



West Lothian
Council

MANAGER'S GUIDE ON THE USE OF FIXED TERM CONTRACTS

Human Resources
April 2017

WEST LoTHIAN COUNCIL

MANAGER'S GUIDE ON THE USE OF FIXED TERM CONTRACTS

CONTENTS

1.	PURPOSE.....	3
2.	USING FIXED TERM CONTRACTS	3
3.	RIGHT NOT TO BE LESS FAVOURABLY TREATED	3
4.	RIGHT TO PERMANENT EMPLOYMENT STATUS	4
5.	OBJECTIVE JUSTIFICATION	5
6.	WORKFORCE MANAGEMENT AND ORGANISATIONAL CHANGE	5
7.	RENEWING A FIXED TERM CONTRACT	6
8.	ENDING A FIXED TERM CONTRACT	6
9.	ENTITLEMENT TO A REDUNDANCY PAYMENT	6
10.	ACCESS TO PENSION.....	6
11.	ENDING MULTIPLE FIXED TERM CONTRACTS	6
12.	RIGHT OF APPEAL	7
	Appendix 1 - Template Letter - Request for Permanency Declined	8
	Appendix 2 - Template Letter - Request for Permanency Approved.....	9
	Appendix 3 - Fixed Term Contract Termination Process	10
	Appendix 1 - Template Letter - End of Fixed Term Contract Consultation.....	11
	Appendix 2 - Template Letter - End of Fixed Term Contract Notice.....	12

MANAGER'S GUIDE ON THE USE OF FIXED TERM CONTRACTS

1. PURPOSE

- 1.1 This document provides guidance for managing employees engaged on fixed term contracts. In particular it sets out the steps that should be taken to ensure that fixed term employees are not subjected to less favourable treatment than a comparable permanent employee.
- 1.2 A fixed term contract is one that is due to end when '*a specified date is reached, an event does/does not happen or a task has been completed*'.

2. USING FIXED TERM CONTRACTS

- 2.1 Clarity over the reason for engaging an employee on a fixed term contract is essential to ensuring that fair processes are followed at the point that the contract is renewed or terminated. For the purposes of this guide, the justification for engaging an employee on a fixed term basis must be one of the following:
- Funding for the post is dependent on external sources which cannot be guaranteed to continue in the long-term
 - Backfill for maternity leave
 - Backfill for long term sickness absence
 - Backfill for career break
 - Backfill for secondment
 - Short – term seasonal work assignment
 - Specific task or project (further details will be required in the contract of employment)
 - Temporary appointment pending a planned service restructuring (under the terms of the council's Workforce Management Policy and Procedure).
- 2.2 Managers seeking to engage employees on a fixed term basis must comply with formal Vacancy Monitoring Authorisation processes.

3. RIGHT NOT TO BE LESS FAVOURABLY TREATED

- 3.1 An employee engaged on a fixed term contract has the right not to be treated less favourably than a comparable permanent employee in accordance with the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. However, an employer may be able to objectively justify less favourable treatment in circumstances where a good business reason for doing so can be demonstrated.

3.2 Fixed term employees have the right to:

- the same pay and conditions as permanent staff
- the same or equivalent benefits package as permanent staff
- receive information about permanent vacancies
- protection against selection for redundancy or dismissal if the principal reason for the selection was because they are a fixed term employee
- not be unfairly dismissed (after 2 years' service or one year if employed prior to 6 April 2012)*
- a redundancy payment if appropriate (after 2 years' service)
- acquire permanent employment status if engaged for a continuous period in excess of four years on one or more fixed term contracts (unless continuation on a fixed term contract basis can be objectively justified).

**It should also be noted that an individual need not have had one (or two) years' service to claim unfair dismissal if the reason for termination amounts to discrimination or one of the other automatically unfair reasons for dismissal.*

4. RIGHT TO PERMANENT EMPLOYMENT STATUS

- 4.1 Individuals who have been employed under a series (two or more) of fixed term contracts (in any post or in any service) for a continuous period in excess of 4 years will automatically acquire permanent employment status unless continued employment on a fixed term basis can be 'objectively justified'. Objective justification is defined in paragraph 5 below.
- 4.2 An employee is not required to make a formal request for permanent employment status. It happens by operation of the law as a result of the criteria being met in the absence of justifiable objective grounds to the contrary. However, employees with four or more years' continuous service under fixed-term contracts have the right to ask the council for a statement that their employment status is now permanent.
- 4.3 An employer has **21 days** to provide a written statement either confirming that they have achieved permanent employment status or providing objective justification as to why the individual should continue to be employed on a fixed term basis. Template letters for the purposes of confirming an employee's employment status are attached at Appendices 1 and 2 of this guidance.
- 4.4 If the employer fails to discharge its legal obligations or the employee does not accept the employer's position, then the employee has the right to raise proceedings at an Employment Tribunal to ask for their status to be recognised as permanent.

Dual Jobs

- 4.5 Where an employee is engaged under two separate contracts of employment, two separate and distinct contractual relationships exist both with distinct sets of statutory rights. As such each contract must be considered separately when determining length of service and whether the right to permanent employment status has been achieved. Service accrued in both contracts cannot be aggregated to achieve the 4 years' service necessary for

permanent employment status. Permanence in one contract does not mean automatic permanence in the other.

Apprenticeships

- 4.6 Apprenticeship contracts are excluded from the fixed term regulations and therefore service under such a contract will not be considered when determining length of service and whether the right to permanent employment status has been achieved. Service under an apprenticeship contract will however be relevant in determining continuity of service in terms of other employment rights (eg sick pay, maternity pay, annual leave entitlement).

Supply/Casual Workers

- 4.7 As a general rule of thumb, 'casual work' engagements will not be deemed to constitute fixed term contracts, however any claims for permanent status based on prolonged and continuous periods of so called casual work will be considered on their individual merits.

5. OBJECTIVE JUSTIFICATION

- 5.1 In assessing whether there is 'objective justification' to retain an employee on a fixed term contract basis, the reason for the last contract renewal at the date that renewal took effect is a relevant consideration as is the reasons for the first engagement on a fixed term contract and reasons for previous renewals.
- 5.2 Objective grounds are not defined by legislation but must relate to the needs of the service. It must be more than a matter of convenience and as such it should;
- achieve a legitimate objective;
 - be necessary to achieve that objective; and
 - be an appropriate way to achieve that objective.
- 5.3 Typical examples of what might constitute objective grounds for retaining an employee on a fixed term basis are reflected in the list of reasons specified in Section 2.1 above. However each individual case must be considered on its own merits in conjunction with Human Resources.

6. WORKFORCE MANAGEMENT AND ORGANISATIONAL CHANGE

- 6.1 Unless there are objectively justifiable grounds for their exclusion, employees engaged on fixed term contracts in service areas affected by a restructure must be included in any matching and ring-fenced recruitment process implemented under the terms of the council's Workforce Management Policy & Procedure. Each individual case should be considered on its own merits in conjunction with Human Resources.
- 6.2 Inclusion in the matching and ring-fenced recruitment process does not in itself alter the fixed term status of an employee (unless that employee is successfully matched to a permanent post or secures permanent status through the ring-fenced recruitment process).
- 6.3 A fixed term employee who is unsuccessful in being appointed to a permanent post through the matching/ring-fenced recruitment process will be subject to the procedural arrangements set out in Section 7 of this guide relating to 'Ending a Fixed Term Contract'.

7. RENEWING A FIXED TERM CONTRACT

7.1 When considering the renewal of a Fixed Term Contract, Service Managers must take account of:

- the reason for the fixed term contract and whether it remains unchanged
- future requirements in relation to service need and budgetary position
- whether the renewal of the contract is likely to prompt a request for permanent employment status and whether there is objective justification to retain the contract on a fixed term basis.

7.2 A proposal to renew a Fixed Term Contract for a reason other than that specified on the original Vacancy Authorisation should be discussed in the first instance with a Senior HR Business Adviser.

8. ENDING A FIXED TERM CONTRACT

8.1 Ending a fixed term contract at the end of its natural expiry date constitutes a dismissal in law and as such care is required to ensure that any such dismissal is procedurally fair. The specific steps that managers should follow when ending a fixed term contract are set out in Appendix 3 of this document.

9. ENTITLEMENT TO A REDUNDANCY PAYMENT

9.1 In addition to following a fair procedure for the ending of a fixed term contract, additional obligations on the council may arise depending on the reason for the contract. For example, if a fixed term contract is for a purpose **other than maternity leave cover, cover for long-term sick absence, career break or secondment**, the non-renewal of the contract is likely to constitute dismissal on the grounds of redundancy (ie non-renewal due to the cessation or diminution of the work being undertaken).

9.2 An entitlement to a redundancy payment will arise if the employee has accrued at least 2 years continuous service with the council (in any post and in any service). Continuous service also includes service with other public bodies listed under the Redundancy Modification Order. Where a post holder has a dual job, only continuous service accrued under the contract that is not being renewed will count in determining entitlement to a redundancy payment.

9.3 In determining whether a redundancy payment is appropriate, advice should be sought from Human Resources.

10. ACCESS TO PENSION

10.1 An employee aged 50 (55 if joined scheme after April 2010) or over with two or more year's pension scheme membership, whose fixed term contract is not renewed on the grounds of redundancy, will qualify for immediate access to his/her pension benefits. As this could give rise to substantial pension fund strain liability, these costs will require to be factored into the budget provision.

11. ENDING MULTIPLE FIXED TERM CONTRACTS

11.1 The ending of a number of fixed term contracts before their natural expiry/expected end date, may trigger specific obligations on the council in terms of statutory consultation and notification requirements. This will apply where the council proposes to dismiss 20 or more

employees at one establishment within a ninety-day period. The total number of contracts potentially being ended across the whole council has to be taken into account for statutory consultation and notification purposes.

- 11.2 Advice from Human Resources must always be sought where it is proposed to end a number of fixed term contracts within a service over a specific period.

12. RIGHT OF APPEAL

Any subsequent appeal against a decision not to renew a fixed term contract will be heard by an appropriate Senior Officer who will be the final arbiter on the matter.

HR Policy & Advice
April 2017

Template Letter

Response to Request for Permanent Employment Status – Declined

Date

**PRIVATE & CONFIDENTIAL
(to be opened by addressee only)**

Dear

REQUEST FOR PERMANENT EMPLOYMENT STATUS

I refer to your recent request to have your temporary employment converted to permanent status.

You are currently engaged under the terms of a fixed term contract for the purposes of xxxxx. This contract is due to expire on (date specified in contract).

For the purposes of Regulation 8(2) of the Fixed-term Employee (Prevention of Less Favourable Treatment) Regulations 2002, I would confirm that the council regards the reason for your current contract as constituting 'objective grounds' for your employment being on a fixed term basis.

In the circumstances therefore, I am unable to agree to your request.

Yours sincerely

Template Letter

Response to Request for Permanent Employment Status – Acceptance

Date

**PRIVATE & CONFIDENTIAL
(to be opened by addressee only)**

Dear

REQUEST FOR PERMANENT EMPLOYMENT STATUS

I refer to your recent request to have your temporary employment converted to permanent status.

You are currently engaged under the terms of a fixed term contract for the purposes of xxxxx. This contract is due to expire on (date specified in contract).

Having considered the reason for your current employment being on a fixed term basis and the future business needs of the service, I can confirm that your employment will change to permanent status with effect from

You will be issued with a revised Statement of Particulars to reflect the change in your contractual status in due course.

Yours sincerely

FIXED TERM CONTRACT TERMINATION PROCESS

Step 1

- Using the template letter at Appendix 4, invite the employee to a meeting to discuss the expected end of their fixed term contract and to explore any alternative options to termination of the contract.
- Hold the meeting early enough to enable time to investigate any proposed alternatives before the date on which the employee requires to be served statutory notice of termination of employment (a week for each year of continuous service).

Step 2

- Investigate any alternatives to termination of the contract discussed at the meeting.
- Ensure the employee can access the council's Vacancy Bulletin and offer assistance with job applications if necessary etc.

Step 3

- Where no other viable alternatives are available and the contract is to be terminated seek advice from the Senior HR Business Adviser as to whether a redundancy payment is appropriate.
- Where a redundancy entitlement is appropriate, the amount will be calculated by Human Resources.
- Confirm the decision to terminate the contract in writing using the template letter at Appendix 5, and confirming the amount (if any) of redundancy payment due.

Step 4

In every instance, complete termination form (including details of any redundancy payment and/or outstanding balance of annual leave to be paid as appropriate) and pass for processing to hrsupport@westlothian.gov.uk Paperwork must be processed timeously, taking account of the payroll processing timetable, in order to avoid any over/under payments.

Template Letter

Invitation to Discuss the Ending of a Fixed Term Contract

Date

**PRIVATE & CONFIDENTIAL
(to be opened by addressee only)**

Dear [name]

CONSULTATION ON THE NON – RENEWAL OF FIXED TERM CONTRACT

As you are aware, your fixed term contract is due to end on [date].

I would like to discuss your position with you and would be grateful if you would attend a meeting on [date] at [time] in [venue]. The purpose of the meeting is to explore any options which may be available, including any alternatives to termination of the contract.

You may bring a trade union representative or some other person of your choice to accompany you at the meeting if you wish.

Yours sincerely

Manager

Template Letter

Notice of Non- Renewal of Fixed Term Contract

Date

PRIVATE & CONFIDENTIAL
(to be opened by addressee only)

Dear

NON- RENEWAL OF FIXED TERM CONTRACT

I refer to our meeting on [date] when we discussed the non – renewal of your fixed term contract as [post].

As discussed the reason for your fixed term contract coming to an end is [reason].

At the meeting, consideration was given to whether there were other alternative vacancies for which you could apply that might enable you to continue in the employment of the council. At this time however, I have to confirm that no such vacancies are available and that your current fixed term contract will not be renewed. Your employment will therefore terminate on [date] as specified in your contract employment and you should treat this letter as constituting formal notice of termination.

In the meantime you are invited to apply for any suitable vacancies that arise (internal & external) advertised within the council which can be viewed on www.myjobscotland.gov.uk. I would be happy to provide any assistance required in making a job application.

** (delete following paragraph if employee has less than two years' service or it has been confirmed by Human Resources that a redundancy payment is not appropriate in the circumstances)*

As you have continuous employment with council for over two years, you are entitled to a redundancy payment of [number] week's pay. Payment will be made in as part of your final salary.

You will also receive payment for any outstanding annual leave entitlement.

Your pension provider (Lothian Pension Fund or Scottish Public Pensions Agency) will contact you directly in order that arrangements may be made regarding any pension rights which you have accrued.

You may appeal against the decision not to renew your fixed term contract by writing to the Head of Corporate Services, within 10 days of receipt of this letter, outlining the grounds of your appeal.

Finally, I would like to take this opportunity to thank you for the work you have done while you have been with West Lothian Council and wish you well in the future.

Yours sincerely

Manager