

# Fixed Term and Temporary Contracts in Schools

August 2023 V3.0  
Human Resources



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## 1.0 Introduction

This policy provides the headteacher and governors with guidance in relation to the issuing and management of fixed term/temporary contracts.

The governing body is responsible for determining the nature of the contract of employment for all staff and it is essential that there are transparent, necessary and objective reasons for agreeing that a post is of a fixed term/temporary nature as opposed to being permanent.

Whilst this policy refers to workers not on permanent contracts as fixed term or temporary, most temporary workers will be engaged on fixed term contracts. In addition, many temporary workers will satisfy the statutory definition of 'worker' and legislation designed to protect 'workers' will impact on them.

The main legislation impacting on fixed term/temporary workers is the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 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 information in this policy the governing body can reduce the risk of claims of unfair dismissal and minimise the risk of complaints regarding unequal treatment.

## 2.0 Scope

This policy applies to all school employees, teaching and support staff.

## 3.0 What is a fixed term contract?

A fixed term contract is defined under the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 as a contract of employment that will terminate either:

- on the expiry of a specific term; or
- on the completion of a particular task; or
- on the occurrence or non-occurrence of any specific event.

## 4.0 When to use a fixed term contract?

It is essential that you demonstrate that there are necessary and objective reasons for placing a post on a fixed term/temporary contract.

Necessary and objective reasons or circumstances may include the following:

- When the funding is of short-term duration and longer-term funding is unlikely.
- The post is for a specific project or relates to a specific event (e.g., to cover staff sickness or maternity absence).
- The contract is to provide a secondment or career development opportunity.
- Where specific or specialist expertise or recent experience is a necessary element of the job and will only be required for a specific period.
- A project is shortly to come to an end.
- To cover a period up to the closure of a school.
- To cover a vacancy while recruitment for a permanent position is carried out (recruitment should not take longer than two terms).
- To employ an unqualified teacher pending the availability of a qualified one. \*

Fixed term/temporary contracts should not be used to create a 'trial period' in order to evaluate the applicant's suitability for the post. Headteachers should deal with poor/unacceptable performance as they would normally with other staff on permanent contracts through the use of the school's adopted Performance or Disciplinary Policy and Procedures. Effective use should also be made of the six-month probation period for support staff as detailed within the 'Probationary Policy and Toolkit applicable to All School Support Staff'.

*\* 'The Education (specified work and registration) (England) Regulations 2003' state that an unqualified teacher may carry out work specified in regulation 6 in a school only for such period of time as no suitable qualified teacher, graduate teacher, registered teacher or teacher on the employment-based teacher training scheme is available for appointment or to give instruction.*

## 5.0 Casual Workers

These employees generally supply a short term or specific need for labour and typically have periods of work with breaks in between. A truly casual contract means that an individual is employed on an 'as and when' basis and no agreement is made on the particular number of hours or times or work. An example of this would be supply teachers who are normally brought in on a casual basis to cover unplanned gaps in school provision.

The regularity of the work undertaken by the individual will determine whether continuity of employment is achieved. The more regular the work and the more control the employer has over the relationship the more likely it will be that the individual will have employed status.

It is therefore essential to bear this in mind if considering offering 'casual work' as it may be more appropriate to offer a fixed term/temporary contract or use an employment agency.

## **6.0 The Successive Use of Fixed Term/Temporary Contracts**

Schools must be mindful of the use of successive fixed term/temporary contracts and must be aware that an employee who has four years' service on fixed term contracts will be entitled to become permanent 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.

## **7.0 The Successive Use of Fixed Term/Temporary Contracts**

When advertising/interviewing for a fixed-term/temporary post, schools 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. Please ensure you share the following with your HR / Payroll provider so that this can be issued in a timely manner:

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

## **8.0 Rights of Fixed Term/Temporary Workers**

The law does not distinguish between temporary and permanent employment in terms of an employee's rights. Fixed-term employees have the same remedies in law for unfair dismissal as an employee on a permanent contract. 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 9.3.

Employees are required to have two years' service to attract unfair dismissal rights. There is no qualifying period required for an individual to claim sex, race, disability or age discrimination, etc.

### **8.1 Redundancy**

In certain circumstances, whilst undertaking a redundancy process, it may be necessary to include fixed term employees in your consultation group. In these circumstances, it is recommended that you seek advice from your HR provider.

The non-renewal of a fixed term/temporary contract which was to cover for an absent employee, i.e., one suffering from long term illness or maternity, does not fall within the definition of redundancy. If the absent colleague does not return, thus creating a vacancy which is advertised and not filled by the temporary employee, dismissal is not for redundancy but may be for 'some other substantial reason'.

## 8.2 Selection for Redundancy

Where a redundancy situation arises, policies that specify that temporary, fixed-term workers will be selected in preference to those on permanent open-ended contracts may amount to sex discrimination as well as being contrary to the Fixed-Term Employees Regulations.

## 8.3 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 at one or more schools within the local authority can be aggregated to provide continuity of service which will give employment protection rights (this would be irrespective of the length of service at the current school). School holidays are deemed a temporary cessation of work and will not interrupt continuity.

Under 'The Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999', all service with local authorities and other bodies listed under the order (such as foundation schools) counts in the calculation of continuous service for the purpose of calculating redundancy payments.

## 8.4 Access to Permanent Posts within the School

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.

## 9.0 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 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 law
- 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.



## 9.1 Reviewing Fixed Term/Temporary Contracts

Towards the end of the period of the contract the headteacher 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 to on a permanent basis or whether the return date for an employee off sick is now known.

The headteacher 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 headteacher and followed up in writing to the individual.

## 9.2 Renewal

If a post covered by an individual employed on a fixed term contract is to continue unchanged beyond the date of the fixed term, the contract should be renewed, and the appropriate forms completed for the school's payroll provider. However, you are advised to refer to section 6, 'The Successive Use of fixed term 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.

## 9.3 Non-Renewal

A fixed term contract that clearly states an end date in the contract and that it will expire on that date will naturally come to an end at that point unless the school chooses to renew / extend it. There is no need to issue separate notice that the contract is coming to an end as the notice was effectively given when the contract was issued. However, it is good practice to advise the employee that this is still the situation and write to them a month before the end date to confirm that the reason it is ending is due to the expiry of the fixed-term contract.

**In some cases, an employee with over 2 years' service may be entitled to a redundancy payment, The headteacher should consult the school's Human Resources provider for clarification (see section 8.1)**

## 10.0 Redeployment

Where a fixed term or temporary contract comes to an end an employee may wish to apply for other suitable roles within schools. Vacancies are advertised on the Milton Keynes City Council website under Schools and Lifelong learning.

In situations where the ending of a fixed-term contract is as a result in a redundancy situation, employees should be directed to the schools jobs website as the aim is always to preserve employment and avoid redundancy wherever possible.

Fixed Term/temporary employees also have the right to be informed of any available vacancies at their workplace.

## 11.0 Data Protection

Any data collected and processed as part of employing and managing employee's is held securely. It is accessed by, and disclosed to, individuals only for the purposes of completing that specific procedure, process or activity.

Records are retained and destroyed in accordance with the organisations Retention Schedule.

Inappropriate access or disclosure of employee data constitutes a data breach and should be reported in accordance with the Data Protection Policy immediately. It may also constitute a disciplinary offence, which may be dealt with under the Disciplinary Procedure.

## 12.0 Version Control and RAG Status

### Version Control

Version	Date	Updated by	Comments
1.0			Policy introduction
2.0	June 2018	Declan Leith	Updated in line with legislative changes.
3.0	2023 08 14	MKCC HR	Updated onto new policy template.

### RAG Status



This policy is not intended for use by non-maintained schools. If extracts are used they should be attributed.



Foundation and Voluntary Aided Schools can adapt and adopt this policy or use an alternative.



This policy is for use by Community and Voluntary Controlled schools. Governing Bodies are asked to adopt this policy. Should a Governing Body wish to adopt an alternative policy please ensure that a copy is supplied providing assurance that it is legally compliant.



## Appendix 1 – Model Letter

Name

Address

[Date]

Dear [Insert Name]

### **NON-RENEWAL OF FIXED TERM/TEMPORARY CONTRACT**

I am writing to confirm that as previously stated, your fixed-term contract will expire on (insert date). Your employment will therefore cease with effect from that date.

Should you be interested in opportunities available at other schools you can access job vacancies in Milton Keynes Schools via <https://www.milton-keynes.gov.uk/schools-and-lifelong-learning/jobs-schools-and-settings>

Finally, I would like to thank you for the contribution you have made to the work of the school and I extend to you my best wishes for the future.

Yours sincerely,

[Name]

Headteacher

*Cc: Personal file*

