



# Fixed Term and Temporary Contract Guidance

## Version 1.4

<p><b>Important:</b> This document can only be considered valid when viewed on the Trust website. If this document has been printed or saved to another location, you must check that the version number on your copy matches that of the document online.</p> <p><b>Name and Title of Author:</b></p>	<p>Lisa Longstaff, Director of HR and Governance</p>
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<p><b>Target Audience:</b></p>	<p>All staff employed on a fixed term or temporary basis</p>
<p><b>Related Documents:</b> All Trust policies and procedures referred to are located on the trust website, <a href="http://www.theeducationalliance.org.uk">www.theeducationalliance.org.uk</a>. If English is not your first language, and you require assistance/translation, please contact the HR Department. This guidance has been equality impact assessed.</p>	<p>Recruitment and Selection Policy Organisational Change and Redundancy Policy Redeployment Procedure Equality, Diversity and Inclusion Policy</p>

## Contents

<b>Section</b>	<b>Page</b>
<b>Guidance Statement</b>	3
<b>1. Scope</b>	3
<b>2. Roles and Responsibilities</b>	3
<b>3. Equality and Diversity</b>	3
<b>4. Introduction</b>	3
<b>5. Definitions</b>	4
<b>6. Use of Fixed-Term and Temporary Contracts</b>	4
<b>7. Extending a Fixed-Term or Temporary Contract</b>	4
<b>8. Terminating a Fixed-Term or Temporary Contract</b>	5
<b>9. Successive Fixed-Term Contracts</b>	6
<b>7. Monitoring Compliance with and Effectiveness of this Guidance</b>	6
<b>8. Review</b>	6
<b>Appendices</b>	
<b>1. Fixed term and temporary contracts process</b>	7
<b>2. Criteria for redundancy payments</b>	8

## GUIDANCE STATEMENT

We are here to make great schools and happier, stronger communities so that people have better lives. We do this by:

- Always doing what is right
- Trusting in each other and standing shoulder to shoulder
- Doing what we know makes the difference

Doing what is right means always acting with integrity, in the interests of others and being honest, open and transparent.

Whilst the majority of staff working in the trust are employed on a permanent basis, the trust offers a range of employment contracts to suit a range of circumstances. Fixed term and temporary contracts are offered where the demand is temporary in nature (e.g. maternity cover) or the funding is temporary.

### 1. SCOPE

This policy applies to all staff employed by The Education Alliance on a fixed term or temporary basis.

### 2. ROLES AND RESPONSIBILITIES

The **Trust Board** is responsible for approving this guidance.

The **CEO and Executive Principal** are responsible for ensuring that staff and others adhere to this guidance.

The **Human Resources Department** is responsible for ensuring that fixed-term and temporary employees are aware of this guidance and that the guidance is implemented fairly, transparently and equitably.

**Leaders and managers** must ensure they implement this guidance fairly and equitably, seeking guidance, clarification and support as and when required.

### 3. EQUALITY AND DIVERSITY

The Education Alliance is committed to:

- Promoting equality and diversity in its policies, procedures and guidelines
- Delivering high quality teaching and services that meet the diverse needs of its student population and its workforce, ensuring that no individual or group is disadvantaged.

This guidance details the way in which the trust manages fixed-term and temporary contracts in line with its legal duties, ensuring staff employed on fixed-term and temporary contracts are not treated less favourably than comparable permanent employees.

### 4. INTRODUCTION

The trust recognises the valuable contribution every employee makes and it is committed to ensuring fixed-term and temporary staff are not treated less favourably than permanent employees, unless circumstances objectively justify a different approach. 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.
- The right to a statutory redundancy payment where the reason for the expiry [i.e. dismissal] of a fixed-term or temporary contract is due to redundancy. 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).
- 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.

## 5. DEFINITIONS

A **fixed-term contract** is normally issued when the end date or length of the contract is known, for example, where an employee is going on maternity leave and has confirmed a return to work date.

A **temporary contract** is normally issued when the end date or length of the contract is unknown, (such as where an employee is absent due to illness and the duration of that absence is unknown), however, the contract should indicate the anticipated length.

## 6. USE OF FIXED TERM AND TEMPORARY CONTRACTS

Fixed term or temporary contracts will generally be offered where:

- it is known in advance that a particular job will come to an end on a specific date;
- the employment is for the purpose of completing a particular task;
- the employment is for the purpose of replacing an employee who is to be absent from work for a period of time (for example on maternity leave); or
- the post is dependent on external funding and it is thought likely that the funding will be available for only a temporary period of time.

Any employee engaged on a fixed-term or temporary contract will be entitled to terms and conditions of employment that are not less favourable than the terms and conditions of a comparable permanent employee, unless there is an objective reason for offering different terms. A comparable permanent employee is someone who is engaged in the trust's workforce, in the same or broadly similar work.

Employees engaged on fixed-term or temporary contracts will be encouraged to apply for permanent vacancies and will have access to all available vacancies as they arise via the trust/school websites.

## 7. EXTENDING 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.

Decisions to extend a fixed-term or temporary contracts sit with the Headteacher in trust schools as they are able to assess the impact on their school budgets, the need for the extension and seek advice and guidance from the HR Department. Once approved, the HR Department can ensure that the

Payroll Department is notified and that the employee is informed in writing of the extension, detailing the end date detailed wherever possible.

## 8. TERMINATING 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 in Appendix 1 should be followed. Fixed-term contracts will normally end automatically when they reach the agreed end date. HR colleagues across the trust will ensure that details of fixed-term and temporary staff are placed on the redeployment register, ensuring they are fully supported in line with the trust's Recruitment and Selection Policy and the Redeployment Procedure.

Prior to ceasing a fixed-term or temporary contract, the HR Department will check with the Headteacher to ensure they are aware and in agreement with the termination of the contract. The HR Department will also advise the Headteacher of any issues (e.g. an entitlement to redundancy pay; employment rights; continuous service). Whilst the trust is not legally required to give notice where the end date is already specified in the contract, confirmation of the end of the contract will be sent to the employee from the HR Department within the usual notice periods as specified within the employment contract.

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). 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.

Further clarification on the correct dismissal reason is provided in Appendix B.

The trust recognises that the cessation of a fixed-term contract is legally considered to be a dismissal, and if the employee has 2 years' service the employer needs to show that there's a 'fair' reason for not renewing the contract. Workers have the right not to be unfairly dismissed after 2 years' service, and to a written statement of reasons for not renewing the contract after 1 years' service. Workers may be entitled to statutory redundancy payments after 2 years' service if the reason for non-renewal is redundancy.

A redundancy payment may be due in certain circumstances when a temporary or fixed term contract ends and the employee is not offered a renewal of the contract. 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.

Some situations will be relatively clear, but there are often marginal cases; HR will advise the manager on the appropriate reason for dismissal.

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

When preparing to end a fixed-term or temporary contract, the trust will normally:

- Demonstrate the reason for dismissal
- Take appropriate steps to ensure the dismissal is fair and reasonable
- Take care not to allow a fixed-term contract to expire without renewal and then engage someone else to do the same work
- Establish whether the fixed-term employee is entitled to a redundancy payment
- Ensure the employee is aware of and able to access vacancy information within the trust, and that they are offered support via the Redeployment Procedure
- Give written notice where early termination is necessary or where an end date is not specified in the temporary contract
- Provide the employee with a written statement of reasons for dismissal where such a request is received

Generally, dismissal on the expiry of a fixed-term contract will be viewed as legally fair, provided that;

- The fixed-term contract was established for a genuine purpose;
- The purpose of the contract and the reason for it being fixed-term were known by the employee; and
- The underlying purpose of the contract has ceased to be applicable.

## **9. SUCCESSIVE FIXED-TERM CONTRACTS**

Under reg. 8 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, employees continuously employed on successive fixed-term contracts for 4 years or more will automatically achieve permanent status, unless the trust can justify the continued use of a fixed term contract.

## **10. MONITORING COMPLIANCE WITH AND EFFECTIVENESS OF THE GUIDANCE**

Effectiveness and compliance of this procedure will be monitored on an annual basis by HR.

## **11. REVIEW**

This guidance will be reviewed every two years with recognised trade unions via the trust's JCNC.

Where a fixed term or temporary contract is due to expire, HR will contact the Headteacher to seek clarification on whether or not the contract should be extended, exploring the reasons and ensuring legal requirements are understood and that this policy is implemented fairly, equitably and transparently.

Where the decision is taken that the contract will be terminated, either based on Redundancy or Some Other Substantial Reason (SOSR), the following process should be followed

1. The employee should be invited to attend a meeting with their line manager and a HR colleague. 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 work colleague.

Where the fixed-term or temporary contract is either ceasing early or an end date was not specified in the contract of employment, the meeting should be held prior to the commencement of the required notice period to ensure that the appropriate notice is issued.

In all instances, advice should be sought from the HR Department prior to the meeting taking place.

2. The following points should be used as a guide when conducting proceedings:
  - a. Confirm with the employee that the contract of employment is to expire; the date of expiry and that it will not be renewed.
  - b. Explain the reason for the non-renewal.
  - c. Confirm the dismissal, the reasons and the termination date.
  - d. Confirm whether the dismissal will be on grounds of redundancy (with or without a payment) or SOSR.
  - e. Check and confirm whether the employee wishes to access additional support via the Redeployment Procedure.
  - f. Check that the individual is aware of how to access job vacancies within the trust.
  - g. Where an employee has 2 years or more continuous service and the reason for the dismissal is due to redundancy, the HR Department will check whether there is an entitlement to a redundancy payment, and if there is, they will calculate a redundancy estimate and provide written confirmation of this to the individual.
  - h. Advise the employee of their right of appeal.
  - i. Advise the employee that their dismissal will be confirmed in writing.
3. Following the meeting, the HR Department will issue the relevant dismissal letter.

## CRITERIA FOR REDUNDANCY PAYMENT

## APPENDIX 2

### Definition of Redundancy - ERA 1996

*"For the purposes of this Act, an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to –*

*(a) the fact that his employer has ceased, or intends to cease –*

*(i) to carry on the business for the purposes of which the employee was employed by him, or (ii) to carry on that business in the place where the employee was so employed, or*

*(b) the fact that the requirements of that business –*

*(i) for employees to carry out work of a particular kind, or (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer*

### Examples:

<b>Reason for Appointment</b>	<b>Type of Dismissal</b>	<b>Redundancy Payment (if over 2 years' service)</b>
Time Limited Project	Redundancy	Yes
External Funding Stream	Redundancy	Yes
Cover for substantive post-holder (Maternity, Sickness, Secondment etc)	SOSR	No
Trial of a role which becomes a permanent need and the employee on a fixed term contract is not the successful applicant	SOSR	No