

## **APPOINTMENTS AND CONDITIONS OF SERVICE COMMITTEE**

**10 November 2020**

### **Report of the Director of Organisation Development and Policy**

## **REVIEW OF POLICIES ON THE USE OF FIXED TERM CONTRACTS AND SECONDMENTS**

### **1. Purpose of the Report**

To seek approval for revised policies on the use of Fixed Term contracts (FTCs) (Appendix 1) and Secondments (Appendix 2).

### **2. Background Information /Introduction**

The existing 'Managers' Guidance on Fixed term (FT) employees' was created in January 2013, and last amended in June 2018. Changes in case law and legal advice relating to the equal treatment of FT employees require the policy to be reviewed. The Secondment Procedure has been in place since January 2018 and is closely aligned to the Policy on FTCs as both relate to arrangements for meeting temporary resource requirements within the council.

#### **a) Definitions**

A **FT contract** is a contract that comes to an end:

- Upon reaching a specific date
- When a specified task has been completed
- When a specified event does or does not occur.

The end of a FT contract is a dismissal in law. The reason for the dismissal will be either redundancy or 'some other substantial reason', depending on the reason for the FT set out in the employee's contract.

A **secondment** is the temporary movement or 'loan' of an employee to another part of the organisation (or to/from an external organisation) for the benefit of the employee and the organisation, mutually agreed in advance between the employee substantive manager and secondment manager. The employee's substantive job remains available for them to return to at the end of the secondment.

#### **b) Equal Treatment**

The council must ensure that employees on FT contracts are not treated less favourably than comparable employees on a permanent contract, under the Fixed term Employees (Prevention of Less Favourable Treatment) Regulations 2002. There is no qualification period for claims of less favourable treatment.

**c) Aims of the review:**

**To ensure alignment between the policies, both have been reviewed to ensure that:**

- The risk of legal challenge is minimised, and current case law is reflected as outlined above.
- FT contracts and secondments are used appropriately across the council to support workforce planning and business effectiveness.
- FT employees are treated consistently within organisational reviews.
- Both policies are aligned and support succession planning, talent management and career development.

**d) Consultation**

The Trade Unions and Employee Network groups have been consulted in the revision of these policies. The changes have been informed by Legal advice, case law, and current experiences of managing FT contracts and secondments from a manager, employee and HR perspective.

**3. Finance Considerations**

Implementation of the revised policies will reduce the risk of the council incurring costs as a result of employee claims of unequal treatment or unfair dismissal, and support the more efficient and effective use of fixed term contracts and secondments within the workforce.

**4. Legal Considerations**

The review of the fixed term contract policy has been driven by changes in case law and legal advice relating to the equal treatment of FT employees and will ensure that employees on FT contracts are not treated less favourably than comparable employees on a permanent contract, under the Fixed term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

**5. HR Considerations**

The revised policies support the appropriate and consistent use of fixed term contracts across the workforce and the people priorities within the draft People Strategy.

**6. Recommendation**

That the committee approve the revised Fixed Term Contract and Secondment Policies.

**Emma Crapper**  
**Director of Organisation Development and Policy**

# FIXED TERM CONTRACT POLICY

September 2020

**Version History**

<b>Version</b>	<b>Date</b>	<b>Detail</b>	<b>Author</b>
1.0	August 2020	Policy developed to replace existing Manager Guidance on Fixed Term Contracts	Tanya Causebrook

**Links and Dependencies**

Related Resourcing Policies including Redundancy and Redeployment Policy, Recruitment and Selection Policy and Secondment Policy.

## Fixed Term Contract Policy

### 1. Purpose

The council needs a skilled and confident workforce able to deliver excellent services to improve life for local people. Fixed term contracts can be an effective tool for matching workforce capacity with service/business needs. This policy outlines how fixed term contracts should be used within the council appropriately, effectively, and in line with relevant employment legislation.

### 2. Scope

This policy applies to all employees of Derbyshire County Council except those employed in schools where the Governing Body is the employer, who are covered by the relevant policies for schools.

All employees should have equal access to the policy.

### 3. Equal Treatment

The Council is committed to ensuring that employees on fixed term contracts are not treated less favourably than comparable employees on a permanent/open ended contract, as provided for in the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

Legislation requires that fixed term employees:

- are employed on the same terms and conditions and be subject to the same policies and procedures as comparable permanent employees.
- have the same access to the Redundancy and Redeployment Policy and redeployment provisions as permanent employees. This means that fixed term employees whose contract is ending, and who are at risk of redundancy, will have the same access to redeployment opportunities as permanent employees, including to both permanent and fixed term posts.
- will be able to apply for internal vacancies from the first day of their employment.
- must be given the same opportunities for training and development as a comparable permanent employee (different treatment may be justified if the costs are disproportionate to the benefit received).

The regulations do not apply to:

- apprentices
- employees on certain government training schemes
- students on operational placements of one year as part of a higher educational programme

- agency workers.

#### 4. Key principles

##### a. Definition of a Fixed Term Contract

Fixed term contracts are contracts that come to an end:

- Upon reaching a specific date
- When a specified task has been completed
- When a specified event does or does not occur

##### b. Alternatives to fixed term contracts

Alternatives to using a fixed term contract should always be considered, with the following list not being exhaustive;

###### i) Meeting the gap within the team

Where the gap in resources is unplanned, and will last less than 3 months, cover through existing resources should be considered in the first instance e.g. reallocating essential duties to other members of the team where appropriate, part time employees increasing hours, or short term secondment arrangements enabling team members to temporarily undertake all or some of a more senior role ('acting up'). Managers should ensure that workloads across the team remain reasonable.

###### ii) Resources@Derbyshire

Where the gap cannot be met within the team, short term Business Services support for up to 8 weeks can be provided by Resources@ Derbyshire if this is appropriate for the cover required.

###### iii) Internal secondments

For longer term cover requirements internal secondments should be encouraged for individual career development (see [Secondment Policy](#)). Secondments enable existing permanent employees to undertake temporary/fixed term assignments in a different work area and should not be for longer than 2 years. Management approval for a secondment is required, as the employee is entitled to return to their substantive post at the end of it.

Where a manager is not able to agree a secondment, and an existing employee chooses to move from a permanent to a fixed term contract to undertake the work, the employee must be made aware of the implications of their contractual status changing from permanent to fixed term, including that they will not have any entitlement to return to their substantive post at the end of the fixed term contract.

##### c. Using fixed term contracts

Where there is a specific, business related reason, a fixed term contract may be more appropriate than a permanent contract.

Fixed term contracts should only be used in the following circumstances:

- To cover periods of absence of longer than four weeks, e.g. maternity, parental or adoption leave, long term sickness or cover an absence due to another employee being on secondment.
- Where there is short term funding for a post or project, which is unlikely to be extended.
- To complete a task/project within a stated time period, which cannot be resourced from within the existing permanent workforce.
- To provide specialist expertise or experience in the short term, to support a specific project or piece of work.

Fixed term contracts will not be used to assess an employee's capability to perform effectively.

Every fixed term employment contract must include either:

- a date on which it is due to expire, and the reason for this, or
- an event which will cause it to end (for example someone returning to work after an absence which is being covered by the fixed term appointment).

As the reason or event set out in the contract determines the process to be followed, at the end of its fixed term, it is critical that this is accurate.

Fixed term employees will be kept informed, within relevant timescales, of the likelihood of their contract being renewed or ended, and reasons for this, with the aim of minimising uncertainty wherever possible.

#### **d. Length of fixed term contracts**

Fixed term contracts within the council should not normally exceed 2 years. An exception would be when a post is funded through specific external funding for over 2 years, but is not expected to continue long term.

Fixed term employees with more than 2 years' service with the council (or an associated employer under the Redundancy Payments (Continuity of Service in Local Government) (Modification) Order 1999) will be entitled to a redundancy payment if the reason for the contract ending is redundancy (see Redundancy Policy).

Fixed term employees with less than 2 years' service, or those where the reason for the fixed term contract ending is not redundancy, but 'some other substantial reason' will not be entitled to a redundancy payment (see g. below).

After 4 years of successive contracts, legislation determines that a fixed term contract may become permanent unless the continued use of a fixed term contract can be objectively justified. In cases where an employee has been employed for four years or more on successive fixed-term contracts the employees' contractual status will be reviewed in consultation with HR, to determine whether transfer to a permanent contract is appropriate. The factors considered will include the nature and grade of the fixed term roles, location and context.

A continuation of a series of fixed term contracts beyond four years would only be justified in exceptional circumstances.

#### **e. Recruiting to fixed term posts**

Fixed term posts should be advertised and appointed to following the appropriate council resourcing policies and processes, to ensure robust decisions and high quality appointments.

The reason for and length of the fixed term post should be clear throughout the recruitment process and in correspondence with the successful candidate.

#### **f. Renewing or extending a fixed term contract**

Extension/renewal of a fixed term contract must be justifiable. It must be clear whether the original reason for the fixed term contract still applies, or whether circumstances mean it has changed.

The reason for the extension/renewal of the fixed term must be clear in the employee's contract. This will determine the reason for and process to follow when ending the contract.

The employee currently employed under the contract should be offered the extension or renewal.

The successive renewal of fixed term contracts should be avoided. If an employee's fixed term contract is extended beyond four years, it is likely that the contract will need to be converted to permanent (see d. above)

#### **g. Ending a fixed term contract**

Not renewing a fixed term contract when it comes to an end is a dismissal in law.

The reason for fixed term set out in the employee's contract will determine the reason for the dismissal which will be either:

**i) Redundancy** – where the requirement for the work to be undertaken has diminished or ceased e.g. a specific task has been completed, or project work dependent on external funding ends, once the funding ceases.

Where a fixed term contract ends due to redundancy, the Redundancy and Redeployment Policy should be followed in the same way as it would for a permanent employee individually at risk of redundancy.

**ii) Some other substantial reason (SOSR)** e.g. the substantive post holder has returned to work following a period of leave, or a permanent employee is recruited.

A fair dismissal process must be followed.

Poor performance is not acceptable grounds for not renewing a fixed term contract. Any concerns should be dealt with in the same way as for permanent employees.

#### **h. When a fixed term post becomes permanent**

The options are:

- i)** to re-advertise the post as permanent through the Council's recruitment and selection process or,
- ii)** to slot/offer the employee currently in the post the permanent role, as long as:
  - The employee was offered the fixed term contract through a competitive process after recruitment through the council's normal recruitment and selection process (as a minimum the fixed term post should have been advertised internally)
  - The duties of the job they were recruited to have not changed and the grade is the same
  - The person in the role is not an agency worker, on a relief contract or any other contract that classifies them as a 'worker' rather than 'employee'.
  - There are no employees 'at risk' with priority status who should be considered for the role.

### **5. Fixed term employees and organisational reviews**

Fixed term employees:

- whose contract is due to end **before** the date an organisational review is implemented will not be included within the pool for redundancy and any 'selection out' process as their contract already has an end date. However, if there is an appointment in process as part of the review, employees on fixed term contracts will be considered alongside other colleagues.
- whose contract is due to end **after** the implementation date of an organisational review will be included in the review process, pool for redundancy and any 'selection out' or 'appointment in' process.

Employees on fixed term contracts should normally be included in the consultation process for organisational reviews.

Fixed term employees must not be selected for redundancy purely on the basis of being fixed term, unless it is considered that the selection can be objectively justified and is appropriate, following HR advice.

### **6. Roles and responsibilities**

#### **a. Managers must:**

- Ensure there is a justifiable reason for appointing a post on a fixed term basis.
- Clearly explain the fixed term nature and length of the contract during the recruitment process, and in related correspondence.

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- Ensure that all fixed term employees understand the nature of their contracts and keep them informed of the likelihood of extension/renewal and the reasons for this.
- Follow the process for ending or not renewing a fixed term contract within timescales – starting at least 3 months before the contract is due to end (see further manager guidance).
- Seek advice from HR before extending fixed term contracts, particularly when fixed term employees reach 4 years in a single or successive fixed term contracts with the council.
- Ensure that fixed term contracts are used and managed effectively, in line with this policy, within their area of responsibility.

### **b. HR will:**

- Work with managers to implement effective resourcing solutions to support service delivery.
- Provide guidance to managers on implementing this policy in specific situations including determining whether the use of a fixed term contract is appropriate, termination of a fixed term contract, and redundancy liability.
- Notify managers of an employee's fixed term end date to allow appropriate notice to be given and processes followed.
- Monitor the use of fixed term contracts across the council to assess risk and compliance with policy.
- Review this policy to ensure accurate and timely advice to managers.

### **c. Employees should:**

- Have a clear understanding of the fixed term nature of their employment and reasons for it.
- Raise any issues relating to their fixed term employment with their manager at the earliest opportunity.
- Not have any expectation that their employment will be extended unless they have received formal confirmation of this.
- Have the right to representation/support.

# SECONDMENT POLICY

September 2020

<b>Version History</b>			
<b>Version</b>	<b>Date</b>	<b>Detail</b>	<b>Author</b>
1.0	January 2018	Finalised new Secondment Procedure	Jeanette Moore
2.0	August 2020	Revised to align with Fixed Term Contract Policy and retitled 'Secondment Policy'.	Tanya Causebrook

<b>Links and Dependencies</b>
Related Resourcing policies including Fixed Term Contract Policy, Redundancy and Redeployment Policy, Recruitment and Selection Policy.

## DERBYSHIRE COUNTY COUNCIL

### SECONDMENT POLICY

#### 1. Purpose

The secondment policy supports managers in adopting a consistent, fair and effective process when considering and managing secondments.

This policy should be read in conjunction with other related employment policies.

#### 2. Scope

This Policy applies to all employees of Derbyshire County Council except those employed in schools where the Governing Body is the employer, who are covered by the relevant policies for schools.

All employees should have equal access to the policy.

#### 3. Introduction

A secondment is the temporary movement or 'loan' of an employee to another part of the organisation (or to/from an external organisation) for the mutual benefit of the employee and the organisation. The employee's substantive job remains available for them to return to at the end of the secondment.

A secondment agreement is not a fixed term contract. Separate guidance on using fixed term contracts can be found [here](#).

Short term secondment/fixed term opportunities for longer than three months should be filled in accordance with the relevant Council resourcing policies and processes. Employees are encouraged to apply for these opportunities on a secondment basis, returning to their substantive job at the end of the secondment.

Secondments must be mutually agreed in advance between the employee, substantive manager, and secondment manager. There is no automatic right to be released to undertake a secondment, however managers are encouraged to support requests.

##### a. Benefits

Managers are encouraged to release employees for secondments, as this benefits both the employee and the organisation by:

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- Providing a short-term resource such as for specific projects, fluctuating service needs, maternity leave cover, staff shortages, etc.
- Enabling employees to gain enhanced skills, knowledge and confidence to support career development and succession planning.
- Making the best of our resources and tapping into the talent and creativity of our employees.
- Strengthening a culture of flexibility and supporting employees to embrace change.
- Supporting service improvement and 'one council' working across all departments.
- Fully utilising expertise and sharing skills and knowledge across the organisation and wider community.
- Supporting partnership working.
- Helping to attract employees who are flexible and keen to develop by actively promoting learning and development.

Where a manager is not able to agree a secondment, and an existing employee chooses to move from a permanent to a fixed term contract, the employee must be made aware of the implications of changing their contractual status from permanent to fixed term, and that they will not have any entitlement to return to their substantive post at the end of the fixed term contract.

### **b. Types of secondment**

Secondments will be either:

#### **i) Internal - within or between sections/departments within the council:**

**a. On a short term basis for less than three months** where an employee is seconded into a temporary promotion within the same team, undertaking all or some of a more senior role, ('acting up') to cover a short term absence, or pending recruitment. Short term secondment opportunities are not always advertised unless there is likely to be interest from a number of people in a team. If the duration is anticipated to be over three months, it should normally be advertised as a temporary/fixed term post.

If all the duties of the more senior role are being covered then the full increased pay rate will be paid. If only some of the duties are being covered then seek HR advice as this will need to be evaluated. A variation to contract relating to the temporary promotion will be issued to the employee by HR Services and arrangements for pay agreed in accordance with the appropriate terms and conditions.

**b. Or, on a longer term basis for up to two years.**

**ii) External** - from the Council to an external organisation\* where the Council will remain the employer and the secondee will continue to be subject to the Council's policies and procedures.

**iii) Inward** - from an external organisation to the Council\* where the Council is the Host, not the employer.

\*For a secondment into/out of the Council, see section 7. below, and seek HR advice.

A secondment can be either full time, for the whole working time of the secondee, or part time, where part of the secondee's working time is spent in his/her substantive job, and part in the seconded job.

A secondment arrangement would **not** apply in the following circumstances:

- Short term placements, such as work shadowing, which are arranged informally between teams.
- Work tasters.

#### **4. Duration**

**a. Length of secondment**

A secondment will typically be for a period of up to one year but may be for up to two years. Secondments will only be extended beyond two years in exceptional circumstances. All parties will need to agree any extension to the original secondment which should be confirmed through the relevant resourcing approval process. Services should monitor and manage secondments effectively to ensure they do not continue indefinitely.

Managers should seek Resourcing Manager advice prior to offering secondment opportunities which are for more than two years, or extending a secondment beyond two years. Consideration must be given as to whether the job should continue as a secondment or be appointed to on a permanent basis through the process below.

At the end of the secondment the employee and their manager should reflect on and capture the learning, skills and experience the employee has gained, and the benefits to both them and the service.

**b. If the secondment opportunity becomes permanent**

A seconded employee does not have an automatic entitlement to be 'slotted' into the post they are seconded into if it becomes permanent. However, the manager should consider which of the following options most effectively meets service needs:

- i) Advertise the post as permanent through the appropriate Council resourcing process (if the secondee is unsuccessful then they return to their substantive post) or,
- ii) slot/offer the employee currently seconded into the post the opportunity on a permanent basis, as long as:
  - The employee was offered the secondment originally through the appropriate resourcing process (as a minimum the opportunity must have been advertised internally).
  - The duties of the job they were recruited to have not changed and the grade is the same.
  - The person in the role is not an agency worker, on a relief contract or any other contract that classifies them as a 'worker' rather than 'employee' (if required, seek further clarification from Resourcing Managers on the definitions of 'employee' and 'worker').
  - There are no employees 'at risk' with priority status who should be considered for redeployment into the role.

<b>5. Roles and Responsibilities</b>
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**a. Secondment Manager**

- Advertises/fills the opportunity through the appropriate resourcing process giving suitable employees equal opportunity to apply.
- Meets the salary costs of the secondee, including any contractual/statutory sick pay, maternity/paternity pay.
- Identifies any contractual changes for the duration of the secondment, discusses these with the employee, and seeks legal advice if required.
- Ensures that HR Services are notified and any required pre-employment checks, e.g. DBS check/medical, are carried out before the secondment starts.
- Ensures any reasonable adjustments are put in place prior to the commencement of the secondment.
- Provides an induction, in line with the relevant induction policy and process, and any training and development that may reasonably be required to carry out the job.
- Agrees objectives relating to the seconded job, which should be reflected in the secondee's 1:1, review or supervision meetings.
- Assumes day to day management responsibility, including for leave, absence.

- Reports to the substantive manager any performance, health and safety, grievance or disciplinary matter that relates to the secondee which arises out of, or is in any way connected with, the secondment.
- Has responsibility for reviewing the secondment, and contacts the substantive manager and the secondee at least three months prior to the secondee's proposed return date to their substantive job.
- Reflects with the secondee on the learning, skills and experience gained, and benefits to the individual and service, to evaluate the success of the secondment and make recommendations for further development, where appropriate.
- If the secondment arrangement is with an external organisation, liaises with Finance and the external organisation to ensure that appropriate cross charging arrangements are in place.

**b. Substantive Manager**

- Makes the decision whether to 'release' the employee from their substantive job, for the period of the secondment, supporting requests for release whenever possible.
- In making the decision considers the temporary backfill arrangements, impact on the team, additional training required and whether to cover the absence on a fixed term contract basis (see Policy on the Use of Fixed Term Contracts.)
- If refusing a secondment request, has clear business reasons for the decision and explains these to the employee.
- Makes arrangements to ensure the secondee is kept in touch regularly with general developments affecting their substantive job.
- Includes the secondee fully in any consultation process which affects their substantive job.
- Monitors relevant statutory requirements for maintenance of professional registrations in consultation with the secondee
- Meets with the secondee prior to their return date
- Ensures that the secondee understands that if the post they are seconded to is at a higher grade that they will on return to their substantive role, go back to their substantive grade.
- On return, discusses the value of the secondment, in terms of the learning, skills and experience gained, where appropriate, and benefits to the individual and service, and resets their role and development objectives.

**c. Employee**

- Discusses any secondment opportunities with their substantive manager and gains approval for release prior to applying.
- If a release on secondment, or extension to a secondment, is not agreed, and the employee wishes to be considered for the job on a fixed term contract basis, discusses with their substantive manager the implications of doing so on their employment contract, with advice from HR if required.

- At the end of the secondment reflects on and captures the learning, skills and experience they have gained, where appropriate, and discuss this, and how it can benefit the service, with their manager
- Maintain professional registration/s
- Undertake any training required when returning to their substantive post to ensure they are up to date.

## **6. Contractual arrangements**

- A secondment agreement for secondments over 3 months will be formally issued by HR Services (HRS). Short term secondments of 3 months or less will receive a letter confirming the arrangements of the short term secondment.
- The salary, grade and terms and conditions of employment of the seconded employee will be those applicable to the secondment post. These may be more generous than those applying to the seconded employee's substantive post.
- The employee should be made aware of any contractual changes for the duration of the secondment.
- The secondment agreement must include a break clause.
- If there is no agreement from the substantive manager to release the employee from their substantive job, or to extend an existing secondment agreement, the employee may decide to accept an offer of a fixed term contract instead and resign from their substantive job. There will be no right of return to their substantive job and a fixed term contract will be issued.
- If a secondment is to be extended (see section 4), the secondment manager must obtain agreement from the substantive manager, employee, and through the relevant resourcing approval process, prior to contacting HR Services and completing a 'Generic Employee Variation' form on SAP Workplace. HR Services will then issue a Secondment Extension.
- If the secondment is required to end early for any reason, instigated by any party e.g., there is a change to service requirements, the secondment will end with the agreement of the secondment manager and substantive manager, subject to a minimum notice period to be agreed between all parties, usually one month. If the employee resigns from Derbyshire County Council (DCC) employment, the normal contractual notice period will apply.
- Employees seconded to external organisations retain full continuity of employment with DCC and will remain an employee of the Council throughout.

## **Organisational reviews**

### **a. Substantive post affected by a review**

If the employee's substantive job is included in a restructure during the secondment period, the employee will automatically be fully included in any consultation or process which affects the job, including the redeployment process where this applies.

If the substantive job is deleted from the structure, the term "secondment" will no longer apply as there is no substantive job to return to. The secondee may continue in the secondment role until their last day of notice, provided that this was agreed with all parties and the notice provisions of the secondment were adhered to. Following this, if the employee continued in the temporary job, this would have to be on a fixed term contractual basis (which would also include a statutory four-week trial period). At the end of the fixed term contract period, employment would be terminated unless an alternative job could be secured. HR advice should be sought and the employee made fully aware, in writing, of the implications of the changed contractual status, prior to them being asked to make a decision as regards to their continuation, or otherwise, in their substantive job.

### **b. Secondment affected by a review**

Normally, employees seconded into an area which is subsequently restructured or reviewed, should return to their substantive post, and not be included in the ring fence.

## **7. External secondments**

### **a. To an external organisation**

A "template" Agreement should be used (drawn up by Legal Services and issued by HR) in cases where an employee is seconded to an external organisation. The general principles in the previous sections of this procedure will still apply to external secondments (both into and out of DCC), where appropriate. HR and legal advice should always be sought in relation to any external secondment to ensure that the "agreement template" is appropriate to the circumstances and takes into account any changes in the law. Advice should also be taken where the external secondment is to be to an organisation with whom DCC has an arrangement such as an honorary contract or a s.113 agreement (e.g. NHS).

### **b. From an external organisation**

The contractual agreement for a secondment into DCC should be considered in collaboration with the employing organisation who will be

aware of the employee's current contractual terms and conditions. HR and legal advice should be taken on each occasion and it may be possible for DCC (Legal Services and HR) to provide the agreement in particular circumstances. Advice should also be taken where the external secondment is to be from an organisation with whom DCC has an arrangement such as an honorary contract or a s.113 agreement (e.g. NHS).

**c. Costs**

For both external and inward secondments, specific consideration must be given in relation to cross charging e.g. the reimbursement of salary/contractual and statutory sick, maternity or paternity pay.