### Casual Workers Policy

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<th>Version 1</th>
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<tr>
<td>October 2015</td>
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1. **STATEMENT**

1.1 The Action Group values the Casual Workers that work for the organisation. The use of Casual Workers provides The Action Group with flexibility to meet the demands at peak periods and provide flexibility in covering emergency staffing issues. They also assist The Action Group better meet the outcomes for users and fits within the Self Directed Support model of flexible and creative service provision.

1.2 Where The Action Group uses Casual Workers these are primarily Casual Support Workers. This policy is designed to apply to all Casual Workers and not just for Casual Support Workers.

2. **DEFINITION**

2.1 There is no legal definition of a “Casual Worker”. The term often encompasses a variety of circumstances where an individual is employed flexibly. Casual Workers are often employed in situations where the requirement of workers fluctuates. Healthcare and social services are commonly types of organisations that require the flexibility of Casual Workers to keep the business running optimally. The term “employer” is used to mean those that provide work to Casual Workers and does not imply an employment relationship between parties.

2.2 Basically work is “casual” where there is no “mutuality of obligation” between the employer and the worker. This means The Action Group is not obliged to offer work to the worker and equally, the worker is not obliged to accept the offer of work. A Casual Worker is never an employee.

2.3 Even if assigned to a team, there is no obligation on The Action Group to provide work or for an individual to accept work.

3 **THE DIFFERENCE BETWEEN CASUAL WORK AND CONTRACTED WORK**

3.1 A person is employed on a temporary contract if he or she has been offered a contract of employment for a fixed period and has agreed to carry this out personally for that period. This fulfils the test of “mutuality of obligation” since the employer is committed to providing work and the worker is committed to accepting that work. Usually the temporary contract will be confirmed in writing.

3.2 The key test of ‘mutuality of obligation’ is whether the employer is obliged to provide work and the employee is obliged to accept the work offered.

<table>
<thead>
<tr>
<th>Casual Worker</th>
<th>Employee</th>
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<tbody>
<tr>
<td>Can accept or refuse shifts offered</td>
<td>Must make self available for all rota’d shifts* (Specific holidays or days off can be requested in advance but may be refused)</td>
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<tr>
<td>Wages each month will vary depending on hours worked</td>
<td>Standard monthly wage (plus overtime if</td>
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1 Law at work Notes
2 Law at Work Notes
3.3 The Action Group can withdraw an offer of work initially made to a worker.

3.4 It does not imply employee status to assign a Casual Worker to a particular team.

3.5 Even when a Casual Worker is placed in a team, The Action Group can offer that casual worker a shift in any other team at any time. The worker is always free to accept or reject the offer of work.

4 CONTINUITY OF SERVICE

4.1 Casual work does not count towards continuous service.

4.2 Some Casual Workers accept work frequently. Often these periods of work run together so that he or she has worked for The Action Group every day without a break for many weeks or months. This does not make the person an employee. This does not count as continuous service.
5. EXPERIENCE

5.1 If a Casual Worker takes up a contract, and if they have exceptional experience they may be awarded a single point increase on the pay scale. This is in accordance with the recruitment policy.

5.2 To be regarded as having experience the individual must have the equivalent of 1 years experience at 30 hours a week. For example a Casual Worker that has been working 5 hours a week must have 6 years experience to be considered for an increase.

6. CASUAL WORKERS - HOURS OF WORK

6.1 The Action Group considers a Casual Worker to be someone who is not contracted to working fixed regular hours or a set pattern of work, and usually fewer than 20 hours a week and no more than 2 Sleepovers a week. If a worker consistently carries out more than 20 hours and/or 2 Sleepovers per week, they will be offered a Part-time employment contract.

6.2 There are times when an individual is available for more than the 20 hours a week, for example students on holiday breaks or able to do more hours because a partner is on holiday. Therefore The Action Group will calculate whether the employee is consistently working 20 hours per week over a rolling 17 week period in line with The Working Time Directive averaging conventions.

6.3 If a Casual Worker is working over the 20 hours per week average (over 17 weeks) then this should become a contract. They would be accepting The Action Group’s terms and conditions and ‘flexible working’ patterns could include sleepovers, evenings, weekends and early mornings. A flexible working pattern would be negotiated with the manager, casual worker and HR and would be based on service delivery needs and in line with the Action Groups family friendly and ‘flexible working’ procedures.

6.3.1 The Action Group will phase in the 20 hour rule (6.3) as follows: The target timelines will be monitored by the Senior Manager with responsibilities for operations and amended to meet the needs of the organisation.

<table>
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<th>Maximum number of hours</th>
<th>Implementation dates</th>
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<tr>
<td>30</td>
<td>1st April 2016 – 30 September 2016 (operationally reviewed at this time)</td>
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<tr>
<td>25</td>
<td>1st October 2017 – 31st March 2017 (operationally reviewed at this time)</td>
</tr>
<tr>
<td>20</td>
<td>1st April 2017 (operationally reviewed at this time)</td>
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(The requirement for operational flexibility of the organisation and to manage emergency situations will be primary reasons for breaching the above time scale.)

6.4 Our recruitment process for CSWs and permanent workers are identical and we expect the same standards of performance from each. As such, we have always been very open to CSWs becoming permanent workers and vice versa when their personal circumstances change. Please be assured that you should never feel ‘trapped’ in a casual contract with us if a permanent one would suit you better and you are able to accommodate the rota demands involved. This of course is subject to the desired number of permanent hours being available in a team, but if you are already working regularly in that team on a casual contract then in most cases we should be able to accommodate those hours being changed over. Or alternatively there may be permanent hours available in a different team.
7. **LEGAL FRAMEWORK**

7.1 The employment status affords employment rights in employment legislation. The levels of status in the Action Group are:

7.1.1 **Casual Worker.**

Someone can be seen as a ‘worker’ when:

- When they provide their work or services personally (I.E not self employed)
- That there is **no** “mutuality of obligation”. That means that the employer does not have to offer any work and the worker can refuse any work offered.
- When the understanding either oral or in writing is consented by both parties.

7.1.2 **Contracted Employee.**

An employee is someone who is said to have an “irreducible minimum” of contract, they are:

- The worker must provide their work or services personally. They cannot allow a substitute to work for them.
- There must be a significant degree of control over the worker, where and when they work.
- There must be a “mutuality of obligation” between the employee and the employer to provide work and for the work to be done.

7.2 The Action Group as a Social Care provider complies with the Scottish Social Service Council’s³ (SSSC) code of Conduct and all staff whether Casual workers or contracted employees are bound by them.

8. **NON EXCLUSIVITY OF CONTRACT**

8.1 The Action Group does not exclude a Casual Worker from undertaking work with another employer. However, where an employee does work elsewhere, the Action Group needs to know how many hours per week are being worked elsewhere so that we can ensure compliance with the Working Time Directive and the support to vulnerable users is not affected as part of The Action Groups and the workers duty of care.

9. **EMPLOYMENT RIGHTS**

9.1 Casual Workers in The Action Group are employed as Workers and have some basic statutory rights. These include:

³ WWW.sssc.uk.com
• Protection against certain types of discrimination including race, sex, disability, part time status, sexual orientation and religious belief.
• Rights under the Working Time Regulations, such as paid holiday leave, restrictions on working hours and the right to rest breaks
• Right to the national minimum wage / National Living Wage (from 1st April 2016)
• Protection for whistle-blowing
• Health and safety protection
• Protection against unlawful wage deductions.

9.2 The Action Group employees have different levels of rights and protections including:
• Protection against unfair dismissal.
• The right of appeal and representation.
• Protection against Discrimination.
• The right to maternity, paternity and parental privileges.
• Statutory and occupational sick pay.
• Organisational T&C
• Redundancy rights.

9.3 Casual Workers will only be paid for the hours they have worked and for accrued Statutory Annual leave. They do not have service conditions nor continuity of employment.

10 MANAGEMENT OF CASUAL WORKERS

10.1 Casual Workers will be recruited by the Casual Resource Manager. They will work with other managers as part of this recruitment process. They will be recruited within The Action Group’s recruitment policy and procedures.

10.2 Once recruited and inducted by the Casual Resource Manager, they will be allocated to a “home team” where the team manager for that team will be responsible for offering them work. **Offers of work will be based on the availability given by Casual Workers** – normally 3 weeks in advance but also on a “as and when” basis, linked to service need. The Team Manager and Assistant Team Manager of the “home team” will be responsible for their supervision, line management, induction into the home team users/systems and booking them into any necessary training for the users within that team. They will be paid to attend necessary training and supervision. Some Casual Workers will work in more than one team. However their “Home team” manager will still retain line management responsibility, by liaising with the other team manager(s). The Casual Resource Manager will also oversee these arrangements.

10.3 The Casual Resource Manager will also book the Casual Worker onto mandatory training and check that all Casual Workers complete their training and refresher courses as necessary. The Casual Resource Manager will liaise with Team Managers to ensure Casual Workers are supervised as per TAG’s supervision policy.

10.4 The Casual Resource Manager will also offer individual and group supervision sessions to assist in ensuring the minimum supervision target of 6 supervision sessions in one year are
met for each Casual Worker. (1 supervision every 2 months). Managers will record the supervision meeting in the Causal worker’s supervision record. Managers must send all supervision and meeting notes to the Casual Resource Manager. Supervision notes for casual workers will be stored on cascade and not in paper files.

10.5 Casual support workers will be paid for hours worked and their time will be sent to payroll through The Action Group’s rota management system: Carista. Casual Workers are required to confirm their hours weekly with all relevant managers (if they have worked for more than 1 team).

10.6 Any practice issues regarding Casual Workers will be dealt with by the Home Team Manager in conjunction with the Casual Resource Manager.

10.7 It is to the home Team Manager that the Casual Worker should advise the hours they are available to work on a week by week basis.

10.8 The Casual Resource manager can reallocate Casual Workers to other teams if work becomes unavailable in the existing home team.

11 MANAGEMENT OF MISCONDUCT

11.1 Casual Workers are not subject to the disciplinary procedures of the organisation. This does not mean or imply misconduct will not be addressed.

11.2 Misconduct will be identified through several means and filtered to the appropriate manager to deal with.

11.3 The manager will arrange for supervision meeting as soon as possible after the incident, with the worker to discuss the alleged misconduct.

12. OUTCOMES OF SUPERVISION MEETING WITH MANAGER

12.1 The supervision meeting with the manager will have a range of outcomes, These include but are not exclusive:

12.1.1 Verbal Response. This is when a Casual Worker has not met the standards that The Action Group require the individual to meet. The Action Group’s Code of Conduct, differentiates levels of misconduct.

12.1.2 Recorded Response. This is an internal process, when the incident has resulted in misconduct that is serious enough to require monitoring of the workers behaviour/conduct. A note will be made in Cascade for a period of 12 months. This is primarily for compliance requirements. After 12 months the incident is ‘closed’ on Cascade.

12.1.3 Further Development. There are some circumstances where it is felt the individual requires extra organisational support, this could be attending extra training or learning for example.

12.1.4 Reflective Learning. As part of reinforcing why certain behaviours or actions are unacceptable, The Action Group may require that the worker reflects in writing on an incident so they can reflect how the incident could have been managed differently.
12.1.5 Withdraw any offers of work. If the incident is regarded as serious, The Action Group can withdraw any offers of work and cease to accept or offer any work. The Action Group’s Code of Conduct, differentiates levels of misconduct.

12.2 Two Strike Rule. If the worker is required to have a supervision and there is a requirement to record it on Cascade twice in a 12 month period, The Action Group will withdraw any offers of work and cease to offer the worker any work.

13. INVESTIGATIONS

13.1 The Action Group is committed to learning from mistakes and incidents as part of its compliance requirements.

13.2 Investigations are normally initiated when:

13.2.1 There has been a complaint from a Service User.

13.2.2 There has been a disclosure under whistle blowing.

13.2.3 There has been a grievance investigation initiated by an employee.

13.2.4 Where The Action Group believes that there is significant organisational learning to gained by initiation an investigation.

13.3 If any Casual Worker is implicated in an investigation and the recommendations are that disciplinary action is recommended, the actions in Section 11 and 12 will replace disciplinary actions.

14. RECORDING OF MEETINGS

14.1 Managers will record supervision meeting in the individual's supervision record.

14.2 If a Casual Worker is reprimanded for misconduct a record of it will be recorded on the HR information management system in accordance with the Data Protection Act. All records will remain 'Live' for 12 months before becoming 'closed'.

14.3 All investigations will be held in accordance with current policies and procedures and in accordance with the Data Protection Act.

14.4 There may be times were compliance requirements require The Action Group to inform the Scottish Social Service Council (SSSC), Local Authority Contract Officers and the Care Inspectorate (CI) of the misconduct and what was done about it. In some cases we are required to sent any supporting documentation we have on the incident to these bodies.

15. COMPLIANCE
The Action Group as a Social care provider is compliant to the guidance and codes of conduct of other organisations.

15.1 **Scottish Social Services Council (SSSC)**

The SSSC regulates Social Care Workers and has a national level code of conduct that all Casual Workers and employees providing Social care must comply to.

The Action Group has to make the SSSC aware of any misconduct of 'registered workers' and any worker that has potentially compromised the safety of any Service Users or any misconduct that has resulted in the withdrawal of work to the worker.

The SSSC as an autonomous body may initiate an investigation or hearing into a Casual Worker’s behavior or conduct out with the scope of The Action Groups control.

15.2 **Care Inspectorate**

The Care Inspectorate regulates and inspects care services in Scotland to make sure that they meet the right standards. They also jointly inspect with other regulators to check how well different organisations in local areas work to support adults and children.

The Care Inspectorate is accountable to ministers, it is their job to assure and protect everyone that uses these services.

Their job is not just to inspect care services, but help them improve. This means they offer advice, guidance and suggestions to help services reach the highest standards. If a service isn't performing to the levels they require, they do not hesitate to act. The Care Inspectorate can issue recommendations for improvement and requirements for change and check these have happened. If a service doesn't improve, they can close it down. The Care Inspectorate can also impose conditions on care service meaning they must start or stop doing something specific.

15.3 **Disclosure Scotland**

Disclosure Scotland obligate organisations to report to them when misconduct causing harm to Service Users or a Casual Worker has been withdrawn from being used.

16. **CHANGE OF CONTRACTS**

16.1 The Action Group recognises that a casual contract offers considerable flexibility to the worker and most Casual Workers are happy with the arrangement.

16.2 Any Casual Worker can request to change their contract to become an employee. The Action Group will proactively work with the individual to meet their requirements if this is possible.

16.3 If an individual elects to have employee status they will start at the bottom of the Qualified or Unqualified Support workers scales (subject to level of experience). They do not have any continuity of service regardless of how long they have been a Casual Worker with The Action Group. (5.1 and 5.2 may apply).
16.4. There will be a gap of one calendar week between contracts. This is to ensure that any continuity of service is broken.

17. SICKNESS

17.1 Casual Workers who decline or leave work early because of illness, are simply unavailable for work and will not normally be paid for any hours not worked.

17.2 Casual Workers may be eligible for Statutory Sick Pay if they qualify under HMRC rules. If the Casual Workers believe they have eligibility they must contact their Home Team Manager.

17.3 Casual Workers, if claiming SSP, and for Action Group purposes:

17.3.1. Self declare any period of absence to their Home Team Manager.

17.3.2 If the absence is longer than 7 day they must produce GP ‘Fit Note’ (commonly known as sick line).

17.4 Any Casual Worker who has self declared sick and has not provided a ‘Fit Note’ at the 7 day point will be regarded as ‘Fit’ and the casual worker will have to confirm availability with their manager.

17.5. Failure to notify Home Team Manager or to provide a GP ‘Fit Note’ may result in SSP not being paid.

17.6 Individuals can still be removed from the Casual List at the 3 month point (see section 19)

18. GRIEVANCE

18.1 A Casual Worker can put in a grievance against bullying or discrimination.

19. REMOVAL FROM THE CASUAL LIST

19.1 All Casual Workers should inform the Casual Resource Manager of any periods where they know that they will not be available to work of longer than 6 weeks. If a Casual Worker becomes ‘dormant’ having stopped undertaking work without informing the Casual Resource Manager they can and will be removed from the casual list and cease to be a worker for The Action Group.

19.2 If a Casual worker has not undertaken any work with the organisation in 3 calendar months, they will be sent an email by the Casual Resource Manager. This email will advise them they are at risk of being removed from the casual list or ask them if they want to be removed from the casual list. If the individual does not respond within 14 days they will be removed from the casual list.

19.3 If a Casual Worker knows in advance that will not be able to undertake any work for a period of up to six months (for example travelling abroad) and they want to return to casual work they must notify the Casual Resource Manager of a return date. If they do not return to work within this six month period then they will be removed from the list.
19.4 Any Casual Worker who is removed from the list due to inactivity but wishes to be re-engaged will have to submit a further application to HR and follow the original recruitment process again.

20. **RIGHT OF APPEAL**

20.1 The Casual Worker does not have a right of appeal if The Action Group withdraws or does not make an offer of work, whether or not as a result of any supervision outcome meetings.