

SSSC Policy

Guidance and Procedure for the Termination of Fixed Term Contracts in Schools

1. Introduction/Background

The Fixed Term Employees' (Prevention of Less Favourable Treatment) Regulations 2002 were introduced to ensure that staff on temporary or fixed term contracts are treated no less favourably than those on established contracts.

In addition, the Employment Rights Act 1996 states the expiry or non-renewal of a temporary or fixed term contract is a dismissal in law.

The statutory dismissal procedure was abolished in 2009 and was replaced by the ACAS Code of Practice. However, the Code of Practice specifically states that it does not apply to the non-renewal of fixed term contracts. That being said, the ERA requires dismissals to be "fair and reasonable in all the circumstances" which includes the requirement to follow a fair procedure and for the dismissal to be for a fair reason. It would therefore not be unreasonable to use the ACAS Code of Practice to determine a fair procedure, using the three step approach as follows:

1. Decision taken not to renew contract in sufficient time to give the employee notice that their contract is to be terminated. Letter confirming that the contract is due to end and the reason why it is not to be renewed to be sent to the employee. Opportunity to be given to the employee to make representations against this dismissal as a result of non-renewal of the contract to the Headteacher.
2. Meeting to discuss employee representations against dismissal followed by written confirmation of the decision.
3. The right of appeal to Governors.

2. Scope

This procedure applies to all school employees, teaching and support staff, including SEN Teaching Assistants employed to support a statemented pupil.

3. What is a fixed term contract?

A fixed term contract is defined in legislation as a contract of employment that will terminate either:

- On the expiry of a specific term; or
- On the completion of a particular task; or
- On the occurrence or non-occurrence of any specific event

4. When to use a fixed term contract

Fixed term or temporary contracts for staff will **only** be considered in the following circumstances:

- (i) Where the appointment is to cover for the absence of another member of staff on maternity leave, secondment or long term illness.

Any cover for short-term illness would be on a supply basis.

- (ii) Where the school can be reasonably certain that the budget and/or pupil numbers will fall to such an extent that the existing level of staffing cannot be sustained in the next financial year.
- (iii) Where the post is to be filled on a permanent basis but there is a need for a short-term appointment while a permanent appointment is being made.
- (iv) In the lead up to the re-organisation or closure of a school.
- (v) To meet a change in curriculum needs arising from a short-term increase in demand for a particular subject or to provide additional support in a particular area.
- (vi) To meet a temporary increase in pupil numbers during the course of a year which necessitates additional staffing for a fixed period.
- (vii) Where the post is responsible for a new initiative or function for which the longer term future is uncertain. This includes externally funded posts (eg through Government Grants).

Fixed Term or Temporary contracts will **not** be used to:

- (i) Assess the suitability or competence of employees.
- (ii) Reduce Salary costs.

5. The successive use of fixed term contracts

Schools must be mindful of the use of successive fixed term contracts and must be aware that an employee who has four years service on fixed term contracts will be presumed to have become an established contract unless a further renewal on a fixed term basis can be objectively justified (For example the objective justification for the continued renewal of the contract of (a) a SEN Teaching Assistant on a fixed-term basis could be that the SEN TA is employed to assist a named child and so is only required whilst that child is at the school, but this could be for a period longer than 4 years or (b) when a teacher is seconded from his/her substantive post to the L.A. a position which could extend to a period longer than 4 years).

6. Redundancy

Any individual with 2 years continuous employment can claim a statutory redundancy payment upon the ending of their employment if the reason for the expiry of their fixed term contract is by reason of redundancy and alternative employment has not been identified. That is, that the contract is not being renewed because:

- the employer has ceased or intends to cease to carry on the business for the purposes of which the employee was employed, or
- the employer has ceased or intends to cease to carry on that business in the place where the employee was so employed; or
- the requirement for employees to carry out work of that particular kind, or
- the requirement for employees to carry out work of that particular kind in the place where the employee was employed has ceased or diminished

Procedure for Ending Fixed Term Contracts

The procedure below should be followed in the case of all staff employed on fixed term or temporary contracts that are coming to an end including SEN Teaching Assistants (model letters can be found at Appendix A).

Step 1

Headteacher/ Line Manager sets out in writing the proposed decision not to renew the fixed term/temporary contract and offers the employee the opportunity to meet to discuss the matter (the employee may be accompanied by a trade union representative or friend and should be given reasonable notice). Notes should be taken, with a copy kept on the employee's personal file. (See model letter 1.) If the employee does not wish to meet, a decision would be taken in the absence of any representations, but they would still have the right to appeal against the dismissal.

Step 2

After the meeting the employee must be informed in writing of the decision and notified of the right to appeal against it if they are not satisfied. Ideally, the meeting should take place before the commencement of the notice period so that the letter after the meeting is the letter confirming dismissal by reason of non-renewal and giving notice. The Headteacher needs to decide whether the individual representations make any difference to the decision not to renew the contract. Any appeal should be lodged within 10 working days of the written notice of the decision. (See model letter 2.)

Step 3

An employee can appeal against a decision not to re-engage at the end of a fixed term/temporary contract. The appeal must be made in writing to the Headteacher/Line Manager. An appeal hearing, involving the Personnel Sub-Committee/a Governors Committee will be held as soon as practicable following receipt of the appeal notice. Employees may be accompanied at this meeting. The appeal hearing will involve the school's case, the employee's case and summing up. The result of the appeal hearing must be notified in writing within 5 working days of the meeting. (See model letter 3.)

It is important that the above procedure is started at Step 1 as early as possible in order that it can be completed in time for the employee to be issued with the correct notice period i.e. 2 months or 3 months for teaching staff depending which term the contract expires or a week's notice for each year of service (min one month, max 12 weeks) for non-teaching staff.

You should ensure that you notify a member of the Leavers Team at the Shared Service Centre of the outcome in order for the notice letter to be issued to the individual.

NB – The reason for not renewing the fixed-term contract is likely to have an impact on the process used. For example, if the reason for non-renewal is a reason which fits into the definition of ‘redundancy’ under section 139 of the Employment Rights Act, then the redundancy procedure should be followed and the employee would be entitled to be treated in exactly the same way as an employee on an established contract under the terms of the redundancy/redeployment procedure.

Not renewing a contract because it is cover for maternity leave which has ended is specifically exempt from being a redundancy and so the redundancy procedure need not be followed, but it is still a dismissal.

APPENDIX A

MODEL LETTER 1

Name
Address

Date

Dear

NON RENEWAL OF FIXED TERM CONTRACT

As you are aware, your contract is due to end on (insert date), and I am writing to confirm that your contract will not be renewed and to give you notice that your contract will terminate on that date. This is because (insert reason)

I would therefore like to offer you the opportunity to meet with me on (date) at (time).

The purpose of the meeting will be for you to discuss the situation with me and to make any representations you wish regarding the proposed non renewal of your fixed term contract.

You have the right to be accompanied at the meeting by your trade union representative/friend.

Please confirm whether you will be attending the meeting.

Yours sincerely

Headteacher

cc. Personal file

MODEL LETTER 2

Name
Address

Date

Dear

NON RENEWAL OF FIXED TERM CONTRACT

I am writing to confirm the outcome of our meeting held on (insert date), when you were able to make representations concerning the non-renewal of your fixed term contract.

- In response to the particular point which you raised at the representation hearing (comment on whether their representations make any difference to the decision not to renew the contract).
- I confirm that your employment at the school will end on (date) because (insert reason); and
- Arrangements will be put in place for the Local Authority Human Resources Department to support you with redeployment to the end of your contract. You can also access job vacancies in Derbyshire Schools via www.derbyshire.gov.uk/jobs

You do have the right to appeal against my decision that your contract should terminate. If you wish to appeal you should do so in writing to me within 10 working days of receipt of this letter. Your letter should set out the grounds of your appeal. An appeal decision by the Governing Body will be final.

Finally I would like to thank you for the contribution you have made to the work of the school and I extend to you my best wishes for the future.

Yours sincerely

Headteacher

cc. Personal file
Leavers Team, John Hadfield House

MODEL LETTER 3

Name
Address

Date

Dear

NON RENEWAL OF FIXED TERM CONTRACT

I am writing to you following the hearing by the Appeals Committee on _____ 200__, regarding the non renewal of your fixed term/temporary contract. You were accompanied by _____.

Following careful consideration of your appeal, the Appeals Committee has agreed to uphold the decision of the Headteacher. I will therefore be writing to the LEA on behalf of the Governing Body informing it of the Governors' decision and the requirement to give you notice of termination.

If you have any specific or general queries about the process, please do not hesitate to raise them with me or _____ in the Human Resources Section on 01629 (tel no).

Yours sincerely

Chair of Appeals Committee