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Procedures for the Appointment, Extending and Ending of Fixed Term Contracts – School Based Employees

This Policy has been formally readopted by the Governing Board of The Westminster School on 04/02/2021

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Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002

1. Purpose of the Document

This document sets out the main aims and principles of the regulations and sets out procedures to be followed by Head Teachers and Governing Bodies when using fixed-term contracts to ensure that employment practice is in accordance with the regulations.

2. Staff Covered by the Document

The regulations and procedures will apply to all school based teaching and non-teaching staff who form part of the school staffing establishment.

The procedures will apply where an employee has been appointed to a fixed-term contract, when the fixed-term contract ends and when requesting a permanent contract.

3. Summary of Regulations

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations came into effect on 1 October 2002.

The regulations cover an employee on a fixed-term contract. This employee is defined as a person with a contract of employment that comes to an end for one of the following reasons:

- Upon reaching a specified date
- When a specified task has been completed
- When a specified event does or does not occur

The regulations do not apply to:

- Agency workers whose contract of employment remains with the agency
- Apprentices
- Placement Students
- Employees on certain training schemes

For detailed interpretation and advice on the above please refer to your School HR Consultant.

Note: There is no difference between a temporary and fixed term contract.

4. Purpose of the Regulations

4.1 Equal Treatment

A fixed-term employee has the right not to be treated less favourably than a comparable permanent employee unless there is objective justification. The following are examples of less favourable treatment:

- Longer service qualifications for conditions of service and/or benefits
- Less favourable access to training
- Not being given the same opportunity to secure permanent employment.
- Selection for redundancy

4.2 To Prevent the Misuse of Fixed-Term Contracts

The regulations also include provisions to prevent abuse arising from the use of successive fixed-term contracts. Successive fixed-term contracts are defined as a series of two or more contracts that do not break continuity of employment as defined by the Employment Rights Act 1996.

A fixed term-contract that has been renewed or extended, or where the employee is re-engaged with the same employer, may become a permanent contract once the employee has completed 4 years continuous service, unless

the Employer can objectively justify the Employee remaining on a fixed term contract.

This four-year rule covers fixed-term contracts that commenced on or after 10 July 2002, unless the continued use, can be objectively justified.

Once four years continuous service has been completed under two or more successive contracts, the employee can request written confirmation that the contract will be permanent.

The Employer will either provide the Employee with a permanent contract of employment or if the Employer is unable to provide the Employee with a permanent contract due to objective justification they will provide a statement to the Employee detailing the reasons for not providing the Employee with a permanent contract.

4.3 Ending a Fixed-Term Contract

The regulations state that the expiry of or non-renewal of a fixed-term contract will constitute a dismissal. The regulations outlaw the use of redundancy waiver clauses unless they were agreed before 1 October 2002 and apply to contracts or renewals entered into before this date.

Therefore, employees on fixed-term contracts who have two year's continuous service with the same employer will acquire employment rights; ie the right to make a claim of unfair dismissal. Similarly, employees with 2 year's or more continuous service with the same employer will also acquire the right to a redundancy payment if the dismissal is for reason of redundancy.

***For the purpose of calculating redundancy payments, all previous continuous local authority service and service with other associated organisations will be taken into account*.**

Please contact your Schools HR Consultant for advice on continuity of service

Employees will not have the right of a redundancy payment if the dismissal is for some other substantial reason; eg the end of maternity or sickness cover.

SECTION 1

Procedure to be followed when appointing an Employee on a Fixed-Term Contract

1. A request to place an advertisement should be made by using the [HR4.2s](#). The advertisement will then be placed in accordance with normal LA procedures.
2. The advertisement should state that the position is fixed-term; the date the contract will end and/or specify the event that will end the contract. Guidance on acceptable reasons is detailed on page 10 of this document.
3. Application packs sent to candidates should re-iterate the information relating to the fixed-term contract.
4. Candidates should be reminded at interview that the post is fixed-term, the reason why and the date/reason upon which the contract will expire.
5. Any offers of employment made subject to satisfactory clearances should also state the terms of the fixed-term contract.
6. A [HR4.6s](#) form must be completed when confirming the appointment with HR Services in order for clearances to be obtained and contract to be issued.
7. HR Services will issue a contract of employment detailing the terms of the fixed term contract.

SECTION 2

Procedure for Ending a Fixed-Term Contract

In most cases, the ending of a fixed-term contract is considered a dismissal. Before any dismissal takes effect, employers must ensure that they have consulted with the employee (and their representative if requested by the employee), and during that consultation allowed sufficient time for the employee to respond and make representation if they so wish.

Where the fixed-term contract is ending, the individual may be entitled to a redundancy payment. Head Teachers should seek advice, from their Schools HR Consultant to ascertain if there is an entitlement for redundancy pay or whether the contract is ending for some other substantial reason. In cases where dismissal is for some other substantial reason, an employee is not entitled to a redundancy payment.

1. When ending a fixed-term contract, a consultation meeting with the employee must commence within 20 working days of the start of the new school term in which the fixed-term contract is due to end.

If the contract is not scheduled to end at the end of the school term, please contact your Schools HR Consultant for advice on appropriate timescales.

2. The Head Teacher shall give the employee no less than 5 working days notice, in writing to attend this meeting to commence consultation on the ending of the fixed-term contract.
Please contact your Schools HR Consultant for advice on the content of the meeting. A sample letter, inviting the employee to the meeting is attached as [Appendix A](#).
3. The employee shall be given the right to be represented at the meeting by a **Trade Union representative, friend or colleague.**
4. **At the meeting the Head Teacher shall inform the employee that their fixed-term contract will end, the date their employment will end, reasons why, and advise them of their right to a hearing with the appropriate Committee of the Governing Body.**

5. Where the employee has 2 years or more ***continuous service*** the Head Teacher shall inform them of their right to be placed on the Council's at risk register and where not accessible the weekly vacancy bulletin will be forwarded to their home address.
6. Where the ending of the contract is for reason of redundancy the **Schools HR Consultant** will initiate the redeployment process.
7. The Head Teacher must confirm the outcome of the meeting in writing to the employee. Please see sample letter [\(Appendix B\)](#).
8. The Head Teacher must then complete the [HR616s](#) and return to their Schools HR Consultant in order for the appropriate action to be taken.

Please contact your Schools HR Consultant for advice and clarification.

SECTION 3

Procedure for Extending a Fixed-Term Contract

1. When extending a fixed-term contract, a consultation meeting with the employee must commence within 20 working days of the start of the new school term in which the current fixed-term contract is due to end.
2. The Head Teacher shall give the employee no less than 5 working days notice, in writing to attend this meeting to commence consultation on the extension of the fixed-term contract.
Please contact your Schools HR Consultant for advice on the content of the meeting. A sample letter is detailed in [Appendix A](#).
3. The employee shall be given the right to be represented at the meeting by a **Trade Union representative, friend or colleague**.

4. At the meeting the Head Teacher shall notify the employee of the duration of the fixed term contract extension/renewal stating when it will end and the reason.
5. ***If the employee declines an offer, which is deemed to be a suitable alternative offer of employment, the employee will forfeit their right to a redundancy payment.* The employee must be informed of this at the meeting.**
6. Whether the extension is accepted or declined the Head Teacher must then complete [HR615s](#) and return it to the Schools HR Consultant in order for the appropriate action to be taken.
7. The Head Teacher must confirm the outcome of the meeting in writing to the employee. Please see sample letter in [Appendix B](#).

In this case the Head Teacher must seek advice from the Schools HR Consultant. Employees may also wish to seek advice from their Trade Union in this situation

SECTION 4

Procedure for an Employee Requesting a Permanent Contract

An employee who has had 2 or more successive fixed-term contracts, will become permanent once they have completed 4 years continuous service (starting 10 July 2002) unless the continued use of a fixed-term contract can be objectively justified.

1. Once four year's continuous service has been completed the employee must write to the Head Teacher requesting written confirmation that their employment will be made permanent.
2. **On receipt of the request the Head Teacher must contact their Schools HR Consultant for advice.**
3. Where the employment will be made permanent, the Head Teacher will confirm this in writing to the employee and will notify HR Services so that a new contract of employment may be issued.

4. Where the employee is not afforded the right to a permanent contract, the Head Teacher must confirm this in writing to the employee stating reasons why.
5. Where the employee feels that they are not able to accept the decision of the Head Teacher, they will have the right to a personal hearing with the **appropriate committee** of the Governing Body.

POINTS FOR CONSIDERATION WHEN MAKING A FIXED-TERM APPOINTMENT:

- Is there a genuine requirement for a fixed-term contract?
- Is the contract likely to be renewed for more than 4 years?
- **What are the advantages of making a permanent appointment compared with making a fixed term appointment?**
- Will the use of a fixed-term contract have an impact on the success of recruitment and retention in your school?
- Will it **really** make any difference to the school budget if you appoint to a fixed-term **as opposed to a** permanent contract?
- Have you examined other ways of re-arranging your workforce to meet your service commitments?
- Should this really be a permanent contract?
- ***Does the individual have enough service to acquire employment rights. (Right to claim unfair dismissal or redundancy)*.**

Having considered all the above, should this really be a fixed term contract!

REMEMBER!

- ***YOU MUST AFFORD THE EMPLOYEE ON A FIXED TERM CONTRACT THE SAME OPPORTUNITIES AS A COMPARABLE PERMANENT EMPLOYEE*.**
- ***DOES THE REASON FOR THE FIXED-TERM CONTRACT FIT THE ACCEPTABLE REASONS GUIDANCE DETAILED ON PAGE10***

Please contact your Schools HR Consultant for advice and clarification

Reasons that would normally (but not automatically) be considered acceptable reasons for the use of a fixed term contract:

Covering sickness
 Maternity Cover
 Unqualified Teacher
 Short Course
 Summer Schools
 SEN support
 External funding
 Foreign Language Placements Graduate
 Teacher Programme
 Apprentice

Reasons that would not be acceptable for the use of a fixed term contract:

Budget uncertainty
 Probation or trial periods
 Over a certain age (e.g. 70 years)

NB: The above are for guidance and is not exhaustive.

APPENDIX A

Sample Letter:

Ending/Extending a Fixed-Term Contract Commencement of Consultation

Dear

As you are aware, your appointment to the post of _____ is for a fixed-term period and is expected to end on _____ when eg SEN funding is due to expire.

Therefore, I would be grateful if you could attend a meeting on _____ at _____ to discuss your fixed-term appointment.

The meeting will take place with ~~and myself.~~ You also have the right to be accompanied by a trade union representative, friend of colleague if you so wish.

Yours

APPENDIX B Sample Letter

Confirmation of Consultation Meeting that Fixed-Term Contract will end/extend.

Dear

Further to our meeting held on _____ in the presence of _____, ***it is with regret that I must/I am pleased to** confirm that your appointment to the post of _____ *will end on/will be extended to _____ due to _____.

Insert if Ending Contract

*You have the right to a personal hearing with the Governing Body and should you wish to exercise this right you should do so in writing to the Clerk to Governors, within 10 working days of the date of this letter.

*As advised, if you have more than 2 years continuous service, you will be placed on the Council’s at risk register and receive email alerts or vacancy bulletins to your home address in order to help you seek alternative employment.

*I will notify HR Services that you employment will end so that any redundancy payments for which you may be entitled can be calculated and paid accordingly.

Insert if Extension Offered but Declined

*I note that you declined the offer of a further fixed term contract as _____. As this is deemed to be an offer of suitable alternative employment I advised you that you would forfeit your right to any entitlement to redundancy pay.

May I take this opportunity to

Yours

***Insert/delete where applicable. 2**