

# Policy – Fixed Term Contract

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# Policy – Fixed Term Contract

## Version control

This document is subject to regular review due to legislative and policy changes. The latest versions of all our publications can be found on our website. Before contacting us about the content of this document, we recommend that you refer to the most recent version on the website and any relevant guidance.

Version	Date approved	Approved by	Notes / changes
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## TIMESCALES

A fixed term contract becomes permanent after 4 years of successive contracts – unless it can be objectively justified not to make it permanent.	4 years
Fixed term employees who have more than 2 years' service with the council or an associated employer which comes under the Redundancy Payment Modification Order (Local Government) 1983 will be entitled to a redundancy/loss of office payment. In this situation the fixed term employee will also be placed on the redeployment list in order to find suitable alternative employment. If the dismissal is some other substantial reason (please refer to section 5 which explains what circumstances may qualify as SOSR) then employees may be entitled to a loss of office payment.	2 Years
Managers should ensure that the end of a fixed term contract process is started.	At least 3 months before the contract ends

## ROLES AND RESPONSIBILITIES

### DIRECTORS AND HEADS OF SERVICE

- Ensuring effective implementation and awareness of the procedure.

### MANAGERS

- To be aware of their responsibilities as determined by the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- To ensure there is a justifiable and demonstrable reason for appointing to a post on a fixed-term or temporary basis, and that this is fully explained during the recruitment process and in any subsequent correspondence relating to the post/contract.
- To ensure that all fixed-term or temporary employees understand the nature of their contracts, and are consistently advised as to the likelihood of extension/renewal and the reasons for this, within the timescales outlined in this procedure.
- To liaise with employees, Trade Union representatives and Human Resources as appropriate, regarding formal procedures and meeting arrangements.

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- To provide written statements as may be required/requested by the employee, confirming the status of the fixed-term or temporary contract, and the reasons for any perceived less favourable treatment or the ending of a fixed-term or temporary contract.
- To ensure the termination process is followed when ceasing or not renewing a fixed-term or temporary contract.

## EMPLOYEES

- To ensure they have a clear understanding of the fixed-term or temporary nature of their employment, and reasons for this.
- To have no expectations that their employment will be extended, unless they received formal clarification of this.
- To raise any issues relating to their fixed-term or temporary employment and any perceived less favourable treatment, with their manager at the earliest opportunity.
- To attend meetings as necessary in connection with their fixed-term or temporary contract, noting their right to be accompanied by a work colleague, recognised Trade Union officer or recognised Trade Union representation at any such meetings.

## Introduction

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 came into effect on 1<sup>st</sup> October 2002. The purpose of the Regulations is to ensure that employees who are on a fixed term contract do not receive less favourable treatment than those who are permanently employed.

A fixed term contract is a contract of employment that comes to an end:

- upon reaching a specified date
  - when a specified task has been completed; or
  - when a specified event does or does not occur
- Examples of fixed term employees are as follows:
- employees taken on to cover seasonal peaks in demand

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- employees taken on to specifically cover a period of maternity or sick leave
- employees taken on to provide temporary cover for a permanent employee who is temporarily on secondment or absent for any other reason
- employees taken on to perform a specific task
- where funding is only agreed for a specific period of time

## Aims

The aims of the policy are as follows:

- protect fixed term contract employees from less favourable treatment;
- limit abuse through successive use of fixed term contracts;
- ensure that the correct procedure is followed by managers

## Application/scope of policy

This policy will apply to all fixed term employees of the council with the exception of:

- Directors and Heads of Service – separate National procedures will apply.
- Agency Workers - who hold a contract of employment or relationship with an external temporary work agency (to include Matrix)
- Placement students – students on higher education courses on work placements of one year or less are excluded. Higher education courses include undergraduate, postgraduate and teacher training courses.
- Employees on training schemes – Fixed term employees employed in training, work experience or temporary work schemes designed to provide them with training or retraining or assist labour market re-integration which are funded by the European Social Fund or provided under arrangements made by the government are excluded.
- Apprentices

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## Legal & other references

- The Fixed Term Employees (prevention of Less Favourable Treatment) Regulations 2002
- Employment Rights Act 1996
- Redundancy Payment Modification Order (Local Government) 1983 (as amended)

## Policy Details

### Key principles

Employees have the right not to be treated less favourably than a comparable employee on a permanent contract in respect of pay, terms and conditions, training/development opportunities, opportunities to obtain permanent employment or be subjected to any detriment on grounds of status as a fixed term employee.

Employees on a fixed term contract have the following rights:

- not to be unfairly dismissed (after two years' service)
- to a written statement of reasons for the dismissal
- to a statutory redundancy/loss of office payment (after two years' service) if the reason for dismissal is redundancy.
- to a minimum notice period of their contract ending before the agreed end date, task or event.
- not to be selected for redundancy or be unfairly dismissed if the main reason for the selection was because the employee is on a fixed term contract.
- fixed term employees will become permanent after 4 years of successive fixed term contracts unless the continued use of a fixed term contract can be objectively justified. Fixed term employees have the right to written confirmation of permanent status.

## Recruitment of a Fixed Term Employee

When recruiting for a fixed term post it will be necessary to include in the advert:

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- that the post is a fixed term
- the reason i.e. cover for maternity, undertake a specific project
- duration i.e. duration of the project; for a 6 month period; duration of the maternity leave.

This will be reiterated during the interview and confirmed in the statement of terms and conditions of employment for the successful candidate.

It is important that a notice clause is included in the statement of terms and conditions of employment. This will allow either party to lawfully terminate the contract early, provided the appropriate contractual notice is given. Notice periods will be in accordance with the Single Status Agreement.

### **Probationary periods for fixed term employees**

The appointment of all new entrants to local government appointed on a fixed term contract will be subject to a 6 month probationary period which will be monitored in accordance with the Probationary Period Procedure.

### **Fixed term posts that become permanent**

If during the time employed on a fixed term contract, the post becomes permanent or if an extension is required all parties must be kept informed.

The incumbent fixed term contract post holder will be offered the permanent contract provided that the following conditions are met:

- they have 6 months or more continuous service (must have completed a probationary period)(change recruitment policy if agreed)
- they were subject to an appropriate competitive recruitment process for that specific post at the outset.
- they have satisfactory evidence of good performance in that post

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If all of the above conditions are met then the line manager must complete the Contract Change Form and return to Human Resources. This will then be confirmed in writing by Human Resources and sent to payroll.

## **Terms and Conditions**

### **Employment rights**

Following completion of the necessary qualifying service a fixed term employee will have the same employment rights as a permanent employee. A fixed term employee has the right to be treated no less favourably than a comparable permanent employee with regard to terms and conditions of employment or by being subjected to any other detriment. This principle applies to all terms and conditions of employment.

A full statement of terms and conditions of employment should be provided to all fixed term employees.

### **Pay and pension**

The fixed term position should be evaluated in accordance with the council's job evaluation scheme prior to the post being advertised. If there is significant change to the post during the fixed term period, it may be revaluated subject to the approval of the line manager.

The fixed term employee will be automatically admitted to the Local Government Pension Scheme unless they decide to opt out.

### **Internal vacancies**

Fixed term employees will be eligible to apply for internal vacancies from the first day of their employment. They should be made aware of the council's vacancies database held on the Intranet and any local arrangements for advertising job vacancies.

### **Learning and Development**

A fixed term employee must be given the same opportunity to receive training as a comparable permanent employee. However, the line manager may be able to justify

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different treatment if the cost of the training is disproportionate to the benefit received by the employee.

In order to determine training requirements, a fixed term employee should be offered a performance appraisal in line with departmental arrangements.

### **Annual leave**

The council's annual leave procedure will apply to all fixed term employees.

### **Maternity leave and pay**

Subject to a qualifying period, expectant women will be entitled to maternity leave and pay in accordance with the Single Status Agreement.

Where a fixed term contract does come to an end during an employee's maternity leave, her occupational maternity pay will cease on the termination of the contract and she will not have the right to return to work at the end of her maternity leave. However, she will still be entitled to receive SMP, if eligible provided she does not start working for a new employer.

If, due to the termination of her contract, the employee is unable to return to work or has returned but is unable to complete the 3 months service required to qualify for half pay, she will not be entitled to receive the half pay element of her maternity pay.

### **Extension of a Fixed Term Contract**

Successive renewal of fixed term contracts should be avoided wherever possible. Where it is necessary, the line manager should assess prior to renewal whether the reason for the fixed term contract is still applicable.

Please note that any period of continuous employment under a fixed-term contract will be taken into account when calculating the employee's continuous employment.

In order to ensure that the extension or change in contract status is actioned the line manager must ensure that they complete the Contract Change Form and return to Human Resources. Line managers will also need to write to the employee using the Extension of a

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fixed term contract letter template in order to confirm the extension. A copy of this letter will need to be sent to Human Resources.

### **Permanent Status**

For the purpose of determining when the fixed term contract becomes permanent, it will be service in continuous fixed term contracts that will be taken into account.

A fixed term contract that has been renewed or extended (or where the employee is re-engaged on a successive contract) will become a permanent contract once the employee has completed four years' continuous service, unless the continued use of a fixed-term contract can be objectively justified. There is no limit on the length of the first fixed-term contract.

However, once a fixed term contract of over four years expires and is renewed (or the employee is re-engaged) the contract will be deemed to be permanent unless the renewal can be objectively justified.

Written confirmation that the contract is to be regarded as permanent should be given to the employee and the employee has a right to request this. The line manager will need to complete a Contract Change Form and send to Human Resources. The Fixed term to permanent status letter will be sent to the employee by Human Resources and inform payroll.

Successive fixed contracts do not only include renewals and extensions, but also situations where one fixed term contract ends and the employee is taken on immediately on another fixed-term contract, even where it is a completely different job.

### **Continuity of service**

For the purpose of qualifying service for benefits, Redundancy (loss of office) payments, occupational sick pay, annual leave entitlement and notice period, continuous service will include continuous previous service with any public authority to which the Redundancy Payment Modification Order (Local Government) 1983 (as amended) applies, regardless of whether it was accrued on a permanent or fixed term basis.

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If there is a break of more than a week (running from Sunday to Saturday) between two contracts, continuity will be broken (except where there is a redundancy and a new job is taken up within 4 weeks).

### Redundancy

A fixed term employee cannot be selected for redundancy purely because he or she is employed on a fixed term contract, unless this criterion can be objectively justified. The ability of an employer to objectively justify the less favourable treatment and establish that the dismissal was fair will depend on the circumstances. For example, where an employer has engaged a team of workers on fixed term contracts to perform a specific task, when the task is completed it may be able to justify dismissing those employees, rather than widening the pool for selection to include other permanent employees who are performing similar work or who have similar skills and abilities. It is therefore important that the 'reasons' for the fixed term post are clear.

Where it is necessary to select one of more fixed term employee for redundancy or dismissal, this should be done in accordance with the selection criteria detailed in the council's Redundancy Policy.

### Termination of a Fixed Term Contract

The termination of fixed-term contract, or non-renewal of a fixed-term contract beyond its expiry date is regarded as a dismissal and the procedure outlined below should be followed.

The reason for dismissal will be due to either:

- **Redundancy**; e.g. where the requirement for the work to be undertaken has diminished or ceased.
- **SOSR (Some Other Substantial Reason)**; e.g. where the requirement for the work to be undertaken has not reduced and the substantive post holder has returned to work or a permanent employee is recruited.

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## Redundancy dismissal

Examples of fixed-term employment ending due to redundancy:

- Employee recruited to carry out the completion of a specific task, such as project work that is dependent upon external funding and the post will end once the funding ceases or no more funding can be found
- The completion of a specific task which is then completed
- Employee is recruited to provide additional staffing and the provision of services then reduces or ceases

## SOSR dismissal

Examples of fixed-term employment ending on SOSR:

- Employee recruited to provide cover for adoption/maternity/parental leave until post holder returns to work
- Employee recruited to cover secondment of substantive post holder
- Employee recruited to cover a vacancy whilst recruitment process is undertaken
- Employee recruited to provide cover for long-term absence/sickness until employee who has been absent/sick returns to work

In the case of SOSR, if the employee has more than two years' continuous service, the employee may be entitled to a loss of office payment.

## Redeployment

The Authority will make every effort to seek suitable alternative employment for fixed term employees who have more than 2 years' continuous service in accordance with the Redundancy and Redeployment Policy.

## Redundancy payment

Any employee who is dismissed on the grounds of redundancy by reason of the ending of their fixed-term contract will be entitled to a redundancy/loss of office payment, providing

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they have at least 2 years' continuous service with the council or related employers as listed under the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999 and subsequent amendments.

Where a fixed-term contract, is brought to an end earlier than the stated expiry date, the employee will be eligible to the appropriate notice.

Terminations subject to redundancy should be dealt with in accordance with the Redundancy Policy.

### Loss of office payment

Any employee who is dismissed on the grounds of SOSR by reason of the ending of their fixed term contract may be entitled to a loss of office payment, providing they have at least 2 years' continuous service with the council or related employers as listed under the Redundancy Payments (Continuity of Employment in Local Government) (Modification) Order 1999 and subsequent amendments.

### Termination of a fixed term contract process

The expiry and non-renewal of all fixed term contracts is classed as a dismissal and is subject to the Statutory Dismissal Procedures. When terminating a fixed term contract the line manager must follow the following steps:

- Three months prior to the end of the contract, the line manager should notify the employee in writing that their fixed-term contract will not be renewed and as such will result in the termination of employment on the grounds of **redundancy** or **SOSR**, and arrange to meet the employee as soon as possible. This should be confirmed by the line manager using Invitation to attend meeting letter template.
- The employee should be given a minimum of 5 working days' notice of this meeting, and they have the right to be accompanied at the meeting by a recognised Trade Union Representative or work colleague.
- The meeting should be held prior to the commencement of the required notice period to ensure that the appropriate notice is issued taking account of the employee's continuous service date.

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- If the employee confirms that they understand that the fixed-term contract is due to end, and that they do not wish to attend the meeting, the line manager must use the template letter Declined invitation letter template.
- If the employee confirms that they wish to attend the meeting:
  - a. Confirm with the employee that the contract of employment is to expire; the date of expiry and that it will not be renewed.
  - b. Explain the reason for the non-renewal.
  - c. Confirm the dismissal, the reasons and the termination date. The dismissal will be on grounds of redundancy or SOSR (with or without a payment). The line manager should complete the Financial Estimate Form and send this directly to payroll for the estimated figures. Please do not send to Human Resources.
  - d. Check and confirm whether the employee is eligible for 'at risk' status (more than two years' service) seeking advice from Human Resources where appropriate and inform Human Resources so that they can be added to the redeployment vacancies bulletin. Check that the individual is aware of how to access job vacancies within the council i.e. via the intranet and [www.denbighshire.gov.uk](http://www.denbighshire.gov.uk).
- Following the meeting, the line manager should confirm the above in writing using Attended meeting letter template.
- If an extension or renewal of the contract is made, the line manager must confirm in writing using the Extension to contract letter template. The line manager must also complete the Contract Change Form and send to Human Resources with a copy of the extension letter. Human Resources will inform payroll.
- If the employee wishes to exercise their right of appeal they must do so within 10 working days of the date they were notified of the decision. Please refer to the Corporate Appeals Policy.
- The line manager is to complete the Leavers form if the contract is not to be renewed and returned to Human Resources at the earliest opportunity to avoid any under/overpayments.

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## Short term fixed term contracts process

Where the contract is for a short period of time, for example, a contract which is 6 months or less, which means that the above steps cannot be reasonably followed, in order to terminate the contract, the line manager must ensure that the following steps are followed within a reasonable timescale:

- The employee is written to inviting him/ her to meeting
- A meeting is held to discuss the ending of the contract
- The employee is written to confirming the outcome of the meeting and informing them of their right of appeal.

## Appeals

The appeal should be heard in accordance with council's Appeal Procedure.

## FAQ's

### What constitutes less favourable treatment?

Less favourable treatment occurs in a situation where a fixed-term employee does not receive a benefit that a comparable permanent employee is entitled to (or is offered a benefit on less favourable terms). It can also happen if an employer fails to do something for a fixed-term employee that is done for a permanent employee.

In addition, less favourable treatment can be considered as any situation in which a fixed-term employee is subject to a disadvantage that is not imposed on permanent staff. For example, if a fixed-term employee is selected for redundancy solely because they are fixed term.

However, the Regulations do allow for situations where it is objectively justifiable to treat fixed term employees differently from comparable permanent staff.

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## What is an objective justification?

What constitutes an objective justification is not specified in the Regulations, but it is expected that it is:

- to achieve a legitimate objective, for example a genuine business objective
- necessary to achieve that objective
- an appropriate way to achieve that objective

Therefore, it is essential that the council has transparent, necessary and objective reasons for placing a post initially and subsequently on a fixed-term contract. The renewal or extension of the fixed term would also have to be justified separately by objective reasons.

## Are there any employees exempt from the fixed term regulations?

Yes, there are some categories of worker who are excluded from the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002:

- apprentices
- employees on certain government training schemes
- students on occupational placements of one year or less as a part of a higher educational programme
- agency workers, that is those who have an employment contract with a temporary work agency but are placed with and do their work for a third party (although from 27 October 2008 agency workers must be treated in the same way as all other employees with regard to entitlement to statutory sick pay whether they are indirectly or directly employed and regardless of the length of their contract).

Unlike the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed-term employees Regulations 2002 apply to 'employees' and not to 'workers'.

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### **What happens if an employer allows a fixed-term contract to expire and the employee continues working past the specified date?**

If an employer allows a fixed-term contract to expire and the employee continues working past the specified date, then the law will imply continuation of the arrangement as an open ended contract. This means that the employee's contract has been extended without a fixed termination date. In the absence of any provision to the contrary, this will be subject to the statutory minimum periods of notice. Pre-existing terms and conditions from the original fixed-term contract will form part of the on-going implied agreement.

If an employee continues working past the expiry of the fixed-term contract, employers should issue a further written agreement which complies with the provisions governing written particulars and confirms the continuation of the employment and that the pre-existing terms are still applicable.