



Holy Trinity CE Primary School and Nursery

Fixed Term Contract Protocol

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PROTOCOL AND PROCEDURE FOR THE USE OF FIXED TERM CONTRACTS

1. INTRODUCTION

1.1 The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 which came into force on 1 October 2002 are designed to ensure that fixed term employees are treated no less favourably than comparable permanent employees.

1.2 One of the additional aims of the regulations is to prevent the abuse of employees, arising from the use of successive fixed term contracts.

1.3 A fixed term contract is one that comes to an end upon a specified date, when a specific task has been completed, or when a specified event does or does not happen. A list of approved reasons for fixed term contracts is set out at [Appendix A1](#).

1.4 When a fixed term contract comes to an end, this is viewed in law as a dismissal. Appropriate steps must be followed by the employer (as determined by the Dispute Resolutions Regulations 2004 which came into force on 1 October 2004) to ensure that the dismissal is fair.

1.5 Failure to follow the statutory procedure could lead to a claim of unfair and/or wrongful dismissal, subject to an individual's requisite qualifying service i.e. at least one year's continuous service.

1.6 In addition, the regulations state that if an employee has been continuously employed for a period of 4 years from 10 July 2002 and has been placed on two or more successive fixed term contracts, the contract will be treated as if it were permanent unless there is objective justification for the contract continuing on a fixed term basis.

1.7 In view of the increased legislation in this regard, the following protocol therefore provides a framework under which fixed term staff will be employed and supported by the school and sets out the obligations of the Governing Body to ensure that fixed term employees are treated fairly, in accordance with best practice and current employment legislation.

2. STATEMENT

2.1 The Governing Body of Holy Trinity CE Primary School and Nursery recognises that on occasions, there will be a genuine need to engage staff on a fixed term contract, for example to cover a period of maternity or sick leave, or to fill a short-term vacancy while the post is advertised on a permanent basis.

2.2 In such circumstances, the Governing Body of Holy Trinity CE Primary School and Nursery is committed to ensuring that the purpose of the post and the reason for it being offered on a fixed term basis is clearly understood and communicated from the outset of the recruitment process.

2.3 Fixed term contracts will not be used for ascertaining an individual's suitability for a post, as this would not be deemed to be a genuine fixed term contract. The relevant probation periods should be used where appropriate.

2.4 The Governing Body of Holy Trinity CE Primary School and Nursery acknowledges that legislation now limits the total duration of successive fixed term contracts to four years

and agrees to grant permanent status to an employee who has completed four years' continuous service on a fixed term contract (which would otherwise be renewed or extended) unless there is objective justification for the contract continuing on a fixed term basis.

2.5 The expiry and non-renewal of a fixed term contract is a dismissal in law and the appropriate procedure will be followed, as set out in sections 3.4. and 3.5/3.6 below.

3. PROTOCOL

3.1 Assessing the need for a fixed term contract

3.1.1 The Governing Body will determine whether a post should be appointed on a permanent or temporary/fixed term basis, depending on the specific requirements for the post.

3.1.2 It is essential that schools demonstrate that there are transparent, necessary and objective reasons for placing a post on a fixed term contract. Fixed term contracts should only be used for the reasons outlined at [Appendix A1](#). If a school wishes to advertise and appoint to a post falling outside the scope of the reasons listed, advice should be sought from an HR Officer.

3.2 Recruitment process

3.2.1 The Governing Body of Holy Trinity CE Primary School and Nursery will provide clarity from the outset as to the purpose of the post, why it is being offered on a fixed term basis and the circumstances under which the contract is terminable.

3.2.2 In pursuance of the above, the Governing Body of Holy Trinity CE Primary School and Nursery will ensure that full details of the fixed term contract are provided in the advert and job details sent to prospective applicants. A copy of the protocol will also be included in the job application pack.

3.2.3 Details as to why the post is being offered on a fixed term basis should be reaffirmed during the interview process and when the verbal offer of appointment is made.

3.2.4 All contracts of employment will confirm the full details of the fixed term nature of the appointment and will clarify the date on which the contract expires or specify the relevant notice periods, where applicable.

3.3 Ending the fixed term contract – reason for dismissal

3.3.1 As soon as it is proposed not to renew a fixed term contract when it expires, the headteacher in consultation with a Human Resources Officer as appropriate, will determine the reason for dismissal, and therefore which procedure will apply.

3.3.2 The majority of fixed term contracts are not renewed due to a reduction in work of a particular kind, and therefore for reason of redundancy. In these cases, the procedure set out at 3.5 and 3.6 should be followed.

3.3.3 In cases of individuals whose contracts are ending for some other substantial reason (SOSR), the modified procedure as set out at 3.4 will apply. The following are examples of fixed term contract expiry and non renewals for SOSR:

- Providing cover for maternity/adoption leave
- Providing cover for sick leave

- Providing cover for a secondment
- Trainees employed on the GTP scheme, who are supernumerary to the school staffing structure

3.4 Ending the fixed term contract – some other substantial reason procedure

3.4.1 As soon as it proposed not to renew a fixed term contract when it expires, the headteacher should informally notify the individual of the situation and invite them, in writing, to a meeting to discuss the termination/non-renewal of the contract. The employee should be advised of their right to representation at the meeting. **(See Model Letter 1)**

3.4.2 The meeting should be held with the headteacher to consider the reasons for the contract termination/non-renewal and to provide the opportunity for the individual to make representations.

3.4.3 Following the meeting, the individual will be notified verbally of the outcome by the headteacher and this will be followed up in writing.

3.4.4 Where it is decided that employment should terminate the letter will confirm the end of the contract, notice arrangements (where applicable) and the individual's right of appeal. **(see Model Letters 2, 3 or 4 as appropriate).**

3.4.5 In such circumstances that an individual exercises their right of appeal, the Governing Body should convene a meeting of an appeals panel, which will meet to consider the decision of the headteacher and any supporting paperwork, against the individual's appeal. The constitution of the appeals panel will be as set out in the Redundancy Policy and Procedure (see footnote at 6.10.1)

3.4.6 The individual has a right to be accompanied at this appeal meeting and will be advised of the outcome accordingly **(see Model Letters 5 and 6).**

3.5 Ending the fixed term contract –defining the selection pool for Redundancy

3.5.1 As soon as it is proposed not to renew a fixed term contract when it expires, the Governing Body of Holy Trinity CE Primary School and Nursery will decide whether the full redundancy procedure or the modified procedure outlined in section 3.6 should be followed.

3.5.2 In cases whereby a member of staff has held a number of different fixed term posts within the school over a substantial period of time, it may be appropriate for the selection pool to be widened out and the full redundancy procedure invoked. For example, a 1:1 TA who has worked with different children over the years and also undertaken general TA duties within the school. The pool will also need to be widened out where the expiry date of the fixed term contract is approaching, but the actual work relating to the contract is still clearly required, even if there is a general need for reduction in work of that kind due to budget reductions/falling rolls. In this situation, ending the contract without going through a wider redundancy selection process is likely to be deemed to be unfair. This is because the reason for the non-renewal of the contract is not that the purpose has ended, but for another reason, namely that there is a general need for a reduction of work of a particular kind. Selection of an employee on a fixed term contract in these circumstances is contrary to the Fixed Term Workers Regulations.

3.5.3 However, in such circumstances that an individual has been appointed to a fixed term contract that was agreed for a specific purpose and the understandings and expectations around the end date were clear from the outset, without the nature of the role

significantly changing or evolving since that time and the work of the post is genuinely ceasing at that time, the selection pool will be that one post.

3.5.4 In any event, schools are strongly advised to contact HR to discuss the specific circumstances of each case and to do this allowing sufficient time for either process to be followed (approximately 2 terms for the full redundancy procedure and 6-8 weeks for the modified procedure set out below).

3.6 Ending of fixed term contract – modified redundancy procedure

3.6.1 In consultation with HR, where the decision has been made to follow the modified procedure to propose the termination/non-renewal of a fixed term contract when it expires (as set out in 3.5.1 above), an individual consultation meeting with the headteacher should be arranged with the affected member of staff.

3.6.2 The individual should be given sufficient advance notification of the meeting and be advised of their right to be accompanied to the meeting. The meeting should include a discussion of the reason(s) for the proposed redundancy, the employee's personal situation and any alternative work within the school. The employee should be provided with the opportunity to ask questions about their personal position, and to present any alternatives as a way of mitigating the redundancy (**see Model Letter 7**).

3.6.3 Following the individual consultation meeting, if a decision is made to proceed with the redundancy, a staffing committee meeting should be arranged to consider the circumstances of the fixed term contract coming to an end.

3.6.4 The headteacher should draft a report setting out the reasons for the proposal and write to the individual, enclosing a copy of the report, outlining why the school is considering the termination/non-renewal of the fixed term contract and inviting them to attend the meeting to discuss the matter further. The letter should also advise the individual of their right to representation (**see Model Letter 8 and Appendix A2**).

3.6.5 During the meeting, the contents of the headteacher's report will be discussed in full and the individual given the opportunity to state their case. In the event that the individual declines to attend the meeting, they should be advised to put this in writing to the Chair of Governors.

3.6.6 Following receipt of any individual representation, the staffing committee will need to consider the full facts of the situation and make a decision to accept the report unamended, accept the report in the light of representations received, or to reject the report.

3.6.7 Following the meeting, the individual will be notified verbally of the outcome and this will be followed up in writing.

3.6.8 Where it is decided that employment should terminate the letter will confirm the end of the contract, notice arrangements (where applicable) and the individual's right of appeal. (**see Model Letter 9, 10 or 11 as appropriate**).

3.6.9 Where relevant (i.e. if a member of staff has two or more years' continuous service), financial approval will need to be obtained from the Local Authority and the Head of Human Resources, as delegated will authorise the redundancy payment.

3.6.10 At the point at which individual's are notified of the termination of their contract, an HR officer will work closely with the individual and the school to seek suitable alternative employment, in accordance with the school's Redeployment Policy.

3.6.11 In such circumstances that an individual exercises their right of appeal, the Governing Body should convene a meeting of an appeals panel, which will meet to consider the decision of the staffing committee and any supporting paperwork, against the individual's appeal. The constitution of the appeals panel will be as set out in the Redundancy Policy and Procedure (see footnote at 6.10.1)

3.6.12 The individual has a right to be accompanied at this appeal meeting and will be advised of the outcome accordingly (**see Model Letters 12 and 13**).

Appendix A1

List of reasons for temporary employment

1. To cover maternity leave (termination on future occurrence, with notice)
2. To cover sick leave (termination on future occurrence, with notice)
3. To cover adoption leave (termination on future occurrence, with notice)
4. To cover paternity leave (termination on future occurrence, with notice)
5. To cover paid leave of absence (termination at end of fixed term)
6. To cover unpaid leave of absence (termination at end of fixed term)
7. To cover the secondment of the substantive postholder (termination at end of fixed term)
8. On a short-term basis to cover a vacancy pending permanent recruitment to the post, (which should be for no more than two terms), (termination at end of fixed term or on future occurrence, with notice)
9. To cover a temporary reduction in hours of substantive postholder (termination at end of fixed term)
10. To cover the special needs of a statemented pupil (termination on future occurrence, with notice)
11. To undertake a project (termination at end of fixed term)
12. Graduate Teacher Scheme (termination at end of fixed term)
13. Linked to fixed term external funding (termination at end of fixed term)

Any other reasons should be discussed with your HR Officer prior to advertising.

Appendix A2

MODEL SUMMARY REPORT TO STAFFING COMMITTEE

1. INTRODUCTION

- 1.1 The purpose of this report is to outline the circumstances of a fixed term contract within Holy Trinity CE Primary School and Nursery coming to an end.
- 1.2 The termination of the contract is necessary due to the requirement for <insert details of nature of work> to be undertaken ceasing from <insert date>.
- 1.3 The Staffing Committee are asked to consider the report and make a decision in respect of the proposed termination.

2. BACKGROUND

- 2.1 The post of <insert Job Title> was advertised and appointed on a fixed term basis for a period of <insert number> months/years for the following reasons <insert details e.g. wording from contract>.
- 2.2 The individual <insert name> was appointed to the post on the clear understanding that the contract would come to an end on <insert date> or when the requirement for the work to be undertaken ceased.
- 2.3 The school is unable to renew the contract for the following reasons <insert details> and therefore needs to consult with the individual postholder on the ending of the contract.

3. CONSULTATION PROCESS

- 3.1 <insert name> attended an individual consultation meeting with the headteacher on <insert date>. The meeting included a discussion on the reason(s) for the contract not being renewed, the employee's personal position and any alternative work within the school. <insert name> requested that the following points be considered <insert if applicable>.
- 3.2 A letter was sent to the individual concerned on <insert date> further setting out the reasons why it is proposed that the contract comes to an end (see Model Letter 1).
- 3.3.1 Notification has been given that <insert name of postholder> will/will* not be making representation at this meeting of the staffing committee (**delete as applicable*) or the individual has sent written representation in response to the proposals and this is attached to this report.

4. CONCLUSION

- 4.1 The Staffing Committee is asked to consider the contents of this report and the representation received from the individual (if applicable) and come to a decision with regards to the ending of the fixed term contract on <insert date>.

Name
Headteacher
School
Date