



Policy on the Use of Fixed-Term and Temporary Contracts of Employment for Employees in Schools.

Definitions

1. A 'permanent' contract means one of indefinite or indeterminate length. 'Fixed-term' contracts of employment are those set up either:
 - for a specified period of time
 - to cover a specific task
 - to end when a future event does or does not happen (e.g. the return from maternity leave of a permanent employee).'Temporary' contracts are for a temporary reason but do not have an end date and are terminated by notice.

Background Information and Legal Requirements

2. Employees on fixed-term contracts are protected by the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. The ending of a fixed-term contract is a dismissal in law. There is no upper age limit which debars an employee from taking a case for unfair dismissal to an Employment Tribunal under these Regulations.
3. It is unlawful to treat an employee on a fixed-term contract less favourably than one on a comparable 'permanent' contract unless this can be independently and objectively justified. Employees who hold a fixed-term contract should receive the standard terms and conditions of employment for their work group, unless special circumstances apply. This includes comparable pay, hours of work, entitlement to pension, training opportunities, selection for redundancy and any other benefits. They should also receive the same information on vacancies within the Council as permanent employees.
4. A fixed-term employee has a right to ask for a written statement setting out the reasons for less favourable treatment if they believe that this may have occurred. This must be provided within 21 days.
5. In the case of all fixed-term and temporary contracts, employees will accrue service with Oxfordshire County Council and with local government and associated employment (see the Redundancy Payments Modification Order 1999 for details of organisations which are included). This affects entitlements to annual leave, sick leave benefits, redundancy pay and the right to claim unfair dismissal at an Employment Tribunal.
6. A continuous succession of fixed-term or temporary contracts will usually lead to an employee gaining continuous service from one contract to another. This can occur even though s/he has been employed in different posts, different parts of the Council, or for some purposes, with different local authorities or associated employers.

7. If employment on a series of fixed-term contracts is continuous and exceeds 4 years in duration by law the employee will automatically become permanent.
8. If an employee is continuously employed for two years within local government or associated employment, even if s/he is employed on a fixed-term contract, if the reason for his/her dismissal is redundancy, s/he becomes eligible for a redundancy payment and, if applicable, early payment of pension upon termination of his/her contract.
9. An employee who gains one year's continuous employment wholly within Oxfordshire County Council will usually obtain the right to refer the termination of her/his contract to an Employment Tribunal if she/he believes it to be unfair dismissal. An example of grounds for unfair dismissal could include unfair selection for redundancy. Service may be accumulated by a number of consecutive contracts in a number of different schools. See also paragraph 3.
10. The termination and non-renewal of a temporary or fixed-term contract is a dismissal and legislation requires that consultation must take place with the employee. The governing body will be responsible for any such consultation but may delegate it to the Headteacher.
11. The employee must receive written notification of the circumstances leading to the proposed termination and non-renewal of the contract. She/he must be invited to attend a meeting to discuss the matter, accompanied by a union representative or work colleague if she/he wishes. Sufficient notice of the meeting must be given to allow the employee to have a reasonable opportunity to consider a response to the matters raised. After the meeting, the employee must be informed in writing of the decision and notified of the right to appeal against it if s/he is not satisfied with it. It is suggested that a deadline of not more than ten working days be set for receipt of a request for an appeal hearing.
12. If the employee informs the Headteacher of her/his wish to appeal, a panel of the governing body should hear the appeal and, again, the employee has a right to be accompanied by a representative. The employee must then be informed in writing of the final decision.

Why use a Fixed-Term Contract?

13. A fixed-term contract should be used only when there is a genuine need for the employment contract to be short-term and there are legitimate and objective grounds for not offering the employee a permanent contract. In many instances it is desirable to both the Council and the employee to offer a permanent contract. There are eight reasons which the County Council and the unions have accepted should stand up to challenge at an Employment Tribunal if they are properly used:
 - (i) To cover maternity, paternity, adoption or sick leave.
 - (ii) To cover secondment or leave of absence.

- (iii) Interim arrangements pending the arrival of permanent staff, up to the end of the current academic year. (Where a management post becomes vacant at the end of the Summer Term, it will be acceptable to advertise this or any knock-on vacancy arising from it, for a full academic year).
- (iv) To employ an unqualified teacher pending the availability of a qualified teacher.
- (v) Temporary increase for twelve months or less or clear likelihood of a decrease within twelve months in curriculum or staffing requirements.
- (vi) Clear likelihood of a budget reduction within twelve months, which would necessitate a reduction in staffing.
- (vii) Posts dependent on funding external to the County Council, including the Graduate Teacher Programme.
- (viii) Where the Council has agreed to recommend to the Secretary of State the reorganisation or closure of a school.

N.B. Although a fixed-term or temporary contract might be justified in any of these circumstances it should not be assumed that it must be used. An open-ended (“permanent”) contract might still be appropriate except in the circumstances set out in (iv) above, where statute prevents it. The duration of a fixed-term or temporary contract will normally depend on the reasons for the temporary nature of the contract of employment.

a) Where the contract directly relates to covering the absence of another employee this will dictate the length of the contract.

b) Where the contract directly relates to a planned substantial organizational change such as restructuring the timescales for this will dictate the length of the contract

c) Where work is funded by time limited external provisions the Headteacher will assess whether to offer the associated contracts of employment on a fixed term or permanent basis taking into account the likelihood of continuity of the funding, the turnover of the work group involved, the ability to recruit and any other significant factors.

14. They should not be used in the following circumstances:

- (i) In order to create a “trial period”. Concerns about competence should be dealt with under the Professional Capability Procedure if necessary.
- (ii) Because of anxiety about a shortfall in future budgets which cannot be substantiated.
- (iii) As a matter of course for all part-timers simply because they are part-timers (to do so will probably constitute indirect sex discrimination).

15. There are disadvantages to recruiting staff on a temporary basis:

- (i) It narrows the field of applicants to those not already in a permanent post.
- (ii) It can affect adversely the morale and commitment of the employee concerned, particularly as the end of contract approaches.

16. However, if the Governors do consider it to be appropriate to appoint on a fixed-term basis they should consult their Schools' HR Team adviser about the best way to proceed.

17. If the need arises to reduce staff numbers due to redundancy in a workgroup where there are employees on fixed term or temporary contracts, then these employees will not automatically be selected for redundancy. A selection process will take place in line with the Redundancy Procedure and all employees in the work group will be included, irrespective of the temporary or fixed term nature of their contract. For the avoidance of doubt, the reason for dismissal will normally be redundancy in cases where work ceases or diminishes due to the removal of external funding so this clause will apply. All costs of redundancy are met by the school unless it is in an agreed budget deficit situation. However, redundancy will not usually be the reason for dismissal in cases where the temporary or fixed term worker has been covering the absence of a colleague or where the contract is pending a substantial reorganisation.

Use of Fixed-Term and other Temporary Contracts

18. Recruitment to a fixed-term or other temporary contract will normally be through an open recruitment process in accordance with the County Council's procedures, unless there are exceptional circumstances. The reason for the use of the fixed term or temporary contract should be stated in the advertisement and must be included in the further particulars for the post. In accordance with normal management systems, the temporary employee will be required to satisfactorily pass any probationary period which may be applicable (not for teachers) and will be included in the normal performance management framework applicable to permanent employees. Where there subsequently becomes a continuing need for the temporary post on a permanent basis, the Headteacher will decide whether to undertake a further recruitment process or whether to confirm the appointment of the temporary employee on a permanent basis. This decision will be based on objective reasons taking into account:
- Whether a competitive selection process was used when the temporary appointment was made
 - whether the requirements of the job have changed
 - the ability to recruit and retain employees with the appropriate skills

The performance and conduct of the temporary or fixed term employee will normally be taken into consideration where action has been taken under the School/Council's procedures.

19. A clause stating the notice period upon which the contract will be terminable will be included, or the contract will make it clear where notice will not be applicable. Notice will be given where appropriate in accordance with the contractual conditions. In all cases, it is good practice to notify employees of the impending ending of their contract of employment.
20. Where at the outset it is envisaged that the need for a post will continue for a period in excess of two years, a "permanent" i.e. open-ended, contract of employment should normally be issued because redundancy may be triggered, see paragraph 17.

21. An employee will not normally receive a series of consecutive fixed-term or temporary contracts for the same job unless there are specific reasons in line with paragraph 13 above.
22. The continuity of employment of an employee will not normally be affected by minor changes in his/her hours of work or duties and responsibilities.

FAQs. Can we decide to renew a Fixed-Term Contract?

23. The governing body has the power to decide whether or not to renew a fixed-term contract.
24. If a fixed-term contract is to be renewed this will again be only for one or more of the reasons set out in paragraph 13 above. If none of these apply, the contract should be a permanent one and governing bodies will be advised accordingly.

How should a Fixed-term Contract be worded?

25. All schools have received Notes of Guidance on issuing contracts. N.B. For schools, which subscribe to "Admin Plus" in the Human Resources section of the Quest package, appropriate contracts will be issued by the Pay and Employment Team at Shared Services.

26. The main points to remember are:

- State the reason for making the contract temporary
- State appointment and termination dates, namely the notional (not actual) term dates, e.g. 1 September to 31 December
- Include the phrase "or at such earlier date as may be determined by one month's written notice on either side" to allow for the early termination of the contract in unforeseen circumstances.

Some of our staff are on fixed-term contracts because we need a different number of hours each year. Can we give them permanent contracts of some kind?

27. You can give them permanent contracts for "baseline" hours, which are the minimum number you are likely to need year after year. Then in addition you could give a fixed-term contract for any hours, which may not be available permanently for one of the reasons given in paragraph 13 above. You would still need to comply with the evidence contained in this procedure in relation to the fixed-term contract.
28. Support staff (i.e. employees other than teachers) can be given a permanent "variable hours" contract which allows the school to reduce the hours by up to a third without making the employee redundant.
29. These approaches have the advantage of giving the employee some permanence while retaining some flexibility for the school.

Reviews

30. The Headteacher should regularly review the need for and progress of a fixed-term contract, both to ensure that relevant 'trigger' points are adhered to (e.g. the need to consult when the contract is coming to an end) and to make plans for the future.

Review of the Policy

31. The policy will be monitored continuously and will be subject to formal review after three years in conjunction with the relevant trade unions.

Monitoring

32. In introducing this policy an impact assessment has been undertaken to take account of the Race Relations (Amendment) Act 2000 and discrimination legislation more generally.

Head of Human Resources **May 2009**