

FIXED TERM AND TEMPORARY CONTRACTS PROCEDURE



Version Control

Document title	Fixed Term and Temporary Contracts Procedure		
Owner	HR Strategy and Planning Team		
Status	Draft	Version	1
Effective from	TBC	Approved on	TBC
Last updated	April 2016	Last updated by	HR Strategy Planning
Purpose	This document sets out the arrangements for managing staff employed on a Fixed Term or Temporary Contract.		

This procedure links to:

- Redundancy Procedure
- Redeployment Procedure

This list is not exhaustive.

For further advice or guidance on this procedure, or if you would like this information in another language or format please contact:

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1 Purpose and scope

The purpose of this procedure is to set out for managers how to safely recruit, manage, and terminate staff on fixed term or temporary contracts of employment. This procedure will also serve to help inform staff employed on such contracts about what to expect from the council.

This procedure applies to all staff employed on fixed term or temporary contracts at Walsall Council (excluding schools) with the exception of:

- Apprentices
- Placement students – work experience students for no more than one year who are required to attend college as part of a higher education course
- Those participating in government or European Social Fund training or work experience schemes
- Casual and staff bank
- Agency workers

2 Introduction

Background and Legal Context

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 afford fixed term or temporary employees important statutory rights that have an impact on the use of such contracts, which include:

- 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 right to join the occupational pension scheme
- The opportunity to receive training and not to be subjected to any other detriment on grounds of status as a fixed term or temporary employee
- The right to a statutory redundancy payment where the expiry [i.e. dismissal] of a fixed term or temporary contract gives rise to a redundancy situation. This does not normally apply if the dismissal is for 'some for other substantial reason' e.g. where the employee is brought in on a Fixed Term Contract to provide temporary cover, normally for less than 2 years.
- The right 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.

- Limiting the use of successive fixed term contracts to no more than 4 years, after which a fixed term or temporary contract should become permanent, unless the continued use of a fixed term contract can be justified on objective grounds.
- The right to be informed and have access to information regarding permanent employment opportunities within the organisation.

3 Definitions and differences between a fixed term and temporary contract

A fixed term contract will be issued to an employee when the end date or length of the contract is known. The contract must state clearly the reason for the fixed term status to establish those specific elements of the role which could attract a redundancy payment; or whether the role is to provide cover; backfill etc. which defines the objective justification.

A temporary contract will be issued to an employee when the end date or length of the contract is unknown, however, the contract will indicate the anticipated length of the contract. The contract should also state the reason for the temporary status.

When on a fixed term or temporary contract for the following reasons the employee will be eligible to receive a redundancy payment upon the expiry of the contract, where they have more than 2 years continuous service*:

- The completion of a specific task, such as project work that is dependent 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 – for example as a resource whilst a service determines future staffing requirements or is going through a restructure process.

In such cases, the reason for dismissal will be ‘redundancy’.

Conversely examples of when a fixed term or temporary contract will be issued to employees where the reason for the dismissal will be for “**some other substantial reason**” include:

- Cover for adoption/maternity/parental leave.
- Cover for secondment of substantive post holder.
- Cover for long-term absence e.g. sickness.

In such cases, the employee is not normally eligible to receive a redundancy payment. N.B... Neither list is exhaustive.

*continuous service is service that falls under the Local Government Modification Order and is therefore not limited to the employment of Walsall Council.

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 or temporary contracts.

5 Responsibilities

Managers

- To be aware of their responsibilities as determined by the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- To ensure there is a justifiable and demonstrable reason for appointing to a post on a fixed term or temporary basis, and that this is fully explained during the recruitment process and in any subsequent correspondence relating to the post/contract.
- To ensure that all fixed term or temporary employees understand the nature of their contracts, and are consistently advised as to the likelihood of extension/renewal and the reasons for this, within the timescales outlined in this procedure.
- To liaise with employees, appropriate Trade Union representatives and relevant Human Resources staff as appropriate, regarding formal procedures and meeting arrangements.
- To ensure the dismissal process is followed when ceasing or not renewing a fixed term or temporary contract.
- To update HR on any changes in status/duration of contracts.

Employees

- To ensure they have a clear understanding of the fixed term or temporary nature of their employment, and reasons for this.
- To have no expectations that their employment will be extended or made permanent, unless they received formal, written clarification of this.

- To raise any issues relating to their fixed term or temporary employment and any perceived less favourable treatment, with their manager at the earliest opportunity.
- To attend meetings as necessary in connection with their fixed term or temporary contract, noting their right to be accompanied by a work colleague, or recognised Trade Union representation at any such meetings.

6 Procedure

Advertising a Fixed Term or Temporary Contract

When advertising a fixed term or temporary vacancy the advert must specify the length of the appointment (where this is known) and the purpose of the contract. If there is a possibility of permanency or renewal on expiry of the period, this should also be included in the advert.

Filling a vacancy which a fixed term or temporary employee is covering

Should a fixed term or temporary post subsequently become available to fill on a permanent basis, then the incumbent fixed term or temporary post holder can be offered a permanent contract provided that the following conditions are met:

- They have 12 months or more continuous service, and
- They were subject to an appropriate recruitment process (including a competitive interview) for that specific post at the outset.

If the post-holder does not meet the above criteria, the post should be advertised in accordance with normal recruitment procedures. The manager should meet with the fixed term or temporary employee to inform them that the post is due to be advertised, and if they are subsequently unsuccessful at interview, the dismissal process outlined below should be followed.

Fixed term or temporary employees applying for secondments

In cases where a fixed term or temporary employee applies for and is successful in obtaining a secondment opportunity and the fixed term or temporary contract is due to expire before the end of the secondment:

- The original manager should ensure that they meet with the individual in advance of the required contractual notice to bring their fixed term/temporary contract to an end and the seconding Manager must create a new post and issue a new fixed term or temporary contract.

When you are considering extending or ending a fixed term or temporary contract early or on the due date, you are advised to discuss this at the earliest opportunity with your HR Advisor.

Extension of a fixed term or temporary contract

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

Where an employee has been continuously employed under one or more fixed term or temporary 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.

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

- The date on which the employee acquired four years' continuous employment under fixed term contracts. (i.e. anniversary of start date)
- The date on which that contract was entered into or last renewed, for example if an employee has 3.5 years service, and is offered another 12 month contract, they will automatically become permanent with the establishment of the contract

In order to ensure that the extension or change in contract status is actioned the line manager must ensure that they complete and return the necessary post amendment/extension form to HR. Managers should confirm the extension in writing to the employee using **Template Letter 4**.

Termination of a fixed term or temporary contract

The termination of a fixed term or temporary contract, or non-renewal of a fixed term or temporary contract beyond its expiry date is regarded as a dismissal (Employment Rights Act 1996, s.95 (1) (b)) and the procedure outlined below must be followed.

The reason for dismissal will be due to either:

- **Redundancy**; e.g. where the requirement for the work to be undertaken has diminished or ceased
- **SOSR (Some Other Substantial Reason)**; e.g. where the requirement for the work to be undertaken has not reduced and the substantive post holder has returned to work or a permanent employee is recruited.

SOSR Dismissal: Examples of fixed term or temporary employment ending due to SOSR

- Cover for adoption/ maternity/parental leave.
- Cover for secondment of substantive post holder.
- Cover for long-term absence e.g. sickness.

In cases such as the examples given above the employee is not normally eligible for a redundancy payment nor are they eligible to access to the Council's redeployment register. Especially when it was made known, at the commencement of fixed term employment, that any of the above were the reason for the employment.

Redundancy Dismissal: Examples of fixed term or temporary employment ending due to redundancy

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

Redundancy Payment

Any employee who is dismissed on the grounds of redundancy by reason of the ending of their fixed term or temporary contract will be entitled to a redundancy payment, providing they have at least 2 years continuous service with the Council or related employers as listed under the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999 and subsequent amendments. The employee may also be entitled to access the Council's redeployment register in line with the Redeployment Procedure. Where a fixed term or temporary contract is brought to an end earlier than the stated expiry date, the employee will be eligible to the appropriate notice, the length of which will be determined by their length of service.

Termination of Fixed Term or Temporary Contract – Process

1. The Line Manager should on an on-going basis monitor the use of fixed term or temporary contracts.
2. At least 1 month prior to the notice period needed to terminate the contract the following steps must be followed.
3. The Line Manager should notify the employee in writing that their fixed term or temporary contract will not be renewed and as such will result in the termination of employment on the grounds of redundancy or SOSR, and invite the employee to a meeting as soon as possible.
4. This should be confirmed using the Standard End of Fixed Term Invite to Meeting letter (**Template Letter 1**).
5. The employee should be given a minimum of 5 working days' notice of this meeting, and they have the right to be accompanied at the meeting by a recognised Trade Union Representative or work colleague.

6. The meeting should be held prior to the commencement of the required notice period to ensure that the appropriate notice is issued taking account of the employee's continuous service date if applicable.
7. If the employee confirms that they understand that the fixed term or temporary contract is due to end, and that they do not wish to attend the meeting, the End of Contract Letter can be issued (**Template Letter 2**).
8. If the employee confirms that they wish to attend the meeting, the following agenda is covered:

- Confirm with the employee that the contract of employment is to expire, the date of expiry and that it will not be renewed.
- Explain the reason for the non-renewal.
- Confirm the dismissal, the reasons and the termination date. The dismissal will be on grounds of redundancy (with or without a payment) or SOSR.
- If the employee is one of a pool of employees on fixed term or temporary contracts from which selection for redundancy has to be made, the criteria that will be used to make this selection should be explained.
- Check and confirm whether the employee is eligible for 'at risk' status seeking advice from HR.
- Check that the individual is made aware of their rights in accordance with the Redeployment Procedure and where relevant provide any appropriate support e.g. completing redeployment registration forms and/or providing guidance on accessing job vacancies within the Council i.e. via the Intranet.
- Where an employee has been on fixed term or temporary contract of 2 years or more and the reason for the dismissal is due to redundancy make them aware that they will be entitled to a redundancy payment. The line manager should contact HR who will obtain an estimate of redundancy costs.

10. Following the meeting, the manager should confirm the above in writing (**Template Letter 3**).
11. If an extension or renewal of the contract is made, the Line Manager should confirm to the employee (**Template letter 4**), and notify Payroll using a **temporary/fixed term post extension form**.
12. If the employee wishes to exercise their right of appeal they must do so by writing to the Head of Human Resources within 10 working days of the date they were notified of the decision.

Treatment of fixed term or temporary employees who become pregnant / take maternity leave

If an employee on a fixed term or temporary contract becomes pregnant, they have additional rights above those relating to equal treatment given to all fixed term and temporary workers.

You are advised to consult your HR Advisor in the first instance.

Chief Officers and Deputy Chief Officers

For staff classified as either a Chief Officer or Deputy Chief Officers, the Council's constitution determines that appointment and dismissal will be by Appointments Board. The Fixed Term and Temporary Contracts Procedure will be amended accordingly to satisfy that requirement.

Process Flow Chart

