

Fixed Term/Temporary Contracts Guidance

1. Introduction

This guidance provides all managers with responsibility for staff with direction in relation to the issuing and management of fixed-term/temporary contracts.

Heads of Service and Managers are responsible for determining the nature of the contract of employment for all staff and it is essential that there are transparent and objective reasons for agreeing that a post is of a fixed-term/temporary nature as opposed to being permanent.

The main legislation impacting on fixed-term/temporary workers is the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, which came into force in October 2002.

The 2002 Regulations state that:

- fixed-term employees have the right not to be less favourably treated than comparable permanent employees, unless the less favourable treatment is justified on objective grounds;
- the treatment of any fixed-term employee will be compared to that of any permanent employee who does the same or similar work for the same employer;
- fixed-term employees should not be employed on a series of successive fixed-term contracts beyond 4 years;
- fixed-term employees cannot waive their statutory right to claim unfair dismissal or receive redundancy payments if they are made redundant at the end of their contract.

By following the advice provided the Authority can ensure the appropriate use of temporary or fixed terms contracts and reduce the risk of claims of unfair dismissal and of complaints regarding unequal treatment.

2. Key Principles

The employee on a fixed term/temporary contract should not expect their employment to last longer than the term of the first contract. Should the contract be ended early i.e. before the contracted length of time then a dismissal will occur and the relevant notice period will apply.

3. Scope

This guidance covers all employees including centrally employed teachers but excluding staff on the complement of locally managed schools for which local arrangements exist.

4. Differences between a fixed term contract 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.

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

temporary or fixed term contract for the following reasons the employee will be eligible to a redundancy payment, where s/he has two or more continuous years service:

- 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.

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

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”

- Cover for adoption/maternity/parental leave
- Cover for secondment of substantive post holder.
- Cover for a vacancy whilst recruitment process is undertaken (only for approved vacancies)
- Cover for long-term absence e.g. sickness

In such cases, the employee is not normally eligible to receive a redundancy payment. Temporary or fixed term contracts should only be used for approved vacancies; these contracts should not be used to cover for a post which is awaiting approval/funding.

Fixed-term/temporary contracts should not be used to create a ‘trial period’ in order to evaluate the applicant’s suitability for the post. Heads of Service and Managers should manage poor/unacceptable performance in line with the Capability or Disciplinary Policy and Procedures. In particular and where applicable, effective use should also be made of the employee’s probation period as detailed within the [Managing Probationary Employees Policy and Procedure](#)

5. Casual Workers

Casual Workers are not employees of the Authority and should be used only under the following circumstances:

Where the work

- occurs only once and for a short period of time (usually 3 months or less), or
- which occurs more often but on an irregular and infrequent basis, **and**
- where there is no obligation on the Authority to offer work, and no obligation on the individual to accept it.

These are workers engaged for a one off event or a series of one off events, e.g. summer play scheme workers, summer placements.

Casual workers can drift into longer term working arrangements and care needs to be taken to differentiate between a ‘true’ casual and individuals who are being utilised on a more frequent and regular basis. Casual workers accrue statutory holiday entitlement in line with UK’s Working Time Regulations, i.e. 5.6 weeks (28 days including 8 Bank/Public Holidays) pro rata.

6 Successive Use of Fixed-term/Temporary Contracts

The Authority must be mindful of the use of successive fixed-term/temporary contracts and must be aware that an employee who has four years service or more on fixed-term contracts may be entitled to permanent status unless a further renewal on a fixed-term basis can be objectively justified.

Furthermore, if the objective reason for the use of such a contract is the short term nature of the work, this justification must be called into question where the contract is repeatedly renewed and the overall duration of the employment becomes substantial. Regular reviews of the contractual status/arrangements should be undertaken in conjunction with section 15.

7 Issuing Fixed-Term/Temporary Contracts

When advertising/interviewing for a fixed-term/temporary post, the recruiting manager should make it clear to applicants at each stage of the process that the post is fixed term/temporary, the expected duration of the contract and the reasons for this.

It is necessary for certain information to be included in the written statement of particulars of employment which will be provided to the employee. Therefore it is essential that the Manager informs the HR Support Team of the following information via the 'Approval for Recruitment Form' and 'Advertising Vacancies Request Form':

- the reason for the appointment being fixed term/temporary;
- the duration/likely duration of the period of employment;
- the proposed end date of the contract; and/or
- The event that will bring about the termination of the contract.

Please refer to [Authority recruitment documents and forms](#)

8. Rights of Fixed-term/Temporary Employees

Fixed-term/temporary employees who have more than one year's continuous service or two years if they started on or after 6 April 2012 have the same remedies in law for unfair dismissal as an employee on a permanent contract. There is no length of service requirement in relation to 'automatically unfair grounds', e.g. sex, race, disability, age, etc, discrimination. A claim for unfair dismissal may be made if the employer fails to renew the contract without a fair reason and without following a fair procedure.

The non renewal of a fixed-term contract is a dismissal in law and employees on these contracts have the right to a written statement of the reasons for this dismissal. Further information on the correct procedure to follow when not renewing a contract is contained in section 17.

9. Fixed term/temporary contracts and restructuring

Where the fixed term employee is employed within a service area that is being re-structured please refer to Appendix A. The questions and answers section will assist in the application of the [Restructuring Policy](#)

10. 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 substantive manager should ensure they meet with the individual in advance of the required contractual notice to bring their temporary/fixed term contract to an end.
- At the time that the substantive manager meets with the employee, they will also need to liaise with the secondment line manager who will be responsible for transferring the secondee onto a fixed term contract for the remainder of the secondment period.

11. Selection for Redundancy

Where a potential redundancy situation arises, the Authority's Redundancy Policy & Procedure will be used.

12. 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 service with the Authority or related employers as listed under the redundancy payments (continuity of employment in local government) (modification) Order 1999 and subsequent amendments. Where a fixed term or temporary contract, is brought to an end earlier than the stated expiry date, the employee will be entitled to the appropriate notice.

13. Continuous Service

Continuity of employment is not broken when one employment contract follows another with a gap of less than a week (running from Sunday to Saturday) with the same employer. Therefore a series of contracts in one or more departments within the Authority can be aggregated to provide continuity of service which will give employment protection rights (this would be irrespective of the length of service in the current department).

14. Access to Permanent Posts

An employee on a fixed-term contract does not have an automatic right to a post if it is decided that a permanent appointment will be made, for example where a member of staff decides not to return following maternity leave. This is because **all vacancies should be advertised**, however the employee will be able to apply for the post and should be treated on an equal footing with other candidates.

15. Renewal and Non Renewal of Fixed-term/Temporary Contracts

It is important that the termination of fixed-term and temporary contracts is handled properly to avoid potential claims against the Authority / school and for the benefit of the employee. The following points should be noted when a fixed-term or temporary contract ceases:

- The termination and non-renewal of a fixed-term contract is a dismissal under UK law. Legislation requires that consultation should take place with the employee and the statutory dismissal process should be followed (see section 16 below).
- The non renewal of a fixed-term contract for reasons of pregnancy or other reasons connected with pregnancy is unlawful.
- Non renewal of fixed-term contracts for reasons of poor/unacceptable performance may amount to unfair dismissal.

16. Reviewing Fixed-term/Temporary Contracts

The temporary nature of the contract should be kept under regular review but especially towards the end of the period of the contract when the Manager should review the post

with the employee to assess whether there is still a need for the post to be temporary/fixed-term or whether a permanent contract could be issued. The review would consider, for example, whether funding has been secured, the post appointed should be on a permanent basis or whether the return date for an employee off sick is now known.

The Manager should remind individuals on fixed-term contracts of the end date of the contract and, if the contract will not be renewed, whether there is any possible alternative employment and where posts are likely to be advertised. This review should be done by the Manager and followed up in writing to the individual.

17. Renewal of a Temporary/Fixed Term Contract

If a post covered by an individual employed on a fixed-term/temporary contract is to continue unchanged beyond the end date of the fixed-term/temporary, the contract should be renewed and the appropriate forms completed and sent to the HR Support Team. However you are advised to refer to section 6, 'The Successive Use of Fixed-term/temporary Contracts' and ensure that there is still objective justification for the post being fixed term. If the duties of the post have changed significantly or the post becomes permanent the vacancy should be advertised.

18. Non-Renewal of a Temporary/Fixed Term Contract

ACAS discipline, grievance and dismissals guidance expressly applies to the non renewal of a fixed-term or temporary contract in the same way that it applies to the dismissal of a permanent employee, even though both parties may expect the contract to come to an end. This is because the expiry of a fixed-term/temporary contract will still count as a dismissal for the purposes of unfair dismissal law. The Manager is responsible for the dismissal of an employee.

The following stages are considered to be best practice and will comply with the appeals process:

Step 1: Set out in writing the proposed decision not to renew the fixed term/temporary contract and offer the employee the opportunity to meet to discuss the matter (the employee may be accompanied by a trade union representative or work colleague and should be given reasonable notice). See Appendix A for sample letter.

If the employee confirms that they wish to attend the meeting:

- 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 the grounds of redundancy (with or without payment) or SOSR.
- If the employee is one of a pool of employees on a fixed term or temporary contract from which selection for redundancy has to be made, the criteria that will be used to make the selection should be explained.
- Check and confirm whether the employee is eligible for redeployment status seeking advice from HR where appropriate.
- Check that the individual is aware of how to access job vacancies via the internet.
- Where an employee has been on a 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 the HR advisor to obtain an estimate of redundancy costs.

Step 2: After the meeting the employee must be informed by the Manager of the decision and liaise with HR to issue a letter confirming the decision to renew a contract of employment or to terminate the employment.

Step 3: An employee has the right to appeal against the termination of a temporary or fixed term contract. The appeal should be made in writing where possible, stating the grounds for appeal and to be received at least 7 days before the date of termination. Appeals should be addressed to the Assistant Chief Executive (People Management and Performance) Following this a panel should be convened in accordance with the Authority's appeals procedure.

Collective redundancy consultation

On the 6th April 2013 the Government confirmed that the minimum period for collective redundancy consultation is reduced where 100 or more employees are in scope from 90 to 45 days.

The minimum consultation period where the employer is proposing to dismiss between 20 and 99 employees remains at 30 days.

Fixed-term/temporary contracts that terminate as envisaged by the employer and employee are excluded from the requirement to consult collectively. However, if the employee proposes to dismiss the fixed-term employees earlier than the date agreed (and the reason is redundancy), the employer must include the fixed-term contracts in the count for collective redundancies and must consult on the proposed redundancies.

If the employee has over 2 years service the Manager should consult their HR Officer with regard to whether there is an entitlement to a redundancy payment (see section 10)

19. Ensuring Equality of Treatment

This guidance must be applied consistently to all employees irrespective of race, colour, nationality (including citizenship), ethnic or national origins, language, disability, religion, belief or non belief, age, gender, gender reassignment, sexual orientation, parental or marital status, pregnancy or maternity.

If you have any equality and diversity concerns in relation to the application of this policy and procedure, please contact a member of the HR Team who will, if necessary, ensure the policy/procedure is reviewed accordingly

If you require this publication in an alternative format please contact People Management on 01267 246184, Ext 6184 or email PMBusinessSupportUnit@cararthenshire.gov.uk

Appendix A – Restructuring and fixed term/ temporary contracts Q&A

Q: Can fixed term or temporary employees apply for “New posts” in the service area being re-structured?

A: Fixed term and temporary employees will be eligible to apply for these posts unless the fixed term employee was specifically brought in to cover work pending the restructuring exercise.

Q: If a fixed term employee is in post at the start of the restructuring process but their contract ends during consultation, can they be considered for assessment of compatibility in that post?

A: With reference to the above please refer to HR for further advice as this will depend on a number of factors. Fixed term and temporary employees would not be automatically excluded from this process unless the reason for the fixed term contract was ‘Pending re-structuring’. In these circumstances the employee would not be included

Q: If the fixed term employee is occupying a post that is made permanent on the new structure and their contract is not due to end before the new structure is implemented, do they have the opportunity to be considered for that post?

A: The fixed term employee will have the opportunity to be considered it must be noted, however, that a temporary employee who is providing temporary cover for a substantive post holder cannot displace the substantive employee

Q: Where there is a redundancy situation and some of the employees occupying the posts in the potential pool are on fixed term contracts are they included in the redundancy selection pool?

A: With reference to the above please refer to HR for further advice as this will depend on a number of factors including when the contract is due to end and the reason for the fixed term contract. Fixed term and temporary employees would not be automatically excluded from this process.