

Model Policy for Schools – Policy on Fixed-Term Contracts of Employment

1. Introduction

- 1.1 This Oxfordshire model policy has been drawn up following consultation with all the recognised trade unions and associations: ASCL, ATL, NAHT, NASUWT, NUT and Unison.
- 1.2 Further advice and support on the application of the policy is available from the Schools' HR team by telephone: 01865 797588 or email: schoolshr@oxfordshire.gov.uk

2. Scope

- 2.1 This policy applies to all employees working in schools. It is recommended that academies who have chosen to continue to use the Burgundy Book and Green Book also adopt this model policy. Where an academy adopts this policy the word 'school' should be taken to refer to the academy.

3. Legal Framework

- 3.1 The school employs and manages fixed-term employees in accordance with the legal requirements set out in the Fixed-Term Employees (prevention of less favorable treatment) Regulations 2002. This requires fixed-term employees to be employed on comparable terms and conditions to permanent employees. To comply with the regulations the school will:
- ensure fixed-term employees are treated fairly and no less favourably than those on permanent contracts, including terms and conditions
 - allow fixed-term employees access to the same information about permanent job opportunities
 - only use fixed-term contracts where genuine needs exist that can be objectively justified – (see Section 5)
 - minimise the occasions when people are employed on successive fixed-term contracts

4. Definition

- 4.1 Fixed-term contracts of employment, (also referred to as Temporary Contracts), are those set up either:
- for a specified period of time
 - to cover a specific task

- to end upon a future event (e.g. the return from maternity leave or secondment of a permanent employee)

4.2 The Headteacher will normally be responsible for recruitment to posts within the school staffing structure. Where recruitment is to an acting or temporary Headteacher post the governing body will be responsible.

5. Reasons to use fixed-term contracts

5.1 Fixed-term contracts can provide an effective method of employment in certain circumstances. However, a fixed-term contract should only be used when there are legitimate grounds for not offering the employee a permanent contract.

5.2 Fixed-term contracts should only be issued for one of the following reasons:

- to cover maternity, paternity, adoption or sick leave
- to cover secondment or leave of absence
- as an interim arrangement pending the arrival of permanent staff, up to the end of the current academic year (where a management post becomes vacant at the end of the summer term, it will be acceptable to advertise this or any knock-on vacancy arising from it, for a full academic year)
- to employ an unqualified teacher pending the availability of a qualified teacher
- to cover a temporary increase in curriculum or staffing requirements for up to 12 months or where there is a clear expectation that staffing requirements will decrease during the following 12 months
- expected budget reduction within 12 months, which would require a reduction in staffing
- the post is dependent on external funding to the school including school based initial teacher training programmes
- where the council has agreed to recommend to the Secretary of State the reorganisation or closure of a school

5.3 While a fixed-term contract might be justified for the circumstances listed above, it should not be assumed that it must be used. A permanent contract might still be appropriate.

5.4 There are disadvantages to recruiting staff on a temporary basis:

- it can narrow the field of potential applicants for jobs
- it can adversely affect morale and commitment of the employee concerned, particularly as the end of the contract approaches

5.5 Fixed-term contracts should not be used

- for the creation of a trial period
- where concerns about the prospect of reducing budgets cannot be substantiated

6. Duration of Fixed-Term Contracts

- 6.1 The duration of a fixed-term contract will depend on the reasons for the temporary nature of the employment and normal notice periods will apply in most circumstances.
- 6.2 For teachers where the contract is for one term¹ or less or to cover the absence of another employee (e.g. maternity leave/paternity/adoption/secondment), it will be made clear in the contract that employment will end either on the date stated in the contract or if the permanent post-holder returns earlier than expected, one month's written notice can be given.
- 6.3 It should be noted that the fixed-term post-holder can also give one month's written notice in the circumstances covered in 6.2.
- 6.4 Where the work is connected to temporary funding, the Headteacher will carefully assess whether to offer employment on a fixed term or permanent basis, taking into account:
- the likelihood of the funding continuing
 - turnover of the work group
 - the ability to recruit
 - any other significant factors.
- 6.5 Fixed-term contracts are sometimes used where school funding or other changes are expected, that may result in the need to reduce staff numbers. Restricting recruitment of permanent staff, is a reasonable step to take in order to avoid or minimise the need for redundancies. In these circumstances, the length of fixed-term contracts should reflect the timescale of the anticipated changes.

7. Accrued Employment Rights & Continuous Service

- 7.1 An unbroken succession of fixed-term contracts will usually lead to an employee gaining continuous service from one contract to another. This can occur even when the employee has been employed in different posts, in different schools or for some purposes, with different local authorities or associated employers.
- 7.2 Continuous service affects entitlements to annual leave, sick leave benefits, redundancy pay and the right to claim unfair dismissal at an employment tribunal.

8. Qualifying for Redundancy Compensation

- 8.1 If an employee has been **continuously employed for two years or more** within a school, local government or associated employment, even if s/he is employed on a fixed-term contract, if the reason for his/her dismissal is redundancy, s/he becomes eligible for a redundancy payment. Members of the

Local Government Pension Scheme may also be entitled to early payment of pension benefits. See Section 14 explaining when redundancy may and may not apply.

8.2 Qualifying for Permanent Employment Status

Employees who have been continuously employed for **4 years or more** on a series of fixed-term contracts, are automatically deemed to be permanent employees, unless the continued use of a fixed-term contract can be justified.

9. Recruitment to a fixed-term post

9.1 Recruitment to a fixed-term or temporary post will normally be through an open recruitment process in accordance with the school's procedures, unless there are exceptional circumstances or the post is for a very time limited period (i.e. 3 months or less).

9.2 The reason the job is for a fixed-term period should be stated on the advertisement and included in all the job particulars e.g. job description, offer letter and contract (see Annex 1 – guidance on issuing contracts).

10. Appointing fixed-term employees to permanent posts

10.1 Where there is a continuing need for the fixed-term post, the Headteacher may decide to make the job permanent. In these circumstances, the Headteacher will decide whether to undertake a further competitive recruitment process, or whether to confirm the appointment of the temporary employee on a permanent basis. This decision will be based on objective reasons taking into account whether:

- a competitive selection process was used when the temporary appointment was made
- the requirements of the job have changed
- there is more than one employee, working in the school, who would be eligible to apply for the post
- the employee has demonstrated satisfactory conduct and performance

11. Managing Performance

11.1 Fixed-term employees should be fully inducted in to their role and must demonstrate good standards of performance and pass a probation period, where applicable.

11.2 The normal performance management framework will apply to employees on fixed-term contracts.

12. **Extending Fixed-Term Contracts**

- 12.1 Employees will not normally receive a series of consecutive fixed-term contracts for the same job unless exceptional circumstances apply, for example:
- funding for a post is only renewed on a short term basis
 - a one off piece of work or task requires additional support for longer than was originally anticipated
 - potential changes affecting the staffing needs of the school are expected and recruitment to permanent posts is restricted.
- 12.2 In these circumstances, the Headteacher will assess whether there is a case to extend the fixed-term contract for a further temporary period or in cases where only some of the tasks are continuing, whether the work can be carried out in a different way.

13. **Ending or Non-Renewal of Fixed-Term Contracts**

- 13.1 Ending a fixed term contract is regarded as a dismissal and will be dealt with fairly and in accordance with the legal requirements.
- 13.2 Contracts of employment issued to fixed-term employees will stipulate the date the contract will end, and normal contractual notice will apply except in circumstances set out in paragraph 6.2 and 6.3.
- 13.3 Notice will be served by the Headteacher in writing (see template letter Annex 1). The letter will specify the date on which the fixed-term contract is due to end and confirm the reason the contract is ending. The employee will also be invited to attend a meeting to discuss the ending of the contract. The employee will have the right to be accompanied to this meeting by a work colleague or trade union representative.
- 13.4 The employee has the right of appeal against the ending of their fixed-term contract. See section

14. **When Redundancy does and does not apply?**

- 14.1 The ending of a fixed-term contract is likely to be on the grounds of redundancy if the requirement for an employee to carry out work of a particular kind has ceased or diminished or is expected to cease or diminish.
- 14.2 Where redundancy is the reason for the contract ending, employees with two or more years' service will qualify for redundancy compensation and the school's Redundancy Procedure will be followed.
- 14.3 Redundancy does not apply where the reason for the fixed-term contract is to cover the absence of another employee e.g. maternity, adoption, paternity cover, sickness, secondment. In these circumstances, the contract will end

due to the return of the permanent post-holder not because the job is redundant.

- 14.4 The law protects fixed-term employees from automatically being selected for redundancy simply because they are on a fixed-term contract. Where it is necessary to end a fixed-term contract for reason of redundancy, the Headteacher should seek advice from the Schools HR Team. A careful assessment to determine whether other employees should be included in the selection pool for redundancy must take place (this could include permanent employees).
- 14.5 When identifying those who should be included in the selection pool a range of factors will be considered including:
- a) identifying employees who are carrying out the same kind of work
 - b) identifying if the work is linked to a particular funding stream, task or project

Each case will need to be carefully considered on its own facts.

- 14.6 Fair selection criteria will then be agreed in accordance with the Redundancy Procedure.
- 14.7 Ending of a fixed-term contract (dismissal) may also result from disciplinary or capability action in which case the normal procedures will be followed.

15. **Managing Organisational Change that involves Redundancy**

- 15.1 Where as a result of organisational change (e.g a review of the staffing structure), certain types of work are expected to cease or diminish, the group from which employees will be selected for redundancy, (the selection pool), must be very carefully identified. All employees undertaking the same kind of work will need to be identified.
- 15.2 In these circumstances, where there are fixed-term employees working alongside permanent employees doing the same type of work, it would be unlawful to automatically select the fixed-term employees for redundancy, simply because they are on a fixed-term contract. Both fixed-term and permanent employees would need to be included in the selection pool and fair selection criteria agreed in accordance with the school's [Redundancy Procedure](#).

16. **Raising Concerns and the Right of Appeal**

- 16.1 A fixed-term employee has the right to ask for a written statement setting out the reasons for the management actions/decision if they believe that less favourable treatment may have occurred. This must be provided within 21 days.

- 16.2 Where a fixed term employee wishes to appeal against the ending of his/her contract they must set out the grounds for appeal and send this to the Clerk to the governing body. A panel of the governing body will hear the appeal. The employee will be informed in writing of the decision. The employee has the right to be accompanied to the appeal by a trade union representative or work colleague.
- 16.3 Where the ending of the contract is on the grounds of redundancy the appeal process set out in the school's [Redundancy Procedure](#) will be followed.
- 16.4 In cases of dismissal on the grounds of conduct or capability the appeal process set out in the school's [Disciplinary & Capability Procedures](#) will be followed.

17. Further Advice

Further advice and support is available from the Schools' HR team by telephone: 01865 797588 or email schoolshr@oxfordshire.gov.uk

18. Related Policies/Procedures

[Redundancy Policy](#)
[Disciplinary & Capability Procedure](#)
[Guidance on variable hour contracts](#)
[Contracts for staff | Schools](#)

19. Review of the Policy

The policy will be monitored regularly and will be subject to formal review after three years in conjunction with the relevant trade unions.

20. Monitoring

In introducing and reviewing this policy an impact assessment has been undertaken to take account of the Equality Act 2010.

<p>Alternative formats of these policies can be made available on request. These include other languages, large print, Braille, audio cassette, computer disk or e-mail. Please contact HR on 01865 815399.</p>

Issuing Contracts to Fixed Term Employees – Guidance for Schools

Full guidance on issuing contracts to school employees can be found on the school's website [Contracts for staff | Schools](#) along with guidance on [Variable Hour Contracts](#)

When issuing contracts to fixed-term employees the main points to remember are:

- Clearly state the reason for making the contract temporary
- State the start and finish date of the contract, namely the notional (not actual) term dates e.g. 1 September to 31 December.
- For teachers where the contract is for one termⁱⁱ or less or to cover the absence of another employee (e.g. maternity leave, paternity, adoption, secondment), it must be made clear in the contract that employment will end either on the date stated in the contract or if the permanent post-holder returns earlier than expected, one month's written notice can be given. In these cases include the phrase "or at such earlier date as may be determined by one month's notice on either side" to allow for the early termination of the contract in unforeseen circumstances.

ⁱⁱ One term refers to the three main terms of the school year as set out in Conditions of Service for School Teachers in England and Wales (the Burgundy Book), not one of the six shorter terms of the Oxfordshire school year.