

APPENDIX B

USE OF FIXED TERM WORKERS PROCEDURE

These guidelines are to provide helpful information to assist the recruitment and management of workers engaged by the council in work of a temporary nature by a fixed term contract, it is not intended to amount to legal advice.

1. Introduction

This Procedure should be read in conjunction with the Temporary Workers Policy.

The council is committed to ensuring that it delivers excellent services to its customers at all times. The organisation will, where necessary, use fixed term contracts of employment to help to fulfil customer demands and maintain the highest standards of service.

2. Definition

Fixed-term contracts of employment are those set up either:

- for a specified period of time (for example, to cover maternity leave)
- to cover a specific task, or work on a specific project

3. Fixed Term Contracts process

Recruitment of fixed term workers

Where the need for a particular job to be done is clearly temporary, the contract of employment offered will be for a fixed term. Firstly, a line manager needs to identify whether a post is suitable for a fixed term contract. The post will be suitable if it satisfies one or more of the following conditions:

- it is known in advance that a particular job will come to an end on a specific date
- the employment is for the purpose of completing a particular task
- the employment is for the purpose of replacing an employee who is to be absent from work for a period of time (for example on maternity leave)
- the post is dependent on external funding and it is thought likely that the funding will be available for only a temporary period of time

When recruiting to a fixed term post the start and end date, or duration must be clearly stated in the advert and clearly explained at interview. Refer to the Recruitment Procedure for details of the council's standard recruitment processes.

Probation

All fixed term contracts are subject to a probationary period. Please refer to the Probation Procedure for further information.

Pensions

Fixed term employees are entitled to join the pension scheme on the same basis as permanent staff, provided they have a contract for more than 3 months.

Extending fixed term contracts

Once an employee has been employed on a fixed term basis it is possible for the line manager to extend the contract should there be a genuine requirement for the temporary work to continue. The line manager can extend the contract on a further temporary basis by informing HR Support of the revised end date.

If you are unsure as to whether to extend a fixed term contract you must seek advice from your HR Business Partner.

Use of successive fixed term contracts

Regulations limit the use of successive fixed-term contracts by imposing a cut-off of 4 years' continuity of service, after which the employee will automatically achieve permanent status, unless there is an objective reason that justifies further renewal for a fixed term. Line managers who are extending a fixed term contract beyond 4 years must contact their HR Business partner for advice.

4. Termination of a fixed term contract

Expiry of a fixed-term contract

The expiry of a fixed-term contract without renewal is regarded as a dismissal. An example would be a fixed-term contract set up to cover an employee's maternity leave, the exact duration of which may not be known at the outset. However, when the absent employee returns to work, the replacement employee's fixed-term contract will come to an end.

Generally, dismissal on the expiry of a fixed-term contract will be fair provided that:

- the fixed-term contract was set up for a genuine purpose
- the purpose of the contract and the reason for its being for a fixed term were known to the employee; and
- the underlying purpose of the contract had ceased to be applicable when the employee is dismissed.

Reasons for dismissal

Where line managers do not plan to renew the contract because the employee is underperforming, they should refer to the [Capability Procedure](#). Where there are conduct issues, line managers should refer to the [Disciplinary Procedure](#). A fixed term employee who wishes to raise a grievance regarding the non-renewal of a fixed term contract may refer to the [Grievance Policy](#) and Procedure.

Line managers are advised to contact their HR Business Partner if an employee becomes pregnant whilst employed by a fixed term contract. Dismissal will automatically be unfair if the dismissal is related to pregnancy, childbirth or maternity leave.

Redundancy

Line Managers must be clear on why they are not renewing the fixed-term contract. If the work that the employee was engaged to do has been completed, or the funding for the role has come to an end, the reason for the dismissal is likely to be redundancy.

Where a fixed term contract expires after 2 years of continuous service whether on one or more fixed-term contracts and a genuine redundancy has occurred, the employee shall qualify for a redundancy payment.

The council will need to show proper consultation in the period prior to the end of the contract, this includes a reasonable attempt to find alternative work within the council - just as it would where the redundancy situation concerned an employee on a permanent contract.

It is likely to be unlawful to select fixed-term employees for redundancy simply on the basis of their fixed-term status.

Dismissal procedures

As soon as practical HR will write to the employee explaining the reason for the non-renewal of contract and inviting them to a meeting with their manager to discuss the matter further. The letter will advise the employee of their right to be accompanied by a colleague or trade union representative.

The letter will ask the employee to contact their manager to set up a date to meet and will give a timescale by which they must do so. This will vary according to the circumstances of the situation but should give the employee time to consider what they want to do.

If the employee does not wish to meet and accepts the contract is to end, the line manager must inform HR Support of this so they can write to the employee to confirm that they do not wish to exercise the right to the meeting and confirm the end date of the contract.

The Meeting

The employee should make all reasonable steps to attend the meeting. If the employee's companion is not available on the date set, the employee should propose an alternative date within 5 working days of the date set for the meeting. If the employee fails to do so, then management will set the date and the meeting will proceed without the employee's companion if they are unable to attend. At the meeting the employee should explain why they do not think it appropriate to terminate the contract.

Following the meeting the manager should write to the employee with details of the decision and the reasons for it. The letter should also notify the employee of their right to appeal against the decision, for further information refer to the council's Appeals Procedure.

5. Early termination of fixed term contract

Either side may give notice at any time during the life of the contract providing that the terms relating to notice have been made explicit and confirmed in writing in the letter of appointment and/or contract of employment. Where there is no early termination clause in the contract of employment line managers must seek advice from their HR Business Partner. Notice does not apply in gross misconduct situations.

6. Post status changes

There will be occasions when it is decided that the temporary post can be filled on a permanent basis for example: -

- The permanent post holder will not be returning to take up the duties of their substantive post
- It is decided that there is a permanent requirement to undertake the duties of a post which was conceived as short term
- Funding is made available to undertake the role in the long term
- It is accepted that further post holders are required to undertake the duties in the long term.

In all normal circumstances the post will need to be advertised as a permanent vacancy. It will not be possible to simply 'slot in' the temporary employee into the post. The council strives to be fair to all of its employees and there may be other people also in an 'at risk' situation who should be allowed the opportunity of applying for the post.

If the temporary employee is placed on the 'at risk' register held by the council – this will depend on their circumstances - then they will be offered a non-competitive interview along with other suitable candidates from the 'at risk' register.