**ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD**

**FIXED-TERM WORKING POLICY**

**Covers:**

* Use of fixed-term contracts
* Objective reason for a fixed-term contract
* Terms and conditions
* Requesting a fixed term appointment
* Ending a fixed term contract early
* Reviewing a fixed term contract
* Non-renewal of a fixed term contract

Royal Borough of Windsor & Maidenhead

**Fixed-Term Working Policy**

**1. Introduction**

* 1. This policy has been developed to ensure the council acts in accordance with the requirements of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

* 1. It is the council’s policy that its employees will, as the 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 temporary, the contract of employment offered will be for a fixed term.
  2. Fixed-term contracts will generally be offered 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.
* the employment is for the purpose of replacing an employee who is absent from work for a period (for example on maternity leave).
* the post is dependent on external funding, and it is thought likely that the funding will only be available for a temporary period of time.

1. **Use of Fixed-Term Contracts**
   1. The council will only use fixed-term contracts where there is an objective and justifiable reason for their use. It is not possible to completely eliminate the use of fixed-term contracts, although their use should be kept to a minimum, consistent with legislation and this policy.
   2. Issues of performance or quality will not be used to establish whether or not a fixed term contract should be used. Performance and quality issues will be dealt with in accordance with the appropriate council procedure.
   3. The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 lay down a statutory limit of four years on the use of successive fixed-term contracts unless the use of successive fixed term contracts can be objectively justified. A fixed-term contract that is renewed or extended will automatically be deemed to be permanent after four continuous years’ employment, unless the fixed-term can be justified for good business reasons. However, there is no restriction on an initial fixed-term contract; there has to be a series of two or more successive contracts lasting at least four years in total. Successive fixed-term contracts of four years or more will be reviewed regularly by the HR Unit and permanent status confirmed where appropriate following discussions with the appropriate Service Head and the Leader of the Council through the council’s approval process

**3. Objective Reasons for the Use of Fixed-Term Contracts**

3.1 There will be occasions where the initial or continued use of fixed term contracts is justified. The council is committed to providing the reason for any appointment to or renewal of a fixed-term contract at the time of that appointment or renewal.

3.2 The use of a fixed-term contract may be justified by reference to one or more of the following reasons:

* Where there is no reasonably foreseeable prospect of short-term funding being renewed nor other external or internal funding becoming available.
* To cover for specific absences e.g. sickness, secondment, maternity leave, adoptive leaves unpaid leave of absence.
* Where there is a demonstrable need in the short-term for defined, specialist input from practitioners in a particular area, or where there is evidence that the post requires specialist expertise or recent experience not already available within the council
* Where the contract is clearly defined as being for training or career development for a specific limited period.
* Where the contract is to provide cover for a secondment.
* Where the customer or other business demand can be clearly demonstrated as being subject to particularly uncertain demand.
* Re-engagement following retirement to complete activities, to transfer knowledge, or to provide specialist input.
* Where a post has been created to satisfy a short-term need. E.g. elections work

Any objective justification referred to will be reviewed in light of developing case law and legal thinking.

1. **Terms and Conditions**
   1. Any employee engaged on a fixed-term contract will be entitled to terms and conditions of employment that are no less favourable on a pro rata basis than the terms and conditions of a comparable permanent employee, unless there is an objective reason for offering different terms. It is the council’s expectation that the same terms and conditions will be offered to employees on fixed-term contracts, any potential objectively justifiable reasons for a variance require approval from the Head of HR.
   2. Fixed-term employees will be treated in the same way as comparable permanent employees in relation to opportunities for training, promotion, transfer and appraisal.
   3. Employees engaged on fixed-term contracts are encouraged to apply for permanent vacancies and should be signposted to these on the council’s Website.
   4. Fixed-term employees are eligible to join the Local Government Pension Scheme if their contract is due to last in excess of 3 months. In addition, any employee’s whose earnings meet the threshold for auto enrolment into the pension scheme will be enrolled immediately.
2. **Requesting a Fixed-Term Appointment**

5.1 In accordance with the requirements of the regulations it is essential that the use of every fixed-term contract is strictly managed within an agreed framework.

5.2 Where a request is made through the council’s request to recruit process to advertise or issue a fixed term contract the manager making the request must provide an objective and justifiable reason (making reference to section 2.2 above). Details of any relevant circumstances should also be included to demonstrate that the use of a fixed-term contract is objectively justifiable within the terms of this policy and the requirements of current employment legislation.

5.3 The HR Business Partner Team should be contacted in the first instance for advice or if there is any doubt about the validity of using a fixed-term contract.

1. **Early Termination of a Fixed-Term Contract**

6.1 In rare circumstances it may be necessary to terminate a fixed term contract earlier than the date specified for example if the postholder decides to return early from maternity leave. In these circumstances notice must be provided in accordance with the ‘Notice’ clause in the employee’s contract. If the need to terminate early arises from a reduction in workload contact the HR Business Partner team.

**7. Review at the End of a Fixed-Term Contract**

7.1 The expiration and non-renewal of a fixed-term contract is a dismissal and needs to be treated as such following a fair, agreed process.

* 1. At a reasonable point in advance of the end of the fixed term contract, it is the managers responsibility to review the contract. This should involve exploring whether the contract can be extended or made permanent, and if not, whether alternative work can be identified. Any extension to a fixed term contract or conversion to permanent status requires approval.
  2. HR will issue an email reminder to managers 2 months prior to the end of a fixed term contract but managers are encouraged to review fixed term contracts as soon as is reasonably practicable.

**8. Non-Renewal of a Fixed-Term Contract**

* 1. If it is not possible to extend the contract, then the process to be followed depends on the reason for the non-renewal. Reasons for non-renewal fall into two general categories.

1. **Redundancy**

Cessation or reduction in the work the person was employed to carry out, the reason for this dismissal is normally classified as redundancy. This would include non-renewal of grant funding.

**2. Some other substantial reason**

The person was employed to provide cover for a specific time limited event such as maternity leave, sick leave or secondment, or employed on a trainee programme which has been completed. The reason for this dismissal is normally classified in legal terms as for ‘some other substantial reason’. It will not normally involve a reduction in head count e.g. the fixed-term member of staff leaves and the substantive postholder returns from maternity leave.

* 1. In some cases the expiry date of the fixed-term contract may have already been specified at the outset and so there is no requirement to serve notice again, however good practice should be adhered to meaning reasonable steps should be taken to ensure communication occurs with the employee at the earliest opportunity and within good time of the original end date.
  2. If the individual is not undertaking a unique role and could be considered to be part of a pool if there are others undertaking the same role or similar work, Managers should contact the HR Business Partner team for further advice.

1. **Process for non-renewal of a fixed term contract – Redundancy**
   1. Managers should contact the HR Business Partner team before commencing the procedure for non-renewal of a fixed term contract.
   2. Invite the employee to a meeting to discuss the forthcoming expiry of their fixed term contract. They may be accompanied at this meeting by a Trade Union Rep or workplace colleague if they so wish.

9.3 At the meeting advise the employee that their contract is coming to an end and make reference to the relevant clause in their contract. It should be explained to the employee that the council is not proposing to extend the contract and the reason(s) for this.

* 1. Explain that as the reason for the proposed non-renewal is the cessation or reduction in requirement for the work to be carried out then a potential redundancy situation exists.
  2. Inform the employee that this first meeting marks the start of a formal consultation period with them, the length of which will be advised by the HR Business Partner team but will not normally be less than 14 days or more than 30 days. Encourage their feedback and explain that the purpose of the consultation period is to explore whether there is any way to prevent their redundancy.
  3. Confirm that the council has a responsibility to seek alternative employment for them and if it is confirmed at the end of the consultation period that their contract will end, this redeployment search will continue until their termination date. They will be asked to complete a skills profile should they so wish to aid the search for alternative work.
  4. It should be noted that opportunities for redeployment are wholly dependent on the vacancies available at the time.
  5. At the time of the meeting or as soon as possible afterwards issue them with a confirmation letter and consultation document as appropriate. Managers should contact the HR Business Partner team for guidance and template letters.
  6. Employees with two or more year’s continuous Local Government service are entitled to a redundancy payment calculated in accordance with the Borough’s Redundancy and Early Retirement Policy.
  7. The provisions of the Borough’s Redeployment Policy in relation to pay protection do not apply to employees redeployed following the expiry of a fixed term contract.
  8. If upon the expiry of the consultation period it is concluded that the fixed-term contract will not be renewed and no alternative employment has been identified, it will be confirmed to the employee that their contract will terminate on the date previously specified. Alternative employment will continue to be sought until the termination date.
  9. There is no entitlement to any further notice period beyond the end date specified in the original contract.
  10. The employee has the right of appeal against the decision not to renew their fixed term contract. They must register their appeal in writing within 5 working days of receiving final confirmation that their contract will not be renewed clearly stating grounds for their appeal. Appeals will be heard by a senior manager not previously involved. The appeal will take place within 10 working days wherever possible, and the employee will be given at least 5 working days’ notice of the appeals hearing and may be accompanied by a Trade Union representative or work colleague.

9.14 Where a fixed-term employment contract comes to an end, irrespective of whether a redundancy payment applies, there is a right of appeal against the employment termination.

**10. Process for non-renewal of a fixed term contract – Some other substantial reason**

* 1. Managers should contact the HR Business Partner for their Service before commencing the procedure for non-renewal of a fixed term contract.
  2. Invite the employee to a meeting to discuss the forthcoming expiry of their fixed term contract. They may be accompanied at this meeting by a Trade Union Rep or workplace colleague if they so wish.
  3. At the meeting advise the employee that their contract is coming to an end and make reference to the relevant clause in their contract. It should be explained to the employee that the Council is not in a position to extend the contract and the reason(s) for this.
  4. The council will seek to identify suitable alternative work for them, and confirmation will be sought during the meeting as to whether or not the employee wishes to be redeployed. If the employee wishes a redeployment search to be carried out, possible limitations such as hours, travelling etc will be identified and discussed. Contact should then be made with the relevant HR Business Partner so that any redeployment opportunities across the council can be fully explored.

10.5 It should be noted that opportunities for redeployment are wholly dependent on the vacancies available at the time.

* 1. Following the meeting the Manager will write to the employee confirming that the fixed-term contract will come to an end on the specified date, re-iterating the reasons for the non-renewal of the contract and summarising the discussion with regard to redeployment. Managers should contact the HR Business Partner team for guidance and template letters.
  2. There is no entitlement to any further notice period beyond the end date specified in the original contract.

10.8 The employee has the right of appeal against the decision not to renew their fixed term contract. They must register their appeal in writing within 5 working days of receiving final confirmation that their contract will not be renewed clearly stating grounds for their appeal. Appeals will be heard by a senior manager not previously involved. The appeal will take place within 10 working days wherever possible, and the employee will be given at least 5 working days’ notice of the appeals hearing and may be accompanied by a Trade Union representative or work colleague.