods.

4.6 Cost and impact of the 3 options would be as follows:

	Additional cost per month of scheme	No. of workers affected	Av. cost of compensation per worker	Total Cost Q1 Apr-June
Option 1	£0	0	£0	£0
Option 2	£3,584	43	£83	£10,752
Option 3	£45,369	189	£240	£136,107

4.7 The estimate figures above are based on a comparison between average earnings and those earned in April 2020.

4.8 The other variable to be considered is the length of time for which any compensation would be made. The Council is moving into the recovery stage and as such it is recommended this payment would run for the period of April – June 2020 only. Any compensatory payment made will be treated as pay for the purposes of tax and national insurance.

4.9 If either Option 2 or 3 is agreed, payments will be based on a comparison of payroll data for each affected employee. **Cosla Circular SJC-62** has been issued as guidance, however the application of Option 3 would be consistent with payment to supply teachers.

Designation: Interim Head of HR

Date: 07.09.20

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Background Papers: COSLA Circular SJC-62

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17 April 2020

Dear Chief Executive,

SJC-62

COVID-19 and Casual Workers

Dear Colleague

It is recognised that during the COVID-19 outbreak and councils' responses to it there will be disruption to established patterns of work and arrangements for maintaining service delivery. This may result in workers whose names are on casual worker lists experiencing a change in the offers of work made that they can accept.

In this circular a casual worker means a person on list of names held by the council who can be contacted and offered work on an ad-hoc basis. The workers are directly employed by the Council. These lists are often referred by terms such as "relief", "supply", "sessional", "pool" or "bank". This circular applies to such workers where there is no "mutuality of obligation".

This circular does not apply to employees working additional hours, overtime, in 'acting up', or similar arrangements. It does not apply to employees on temporary contracts. It does not apply to agency workers.

It is recommended that the arrangements in this circular should apply to casual workers who have accepted an offer of casual worker in the period 1st January 2020 to 31st March 2020 and who are known to remain available for work. Councils may exercise discretion about this, including taking account of an individual's known personal circumstances.

It is suggested that compensation should be considered for each pay period commencing after 20/3/20 (when schools were closed by the Scottish Government). It is suggested that it should be reviewed on a monthly basis and discontinued when it is judged that working arrangements have regularised.

The following eligibility criteria are suggested:

- If a casual worker has not been offered work because of service disruption related to COVID-19, consider for compensation.

- If a casual worker has been offered and accepts work but has been offered less work than normal overall because of service disruption related to COVID-19 consider for compensation.
- If a casual worker cannot accept work because of being symptomatic or ill because of COVID-19, or because they are self-isolation in line with medical guidelines consider for compensation.
- If a casual worker cannot accept work because they are “shielding” consider for compensation.
- If a casual worker has been offered and declines work, they will not normally be eligible for compensation. This includes offers of work of a type that they would not normally do but are capable of accepting.

The principle for compensation is that it should calculate the typical weekly/monthly/pay-period earnings based on the average over the previous 12 weeks, or 3 months, or 3 pay periods (as appropriate to local circumstances). The purpose of any payment made should be to ensure that the worker receives approximately what they might anticipate in normal circumstances. This means that a worker who is receiving some paid work might have pay “topped up”.

There will be no need to consider compensation if a worker is clearly already earning more than normal.

Councils have discretion to customise the principles, including reference periods, means of calculation and dates above to take account of local factors such as peaks in demand which might distort the average and the ease and accuracy of calculation because of the pay system in use.

Any compensatory payment made will be treated as pay for the purposes of tax and national insurance.

This will be monitored by the SJC, and revisions will be made as necessary.

Yours sincerely

TOM YOUNG (COSLA)
JOHANNA BAXTER (UNISON)
DREW DUFFY (GMB)
WENDY DUNSMORE (UNITE)

Joint Secretaries