



ENDING FIXED-TERM CONTRACTS IN SCHOOLS: MANAGERS' GUIDANCE

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1. Introduction

This document aims to provide guidance on the procedure and process for ending the employment of those employees who are employed on a fixed-term contract in schools.

The expiry of a fixed-term contract without renewal is regarded in UK law as a dismissal.

Ending a fixed-term contract is a dismissal in the same way as a dismissal by reason of discipline or capability etc. For this reason it is necessary to ensure a fair process when dismissing an employee at the end of a fixed-term contract.

Please note that the term "Fixed Term" covers all fixed term and temporary contracts – not just those which are fixed term by virtue of the fact that at the outset they were due to end on a specific date (i.e. it includes contracts, for example, to cover for sickness or maternity leave which are temporary but for which there is no specific end date).

2. Scope

This procedure applies to all employees in schools employed on a fixed-term contract.

3. Principles

In Schools, where the Local Authority (LA) is the employer, the Headteacher and/or Governing Body must consult with the LA (Director of Children's Services), their HR Provider, and where appropriate the Diocese, for advice at the earliest opportunity, and prior to any hearing being arranged in cases which may potentially result in the dismissal of an employee. Schools must also consult with the LA when considering a settlement agreement.

All community, voluntary controlled, community special and maintained nursery schools should note the following:

- that when arranging a hearing or appeal hearing to consider dismissal they should notify the LA; the LA may then make the decision that an LA representative will be on the panel;
- in cases where the LA is not on the panel, the school should inform the LA of their decision before communicating this to the employee;
- the panel has a duty to consider the views of the LA and document these and any reasons why they are not taking account of their views.

3.1 Support at meetings

Employees may be accompanied by a recognised Trade Union Representative or work colleague where they are required to attend a meeting. This does not extend to legal representation. It is the employee's responsibility to arrange this.

If the employee has a disability, schools should consider whether it might be reasonable to allow them to be accompanied with consideration of their disability or the disability of a companion. For example, if the employee or companion has a hearing impairment, they may request that someone who can do sign language accompanies them. If schools have a particular query, they should contact HR for further advice.

An employee who is accompanying a colleague of the same employer is entitled to take reasonable time off to fulfil that responsibility.

The companion has no right to answer questions on the employee's behalf, or to address the meeting if the employee does not wish it, or to prevent the employer from explaining their case.

3.2 The role of the HR Consultant

The role of the HR Consultant in any meeting is to support the manager conducting the meeting, to provide advice on the application of the procedure and to ensure that the procedures are carried out in a fair and consistent manner. The HR Consultant will be allowed to ask any necessary questions of any party within the meeting but will have no authority to determine any outcomes.

3.3 Record keeping / Confidentiality

Full confidential records of the process should be kept covering all stages of the procedure, including a record of:

- Documentation to support the ending of the contract
- The initial notification to the employee of the termination of employment and any subsequent related correspondence
- Notes of all meetings held with the employee
- Any follow-up actions taken e.g. redeployment activity
- Details of any appeal against the dismissal and its outcome

These should be held confidentially on the employee's personal file and the employee's manager should ensure all such documentation is provided to their HR provider.

Under current UK Data Protection legislation individuals have the right to request and be granted access to any documents held about them personally on file or on a computer system. Such requests should be made through the completion of a subject access request which will be forwarded to the Data Protection Team.

4. Procedure

There must be a genuine reason for ending the contract (i.e. such as a return from maternity leave, or the cessation of a funding source, and when other options have been explored but no alternative to dismissal has been identified i.e. some other substantial reason or redundancy).

Prior to taking a decision to terminate an employee's contract of employment, the following three-step process must be followed

- Step 1 The employee must be advised in writing of the impending expiry of the contract and the reasons for the termination, and be invited to attend a meeting to discuss the termination (A template letter can be found at Appendix B)
- Step 2 The meeting should then be held to discuss those reasons and to consider any alternatives put forward by the employee, for example, to establish whether there is any alternative work that the employee could do.
- Step 3 The decision (e.g. that the employee is to be dismissed on account of his or her fixed-term contract coming to an end) must be confirmed in writing by an appropriate person with the authority to dismiss (i.e. Head teacher, Chair of Governors, Local Authority), specifying the right to appeal the decision, and how to exercise that right (A template letter can be found at Appendix C)

If the employee does appeal against the decision to dismiss, the appeal must be confirmed in writing to the Clerk to the Governing Body and will be heard by a panel of Governors. The final decision should be communicated to the employee in writing.

Successive Fixed Term Contracts – These should not last longer than a combined period of four years (unless the adoption of a longer period is objectively justified). As a result, after four years the contract will normally become permanent. An employee on a fixed term contract will have the right to request a statement from his/her employer outlining the reasons why the contract remains fixed term beyond the four year period or for confirmation that the contract has become permanent.

4.1 Right to be informed of suitable vacancies

Employees engaged on a fixed-term contract have the right to be informed of any suitable available vacancies that arise within the schools in accordance with the schools' advertising procedures.

The occupation of a fixed term post does not create an automatic right to occupy that post should a decision be made to establish it on a permanent basis.

4.2 Redeployment

The school will support the employee to obtain alternative employment. Information about employees at risk of redundancy will be shared with other schools via Headteachers forums etc in order to encourage those undertaking recruitment to consider vulnerable employees.

4.3 Written statement of reasons for dismissal

Any employee is entitled to request a written statement of reasons for dismissal, and the school is obliged to comply with such a request within 14 days. Compliance with this procedure will ensure that this legal obligation is met.

4.4 Redundancy pay

The employee will also be entitled to statutory redundancy pay if the dismissal is by reason of redundancy and the person has accrued two or more year's continuous service, whether on one or more fixed-term contracts.

5. Post procedural considerations

An employee who has worked for the school for two years or more will have gained the right to bring a complaint of unfair dismissal to an employment tribunal, so appropriate steps must be taken to ensure that the dismissal is fair.

Generally, dismissal on the expiry of a fixed-term contract will be fair provided that:

- The fixed-term contract was set up for a genuine purpose;
- The purpose of the contract and the reason for it being for a fixed term were known to the employee;
- The underlying purpose of the contract had ceased to be applicable when the employee was dismissed

6. Timescales

Attention must be paid to the length of service of the employee and whether or not they have worked on any preceding fixed-term contracts that are linked to the current contract.

Even if the date of termination has been agreed in advance, the employee should be given statutory written notice of at least one week.

Employees that have been continuously employed for two years or more are entitled to a minimum of a week's notice for every year of service up to a maximum of 12 weeks.

Employees in a probationary period are subject to one week's notice.

There is no requirement to re-issue notice where employees are on a fixed term contract where the end date has been specified, however, should such contracts be terminated early then notice would need to be given.

7. When to seek further advice

7.1 Redundancies – part of a pool

Please contact your HR provider if a fixed-term employee is likely to become at risk of redundancy for any reason other than the end of their contract.

7.2 If a fixed-term employee is to work beyond 2 years

If an employee has been continuously employed beyond 2 years in a single role or in a number of roles with the school or local government advice on their employment status must be sought from your HR provider.

7.3 During the 3-step process

During meetings with the employee to discuss the ending of their contract, although the Head teacher holding the meeting should have gathered relevant information prior to the meeting, further details may come to light which may make it necessary to adjourn the meeting and seek further information or advice. Where such an adjournment is necessary, clear timescales should be agreed with the employee.

8. Scheduling the meeting

Where possible the Head teacher should agree the date of the meeting with the employee in consultation with the employee's representative. If the representative cannot attend on the proposed date, the employee can suggest an alternative time and date so long as it is reasonable and it is not more than five working days after the original date.

If the availability of a representative will unduly delay the meeting then the employee should be requested to arrange a different representative who can attend within a reasonable timescale.

9. Content of the meeting

The meeting should focus on the termination of the contract and not be diverted into a discussion on other issues. All parties should be allowed to state their case without interruption. The manager will control the meeting with the assistance of the HR Consultant (if present). This is a formal meeting and not a general discussion.

10. Conduct of the meeting

The manager will chair the meeting and normally be advised by a HR Consultant. It is important that the meeting is conducted in a professional manner at all times and all parties are given the opportunity to ask and respond to questions. A short adjournment for a reasonable reason may be requested at any time during the meeting.

11. Outcome Letters

For all employees who are legally employed or engaged by a Community School and are to be dismissed:

- within 14 calendar days beginning with the date on which the notification from the Governing Body is received, the LA will issue notice to terminate the employee's contract or issue confirmation of the decision taken at a dismissal appeal hearing.
- The notice period and the date of termination will be confirmed in writing and will be as given in the dismissal decision at the hearing. If a subsequent appeal reverses the decision, the notice to terminate the contract will be rescinded. Where a notice period applies, the notice period will commence from the date the employee receives the dismissal decision.

For all employees who are legally employed or engaged by the Governing Body and are to be dismissed:

- within 14 calendar days of the hearing, the Governing Body will issue notice to terminate the employee's contract or issue confirmation of the decision taken at a dismissal appeal hearing.
- Where a notice period applies, the notice period will commence from the date the employee receives the dismissal decision from the Governing Body.
- The notice period and the date of termination will be confirmed in writing and will be the same as that given with the dismissal decision by the governing body at the hearing. If a subsequent appeal reverses the decision, the notice to terminate the contract will be rescinded.
- A written statement will accompany all dismissal letters issued from the School confirming their decision.

A standard outcome letter is available from the school's HR Provider.

The decision of the governor panel hearing the appeal is final. There is no further right of appeal. A copy of the outcome letter should be retained by the school and placed on the employee's HR file.

12. Other Policies

Reference should also be made to the following school policies:

- Redundancy Policy and Procedure

If you have any questions or queries with regard to the content of this guidance you should contact your HR Provider, if BWD is your provider please ring the School HR Advice Line on 01254 588973.

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Appendix A

Checklist for ending a fixed-term contract

- Recognise that the expiry of a fixed-term contract is regarded in UK law as a dismissal
- Ensure that all fixed term contracts are reviewed at least 4 months before they are due to end, to ensure that the potential maximum 12 weeks' notice for employees who have 12 years' continuous service is satisfied.
- Make sure that it is possible to demonstrate the reason for the dismissal (usually redundancy)
- Take appropriate steps to ensure that the dismissal is fair in all circumstances
- Remember that employers are required to follow minimum statutory procedures when contemplating dismissing an employee
- Take care not to allow a fixed-term contract to expire without renewal and then engage someone else on a new temporary contract to do the same work
- Check, before dismissing the employee that the underlying purpose of the contract has ceased to be applicable.
- Establish whether the fixed-term employee is entitled to statutory redundancy pay.
- Take steps to ensure that fixed-term employees are informed of any suitable vacancies.
- Give the employee written notice of the termination of the contract (in accordance with the provisions of the Employments Act 1996).
- Be aware that employees with the requisite service can request a written statement of reasons for dismissal.

Appendix B

Dear ****,

FIXED TERM CONTRACT/TEMPORARY CONTRACT *delete as appropriate

I am writing to notify you that your fixed term/temporary* contract is due to end on (date).
(*delete as appropriate)

The reason for this is.....

You are invited to attend a meeting to discuss this matter on (date) at (time) at (venue).
*****, HR Consultant will be supporting at the meeting.

You are entitled, if you wish, to be accompanied by a work colleague or a representative of your trade union or professional association. You are responsible for arranging your own representation. This does not extend to legal representation.

I would be grateful if you could confirm if this date is convenient.

Yours sincerely,

Appendix C

Dear *****,

FIXED TERM CONTRACT/TEMPORARY CONTRACT * delete as appropriate

Thank you for attending the meeting on (date). Present at the meeting were xxxxxxxxxx

At this meeting you were informed that your fixed term/temporary contract was due to end on (date) and that the reason for this is

(*delete as appropriate)

For fixed term contracts

I am writing to confirm that your fixed term contract will end on(date)

For temporary contracts

I am writing to confirm that your temporary contract will end on (date) and this letter is formal notice of the termination of your employment.

NB - For temporary contracts be mindful of notice periods

You have a right of appeal against this decision. If you wish to appeal please write to (name) within *.....working days.

(*please use the number of days specified in the disciplinary procedure adopted by your school).

I would like to take this opportunity to thank you for your service to the school which has been very much appreciated.

Yours sincerely