



FIXED TERM CONTRACTS

1 Introduction

- 1.1 The aim of this Policy is to set out the Council's approach to the employment of individuals on fixed term contracts and to take into account the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (referred to as the 'Fixed Term Regulations'), as amended.
- 1.2 Employees on fixed term contracts will not be treated less favourably than comparable permanent employees, unless there is objective justification for doing so.
- 1.3 Individuals employed on fixed term contracts for less than full time hours will receive the same or equivalent terms and conditions of service as a permanent comparable employee on a pro-rata basis.
- 1.4 The ending of a fixed-term contract is a dismissal in law.
- 1.5 A continuous succession of fixed-term contracts will usually lead to an employee gaining continuous service from one contract to another. This can occur even though s/he has been employed in different posts, different parts of the Council, or for some purposes, with different local authorities or associated employers.
- 1.6 If employment on a series of fixed-term contracts is continuous and exceeds 4 years in duration by law the employee will automatically become permanent.

Definition

- 1.7 A fixed term contract is a contract of employment which comes to an end, either:
 - On a specific date
 - When a specific task is completed (e.g. on completion of a particular project)
 - When a specified event does or does not occur (e.g. when an employee returns from maternity leave)

Scope

- 1.8 This Policy applies to all employees of the Council, except those employed in schools under the control of Governing Bodies, for whom procedures adopted by the Governing Body will apply. For the purpose of this policy, employees are as defined in section 230 of the Employment Rights Act 1996 or any substituting or amending

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legislation.

Remedy

- 1.9 A fixed term employee who believes they are being treated less favourably than a comparable permanent employee should raise their concerns with their line manager or with Human Resources.
- 1.10 Under the Fixed Term Regulations, the employee may also make a written request to their line manager for a written statement explaining the reasons for the apparent less favourable treatment. The line manager will respond in writing to this request within 21 (calendar) days of receipt.

2 Establishing the correct type of contract

- 2.1 Managers must always give consideration to the appropriate employment terms before a vacancy is filled.
- 2.2 Where it is not appropriate or possible to recruit on a permanent basis, the manager must determine whether the appointment is expected to be short term (usually less than 12 weeks), in which case the individual should be engaged via the Council's agency provider.
- 2.3 Where the appointment is expected to be longer term, the individual should generally be employed on a fixed term contract.
- 2.4 Where a contract for services is more appropriate, procurement procedures must be followed. Please refer to Human Resources for further advice.

3 Appointment to a Fixed Term Contract

- 3.1 Any appointment to a fixed term contract is subject to the provisions of the Council's Recruitment and Selection Policy. In particular, the following points should be noted:

Employment Checks

- 3.2 The same checks and standards apply to fixed term contract posts as they do to permanent posts. Therefore, all fixed-term contract posts are subject to:
- job evaluation prior to recruitment
 - satisfactory employment and medical references prior to an individual being confirmed in post
 - CRB checks, where they are a requirement of the post

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Previous service

- 3.3 Managers should also be aware that, on appointment, an employee who has continuous local government service with a body listed on the Modification Order¹ may have certain employment / contractual rights on appointment, even if the contract with the Council is for a relatively short fixed term. These apply in particular to redundancy (see section 6 below) and to certain contractual entitlements under the Green Book² (e.g. maternity, annual leave and sick pay). These are covered in section 4 below.

Notice

- 3.4 A fixed term contract should always include a notice period which will apply if it is necessary to terminate the contract earlier than the agreed end date. This enables both the Council and the employee to terminate the contract ahead of the agreed end date by giving the requisite amount of notice. A failure to incorporate a notice period will mean that the employee will be entitled to be paid until the end of the contract, if the Council seeks to terminate their employment earlier than the agreed end date.
- 3.5 The notice period will usually be at least one month, in line with the minimum term for permanent employees. Where the contract is particularly short, it may be possible to objectively justify a shorter notice period. HR should be contacted for advice prior to any variation in the notice period being included in a contract.

4 During Employment

Probation

- 4.1 All employees on fixed term contracts of 6 months or more are subject to a probationary period in accordance with the Probation Policy.
- 4.2 The manager of fixed term employees on contracts of less than 6 months must schedule regular performance monitoring meetings with the employee, appropriate to the contract length. The principles of the Probation Policy must be applied and any performance concerns, which may lead to termination of the fixed term contract, must be discussed with HR.

¹ The Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999, as amended

² The National Agreement on Pay and Conditions of Service for Local Government Services

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Sick Pay

- 4.3 Employees on fixed term contracts are entitled to occupational sick pay in accordance with the Council's sickness allowance scheme. In calculating entitlement, any continuous service with a body listed on the Modification Order must be taken into account. Employees have access to the statutory sick pay scheme from the date of appointment at Hounslow.

Code of Conduct

- 4.4 All employees on fixed term contracts are subject to the Councils' Code of Conduct from the date of appointment.

Annual Leave

- 4.5 Employees on fixed term contracts are entitled to paid leave, from the date of appointment, in accordance with the Council's Authorised Leave Policy. Under the Green Book, fixed-term employees will have any continuous local government service with a body listed on the Modification Order taken into account when determining their entitlement to annual leave.

Bank Holidays

- 4.6 Provided that fixed-term employees are not contractually required to work on a bank holiday, they are entitled to paid bank holidays on the same basis as comparable permanent employees, as set out in the Authorised Leave Policy.

Grievance Policy

- 4.7 Employees on fixed-term contracts have access to the Grievance Policy from the date of appointment.

Disciplinary Policy

- 4.8 Fixed term employees who are still in their probationary period should have any conduct issues dealt with under the Probation Policy. Where the probation period has been confirmed, conduct issues should be addressed via the Disciplinary Policy.

Management of Absence

- 4.9 Fixed term employees who are still in their probationary period should have any attendance / absence issues dealt with under the Probation Policy. Where the probation period has been confirmed, attendance /

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absence issues should be addressed via the Management of Absence Policy.

Capability

- 4.10 Fixed term employees who are still in their probationary period should have any capability or performance issues dealt with under the Probation Policy. Where the probation period has been confirmed, capability or performance issues should be addressed via the Capability Policy. Timescales and review periods will need to account into account the fixed term period of the contract.

Maternity

- 4.11 A fixed term employee will be entitled to occupational maternity pay and leave once they have accrued 1 year's continuous local government service. Any previous continuous local government service with a body listed on the Modification Order will be taken into account in establishing this qualifying period.

Severance

- 4.12 Employees on fixed-term contracts have access to the Severance Policy from the date of appointment.

Pension

- 4.13 The pension provision for employees on a fixed term contract may vary depending on the circumstances, for example the length of the contract. As a result, the position should be checked with the HR Payroll team in each individual case.

5 Continuity of Service

- 5.1 An employee joining the Council, who has previously worked for a different employer which is listed on the Modification Order, has continuity of service for certain entitlements (redundancy, annual leave, occupational maternity pay and occupational sick pay) if they have not had a break in service between the two employments.
- 5.2 Continuity of service is broken if the employee has had a break of a whole statutory week between the two employments. A statutory week begins on a Sunday and ends on the next Saturday. Any part of a week in which a person works counts towards continuity and therefore there must be a clear break of a whole statutory week between the employments before continuity is broken.

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- 5.3 Where the reason for the person leaving their former employment is redundancy, and the employee was working for an employer listed on the Modification Order, different rules apply regarding continuity.

6 Redundancy

- 6.1 A fixed term employee, whose contract is not being renewed because the post is being deleted, should have the Redundancy and Redeployment Policy applied to them, as a permanent employee would. This means the employee must be consulted and offered any suitable alternative employment that exists in accordance with the Council's Policy. Employees must also be considered for any suitable redeployment opportunities which exist until the date the fixed term contract expires.
- 6.2 Fixed term employees are entitled to a redundancy payment once they have two years' continuous local government service.
- 6.3 All continuous service with a body listed on the Modification Order will be taken into account in establishing the employee's entitlement to redundancy pay. For example, a fixed term employee whose post is made redundant after they have been employed at Hounslow for only 6 months will nonetheless be entitled to a redundancy payment if, taking into account any previous continuous local government service with a Modification Order body, they have at least 2 years' continuous local government service.

7 Renewal beyond 4 years

- 7.1 Under the Fixed Term Regulations, a fixed term contract that has been renewed or extended will become a permanent contract once the employee has completed 4 years' continuous service, unless there is objective justification for not doing so. An employee who considers that their contract has become permanent can write to their line manager to request clarification of their status. The line manager will respond to this, in writing, within 21 days and either agree that the status has become permanent or provide reasons why the employment continues to be regarded as fixed term.
- 7.2 Continuous service accrued on a permanent contract, prior to the commencement of a fixed term contract, does not count in calculating this 4 year period.
- 7.3 Managers, who are looking to renew or extend a fixed term contract where the employee would accrue 4 years' continuous service, must discuss the situation with HR prior to that renewal or extension. It must be agreed that it is necessary to retain the employee on a fixed term

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basis before taking action which would afford the employee permanent employment status.

8 Expiry of a fixed term contract

- 8.1 At least three months before a fixed term contract is due to expire, the line manager must discuss, with their HR Manager, the appropriate way forward. In all cases, consideration must be given to whether there is still a requirement for the post and, if so, whether that should be on a permanent or fixed term basis.
- 8.2 If there is no longer a requirement for the post, the contract will not be renewed and the employee must be treated appropriately, depending on the circumstances (see paragraphs 8.4 – 8.6 below).
- 8.3 Where the contract is to be renewed on a fixed term basis, the manager must notify the HR & Payroll Team, who will arrange for a new contract to be issued to the employee. Managers must note the provisions in Renewal beyond 4 years (section 7 above).

Termination of a fixed term contract

- 8.4 The expiry of a fixed term contract is a dismissal. As a result, the Council's appropriate policies and procedures must be applied in full, as they would to a comparable permanent employee.
- 8.5 Where the reason for the dismissal is redundancy, the employee will be entitled to a redundancy payment if they have at least 2 years' continuous local government service at the date of termination. This applies even if the contract is expiring in accordance with the agreed terms of the contract (ie on the agreed date or completion of the task / event).

Notice

- 8.6 An employee on a fixed term contract is not entitled to notice of termination, if the contract is expiring on the agreed date or completion of the task or event although managers will wish to discuss the impending termination with the employee as a matter of good practice. If, however, the FTC is being terminated earlier than the agreed end date, completion of the task or event, the employee must be given the agreed notice provided for in the contract (see paragraphs 3.4 and 3.5. The notice must not extend the fixed term contract beyond its expiry date.

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Right of Appeal

- 8.7 Where a fixed term contract terminates on the agreed end date or completion of the task or event, and in accordance with the purpose of the contract (e.g. where funding for a project ceases in line with expectations), the employee does not have a right of appeal against the dismissal.
- 8.8 However, if the fixed term contract is terminated before the agreed end date or completion of the task or event, the employee has a right of appeal against the decision. The process for the appeal is set out in the relevant policy under which the contract is being terminated.
- 8.9 Appeals must be processed in a timely manner to ensure that matters are concluded before the expiry of the fixed term contract.
- 8.10 Managers who are unclear about whether an employee on a fixed term contract has the right of appeal should contact HR for advice.

9 Further Information

- 9.1 Further advice on this policy, including clarification on the appropriate contract to use and the status of employees on a fixed term contract is available from the HR team.

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