

Fixed Term Contract Policy

September 2020

Controlled

Version History			
Version	Date	Detail	Author
1.0	August 2020	Policy developed to replace existing Manager Guidance on Fixed Term Contracts	Tanya Causebrook

Links and Dependencies
Related Resourcing Policies including Redundancy and Redeployment Policy, Recruitment and Selection Policy and Secondment Policy.

Fixed Term Contract Policy

1. Purpose

The council needs a skilled and confident workforce able to deliver excellent services to improve life for local people. Fixed term contracts can be an effective tool for matching workforce capacity with service/business needs. This policy outlines how fixed term contracts should be used within the council appropriately, effectively, and in line with relevant employment legislation.

2. Scope

This policy applies to all employees of Derbyshire County Council except those employed in schools where the Governing Body is the employer, who are covered by the relevant policies for schools.

All employees should have equal access to the policy.

3. Equal Treatment

The Council is committed to ensuring that employees on fixed term contracts are not treated less favourably than comparable employees on a permanent/open ended contract, as provided for in the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

Legislation requires that fixed term employees:

- are employed on the same terms and conditions and be subject to the same policies and procedures as comparable permanent employees.
- have the same access to the Redundancy and Redeployment Policy and redeployment provisions as permanent employees. This means that fixed term employees whose contract is ending, and who are at risk of redundancy, will have the same access to redeployment opportunities as permanent employees, including to both permanent and fixed term posts.
- will be able to apply for internal vacancies from the first day of their employment.
- must be given the same opportunities for training and development as a comparable permanent employee (different treatment may be justified if the costs are disproportionate to the benefit received).

The regulations do not apply to:

- apprentices
- employees on certain government training schemes

- students on operational placements of one year as part of a higher educational programme
- agency workers.

4. Key principles

a. Definition of a Fixed Term Contract

Fixed term contracts are contracts that come to an end:

- Upon reaching a specific date
- When a specified task has been completed
- When a specified event does or does not occur

b. Alternatives to fixed term contracts

Alternatives to using a fixed term contract should always be considered, with the following list not being exhaustive;

i) Meeting the gap within the team

Where the gap in resources is unplanned, and will last less than 3 months, cover through existing resources should be considered in the first instance e.g. reallocating essential duties to other members of the team where appropriate, part time employees increasing hours, or short term secondment arrangements enabling team members to temporarily undertake all or some of a more senior role ('acting up'). Managers should ensure that workloads across the team remain reasonable.

ii) Resources@Derbyshire

Where the gap cannot be met within the team, short term Business Services support for up to 8 weeks can be provided by Resources@ Derbyshire if this is appropriate for the cover required.

iii) Internal secondments

For longer term cover requirements internal secondments should be encouraged for individual career development (see [Secondment Policy](#)). Secondments enable existing permanent employees to undertake temporary/fixed term assignments in a different work area and should not be for longer than 2 years. Management approval for a secondment is required, as the employee is entitled to return to their substantive post at the end of it.

Where a manager is not able to agree a secondment, and an existing employee chooses to move from a permanent to a fixed term contract to undertake the work, the employee must be made aware of the implications of their contractual status changing from permanent to fixed term, including that they will not have any entitlement to return to their substantive post at the end of the fixed term contract.

c. Using fixed term contracts

Where there is a specific, business related reason, a fixed term contract may be more appropriate than a permanent contract.

Fixed term contracts should only be used in the following circumstances:

- To cover periods of absence of longer than four weeks, e.g. maternity, parental or adoption leave, long term sickness or cover an absence due to another employee being on secondment.
- Where there is short term funding for a post or project, which is unlikely to be extended.
- To complete a task/project within a stated time period, which cannot be resourced from within the existing permanent workforce.
- To provide specialist expertise or experience in the short term, to support a specific project or piece of work.

Fixed term contracts will not be used to assess an employee's capability to perform effectively.

Every fixed term employment contract must include either:

- a date on which it is due to expire, and the reason for this, or
- an event which will cause it to end (for example someone returning to work after an absence which is being covered by the fixed term appointment).

As the reason or event set out in the contract determines the process to be followed, at the end of its fixed term, it is critical that this is accurate.

Fixed term employees will be kept informed, within relevant timescales, of the likelihood of their contract being renewed or ended, and reasons for this, with the aim of minimising uncertainty wherever possible.

d. Length of fixed term contracts

Fixed term contracts within the council should not normally exceed 2 years. An exception would be when a post is funded through specific external funding for over 2 years, but is not expected to continue long term.

Fixed term employees with more than 2 years' service with the council (or an associated employer under the Redundancy Payments (Continuity of Service in Local Government) (Modification) Order 1999) will be entitled to a redundancy payment if the reason for the contract ending is redundancy (see Redundancy Policy).

Fixed term employees with less than 2 years' service, or those where the reason for the fixed term contract ending is not redundancy, but 'some other substantial reason' will not be entitled to a redundancy payment (see g. below).

After 4 years of successive contracts, legislation determines that a fixed term contract may become permanent unless the continued use of a fixed term contract can be objectively justified. In cases where an employee has been employed for four years or more on successive fixed-term contracts the employees' contractual status will be reviewed in consultation with HR, to determine whether transfer to a permanent contract is appropriate. The factors considered will include the nature and grade of the fixed term roles, location and context.

A continuation of a series of fixed term contracts beyond four years would only be justified in exceptional circumstances.

e. Recruiting to fixed term posts

Fixed term posts should be advertised and appointed to following the appropriate council resourcing policies and processes, to ensure robust decisions and high quality appointments.

The reason for and length of the fixed term post should be clear throughout the recruitment process and in correspondence with the successful candidate.

f. Renewing or extending a fixed term contract

Extension/renewal of a fixed term contract must be justifiable. It must be clear whether the original reason for the fixed term contract still applies, or whether circumstances mean it has changed.

The reason for the extension/renewal of the fixed term must be clear in the employee's contract. This will determine the reason for and process to follow when ending the contract.

The employee currently employed under the contract should be offered the extension or renewal.

The successive renewal of fixed term contracts should be avoided. If an employee's fixed term contract is extended beyond four years, it is likely that the contract will need to be converted to permanent (see d. above)

g. Ending a fixed term contract

Not renewing a fixed term contract when it comes to an end is a dismissal in law.

The reason for fixed term set out in the employee's contract will determine the reason for the dismissal which will be either:

i) Redundancy – where the requirement for the work to be undertaken has diminished or ceased e.g. a specific task has been completed, or project work dependent on external funding ends, once the funding ceases.

Where a fixed term contract ends due to redundancy, the Redundancy and Redeployment Policy should be followed in the same way as it would for a permanent employee individually at risk of redundancy.

ii) Some other substantial reason (SOSR) e.g. the substantive post holder has returned to work following a period of leave, or a permanent employee is recruited.

A fair dismissal process must be followed.

Poor performance is not acceptable grounds for not renewing a fixed term contract. Any concerns should be dealt with in the same way as for permanent employees.

h. When a fixed term post becomes permanent

The options are:

- i)** to re-advertise the post as permanent through the Council's recruitment and selection process or,
- ii)** to slot/offer the employee currently in the post the permanent role, as long as:
 - The employee was offered the fixed term contract through a competitive process after recruitment through the council's normal recruitment and selection process (as a minimum the fixed term post should have been advertised internally)
 - The duties of the job they were recruited to have not changed and the grade is the same
 - The person in the role is not an agency worker, on a relief contract or any other contract that classifies them as a 'worker' rather than 'employee'.
 - There are no employees 'at risk' with priority status who should be considered for the role.

5. Fixed term employees and organisational reviews

Fixed term employees:

- whose contract is due to end **before** the date an organisational review is implemented will not be included within the pool for redundancy and any 'selection out' process as their contract already has an end date. However, if there is an appointment in process as part of the review, employees on fixed term contracts will be considered alongside other colleagues.
- whose contract is due to end **after** the implementation date of an organisational review will be included in the review process, pool for redundancy and any 'selection out' or 'appointment in' process.

Employees on fixed term contracts should normally be included in the consultation process for organisational reviews.

Fixed term employees must not be selected for redundancy purely on the basis of being fixed term, unless it is considered that the selection can be objectively justified and is appropriate, following HR advice.

6. Roles and responsibilities

a. Managers must:

- Ensure there is a justifiable reason for appointing a post on a fixed term basis.
- Clearly explain the fixed term nature and length of the contract during the recruitment process, and in related correspondence.
- Ensure that all fixed term employees understand the nature of their contracts and keep them informed of the likelihood of extension/renewal and the reasons for this.
- Follow the process for ending or not renewing a fixed term contract within timescales – starting at least 3 months before the contract is due to end (see further manager guidance).
- Seek advice from HR before extending fixed term contracts, particularly when fixed term employees reach 4 years in a single or successive fixed term contracts with the council.
- Ensure that fixed term contracts are used and managed effectively, in line with this policy, within their area of responsibility.

b. HR will:

- Work with managers to implement effective resourcing solutions to support service delivery.
- Provide guidance to managers on implementing this policy in specific situations including determining whether the use of a fixed term contract is appropriate, termination of a fixed term contract, and redundancy liability.
- Notify managers of an employee's fixed term end date to allow appropriate notice to be given and processes followed.
- Monitor the use of fixed term contracts across the council to assess risk and compliance with policy.
- Review this policy to ensure accurate and timely advice to managers.

c. Employees should:

- Have a clear understanding of the fixed term nature of their employment and reasons for it.
- Raise any issues relating to their fixed term employment with their manager at the earliest opportunity.
- Not have any expectation that their employment will be extended unless they have received formal confirmation of this.
- Have the right to representation/support.