

GUIDELINES ON THE USE OF FIXED TERM CONTRACTS

1. Purpose

- 1.1 This document provides guidance on the legalities which surround the use and termination of fixed term contracts. This guidance does not apply to apprentices, placements as part of a programme of study, or agency workers.

2. Use of fixed term contracts

- 2.1 A fixed term contract of employment might be appropriate in the following circumstances:
- for a specified period, for example covering maternity leave or a Term whilst a permanent post holder is recruited;
 - when automatic termination will occur following completion of an activity such as a project;
 - when an event is due to occur for example non-renewal of external funding for a post.

3. Terms and conditions of employment for fixed term contract employees

- 3.1 Fixed term workers have the same statutory rights as permanent workers and should be engaged on terms no less favourable than a permanent counterpart (with the exception of the inclusion of a contractual termination date).
- 3.2 Failure to treat an employee in a way which is not comparable with a permanent counterpart will most likely be a contravention of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- 3.3 The basis for the fixed term contract and the intended dated of cessation will be included in the offer letter and contract of employment.
- 3.4 Where an employee has been continuously employed on successive fixed term contracts for 4 years or more they will normally automatically achieve permanent status at the next renewal. Term breaks do not count as a break in service as they are a temporary cessation of business. Justification for another fixed term contract in these circumstances could be to cover for a substantive post holder. In practical terms, if an employee has been employed on a fixed term contract for 3 years, and a further fixed term contract cannot be justified, the fixed term contract will become permanent when the employee reaches 4 years' service.

4. Extending a fixed term contract of employment

- 4.1 The need to extend a fixed term contract can arise for a number of reasons, including covering an extended period of absence, extension of the project or continued inability to recruit on a permanent basis.
- 4.2 In these circumstances the employee can be offered an extension to their contract for a specified period. If the extension is not accepted then the contract will terminate on the original date.

5. Transferring a fixed term contract into a permanent contract

- 5.1 In some circumstances it may be possible to add the fixed term post to the establishment, for example if the substantive employee decides not to return to work, or if the work which was required on a fixed term basis is now required on an ongoing basis.
- 5.2 Before any offer of permanent employment is made to a holder of a fixed term contract, the following should be considered:

- If the incumbent has less than 2 years continuous service at the intended end date, consideration should be given to establishing if there any posts at risk of redundancy across The Trust meaning that this job might be considered as a suitable redeployment opportunity.
- In any event, approval from the Headteacher is required before a fixed term contract can be converted to a permanent contract.
- If the employee has more than 2 years continuous service (the qualifying service period for unfair dismissal) or if the employee has successive fixed term contracts of 4 years or more (the qualifying period to become permanent) the permanent post should normally be offered to the employee.
- For service below these thresholds the options are:
 - Advertise the post externally and / or internally following the recruitment and selection procedure.
 - OR
 - Where the employee has been through the established selection procedure and where the post was at least advertised across the MAT internally, and the post has not changed since, the employee may be offered the role on a permanent basis.

6. Terminating a fixed term contract - principles.

- 6.1 It is good practice to set a reminder at least 1 month before the date which you need to give notice to ensure that sufficient time is available for decisions to be made and for consultation to take place with the employee prior to issuing notice to terminate a fixed term contract.
- 6.2 If an employee on a fixed term contract has more than two years continuous service, including previous service with an employer recognised under the redundancy payments modification order, then they may be entitled to a redundancy payment. Please check with the Head of Human Resources if you are unsure.
- 6.3 Termination or non-renewal of a fixed term contract amounts to dismissal (Employment Rights Act 1996), and as such a fair process should be followed in all cases.
- 6.4 For a dismissal to be fair it has to be based upon one of the potentially fair reasons for dismissal which in the case of a termination of a fixed term contract is either Redundancy or Some Other Substantial Reason.
- For the majority of cases the reason for a fixed term contract ending will be redundancy, in that the work the employee was engaged to do has completed, is about to complete, or the funding has come / is coming to an end.
 - Some Other Substantial Reason is normally used as the reason for dismissal in cases where the substantive employee is returning to work for example from maternity, adoption or shared parental leave.

7. Terminating a fixed term contract – procedure

- 7.1 From April 2013 the termination of a fixed term contract, as set out in this guidance, does not require collective consultation. However fixed term contracts which are being terminated early on the grounds of redundancy do count and must be included in any collective consultation which is already taking place on redundancy.
- 7.2 Information and consultation about the termination of a fixed term contract should take place just as it would with an employee on a permanent contract, particularly where the reason for dismissal is redundancy.

- 7.3 The School will set out in writing to the employee the proposed decision not to renew the fixed term contract and invite the employee to a meeting at which they have a right to be represented by a work colleague or trade union representative.
- 7.4 At this meeting the employee will be informed that the intention is to terminate their fixed term contract and to remind them of the end date / circumstances which will bring about termination and the reason for the proposed dismissal. The employee will be invited to make representations about the situation and also informed how they can find out about vacancies across the MAT.
- 7.5 If the employee does not wish to meet or make any representations, they will not lose their right of appeal.
- 7.6 The Headteacher will need to consider if the representations make any difference to the decision to terminate the fixed term contract.
- 7.7 If not, and following this meeting, the employee will receive confirmation of dismissal in writing which will include:
- the notice period
 - the termination date
 - reason for dismissal,
 - redundancy pay if due,
 - the right of appeal

8. Appeals

- 8.1 The employee must set out in writing the grounds of their appeal within 10 working days of receipt of the confirmation letter referred to above and send this to the Headteacher.
- 8.2 The matter will be referred to a Governors' Appeal Panel comprising of at least 2 governors (excluding the Staff Governor).
- 8.3 The employee will be given 10 working days' notice of an appeal hearing, unless an earlier date is mutually agreed. This notice will include the time, date and location of the meeting and will include their right to be accompanied by a trade union representative or work colleague.
- 8.4 The decision of the hearing will be notified to the employee in writing within 5 working days of the hearing and the employee will be advised that this decision is final and there is no further right of appeal.

9. General Data Protection Regulation

- 9.1 All data within this policy will be processed in line with the requirements and protections set out in the General Data Protection Regulation.

Document management

Review cycle:	Every 2 years
Next review due:	May 2020
Policy owner	Head of Human Resources
Equality Analysis completed:	2.8.17