



**Corporate Policy and  
Resources Committee**

**13 April 2017**

**Subject: New Fixed Term and Temporary Contract Policy and Procedure**

Report by:

Director of Resources  
Ian Knowles

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Purpose / Summary:

To propose a new Fixed Term and Temporary  
Contract Policy & Procedure for staff

**RECOMMENDATION(S):**

That Corporate Policy and Resources Committee approve the Fixed Term and Temporary Contract Policy & Procedure and the policy is adopted for all employees of the council.

Delegated authority be granted to the Director of Resources to make minor housekeeping amendments to the policy in future, in consultation with the chairman of the Corporate Policy & Resources committee and chairman of JSCC.

## IMPLICATIONS

**Legal:** The main Acts and Regulations covering workers on fixed-term contracts are:

The Employment Act 2002

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) which implement the provisions of the Fixed-term Work Directive (1999/70/EC) into UK law

The Fixed-term Employees (Prevention of Less Favourable Treatment) (Amendment) Regulations 2008 ( SI 2008/2776).

**Financial :** None FIN/6/18

**Staffing :** None

**Equality and Diversity including Human Rights :**

West Lindsey District Council has a commitment to equal opportunities. It seeks to ensure that no potential or current employee receives less favourable treatment than another on the grounds of age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

**Risk Assessment :**

**Climate Related Risks and Opportunities :**

**Title and Location of any Background Papers used in the preparation of this report:**

**Call in and Urgency:**

**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

**Yes**

**No**

**x**

**Key Decision:**

A matter which affects two or more wards, or has significant financial implications

**Yes**

**No**

**x**

## **1. Introduction**

The council employs some staff on temporary or fixed term contracts and as such it is good practice to have a policy and procedure document in place to ensure that guidance is given to managers and that the council meets the legislative requirements that are in place.

## **2. Purpose**

The council recognises the importance of providing staff and managers with consistent information and guidance when navigating through the fixed term workers legislation and has therefore drafted and consulted on a new policy/procedure document,

## **3. Scope**

The document applies to all staff employed on fixed-term or temporary contracts with the exception of:

- Apprentices
- Placement students
- Agency Workers

## **4. Engagement**

The policy has been developed by the People and OD Team Manager and feedback has been sought from the management team, staff representatives and Unison, it has also been agreed by Legal Services.

The policy was considered at JSCC on 30<sup>th</sup> March 2017 and was fully supported by Members, Unison and Staff Representatives.

## **5. Training and Awareness**

This policy will be made available to view on the Minerva site and hard copies available at the depots once formally agreed.

A clear communication will be sent to Managers to make them aware that the policy has been reviewed and to update them on their responsibilities.

## **6. Recommendation**

That Corporate Policy and Resources Committee approve the Fixed Term and Temporary Contract Policy & Procedure and the policy is adopted for all employees of the council.

Delegated authority be granted to the Director of Resources to make minor housekeeping amendments to the policy in future, in consultation with the chairman of the Corporate Policy & Resources committee and chairman of JSCC.

# Fixed Term And Temporary Contract Policy & Procedure

JSCC Approved – 30 March 2017

P&R Approved –



## **FIXED TERM AND TEMPORARY CONTRACTS POLICY & PROCEDURE**

### **1. Purpose**

The purpose of this policy and procedure is to explain the requirements of the legislation and to outline how fixed-term and temporary contracts will be used within the council.

### **2. Scope**

This procedure applies to all staff employed on fixed-term or temporary contracts with the exception of:

- Apprentices
- Placement students
- Agency workers

### **3. 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 may adjust terms and conditions providing they can be objectively justified but be in line with the guidance in the section 'Objective Justification'.
- The right to a 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.

### **4. General Position**

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.

A decision to offer, renew or not renew a fixed term or temporary contract places certain obligations on the council depending on the reason for the offer, renewal or non-renewal and the length of service accrued by the post-holder.

An employee on a fixed term or temporary contract may be eligible for a redundancy payment if they have previous continuous employment with an employer on the Redundancy Modification Order which takes them beyond two years by the final day of their employment. This is contractual and means that any redundancy pay due by the council will be based on all previous continuous employment. Depending on the length of continuous service, this could be costly. A period of seven calendar days, counts as a break in continuous service. See section 11

There is a statutory duty to appoint on merit and applicants who have previous continuous service with an employer on the Redundancy Modification Order should not be discounted because of this.

## **5. Difference between a Fixed-Term Contract and a Temporary Contract**

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.

## **6. When to use a fixed term or temporary contract**

A fixed term or temporary contract is a contract that comes to an end:

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

Managers should only use fixed term or temporary contracts for specific purposes. Some of the most common examples of when a fixed-term or temporary contract would be appropriate are:

1. Where funding for a particular post is dependent on external sources which cannot be guaranteed to continue in the long-term
2. Engaging employees to undertake seasonal work
3. Engaging employees to cover periods of peaks in demand
4. Implementation of a specific project
5. Cover for maternity leave, sickness absence etc.
6. Cover for secondment

## 7. Advertising a fixed-term or temporary contract

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

## 8. End of Fixed Term or Temporary Contract

The termination of a fixed-term or temporary contract, or non-renewal of a fixed-term or temporary contract beyond its expiry date is regarded as a dismissal.

The reason for the dismissal will be due to either:

**Redundancy** – for example where the requirement for the work to be undertaken has diminished or ceased

**SOSR** (Some other substantial reason) – for example 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.

## 9. Non – Renewal

The non-renewal of a fixed term or temporary contract at the end of its natural expiry date constitutes a dismissal in law and as such care requires to be exercised to ensure that any such dismissal is procedurally fair.

In common with an employee with permanent contractual status, a temporary or fixed-term employee who has at least two year's continuous service will be entitled to lodge a claim of unfair dismissal to an Employment Tribunal (ET) claiming that the ending of their fixed term contract was not undertaken fairly. It should also be noted that an individual need not have had one year's continuous service to claim unfair dismissal if the reason for termination amounts to discrimination or one of the other automatically unfair reasons for dismissal.

The specific steps that managers should follow when ending a fixed term contract are set out at section 2 of this document.

In addition to following a fair procedure, additional obligations on the council may arise depending on the reason for non-renewal. For example, if a fixed term contract is for a purpose **other than maternity leave cover, cover for long-term sick absence or secondment etc**, the decision not to renew is likely to constitute dismissal on the grounds of redundancy and a redundancy payment entitlement will arise if the individual has accrued at least 2 years continuous service.

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 the ending of their 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. The reason that a redundancy payment would not be payable in such cases is that the reason for the dismissal is the return to the post of the absent employee, not a reduction in the employer's requirements for employees to perform the particular job, this would be classed as a dismissal for Some Other Substantial Reason – SOSR.

## **10. Renewal**

Managers must look at their establishment and their staffing regime and consider whether a fixed term or temporary contract is appropriate by weighing up the pros and cons of using them. If a vacant post is likely to be filled permanently then this should be considered at the outset.

Managers should be aware that after one year of continuous employment an employee has the right to be redeployed and an employee who has two or more year's continuous service may be entitled to receive a redundancy payment.

## **11. Does the post-holder have at least 2 years continuous service?**

If a fixed term or temporary contract is not to be renewed and the circumstances are deemed to meet the statutory definition of redundancy (ie. non – renewal due to the cessation or diminution of the work being undertaken), a redundancy payment will be payable providing he or she has at least 2 years continuous service. Continuous service includes service with other public bodies listed under the Redundancy Modification Order. The RMO provides that continuous service with a local authority and other specified public bodies can be counted for the purpose of establishing entitlement to and calculation of redundancy/severance payments.

Where a post holder has a dual job, only the continuous service under the contract to be ended will be considered when determining whether a redundancy payment is payable.

There may be a pension consideration which could give rise to substantial pension fund strain costs. Such costs will require to be factored into the budget provision. You should seek advice from Human Resources.

## **12. Will the post-holder accrue at least 4 years continuous service if their current fixed term contract is renewed or extended?**

Post-holders who have been employed on a series of fixed term or temporary contracts for a continuous period in excess of 4 years will automatically acquire permanent employment status unless continued employment on a fixed term basis can be 'objectively justified'. In assessing whether 'objective justification' exists, the

reason for the last renewal at the date on which the renewal took effect is the relevant consideration. Reasons for the first engagement on a fixed-term contract and reasons for previous renewals will not be relevant.

Advice from Human Resources should be sought when determining continuous service, particularly where the pattern of employment indicates that breaks in service may have occurred.

**13. Does the post-holder have a dual job and what impact does this have on a potential claim for right to permanency?**

Where an employee has two contracts, there exists two separate and distinct contractual relationships and so two separate and distinct sets of statutory rights. Therefore, each contract must be considered separately when determining length of service and right to permanency. Accrued service from two contracts cannot be combined to achieve the 4 years' service necessary to invoke a right to permanency.

**14. What if a number of fixed term contracts are not being renewed within a service for the same reason?**

The non-renewal of a number of fixed term contracts over a specific period may trigger specific obligations on the council in terms of statutory consultation and notification requirements.

This will apply where the council proposes to dismiss 20 or more employees at one establishment within a ninety-day period. For the purposes of determining whether a collective redundancy situation exists, it will be appropriate to take into account fixed term employment contracts that are due to expire during that 90 day period.

**Advice from Human Resources must always be sought where it is proposed to end a number of fixed term contracts within a service over a specific period. The total number of terminations across the whole council has to be taken into account for statutory consultation and notification purposes.**

**15. Conclusion**

Fixed term or temporary contracts should only be entered into following full consideration of the requirements for the contract and of the length of time necessary to fulfil the function or complete the task. The contract should be kept under review and extended only where necessary.

Should you have any queries on the application of fixed term or temporary contracts, please contact the HR team.

## **SECTION 2 - PROCEDURE**

### **Non-renewal/termination of a fixed-term or temporary contract**

The following procedural steps should be followed when it is expected that the fixed term or temporary contract will not be renewed or extended.

#### **Step 1**

The 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. Advise the employee that he/she may be accompanied at the meeting by their Trade Union Representative or a work colleague.

The manager should hold an initial meeting with the employee in advance of the date the employee's fixed term contract is due to end. Ensure the meeting is arranged sufficiently early in the process to enable a further follow-up meeting to take place before the date on which the employee requires to be served with their statutory notice of termination of employment (a week for each year of continuous service).

Advise the employee that the contract is coming to an end and is unlikely to be renewed. A final decision should not be taken at this stage – that decision should be confirmed only after the process of discussion and consultation with the employee has been concluded. The employee should be given the opportunity to consider their position and be invited to express any views they may have on, for example, alternatives to non-renewal of the contract. Following the meeting, confirm the substance of the discussions in writing and arrange a further meeting again advising of the right to be accompanied.

#### **Step 2**

Meet again and consider any representations from the employee. If the outcome does not affect the original proposal not to renew the contract, this should be confirmed to the employee together with the reason for the non-renewal.

Advise the employee of current vacancies elsewhere in the council and provide access to the vacancy list together and offer any assistance with job applications etc.

#### **Step 3**

Following the meeting, confirm the decision in writing giving the appropriate contractual or statutory notice of termination and advise of the right of appeal. Confirm the amount (if any) of any redundancy payment that may be due.

#### **Step 4**

Complete the appropriate termination paperwork (including redundancy details) and pass for action to [human.resources@west-lindsey.gov.uk](mailto:human.resources@west-lindsey.gov.uk)

#### **Appeal**

Any subsequent appeal will be heard by an officer that has not been involved in the original process. The decision of that officer will be final and no further right of appeal will be offered.

## Objective Justification

The objective grounds must apply at the start of the fixed-term contract or, if it has been renewed, at the date the last renewal took effect. The position when the first fixed-term contract or previous renewals were put in place will not be the determining factor. Objective grounds are not defined by legislation but must relate to the needs of the service. It must be more than a matter of convenience and as such it should;

- achieve a legitimate objective, for example a genuine business objective;
- be necessary to achieve that objective; and
- be an appropriate way to achieve that objective.

It is essential that when renewing a fixed term contract that would result in an individual accruing 4 years continuous service, that the reason for the further renewal is clearly stated within the written terms of the extension/renewal. It is good practice to include a statement of the reasons for a fixed-term contract at all stages. The table attached at Appendix 1 provides examples of the types of scenarios where objective grounds for retaining fixed-term employment may exist. However if there is no objective justification then the individual's employment status should then be classed as 'permanent.'

It should be noted that an employee does not need to make a formal request for permanent employment status for the change from temporary to permanent to occur. It happens by operation of the law as a result of the criteria being met in the absence of justifiable objective grounds to the contrary. However, employees with four or more years' continuous service under fixed-term contracts have the right to ask the council for a statement that their employment status is now permanent. The council has **21 days** to provide a written statement either confirming permanent employment status or providing objective justification as to why the individual should continue to be employed on a fixed term basis.

## EXAMPLES OF OBJECTIVE JUSTIFICATIONS

| CRITERIA                | JUSTIFICATION FOR RETAINING FIXED TERM STATUS (Strong)                                   | JUSTIFICATION FOR RETAINING FIXED TERM STATUS ( Weak)  |
|-------------------------|--|--|
| <b>External Funding</b> | External funding that has restrictions regarding contract status (e.g. European funding) | External funding that is medium to long term with no restrictions on contractual status                                |
|                         | External funding that is short term and has a known end date                             | External funding that is medium to long term   |
|                         | External funding from a single source  | External funding is from several sources and renewal of funding is likely or the loss of some funding can be sustained |
|                         | Self funded posts with unpredictable income  | Self funded posts where the post holder has a proven history of income generation                                      |
| <b>Specific Purpose</b> | Posts that are for a clearly defined purpose or project that is time limited             | Posts that were initially devised for a specific purpose but where post holder has become integral                     |

|                                    |   |  |
|------------------------------------|---|--|
|                                    |   | to the objective of project/event's success  |
|                                    | Requirement for post has diminished   | Requirement for post continues and is integral to Service's business plans   |
| <b>Legal Restrictions</b>          | The position cannot be made permanent due to work permit or visa restrictions   | n/a  |
| <b>Career Development</b>          | Post is designed to provide a career development opportunity  | n/a  |
| <b>Temporary Cover Arrangement</b> | Post is to cover period of absence (e.g. secondment, maternity, sick leave)   | n/a  |
| <b>Contribution to Business</b>    | The post-holder's contribution is limited in respect of the service's business objectives                                 |  |
| <b>Specialist Skills</b>           | The post requires specialist skills/knowledge for a limited period of time (e.g. to set up or devise a system or service) | The Service requires the continued specialist knowledge/skills to meet its academic/business objectives or maintain the project/service/system etc |
| <b>Capacity for Redeployment</b>   | The post-holder does not have transferable skills   | The post-holder has transferable skills  |
|                                    | There is little prospect of a suitable post becoming available  | Opportunities exist or are likely to become available within the organisation to enable redeployment to take place                                 |

### **Policy Statement**

West Lindsey District Council has a commitment to equal opportunities. It seeks to ensure that no potential or current employee receives less favourable treatment than another on the grounds of age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

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