

F5 Fixed Term Contract Guidance

1 Policy Guidance

- 1.1 Whilst the Council aims to attract and retain a dedicated workforce, there will be occasions when there is a need to employ workers on a fixed term contract. Fixed-term employment lasts for a specified length of time. Alternatively, such contracts can end with the completion of a specified task or when a particular event takes place. For example, fixed-term employees can be brought in to cover for permanent staff on long-term sickness or maternity leave or to cope with increased seasonal demand. One advantage is that the Council can benefit from specific skills without the cost of a longer-term commitment.
- 1.2 The objectives of this Policy are to ensure that the Council will not treat employees on a fixed-term contract less favourably than comparable employees on a permanent contract and will ensure that all employees are aware of their responsibilities regarding their fixed-term contract. In addition the policy will ensure managers are aware of and supported in carrying out their responsibilities when determining the appropriateness of use of fixed-term contracts and undertaking the process to be followed when appointing to and ending fixed-term contracts.
- 1.3 The above forms the Council's policy guidance as at May 2011, it should be noted that: -
 - the policy does not confer any contractual rights
 - the Council will retain the right to review the policy at any time. Changes may result from employee, management and trade union feedback and/or from changes in employment legislation. The Council, following consultation with recognised Trade Unions, will implement revisions and updates.
 - The policy will cease on the 1 April 2013.

2 Scope

- 2.1 This guidance applies to all Council employees, including Head Teachers, Teachers, Chief Officers and the Chief Executive.
- 2.2 The guidance is recommended for implementation for staff directly employed by schools, for example those based in Academies.

3 Principles

- 3.1 The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002), which came into force on 1 October 2002, afford fixed-term employees important rights that have an impact on the use of such contracts, which include:
- 3.1.1 The right not to be treated less favourably than a comparable employee on a permanent contract in respect of pay, contractual terms and conditions, the opportunity to receive training or be subjected to any other detriment on grounds of status as a fixed-term employee. However, where it is deemed appropriate, the Council will adjust terms and conditions providing this can be objectively justified.
 - 3.1.2 The right to a statutory redundancy payment where the expiry, i.e. dismissal, of a fixed-term contract gives rise to a redundancy situation. This does not apply if the dismissal is for 'some for other substantial reason' e.g. brought in to provide temporary cover.
 - 3.1.3 The right, unless this can be objectively justified, not to be selected for redundancy or be unfairly dismissed if the principal reason for the selection was because the employee is on a fixed term contract. See paragraph 5.5.
 - 3.1.4 Limiting the use of successive fixed-term contracts to no more than 4 years, after which a fixed-term contract should become permanent, unless the continued use of a fixed-term contract can be justified on objective grounds. The only exemptions to this are when employment on a further fixed-term contract is objectively justified to achieve a legitimate aim, e.g. a genuine business aim that can be objectively justified, and is also a necessary and an appropriate way to achieve that aim, or the period of four years has been lengthened under a collective or workplace agreement.
 - 3.1.5 The right to be informed and have access to information regarding permanent employment opportunities within the organisation.

4 Objective Justification

The Council reserves the right when applying the equal treatment requirement, to objectively justify different terms and conditions for employees on fixed-term contracts. Less favourable treatment will be objectively justified if it can be shown that it is:

- to achieve a legitimate objective, for example a genuine business objective
- necessary to achieve that objective

- an appropriate way to achieve that objective.

5 Employment Terms

- 5.1 The employee on the fixed-term contract should not expect their employment to last longer than the term of the first contract. Should the contract be ended early i.e. before the contracted length of time, then a dismissal will occur and the relevant notice period will apply.
- 5.2 The employee on a fixed-term contract will have no right to receive 'At Risk' status where their contract is reaching its fixed end date. This does not mean that the employee will not be able to apply for other positions, but they will not receive preferential status consideration i.e. 'At Risk' status at the end of their contract.
- 5.3 Employee performance will be managed through all the standard Council's HR policies, for example, capability, conduct and grievance.
- 5.4 All other employee rights and benefits will apply as for permanent employees. For example, maternity leave; reasonable adjustments; and any need to redeploy on the grounds of a specific medical condition.
- 5.5 The objective justification for not giving 'At Risk' status to an employee employed on a fixed-term contract is based on the legal duty the Council has to ensure that all permanent employees are afforded full employment protection i.e. receive 'At Risk' status, particularly in times of reorganisation, restructures and/or economic downturns. Note however that an employee on a Fixed Term Contract who has 4 years or more continuous service will be entitled to the same protection afforded to permanent employees.
- 5.6 The Council will offer fixed-term employees access to the Local Government Pensions Scheme on the same basis as permanent staff. However the Council does not need to offer special alternative benefits (e.g. contributions to a private pension scheme) to their fixed-term employees who decide not to join a pension scheme.
- 5.7 Examples of when a fixed-term contract will be issued to employees, where the employee will not be eligible to receive a redundancy payment include:
 - Cover for adoption/maternity/parental leave.
 - Cover for secondment of substantive post holder.
 - Cover for a vacancy whilst recruitment process is undertaken.

- Cover for long-term absence e.g. sickness.

In such cases, the reason for the dismissal will be for 'some other substantial reason'.

5.8 When on a fixed-term contract for the following reasons the employee will be eligible to a redundancy payment, where they have more than 2 years continuous service:

- The completion of a specific task, such as project work that is dependant on external funding and the post will end once the funding ceases or no further funding can be found
- The completion of a specific task which is then completed
- The employee is recruited to provide additional staffing and the provision of services reduces or ceases

In such cases, the reason for dismissal will be 'redundancy'. However neither list in 5.7 or 5.8 is exhaustive.

5.9 All employees employed on a fixed-term contract will be subject to the Induction and Probationary Policy in line with employees on a permanent contract.

6 Extension of a fixed-term contract

6.1 Where fixed-term contracts are extended, all continuous fixed-term periods of employment will count towards an employee's continuity of service.

6.2 Where an employee has been continuously employed under one or more fixed-term contracts for a period of four years, their contract will become permanent unless the employer can show that the use of a fixed-term contract is objectively justified.

6.3 The date that the fixed-term contract will become permanent is the latest of the two following dates:

- The date on which that contract was entered into or last renewed, or
- The date on which the employee acquired four years' continuous employment under fixed-term contracts.

7 Cessation of a fixed term contract

- 7.1 If an employment contract terminates when a task is completed or an event occurs or does not occur, this is legally classified as dismissal. This gives fixed-term employees the same statutory rights as permanent employees or others on different fixed-term contracts, including the right:
- not to be unfairly dismissed (after one year's continuous employment)
 - to a written statement of reasons for dismissal (after one year)
 - to statutory redundancy payments (after two years)
- 7.2 Employees working on fixed contracts for three months or more have the right to the same minimum notice period as permanent employees of the same length of employment. Notice requirements apply only when contracts are terminated before the agreed expiry date.
- 7.3 Employees on fixed-term contracts of up to three months have the right to one week's notice if their contracts are prematurely terminated after one month or more. It also means they must give the Council one week's notice of termination.

8 Informing fixed-term employees about permanent vacancies

The Council will inform fixed-term employees of permanent vacancies in the Council, and give them the same opportunity as others to apply for such roles. The Council will inform fixed-term and permanent employees of such vacancies at the same time and in the same way.

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