

GUIDE TO FIXED TERM CONTRACTS (FTC)

This guide provides managers with information relating to the use of fixed-term contracts, ensuring awareness of the appropriateness of their use and renewal.

1. When is a Fixed-Term Contract appropriate?

A fixed-term contract is one which is due to end when a specified date is reached, a specific event does or does not happen, or a specified task has been completed. Therefore, it is used to provide a time-limited contract. Examples may include:

- to cover the temporary absence of the substantive post holder e.g. maternity leave, sickness absence, secondment or career break;
- to work on a specific project with separate funding;
- to cover a vacancy pending changes in structure, budgets, closure of a service.
- to cover peaks in demand

2. How do I recruit to a Fixed-Term Contract?

Recruiting to a fixed-term contract will be in accordance with the County Council's recruitment procedures. The fixed term nature of the contract should be stated in the advertisement and must be included in the further contractual information for the post.

The employee will still be subject to a satisfactory probationary period, but clearly this must be planned to be appropriate to the length of the fixed term contract. Employees will also be included in the normal performance management framework applicable to permanent employees including one-to-ones and appraisals.

3. What about the Terms and Conditions of Employment?

Standard terms and conditions will be the same as those enjoyed by permanent employees in the same work group unless less favourable treatment can be justified. This includes, for example; comparable pay, hours of work, access to pension, access to vacancies and the redeployment procedure.

However common sense needs to be applied to the offer of training opportunities. A fixed term employees may well need some training to do the job efficiently, in the same way that a permanent employee would. However clearly it would be inappropriate to offer a long term training programme to a short (fixed) term employee.

Where less favourable treatment is being considered, you should discuss this with the HR Advisory Service to ensure it does not contradict equality legislation, including equal pay.

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4. How long can a Fixed-Term Contract last?

A fixed-term contract can last for up to 4-years, but normally it is between 6 and 24 months. There is no limit on the length of the first fixed-term contract, however if an individual is employed on a series of fixed-term contracts (2 or more successive contracts), which are continuous and exceed 4 years in duration, then the employee will automatically become permanent and can request confirmation of this in writing.

For these reasons, if an employee has been on fixed-term arrangements and there is a wish to keep them beyond 4-years, then you should contact the HR Advisory Service to discuss this.

5. What about Continuous Service?

A continuous succession of fixed-term contracts will usually lead to an employee gaining continuous service from one contract to another, even though they have been employed in different posts in different parts of the County Council or for some purposes different Local Authorities or associated employers (e.g. maintained Schools). Continuous service affects entitlements to annual leave, sick leave, redundancy pay and the right to claim unfair dismissal at an Employment Tribunal. A break in continuous service will arise where an employee has a gap between contracts / service which must, as a minimum, specifically include a seven day period commencing on a Sunday and including the following Saturday.

6. Can Fixed-Term Contracts be renewed?

To renew a fixed-term contract, the same principles will apply as recruiting into a vacant position in that it is important to establish organisationally whether continuation of the post is required and if funding is available.

However there is no requirement to go through a recruitment process and therefore if the fixed term contract employee wishes to accept your offer of an extension, you should instruct the HR Administration Centre who will issue a new contract with a revised end date.

7. Can an appointment be made to a permanent post?

Where it is determined that a fixed-term / temporary arrangement needs to be made permanent then you will need to decide whether to undertake a further recruitment process or whether to confirm the appointment of the fixed-term / temporary employee on a permanent basis. This decision will be based on objective reasons taking into account:

- whether a competitive selection process was used when the first (fixed-term) appointment was made
- whether the requirements of the job have changed
- the ability to recruit and retain employees with the appropriate skills
- the duration of the fixed-term contract (if it has been in place for 4 years or more)
- whether by doing so it would affect any other member of staff, particularly in respect of job security or promotion opportunities

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8. What happens when a Fixed-Term Contract expires or is not renewed?

Fixed-term contracts normally end automatically when they reach their agreed end point. However, since the expiry or non-renewal of a FTC is a dismissal in law you must still act fairly and follow a fair dismissal procedure. This means that fair reasons and fair process must be considered. If you decide to terminate employment you must inform the HR Administration Centre of your decision in order to follow the correct process for ending the contract.

8.1. Fair reasons

Normally the dismissal due to the expiry of a FTC will be considered fair if it is based on one of the following grounds:

- where the reason for the contract has disappeared and:
- the FTC was set up for that purpose, and
- both the purpose and the reason for it being FT were known to the employee and
- the underlying purpose of the contract has ceased to be applicable when the employee was dismissed.

For example, when the substantive post holder has returned to work or a permanent employee is recruited. The contract would be terminated for “some other substantial reason”, commonly known as SOSR. No termination payments will be due.

Where the above conditions do not apply, or where the requirement for the work to be undertaken has diminished or ceased before the expiry of the fixed term contract, the contract can still be ended fairly, but a redundancy payment may be applicable. . In such a case you should contact the HR Advisory service to determine whether any payments to the employee are due.

8.2. Fair procedure

In order to follow a fair procedure you are required to:

- a) provide the employee with written reasons as to why the contract is coming to an end or is not being renewed
- b) offer the employee a meeting to discuss this at which they will have the right to be accompanied by a trade union representative or a friend or colleague
- c) following any dismissal give the employee the right to an appeal to their Head of Service, or if their Head of Service has been involved in the decision to terminate employment to another Head of Service or Director

Copies of any correspondence should be kept to show that these steps have been followed.

9. What is the Notice Period for Fixed-Term Contracts?

All fixed-term contracts issued by Warwickshire County Council include a clause that allows for early termination of the contract on notice. The contract should only be terminated earlier than the specified end date if there is a substantial reason for doing so. Where you are considering terminating a contract early you must contact the HR Advisory Service to discuss this.

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10. Can Fixed-Term Contracts be considered for redundancy (for example during restructures)?

Fixed-term employees are protected from being selected for redundancy on the grounds that they are a fixed-term employee, unless you objectively justify the choice. This means you must give a good reason that is based on the needs of the business.

If the FTC employee has a substantive post elsewhere, for instance because they are acting up or on secondment, consideration will need to be given to their inclusion when considering criteria for assimilation into the new structure. Factors to consider will include:

- how long the arrangement has been in place
- if the appointment followed an open recruitment process
- whether the substantive post is within the service undergoing change or not
- whether the substantive post is internal or external to the County Council

11. Who to contact for help?

For advice and guidance, please contact the HR Advisory Service

For assistance with the recruitment please contact the Recruitment Centre

For assistance with setting up, extending and ending fixed-term contracts, please contact the HR Administration Centre

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