

FIXED TERM CONTRACTS POLICY

Issued: May 2016
Reviewed: August 2017
Next Review Due: August 2019

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The Governing Body of all academies within BDAT seeks to minimise the use of temporary and fixed term contracts and as far as possible to seek to employ staff on sustainable permanent contracts which promote stability of employment which helps the academy to maintain an effective and committed workforce.

Similarly, the Governing Body is committed to using casual staff only to cover for emergency short-term needs. Any casual staff who remain in the academy's employment for longer than one month shall be issued with an appropriate contract of employment.

The Governing Body's policy reflects the following underlying principles:

Permanent contracts are the normal form of employment relationship between the academy and its staff,

- Fixed term and temporary contracts will only be considered where there is an objectively justifiable educational, organisational or budgetary need to do so and this reason should be specified in the letter confirming the contract of employment
- The principle of equality of opportunity applies equally to non-permanent staff as it does to permanent staff,
- Where the use of fixed term contracts is justifiable by objective reasons, staff on these contracts will otherwise be treated no less favourably than colleagues on open-ended contracts and will have the same entitlements and conditions of service as those on permanent contracts.

The employment status of all fixed term staff, and the justification for the use of a fixed term contract, will be reviewed periodically. If any staff member should remain on a fixed term or temporary contract continuously for four years or more then they will have employment rights and the review will give regard to converting the contract to a permanent one unless there are very strong objective and justifiable reasons as to why this should not happen that can be robustly and objectively justified (Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002).

Staff on fixed term contracts will be consulted in good time before the date of expiry of their contract. All consultation on the termination of fixed term contracts will follow the procedure set out in the guidance below which is consistent with statutory dismissal procedures introduced by the Employment Act 2008 and the associated ACAS Codes of Practice.

This model policy has been provided as a Trust level resource for BDAT and does not form part of an employee's terms and conditions of employment.

1. Introduction

Academies have the responsibility to manage staff contracts. This means that those contracts need to be reviewed and monitored so that staff are treated reasonably and so that the academy meets its legal obligations.

This document relates to both fixed term and temporary employment; therefore when either is mentioned please assume that this means both types of employment contract. The policy provides information regarding the appropriate use of fixed term contracts and how they should be managed; the procedure concerning the expiry of fixed term and temporary appointments (that meets the requirements of the Employment Act 2002 (Dispute Resolution) Regulations 2004) and guidance regarding the legal aspects and staff rights after four years of employments, with reference to the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

NOTE: Continuous Service

Throughout this document, unless otherwise indicated continuous service includes service with Bradford Council and associated employments (see the Redundancy Payments (Continuity of Employment in Local Government) (Modification Order) 1999).

A Fixed Term contract is defined as:

1. Contracts that last for a specified period of time, or
2. Contracts that will end when a specified task has been completed, or
3. Contracts that will end when a specified event does or does not happen.

Examples of fixed term staff include:

1. Staff doing so-called 'seasonal' or 'casual' work who have contracts for a short period or task that end when the period expires or the task is completed.
2. Staff on fixed term contracts concluded specifically to cover for maternity, parental or paternity leave or sick leave.
3. Staff hired to cover for peaks in demand and whose contracts expire when demand returns to normal levels.
4. Staff whose contracts will expire when a specific task has been completed

Staff on Fixed Term Contracts have key employment rights:

From day one:

- A member of staff has the right not to be unlawfully discriminated against on the grounds of sex, race, disability, or age under the relevant antidiscrimination legislation.
- A member of staff may claim for breaches of contract.

After one year:

- A member of staff has the right not to be unfairly dismissed.

- This requires the employer to follow a dismissal procedure which meets the standards set out in the Employment Act 2002 (Dispute Resolution) Regulations 2004. The procedure set out in this document meets this standard.

After two years:

- A member of staff, including anyone aged 65 and over, has a right to a redundancy payment.

After four years:

- A member of staff who has been employed under a fixed term contract, and where the contract has previously been renewed, after four years' continuous employment their contract becomes permanent except where a further period of non-permanent employment can be robustly and objectively justified (Fixed term Employees (Prevention of Less Favourable Treatment) Regulations 2002).

2. Procedure for the use of Fixed Term Contracts

2.1 Advertising the Fixed Term post

Fixed term contracts will be advertised as other vacancies are. This is to ensure that the best possible candidate is recruited to the post. The job pack and advert will clearly state that the post is for a fixed period of time and the reason for this. Any additional documentation related to the vacancy, including the letter confirming an interview, will clearly state this is for a fixed term contract.

2.2 Interviewing the Candidate

When interviewing candidates for the fixed term post it will be made clear at the interview why the post is being offered on a fixed term basis and the proposed end date should be made clear. Again, the reason for the post being on a fixed term basis will be explained. Prospective fixed term staff will be informed that should a vacancy arise within the academy, they would have the right to apply in competition with other applicants. When recruiting staff for fixed term contracts they must meet the person specification for the role in the same way as for permanent posts.

2.3 Creating the Fixed Term Contract

Terminating a contract of employment where the terms of the contract are unclear can result in a legal challenge. Because of this there is a need to be absolutely clear about the terms of the contract, the reason why it is offered on a temporary or a fixed term basis and that means that there is a risk of non-renewal/dismissal without any guarantee that suitable alternative employment would be offered.

Example terms of employment which could be incorporated into the contract are:

“This contract is offered on a fixed term basis in order to cover a career break granted to Janice Smith which has been agreed until 31st August 2018. Your employment is therefore expected to end on the 31st August 2018. You will be consulted on the proposed termination and you may be served your contractual notice. In this event the academy will consider whether it has any suitable alternative employment to which you could be redeployed within the academy. You

should note that there is no guarantee that any such alternative employment will be offered to you.”

or

“This employment is offered in order to increase the number of support staff available to supervise students during the building of our new nursery. The nursery is expected to be completed by the 31st December 2018. Your employment is therefore expected to end on the 31st December 2018. You will be consulted on the proposed termination and you may be served your contractual notice. In this event the academy will consider whether it has any suitable alternative employment to which you could be redeployed within the academy. You should note that there is no guarantee that any such alternative employment will be offered to you.”

or

“You are employed on a fixed term basis to 31 August 2018 to cover a vacancy for a Year 4 teacher. The governing body’s policy is that all permanent teaching posts should be advertised openly and it intends to advertise the post next Easter with a view to making a permanent appointment to commence on the 1st September 2018. Whilst you may apply for the post in competition with other applicants there is no guarantee that you would be the successful applicant. Your employment would therefore end on the 31st August 2018 subject to you being served your contractual notice. You will be consulted on the proposed termination. In this event the academy will consider whether it has any suitable alternative employment to which you could be redeployed within the academy.”

Terminating a fixed term contract before its end date may mean that a staff member is entitled to be paid for the balance of the contract unless there are “break clauses” written into the contract that would prevent this. Examples of break clauses that may be used include provisions for termination in cases of capability, gross misconduct, for this reason a realistic end-date needs to be chosen.

2.4 Reasons for Creating Fixed Term contracts

Fixed term contracts will only be used for specific and objectively justifiable business and budgetary reasons. Some of the reasons which may be used are as follows:

- To cover absence caused by maternity, sickness, leave of absence, secondments, acting up and career breaks.
- To undertake a specific project to completion or where the project has a fixed duration.
- Where external funding has been provided for a specific purpose and for a fixed period of time.
- To cover a vacancy pending recruitment.
- To cover a post pending the recruitment of a fully qualified teacher.
- To cover a post pending a staffing or academy re-organisation.
- Where there is a genuine and identifiable budget need.
- To cover a post due to the academy increasing in size (eg a bulge class for a specific period of time), or where falling rolls within the academy are expected.

Where a fixed term contract has been created for any of the above reasons, any termination would normally have to be justified by reference to that reason.

2.5 Maintaining and Reviewing a Fixed Term Contract

Fixed term staff will be managed the same way as permanent staff. Fixed Term staff have a legal right not to be treated less favourably than permanent staff.

2.6 Pay and Benefits

Staff on fixed term contracts will be employed on the same terms and conditions as permanent staff; this includes pay, holiday, sickness and pension rights.

2.7 Capability

Staff on fixed term contracts will be performance managed in the same way as permanent staff using the performance management/Appraisal framework. Should capability issues arise then the staff will be subject to the same capability procedures as other teaching and support staff in the academy.

Problems with performance can be taken into account when considering whether to extend a fixed term appointment. However, managers should note that not renewing a fixed term contract due to performance issues, when otherwise it may have been renewed, may be considered as unfair if there has been no discussion and no support process offered previously.

2.8 Misconduct and staff complaints

Should staff on a fixed term contract behave inappropriately or should they raise a complaint or have a complaint made against them; the staff concerned will be subject to the same disciplinary and complaints procedures as permanent staff.

2.9 Maternity

Staff who become pregnant whilst being employed on a fixed term contract will be entitled to the same maternity rights as other staff.

2.10 Reviewing Fixed Term Contracts

Possible options include:

- Renewal on the same terms for a new fixed period.
- Renewal on revised terms.
- Or non-renewal.
- Consideration of any available suitable alternative employment within the academy.

Decisions on fixed term contracts will be made in sufficient time to allow for full consultation and to allow notice to be given to the staff member. It is advisable that this process starts at least two months prior to the resignation dates listed in this document.

When renewing a fixed term contract it is possible to change the terms of the contract. For example, the reason for the fixed term contract for a teacher can be changed from covering a

vacancy to covering a maternity leave if the needs of the academy have changed, assuming the qualifications and experience required are similar. Even if non-renewal is not being contemplated there will be a consultation meeting with the staff member at a one to one meeting between the manager and the member of staff.

Where the employment continues beyond the fixed term end date a new letter of appointment, or a letter varying the contract, will be provided which sets out any new terms applying to the contract and the reason for the fixed term appointment, even where this remains unchanged.

Where non-renewal and a possible dismissal is being contemplated the consultation and dismissal process will follow.

It should be noted that non-renewal without the offer of a suitable alternative employment will amount to a dismissal by reason of redundancy. The dismissal of a person with over 2 year's continuous service may result in a redundancy payment being made.

It is also important to note that if a member of staff has over four years continuous service on a series of fixed term appointments then the staff member has the right to be considered for a permanent contract unless there are exceptionally strong, objectively justifiable reasons why permanency would not be appropriate.

Before any non-renewal dismissal is considered it should be remembered that employers have a responsibility not to unjustifiably end a person's employment and for this reason it is very important that alternatives to dismissal should be considered. Additionally, notice of termination can be revoked if circumstances change, for example if a suitable alternative position arises before the termination takes effect.

3. Procedure to Terminate Fixed Term Contracts

3.1 Consultation

Staff on Fixed Term Contracts will be consulted on any proposal not to re-new the contract prior to the ending of the contract. The consultation process will follow the procedure set out below.

3.2 Minimum Notice Periods

Support staff:

A meeting will be arranged with the staff member and his/her union representative (or accompanying work colleague) to discuss the ending or renewal of the contract. This meeting should take place at least 10 working days prior to the intended commencement date of the notice period.

- Weekly paid = 1 week's notice (minimum*), or 1 week per year of service up to a maximum of 12 weeks
- 4 weekly paid = 4 week's notice (minimum), or 1 week per year of service up to a maximum of 12 weeks

- Monthly paid = 1 month's notice (minimum), or 1 week per year of service up to a maximum of 12 weeks

Teachers:

A meeting will be arranged with the teacher and his/her union representative (or accompanying work colleague) to discuss the ending or renewal of the contract. This meeting should take place at least 10 working days prior to the intended commencement date of the notice period.

- 31st May for ending the contract on the 31st August
- 31st October for ending the contract on the 31st December (minimum), or 1 week per year of service up to a maximum of 12 weeks
- 28th February for ending the contract on the 30th April (minimum), or 1 week per year of service up to a maximum of 12 weeks

* Only one week's notice is required for manual workers, however, it would be good practice to give at least four weeks' notice. (Please note some manual staff are on four weekly or monthly pay and this dictates the notice period the staff is required to receive).

All staff on fixed term contracts will be consulted if their contract is not renewed. If a member of staff is on a fixed term contract and their contract is unlikely to be renewed the academy will try and seek suitable alternative employment within the academy. It is not always possible to find suitable alternative employment and factors such the size of the academy and the skill set of the staff member will need to be taken into consideration.

The staff member will be informed of their right to a formal meeting which includes the right to be accompanied by a Trade Union Representative or work colleague.

3.3 Formal Procedure

The staff member will be invited in writing to the meeting at least 5 days prior to the meeting, excluding the date of issue and the date of the meeting.

The letter will contain the following information:

- A clear statement that the academy is recommending dismissal at the meeting.
- A summary of the reasons for that recommendation.
- Copies of any documentation in support of the recommendation.
- Clear guidance to the staff member on how they can convey to the meeting their comments in respect of the recommendation and the reasons for it. The staff member's input into the meeting can be exercised by the staff member choosing any one of the following methods.
 - Attending the meeting in person with or without a Trade Union representative or work colleague.
 - Not attending the meeting but requesting that a Trade Union Representative or a work colleague to attend on their behalf.
 - Making their view known in writing.

- Electing to neither attend nor make representations nor to have a Trade Union Representative or a work colleague to act on their behalf.

3.4 Procedure at the Meeting

- The academy management representative will present the management case as to why consideration is being given to dismissing the staff member (by non-renewal/extension of the fixed-term/temporary contract or offer of further employment) on the expiry of the contract.
- The staff member, or their Trade Union Representative or work colleague, will make his or her representations to the Head teacher/Principal and may present supporting documentation or other evidence.
- The Head teacher/Principal may ask questions of or seek information from either party as appropriate and encourage a full discussion of all matters in relation to the question of the dismissal of the staff member.

The following issues should also be considered in the meeting:

- The feasibility of taking action to avoid the dismissal of a member of staff eg the possibility of additional funding becoming available and the individual's employment being continued.
- Redeployment to suitable alternative employment within the academy.
- The right to time off to seek alternative employment.
- Any relevant training opportunities.
- Where relevant, eligibility to a redundancy payment if the staff member has two years' service.

After an adjournment of the meeting to consider the information presented the Head teacher/Principal will arrive at a decision in respect of the recommendation to dismiss.

Should the academy require assistance from a HR Business Partner to attend these meetings, they should liaise with the HR Advisory Team.

The range of possible decisions include the following:

- Deciding not to dismiss.
- Deciding to seek further information with or without an adjournment.
- Deciding to dismiss and the reasons for dismissal.
- Deciding to dismiss with deferral pending some specified criteria.

The Head teacher/Principal will normally convey the decision verbally following the adjournment of the meeting, and in any event confirm it in writing within five working days of the decision being taken.

3.5 Right of Appeal

The staff member has the right of appeal to the Appeals Committee of the Governing Body. This right may be exercised by writing to the Clerk to Governors within 10 working days of the decision being communicated in writing to the staff member (i.e. from the date the letter was issued) and calculated from whichever date was earliest. The appeal hearing is a rehearing with the staff member having the same rights as the staff member had had at the first hearing.

There is no further right of appeal against the decision of the Appeals Committee.