




**Haringey** Council

Report for:	Corporate Committee on 20 March 2012	Item Number:	
Title:	Workplace Learning/ Experience Policy		
Report Authorised by:	Stuart Young, Assistant Chief Executive 		
Lead Officer:	Steve Davies, Head of Human Resources		
Ward(s) affected: ALL	Report for Key/ Non Key Decisions: Non Key Decision		

**1. Describe the issue under consideration**

To ask the committee to agree a policy for handling workplace learning/ experience arrangements.

**2. Cabinet Member introduction**

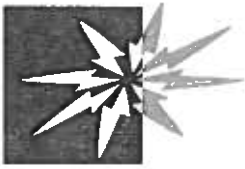
Not applicable

**3. Recommendations**

To agree the attached policy for workplace learning/ experience opportunities.

**4. Other options considered**

- 4.1 The attached policy outlines the different types of workplace learning/ experience opportunities and the appropriate pay and conditions that are applicable to the different arrangements.



- 4.2 Given that the council is a public body there is no scope to avoid statutory employment regulations including national minimum wage regulations in relation to pay. Therefore we need to have a policy for pay and conditions for apprenticeships and internships. That policy needs to enable each case to be considered on its merits to determine whether an employment relationship exists. Where one does the relevant legislation/policy should apply.

## 5. Outline Policy Considerations

- 5.1 Youth unemployment is at record levels and in the borough it is at 11.7% compared to a London average of 8.1%. The council like many large employers have strived to provide a number of workplace learning/ experience opportunities for young people including work experience, apprenticeships and more recently internships. It is important that there is clarity over what these different arrangements are and what pay and conditions, if any, should apply to these different workers.
- 5.2 There are 3 different types of workplace learning/ experience arrangements that the council support. These are work experience, apprenticeships and internships. Whilst the council has supported apprenticeships in the recent past, it should be noted that at present the council do not operate a scheme for apprentices.
- 5.3 The first task will be for the Head of HR to determine whether the person is a 'worker' or a volunteer. Under the National Minimum Wage Act (NMW) 1998 someone should be classified as a 'worker' who has a contract of employment or other contract that requires the individual to carry out work or services for another party. Volunteering can take many forms by it does not usually involve full time or close to full time working or doing specific duties. Also, if they are shadowing, observing or following then they are not likely to be classified as a worker. And volunteers are under no obligation to perform work or carry out your instructions. Interns may be classified as 'workers' or volunteers depending on the nature and type of working arrangement but the Head of HR will assess each case and utilise the HMRC guidance and employment status classification tool determining the status of the intern in each case. .
- 5.4 Under the NMW Act all 'workers' must be paid at least the minimum wage (currently £6.08 per hour for 21 and over years of age, £4.98 per hour for 18-20 yrs), unless they are:
- People doing a government accredited apprenticeship or work based training
  - Students doing a first degree or teacher training who work as part of their course
  - Volunteer workers for a charity, voluntary organisation or statutory body



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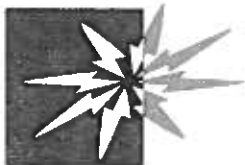
- 5.5 Work experience placements tend to last for a few weeks only and usually apply to Year 10 school students. Therefore no payment is necessary.
- 5.6 However, both apprenticeships and internships tend to be more formalised arrangements and tend to last 6 – 12 months and involve undertaking a programme of work or project. Therefore given the council's London Living Wage policy it is proposed to pay these groups the London Living Wage rate (currently £8.30 per hour) for the hours that they work. This will apply as appropriate following the Head of HR's assessment.
- 5.7 The attached policy outlines in more detail the different types of workplace learning/ experience opportunities that there are and the appropriate pay and conditions that are applicable to the different arrangements.

## **6. Comments of the Chief Finance Officer and financial implications**

- 6.1 The Chief Financial Officer is content that the policy is written in such a way as to ensure that the potential costs and other financial implications of any appointment will be considered and addressed before any agreement to enter into any of these arrangements is made.

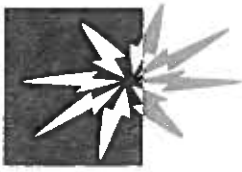
## **7. Head of Legal Services and legal implications**

- 7.1 The Head of Legal Services has been consulted on this report.
- 7.2 Section 112 of the Local Government Act 1972 provides that the Council may appoint staff on such reasonable terms and conditions of employment as the authority might determine.
- 7.3 Under section 1 of the National Minimum Wages Act 1998 a person who qualifies for the national minimum wage shall be remunerated by his employer in respect of his work in any reference pay period at a rate which is not less than the national minimum wage. A person qualifies for the national minimum wage if he is an individual who is (a) a worker (b) is working, or ordinarily works in the UK, under his contract; and (c) has ceased to be of compulsory school age. The national minimum wage shall be such single hourly rate as the Secretary of State may from time to time prescribe. The current rates are set out in paragraph 5.4 of the report. The Council has adopted the London Living Wage Policy and therefore any rate applicable would be by reference to that policy. There are special rates which apply in relation to apprentices.
- 7.4 Section 3 of the Act under the heading ' Exclusion of, and modifications for, certain classes of persons' states that the section applies to persons who have not attained the age of 26 and under section 1A for those who have attained the age of 26 who are



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- (a) within the first six months after the commencement of their employment with an employer by whom they have not previously been employed;
  - (b) participating in a scheme under which shelter is provided in return for work
  - (c) participating in a scheme designed to provide training, work experience or temporary work;
  - (d) participating in a scheme to assist in the seeking or obtaining of work
  - (e) [undertaking] a course of higher education requiring attendance for a period of work experience
  - (f) undertaking a course of further education requiring attendance for a period of work experience
- 7.5 Section 3(2) provides that the Secretary of State may make regulations to whom the section applies
- (a) preventing them being persons who qualify for the national minimum wage; or
  - (b) prescribing an hourly rate for the national minimum wage other than the single hourly rate for the time being prescribed in section 1(3).
- 7.6 Section 44 of the Act under the heading 'Exclusions' relates to Volunteers and states a worker employed by a charity, a voluntary organisation, an associate fund raising body or a statutory body does not qualify for the national minimum wage in respect of that employment if he receives, and under the terms of his employment (apart from the Act) is entitled to
- (a) no monetary payments of any description, or no monetary payments except in respect of expenses
    - (i) actually incurred in the performance of his duties, or
    - (ii) reasonably estimated as likely to be or to have been so incurred, and
  - (b) no benefits in kind of any description or no benefits in kind other than the provision of some or all of his subsistence or of such accommodation as is reasonable in the circumstances of his employment.
- 7.7 An employee for the purposes of the Act means an individual who has entered into or works under a contract of employment. A contract of employment means a contract of service or an apprenticeship. A worker means an individual who has entered into or works under a contract (a) a contract of employment or (b) any other contract whereby the individual undertakes to do or perform any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.
- 7.8 Regulation 3 of the National Minimum Wage Act Regulations 1999 relates to time paid work and states that time work is work that is paid under a workers contract by reference to the time which a worker works and is not salaried hours work i.e. paid by reference to an annual salary. Unmeasured work is where there are no specified hours and the worker is required to work when needed or when work is available.



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- 7.9 Whether an intern is a worker and entitled to be paid the national minimum wage is fact specific. Short informal arrangements, for example, involving work shadowing, observing and/or following are likely to be excluded however if there are fixed duties which are to be performed personally in a particular way by the individual the greater the likelihood is that he or she is a worker and entitled to be paid the national minimum.
- 7.10 The report in order to address the very fact specific situations which are likely to arise and to ensure compliance with the relevant legislation states, on page 5, that any proposed workplace learning/experience opportunities need to be cleared and authorised by the Head of HR. All and any appointments should be made in accordance with the relevant HR policies and procedures relating to recruitment.
- 7.11 Failure to pay the national minimum wage where it should be paid is an offence and can lead to enforcement action and litigation against the employer.
- 7.12 Members must also have due regard to the public sector equal duty when considering any policy. An outline of the duty is attached at Appendix C to the report. Members attention is also drawn to the equalities comments at section 8 of the report

## **8. Equalities and Community Cohesion Comments**

- 8.1 The current age profile in the council (at June 11) shows only 1.9% of staff are under 25 (down from 3.8% in 2009/10), this equates to only 72 staff from a total of 3,866. In the borough profile, 11% of residents are in the same age group.
- 8.2 During the same period, youth unemployment in the borough was 11.7% (higher than the London average rate of 8.1%) The council like many large employers have strived to provide a number of workplace learning/ experience opportunities for young people including work experience, apprenticeships and more recently internships.
- 8.3 Therefore it important for the council to have a policy on how these different workers should be treated in terms of their pay and conditions.
- 8.4 An equalities impact assessment screening tool form is attached at Appendix B.

## **9. Use of Appendices**

Appendix A – Workplace Learning/ Experience Policy

Appendix B – Workplace Learning/ Experience Policy Equalities Impact Assessment Screening Tool Form



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Appendix C – Public sector equal duty

#### 10. Local Government (Access to Information) Act 1985

No documents that require to be listed were used in the preparation of this report.

## Workplace Learning/ Experience Policy

### Introduction & Scope

Workplace learning/ experience opportunities provide young people with a means of gaining valuable skills and experience within a real workplace environment. As such they can act as a 'talent pipeline' into the workplace.

This policy outlines the types of workplace learning/ experience arrangements that the council support and pay and conditions that are applicable to these types of arrangements. Any proposed workplace learning/ experience opportunities need to be cleared and authorised by the Head of HR to ensure the arrangements comply with relevant legislative provisions and the council's policies and procedures

Each case will be assessed on its merits. The first task will be for the Head of HR to determine whether the person is a 'worker' or a volunteer. Workers will be paid for their work, volunteers do not get paid. Interns may be classified as 'workers' or volunteers depending on the nature and type of working arrangement but the Head of HR will assess each case and utilise the HMRC guidance and employment status classification tool determining the status of the intern in each case.

Volunteers (where a worker is free to come and go and usually does not constitute full time work) are not covered within the scope of this policy.

This policy does not address in detail the administrative or practical arrangements for setting up the different workplace learning/ experience options which will be determined on a case by case basis by HR with the appropriate service manager, however issues that need to be considered include whether there is a properly funded post in the structure, how long will the job be in place, what hours will the postholder work, what work will be undertaken including an outline programme, what will be the management and monitoring arrangements for this work.

### Types of Workplace learning/ experience opportunities

**Work Experience** – placements tend to last for a few weeks and primarily involve work shadowing and the completion of small tasks that do not form a core part of the council's work. These placements usually apply to Year 10 school students, but not always.

**Apprenticeships** - a formalised programme for young people linking practical work experience with a nationally recognised training qualification. Typically lasting up to 12 months working up to 4 full days a week with additional time off (usually 1 day a week) for training but the costs of training are partly supported by grants.

**Internships** – provide work experience opportunities for young people lasting a number of months, usually 3 – 12 months, work set hours and close to full time, complete specified work to goals/ deadlines, and make a valuable contribution to the organisation.

## **What type of work is suitable**

**Work Experience** – any basic level tasks in the workplace that expose the young person in a limited way to the types of work typical of the service within which they are working. Shadowing another officer in their day to day work is also a typical means of exposing young people to the type of work they may have to do in the workplace – this will tend to suit more physical/ practical outside visit types of work.

**Apprenticeships** – the national qualifications that support various workplace apprenticeships cover numerous types of jobs from accountancy and business administration to social care, gardening - and many more, but in terms of the types of roles that will be suitable to apprenticeships these will typically be entry level, lower graded roles within these types of professions.

**Internships** – these are suited to roles where a specific piece of work or project is required. Internships are typically offered to university graduates. Types of work that are suitable are often desk based research, supporting policy or professional type roles in formulating policy, organising meetings/ events, general research, etc.

## **Approval of these workplace learning/ experience opportunities**

Any proposed workplace learning/ experience opportunities need to be cleared and authorised by the Head of HR to ensure the arrangements comply with relevant legislative provisions and the council's policies and procedures. The first consideration will be in relation to whether there is a properly funded post within the structure. Any posts must be contained within the budgetary provision for the service. Where different funding arrangements are required, e.g. for political groups these will be identified and detailed before authorisation. It is also important that workplace learning/ experience opportunities are not created at the expense of existing employees, and that apprenticeships are created with a view to providing a real opportunity for employment within the council at the end.

In addition to the above points the Head of HR will also have regard to a number of other practical issues being resolved with the service manager including how long will the job be in place, what hours will the postholder work, what work will be undertaken including an outline programme, what will be the management and monitoring arrangements for this work. The specific administrative arrangements are not dealt with in detail within this policy but will be considered on a case by case basis by HR with the appropriate service manager for the different workplace learning/ experience options.

## **Pay and conditions arrangements**

**Work experience** – given the nature and type of arrangement there is no expectation of payment or reimbursement needed. However, in certain cases e.g. if the student is older it may be reasonable to reimburse travelling expenses.



***Apprenticeships*** – given the council's London Living Wage policy it is proposed to pay apprentices the London Living Wage rate (currently £8.30 per hour for workers aged 18 years or over, and £5.10 below this age) for hours worked, with no payment for any training hours. Entitlement to payment will apply to any apprenticeship lasting longer than 4 weeks.

***Internships*** – given the council's London Living Wage policy it is proposed to pay interns the London Living Wage rate (currently £8.30 per hour for workers aged 18 years or over) for hours worked. Entitlement to payment will apply to any internship lasting longer than 4 weeks.

## Equalities Impact Assessments (EqIA) Screening Tool

<b>Equalities Impact Assessments (EqIA) Screening Tool</b>			
1.	Name of the policy/project/function/major development/planning application: Workplace Learning/ Experience Policy		
2.	Brief summary of the above: (include main aims and proposed outcomes) The policy provides a framework for handling workplace learning/ experience arrangements. The policy outlines the different types of workplace learning/ experience opportunities that there are and the appropriate pay and conditions that are applicable to the different arrangements.		
3.	Lead Officer contact details: (name, job title, email, phone no.) Steve Davies, Head of HR, 020 8489 3172		
4.	Date 9 March 2012		
	<b>Response to Screening Questions</b>	Yes	No
5.	Could the proposed policy/project/function/staff restructuring/major development/planning application or the way it is carried out have an adverse impact on any of the key equalities protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation? Or relations between any equalities groups?		No
6.	Is there any indication or evidence (including from consultation with relevant groups) that different groups have or will have different needs, experiences, issues and priorities in relation to the particular policy/project/function/major development/planning application? Or do you need more information?		No
7.	If there is or will be an adverse impact, could it be reduced by taking particular measures?		N/A
8.	By taking particular measures could a positive impact result?	Yes	
			Please explain your answer. If answering YES but after consideration a full EqIA is not necessary please provide a detailed explanation <sup>1</sup> for NOT undertaking a full EqIA
			If different needs are identified please explain what action you will take to meet these.
			If adverse impact is identified please explain what action you will take to mitigate this.
			Youth unemployment is at record levels and in the borough it is at 11.7% compared to a London average of 8.1%. The council like many large

## Equalities Impact Assessments (EqIA) Screening Tool

<p>employers have strived to provide a number of workplace learning/ experience opportunities for young people including work experience, apprenticeships and more recently internships. By having a policy in place for managing the arrangements of these types of workers it is hoped that we can improve youth employment and also improve the councils workforce profile for 16-24 year olds which is below 2% at present compared to a borough profile of 11%.</p>	<p>If answering NO please explain* why not.</p> <p>The aims of the policy are to provide a framework for managing the arrangements of for handling workplace learning/ experience arrangements including work experience, apprentices and interns. At present there are no such workers therefore it is not feasible to undertake a full EqIA. Regardless of this such a policy will provide a potential positive impact and therefore undertaking a full EqIA could not bring any additional benefits and the EqIA is designed to mitigate negative impacts of which there are none with this policy.</p>
<p>9. As a result of this screening is a full EqIA necessary?</p>	<p>No</p>

<sup>1</sup>NB This explanation MUST be included in the Equalities comments in all subsequent reports relating to this issue.

Signed off: \_\_\_\_\_ Steve Davies \_\_\_\_\_

Name: \_\_\_\_\_ Steve Davies \_\_\_\_\_

Designation: \_\_\_\_\_ Head of HR \_\_\_\_\_

Date: \_\_\_\_\_ 9 March 2012 \_\_\_\_\_



## **EQUALITY ACT 2010 – THE PUBLIC SECTOR EQUALITY DUTY**

Section 149 of the Equality Act 2010 Public Sector Equality Duty states

(1) A public authority must, in the exercise of its functions, have due regard to the need to –

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) – A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) – Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) – The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) – Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

- (a) tackle prejudice, and
- (b) promote understanding.

(6) – Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) – The relevant protected characteristics are – age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.

(8) – A reference to conduct that is prohibited by or under this Act includes a reference to –

- (a) a breach of an equality clause or rule;
- (b) a breach of a non-discrimination rule.

