

PERSONNEL COMMITTEE – 13TH OCTOBER 2020

Report of the Head of Strategic Support

Part A

ITEM 15 FIXED TERM CONTRACTS GUIDANCE

Purpose of Report

Personnel Committee to consider and agree the revisions to the Fixed Term Contracts Guidance and the introduction of the Fixed Term Contracts Guidance for Human Resources.

Recommendation

That the proposed Fixed Term Guidance be agreed by the Personnel Committee.

Reason

The purpose of the policy is to provide managers with practical information on fixed term contracts and measures to be implemented within the workplace.

Policy Justification and Previous Decisions

The proposed Fixed Term Contracts Guidance and Fixed Term Contract Guidance for HR outlines the Council's commitment to ensuring good practice and compliance with legislative requirements relating to fixed term contracts.

Implementation Timetable including Future Decisions

It is recommended that the Fixed Term Contracts Guidance be published on the intranet, following the Personnel Committee meeting.

Financial Implications

There are no immediate financial implications arising from this decision.

Risk Management

There are no specific risks associated with this decision.

Appendices: Appendix A – Fixed Term Contract Guidance for Managers
Appendix B – Fixed Term Contract Guidance for HR

Officer to contact: Adrian Ward
Head of Strategic Support
Telephone: (01509) 634573
Email: adrian.ward@charnwood.gov.uk

Part B

Background

1. The Fixed Term Contracts Guidance has been reviewed and streamlined to ensure it is up to date and compliant with legislative requirements.
2. The proposed policy has been reduced from 12 pages to 5, by focusing on key information for all employees and reducing information that is not necessary or can be located in other policies, for example, Organisational Change and Redeployment.
3. In addition, a guidance document has been produced for Human Resources to enable them to provide detailed advice to managers in relation to termination of fixed term contracts, the statutory fallback scheme, organisational change and pregnancy, adoption and maternity rights.
4. The current policy outlines information in relation to the areas outlined in paragraph 2 in greater detail. However, after consideration and review, it was determined that a streamlined policy would be more effective for managers when dealing with fixed term contracts. HR are able to provide additional guidance and support in relation to legislative requirements and best practice by utilising the additional guidance document.
5. Additionally, the letters for managers have been streamlined, the wording in the fixed term contract has been updated and additionally the wording in the redeployment trial period offer letter to clarify an employee's rights when accepting a fixed term contract.
6. The Fixed Contracts Guidance was issued to SLT on 29th January 2020 and considered at JMTUM on the 27th August 2020.

Fixed-Term Contracts Guidance for Managers

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Key Points

This guidance does not apply to agency workers, self-employed individuals, apprentices or those engaged on training contracts, work experience or student placements, or casual workers.

- Fixed-term employees are subject to the same probation requirements as permanent employees.
- Extensions to a fixed-term contract can only be issued where the reason is the same as was stated in the original contract.
- An employee with more than 2 years' continuous service may be entitled to a redundancy payment when their fixed-term contract ends depending on the reason for the termination.
- An employee who is covering for another employee will not be entitled to redeployment status or a redundancy payment at the end of their fixed-term contract, irrespective of their length of service.
- An employee who has been employed on fixed-term contracts for a continuous period of 4 or more years may be entitled to permanent status.
- An employee on a fixed-term contract does not have an automatic right to the post if it becomes available on a permanent basis.

When to Use a Fixed-Term Contract

- Absence cover (e.g. for long-term sickness, maternity, secondment, career break).

- A specific, finite project and no permanent employees are engaged on the same project (excludes permanent employees seconded to the project).
- When short term funding is available but the possibility of longer term funding (e.g. for longer than 2 years) is unlikely. Usually, a fixed-term contract in these circumstances will only be suitable where there are no permanent employees carrying out the same work linked to the funding. Guidance should be sought from Human Resources if there are other permanent employees.
- When additional staffing is needed for a specified period (e.g. to manage a temporary increase in workload) not usually exceeding 6 months.
- Vacancy cover, pending a restructuring (where the trade unions have been made aware of the restructure and consultation is due to commence within the next 6 months).

If you are unsure whether a fixed-term contract is appropriate, please contact Human Resources for advice.

When Not to Use a Fixed-Term Contract

1. To create an artificial trial period to assess an individual's suitability for a job.
2. Where there may be a need to reduce employee numbers at some unspecified time in the future.
3. To cover a vacancy whilst working through the recruitment process to fill the post on a permanent basis.

Actions to Take When Offering a Fixed-Term Contract

1. Meet with the employee prior to them accepting the fixed-term contract to ensure that they are aware of, and understand, the terms and conditions attached to the post including their rights when their employment comes to an end. Advice is available from Human Resources.
2. Keep a record of the employee's understanding and written acceptance.

How to Extend a Fixed-Term Contract

1. Obtain permission for the extension through the delegated decision process.
2. Speak to the employee to advise them that an extension has been agreed and confirm if they are happy to accept it.

3. Complete the [Variation to Contract E-Form](#). Human Resources will write to the employee to confirm the extension. If the reason for the contract has changed, you will need to notify Human Resources of the reason for the change so that this can be reflected in the letter to the employee.

Access to Permanent Posts

An employee on a fixed-term contract does not have an automatic right to the post if it becomes available on a permanent basis.

However, there is provision within the Appointments and Promotions Policy – The Appointment of Temporary Staff, that when a fixed term vacancy becomes available on a permanent basis, without a change in grade or duties, the fixed term post holder can be appointment to that post on a permanent basis subject to the following.

- The temporary post must have originally been advertised internally and externally.
- There must be no substantial differences between the person specifications for the temporary and permanent posts.
- The employee must have successfully completed six months service in the post and if applicable, have successfully completed their probationary period.
- There are no suitably experienced and/or qualified redeployees or employees at risk of redundancy. For further information please contact Human Resources.

How to Terminate a Fixed-Term Contract

Before terminating or not renewing an employee's fixed-term contract, check:

1. How much continuous service does the employee have? You'll need this information to determine how much [notice](#) the individual is entitled to and whether a redundancy payment will be payable (if applicable to the circumstances of termination).
2. Is the employee covering for another employee who is now returning to their post? If so, they will not be entitled to a redundancy payment, irrespective of their length of service.
3. Was the individual employed in the post on a fixed-term basis (but not covering for another employee) and the post is now being made permanent? If so and the employee was not successful in being appointed to the role, you must contact Human Resources for advice on the process that needs to be followed to terminate the individual's employment.
4. Has the individual been employed on fixed-term contracts for more than 4 years (either with you or another service/department)? If so, you must contact Human Resources for advice as the employee may be eligible for permanent status.
5. Is the employee aged over 55? If so, they may qualify for early release of their pension if their contract ends by reason of redundancy.

Will the employee be on maternity leave, adoption leave or shared parental leave when discussions relating to the termination of their contract are due to take place? If so, you must contact Human Resources for advice as the employee may be entitled to additional employment rights.

How to terminate the contract of an employee who was appointed to cover for another employee and the contract is ending because the substantive post holder is returning:

1. Write to the employee to confirm when their contract will be ending, the reason(s) for this, and offer them the opportunity to meet with you to discuss this further. A template letter is available by clicking [here](#). If you are proposing to terminate the employee's contract early, you must allow sufficient time for this process to take place so that the employee can be given the relevant notice.
2. If the employee declines the offer to meet, complete the [Leavers Checklist E-Form](#). Human Resources will write to the employee to terminate the contract.
3. If the employee would like to meet, arrange a convenient date/time. The employee may be accompanied by a work colleague or trade union representative. The employee should be given the opportunity to suggest alternative proposals.
4. If, following the meeting, you decide that the contract should still be terminated, confirm your decision verbally to the employee and complete the [Leavers Checklist E-Form](#). Human Resources will write to the employee to terminate the contract.
5. An employee who wishes to appeal must submit their registration form to you within 7 working days of receiving their termination letter. The appeal will be heard in line with the [Appeal Policy and Procedure](#).

If, following the meeting, you decide that the contract should not be terminated, confirm your decision verbally to the employee and follow the instructions above to extend the contract. A fixed-term contract should only be extended where there is a genuine reason for the extension in line with the guidance contained in this document.

How to terminate the contract of an employee by reason of redundancy (i.e. the work is ceasing and the contract will be terminated either earlier or in line with the contract end date):

1. Contact Human Resources to discuss the potential redundancy, including consultation and notice requirements, eligibility for redeployment status, and whether this process is the correct one to follow.
2. Invite the employee to meet with you to discuss the proposal to terminate their contract. The employee may be accompanied by a work colleague or trade union representative. This meeting represents the start of formal consultation. The consultation period should last for a minimum of one week but may need to be longer depending on the circumstances.

3. At the meeting, explain the reason(s) for the proposed termination and the consultation arrangements. The employee should be provided with written confirmation of this information. A template letter is available by clicking [here](#). If applicable, advise the employee of their entitlement to redeployment status.
4. Once the consultation period has ended and you have considered any comments/suggestions, meet with the employee to advise them of the outcome. The employee may be accompanied by a work colleague or trade union representative.
5. If, following consultation, you decide that the contract should still be terminated, contact Human Resources so that the relevant notice letter can be issued. This letter will confirm the employee's right of appeal, any entitlement to redundancy pay and the date of redundancy.
6. Complete the [Leavers Checklist E-Form](#).
7. An employee who wishes to appeal must submit the registration form to you within 7 working days of receiving their termination letter. The appeal will be heard in line with the [Appeals Policy and Procedure](#)

If, following consultation, you decide that the contract should not be terminated, confirm your decision verbally to the employee and follow the instructions above to extend the contract. A fixed-term contract should only be extended where there is a genuine reason for the extension in line with the guidance contained in this document.

Additional Important Information

Advice must be sought from Human Resources as soon as possible if you receive either of the following requests from a fixed-term employee:

- An explanation as to why they are receiving less favourable treatment than a permanent employee; or
- Confirmation that their contract is to be regarded as permanent (as they have completed 4 years' continuous employment under 2 or more successive contracts).

A written response to either of these requests must be provided within 21 calendar days of the request being made.

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Fixed-Term Contracts - Guidance for HR

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Legal Context

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 give fixed-term employees the right to be treated no less favourably than permanent employees doing the same or broadly similar work with regard to their terms and conditions or in being subjected to any other detriment on the basis of their fixed-term status, unless such treatment can be justified on objective grounds. Fixed-term employees therefore have the right to the same pay and contractual entitlements as permanent employees, unless it can be objectively justified that a particular term or condition should not be applied.

Fixed-term employees who believe they are receiving less favourable treatment have the right to request a written statement from their employer explaining the reasons for such treatment and the employer must respond in writing within 21 calendar days of the request.

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Permanent Status - The Statutory Fallback Scheme

To qualify for permanent status under the statutory fallback scheme:

- The employee must have been employed continuously by the Council for 4 or more years under a series of 2 or more fixed-term contracts; and
- The continued use of a fixed-term contract cannot be objectively justified.

Continuous service on a permanent contract prior to service in a fixed-term contract does not count towards continuous service for these purposes.

Employees who believe that they qualify for permanent status are entitled to write to their manager and request written confirmation that their contract is to be regarded as permanent. The manager must write to the employee within 21 days of the request being made to confirm the contract is permanent or to confirm why it remains a fixed-term contract.

Examples of Objective Justification:

- The task/project that the employee is working on is due to finish shortly after the 4 year point;
- The funding for the post is due to cease shortly after the 4 year mark;
- The employee is covering the absence of another employee.

Example Scenarios:

1. An individual is employed on a 3 year fixed-term contract which is then renewed for a further 2 years - permanent status would be achieved on the date that they accrue 4 years' service unless the further fixed-term contract can be objectively justified.
2. An individual is employed on a 5 year fixed-term contract - permanent status would only be achieved if the contract is renewed (and the continued use of a fixed-term contract could not be objectively justified). Permanent status would be effective from the date the contract was renewed rather than when they accrued 4 years' continuous service.

If the employee qualifies for permanent status, the manager should complete the [variation to contract e-form](#) so that written confirmation can be issued by Human Resources.

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Ending Fixed-Term Contracts

In order to determine whether the termination procedures of the Fixed-Term Contracts Guidance or Organisational Change Policy will apply, the manager will need to confirm:

- The reason for the employee's contract (as stated in the contract and extension letters);
- Whether there are other employees (permanent or fixed-term) who are doing the same (or broadly similar) work.

The termination procedures set out in the [Fixed-Term Contracts Guidance](#) should be used where the employee's contract:

- Relates to the completion of an isolated project or piece of work and no permanent employees are engaged on the same task/project;
- States that it is to cover the absence of another employee;
- States that the individual was appointed to provide additional cover during a temporary peak in workload and that their contract would end once this excess demand has reduced. Contracts of this nature will usually only be in place for 6

months and employees must **not** have completed work outside of the 'peak' requirement. If they have, the provisions of the Organisational Change Policy will apply;

- States that the individual was appointed on a fixed-term basis pending the implementation of a restructuring. For this to apply, the implementation date stated in the contract must have been reasonable (usually within 6 months).

The [Organisational Change Policy](#) should be used to terminate fixed-term contracts where:

- The employee is carrying out the same or broadly similar work as permanent employees;
- The employee falls within the scope of a restructuring or review. Please refer to the Organisational Change Policy for further information;
- It is proposed to make a group of employees on both permanent and fixed-term contracts redundant.

When considering the end of a fixed-term contract, the manager will need to confirm the following regardless of which procedure will apply:

- How much continuous service the employee has. Managers should ensure that employees haven't achieved permanent status following the use of successive fixed term contracts. You will also need this to calculate how much notice they are entitled to and whether a redundancy payment may apply depending on which procedure will be used.
- Whether the employee is aged 55 or over and a member of the pension scheme.
- Whether the employee is currently on or due to commence maternity leave, adoption leave or shared parental leave.

Fixed-term posts which become available on a permanent basis

When an individual is appointed on a fixed-term basis, their contract of employment (and if applicable, redeployment trial period offer letter) should clearly state that the employee will only be entitled to a redundancy payment and/or redeployment status when their contract ends if they have the required amount of service and the reason their employment is ending is due to the post being redundant.

In situations where a fixed-term post has become available on a permanent basis but the current post holder has not been appointed to the post, it will not be a redundancy situation. In this case, it will be necessary to confirm whether the employee has been advised, in writing, of the above entitlements. Where it's confirmed that the employee was informed, the termination procedures set out in the [Fixed-Term Contracts Guidance](#) should be followed. However, where this is not the case, the employee should be informed of the position and advice sought from Legal as appropriate.

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Pregnancy, Maternity and Adoption Rights

It is unlawful to reject an applicant for fixed-term employment, to withdraw an offer of employment, to terminate or not renew a fixed-term contract on the grounds that the employee/prospective employee is pregnant (or may become pregnant).

Fixed-term employees have the same entitlement to statutory maternity and adoption leave and pay as permanent employees (subject to meeting the relevant qualification criteria). Although statutory maternity or adoption leave may come to an end at the conclusion of a fixed-term contract, the employee may still be entitled to receive statutory maternity or adoption pay if they have already qualified for it (even if their contract ends before they are due to commence their maternity or adoption leave).

Fixed-Term Employees in a Redundancy Situation

Employers have a statutory duty to offer an employee whose post is confirmed as redundant whilst they are on maternity leave, adoption leave or shared parental leave, any suitable alternative post as an alternative to redundancy. To be classed as a suitable alternative for these purposes, the post must be on terms and conditions and in a capacity and location which are not substantially less favourable than the employee's substantive post and be suitable and appropriate for them to do. The employee should be given redeployment status from the start of formal consultation and offered any suitable post over other employees with redeployment status.

An employee who returns to work before they are issued with their notice of redundancy is not entitled to this preferential treatment however will still be entitled to redeployment status for the duration of their notice period.

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