



FIXED-TERM AND TEMPORARY CONTRACTS POLICY & PROCEDURE

This document applies to all Council employees.

Notes:

- This policy is advisory only for all school based employees

This document may not be applicable to employees who transferred into LCC under TUPE legislation and remain on the terms and conditions of their previous organisation.

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CONTENTS

INTRODUCTION	1
OBJECTIVE JUSTIFICATION	1
KEY PRINCIPLES	1
RESPONSIBILITIES.....	2
DIRECTORS AND ASSISTANT DIRECTOR LEVEL	2
MANAGERS	2
EMPLOYEES	3
FURTHER INFORMATION	3
APPENDIX 1: PROCEDURE.....	4
RESOURCING BOARD	4
ADVERTISING A FIXED-TERM OR TEMPORARY CONTRACT	4
FILLING A VACANCY WHICH A FIXED-TERM OR TEMPORARY EMPLOYEE IS COVERING	4
FIXED-TERM OR TEMPORARY EMPLOYEES APPLYING FOR SECONDMENTS	4
TEMPORARY OR FIXED TERM CONTRACTS THAT ARE DUE TO EXPIRE BEFORE THE END OF THE SECONDMENT	5
EXTENSION OF A FIXED-TERM OR TEMPORARY CONTRACT	5
TERMINATION OF A FIXED-TERM OR TEMPORARY CONTRACT	5
TERMINATION OF FIXED-TERM OR TEMPORARY CONTRACT PROCESS	7

INTRODUCTION

The Fixed-term Employees (Prevention of Less Favourable Treatment Regulations 2002) afford fixed-term or temporary employees important rights that have an impact on the use of such contracts, which include:

- The right not to be treated less favourably than a comparable employee on a permanent contract in respect of pay, contractual terms and conditions, the opportunity to receive training or be subjected to any other detriment on grounds of status as a fixed-term or temporary employee. However, where it is deemed appropriate, the Council will adjust terms and conditions providing they can be objectively justified but be in line with the guidance in the paragraph 'Objective Justification.'
- The right to a statutory redundancy payment where the expiry [i.e. dismissal] of a fixed-term or temporary contract gives rise to a redundancy situation. This does not normally apply if the dismissal is for 'some other substantial reason' e.g. brought in to provide temporary cover, normally for less than 2 years.
- The right not to be selected for redundancy or be unfairly dismissed if the principal reason for the selection was because the employee is on a fixed term contract.
- Limiting the use of successive fixed-term contracts to no more than 4 years, after which a fixed-term or temporary contract should become permanent, unless the continued use of a fixed-term contract can be justified on objective grounds.
- The right to be informed and have access to information regarding permanent employment opportunities within the organisation.

OBJECTIVE JUSTIFICATION

The Council reserves the right when applying the equal treatment requirement, to objectively justify different terms and conditions for employees on fixed-term or temporary contracts.

KEY PRINCIPLES

The employee on the fixed-term contract should not expect their employment to last longer than the term of the first contract. Should the contract be ended early i.e. before the contracted length of time then a dismissal will occur and the relevant notice period will apply.

The employee on a fixed-term contract will normally have no right to receive 'At Risk' status where their contract is reaching its fixed end date.

This does not mean that the employee will not be able to apply for other positions, but they will not receive preferential status consideration i.e. 'At Risk' status at the end of their contract.

There may be occasions (such as where a permanent employee is proposed to be dismissed on the grounds of redundancy but obtains a fixed-term position which is subsequently not renewed) that '**At Risk**' status is given, even though the final reason for dismissal may be SOSR.

Employee performance will be managed through all LCC HR policies e.g. capability, discipline and grievance.

All employees on temporary and fixed term contracts will be set objectives and a development plan which will be reviewed through Performance and Development Appraisal meetings which will be appropriate to the length of their employment.

Where possible such meetings will be aligned to the normal appraisal year to ensure consistency with permanent employees and pay progression increments.

All other employee rights and benefits will apply as for permanent employees, particularly maternity leave; disability leave/adjustments; and any need to redeploy on the grounds of a specific medical condition. The employee will have the right not to be selected for a redundancy if the principle reason for the selection is that the employee is on a fixed-term or temporary contract.

In line with the principles within the [Change Management Agreement](#), employees on fixed term and temporary contracts are not treated any less favourably when being considered for ring-fencing and assimilation during organisational change.

N.B: An employee on a Fixed Term or Temporary Contract who has 4 years or more continuous service will be entitled to the same protection afforded to permanent employees.

Differences between a Fixed-Term Contract, Temporary and Relief Contracts

A **fixed-term contract** will be issued to an employee when the end date or length of the contract is known. The contract must state clearly the reason for the fixed-term status to establish those specific elements of the role which could attract a redundancy payment; or whether the role is to provide cover; backfill etc.

A **temporary contract** will be issued to an employee when the end date or length of the contract is unknown, however, the contract will indicate the anticipated length of the contract. The contract should also state the reason for the temporary status.

A **relief contract** should only be issued where there is a genuine requirement for short periods of employment, e.g., covering short term sickness absence, unforeseen circumstances, peak workloads, special short term projects. See [Use of Relief Workers Policy](#).

Temporary or fixed term contracts should only be used for approved vacancies: these contracts should not be used to cover for a post which is awaiting approval/funding.

RESPONSIBILITIES

DIRECTORS AND ASSISTANT DIRECTOR LEVEL

Designating employees to whom formal dismissal powers have been delegated to, within the County Council's scheme of authorisation.

Ensuring effective implementation and awareness of the procedure.

MANAGERS

- To be aware of their responsibilities as determined by the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

- To ensure there is a justifiable and demonstrable reason for appointing to a post on a fixed-term or temporary basis, and that this is fully explained during the recruitment process and in any subsequent correspondence relating to the post/contract.
- To ensure there is appropriate approval for recruiting to a post i.e. there should be no recruitment to a fixed term post due to a permanent contract not being approved.
- To ensure that all fixed-term or temporary employees understand the nature of their contracts, and are consistently advised as to the likelihood of extension/renewal and the reasons for this, within the timescales outlined in this procedure.
- To liaise with employees, appropriate Trade Union representatives and relevant Human Resources Adviser/Provider as appropriate, regarding formal procedures and meeting arrangements.
- To provide written statements as may be required/requested by the employee, confirming the status of the fixed-term or temporary contract, and the reasons for any perceived less favourable treatment or the ending of a fixed-term or temporary contract.
- To ensure the dismissal process is followed when ceasing or not renewing a fixed-term or temporary contract.

EMPLOYEES

- To ensure they have a clear understanding of the fixed-term or temporary nature of their employment, and reasons for this.
- To have no expectations that their employment will be extended, unless they received formal clarification of this.
- To understand that normally they have no right to receive 'At Risk' status where their contract is reaching its fixed end date.
- To raise any issues relating to their fixed-term or temporary employment and any perceived less favourable treatment, with their Manager at the earliest opportunity.
- To attend meetings as necessary in connection with their fixed-term or temporary contract, noting their right to be accompanied by an LCC work colleague, recognised Trade Union officer or recognised Trade Union representation at any such meetings.

FURTHER INFORMATION

This policy links to and is part of the overall package of Council policies. See also:

[Fixed Term & Temporary Template Letters](#)

[Change Management Agreement](#)

[Redundancy and Early Retirements](#)

[Use of Relief Workers Policy](#)

[Secondment Policy and Procedure](#)

APPENDIX 1: PROCEDURE

RESOURCING BOARD

The Resourcing Board is the central point of co-ordination and control for recruitment, re-organisation, redeployment and redundancy activity across all Director Areas to ensure that LCC manages within its agreed headcount and budget, and delivers its workforce strategy. This will ensure that there is a consistent, transparent and effective management process for all resourcing activities across the council.

All requests for issuing or extending fixed-term or temporary contracts should be submitted to and approved by the Resourcing Board.

ADVERTISING A FIXED-TERM OR TEMPORARY CONTRACT

When advertising a fixed term/temporary vacancy the advert must specify the length of the appointment (where this is unknown, the anticipated length must be specified) and the purpose of the contract. If there is a possibility of permanency or renewal on expiry of the period, this should also be included in the advert.

FILLING A VACANCY WHICH A FIXED-TERM OR TEMPORARY EMPLOYEE IS COVERING

Should a fixed-term or temporary post subsequently become possible to fill on a permanent basis, those permanent staff on the 'At Risk' Register will be given prior consideration for the vacancy.

If there are no permanent staff on the 'At Risk' Register, then the incumbent fixed term or temporary post-holder would normally be offered a permanent contract provided that the following conditions are met:

- They have 12 months or more continuous service, and
- They were subject to an appropriate recruitment process (including a competitive interview) for that specific post at the outset and
- That the possibility of it becoming permanent was made clear during that recruitment process, and

If the post-holder does not meet the above criteria, the post should be advertised in accordance with normal recruitment procedures. The manager should meet with the fixed-term or temporary employee to inform them that the post is due to be advertised, and if they are subsequently unsuccessful at interview, the dismissal process outlined below should be followed.

FIXED-TERM OR TEMPORARY EMPLOYEES APPLYING FOR SECONDMENTS

Permanent staff on the 'At Risk' Register will be given prior consideration for secondment opportunities. Only in cases where there are no permanent staff available for secondment opportunities will fixed-term or temporary staff be considered.

TEMPORARY OR FIXED TERM CONTRACTS THAT ARE DUE TO EXPIRE BEFORE THE END OF THE SECONDMENT

In cases where a fixed-term or temporary employee applies for and is successful in obtaining a secondment opportunity and the fixed-term or temporary contract is due to expire before the end of the secondment:

- The substantive manager should ensure that they meet with the individual in advance of the required contractual notice to bring their temporary/fixed term contract to an end.
- At the time that the substantive manager meets with the employee, they will also need to liaise with the secondment line manager who will be responsible for transferring the secondee onto a fixed term contract for the remainder of the secondment period.

When you are considering extending/renewing or ending a fixed-term or temporary contract early or on the due date, you are advised to discuss this at the earliest opportunity with your HR Adviser.

EXTENSION OF A FIXED-TERM OR TEMPORARY CONTRACT

Where fixed-term or temporary contracts are extended, all continuous fixed-term or temporary periods of employment will count towards an employee's continuity of service.

Please note that any period of continuous employment under a fixed-term contract from 10 July 2002 will be taken into account when calculating the fixed-term employee's continuous employment.

Where an employee has been continuously employed under one or more fixed-term or temporary contracts for a period of four years, their contract will become permanent unless the employer can show that the use of a fixed-term contract is objectively justified.

The date that the fixed-term contract will become permanent is the latest of the two following dates:

- The date on which that contract was entered into or last renewed, or
- The date on which the employee acquired four years' continuous employment under fixed-term contracts.

In order to ensure that the extension or change in contract status is actioned on Business World On! the line manager must ensure that they complete and return to People Services the relevant Contractual Changes Form.

[Letter 4](#) would be used to confirm an extension to the fixed-term or temporary contract.

TERMINATION OF A FIXED-TERM OR TEMPORARY CONTRACT

The termination of fixed-term or temporary contract, or non-renewal of a fixed-term or temporary contract beyond its expiry date is regarded as a dismissal (Employment Rights Act 1996, s.95 (1) (b)) and the procedure outlined below should be followed.

The reason for dismissal will be due to either:

- Redundancy; e.g. where the requirement for the work to be undertaken has diminished or ceased
- SOSR (Some Other Substantial Reason); e.g. where the requirement for the work to be undertaken has not reduced and the substantive post holder has returned to work or a permanent employee is recruited.

A redundancy payment may be due in certain circumstances when a temporary or fixed term contract comes to an end and the employee is not offered a renewal of the contract. This is in law a dismissal. However the entitlement to a redundancy payment depends on whether (a) the employee has completed two years' service (if not, there is no entitlement) and (b) the reason for the decision not to offer renewal of the contract is redundancy. In addition, if it is proposed to terminate a fixed term contract early, or to terminate a temporary or relief contract by notice, the same conditions for entitlement to a redundancy payment will apply.

Some situations will be relatively clear, but there are often marginal cases; before making any statement to the employee concerned about their position, if there is any doubt, managers should seek HR advice.

It must also be understood that if an employee has been continuously employed on a series of fixed term, temporary or relief contracts for four years or longer, they may be entitled to be treated as permanent employees. Such cases will be rare, but managers should always seek HR advice if a case is encountered.

In general terms an employee who has the necessary service will qualify for a redundancy payment if the decision not to renew or continue their contract is part of a general programme of reducing staff for financial or operational reasons – i.e. part of a wider redundancy situation.

It will also usually be a redundancy situation if employees have been recruited on a fixed term or temporary basis to meet an increased need for work of a particular kind, and the increased need no longer applies – i.e. there is a reduction in the Council's requirements for employees to perform that particular kind of work going into the future.

Employees who move from a permanent post to a temporary post in a redundancy situation, in order to avoid immediate redundancy, and who then reach the end of the temporary period in the new job and are not offered an extension or renewal, will normally be regarded as dismissed for redundancy, because in such cases ending of their (extended) employment is mainly attributable to the original redundancy situation.

Cases which will normally not attract a redundancy payment include those where the employee was recruited on a temporary or fixed term basis to provide cover for another employee during that employee's absence on maternity, adoption or parental leave, or long-term sick leave, or on secondment, or the employee is recruited to provide cover during a recruitment process to replace an employee who has left. (Most such cases will not involve two years' service, but in the rare cases where the employee has been in the temporary role for that long, or was appointed to it immediately after other service with the Council, it may be necessary to consider

entitlement. The reason that a redundancy payment would not normally be payable in such cases is that the reason for the dismissal is the return to post of the absent employee, not a reduction in the employer's requirements for employees to perform the particular job.)

Situations where advice is likely to be needed include where an employee has been taken on for a specific role for which time limited funding has been obtained, and at the end of their contract period the funding is not renewed. This may be regarded as the completion of a short term task (with no entitlement to a redundancy payment) or a reduction in the Council's requirements for employees to perform the particular work concerned (because of lack of funding), which would give the employee a right to a payment, depending on the precise circumstances.

Redundancy Payment

Any employee who is dismissed on the grounds of redundancy by reason of the ending of their fixed-term or temporary contract will be entitled to a redundancy payment, providing they have at least 2 years continuous service with the Council or related employers as listed under the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999 and subsequent amendments.

Within the [Redundancy and Early Retirements Policy](#) – at Appendix 1, an Enhanced Redundancy Ready Reckoner is included which allows an individual to calculate a redundancy payment estimate.

Where a fixed-term or temporary contract, is brought to an end earlier than the stated expiry date, the employee will be eligible to the appropriate notice.

TERMINATION OF FIXED-TERM OR TEMPORARY CONTRACT PROCESS

1. The Line Manager should on an ongoing basis monitor the use of fixed-term or temporary contracts through running a **Current Fixed Term Contract in Team report from the line manager self-service reports in Business World On!**; and at least a month before their contractual notice entitlement or notice entitlement taking into account their continuous service date (whichever is more beneficial to the employee) the following steps must be followed.
2. The Line Manager and Head of Service or more Senior Manager should notify the employee in writing that their fixed-term or temporary contract will not be renewed and as such will result in the termination of employment on the grounds of **redundancy** or **SOSR**, and arrange to meet the employee as soon as possible. This should be confirmed using [Letter 1](#).

The employee should be given a minimum of 5 working days' notice of this meeting, and they have the right to be accompanied at the meeting by a recognised Trade Union Representative or LCC work colleague.

The meeting should be held prior to the commencement of the required notice period to ensure that the appropriate notice is issued

Please contact your operational HR Adviser support if you require further advice relating to this meeting.

3. If the employee confirms that they understand that the fixed-term or temporary contract is due to end, and that they do not wish to attend the meeting, [Letter 2](#) should be used.

NB:

If the employee does not attend the meeting the notice period starts 2 days after posting the outcome letter.

4. If the employee confirms that they wish to attend the meeting, please use the following points as a guide when conducting proceedings:
 - Confirm with the employee that the contract of employment is to expire, the date of expiry and that it will not be renewed.
 - Explain the reason for the non-renewal.
 - Confirm the dismissal, the reasons and the termination date. The dismissal will be on grounds of redundancy (with or without a payment) or SOSR.
 - If the employee is one of a pool of employees on fixed-term or temporary contracts from which selection for redundancy has to be made, the criteria that will be used to make this selection should be explained.
 - Check and confirm whether the employee is eligible for 'at risk' status seeking advice from HR where appropriate.
 - Check that the individual is aware of how to access job vacancies within the Council i.e. via George and www.lincolnshire.gov.uk. If the employee is unable to access these, they need to inform HR so alternative arrangements can be made.
 - Where an employee has been on fixed-term or temporary contract of 2 years or more and the reason for the dismissal is due to redundancy make them aware that they will be entitled to a redundancy payment. The line manager should contact their operational HR Adviser support who will calculate a redundancy estimate and provide written confirmation of this to the individual.
5. Following the meeting, the Head of Service or more Senior Manager should confirm the above in writing using [Letter 3](#).

NB:

If the employee attends the meeting and notice is given verbally the notice period starts the day after the meeting.

6. If an extension or renewal of the contract is made, then [Letter 4](#) can be utilised to confirm this.
7. If the employee wishes to exercise their right of appeal they must do so within 10 working days of the receipt of their termination letter. Please refer to the [Appeals Policy and Procedure](#).
8. The line manager or Head of Service must ensure that they complete and return to People Services the relevant Business World On! Forms