

**Personnel Committee – 13<sup>th</sup> June 2016**

**Fixed Term and Temporary Contracts Procedure**

**1. Summary of report**

The purpose of this report is to seek Personnel Committee approval for the new Fixed Term and Temporary Contracts Procedure (appendix 1) in order to help managers and employees understand and better manage such contracts in the Council, ensuring fair and legally compliant processes are followed.

**2. Recommendations**

Personnel Committee is recommended to:-

- Agree the attached fixed term and temporary contracts procedure with immediate effect.

**3. Background**

The council wishes for its staff to be informed and empowered to do the best things possible for the residents of Walsall. An effective employment framework of policies and procedures helps to enable this.

The council currently does not have a procedure for managing the contractual arrangements of fixed term and temporary employees. The Fixed-term Employees (Prevention of Less Favourable Treatment Regulations 2002) afford fixed-term or temporary employees important statutory rights, and a recent review has highlighted that :-

- Some managers do not know what is expected of them in the recruitment, management, and termination of staff on fixed term or temporary contracts;
- An over reliance and expectation of HR to manage these processes for managers;
- A risk averse approach to temporary staff. For example, all temporary or fixed term staff currently leave with a redundancy payment (if they have two years service or above), in many cases, this is not necessary.

To address these issues, attached at appendix 1 of this report is a Fixed Term and Temporary Contracts Procedure.

The document provides:-

- background to the law;

- advice as to when a fixed term or temporary contract should be used;
- clarity on managers and staff roles;
- the process for awarding, extending and terminating fixed term and temporary contracts, to ensure the Council is compliant with the law.

In addition, template letters will be available for managers to use to help manage the process, and People Gateway will be used to prompt managers to carry out the tasks they need to do under this procedure.

Personnel Committee under the Council's constitution has delegated to it the decision making '*To approve procedures for appointment and dismissal of staff.*'

#### **4. Resource and Legal Considerations**

There are no direct financial implications from this report. There may be small savings resulting from not paying redundancy payments when it is not necessary to do so.

The Fixed Term Employee (Prevention of Less Favourable Treatment) Regulations 2002 give the following rights and protections to fixed term employees:

- The right not to be treated less favourably than a comparable employee, particularly in respect to the terms and conditions of employment.
- In certain circumstances the employee can insist that the contract is converted into a permanent one (the duration of which is no longer restricted)
- To be protected against being subjected to detriment or dismissal arising out of the exercise of his rights under the Regulations.

It is also important to note that the mere fact that an employee is on a fixed term contract will not prevent he/she, when that contract expires (and is not renewed), from seeking a statutory redundancy payment and/or bringing an ordinary unfair dismissal claim.

A fixed term contract is defined as a contract of employment that will, in the normal course, terminate on:

- The expiry of a fixed term, or
- The completion of particular task, or
- the occurrence or non-occurrence of any other specific event

The definition includes not only time limited contracts, but also contracts which are task related, and those designed to cover a specific purpose, e.g. to cover maternity leave absence.

The rights under the Regulations do not apply to:

- Those participating in government or European Social Fund training or work experience schemes

- Those participating in work experience, not exceeding one year, but forming part of a higher education course
- Agency workers
- Apprentices

The fixed term employee's right to no less favourable treatment applies in respect of all contractual terms.

No minimum period of continuous employment is required for a fixed term employee to be protected against being treated less favourably.

## **5. Citizen Impact**

There is no direct impact on our citizens as a result of this procedure. The procedure is however, part of the employment framework that helps to ensure that residents of Walsall get the best possible services from the staff the council employs.

## **6. Performance and Risk Management issues**

There are no identifiable risks associated with this implementation, indeed this procedure attempts to address the risks currently in place of non compliance with the law.

## **7. Equality Implications**

Contained within the report. An equality impact assessment is attached as Appendix 2.

## **8. Consultation**

The procedure has been consulted upon with senior managers across the Council and the recognised Trades Unions during August – September 2015. Following initial consultation with Trade Unions they did not want those employees not on a permanent contract to have access to redeployment (as was then proposed and supported by legal).

CMT reviewed this procedure 24<sup>th</sup> September 2015.

Following this review further joint work took place with legal and a slight revision was agreed with legal and made to the procedure (currently proposed). This resulted in fixed term or temporary employees being prevented from accessing redeployment unless they found themselves in a genuine redundancy situation.

Trade Unions were subsequently consulted with again during May 2016 and no issues or concerns have been raised regarding this procedure.

CMT endorsed the revised procedure 2<sup>nd</sup> June 2016 for subsequent Personnel Committee approval.

## Author

Steve McGowan

Head of HR

☎ 655600

✉ [steve.mcgowan@walsall.gov.uk](mailto:steve.mcgowan@walsall.gov.uk)