

Committee: FINANCE AND RESOURCES

Date: 8 February 2008

Report: FIXED TERM CONTRACTS

Purpose of Report

1. To seek Members approval of a new Fixed Term Contract Policy and Procedure.

Strategic Planning Framework

2. The information contained in this report is consistent with the Authority's statutory purposes and it's approved strategic planning framework:

Best Value Performance Plan

"Plan and manage all aspects of the Authority's business so as to make the most effective use of our resources"

Background

3. The Fixed-Term Employees Regulations mean that all fixed term employees have the right not to be treated less favourably than comparable permanent employees, unless the different treatment can be objectively justified. It is also essential that the Statutory Dismissal and Disciplinary Procedures are complied with when a fixed term contract expires.
4. The Appendix contains a proposed Fixed Term Contract Policy and Procedure which it intended will ensure compliance with the appropriate legislation; this document has been reviewed by, and agreed with, the Authority's Senior Management Team.
5. This policy has been written taking full account of Equality Legislation.

RECOMMENDATION

6. That members approve the attached policy.

Christine Pratt
Senior Administrative Officer

24 January 2008
Background Documents: None



FIXED TERM CONTRACT POLICY AND PROCEDURE

1. INTRODUCTION

- 1.1 A 'Fixed-Term employee' is defined as a person with a contract of employment that is due to end when a specified date is reached, a specified event does or does not happen or a specified task has been completed. There may be occasions where it is appropriate for the Authority to recruit a 'fixed term employee', particularly in relation to work which is externally funded, and as a result this may become more frequent practice. It is essential that the Authority complies with legislation pertaining to fixed term employees, and this document includes the Authority 'policy' on fixed term employees, as well as procedures to follow to ensure compliance with the legislation.

2. THE LAW

- 2.1 Under the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, all fixed term employees have the right not to be treated less favourably than comparable permanent employees because they are fixed-term, **unless the different treatment can be objectively justified**. A 'comparable employee' is someone working for the Authority who does the same or broadly similar work, and the comparator's skills and qualifications must be taken into account where they are relevant to the job.
- 2.2 'Less favourable treatment' can occur when a fixed-term employee does not get a benefit, whether it is contractual or not, that a comparable permanent employee gets, or is offered a benefit on less favourable terms.
- 2.3 If a fixed-term employee is treated less favourably than a comparable permanent employee, that employee can make a complaint to an employment tribunal who may make an order of compensation. There is no limit to the level of compensation but it will be related to any financial loss suffered by the complainant.
- 2.4 The regulations do not apply to agency workers, apprentices and work experience placements of one year or less which are undertaken as part of a higher education course.

3. EQUAL TREATMENT PRINCIPLE

- 3.1 It is Authority policy not to treat fixed term employees any less favourably than comparable permanent employees. Therefore under no circumstances will the Authority dismiss or select for redundancy a fixed term employee **purely because they are fixed term**. Please note that as detailed in section 7, on some occasions the ending of a fixed term contract can still fall under the definition of a redundancy dismissal.

- 3.2 Fixed-term employees will be provided with the same opportunities for training and development as permanent employees, unless less favourable treatment can be objectively justified by the Authority.
- 3.3 All fixed-term employees will be notified of any permanent vacancies via the intranet, in accordance with the procedure for permanent employees (unless the Internal Appointments Policy applies).

4. RECRUITMENT

- 4.1 It is the Authority's policy that its employees will, as a norm, be employed on permanent contracts of employment, terminable on the giving of notice by either party. Where, however, the need for a particular job to be done is clearly of a fixed term nature (as in the definition in section 1), the position will be advertised on a fixed term basis, and the offer to the successful candidate will be for a fixed term.
- 4.2 A position will generally be advertised and offered on a fixed term basis where:
- It is known in advance that a particular job will come to an end on a specific date;
 - The employment is for the purpose of completing a particular task e.g. setting up a new database;
 - The employment is for the purpose of covering for an absent employee who is on sick leave, maternity/paternity/adoption leave, or parental leave. The fixed term contract will conclude when the absent employee returns or does not return.
 - The post is dependent on external funding and it is thought likely that the funding will be available only for a specified period of time;
 - The employment is to cover for a particular peak in demand and for which the contract expires when demand returns to normal.
- 4.3 All fixed term contracts must therefore clearly state:
- The date on which employment will come to an end; or
 - The details of the task to be completed, and that once completed this will mean the contract has come to an end; or
 - Employment will terminate when the absent employee returns to work and provided that the replacement employee is dismissed to enable the employee who has been absent due to maternity or other absence to return to work.
- 4.4 The Personnel Section is responsible for the issuing of fixed term contracts.

5. EXTENDING OR RENEWING A FIXED TERM CONTRACT

- 5.1 Fixed-term contracts may be extended or renewed by the Authority for a variety of reasons, for example:
1. The task is not yet completed
 2. Extension of time-limited external funding
 3. Other work has arisen for which the employee would be suitable (renewal)
- 5.2 The extension or the renewal of the fixed-term contract can only be affected with the consent of the employee. The employer cannot insist on an extension or on a renewal. Once the relevant line manager has discussed the extension/renewal of the fixed term contract with the employee, the Personnel Section will issue a letter confirming the arrangement.

- 5.3 Under regulation 8 of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, employees who have acquired four years' continuous employment under a series of fixed term contracts become permanent employees, **unless their continuing employment under a fixed term contract can be objectively justified.**
- 5.4 The Authority must, therefore, consider carefully any proposal to extend an employee's fixed term contract up to 4 years' (continuous employment) as an employee may subsequently claim that they are being treated less favourably because they are not a permanent employee.
- 5.5 If a fixed-term employee thinks they have become a permanent employee (regulation 9), they can make a written request to the Authority for a written statement confirming that they are a permanent employee. The fixed term employee must then be provided with a statement giving reasons why they have not become a permanent employee.
- 5.6 If a fixed-term contract expires and the employee continues working for the organisation without any action on the part of the Authority in terms of offering a renewal or extension of the fixed term contract, the effect is likely to be that the employee will be regarded as working under a normal, open-ended contract i.e. permanent.

6. EXPIRATION OF A FIXED TERM CONTRACT

- 6.1 Since a fixed-term contract contains the date on which it expires, strictly speaking it is not necessary to give an employee on such a contract, notice. However in order to fulfil statutory obligations it is essential to meet with the employee as detailed in paragraph 6.3 onwards, prior to the contract coming to an end.
- 6.2 If the contract is terminable before its expiry, the contractual notice period will apply. There may be a number of reasons why the contract needs to be terminated earlier than expected:
- The employee may prove unsuitable (please see the 'Managing Probationary Periods' and 'Managing Performance, Capability' policies) ;
 - The work may be completed more quickly than anticipated;
 - The organisation's economic condition may make the continuation of the contract unaffordable (see section on redundancy and fixed term contracts);
 - The need for work diminishes (see section on redundancy and fixed term contracts).
- 6.3 With the introduction of the Statutory Dismissal and Disciplinary Procedures (SDDP) (*Employment Rights Act 2002 (Dispute Resolutions) Regulations 2004*), where an employee is on a fixed term contract which is not being renewed or extended, they must be given the same protection from dismissal as employees on permanent contracts i.e. the SDDP must be implemented. The expiry of a fixed term contract without renewal under the same contract is dismissal in law. It is no longer possible to put a clause into a fixed term contract in which the employee agrees not to make a claim for unfair dismissal or redundancy when the contract comes to an end.
- 6.4 **Failure to comply with the SDDP will render an expiration of a fixed term contract dismissal automatically unfair (if the employee is eligible to make a claim i.e. has one years' service). However it is the Authority's policy that the SDDP should always be followed, regardless of length of service to reflect best practice.**

Procedure to follow:

- 6.5 **STEP ONE:** The employee must be written to explaining the situation i.e. the fixed term contract is coming to an end and that they are being invited to a meeting to discuss options. Options to discuss include highlighting other vacancies within the Authority or arrangements for seeking vacancies. The line manager must ensure that a date is arranged well in advance of the contract expiration date. The Personnel Section will be responsible for compiling the letter inviting the employee to a meeting; this will then be sent to the appropriate line manager for agreeing before sending to the employee
- 6.6 **STEP TWO:** A meeting must be held between the employee and the manager to discuss the situation.
- 6.7 **STEP THREE:** The employee will be informed of the outcome of the meeting and be informed of their right of appeal. Personnel will again prepare this letter. Any appeal should be submitted to the relevant Head of Department in writing detailing the reasons for their appeal. The Head of Department will arrange a final meeting within ten working days of the letter being received. On occasions where the line manager at the 'Step Two' meeting is the Head of Department the appeal will be to the Chief Executive. On occasions where the line manager at Step Two is the Chief Executive then the appeal will be heard by two members of SMT (not previously involved).
- 6.8 Throughout this process, the employee is entitled to be accompanied at any meeting that forms part of the procedure, by a fellow worker, Union Representative, or full-time Trade Union Official. The meeting may be postponed, at the employee's request, for up to five working days, if the employee's chosen companion is not available to attend on the date set for the meeting in question.

7. INTERACTION OF FIXED TERM CONTRACT EXPIRY AND REDUNDANCY

- 7.1 As stated in the previous section, expiration of a fixed-term contract without renewal under the same contract is a dismissal in law. Dismissal takes place when the fixed-term contract expires on the nominated termination date.
- 7.2 Where a staff member is employed on a fixed term contract to cover a staff absence, the dismissal of the replacement employee will be potentially fair provided that it is stated in writing at the time of recruitment that their employment will terminate when the absent employee returns to work and provided that the replacement employee is dismissed to enable the employee who has been absent due to maternity or other absence to return to work.
- 7.3 Non-renewal/non-extension of a fixed term contract can also be considered to be dismissal for the reason of redundancy (which is another potentially fair reason for dismissal). The reason for dismissal will not always be redundancy and will depend on the circumstances of the case. Further information can be found in the Authority's *Reorganisation and Redundancy Policy and Guidance Note*. Advice should also be sought from the Personnel and Training Officer.
- 7.4 Where the dismissal is considered to fall under the heading of redundancy, the Authority will seek to identify whether there is any alternative work available within the Authority which the employee could reasonably be offered. If suitable alternative employment of a similar nature and grade is available **at the time of redundancy**, and if work is not offered to the employee prior to the expiry of the fixed-term contract, then this could render the employee's dismissal unfair even if the statutory dismissal procedure has been followed. In accordance with the Authority's Reorganisation and Redundancy Guidance Note where

there is more than one staff member (including any fixed term employee(s) affected by the ending of a fixed term contract) considered to fall under the heading of redundancy then the employees will be given preferential treatment before an external or Authority wide internal recruitment process is undertaken. Each staff member affected will be invited to apply for the vacancy/vacancies and a selection process will take place.

- 7.5 Where alternative work is available (which can include a renewal of a fixed term contract) and provided that the new contract has been offered to the employee before the expiry of the original contract, and provided that it is set to start within four weeks of the termination of the original contract, there will be no entitlement on the employee's part to a statutory redundancy payment.
- 7.6 It is important that the SDDP is still followed in situations of 'redundancy'.
- 7.7 An employee who has at least two years continuous service employed on a fixed term contract is eligible to claim statutory redundancy pay unless paragraph 7.5 applies.