



## APPENDIX 1

### FIXED-TERM AND TEMPORARY CONTRACTS

#### Joint Policy and Procedure

#### Scope of Policy

This policy applies to all staff employed on fixed-term or temporary contracts at South Northamptonshire Council and Cherwell District Council with the exception of:

- Apprentices
- Placement students – work experience students for no more than one year who are required to attend college as part of a higher education course
- Agency workers who are employed directly by the temporary staffing agency and for whom there must be a distinctly separate employment relationship \* / Consultants engaged under a contract for services / Casual and staff bank
- JMT / Employees above Service Manager Level (JNC terms and conditions).

A separate policy for JMT will be developed shortly.

#### Version Control

Version 1	Draft for Circulation to HR
Version 2	Draft for Wider consultation
Version 3	Draft for Committee Approval

## 1 Introduction

**This policy is designed to reflect the Councils' wish to:**

- treat all employees fairly and consistently, with due regard to statutory rights and obligations;
- recognise that anyone working for or on behalf of the Council, however briefly, is the responsibility of the Council;
- maintain a reasonable degree of central consistency, while recognising the need for individual Heads of Service to allocate resources within their own divisions to maintain and deliver services and respond to changing circumstances;
- minimise the risks arising from unintentional breaches of employment, discrimination, and equality legislation (and codes of practice), with the consequent costs to the Council financially, and in terms of reputation;
- deliver services in a cost effective way.

## 2 Definitions and differences between a Fixed-Term Contract and Temporary Contract

**A fixed-term contract will be issued to an employee when the end date or length of the contract is known.** The contract must state clearly the reason for the fixed-term status to establish those specific elements of the role which could attract a redundancy payment; or whether the role is to provide cover; backfill etc. which defines the objective justification.

**A temporary contract will be issued to an employee when the end date or length of the contract is unknown,** however, the contract will indicate the anticipated length of the contract. The contract should also state the reason for the temporary status.

### **Expiry of a Fixed Term Contract or Temporary Contract – Redundancy or “Some Other Substantial Reason”?**

When on a temporary or fixed-term contract for the following reasons the employee will be eligible to a redundancy payment upon the expiry of the contract, where they have more than 2 years continuous service\*:

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

In such cases, the reason for dismissal will be 'redundancy'. Conversely examples of when a fixed-term or temporary contract will be issued to employees where the reason for the dismissal will be for "some other substantial reason" include:

- Cover for adoption / maternity / parental leave.
- Cover for secondment of substantive post holder.
- Cover for long-term absence e.g. sickness.

In such cases, the employee is not normally eligible to receive a redundancy payment. N.B. Neither list is exhaustive.

Temporary or fixed term contracts must only be used for approved vacancies, and / or where consideration has been given to working with other partner organisations as an alternative to taking on additional employees; these contracts should not be used to cover for a post which is awaiting approval / funding.

\*continuous service is service that falls under the Local Government Modification Order and is therefore not limited to the employment of either SNC or CDC.

### **3 Background and Legal Context**

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002, afford fixed-term or temporary employees important statutory rights that have an impact on the use of such contracts, which include:

- The right not to be treated less favourably than a comparable employee on a permanent contract in respect of pay, contractual terms and conditions.
- The opportunity to receive training and not to be subjected to any other detriment on grounds of status as a fixed-term or temporary employee.
- The right to a statutory redundancy payment where the expiry [i.e. dismissal] of a fixed-term or temporary contract gives rise to a redundancy situation. This does not normally apply if the dismissal is for 'some other substantial reason' e.g. where the employee is brought in on a Fixed Term Contract to provide temporary cover, normally for less than 2 years.
- The right not to be selected for redundancy or be unfairly dismissed if the principal reason for the selection was because the employee is on a fixed term contract.
- Limiting the use of successive fixed-term contracts to no more than 4 years, after which a fixed-term or temporary contract should become permanent, unless the continued use of a fixed-term contract can be justified on objective grounds.
- The right to be informed and have access to information regarding permanent employment opportunities within the organisation.

However, where it is deemed appropriate, the Council will adjust terms and conditions providing they can be objectively justified but be in line with the guidance in the following paragraph 'Objective Justification.'

#### **4 Objective Justification**

The Council reserves the right when applying the equal treatment requirement, to objectively justify different terms and conditions for employees on fixed-term or temporary contracts.

#### **5 Key Principles**

An employee on a fixed-term contract should not expect their employment to last longer than the term of the first contract, and this should be made an explicit condition at recruitment, through the advertisement and interview process. Should the contract be ended early i.e. before the contracted length of time then a dismissal will occur and the relevant notice period will apply.

The amount of notice will be based on the grade for the job, and the length of continual service. This notice period can be varied by mutual agreement.

The employee on a fixed-term contract will normally have no right to receive 'At Risk' status when their contract is reaching its fixed end date.

This does not mean that the employee will not be able to apply for other positions, but they will not receive preferential status consideration i.e. 'At Risk' status at the end of their contract commensurate with other employees on the Redeployment (At Risk) Register.

The performance of employees on fixed term or temporary contracts will be managed in the same way as permanent employees, through all relevant HR policies e.g. probation, capability, discipline and grievance.

All other employee rights and benefits will apply as for permanent employees, particularly maternity leave; disability leave/adjustments; and any need to redeploy on the grounds of a specific medical condition. The employee will not be selected for redundancy if the principle reason for the selection is that the employee is on a fixed-term or temporary contract, however employees on a fixed term contract may form part of a pool for redundancy where all employees in the pool are undertaking the same work, and the reason for redundancy is an overall reduction in that work.

Whilst employees on fixed-term and temporary contracts do receive the same terms and conditions as comparable permanent employees, the objective justification for not giving 'At Risk' status is based on the legal duty the Council has to ensure that all permanent employees are afforded full employment protection i.e. receive 'At Risk' status, particularly in times of reorganisation, restructures and/or economic downturns.

There may be occasions (such as where a permanent employee is proposed to be dismissed on the grounds of redundancy but obtains a fixed-term position which is subsequently not renewed) that 'At Risk' status is given, even though the final reason for dismissal is "Some Other Substantial Reason" (SOSR).

N.B: An employee on a Fixed Term Contract who has 4 years or more continuous service will be entitled to the same protection afforded to permanent employees and automatically becomes a permanent employee on renewal of the contract unless the Council can an objective justification for this not to apply. This illustrates the importance of managing the fixed term contract properly.

## **6 Responsibilities**

Responsibility for the application and operation of this Policy has been determined as follows:

### **JMT**

- To act within the policy as Designated Officers to whom formal dismissal powers have been delegated, within the Councils' scheme of delegated authority.
- 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 there is appropriate approval for recruiting to a post via the use of the Vacancy Assessment Form (VAF) i.e. there should be no recruitment to a fixed term or temporary post due to a permanent contract not being approved.
- 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, appropriate Trade Union representatives and relevant Human Resources staff as appropriate, regarding formal procedures and meeting arrangements.
- 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 dismissal 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 or made permanent, unless they received formal, written clarification of this.
- To understand that they have no right to receive 'At Risk' status where their contract is reaching its fixed end date.
- 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, or recognised Trade Union representation at any such meetings.

### **Further Information**

This policy links to and is part of the overall package of Council policies.

See also:

CDC/SNC Organisational Change Policy

Redundancy and Early Retirements

SNC Compensation for Early Termination of Employment Policy

## **Annex 1 – Procedure for utilising Fixed Term or Temporary Contracts**

### **Approval Process**

All requests for issuing or extending fixed-term or temporary contracts must be submitted to and approved through the Councils' Vacancy Assessment Form.

### **Advertising a Fixed Term or Temporary Contract**

When advertising a fixed term or temporary vacancy the advert must specify the length of the appointment (where this is known ) and the purpose of the contract. If there is a possibility of permanency or renewal on expiry of the period, this should also be included in the advert.

### **Filling a vacancy which an employee is covering on a fixed term or temporary basis**

Should a fixed-term or temporary post subsequently become available to fill on a permanent basis, those permanent staff on the redeployment Register will be given prior consideration for the vacancy.

If there are no permanent staff on the Redeployment Register, then the incumbent fixed term or temporary post-holder would normally be offered a permanent contract provided that the following conditions are met: .

- They have 12 months or more continuous service, and
- They were subject to an appropriate recruitment process (including a competitive interview) for that specific post at the outset and
- That the possibility of it becoming permanent was made clear during that recruitment process, and
- If the post-holder does not meet the above criteria, the post should be advertised in accordance with normal recruitment procedures. The manager should meet with the fixed-term or temporary employee to inform them that the post is due to be advertised, and if they are subsequently unsuccessful at interview, the dismissal process outlined below should be followed.

### **Fixed term or temporary employees applying for secondments**

Permanent staff on the Redeployment Register will be given prior consideration for secondment opportunities. Only in cases where there are no permanent staff available for secondment opportunities will fixed-term or temporary staff be considered.

In cases where a fixed-term or temporary employee applies for and is successful in obtaining a secondment opportunity and the fixed-term or temporary contract is due to expire before the end of the secondment.

The original manager should ensure that they meet with the individual in advance of the required contractual notice to bring their temporary/fixed term contract to an end and the seconding manager must create a new contract for the period of the secondment.

At the time that the original manager meets with the employee, they will also need to liaise with the secondment line manager who will be responsible for transferring the secondee onto a fixed-term contract for the remainder of the secondment period, where the secondment is a sideways move. Where the secondment is a promotional move discussions will need to be held with the HR Business Partner to discuss the employment implications such as suitable alternative employment.

When you are considering extending/renewing or ending a fixed-term or temporary contract early or on the due date, you are advised to discuss this at the earliest opportunity with the HR Business Partner.

### **Extension of a fixed term or temporary contract**

Where fixed-term or temporary contracts are extended, all continuous fixed-term or temporary periods of employment will count towards an employee's continuity of service.

It is important to be aware that any period of continuous employment under a fixed-term contract from 10 July 2002 will be taken into account when calculating the fixed-term employee's continuous employment.

Where an employee has been continuously employed under one or more fixed-term or temporary contracts for a period of four years, their contract will become permanent unless the employer can show that the use of a fixed-term contract is objectively justified.

The date that the fixed-term contract will become permanent is the latest of the two following dates:

- The date on which that contract was entered into or last renewed, or
- The date on which the employee acquired four year's continuous employment under fixed-term contracts.

In order to ensure that the extension or change in contract status is actioned the line manager must ensure that they complete and return a Contract Amendment Form to the HR Business Partner.

### **Termination of a Fixed Term or Temporary Contract**

The termination of a fixed-term or temporary contract, or non-renewal of a fixed-term or temporary contract beyond its expiry date is regarded as a dismissal (Employment Rights Act 1996, section 95 (1) (b)) and the procedure outlined below must 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.

### **SOSR Dismissal: Examples of fixed-term or temporary employment ending on SOSR:**

In these cases the employee is not normally eligible for a redundancy payment.

A useful question to test which is applicable is to ask whether the termination of the contract is due to cessation of the work, or cessation of the need for that individual to carry out the work?

### **Redundancy Dismissal: Examples of fixed-term or temporary employment ending due to redundancy:**

- An 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.
- An employee is recruited to provide additional staffing and the provision of services then reduces or ceases.

### **Redundancy Payment**

Any employee who is dismissed on the grounds of redundancy by reason of the ending of their fixed-term or temporary contract will be entitled to a redundancy 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. Where a fixed-term or temporary contract is brought to an end earlier than the stated expiry date, the employee will be eligible to the appropriate notice, the length of which will be determined by their length of service.

### **Termination of Fixed Term or Temporary Contract - Process**

1. The line manager should on an on-going basis monitor the use of fixed-term or temporary contracts.
2. 4 months prior to the expiry of the contract the steps below must be followed. (4 months is used as the maximum where a notice period may be three months, as the notice falls within the period of the fixed term contract.) As a general rule, the meeting should be held within a month of the start of the notice period.

3. The Line Manager and Head of Service or more Senior Manager should notify the employee in writing that their fixed-term or temporary contract will not be renewed and as such will result in the termination of employment on the grounds of redundancy or SOSR, and invite the employee to a meeting as soon as possible. A template letter will be generated by HR to facilitate this.
4. This should be confirmed using the Standard End of Fixed Term Invite to Meeting letter (**Appendix 1**)
5. 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.
6. 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.
7. Please contact the HR Business Partner if you require HR to be in attendance at the meeting, although this would not normally be necessary.
8. If the employee confirms that they understand that the fixed-term or temporary contract is due to end, and that they do not wish to attend the meeting, the End of Contract Letter can be issued by HR (**Appendix 2**).
9. If the employee confirms that they wish to attend the meeting, the following agenda is covered:
  - Confirm with the employee that the contract of employment is to expire, the date of expiry and that it will not be renewed.
  - Explain the reason for the non-renewal.
  - Confirm the dismissal, the reasons and the termination date. The dismissal will be on grounds of redundancy (with or without a payment) or SOSR.
  - If the employee is one of a pool of employees on fixed-term or temporary contracts from which selection for redundancy has to be made, the criteria that will be used to make this selection should be explained, as detailed in the Organisational Change Policy.
  - Check and confirm whether the employee is eligible for 'at risk' status seeking advice from HR.
  - Check that the individual is aware of how to access job vacancies within the Council i.e. via the Intranet. If the employee is unable to access these, they need to inform HR so alternative arrangements can be made.
  - Where an employee has been on fixed-term or temporary contract of 2 years or more and the reason for the dismissal is due to redundancy make them aware that they will be entitled to a redundancy payment. The line manager should contact HR who will obtain an estimate of redundancy costs from Payroll.

10. Following the meeting, HR should confirm the above in writing using **Appendix 3.**
11. If an extension or renewal of the contract is made, a standard contract amendment form should be completed by the line manager and a letter will then be issued by HR with an updated contract.
12. 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 following section on Appeals.
- 13 The line manager must ensure that they complete and return the relevant forms to HR in a timely manner.

## **Appeal Against the termination of a Fixed Term or Temporary Contract.**

Employees on fixed term or temporary contracts have the right of appeal against dismissal. This right of appeal should be notified to the employee at the meeting held to discuss the termination of the employment contract (if one is held) or within the letter confirming the dismissal.

The employee must write to the Shared HR and OD Manager within 10 working days of the confirmation of the termination of the contract, (i.e. the meeting or the subsequent confirmation letter) stating the reasons for their appeal on the pro-forma at **Appendix 4**. The Shared HR and OD Manager will then appoint an Investigating Officer to look into the grounds for the appeal. The Investigating Officer will compile a report for consideration, and following receipt of this report the Shared HR and OD Manager will make a determination on who should hear the appeal.

This will mirror the Appeal against Dismissal process within the Organisational Change Policy.

The Appeal Panel will normally consist of a Head of Service not involved in the original termination decision, the Shared HR and OD Manager and a Trade Union Representative. In the absence of any of the above, the Head of Transformation may determine an appropriate substitute.

The outcome from the Appeal process may result in any one or a combination of the resolutions below:

- That the dismissal stands.
- That the employee is re-instated into the original role or a suitable role equivalent to the one which is terminating.
- That a redundancy payment is made in line with the statutory requirement to pay redundancy.
- That the employee is placed on the 'At Risk' register during their notice period and receives preferential treatment for any other vacancy.

The decision of this Appeal Panel is final, and there is no further internal appeal after this stage.

**Appendix 1 - Notification of the end of a fixed term / temporary contract / Invitation to a meeting.**

Dear

End of fixed term / temporary contract

As you are aware, you are currently employed on a fixed-term contract on the condition that your employment will terminate when the [task/project/cover] is completed. The [task/project/cover] for which you were employed is set to be completed on [date].

If you wish, as part of the procedural arrangements for employees on temporary and fixed term contracts, you have the right to attend a meeting to discuss the end of your contract and opportunities to access other current vacancies within the Council.

A meeting has been provisionally arranged on (Day) at (Date) with (Name). You may bring a Trade Union representative or a work colleague with you if you wish.

If you do not wish to attend this meeting, please let me know by e mail, and I will arrange for the necessary notification letter confirming the end of your contract to be issued to you.

Yours sincerely

Line Manager

**Appendix 2 - Termination of a Fixed Term or Temporary Contract where no meeting has been held.**

Dear

End of temporary / fixed term contract

As you are aware, you are employed on a fixed-term contract on the condition that your employment will terminate when the [task/project/cover] is completed. The [task/project/cover] for which you are employed is set to be completed on [date].

Unfortunately the Council does not have any further work for you beyond that date and your employment will therefore end on [date].

You will be paid in the usual manner on [date] and a form P45 will be sent to you as soon as possible..

Please ensure you have taken the remainder of your annual leave before your departure, **OR** You have therefore taken **xx** days in excess of your entitlement so a deduction will be made from your final salary. Any flexi – time accrued will not be paid.

You have the right to appeal against the decision to terminate your contract on the grounds of the fixed term coming to an end. If you wish to appeal, you should do so in writing within ten working days to the Shared HR and OD Manager, stating the grounds for your appeal.

Please take the time to complete the enclosed exit questionnaire. The information you provide will assist us in improving the working experience for employees in the future. If you would like to have the opportunity of an exit interview, please contact your Line Manager or an HR Business Partner if you so wish.

If you would like us to provide references for you in the future, please complete and return the enclosed reference request form which gives us your approval to do so.

Please return all Council property, including your ID card and car park permit, to me before you leave. You will receive your final payment on [date]. Please submit any claim forms to Payroll by the 5<sup>th</sup> working day of the month following your last day of employment. You will receive a P45, usually with your final payslip, which will be sent to your home address.

I would like to take the opportunity to thank you for your valuable service with the Council.

If you have any questions please do not hesitate to contact me.

Yours sincerely

Line Manager

### Appendix 3 - Notification of the end of a Fixed Term or Temporary Contract – following a meeting

Dear

End of temporary/fixed term contract

As you are aware following your meeting held on [date] with [name], you were employed on a fixed-term contract on the condition that your employment would terminate when the [task/project] was completed. The [task/project] for which you were employed is set to be completed on [date].

As explained to you at the meeting, unfortunately the Council does not have any further work for you beyond that date and your employment will therefore terminate on [date].

You will be paid in the usual manner on [date] and a form P45 will be sent as soon as possible to you after the termination of your employment.

Please ensure you have taken the remainder of your annual leave before your departure. **OR** You have taken xx days in excess of your annual leave entitlement so a deduction will be made from your final salary. No flexi accrued will be paid, but any hours that have been overtaken may be deducted from your final salary.

You have the right to appeal against the decision to terminate your contract on the grounds of the fixed term coming to an end. If you wish to appeal, you should do so in writing within 10 working days to the Shared HR and OD Manager, stating the grounds for your appeal.

Please take the time to complete an exit questionnaire which will be emailed to you within the next couple of days. The information you provide will assist us in improving the working experience for employees in the future. You also have the opportunity to have an exit interview either with your Line Manager or an HR Business Partner . (As for **Appendix 1**)

If you would like us to provide references for you in the future, please complete and return the enclosed reference request form which gives us your approval to do so.

Please return all Council property, including your ID card and car park permit, to me before you leave. You will receive your final payment on [date]. Please submit any claim forms to Payroll by the 5<sup>th</sup> working day of the month following your last day of employment. Your P45 will be sent to your home address as soon as possible after the date of your termination of employment..

I would like to take the opportunity to thank you for your valuable service with the Council.

If you have any questions please do not hesitate to contact me.

Yours sincerely

Line Manager

**Appendix 4 – Appeal against Dismissal (For completion by Employee)**

<b>Name</b>	<b>Post Title</b>
<b>Service</b>	<b>Directorate</b>
<b>Date of Commencement</b>	<b>Planned Date of Termination</b>

**Grounds of Appeal**

I wish to appeal against the decision to not renew / extend my Fixed Term / Temporary contract on the grounds that;

- **I do not believe the contract should be ending at this time.**
- **I believe I have permanent employment rights.**
- **I believe I am entitled to a redundancy payment.**
- **I believe I should be placed on the “At Risk” register.**

**Please tick as many as apply.** The rules for the operation of Fixed Term contracts are contained within the Council Fixed Term Contracts Policy and Procedures, and you should refer to these when submitting your appeal.

**Supporting Information.** Please provide below an outline of any information you feel is relevant to your case. You will have the opportunity to discuss this in full during the Appeal Hearing, the outline here is to ensure the Panel are fully prepared and have all the relevant information to hand for the Appeal. You may attach any additional information you feel is relevant to your appeal.

**Remedy**

Please describe below what remedy you are seeking from the Appeal Panel

Please complete this form and return to the Shared HR and OD Manager within five working days of receipt of your letter.

Signed \_\_\_\_\_ Dated \_\_\_\_\_

Date received in HR \_\_\_\_\_

Investigating Officer \_\_\_\_\_

Appointed \_\_\_\_\_