



BATH & WELLS Multi Academy Trust

'That they may have life, life in all its fullness' John 10:10

Guidance on the use of Casual (Zero Hours) Contracts, Agency Workers, Fixed Term Contracts and Core Hours Contracts

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1. Introduction

Employees within the MAT will normally be employed on a permanent basis, however it is recognised that schools within the MAT often receive funding on a year by year basis and sometimes need cover arrangements, therefore may need to engage workers on alternative types of contracts.

This guidance note aims to set out best practice when employing workers on agency, casual (zero hours), fixed term or core hour contracts.

2. Casual (Zero Hours) Contracts

2.1 Overview of Casual Contracts

Casual contracts are contracts given to workers who supply a specific need for work on a short term basis and have breaks between periods of work. There is no obligation for either the employer to provide work or for the worker to undertake the work offered. Work is on an ad hoc basis, usually to provide cover for unexpected, short term periods of absence. Workers contracts are with the MAT, they should have full pre-employment checks and their clearances through the school/MAT.

2.2 When to use a casual contract

A casual worker is best used where there is an immediate, short-term, unplanned demand for work, for example to cover an unexpected period of short-term sickness absence.

2.3 Employing a casual worker

Casual contracts should only be used where there is need for short term cover and should not be used where there is an ongoing need for work. Ongoing and regular work would require either a fixed term or permanent contract, dependant on the basis of the work. When casual or supply staff are recruited, the school should update the 'Casual/Supply Record'

held on the google drive. Schools may use the Casual/Supply record to find casual or supply staff to work at their school. The school may recruit staff for casual contracts in order to keep an appropriate 'bank' of staffing.

Casual and supply workers are subject to the same pre-employment checks as permanent staff. These checks must be undertaken by the school before the individual can undertake work.

Casual and supply members of staff are paid via the MAT's payroll on submission of a timesheet. The line manager is responsible for ensuring timesheets are submitted to payroll for the casual worker's hours and for ensuring accuracy of timesheets.

Casual workers are eligible to apply for vacancies within the MAT.

2.4 Ending Casual Work

The nature of a casual worker's contract is that there is no guaranteed hours, the employer can offer the worker hours as required and the worker can either accept or reject the hours offered. Therefore, where a member of staff has undertaken work for a period of time and the need ceases, then the school should let the worker know that there are no longer any hours available.

2.5 Is there a limit to the hours a casual worker can be offered

Where possible a casual/supply worker should not work more than hours than those set out in national terms and condition (37 hours a week for support staff and 32.5 for teaching staff). Where more hours a week are offered, it should be ensured that the worker does not work more than 48 hours a week. Hours of work offered to casual/supply workers should not be regular or ongoing as this would imply that a different type of contract is needed. If a casual worker is used regularly, or can demonstrate that he/she can rely on the availability of work, or can demonstrate that the employer expects him/her to be available for work, there is a risk that an employment contract will develop by default, even if it is not in writing. In these cases the worker can make a claim for full employment status (the right not to be unfairly dismissed). This is regardless of the number of hours they have worked.

It is recommended that a casual member of staff should not work a regular pattern for more than eight consecutive weeks. If it is anticipated that there will be a requirement for work for more than eight consecutive weeks or the casual worker unexpectedly exceeds eight consecutive weeks then advice should be sought from Human Resources.

2.6 Ending a Casual workers contract

Schools are advised to regularly review the use of casual staff. Where a casual worker has not undertaken work within a MAT school for a period of more than 6 months, the school should contact the worker to check whether they still wish to retain their casual contract. Where the worker confirms that they no longer wish to retain their casual contract, they should be made a leaver with payroll and be removed from the 'Casual/Supply' Record on the 'google drive.'

3. Agency Workers

3.1 Overview of Agency Workers

An agency worker is someone who is supplied through an agency to carry out an agreed task, they are not employees of the school/MAT and do not hold a contract of employment

with the school/MAT. The school pays the agency for the worker's services and the agency is responsible for paying the individual.

3.2 When to use an Agency Worker

Agency workers should be used to cover shortfalls in staffing on an emergency and/or short-term basis. Using agency workers is often the most costly way of fulfilling staffing needs and therefore schools should aim to only use agencies where they are not able to fill staffing needs through the use of permanent, fixed term or casual staff.

3.3 Engaging an agency worker

Schools should approach agencies directly when they have a need for agency workers. The cost of using the agency is met from the schools budget. The school should agree agency fees with the agency of their choice, ensuring best value for money.

Schools are responsible for ensuring that the agency has carried out appropriate pre-employment checks and that the checks are recorded on the school's single central record.

Legally, agency workers are entitled to receive:

- paid holiday (bank holidays may be included in your holiday entitlement - check this with the agency)
- rest breaks and limits on working time
- no unlawful deductions from wages
- the National Minimum Wage
- freedom from discrimination under equality legislation
- protection under health and safety laws
- details of job vacancies with your hirer
- the same access to shared facilities and services at work as other comparable employees
- Once an agency worker has worked for 12 weeks in the same job, they qualify for equal treatment. This means they are entitled to the same basic terms and conditions as 'comparable workers' - employees doing the same job in the same workplace.

3.4 Ending the engagement of an agency worker

Where the agency worker is no longer needed, the appropriate notice (as set out in the contract with the agency) should be given to the agency to end the work.

4. Fixed Term Contract

4.1 Overview of fixed term contracts

Fixed term employees are those employed to carry out specific work for a time limited period related to the reason for the contract. Fixed term employees are employees of the school/MAT and are entitled to benefits and the same treatment to comparable permanent employees. A fixed-term contract is a contract of employment that will terminate on the expiry of: a fixed term; on the completion of a particular task; or, on the occurrence or non-occurrence of any other specific event

Examples of genuine reasons for fixed-term contracts are:

- A contract to provide cover for a permanent employee's absence such as; sickness, maternity leave or secondment, where the contract will terminate on the permanent employee returning to work.
- A contract linked to a specific funding stream, which is used to pay for the employee's salary, where the contract will terminate on the expiry of the funding stream.
- A contract that ends on the completion of a particular project.

4.2 Appointing fixed term employees

Standard recruitment practices apply when appointing to fixed term contracts. Please see the MAT's Recruitment and Selection Policy for more details.

The reason for the appointment being fixed term must be genuine and detailed in the contract of employment.

It is not good practice and leaves the MAT open to challenge to offer an employee a fixed term contract where there is no genuine reason i.e. where there were doubts during interview. In this circumstance the choice should be either not to appoint or to appoint on a permanent basis and take the short-comings into account during the induction process.

Fixed term employees should be employed on terms no less favourable than a comparable permanent employee.

4.3 Fixed Term Employees Rights

It is a common misunderstanding that fixed-term employees have less employment rights than permanent employees. The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 give fixed-term employees rights. Here are some points to be aware of:

- A fixed-term employee has the right not to be treated less favourably than a permanent employee doing the same or broadly similar work with regard to terms and conditions of employment unless such treatment can be objectively justified. This includes pay, conditions and benefits and *disadvantages* such as not being given the opportunity for promotion; or not being given an appraisal where permanent employees have them as a matter of routine.
- It is likely to be unlawful to select fixed-term employees for redundancy simply on the basis of their fixed term status unless their selection can be objectively justified.
- Fixed-term employees are not to be excluded from enhanced contractual redundancy payment schemes offered to permanent employees.
- Fixed-term employees have the right to be informed of all permanent vacancies in the establishment at which they work. This applies even if the permanent vacancies are not necessarily suitable. Notification can be done via the staff intranet or on its notice board.
- Non-renewal of a fixed-term contract constitutes dismissal and therefore must be fair and justified.
- Fixed term employees have the right to have their contracts automatically converted to indefinite ones after four years
- Fixed term employees have the right to make a complaint to a tribunal seeking a written statement which sets out the reasons for the less favourable treatment complained of.

4.4 Ending a Fixed Term Contract

Expiry of a fixed term contract without renewal is a dismissal in law. Any employee whose fixed-term contract is not renewed on the same terms as before will have the same rights to unfair dismissal protection as a permanent employee with the same length of service who is dismissed. This means that a fixed-term employee is potentially able to bring a claim for unfair dismissal if dismissed on the expiry and non-renewal of their contract if the employee has a minimum of two years' service (the Redundancy Modification Order applies and therefore prior continuous service with other employers under the order is to be taken into account).

In ending a fixed term contract managers will need to provide a reason to rely on for ending the contract in good time before the expiry of the contract and you will need to follow a fair procedure as if terminating a permanent contract.

If a fixed term contract is to be terminated before its end date, it is possible for the employee to claim breach of contract, unless the dismissal is for misconduct or capability.

The contract of employment will specify the reason for the contract being fixed term and this will be used to determine whether the dismissal is fair.

Workers have the right:

- not to be unfairly dismissed after 2 years' service
- to a written statement of reasons for not renewing the contract - after 1 year's service

Fixed-term employees have the right to a minimum notice period of:

- The period stated in the contract of employment - usually 1 month (or the statutory notice period where this is higher)

If an employer ends a contract without giving the proper notice, the employee may be able to claim breach of contract.

Upon the expiry and non-renewal of a fixed term contract, you should establish which of the potentially fair reasons is being used under Section 98 of the Employment Right Act 1998. Fair reasons for ending a fixed term contract will usually either fall under Redundancy or Some Other Substantial Reason (SOSR), unless where performance, conduct or statutory bar are concerned

Redundancy is to be relied on in the case of the work diminishing (i.e. due to a project or funding ending or a restructure). If the reason is redundancy the employee should be supported in finding alternative employment, they should be given prior consideration for appropriate roles and offered any suitable alternative employment. The employee will be entitled to a redundancy payment if they have more than two years service. The employee's service for redundancy purposes includes any service from employer covered in the Redundancy Modification order – this includes all Local Authorities and some other employers.

If a fixed-term contract is used to cover the absence of a permanent employee and the permanent employee returns to the same position, the expiry of the fixed-term contract will not be regarded as redundancy because the requirement for an employee to carry out the particular work that the fixed-term employee was doing still exists. However, usually "some other substantial reason" would be relied upon as a potentially fair reason in those circumstances.

4.5 Limit on renewing a fixed-term contract

Employees who have been continuously employed for four years or more on a single or a series of successive fixed-term contracts are automatically deemed to be permanent employees.

Since the use of successive fixed-term contracts (even if there are short breaks between the contracts) could lead to the fixed-term employee becoming a permanent employee, the school should consider on renewal whether there are objective grounds, relating in particular

to the activity being undertaken by the employee in question, for a further fixed-term contract and if so, the employer should keep a written record of these.

It should also be noted that, if an employee continues working beyond the end of a contract without it being formally renewed, there is likely to be an implied agreement by the employer that the employee is now employed on an indefinite term as a permanent employee. The employer still needs to give proper notice if they want to dismiss the worker.

4.6 Procedure and Top Tips on the use of fixed term contracts

- When considering recruiting a vacancy on a fixed term basis ensure the reason for the role being fixed terms is clear, usually that it is either:
 - To cover a member of staff on secondment, sick leave or maternity leave
 - To carry out a time limited project or a post with time limited funding.
 - Potential future restructures
- If there is not a valid reason for the contract being fixed term then it probably should be permanent.
- When issuing a fixed term contract to a member of staff ensure the reason is clearly stated in the contract and if applicable also the end date. i.e.
 - To carry out a time limited project which will end on DATE
 - To cover an employee's maternity leave ending on the employee's return.
- Ensure that the expiry date of any fixed-term contract is put in the diary so that decisions can be made in good time as to whether the contract is to be renewed indefinitely, for a further fixed term or terminated.
- Ensure fixed term staff receive the same treatment and entitlements as permanent employees
- Ensure any job vacancies are displayed on the staff intranet or the school's notice board and fixed term employees know how to access them.
- Where the employee has a fixed term contract with a specified end date, meet with them well in advance of this date (suggested at least 3 months in advance) to confirm whether the contract is being renewed indefinitely, for a further fixed term or terminated.
- If it is being renewed it should be explained to the employee that it is being renewed because there is an existing need for the work to be carried out and on what basis (indefinitely as the work is now permanent or for a further fixed term and for what reason)
 - A Changes Form should be completed and sent to the MAT's payroll provider so a contract a new contract can be issued (refer to points 1,2 and 3)
- If the contract is ending an explanation should be provided to the employee that the work they are currently undertaking is either:
 - Diminishing as the time limited project or funding has come to an end or due to the planned restructure
 - Stopping due to the permanent post holder returning from sick leave, maternity leave or their secondment
 - A written statement should be provided to the employee outlining:
 - A statement of reasons for non renewal/dismissal
 - Notice of termination, notice period as per their contract of employment.
 - The fair reason for dismissal (i.e. redundancy if the work is diminishing or Some Other Substantive Reason if the permanent post holder is returning) (please see appendix 1 for template letter)
 - Details of any vacancies and any that would be considered 'suitable alternatives', where possible include a vacancy list with the letter.
 - Confirmation of whether they are entitled to a redundancy payment and how much (redundancy pay is due to those who have more than 2 years continuous service – including any continuous service they brought with them from other

employers included in the redundancy modification order) (see Appendix 1 for template letter)

5. Core Hours Contracts

5.1 Overview of Core Hours Contracts

Staff are often employed on fixed term contracts because of uncertainty of pupil numbers and funding. As an alternative, schools can choose to utilise core hours contracts. Staff are offered permanent employment contracts, with a 'core' number of hours worked on a permanent basis. The basis of the employment relationship therefore shifts from fixed term to permanent. In order to retain flexibility the school can keep a 'core' number of staff and where there is a need for additional hours on a short term basis (up to a year at a time) the school can offer the additional hours to staff over and above their core contract as a temporary variation to contract.

When the additional temporary hours end, the employee continues to undertake their 'core contracted' permanent hours, therefore there is no dismissal situation.

Using core hour contracts can help the school avoid the risks associated with using fixed term contracts (as outlined in the above section) and help avoid potential redundancy situations.

Core hours contracts are also attractive to staff who have the security of a permanent contract, and this in turn helps the school manage recruitment and retention and helps provide flexibility.

5.2 Appointing employees on Core Hours Contracts

Standard recruitment practices apply when appointing to Core Hours Contracts. Please see the MAT's Recruitment and Selection Policy for more details.

Employees are then appointed to a permanent contract with a core number of hours. The school may then offer additional hours on a temporary basis as required.

The school may offer current staff who are on fixed term contract a permanent contract with core hours. This should be done in agreement with the employee.

5.3 Ending a Core Hours Contract

The core hours of the contract are a permanent arrangement, therefore the MAT's redundancy process should be implemented where there is a need to end contracts (please see the MAT's Redundancy Policy).