



# Temporary and Fixed Term Contracts Policy

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## 1.0 Introduction

- 1.1 The following procedures have been adopted by the Governing Body of \_\_\_\_\_ School to enable it to discharge its functions under the School Staffing (England) Regulations 2009 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 in relation to the employment of people on temporary and fixed-term contracts. They apply to everyone employed to work on this basis in the school by the governing body, or local authority as the case may be. They do not extend to workers provided and employed by employment businesses, in respect of whose services the school pays that employment business, or to school meals staff and other employees provided by the local authority acting in the role of an employment business.
- 1.2 These procedures deal with the recruitment of people to work on a temporary or fixed-term contract, terms and conditions during their employment, and necessary action when the contract is due to expire. They are designed to give effect to the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, which are not intended to prevent the use of temporary and fixed term contracts but to prevent abuse of them, and to that end include:
- Measures to prevent the abuse of successive fixed-term contracts. The total duration for the use of successive continuous contracts is limited to 4 years. Renewal of contracts beyond 4 years is otherwise deemed by law to become indefinite (permanent), unless there are circumstances in which it is possible objectively to justify using fixed-term contracts for a longer period.
  - The rights of employees on fixed-term contracts to be informed of any vacancies and be given the same opportunity to secure a permanent job as a comparable permanent employee.
  - The principle of non-discrimination and the right not to be treated less favourably than comparable 'permanent' employees. Employees have the right to ask their employers for a written explanation as to why they feel that they have been treated less favourably than their 'permanent' colleagues. The written explanation must be provided within 21 days. Employees are able to refer such matters to an Employment Tribunal.
- 1.3 The regulations define a fixed term employee as a person whose contract comes to an end either upon reaching a specific date or when a specified task has been completed or when a specified event does or does not occur. In these procedures the adjective temporary refers to a contract whose duration cannot be specified precisely because it is not known in advance exactly when a specified task will be completed or when a specified event will or will not occur, whereas a fixed-term contract is treated as one which specifies the precise date on which the contract will terminate. Although an exact date cannot be given for the termination of certain contracts, for example if the contract is to cover the absence of an employee and the duration of that absence is uncertain, wherever possible the temporary employee should be given some indication of the likely duration of the contract.
- 1.4 The Governing Body and headteacher will seek advice from the authority where necessary. If a school insists on offering a temporary or fixed-term contract for inappropriate reasons the local authority reserves the right to require the governing body to meet the costs of any claims for unfair dismissal or redundancy on the expiry

of the contract. The expiry and non-renewal of all fixed term contracts constitute a dismissal in law, whether or not an end date has been specified.

1.5 In this procedure :-

- 'Local Authority' means Birmingham City Council acting in its capacity as a Local Education Authority;
- Any reference to a 'school' also includes an 'academy';
- Any reference to a committee of the governing body also includes an 'academy trust', 'board of directors/trustees' or equivalent body for an academy;
- 'Employee' means any person who is employed by the school under a contract of employment.
- The employee's "chosen companion" is defined in employment law as a trade union representative or a co-worker at the same workplace chosen by the employee.

## 2.0 Reasons for Temporary and Fixed Term Workers – Objective Justification

2.1 Any fixed-term or temporary contract must be objectively justified and must be linked to specific reasons. The following are examples of reasons objectively justifying such a contract.

- to cover for absences of permanent staff due to sickness, attendance on training courses, maternity leave, etc.
- to provide extra help for seasonal variations in workload;
- to undertake duties of another employee temporarily allocated other duties within the school either as a specific task or while a more senior post is vacant or its occupant is absent (an arrangement commonly known as 'back-filling');
- to undertake a specific task, which has a foreseeable end;
- a predicted fall in pupil numbers, for which there is sound statistical evidence, which is large enough to result in a need to reduce the number of employees in the school within the next twelve months;
- a known, severe budgetary deficit, leading to a need to reduce the number of employees in the school within the next twelve months;
- to provide additional education or undertake a specific project for which special funding has been obtained for a known, limited period;
- because the person is employed on the employment-based teacher training scheme;

- because the overseas trained teacher ([as defined in statutory regulations](#) –) does not have qualified teacher status in England and is limited to employment as an overseas trained teacher for a maximum of four years from the date of first employment in that capacity in this country.

2.2 Reasons which would not be regarded as objective justification include:

- Budgetary uncertainty - simple pessimism about the Government's funding intentions for schools (however understandable) is not a sufficient reason.
- Possible future reductions in the number of pupils on roll – this is too uncertain – there must be valid statistical evidence within a known time-frame.
- Short-term needs of the school - this is too vague.
- To test the capability or performance of the employee, whether an Early Career Teacher (ECT) or otherwise - Statutory induction for Early Career Teachers provides for dismissal of a teacher who fails induction and for the local authority to meet the salary costs of such a teacher whilst that teacher is on reduced duties pending appeal. The same arguments apply to support staff on probation.

### 3.0 Recruitment and Selection

- 3.1 When the Governing Body identifies the need for additional staff, over and above the current, approved staffing establishment of the school, for a temporary or fixed-term period it will establish the necessary additional posts as a temporary variation to its staffing structure in accordance with its normal procedures for varying that structure. A need for additional staff on a short-term basis may arise from, for example, the award of a special grant for additional educational provision.
- 3.2 When there is a need to recruit an additional employee in the absence of an employee who is part of the current, approved staffing establishment of the school the Governing Body, or the headteacher as the case may be, will make the necessary arrangements for recruitment and selection in accordance with the Governing Body's delegations of its powers of recruitment and selection.
- 3.3 During the absence of an employee whose job carries extra responsibilities, those responsibilities may be undertaken by another existing employee (after internal advertisement within the school). There may also be occasions when an existing employee is asked to undertake a specific task and there is a need for that employee's normal duties to be covered for the duration of that task. In such cases the Governing Body or the headteacher as the case may be, may advertise for a person to undertake the normal duties of that other employee; this is commonly known as back-filling.
- 3.4 The Governing Body will apply its normal arrangements for recruitment and selection when recruiting temporary and fixed-term employees.
- 3.5 The advertisement for, details of, letter of appointment and statement of particulars for any job offered on a temporary or fixed-term basis must state the reason for the

temporary or fixed-term contract and specify whether the contract is temporary or fixed-term.

## **4.0 Contracts of Employment – Right Not to be Treated Less Favourably**

- 4.1 Contracts of employment must include the reason for the temporary or fixed-term contract and, for a fixed-term contract, the date when it will end. In providing information to Schools HR Services about a new appointment the school must specify the reason for the temporary or a fixed-term contract. If an objective justification in the form of a specific reason is not given the local authority will issue an open-ended (commonly called 'permanent') contract of employment, which will mean that the contract continues until such time as the contract is terminated by resignation or by a dismissal for some reason.
- 4.2 Notice provisions will also be included to allow the contract to be terminated by either party before it is due to end and must specify the grounds which would cause early termination, as premature termination may result in a claim for damages for unpaid remuneration in respect of the rest of the contract. Unless the employee was dismissed for disciplinary, capability or other good reasons a school may face a claim for the balance of a fixed-term contract if it is decided to terminate the contract before the expiry date.
- 4.3 The Burgundy Book excludes teachers "employed on a temporary basis either for a period of one term or less or as substitutes for permanently appointed teachers absent for reasons such as secondment, prolonged illness or maternity" from most of its provisions, including notice periods, occupational sick pay and occupational maternity pay. However, the Burgundy Book pre-dates the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, so where possible the provisions of the Burgundy Book will be applied to teachers on temporary and fixed-term contracts. Notice of the termination of a temporary or fixed-term contract is effectively given in the offer of such a contract, but when the exact date of expiry is uncertain (as in the case of cover for an employee with a prolonged illness) then it may be that the exact date will not be known until a few weeks beforehand and may not coincide with the end of a school term. In such cases the normal notice periods cannot apply, but the school will give as much notice as possible. Occupational maternity leave and pay may not be possible, because of the condition that the employee must return to work for at least thirteen weeks and the employee's contract may not last long enough for the employee to fulfil that condition.
- 4.4 Otherwise terms and conditions of employment will be the same as for comparable open-ended appointments.
- 4.5 Employees on temporary or fixed-term contracts have the right to be informed of vacancies within the school or the authority in the same way as other comparable employees. Any vacancy in the school will be open to all employees, including those on temporary and fixed-term contracts, unless there is an internal re-organisation or re-structure affecting a specific group of staff who would otherwise be displaced.

- 4.6 Any selection for redundancy will not treat temporary or fixed-term employees more or less favourably than permanent employees.
- 4.7 Employees on temporary or fixed-term contracts should not be treated less favourably than permanent or comparable employees in respect of training opportunities, unless this can be objectively justified.
- 4.8 In the event of an employee exercising the statutory right to ask for a written explanation of perceived less favourable treatment than fellow-employees with open-ended contracts the headteacher will reply on the Governing Body's behalf within 21 days.

## **5.0 Extension or Renewal of Temporary and Fixed-Term Contracts**

- 5.1 This procedure provides for the extension or renewal of a temporary or fixed-term contract if:
- an employee whose absence is being covered by a temporary or fixed-term contract delays their return beyond the date specified in the temporary or fixed-term contract, in which case the reason for the temporary or fixed-term nature of the contract remains the same and that fact will be stated in the letter of extension;
  - the special work or project for which or circumstances in which the employee has been engaged on a temporary or fixed-term contract will continue for longer than originally planned, or the temporary funding has been extended, in which case the reason for the temporary or fixed-term nature of the contract remains the same and that fact will be stated in the letter of extension;
  - an employee whose absence is being covered by a temporary or fixed-term contract does not return and there is good reason for continuing temporary or fixed-term employment but for a different reason (for example, because another employee is absent, or to undertake duties of another employee temporarily undertaking extra duties within the school pending the recruitment of a more senior employee). In this case the renewal will take the form of a new temporary or fixed-term contract with a new reason.
- 5.2 The Governing Body notes that if a person employed on a temporary or fixed-term contract is allowed to continue working without a formal extension beyond the date in the contract or without a new temporary or fixed-term contract with a different reason, then the employment will become open-ended by default.

## **6.0 Expiry of Temporary and Fixed-Term Contracts**

- 6.1 The expiry of a temporary or fixed-term contract is a dismissal in law. The school will therefore follow the procedures set out in this section.
- 6.2 Throughout the period of a temporary and fixed-term contract the headteacher will consider whether there are likely to be any vacancies occurring in the school at or

around the known or anticipated date of expiry for which the person employed on the temporary or fixed-term contract might apply.

- Particularly careful consideration needs to be given to a situation in which the post which has been covered on a temporary basis becomes a permanent vacancy (because the employee does not return, for whatever reason). There is no legal obligation on employers to offer the current post-holder the permanent position if a fixed-term role becomes permanent. However, employers are required, under reg.3 of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034), to give all fixed-term employees the same opportunity to secure permanent positions in the business as they give to permanent employees. Any difference between the availability of internal vacancies to fixed-term staff and their availability to permanent staff would need to be objectively justified.
- Regulation 3 also provides that fixed-term employees have the right to be informed by the employer of available vacancies in the business. For these purposes, an employee is "informed" of a vacancy if it is contained in an advertisement that the employee has a reasonable opportunity of reading in the course of their employment, or the employee is given reasonable notification of the vacancy in some other way.
- Schools should therefore inform fixed-term employees of vacancies in the same way and at the same time as they inform permanent employees, whether this means displaying a vacancy notice in a place where all employees would be expected to see it, or emailing the vacancy list to all members of staff. In particular, where there is a permanent vacancy in the role that a fixed-term employee is currently occupying, it is expected that the school will inform them directly.
- If there are no other fixed-term employees in the school, the school could offer the permanent post to the current fixed-term post-holder without advertising it first (although it should be aware of the potential risk of discrimination claims where a position is not advertised externally).

6.3 Because the termination of a temporary or fixed-term contract is a dismissal in law the employee must be given due notice of the termination. The notice period will depend on the statutory or contractual provisions for that particular employee in the light of their continuous service; the school may need to take advice from Schools HR Services. About a month before the start of the notice period the headteacher will obtain a copy of the letter of appointment and contract of employment, ascertain whether the reasons given in the contract for making it temporary or fixed term are due to materialise, consider again whether any alternative employment is available or likely to become available in the school (having regard to the qualifications and experience of the employee), and remind the employee that the contract is due to expire.

6.4 The headteacher will write to the employee inviting them to a meeting with the headteacher to discuss the imminent expiry of the contract of employment. The letter should include copies of any documents to be used at the meeting, remind the employee of the right to be accompanied chosen companion and explain the procedures to be followed at the meeting. A copy of the letter and any supporting papers should be enclosed for the employee's chosen companion. The employee



should be asked to confirm that they will attend the meeting in person, to indicate whether they wish to be accompanied by a chosen companion and to provide any documentation at least 5 days before the meeting.

- 6.5 In order to ensure that the employee has enough time to prepare their response reasonable notice of the hearing should be given. This should be at least 10 working days. It is helpful to agree a date with the employee's chosen companion if they are already involved in the case, before sending the formal notice to attend the meeting. The employee may suggest an alternative time and date as long as it is reasonable and is not more than 5 working days after the original date. The headteacher may reject this suggestion but will do so only if it is unreasonable and will take advice from their chosen Employee Relations Team on what is unreasonable. There is also the discretion to defer the date of the meeting by a longer period in order to reach mutual agreement on a convenient date, having particular regard to the availability of the employee's chosen companion.
- 6.6 The local authority does not expect to be notified of, or to attend, a hearing for confirmation of the expiry of a temporary or fixed-term contract. However, if a headteacher considers that there are exceptional circumstances requiring special support they may seek advice from their chosen Employee Relations Team, which may then send a representative to the meeting.
- 6.7 The headteacher will consult their chosen Employee Relations Team if the reason for the temporary or fixed-term contract is to undertake a specific project or task and the staffing establishment will be reduced on expiry of the contract, as a redundancy payment may be due in this event.
- 6.8 There may be cases in which an employee whose temporary or fixed-term contract is due to expire is simultaneously the subject of allegations being considered under one or more of the governing body's procedures for conduct or capability. Advice should be taken from their chosen Employee Relations Team on such cases.
- 6.9 In the meeting the headteacher should confirm that the contract will expire for the reason provided in the contract of employment. Depending on the particular circumstances the headteacher may also need to confirm that the employee has not been successful in any application for vacancies in the school and/or that there is no current vacancy for which the employee may apply. The headteacher will explain that therefore no other employment is available when the contract expires, but that the employee has the right of appeal to the appeal committee of the governing body.
- 6.10 The headteacher will confirm the outcome of the meeting to the employee in writing. If no further employment is offered, the letter will confirm that no further employment will be offered on the expiry of the contract, and state the right of appeal, including the requirement to give notice of appeal to the clerk to the governing body within 10 working days of receipt of the letter, setting out the grounds of appeal.

## 7.0 Termination of Temporary and Fixed – Terms Contracts and Redundancy

- 7.1 The termination of some temporary and fixed-term contracts will be a redundancy. Circumstances in which a redundancy payment is due (provided that the employee has at least two years' continuous service in accordance with the Modification Order and provided that the employee does not obtain other employment covered by the Modification Order within four weeks of the expiry of the contract) may include the closure of a workplace, reduced need for employees and the cessation of a particular service or project (whether externally funded or not). When the employee has been employed during the absence of another employee, there is no reduction in work when the absent employee returns, so there is no redundancy.
- 7.2 Advice should be taken from their chosen Employee Relations Team if there is a question over redundancy on the termination of a temporary or fixed-term contract.

## 8.0 Appeals

- 8.1 An employee on a temporary or fixed-term contract has the right of appeal against the expiry of the contract without an offer of further employment. An appeal shall be to the appeal committee established by the governing body.
- 8.2 An employee may appeal by giving written notice of the appeal and of all the grounds on which it is made to the clerk to the governing body within 10 working days of receiving written confirmation that the contract will expire without further employment. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal. If the employee so wishes there is no requirement to submit any documentation other than a statement from any witness who may be called by the employee. However, if the employee does not intend to submit any documentation there should be a positive statement from the employee or the employee's representative to this effect and the employee will not be able to use at the hearing any evidence not previously provided. If the employee is unable to provide the supporting evidence with the written notice of appeal the employee should explain this in the written notice of appeal and may ask for the appeal hearing to be delayed for a period not exceeding 5 working days or a mutually agreed period. The clerk to the governing body will confirm that the appeal hearing is delayed.
- 8.3 The clerk to the governing body will immediately notify the headteacher of all the grounds of appeal and any additional evidence, with a request to submit any additional papers in response to the clerk within seven working days.
- 8.4 The clerk to the governing body will then arrange an appeal committee hearing as quickly as possible, to take place, other than in exceptional circumstances (including a request from the employee for a delay), within twenty working days of the employee's notice of appeal. The clerk should make every effort to agree a date with the employee's chosen companion if they are already involved in the case, before sending the formal instruction to attend the hearing. The employee may suggest an alternative time and date as long as it is reasonable and is not more than 5 working days after the

original date. The committee may reject this suggestion if it is unreasonable and may proceed to hear the case in the absence of the employee or the employee's chosen companion, but also has the discretion to defer the date of the hearing in order to reach mutual agreement on a convenient date, having particular regard to the availability of the employee's chosen companion. The clerk to the governing body will notify the employee of the reason for any delay to the appeal hearing.

- 8.5 The clerk to the governing body shall give at least ten working days' formal notice of the hearing to all the participants, and in the same letter shall set out the order of the proceedings, remind the employee of the employee's rights at the hearing, including the right to request to be accompanied by a chosen companion, list the members of the appeal committee, give the names of witnesses, and confirm the options for action which the appeal committee may take (see below). All documents relevant to an appeal hearing shall be enclosed with the letter. The witnesses may include, as appropriate to the circumstances of the case, the headteacher and/or a member of the committee which took the decision against which the employee is appealing, or the person who presented the case if that person was not the headteacher.
- 8.6 The normal procedure for an appeal hearing is set out in the Tool Kit. The appeal committee will have regard to any guidance issued from time to time by the local authority on conducting a hearing
- 8.7 The appeal committee may dismiss the appeal or uphold the appeal. If it upholds the appeal it may either offer the appellant a new contract of employment (for a different reason) or extend the current contract if there is good reason for an extension (for example, if special funding has been extended or the absence or the special work or project is lasting longer than anticipated).
- 8.8 The appellant may choose whether to hear the appeal committee's decision in person or receive it subsequently in writing, but this choice shall not prevent the committee from choosing to adjourn and reconvene before making a decision. An oral announcement shall be confirmed in writing by the clerk to the governing body within 10 working days of the hearing.
- 8.9 The headteacher will take any necessary action to implement the Committee's decision.

## **9.0 A headteacher on a Temporary or Fixed-Term Contract**

- 9.1 In the event of a head teacher being employed on a temporary or fixed-term contract this procedure shall be followed, with the chair of the governing body managing sections 1 to 6 of this procedure with advice from the Schools and Governors Support and their chosen Employee Relations Team as appropriate. This procedure will not apply to a deputy headteacher appointed by a governing body as acting headteacher in the same school, as the deputy head teacher has an open-ended, substantive contract in the school.
- 9.2 The governing body will follow the requirement of the School Staffing Regulations that it must advertise a vacant post of headteacher unless it has good reason not to and, in accordance with the statutory guidance accompanying the School Staffing Regulations,

will consult the local authority (and diocesan authority as appropriate) if it considers that it has good reason not to advertise.

- 9.3 In the event of an appeal against a decision taken by the chair of the governing body in relation to a headteacher on a temporary or fixed-term contract the chair may present the case to the committee, or may ask the Schools and Governors Support from the authority to present the case.

## **10.0 Trade Union Officers**

- 10.1 Normal employment requirements should apply to trade union officers. However, dismissal of a trade union officer can be misconstrued as an attack on the union. Such problems can be avoided by early discussion with a full-time official or senior trade union representative.