



# Fixed Term Contracts Guide & Code of Practice

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*Together, pursuing life in all its fullness*

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# **Fixed Term Contracts for all Staff and a Guide to their use and code of practice.**

## **SUMMARY**

The expiry (and non-renewal) of a fixed term contract is, in law, a dismissal. Academies will need to look behind the reason for not extending the contract (or making it permanent) to determine the reason for dismissal. In most cases, dismissal at the end of a fixed term contract will be by reason of redundancy (i.e., there is a reduced need for employees to do work of a particular kind, including where this is determined by a lack of further funding). In some cases, it might *not* be dismissal – such as where the fixed term contract has been arranged to provide maternity cover and the member of staff is returning to work.

If the reason behind the dismissal is redundancy, and the employee has two years' service (including any preserved by the Modification Order), redundancy pay will be due.

## **1.0 INTRODUCTION**

This document applies to all staff (full-time or part-time).

When determining the staffing needs of an Academy, a balance must be struck between the need for employees of a temporary nature and the need to maintain a stable workforce. Extensive or unnecessary use of fixed-term contracts creates a degree of uncertainty within the Trust, making it difficult to maintain stability and may cause recruitment problems due to the lack of long-term job security and lower staff morale. The Trust has a duty to ensure that a fixed-term contract or renewal of a fixed-term contract is necessary, appropriate and can be objectively justified. It must also observe the legislation governing the use of fixed-term employees (see below).

Further advice can be sought from the HR Department.

## **2.0 LEGAL AND CONTRACTUAL POSITION**

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (known here as the Regulations) governs the use of fixed-term employees. Fixed-term employees have the right not to be treated less favourably than comparable permanent employees because they are fixed-term unless less favourable treatment can be objectively justified. This therefore affects all staff employed on temporary, fixed-term contracts and on supply (except external agency staff). The ending of a fixed-term contract is a dismissal in law.

### **2.1 What is a fixed-term contract?**

A fixed-term contract is any contract of employment that will terminate:

- On the expiry of a specific period of time
- On the completion of a particular task
- On the occurrence or non-occurrence of any other specific event.

Examples of when a fixed-term contract can be used include:

- To cover temporary absence of the substantive postholder, e.g., maternity leave, sickness absence, secondment or career break
- To work on a specific project with separate funding

- To cover a vacancy pending changes in structure, budgets, closure of service/Academy over a specified time period.
- To cover peaks in demand

## **2.2 How long can a fixed-term contract last?**

Under current employment legislation, a fixed-term contract can last for up to four years but normally it is between six and twenty-four months. There is no limit on the length of the first fixed-term contract, however if an individual is employed on a series of fixed-term contracts (two or more successive contracts) which are continuous and exceed four years in total duration, then the employee will automatically become permanent and can request confirmation of this in writing. If an employee has been on fixed-term arrangements and there is a wish to keep them beyond four years, this may be possible if justified on objective grounds. In this case, you are advised to contact the HR Department.

## **2.3 What about continuous service?**

A continuous succession of fixed-term contracts with the same employer will usually lead to an employee gaining continuous service from one contract to another. This will apply even though they have been employed in different posts in different locations, such as with different Trusts, Academy, Community or Voluntary Aided Schools. For some continuous service purposes and depending on the conditions of employment under which employed, service with other associated employers (e.g., Voluntary Aided Schools or other Local Authorities) may count. Continuous service affects entitlements to annual leave, sick leave, redundancy pay and the right to claim unfair dismissal. You are advised to contact the HR Department for advice on individual cases.

A break in continuous service will arise where an employee has a gap between contracts which must, as a minimum, include a seven-day period, commencing on a Sunday and including the following Saturday.

## **2.4 Expiry or Non-Renewal of Fixed term/Temporary Contracts**

The expiry or non-renewal of a fixed-term contract is a dismissal in law and there is a requirement to act fairly and follow a fair dismissal procedure, involving consultation with the employee, as outlined in the dismissal procedure below. Failure to do so could result in a claim of unfair dismissal. Fixed-term employees after two years have the right to a written statement of dismissal and not to be unfairly dismissed. Therefore, employees on fixed-term contracts will require a letter confirming the non-renewal of the contract and right of appeal. (See example letter in Appendix A and Appeals process in Appendix B).

The HR advice is that employees with fixed-term contracts are advised in writing at the outset of:

- (a) the purpose of the fixed-term contract (from the options above or other valid reason)
- (b) the duration
- (c) that the contract will not be renewed.

Normally the dismissal due to the expiry of a fixed-term contract will be considered fair *if it is* based on the following grounds:

- where the reason for the contract has disappeared; and

- the fixed-term contract was set up for that purpose; and
- both the purpose and the reason for it being fixed term were known to the employee; and
- the underlying purpose of the contract has ceased to be applicable when the employee was dismissed.

Where the above conditions do not apply, or where the requirement for the work to be undertaken has diminished or ceased before the expiry of the fixed-term contract, the contract can still be ended fairly but a redundancy payment may be applicable.

In such situations a fixed-term contract must include a clause that allows for early termination of the contract. The contract should only be terminated earlier than the specified end date if there is a substantial reason for doing so. Employees would still have a right to be paid their contractual notice (and can be required to work the notice period). In such a case, you should contact the HR Department to determine whether any payments are due.

The following outlines practical examples of where Fixed-term contracts can be ended without being renewed when one of the conditions below are satisfied:

- The maternity leave employee has returned or resigned.
- The absent employee has now returned or resigned.
- The secondment has come to an end.
- The stated child's needs have changed significantly, or the child has left the Academy.
- A Teacher who is a qualified graduate or registered Teacher is available for appointment, or to give instruction.
- The vacancy has been filled on a permanent basis.
- The peak in demand has come to an end.
- The specific task or project the employee was appointed to carry out has been completed.
- The initiative or funding for this initiative has now come to an end.
- The Management of Change and Redundancy process is completed.
- The Academy reorganisation process or closure process has been completed.
- The individual has previously requested the fixed-term contract and the contract has now expired and will not be renewed, and this has been mutually agreed.

## **2.5 Fair procedure**

To end a Fixed Term contract requires a fair dismissal procedure involving the following:

- Step 1 – meet with individual employee to discuss ending fixed-term contract.
- Step 2 – confirm in writing using the letter in Appendix A.
- Step 3 – right of appeal following Appeal process in Appendix B.

Copies of any correspondence must be kept showing that these steps have been followed.

N.B.: Where a suitable alternative post is available, the individual whose fixed-term contract has ended should be given consideration, and the employee should be offered the same assistance and advice as would be offered to permanent employees who were being dismissed in comparable circumstances.

## **2.6 Can a fixed-term appointment be made to a permanent post?**

Where it is determined that a fixed-term/temporary arrangement needs to be made permanent, you need to decide whether to undertake a further recruitment process or whether to confirm the appointment of the fixed-term employee on a permanent basis.

This decision must be based on objective reasons taking into account:

- Whether a competitive selection process was used when the first fixed-term appointment was made.
- Whether the requirements of the job have changed.
- The ability to recruit and retain employees with the appropriate skill.
- The duration of the fixed-term contract (if it has been in place for four years or more, it will normally be regarded as permanent).
- Whether by doing so would affect any other member of staff, particularly in respect of job security or promotion opportunities.

N.B.: The provisions of the Safer Recruitment in Schools should also be taken into account.

Fixed-term employees can request a written statement as to why they have been treated less favourably if that is what they believe has occurred. The employer is required to respond within 21 days. The statement may be used at an employment tribunal hearing concerning a complaint under the Regulations.

The Headteacher/Line Manager will need to respond to this in writing. It is essential therefore that you are aware of the reasons and that the reasons offer objective justification under the regulations for employing staff on a fixed-term contract.

You are advised to contact the HR Department as soon as you receive such a request.

## **2.7 Newly Qualified Teachers (NQTs)/Early Career Teachers (ECTs)**

Where appropriate, Newly Qualified Teachers/Early Career Teachers may be appointed to a fixed-term contract according to the reasons set out in Section 3.5. They should not be placed on a fixed-term contract for the reason of assessing their potential and suitability as a Teacher. That is the purpose of the statutory induction period, which every NQT/ECT is required to complete. Failure to successfully complete such a period will result in their dismissal.

## **2.8 Named Statemented Children**

If an appointment is made on a fixed-term contract to support a named child, it is possible to fairly end the contract if the reason for ending the contract is clearly outlined in the contract.

Permanent contracts for all special needs staff, including those working with statemented children, can be given if considered appropriate.

## **2.9 Fixed term/Temporary Contracts and the Reductions Procedure**

Fixed-term employees are protected from being selected for redundancy on the grounds that they are a fixed-term employee, unless the selection can be objectively justified. When undergoing a reductions process, Academies should consult the HR

Department and the Management of Change and Redundancy Policy and the Guidance Notes in the associated toolkit.

**Supply Staff:** The Regulations also apply to staff undertaking supply work if employed by the Trust. They do not apply to External Agency workers.

It is **not** appropriate to use fixed-term contracts in the following circumstances:

- In order to create a probationary or 'trial period'. This includes the induction year(s) of an NQT/ECT (see 2.7). This may be viewed as unfair by an Employment Tribunal and is not good employment practice.
- Because of an anxiety about a shortfall in future budgets which cannot be substantiated.
- As a matter of practice for part-timers (due to indirect discrimination risks).
- Where it is expected that the need for a post will continue beyond two years.

### **3.0 REVIEW AND MONITORING**

The Trust will review the application of this policy to ensure proper procedures have been followed and to identify any points that can be learned from those cases and implement any necessary changes.

Records will be treated as confidential. The procedure will be monitored to ensure consistency of application and adherence to equalities legislation, to ensure that the policy operates in accordance with the duties to promote equality, to eliminate discrimination and to promote good relations between staff with protected characteristics as required under the Equality Act 2010.

When carrying out any reviews or monitoring, the organisation will ensure that individuals' personal data is handled in accordance with GDPR.

This policy will be reviewed every three years in consultation with recognised Trade Unions.

## Appendix A: Example statement of dismissal

Dear [name]

I am writing to confirm that your fixed-term contract as an [post] will end on [date] since [reason for ending] and will not be renewed.

*[\*If terminating earlier than the agreed end date in the contract of employment include the following sentence:*

This end date is earlier than agreed in your contract of employment due to [reason] and as such your contractual notice is included within the end date stated above.]

You have the right to access vacancies and be considered for alternative employment. Details of vacancies are placed on the vacancy list which can be accessed through the Trust website, [www.covmat.org/vacancies](http://www.covmat.org/vacancies).

May I take this opportunity to thank you for the contributions you made to the Trust in your time here.

Please do not hesitate to contact me if you wish to discuss this decision.

You have a right of appeal against the decision to end your fixed term contract. If you wish to appeal, please confirm your grounds of appeal in writing to the Head of HR, within seven days of the date of this letter.

Yours sincerely

[Name]

Headteacher

## Appendix B: Appeal Process

This procedure is to be followed for all teaching and non-teaching staff in the Trust:

1. Where an employee wishes to appeal the decision not to renew their fixed-term contract he/she should discuss the matter informally with his/her Headteacher/Line Manager.
2. The Headteacher/Line Manager should reply orally as soon as possible.
3. If the employee is dissatisfied with the response, they should put their case in writing to the Head of HR; within seven days of notification of the decision referred to in paragraph 1 and it will be considered. The employee has the right to be supported by a Trade Union Representative or work colleague.
4. All documents will be submitted three days prior to the meeting.
5. The employee will make representations to the panel and the other party and the panel may ask questions of them. The panel will have had no prior involvement with the case.
6. The Headteacher/Line Manager will then make representations to the panel and the other party and the panel may ask questions of them.
7. Either party may be represented at the hearing.
8. The panel will then adjourn to discuss and come to a decision.
9. The decision will be communicated to both parties and in writing by the chair of the panel.
10. The decision of the panel is final.