



OWLS Academy Trust

Guidance on Fixed Term Contracts

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Reviewed annually

Approved by Jonathan Tedds, Chair of Governor

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This guidance is intended to provide advice on the management of fixed term contracts.

It should be noted that there is no difference between a fixed term contract and a temporary contract and that, since the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 came into force, it is more usual to describe both as “fixed term” rather than “temporary”.

This guidance applies to the use of contracts of employment within the OWLS Academy Trust that will terminate either:

- On a specified date;
- On completion of a specific task or project; or
- When a specific event has occurred (e.g. another employee returns from maternity leave or secondment, or a new staffing structure has been implemented)

This guidance does not apply to:

- Agency staff;
- Individuals who are self-employed;
- Apprentices; or
- Casual workers

Throughout this policy, unless indicated otherwise, all references to Head Teacher include the CEO.



When to Use a Fixed Term Contract

It is essential to demonstrate that there are transparent, necessary and objective reasons for using a fixed term contract, and these should be clearly stated in the employee’s contract of employment. Failing to state a detailed and clear reason could have implications for ending the contract and on future restructurings and redundancy.

Necessary and objective reasons could include:

- Absence cover (e.g. for long-term sickness, maternity leave or secondment);
- Externally funded posts, where funding is only available for a set period of time;
- A specific, finite project;
- When additional staffing is needed for a specified period (e.g. to manage a temporary increase in workload);
- Vacancy cover pending a restructure (i.e. where a restructure is pending and a permanent employee leaves and must be replaced on a temporary basis). In these circumstances the contract should state “the reason for your fixed term appointment is to cover a vacancy pending a restructuring which is due to be implemented by [date]”.

This is not an exhaustive list, but advice should be taken from LCC HR Services if the use of a fixed term contract is being considered for any other reason.

The Head Teacher must make clear to prospective employees the expected duration of the contract in the job advert; recruitment literature; when interviewing; and in the resulting contract of employment. **If, as a result of organisational change, an employee is appointed to a fixed term contract with no break in their**

continuous service and where they are covering for another employee, then they will not be eligible to receive a redundancy payment when the fixed term contract ends. The school must ensure that the employee is advised of this in writing when the fixed term contract is offered to them.

The school must inform the Employee Service Centre (ESC) of the reason for the fixed term contract, the duration and the expected end date, to ensure that this information is then clearly stated in the employee's contract of employment.



When Not to Use a Fixed Term Contract

It is **not** appropriate to use a fixed term contract in the following situations:

- To create an artificial trial period to assess someone's suitability for a job;
- Because there **may** be a need to reduce employee numbers at some unspecified time in the future.

It is also not normally best practice to cover a support staff vacancy with a fixed term contract whilst working through the recruitment process to fill the post permanently. However, due to the nature of the role it may be appropriate to use a fixed term contract in order to cover a teaching vacancy.



Probation

Support staff on fixed term contracts will be subject to the Academy Trust's Probation Policy during their first 6-months of employment, or up to the point of termination if the contract is for less than 6-months.

Teachers are not subject to the Probationary Policy. However, the requirements of the statutory guidance on the induction of newly-qualified teachers (NQTs) in England will apply where relevant.



Rights of Fixed Term Employees

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 give fixed term employees the right to be treated no less favourably than permanent employees doing the same or broadly similar work, with regard to their terms and conditions or in being subjected to any other detriment, unless such treatment can be justified on objective grounds. This means that employers must not discriminate against employees because of their fixed term status.

Fixed term employees therefore have the right to the same pay and contractual entitlements as permanent employees, unless it can be objectively justified that a particular term or condition should not be applied (in which case advice should be sought by contacting LCC HR Services).

Fixed term employees who believe they are receiving less favourable treatment have the right to request a written statement from their employer explaining the reasons for such treatment. The employer must respond in writing within 21 calendar days of the request. In these circumstances the Head Teacher must seek advice from LCC HR Services, as the statement produced can be used at any subsequent Employment Tribunal hearing.

Continuous Service

It is essential that the Head Teacher is aware of an employee's continuous service because, depending on the circumstances, an employee on a fixed term contract may be entitled to a redundancy payment on

termination of their contract, or their contract could become permanent under the “statutory fallback scheme”. See Appendix A for further details about continuous service.

Eligibility for Permanent Status (the “Statutory Fallback Scheme”)

Where an employee has continuous employment under a fixed term contract that has previously been renewed for 4 or more years; or continuous employment under a contract, when taken with a previous fixed term contract, for 4 or more years; then the employee will by law become permanent unless their continuing employment under a fixed term contract can be objectively justified. To become eligible for permanent status all the service has to be with the same employer.

Although there is no legal requirement to write to the employee, the school is recommended to do so in order to confirm the employee’s permanent status.

Once 4 years’ continuous employment have been completed under 2 or more successive contracts, the employee can write to the employer to request written confirmation that the contract is to be regarded as permanent.

There is no limit on the length of a first fixed term contract, but any duration must be justifiable. If a fixed term contract is renewed after the 4 year period then it will be treated as a permanent contract unless the use of a further fixed term contract can be objectively justified. Advice regarding this should be sought from LCC HR Services.

Access to Permanent Posts

Fixed term employees should have the same access and opportunity to apply for permanent employment with the school as permanent employees.

An employee on a fixed term contract does not have an automatic right to the post they have been occupying, except under the “statutory fallback scheme” (as above).

If it is decided that a permanent appointment is to be made, for example if an absent employee does not return from maternity leave or a secondment, then the post should be subject to the usual recruitment process.

Access to Learning and Development Opportunities

Fixed term employees should have equal access to learning and development opportunities as permanent employees.

Pregnancy, Maternity and Adoption Rights

It is unlawful to reject an applicant for fixed term employment; to withdraw an offer of employment; or to terminate or not renew a fixed term contract on the grounds that the employee / prospective employee is pregnant (or may become pregnant)

Employees on fixed term contracts who are pregnant or on maternity or adoption leave have protection under legislation relating to fixed term contracts, sex discrimination and pregnancy discrimination.

Fixed term employees have the same entitlement to statutory maternity and adoption leave and pay as permanent employees, subject to meeting the relevant qualification criteria. Although statutory maternity or adoption **leave** may come to an end at the conclusion of a fixed term contract, statutory maternity or adoption **pay** will continue if the employee already qualifies for it.



Managing Fixed Term Contracts

In adequate time towards the end of the fixed term contract, taking into account the notice period that the employee is entitled to and the consultation required where there is a redundancy situation, the Head Teacher should review the contract and consider whether:

- There is a continuing need for the post;
- Any extension of employment will be on the same basis as before, or different; and
- The employee has attained permanent employment status.

Renewal / Extension of Fixed Term Contracts

If there is a need for the post to continue on a fixed term basis, the Head Teacher should ensure the ESC are notified via the SIMS system.



Ending Fixed Term Contracts

Where employees on fixed term contracts fall within a restructuring or review, or where it is proposed to make a group of employees on both permanent and fixed term contracts redundant, the provisions of the Restructuring and Redundancy Policy and Procedure will apply. However, where the termination or non-renewal of a fixed term contract is being considered on its own the following guidance will apply. Advice is available from HR Services if it is unclear which policy, procedure or guidance should apply.

Fixed term contracts, by their nature, are expected to end at some point; however, the termination of a fixed term contract is still a dismissal and therefore a fair dismissal procedure should be followed when a fixed term contract is coming to an end or is being terminated before the stated end date.

Where a fixed term contract is in place to cover the absence of another employee (e.g. on maternity leave, secondment, or due to long-term sickness) and will end because the substantive post holder returns to work, then the termination of the fixed term contract is **not** a redundancy situation and the employee will not be eligible to receive a redundancy payment when their contract ends (subject to their contract having clearly stated the reason for it), even if they have more than 2 years' continuous service.

In all other cases where a fixed term contract is terminated early or not renewed this is usually a redundancy situation and where the employee has at least 2 years continuous service this will mean they are entitled to receive a redundancy payment.

Advice should be sought from HR Services if there is any uncertainty about whether or not the termination of a fixed term contract constitutes a redundancy.

To terminate a fixed term contract before its end date, the contract must state that it may be terminated early; otherwise payment could be due to the employee until the stated end date.

Termination of a Fixed Term Contract: a Single Redundancy Situation

Where the termination of a fixed term contract is by reason of redundancy, the Head Teacher should seek advice from HR Services. The following steps should then be followed:

- The Head Teacher should determine the timescale required to follow the process below. Allowing sufficient time for consultation to be carried out, a decision to be finalised and the employee to then serve their statutory or contractual notice period (whichever is the greater) up to the date on which

their fixed term contract is due to end. The consultation period should be not less than 1-week and may need to be longer depending on the circumstance; advice regarding this may be obtained from HR Services.

- The Head Teacher should arrange a meeting with the employee to start formal consultation on the proposal. At the meeting the employee should be given a letter proposing to terminate their fixed term contract, which provides details of the business reason(s) for this proposal and sets out the arrangements for consultation, whereby the employee will have the opportunity to ask questions and put forward suggestions about the proposal. The employee may be accompanied at the meeting by a trade union representative or work colleague, and a copy of the letter to the employee should also be sent to the recognised trade unions
- When the consultation period has ended and any comments received have been considered, the Head Teacher should arrange a meeting with the employee to advise them of the outcome. The employee may be accompanied by a trade union representative or a work colleague. If the Head Teacher decides that the contract should still be terminated this must be confirmed to the employee in writing, and where the employee has more than 1-year continuous service they should be advised of their redeployment status and given details of redeployment measures.
- A letter should then be sent to the employee giving notice of the termination of their employment, setting out their entitlement to redundancy pay (where applicable) and confirming the date of redundancy, in accordance with the employee's statutory or contractual notice period, whichever is the greater.
- The school should notify the ESC that the employee's fixed term contract has come to an end, using the SIMS system.
- The employee has the right of appeal against dismissal on the grounds of redundancy; the process for appeal is set out in the Appeals Policy.

Redundancy of Fixed Term Employees on Maternity, Adoption or Maternity/Adoption Support Leave

Head Teachers are strongly advised to seek advice from HR services if an employee is on maternity, adoption or maternity/adoption support leave when their fixed term contract is proposed to end by reason of redundancy.

Employers have a statutory duty to offer employees who, during their maternity leave, adoption leave, or the additional paternity leave element of their maternity/adoption support leave find that their post is due to be made redundant, any suitable vacancy as an alternative to redundancy prior to the termination of their employment. Therefore such an employee should be given redeployment status regardless of their length of service, and should be offered any suitable alternative post over other employees with redeployment status.

To be a suitable alternative for these purposes, the work should be suitable and appropriate for the employee in the circumstances and should be on terms and conditions and in a capacity and location which are not substantially less favourable than their previous post. Advice may be sought from HR Services on what might constitute suitable alternative employment.

An employee who is on maternity, adoption or maternity/adoption support leave during the formal consultation period but has returned to work at the implementation of redundancy stage (8.5c above), is not entitled to this preferential treatment. However, care must be taken to ensure that such an employee is fully engaged with during the consultation period.

Termination of a Fixed Term Contract: Not a Redundancy Situation

Where the termination of a fixed term contract is not a redundancy situation the following steps should be followed:

- Before the employee's statutory or contractual notice period (whichever is the greater) is due to start, the Head Teacher should issue them with a letter proposing to terminate their fixed term contract. The letter should give the reason for this and should offer the employee the opportunity to attend a meeting to discuss the termination or non-renewal of their contract.
- If the employee does not wish to meet, the Head Teacher should notify the ESC that the employee's fixed term contract is coming to an end (via SIMS) and send the employee a letter confirming termination of their employment and advising of their right of appeal.
- If the employee does wish to meet this should be arranged as soon as possible. At the meeting the Head Teacher should explain the reason for the need to terminate or not renew the fixed term contract and the employee should be given the opportunity to put forward alternative proposals which should be considered by the Head Teacher. The employee may be accompanied by a trade union representative or work colleague.
- If, following the meeting, the Head Teacher decides that the contract should still be terminated, this should be confirmed to the employee verbally. The ESC should be notified (via SIMS), and the employee should be sent a letter confirming termination of their employment and advising of their right of appeal.
- The employee has the right of appeal against the termination of their contract; the process for appeal is set out in the Appeals Policy.



Appendix A: Continuous Service

Continuous service refers to a single period of unbroken service. Service is usually broken if one contract of employment follows another with a gap of more than a week and two weekends.

Successive Contracts with Local Authorities and Other Public Service Bodies

Under the Redundancy Payments (Continuity of Employment in Local Government, etc) Modification Order 1999 (as amended), hereafter referred to as the RPMO, a series of unbroken contracts with local authorities and certain other specified public service bodies gives an employee continuity of service and certain specified employment rights, including the right to a redundancy payment based on all their continuous service.

Further information about the bodies covered by the RPMO or details of the continuous service of an individual employee can be obtained from HR Services.

Continuous Employment

Continuous employment refers to a continuous period of employment with the same employer. The continuous period may be a result of a single contract or a succession of fixed term contracts.

Academy Specific Continuous Service

Academies are covered by the RPMO for the purposes of recognising continuous service for redundancy purposes. However, as part of the TUPE consultation process each individual academy will decide if they wish to recognise previous local government service in terms of maternity/adoption rights, annual leave and sickness entitlements. Confirmation of these decisions can normally be found in the documentation associated with the academy conversion.