

# WEST DUNBARTONSHIRE COUNCIL

## Report by the Director of Corporate Services

Corporate & Efficient Governance Committee: 30<sup>th</sup> September 2009

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**Subject: Casual Worker Policy**

### **1. Purpose**

- 1.1** This report seeks to update the Corporate and Efficient Governance Committee on the development of a “Casual” Workers Policy and Guidance for Managers which will replace the Employment of Occasional Workers Policy. The report advises on the changes which have been made to the Policy in response to legislative changes and pension provisions. CEGC is asked to approve the revised policy.

### **2. Background**

- 2.1** In February 2005 the Council approved a policy for all Occasional Workers which applied to occasional workers across the Council.
- 2.2** Since then there has been a considerable amount of case law which has provided greater clarification as to what constitutes a casual worker. Work is “casual” where there is no “mutuality of obligation”. This means the Council is not obliged to offer work to the individual. Equally the individual is not obliged to take work.
- 2.3** In addition there have been changes to statutory leave and changes to the Local Government Pension Scheme which affect casual workers.

### **3. Main Issues**

- 3.1** The “Casual” worker policy has been developed to ensure that the policy covers individuals who work for the Council on a casual, “ad hoc” basis. This ensures that there is a clear separation of employees and casual workers. In the case that the employment relationship becomes more than a casual arrangement then a change in contract would be required. Therefore it is critical that Managers understand the distinction between casual and temporary contracts so that the correct contracts are issued.

- 3.2 From the 1<sup>st</sup> of April 2009 casual workers were not eligible to join the Local Government Pension Scheme. Previously casual workers could join if they requested.
- 3.3 From the 1<sup>st</sup> of April 2009 the statutory entitlement for annual leave has increased to 28 days per annum. Casual workers do not qualify for contractual leave and therefore the calculation table has been updated to reflect the changes in statutory entitlement.
- 3.4 The policy clarifies that the casual worker may be eligible for Statutory Sick Pay on submission of a medical certificate and depending on the hours worked but not Occupational Sick Pay.
- 3.5 The policy was issued to the Trade Unions for feedback on the 10th of March 2009.
- 3.6 In accordance with Council's procedures an impact assessment has been undertaken by the relevant equalities officers. (Summary attached – appendix 1)

#### **4. Personnel Issues**

- 4.1 This policy will impact on current occasional workers and new casual workers. There are currently approximately 220 casual workers within the Authority.
- 4.2 When the policy has been approved it will be communicated to all managers via the communication framework.

#### **5. Financial Implications**

- 5.1 The additional cost is related to the statutory increase in annual leave entitlement.

#### **6. Risk Analysis**

- 6.1 There is a risk of not employing people on the correct contract basis which will decrease on the implementation of the "Casual" Workers policy.

#### **7. Conclusions and Recommendations**

- 7.1 The occasional workers policy requires to be updated in order to meet legislative requirements and council needs.
- 7.2 The CEGC are asked to approve the draft casual workers policy.

.....  
**Joyce White**  
**Director of Corporate Services**  
**Date: 30<sup>th</sup> September 2009**

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**Person to Contact:** Julie McBride, Assistant HR Officer  
Corporate Services - HR and OD ext 7534  
Julie.McBride@West-Dunbarton.gov.uk

**Appendices:**

1. Impact Assessment
2. Casual Workers Policy
3. Guidance for Managers
4. Accrual Table for Annual Leave for Casual Workers
5. Template Casual statement of working arrangements

**Background Papers:** Nil

**Wards Affected:** No wards are affected



## **Briefing Note to Corporate and Efficient Governance Committee**

**To: All members of the CEGC**

**Person to Contact: Julie McBride      Date: 30<sup>th</sup> September 2009**

**Telephone: Ext: 7534**

**Subject: Casual Workers Policy**

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**1.**

### **Background:**

Since February 2005, when the Occasional Worker Policy was introduced there has been new case law regarding what constitutes a casual worker and updates in legislation.

This has made it necessary to revise the existing policy.

Consultation was sought from the Trade Unions on the revised policy on the 10<sup>th</sup> of March 2009 and no feedback was received.

**2.**

### **Main Issues:**

The Casual worker policy has been developed to ensure that the policy covers individuals who work for the Council on an "ad hoc" basis. This will ensure that there is a clear separation of employees and casual workers. In the case that the employment relationship becomes more than a casual arrangement then a change in contract would be required.

From the 1<sup>st</sup> of April 2009 casual workers were not eligible to join the Local Government Pension Scheme. Previously casual workers could join if they requested.

From the 1<sup>st</sup> of April 2009 the statutory entitlement for annual leave has increased to 28 days per annum. Casual workers do not qualify for contractual leave and therefore the calculation table has been updated to reflect statutory entitlement.

The policy clarifies that the casual worker may be eligible for Statutory Sick Pay on submission of a medical certificate and depending on the hours worked but not Occupational Sick Pay.

3.

**What it means for WDC:**

The occasional workers policy requires to be updated in order to meet legislative requirements and council needs. There is a risk of not employing people on the correct contract basis which will decrease on the implementation of the “Casual” Workers policy.

This policy will impact on current occasional workers and new casual workers.

When the policy has been approved it will be communicated to all managers via the communication framework.

## Appendix 1      Summary Report Proforma

The summary report proforma should be used to summarise the issues and actions identified in the impact assessment. It should be included as a background paper for committee reports on policies or functions which have been impact assessed. It will be published on the WDC web site.

1	Title of Policy or function	<b>Casual Workers Policy</b>
2	Lead Department	<b>HR and OD</b>
3	Responsible Officer	<b>Julie McBride &amp; Linda McAlister</b>
4	Staff involved in impact assessment screening	<b>Julie McBride      HR and OD Linda McAlister    HR and OD Ricardo Rea        HR and OD</b>
5	Other staff / services / community groups involved	<b>None, as the policy/procedure and guidance operates closely with other Policies</b>
6	Brief summary of any consultation carried out.	<b>Consultation with Trade Unions and departmental HR teams from 10<sup>th</sup> March until 6<sup>th</sup> April 2009.</b>
7	Summary of (potential) impacts identified	<b>No differential impacts identified on different equality groups</b>
8	Summary of actions identified	<b>Slight rewording of draft guidance to ensure that the employment equalities monitoring policy is followed. Template offer letter amended to reflect the fact that the Council cannot demand that equalities monitoring forms are filled, though we encourage return of such forms.</b>
9	What 'equalities' monitoring is required for this policy / service?	<b>Standard employment equalities monitoring policy should be followed</b>
10	Date of completion of assessment	<b>14<sup>th</sup> April 2009</b>



Date of implementation

# Human Resources Employment Policies



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## HUMAN RESOURCES AND ORGANISATIONAL DEVELOPMENT

### Quick Reference - Associated Documents

**Key Driver for Change/Policy Development:**

Legislative changes and Pension Provisions (effective from 1<sup>st</sup> April 2009).

Passed to CMT – 01.09.09

Passed to JCF – 24.09.09

Agreed at CECG –

Posted to Intranet –





## **EMPLOYMENT OF “CASUAL” WORKERS**

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# EMPLOYMENT OF “CASUAL” WORKERS POLICY

## 1. INTRODUCTION

- 1.1 From time to time a worker is required on an “ad hoc” basis which cannot be absolutely forecast, (such as to provide additional cover for a special event, or to provide specialist skills or relief emergency cover in a front line service such as Social Work or Leisure Services). In these circumstances, an offer of work will be made on a “casual” work basis.
- 1.2 A “casual” worker does not hold a Contract of Employment but has entered into a relationship with the Council where there is no obligation on the Council to provide work, and no obligation on the worker to accept any work offered.

## 2. DEFINITION

- 2.1 Work is “casual” where there is no “mutuality of obligation”. This means the Council is not obliged to offer work to the individual. Equally the individual is not obliged to take work. A casual worker is never an employee and casual work does not count towards continuous service.
- 2.2 Where the work does not fall into the above definition then the work should be offered on a temporary contract basis. Such as where there is a requirement to provide cover such as for maternity leave, or to deliver a short-term pre-determined programme of instruction or training, or where continuous casual service will exceed one month, a temporary fixed term appointment should be made.

## 3. MONITORING

- 3.1 The hours of work and frequency of use of casual workers must be closely monitored within each Department, to ensure it is on an “ad hoc” basis. (Where a casual worker undertakes work on a regular basis, continuity could result or mutuality of obligation could be implied, leading to an employment relationship.)
- 3.2 Where a “casual” worker has been used continuously, rather than “ad hoc” for more than one month, an evaluation of the service need will be made by the Head of Service in conjunction with departmental HR and if there is an ongoing requirement, the casual worker will be offered a temporary appointment for the remainder of the service need duration. Should the worker be offered a temporary contract he or she would be entitled to terms and conditions attached to the relevant role.

## **4. RECRUITMENT PROCESS**

- 4.1 Casual workers will be appointed in accordance with the Council's Recruitment Procedures. Given the emergency requirements of casual workers, appointment may be made from a "pool" of approved workers who have completed an application form for the specific position.

## **5. PAY ENTITLEMENTS OF CASUAL WORKERS**

- 5.1 Casual workers will be paid an evaluated rate for the work done, as determined by the Council's grading scheme. Details of the rate of pay will be included in the statement of working arrangements issued prior to commencement.
- 5.2 For the purposes of annual leave casual workers will accrue leave hourly. Annual leave is based on the statutory entitlements set out in the Working Time Regulations. To calculate annual leave entitlement the Accrual Table at Appendix 1 should be used.
- 5.3 This leave may be banked for specific periods of time and taken subject to the exigencies of the services. Where the worker has been unable to take accrued leave their final pay will reflect any outstanding entitlement.

## **6. RIGHTS FOR CASUAL WORKERS**

- 6.1 Casual workers benefit from several basic rights including:
- Protection from discrimination on the grounds of Age, Sex/Gender (including Gender Reassignment), Disability, Race/Ethnicity/Nationality/Colour, Religion and Belief or Sexual Orientation.
  - Rights under the Working Time Regulations, such as paid holiday leave, restrictions on working hours and the right to rest breaks.
  - The right to the national minimum wage.
  - Protection for whistle blowing.
  - Health and safety protection.
  - Protection against unlawful wage deductions.
- 6.2 Pension regulations effective from April 2009 do not allow casual workers to be members of the Local Government Pension Scheme.

## **7. REVIEW OF POLICY**

- 7.1 The Departmental HR Section will monitor the use of 'casual appointments' to ensure appropriate contractual conditions are applied for all workers involved in delivering services.



## **MANAGERS GUIDANCE**

### **CASUAL WORKERS**

**Prepared by: Corporate Human Resources and Organisational Development:  
July 2009**



**CASUAL WORKERS  
MANAGERS GUIDANCE  
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## **1. INTRODUCTION**

- 1.1 These guidelines have been developed to provide managers with a clear framework, to ensure a consistent and a fair process is operated within the Council when work is offered on a casual basis.
- 1.2 We need to use “casual” workers for many reasons. One of the big issues for a manager is knowing when work should be offered as a temporary fixed term post or as casual work.
- 1.3 Work is “casual” where there is no “mutuality of obligation”. This means the Council is not obliged to offer work. Equally the individual is not obliged to take work. A casual worker is never an employee and there is no continuity of service.

## **2. THE DIFFERENCE BETWEEN CASUAL WORK AND TEMPORARY WORK**

### **Temporary Appointment**

- 2.1 A person is employed on a temporary contract if he or she has been offered a contract for a fixed period of time and has agreed to carry this out personally for that period. This is what “mutuality of obligation” means. The fixed-term appointment will be confirmed by a Contract of Employment. If a temporary employee is unable to fulfill an obligation for short term work he or she has to book some recognised for of leave, or resign and give proper notice.

### **Casual Work**

- 2.2 The key test of mutuality of obligation is when the circumstances of either the Council or the worker change unexpectedly. If a casual worker agrees to do short-term work but is unable to fulfill this obligation on a particular day the worker will not be treated less favourably because of this. The worker must still be considered for future work. As far as the law is concerned a worker is not considered to be treated less favourably if offered work less often, or if considered after other workers on a list, because he or she has been less available in the past.

## **3. RECRUITMENT OF CASUAL WORKERS**

- 3.1 Casual workers will be appointed in accordance with the Council’s Recruitment Procedures, including Equalities Monitoring Procedures. Given the emergency requirements of occasional workers, appointment may be made from a “pool” of approved workers who have completed an application form and been interviewed for the specific position.
- 3.2 Casual workers should also be included in disclosure checking procedures if these checks are used for permanent and temporary i.e. “contracted”

employees within the service area. If permanent and temporary employees undertaking the same work require to have a standard or enhanced criminal convictions disclosure certificate, then so should any casual workers used. The process for disclosure checking is contained within the Safer Recruitment Guidance document.

- 3.3 Casual workers should be sent a statement of working arrangements that makes clear their casual status. This standard letter is available for download from the intranet or from your departmental HR section (Appendix 3).
- 3.5 Each time work is offered and accepted this is a new period of casual work. It is normal for casual work to be arranged verbally over the phone or face to face. Continuous periods of casual work will normally be short periods of less than one month.

#### **4. REVIEW**

- 4.1 Services should monitor the work patterns and hours of work etc. of casual workers. This should be discussed regularly by the Service Manager and departmental HR section with a view to ensuring that “mutuality of obligation” does not arise.
- 4.2 If a worker has been working continuously to cover the same post for more than one month an assessment should be made of whether the work is truly casual. If the work is no longer casual a temporary fixed term contract should be offered.

#### **5. CONTINUOUS SERVICE**

- 5.1 Casual work does not count towards continuous service.

#### **6. SICKNESS**

- 6.1 Casual workers are not entitled to Occupational Sick Pay but may, on submission of a medical certificate, be due Statutory Sick Pay. This will however, be dependant on the number of hours worked.

## **Appendix 1 Frequently Asked Questions - Managers Guidance**

### **1. What exactly is a Casual worker?**

If a person is expected to come in on certain days to do a job, even if this is on a short term basis, the work probably is not casual as there is “mutuality of obligation” – the Council expects them to work and they expect to be provided with it and paid for it.

Truly Casual work is “ad hoc” – asking an individual to come in for a few hours one day (or even a whole day) with no expectation of further work or obligation to offer it, until you ask again.

### **2. What is the recruitment process for casuals?**

“Casual” workers will be appointed in accordance with the Council’s Recruitment Procedures. Given the emergency requirements of occasional workers, appointment may be made from a “pool” of approved workers who have completed an application form and been successfully interviewed for the specific position.

If employees doing the work have to get a standard of enhanced criminal convictions disclosure certificates, then so should any casual workers used.

Before taking on a casual worker, a line manager should ensure they follow service procedures before recruitment.

Casual workers will then be sent the standard offer letter by the Departmental HR Team that makes clear the casual status of their work.

### **3. What happens if circumstances change and the casual worker agrees to work for a fixed period?**

The hours of work and frequency of use of “casual” workers must be closely monitored within each Department. Where a “casual” worker has been used continuously for more than one month, an evaluation of the service need will be made by the Head of Service in conjunction with departmental HR and if there is an ongoing requirement, the individual concerned will be offered a temporary appointment for the remainder of the service need duration.

Should the worker be offered a temporary contract he or she would be entitled to terms and conditions attached to the relevant role, the person would be issued with a new contract under the appropriate fixed term terms and conditions, the new contract would be effective from the date of the temporary contract start date.

### **4. What rights do Casual workers have?**

Workers benefit from several basic rights:

- Protection from discrimination on the grounds of Age, Sex/Gender (including Gender Reassignment), Disability, Race/Ethnicity/Nationality/Colour, Religion and Belief or Sexual Orientation.
- Rights under the Working Time Regulations, such as paid holiday leave, restrictions on working hours and the right to rest breaks.
- The right to the national minimum wage.



- Protection for whistle blowing.
- Health and safety protection.
- Protection against unlawful wage deductions.

Casual work does not count towards continuous service.

#### **5. Can a casual worker join the Local Government Pension Scheme?**

New Pension Regulations which take effect in April 2009 do not allow casual workers to be members of the Local Government Pension Scheme.

#### **6. How can I ensure casual staff are workers rather than employees?**

It is essential that there should be no obligation to provide or accept work. This may, for example, take the form of performing a one-off task, or working under a 'zero' hours contract, which means the employer doesn't guarantee to provide work, and only pays for work actually done.

#### **7. Why does this distinction matter?**

Failing to recognise employee's rights can lead to employment tribunal claims that are costly and time-consuming to defend. Successful claims can also have tax consequences for the employers if suitable PAYE and national insurance arrangements have not been made for people who are, in fact, employees. Also additional employment rights are relevant for "contracted" employees such as holidays and sickness absence payment.

#### **8. What if there are performance or conduct issues with a casual worker?**

If there are performance or conduct issues with a casual worker you should discuss this with your departmental HR section in order to decide the appropriate course of action.

**APPENDIX 4 Accrual Table for Annual Leave for Casual Workers**

No. of Hrs Worked	(A) From 01.4.09 (Calculation: 0.1207 x hrs worked)	How to Use the Accrual Table
		<p>Go down left hand column until you reach the number of hours worked. Look in the box in Column A – this provides annual leave entitlement.</p> <p><b>Calculation - From 1 April 2009</b></p> <p><u>Employee Working a 37 Hour week</u></p> <p>37 hrs x 52 = 1924 hrs                      Holiday Entitlement = 5.6 Weeks (28 da                      5.6 weeks x 37 hours = 207.2 hrs</p> <p>1924 - 207.2 = 1716.8 hrs                      207.2 divided by 1716.8 = 0.1207 hrs                      Hours worked x 0.1207 hrs = entitlement</p> <p><u>Employee Working 35 Hour week</u></p> <p>35 hrs x 52 = 1820 hrs                      Holiday Entitlement = 5.6 Weeks (28 da                      5,6 weeks x 35 hours = 196 hrs                      1820 - 196 = 1624 hrs                      196 divided by 1624 = 0.1207 hrs                      Hours worked x 0.1207 hrs = entitlement</p>
1	0.12	
2	0.24	
3	0.36	
4	0.48	
5	0.60	
6	0.72	
7	0.84	
8	0.97	
9	1.09	
10	1.21	
11	1.33	
12	1.45	
13	1.57	
14	1.69	
15	1.81	
16	1.93	
17	2.05	
18	2.17	
19	2.29	
20	2.41	
21	2.53	
22	2.66	
23	2.78	
24	2.90	
25	3.02	
26	3.14	
27	3.26	
28	3.38	
29	3.50	
30	3.62	
31	3.74	
32	3.86	
33	3.98	
34	4.10	
35	4.42	
36	4.22	
37	4.46	

## Appendix 5

Department of Corporate Services

Council Offices, Garshake Road, Dumbarton, G82 3PU

Tel: Direct Line (01389) 737 Fax: (01389) 737

Our Ref: Your Ref:

Date

If phoning or calling please ask for:

Name

Address

Dear

### **Statement of Working Arrangements.**

\*Following your recent interview, I have the pleasure in confirming your inclusion as an occasional worker within West Dunbartonshire Council.

\*\*You are currently on our register as a casual worker who provides an irregular service on a flexible basis to West Dunbartonshire Council. Your duties and responsibilities will be prescribed by your line manager.

*(Delete as appropriate)*

This statement is provided to advise you of written particulars relating to your working arrangements with effect from 1 March 2009.

#### **1 Pay**

Your rate of pay is £XXX per hour and will be made only in respect of hours worked. You will be paid on a weekly/monthly/fortnightly basis in arrears. You are not entitled to any other allowances or emoluments.

#### **2. Annual Leave.**

You will be entitled to annual leave. This will be accrued on an hourly basis and the balance will be calculated by multiplying 0.1207 x number of hours worked. You will not be entitled to payment for any public holidays. Refer to table.

#### **3. Sick Leave.**

You will not be entitled to Occupational Sick Pay but may, on submission of a medical certificate, be due Statutory Sick Pay. This will however, be dependent on the number of hours worked.

#### **4. Discrimination.**

You have the right to protection against certain types of discrimination including sex, race, disability and equal pay legislation.

**5. Health and Safety**

The Council has a duty to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all workers. You are also under a duty while at work to take reasonable care for the health and safety of yourself and of others.

The Council has a range of Health & Safety policies which you are required to comply with. Copies of Health and Safety policies are available from the intranet, Legal Regulatory and Administrative Services or from your Manager.

**6. Nature of Work**

The nature of your work is that there is no mutuality of obligation between the parties of this agreement, i.e. there is no obligation on the part of the Council to provide work and there is no obligation on you as the worker to accept.

**7. Pension Provisions**

Pension Regulations which take effect in April 2009 do not allow casual workers who have a contract for a period of less than three months to be members of the Local Government Pension Scheme.

Yours sincerely,

Name  
Designation  
Department

## **Agreement for Casual Work**

This statement sets out the basis on which casual work may be made available to you by West Dunbartonshire Council.

1. A record of your name, address, next of kin and evidence of legal right to work in the UK will be kept by the Council. However, there is no obligation on the Council to offer work to you, or obligation on you to accept such work as offered. Each period of work you perform is separate and you do not accrue continuous service by an aggregation of periods of work performed under this agreement for casual work.

2. On commencement, you will be required to produce a form P45 or P46. PAYE Tax and National Insurance will be deducted as appropriate.

3. Payment for work done is made by BACS transfer on a monthly basis.

4. During the periods you work, you will be required to comply with the Council's rules, policies and procedures as amended from time to time, in particular, relating to equal opportunities, Dignity at Work, health and safety, compliance and code of conduct.

5. You must not disclose to any person outside the Council any information relating to the Council's business affairs or trade secrets or that of any suppliers or customers that are of a private or confidential nature.

6. The Council holds information relating to you which is subject to the Data Protection Act 1998. By signing this agreement to undertake casual work you consent to the Council processing, both manually and by electronic means, your personal and sensitive personal data that could be held both offshore and within the United Kingdom for the purposes of the administration and management of the work you perform and/or the Council's business.

"Processing" includes obtaining, recording, holding or disclosing information or data and carrying out operations on the information or data.

"Sensitive personal data" includes information held by the Council as to your physical or mental health, the commission or alleged commission of any offence by you and any proceedings for such an offence (including the outcome or sentence in such proceedings), your political opinions, religious or similar beliefs, sexual orientation. Typical examples of items of sensitive personal data are SSP self-certification forms and medical reports.

7. Workers benefit from several basic rights:

- Protection from discrimination on the grounds of Age, Sex/Gender (including Gender Reassignment), Disability, Race/Ethnicity/Nationality/Colour, Religion and Belief or Sexual Orientation.
- Rights under the Working Time Regulations, such as paid annual leave, restrictions on working hours and the right to rest breaks.
- The right to the national minimum wage.
- Protection for whistle blowing.
- Health and safety protection.
- Protection against unlawful wage deductions.

**I have read the details above, and understand and agree the terms under which casual working can be offered.**

Name: \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

for the Council.

Date: \_\_\_\_\_

**Enclosed:** ICT agreement form



## CASUAL WORKER AGREEMENT FORM

**NAME:**

**DEPARTMENT:**

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Please complete and sign either A or B below.

- A.**
- (i) I confirm my agreement of the offer of casual work on the terms and conditions as specified in your letter attached.
  - (ii) I note that failure to return this acceptance may result in a delay in processing payment of salary.
  - (iii) Start Date –

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

We require sight of the following original documents and these should be included with your Acceptance Form:

- Qualifications (relevant to above post)
- Photographic Evidence, i.e., Passport, Driving License
- Birth Certificate

**The following documents should be completed, signed and returned with your Acceptance Form:**

- Bank/Building Society Mandate
  - Signed ICT Agreement
  - Monitoring Form (optional – however the Council encourages you to complete)
- 

**B.** I confirm that I do not accept.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (Block Capitals) \_\_\_\_\_

Return to: XXXXX HR Section  
West Dunbartonshire Council  
Council Offices  
Garshake Road  
Dumbarton  
G82 3PU