

## Fixed-Term Contracts - Guidance for Managers

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## Purpose

The purpose of this guidance is to provide advice to line managers on the management of fixed-term contracts. It should be noted that there is no difference between a fixed-term and a temporary contract and since the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 came into force, it is more usual to describe such a contract as “fixed-term” rather than “temporary”.

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## Scope

This guidance applies to employees of Charnwood Borough Council employed under the conditions of service of the following bodies:

- National Joint Council for Local Government Services
- Joint Negotiating Committee for Chief Officers of Local Authorities

This guidance is not applicable to:

- agency staff
- individuals who are self-employed
- apprentices
- casual workers.

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## Principles

- The Council's commitment to equality of opportunity will be observed at all times during the operation of this policy and procedure. This will ensure that employees are treated fairly and without discrimination on the grounds of race, nationality, ethnic or national origins, sex, marital status or civil partnership, disability, age, sexual orientation, trade union membership or activity, political or religious belief, maternity or pregnancy, gender re-assignment and unrelated criminal conviction.
- Employees will have the right to be accompanied by a Trade Union Representative or a work colleague during any meetings connected with terminating a fixed term contract.

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## Roles and Responsibilities

<b>Head of Service</b>	To monitor the management of fixed-term contracts
<b>Line managers</b>	To complete the necessary form notifying HR of the appointment of a fixed-term employee. To manage fixed-term contracts in line with this guidance and relevant legislation.
<b>HR Services</b>	To be the first point of contact for managers seeking advice on fixed-term contracts and to issue appropriate contract documentation to fixed-term employees. To provide advice on more complex queries regarding fixed-term contracts.

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## What is a fixed-term contract?

A fixed-term contract is a contract of employment that will terminate either:

- on a specified date; or
- on completion of a specific task or project; or
- when a specific event has occurred e.g. an employee returns from maternity leave or a secondment or a new organisational structure has been implemented; or
- When a specific event has occurred or not occurred e.g. funding not being renewed.

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## Using a fixed-term contract – when and why?

It is essential to demonstrate that there are transparent, necessary and objective reasons for using a fixed-term contract and the reason must be clearly stated in the employee's contract of employment. Failing to state a detailed and clear reason could have implications for ending the contract and on future restructuring and redundancy situations.

Necessary and objective reasons could include the following:

- absence cover e.g. for long- term sickness, maternity leave, secondment;
- externally funded posts, where funding is only available for a set period of time;
- a specific, finite project;
- when additional staffing is needed for a specified period e.g. to manage a temporary increase in workload;
- vacancy cover pending a restructuring i.e. where a restructuring is pending and a permanent employee leaves and has to be replaced on a temporary basis. (In these circumstances the contract should state “the reason for your fixed term appointment is to cover a vacancy pending a restructuring which is due to be implemented by xxx”.)

This is not an exhaustive list and managers should seek advice by contacting HR if they are considering a fixed-term contract for any other reason.

Managers must make clear to prospective employees the expected duration of the contract in the job advertisement and recruitment literature, when interviewing and in the resulting contract of employment.

If the fixed term contract is covering the absence of another employee, this is not a redundancy situation on the termination of the contract. The manager should send a letter to confirm this to the successful applicant (see [template letter](#)).

Managers must provide the reason for the fixed-term contract, the duration and the expected end date to HR to ensure that this information is then clearly stated in the employee's contract.

Where employees on fixed-term contracts fall within a restructure or review, the provisions outlined below will apply.

Managers should check the contract of employment of individuals on fixed-term contracts to determine the reason why the contract was issued.

Fixed-term employees will be entitled to equal consideration for posts and given the opportunity to apply for new or vacant posts in the new structure alongside permanent staff where their fixed-term contract states that it is to cover a short term need and the contract was issued before the Directorate was aware of the impending restructuring. The principles outlined within the comparability section of the organisational change policy and procedure will apply.

Fixed-term employees will not be entitled to equal consideration for posts and given the opportunity to apply for new or vacant posts in the new structure alongside permanent staff involved in the restructure where:

- their fixed-term contract states that it is to cover an absent employee e.g. maternity cover, secondment, etc. This type of contract will end when the employee for whom the cover is provided returns to their substantive post;
- their fixed-term contract specifically states that it is for additional work or a project which is a temporary addition to the establishment and there are no permanent staff carrying out the same role. This type of contract will end when the work is completed or funding for the work finishes;
- their fixed-term contract states that it is to cover a short term need and/or to provide cover during the period of the restructuring and the contract was issued after the Directorate was aware of the impending restructuring.

If a fixed term employee has at least one years' continuous service, and the reason for termination is redundancy they are entitled to the provisions of the redeployment policy and procedure. Where an employee falls outside of this criteria they should have the same access and opportunity to apply for permanent employment with the Council as permanent employees outside of the restructure. Fixed term employees should be notified at the same time and in the same way as permanent employees of vacancies and given the same opportunity to apply.

To exclude a fixed-term employee from consideration for posts in the new structure, the Directorate must have communicated with employees and the trade unions to inform them of the impending restructuring within a reasonable timescale.

If, as a result of organisational change, an employee is appointed to a fixed-term contract where there is no break in continuous service and where they are covering for the absence of another employee, they will not be eligible to receive a redundancy payment when the fixed-term contract ends and the manager must

ensure that the employee is advised of this in writing when they are considering the post. This should be before the fixed-term contract is offered to them.

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## When not to use a fixed-term contract

It is not appropriate to use a fixed-term contract to create an artificial trial period to assess someone's suitability for a job. Employees who have been issued with a fixed term contract before an impending restructuring would be treated the same as permanent employees. In addition, it is not normally best practice to cover a vacancy with a fixed-term contract whilst working through the recruitment process to fill the post permanently. Overall fixed term employees should be treated no less favourably than comparable permanent employees due to their fixed terms status without objective justification. Fixed term contracts should only be used for transparent and objective reasons where there is a genuine need for a fixed term post.

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## Probation

Employees on fixed-term contracts will be subject to the Council's [Probation Procedure](#) during their first 6 months of employment (or up to the point of termination if the contract is for less than 6 months).

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## Fixed-Term contracts Employees' Rights

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 give fixed-term employees the right to be treated no less favourably than permanent employees doing the same or broadly similar work with regard to their terms and conditions or in being subjected to any other detriment, unless such treatment can be justified on objective grounds. Employers must not discriminate against employees because of their fixed-term status.

Fixed-term employees therefore have the right to the same pay and contractual entitlements overall as permanent employees, unless it can be objectively justified that a particular term or condition should not be applied (in which case advice should be sought by contacting HR).

Fixed-term employees who believe they are receiving less favourable treatment have the right to request a written statement from their employer explaining the reasons for such treatment and the employer must respond in writing within 21 calendar days of the request. In these circumstances managers should seek advice by contacting HR, particularly as the statement can be used at any subsequent Employment Tribunal hearing.

## ***Continuous service***

It is essential that managers are aware of an employee's continuous service because, depending on the circumstances, an employee on a fixed-term contract may be entitled to a redundancy payment on the termination of their contract or their contract could become permanent under the "statutory fallback scheme".

For more details about continuous service please refer to Appendix A.

## ***Eligibility for permanent status (the "statutory fallback scheme")***

Where an employee has continuous employment under a fixed-term contract that has previously been renewed for 4 or more years or has continuous employment under a contract, when taken with a previous fixed-term contract, for 4 or more years, the employee will by law become permanent unless their continuing employment under a fixed-term contract can be objectively justified.

To become eligible for permanent status all the service has to be with the same employer.

Although there is no legal requirement to write to the employee, it is recommended that the manager should do so, in order to confirm the employee's permanent status. If continuing employment under a fixed term contract can be objectively justified the manager should write to the employee to confirm this with reasons.

Once 4 years' continuous employment has been completed under 2 or more successive contracts, the employee can write to the employer and request written confirmation that the contract is to be regarded as permanent.

There is no limit on the length of a first fixed-term contract, but any duration must be justifiable. If a fixed-term contract is renewed after the 4 year period, it will be treated as a permanent contract unless the use of a fixed-term contract can be objectively justified. Advice regarding this should be sought by contacting HR.

## ***Access to permanent posts***

Fixed-term employees should have the same access and opportunity to apply for permanent employment with the Council as permanent employees. Fixed term employees should be notified at the same time and in the same way as permanent employees of vacancies and given the same opportunity to apply.

An employee on a fixed-term contract does not have an automatic right to the post they have been occupying except under the "statutory fallback scheme" above.

If it is decided that a permanent appointment is to be made, for example, if an absent employee does not return from maternity leave or a secondment, the post should be subject to the usual recruitment process. The postholder would have the opportunity to apply for the post and the normal recruitment and selection procedure would apply.

However, there is provision within the [Appointments and Promotions Policy – The Appointment of Temporary Staff](#), that when a fixed term vacancy becomes available on a permanent basis, without a change in grade or duties, the fixed term post holder can be appointed to that post on a permanent basis subject to the following.

1. The temporary post must have originally been advertised internally and externally.
2. There must be no substantial differences between the person specifications for the temporary and permanent posts.
3. The employee must have successfully completed six months service in the post and if applicable have successfully completed their probationary period.
4. There are no suitably experienced and/or qualified redeployees or employees at risk of redundancy.

### ***Access to learning and development opportunities***

Fixed-term employees should have equal access to learning and development opportunities as permanent employees.

### ***Pregnancy, maternity and adoption rights***

It is unlawful to reject an applicant for fixed-term employment, to withdraw an offer of employment, to terminate or not renew a fixed-term contract on the grounds that the employee/prospective employee is pregnant (or may become pregnant).

Employees on fixed-term contracts who are pregnant or on maternity or adoption leave have protection under legislation relating to fixed-term contracts including the Equality Act 2010.

Fixed-term employees have the same entitlement to statutory maternity and adoption leave and pay as permanent employees (subject to meeting the relevant qualification criteria). Although statutory maternity or adoption **leave** may come to an end at the conclusion of a fixed-term contract, statutory maternity or adoption **pay** will continue if the employee already qualifies for it.

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## **Managing fixed-term contracts**

HR will advise line managers in advance of employees whose fixed-term contracts are due to come to an end, according to the termination date stated in their contract.

In adequate time towards the end of the fixed-term contract, taking into account the notice period that the employee is entitled to and the consultation required where there is a redundancy situation, the manager should review the contract and consider whether:

- there is a continuing need for the post;
- any extension of employment will be on the same basis as before, or different;
- whether the employee has attained permanent employment status.

### ***Renewal/extension of fixed-term contracts***

Managers wishing to extend fixed-term contracts must first obtain permission through a Delegated Decision, prior to any discussion with the employee(s). Formal permission must be obtained on each occasion that an extension to employment is proposed. Any extensions to fixed term contracts should be discussed with the employee to establish if they wish to continue in the post for the period of extension. If the employee declines an extension, the post will be advertised in accordance with the normal recruitment and selection procedures.

If there is a need for the post to continue on a fixed-term basis, the manager should notify HR, using the [Variation to Contract Form](#), asking for a further contract or letter of variation to be issued and specifying clearly the revised end date and the reason for continuation.

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## **Ending fixed-term contracts**

Where employees on fixed-term contracts fall within a restructuring or review, or where it is proposed to make a group of employees on both permanent and fixed-term contracts redundant, the provisions outlined above for organisational change will apply. However where the termination or non-renewal of a fixed-term contract is being considered on its own, the guidance below will apply. Managers should contact HR for advice if they are unclear which policy, procedure or guidance should apply.

Fixed-term contracts by their nature are expected to end at some point. However, the termination of a fixed-term contract is still a dismissal and therefore a fair dismissal procedure should be followed when a fixed-term contract is coming to an end or is being terminated before the stated end date.

Some fixed-term contracts will be in place to cover the absence of another employee e.g. on maternity leave or on secondment and will end because the substantive post holder returns to work. In these cases the termination of the fixed-term contract is not a redundancy situation and the employee will not be eligible to receive a redundancy payment when their contract ends (subject to their fixed-term contract having clearly stated the reason for it), even if they have more than 2 years' continuous service. The process for terminating a fixed term contract in a non redundancy situation should be followed in this circumstance.

In other cases where a fixed-term contract is terminated early or not renewed, this is usually a redundancy situation. Where the employee has at least 2 years continuous service, this will mean they are entitled to receive a redundancy

payment. Managers should seek advice by contacting HR if they are unclear as to whether the termination of a fixed-term contract ending is a redundancy or not.

To terminate a fixed-term contract before its end date, the contract must state that it may be terminated early; otherwise payment could be due to the employee until the stated end date. The employee is entitled to the requisite notice period.

### ***Termination of a fixed-term contract – a single redundancy situation***

Where the termination of a fixed-term contract is by reason of redundancy, the line manager should seek HR advice. A single redundancy situation is where there is only one employee involved. Where this is the case, this process should be followed for each individual. The following steps should then be carried out:

1. The manager should determine the timescale required to follow the process below. It is necessary to allow sufficient time for consultation to be carried out, a decision to be finalised and the employer to then serve statutory or contractual notice period, whichever is the greater, up to the date on which their fixed-term contract is due to end. Where the employee has at least one year's continuous service and the reason for termination is redundancy, the principles of the redeployment policy should apply. This includes the requirement to place the employee on the redeployment register for 3 calendar months. The consultation period should be not less than one week, and may need to be longer depending on the circumstances – advice regarding this may be obtained from HR Services.
2. The manager should arrange a meeting with the employee to start formal consultation on the proposal. At the meeting, the manager should give the employee a [letter](#) proposing to terminate their fixed-term contract which provides details of the business reason(s) why it is proposed to terminate the contract and sets out the arrangements for consultation, whereby the employee will have the opportunity to ask questions and put forward suggestions about the proposal. The employee may be accompanied at the meeting by a trade union representative or work colleague. A copy of the letter to the employee should also be sent to the recognised trade unions.
3. When the consultation period has ended and any comments received have been considered, the manager should arrange a meeting with the employee to advise them of the outcome. The employee may be accompanied by a trade union representative or a work colleague. If the manager decides that the contract should still be terminated, this must be confirmed to the employee.
4. HR Services should then send a letter to the employee giving notice of the termination of their employment, setting out their entitlement to redundancy pay (where applicable) and confirming the date of

redundancy, in accordance with the employee's statutory or contractual notice period, whichever is the greater.

5. The manager should submit the Leavers Notification to HR.

The employee has the right of appeal against their dismissal on the grounds of redundancy in accordance with the appeal policy and procedure.

### ***Fixed-term employees on maternity leave, adoption leave or maternity/adoption support leave in a redundancy situation***

Managers are strongly advised to seek advice from HR Services if any affected employees are in this position. Employers have a statutory duty to offer employees who, during their maternity leave, adoption leave or the additional paternity leave element of their maternity/adoption support leave find that their post is confirmed as or selected for redundancy, any suitable vacancy as an alternative to redundancy prior to the termination of their employment.

Therefore such an employee should be given redeployment status regardless of their length of service and offered any suitable alternative post over other employees with redeployment status.

To be a suitable alternative for these purposes, the work should be suitable and appropriate for the employee in the circumstances and should be on terms and conditions and in a capacity and location which are not substantially less favourable than their previous post. Advice should be sought on what might amount to suitable alternative employment from HR Services.

An employee who is on maternity leave, adoption leave or maternity/adoption support leave during the formal consultation period, but has returned to work prior to selection for redundancy (stage 3 above), is not entitled to this preferential treatment, but managers must ensure that such an employee is fully engaged with during the consultation period.

### ***Termination of a fixed-term contract – not a redundancy situation***

Where the termination of a fixed-term contract is not a redundancy situation, the line manager should carry out the following steps:

1. Before the employee's statutory or contractual notice period, whichever is the greater, is due to start, the manager should issue the employee with a letter proposing to terminate their fixed-term contract together with the reason for this ([a template letter is available](#)). The letter should offer the employee the opportunity to attend a meeting to discuss the termination or non-renewal of their contract.
2. If the employee does not wish to meet, the manager should then submit the Leavers Notification to HR and send the employee a letter confirming termination of their employment and advising them of their right of appeal ([a template letter is available](#)).

3. If the employee would like to have a meeting, the manager should arrange this as soon as possible. At the meeting the manager should explain the reason for the need to terminate or not renew the fixed-term contract and the employee should be given the opportunity to put forward alternative proposals which should be considered by the manager. The employee may be accompanied by a trade union representative or work colleague.
4. If, following the meeting, the manager decides that the contract should still be terminated, the manager should confirm their decision to the employee verbally, and submit the Leavers Notification to HR and send the employee a letter confirming termination of their employment and advising them of their right of appeal ([a template letter is available](#)).

The employee has the right of appeal against the termination of their contract, as set out in the [Appeal Policy and Procedure](#).

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## Appendix A – Continuous service

Continuous service refers to a single period of unbroken service. Service is usually broken if one contract of employment follows another with a gap of more than a week and two weekends.

### **Successive contracts with Charnwood Borough Council**

Charnwood Borough Council counts as one employer so a series of contracts in one or more sections or directorates can therefore provide an employee with continuity of service and attendant employment rights, including the right to receive a redundancy payment (if applicable).

### **Successive contracts with local authorities and other public service bodies**

Under the Redundancy Payments (Continuity of Employment in Local Government etc.) Modification Order 1999 (as amended) (the RPMO), a series of unbroken contracts with local authorities and certain other specified public service bodies gives an employee continuity of service in respect of certain specified employment rights, including the right to a redundancy payment based on all their continuous service.

For further information about the bodies covered by the RPMO or details of the continuous service of an individual employee, please contact HR.

### **Continuous employment**

Continuous employment refers to a continuous period of employment with the same employer. The continuous period may be the result of a single contract or a succession of fixed-term contracts.

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