

Public
Key Decision - No

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: New Policy – Fixed Term Contracts
Meeting/Date: Employment Committee – 20 September 2023
Executive Portfolio: Cllr Martin Hassall (MH)
Report by: Strategic HR Manager (NB)
Ward(s) affected: N/A

Executive Summary:

As the HR Team work through the policy review, we are reviewing if there are any policy gaps at the same time and it has been established that we do not have one for Fixed Term contracts. A new policy has been created to ensure that as an employer we are following the Fixed Term Work (FTW) Regulations 2002 which ensures that fixed term workers are not treated less favourably than comparable permanent employees.

Policy is attached for your information.

Recommendation(s):

The Committee is asked to consider and endorse the new policy.

2.1 PURPOSE OF THE REPORT

- 1.1 The report draws Committee attention to the new policy and ask for endorsement to implement the use of it.

2.2 WHY IS THIS REPORT NECESSARY/BACKGROUND

- a. The reason for this policy is to ensure that as an employer we are following the Fixed Term Work (FTW) Regulations 2002 which ensures that fixed term workers are not treated less favourably than comparable permanent employees.

b.

2.3 KEY IMPACTS / RISKS

- a. It is a statutory requirement for HDC to ensure Fixed Term workers are not treated any less favourably the comparable permanent employees.

2.4 WHAT ACTIONS WILL BE TAKEN/TIMETABLE FOR IMPLEMENTATION

- a. The policy will be added to our employment policy section of the intranet and highlighted to relevant managers.

2.5 LINK TO THE CORPORATE PLAN, STRATEGIC PRIORITIES AND/OR CORPORATE OBJECTIVES

[\(See Corporate Plan\)](#)

- a. To have an engaged and motivated workforce, as part of being a more efficient and effective council – through updated, clear employment policies.

2.6 CONSULTATION

- a. Senior Leadership Team, ERG and UNISON have been briefed and given the opportunity to review the proposed policy changes and support them.

2.7 REASONS FOR THE RECOMMENDED DECISIONS

- a. Adoption of the policy will ensure that HDC is following correct rules for Fixed Term workers.

2.8 LIST OF APPENDICES INCLUDED

Appendix 1 – Fixed Term Workers Policy

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Fixed Term Contract Policy

Version 1.1

<u>Version Control</u>			
<u>Version</u>	<u>Author</u>	<u>Date</u>	<u>Changes</u>
1.1		June 2023	New policy

Name of Policy:	Fixed Term Contracts
Person/posts responsible:	Strategic HR Manager
Date approved/adopted:	September 2023
Approved by:	Employee Committee
Review Date:	January 2025

1. Introduction

This policy on the use of fixed term contracts is based on the Fixed Term Work (FTW) Regulations 2002. These regulations aim to:

- Prevent fixed term employees from being less favourably treated than comparable permanent employees.
- Prevent abuse arising from the use of successive fixed term contracts.
- Improve access to training information on permanent jobs for fixed term employees.

Under the Employment Rights Act 1996 there is no break in statutory service if the employee works for the same employer, under different contracts, and there are no gaps of a statutory week or more between them. Therefore, a series of fixed term contracts, (even for different jobs), may be amalgamated for the purposes of qualifying conditions for unfair dismissal and other statutory rights.

Under the Redundancy Payment (Local Government) (Modification) Order 1983 we must recognise continuous service in local government organisations when calculating redundancy payments.

2. Policy statement

Huntingdonshire District Council (HDC) regards its employees as its most important asset, and that the quality of its employees has direct impact on the continued effectiveness of the Council and the standard of services provided.

HDC recognises that, at times, there is a justifiable business reason to employ staff on a fixed term contract, for a variety of reasons, such as maternity cover or to complete a short term project.

This policy intends to provide guidance on when to use fixed term contracts and how to manage them and should be read in conjunction with the Recruitment and Selection Policy.

3. Scope of policy

This policy applies to all employees, except those specifically excluded from the FTW Regulations i.e., employees engaged on:

- An apprenticeship scheme
- Publicly funded training and temporary work schemes
- Work experience placements
- Industry Placements

4. Definitions

For the purposes of this policy the following definitions apply:

Fixed term employee is an employee who is employed under a fixed term contract, i.e., an employment contract that ends on a specific date (which is fixed in advance), or ends automatically on the completion of a particular task or with the occurrence of a specific event, e.g. to provide cover until the permanent postholder returns from maternity leave.

Permanent employee is an employee who is employed under a contract which is open ended, i.e., it has no fixed end date.

5. Protection from less favourable treatment

In accordance with the Regulations a fixed term employee will not be treated less favourably than a 'comparable' permanent employee because of their fixed term status, unless the treatment can be 'objectively justified'.

For example, fixed-term employees will:

- Be subject to the same qualifying period(s) for benefits
- Have continuous service calculated in the same way
- Be given details of, and the opportunity to join one of, the recognised trade unions
- Be offered (and receive equal access to) appropriate training and development
- Be provided the same opportunities to secure permanent employment, including being given access to apply for internal vacancies

6. Advertising fixed term contract

The normal Recruitment & Selection rules apply:

- Positions expected to last for longer than 3 months should be advertised
- Positions should be advertised, wherever possible, as secondment opportunities (in order to protect the employment position of individuals who may have a number of years' continuous with us or local government service). Jobs may be advertised as fixed term/secondment opportunities to maximise the pool of candidates. Where a secondment is an option, this should be favoured over a fixed term contract for internal employees where possible.
- Applications shall be accepted from internal applicants who are not subject to a current capability action plan concerning performance, not subject to current formal investigations, disciplinary proceedings or not subject to a live formal disciplinary sanction. Where there are exceptional circumstances, line managers should contact their HR Business Partner.

7. Maximum duration of fixed term contracts

The use of successive fixed term contracts will be limited to 2 years, unless the relevant manager can objectively justify an extension.

The following reasons may provide objective justification to extend a fixed term contract beyond two years:

- The funding for the fixed term contract has been extended but is available for a limited period only.
- The piece of work/project a person was employed to undertake has been extended for a further period.
- The fixed term contract was advertised originally to cover a period of maternity leave, long-term absence or a secondment and the substantive post holder is going to be absent for longer than originally planned.

Where extension of a fixed term contract is objectively justified, the maximum legal period permitted is four years. If an extension beyond four years is required, the contract must automatically be made permanent.

Managers must be careful not to discriminate when extending or terminating fixed term contracts, e.g., a manager must not terminate a contract prior to an employee commencing maternity leave, when the contract ordinarily would have continued.

8. Enforced breaks between fixed term contracts

Forced breaks in fixed term contracts are not permitted. For example, a manager cannot impose a statutory break between contracts, i.e., a Sunday to Saturday break, in order to break an employee's continuity of service and their employment rights. Case law has determined that such 'forced breaks' between fixed term contracts are not legal.

9. Extending, or making fixed terms contracts permanent

Where a fixed term contract is being made permanent, Managers should complete the Vacancy Authorisation Form (VAF) and forward to the Recruitment Team to advertise the role

A selection process would normally be undertaken if there are a number of people undertaking the same role on a fixed term basis and there is only one permanent role.

10. Ending fixed term contracts

Any fixed term contract that is issued will clearly state the date the contract is due to end or specify the nature of the limiting event that will bring the contract to an end e.g., the completion of a specific piece of work, return to work of the substantive post-holder.

Managers should complete the Leaver Form when a fixed term appointment is ending.

Where an employee has more than two years' service the appropriate fair reason for dismissal will be applied. This is likely to be redundancy in the case where the work an employee has been contracted to undertake has ceased or diminished. The redundancy process will apply, and the employee may be eligible for a redundancy payment.

12. Ending fixed term contract early

Sometimes a service may need to terminate a fixed term contract before the specified end date or specified time limiting event. For example, if a piece of work is completed early or if the fixed term contract is being used to provide cover for an absent employee and they return to work early.

In these cases we must issue notice to terminate the contract early in line with the employee's contract of employment. Consideration must be given to length of statutory service and the appropriate reason for dismissal as outlined above.

13. Fixed term contract accepted to mitigate redundancy

Where an employee accepts a fixed term contract as suitable alternative employment to mitigate redundancy from another role, the end of the fixed term contract should be treated as a deferred redundancy.

If the employee has two or more years' continuous local government service, a redundancy payment may be payable at the end of the fixed term contract. Therefore, managers must be

aware that they may need to make provision for these costs when appointing to fixed term contracts.

14. Further information

Employees with questions about this policy should speak to their Line Manager. Managers who need further information on how to apply this policy should contact the HR team.