



Temporary & Fixed Term Employment Procedure

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- **ANY REFERENCE TO THE CEO ALSO NOW REFERS TO THE DEPUTY CEO**

1.0 Introduction

- 1.1 This procedure has been adopted by the Board of Trustees of Washwood Heath Multi Academy Trust (WHMAT) to enable it to discharge its functions under the *Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (the Regulations)* and to ensure that fixed term and temporary employees are treated fairly and consistently a) during the recruitment process, b) whilst employed; and c) when their contracts are due to expire.

2.0 Scope

- 2.1 This procedure applies to all employees who are employed to work on a fixed-term or temporary basis within WHMAT.
- 2.2 The Regulations define a fixed term employee as a person whose contract comes to an end:
- 2.2.1 When a specific date is reached; and/or
 - 2.2.2 When a specified task has been completed; and/or
 - 2.2.3 When a specified event happens or does not happen.
- 2.3 “Temporary” refers to a contract whose duration cannot be specified precisely because it is not known in advance exactly when a specified task will be completed or when a specified event will or will not occur (e.g. long term sickness cover or a specific piece of work or Project).
- 2.4 It does not apply to:
- 2.4.1 Workers
 - 2.4.2 Apprentices
 - 2.4.3 Contractors
 - 2.4.4 Agency workers employed by employment businesses on behalf of WHMAT
 - 2.4.5 Employees who are on government-sponsored or European Community-institution-funded training; or
 - 2.4.6 Students on work experience for up to one year as part of a higher education scheme.

3.0 Reasons for temporary & fixed-term contracts

- 3.1 Whether or not it is appropriate for WHMAT to employ an individual on a fixed-term rather than a permanent contract will depend on the circumstances and its business requirements.

3.2 Examples of when it may be appropriate to use a fixed-term contract instead of a permanent contract include (note the list below is not exhaustive):

- 3.2.1 To cover a specific task or project e.g. to provide 1-2-1 support to a SEN pupil or to a new and growing team on a short-term basis
- 3.2.2 To cover for temporary absences of permanent employees e.g. due to long term sickness, maternity leave, agreed career breaks/sabbaticals etc.
- 3.2.3 To provide extra help for seasonal variations in workload e.g. exam invigilators
- 3.2.4 The funding for the position comes from an external source and it is not clear that it will be continued after an initial fixed period (e.g. Year 7 catch up which is paid for by external funding which could be removed)
- 3.2.5 To carry out the duties of another employee temporarily allocated other duties within WHMAT, either as a specific task, or while a more senior post is vacant or its occupant is absent (an arrangement commonly known as 'back-filling')
- 3.2.6 If there is a predicted fall in pupil numbers or severe known budgetary deficit (based on sound statistical evidence), which may lead WHMAT to reduce its staff headcount
- 3.2.7 To provide additional education for a known, limited period
- 3.2.8 As an instructor when and for so long as no suitable qualified teacher or teacher on the employment-based teacher training scheme is available for appointment
- 3.2.9 Because the person is employed on the employment-based teacher training scheme e.g. "Teach first" where the training is time limited
- 3.2.10 Because an overseas trained teacher does not have qualified teacher status in England and is limited to employment as an overseas trained teacher for a maximum of four years from the date of first employment in that capacity in this country.

3.3 Reasons which would not be regarded as sufficient justification include:

- 3.3.1 Budgetary uncertainty e.g. simple pessimism about the government's funding intentions for academies.
- 3.3.2 Possible future reductions in the number of pupils on roll – this is too uncertain – there must be valid statistical evidence within a known time-frame.
- 3.3.3 The short-term needs of the base academy or WHMAT - this is too vague.
- 3.3.4 To test the capability/performance of an employee.

4.0 Recruitment & Selection

4.1 If the need for a temporary or fixed term position is identified **by an employee** (should this be here or should it say Manager?) within a WHMAT academy, prior approval shall be sought from the CEO before the post is advertised. A business case will be provided by the relevant

member of staff (again shouldn't it say Manager) so that the rationale and costs for the post can be discussed. This will be a temporary variation to the existing staffing structure.

- 4.2 Normal recruitment and selection processes will be followed when recruiting temporary and fixed-term employees (see further WHMAT Safer Recruitment Policy & Procedure).
- 4.3 During the absence of an employee whose job carries extra responsibilities, those responsibilities may be undertaken by another existing employee (after internal advert across WHMAT). There may also be occasions when an existing employee is asked to undertake a specific task and there is a need for that employee's normal duties to be covered for the duration of that task. In such cases, the CEO, Head of Academy or appropriate manager as the case may be, may advertise for a person to undertake the normal duties of that other employee (commonly known as "back-filling").
- 4.4 Job adverts, job descriptions and person specifications for fixed-term contracts should be clear about the nature and duration/length of the contract. If the length is dependent on the completion of a particular task, the nature of that task should be clearly described. If the proposed fixed-term contract will end when a specific event happened e.g. the return of another employee from maternity leave, the event should be clearly described in the advert and made clear to job applicants during the recruitment process. The reason/justification for it being a fixed-term post rather than a permanent post should be clearly stated.
- 4.5 Employees on temporary or fixed-term contracts have the right to be informed of vacancies within WHMAT in the same way as other comparable employees. Any vacancy within WHMAT will be open to all employees, including those on temporary and fixed-term contracts, unless there is an internal re-organisation or re-structure affecting a specific group of staff employees who would otherwise be displaced.

5.0 Contracts of employment

- 5.1 All temporary or fixed-term employees will be provided with a contract of employment that sets out their key terms and conditions of employment (including when the post will or is likely to end for fixed-term contracts. In line with employment law, this will be provided within 2 months of employment commencing unless there are exceptional circumstances.
- 5.2 Notice provisions will also be included to allow the contract to be terminated by either party before it is due to end. However, these grounds will be clearly stated since choosing to bring it to an end for a reason not stated in the contract, may result in a claim for damages for unpaid remuneration in respect of the rest of the contract unless the employee was dismissed for disciplinary, capability or other good reasons.

6.0 Protection from less favourable treatment

- 6.1 Under the Regulations, unless WHMAT is able to justify objectively any differences in treatment (i.e. it can show that there is a good reason for those differences in treatment), it must not treat an employee on a fixed-term contract less favourably than a comparable permanent employee.
- 6.2 A comparable employee is one who is employed by WHMAT, either in the same or a different WHMAT academy as the fixed-term employee, doing the same or broadly similar work, taking

into account, where it is relevant, whether or not the fixed-term employee and the permanent employee have the same level of qualification and skills.

- 6.3 WHMAT must treat the fixed-term employee no less favourably in respect of the:
 - 6.3.1 Terms of his or her contract (e.g. pay and benefits, including access to an occupational pension scheme);
 - 6.3.2 Periods of service required to qualify for particular terms and conditions (e.g. access to service-related pay rates);
 - 6.3.3 Opportunities to receive training; or
 - 6.3.4 Opportunities to secure a permanent position with WHMAT (the Regulations specify that a fixed-term employee has the right to be informed by its employer of available vacancies, both fixed-term and permanent)

- 6.4 Other examples of how to avoid less favourable treatment include:
 - 6.4.1 Where the reason for the non-renewal of a fixed-term contract is redundancy and the employee has at least two years' continuous service, he or she is entitled to a statutory redundancy payment. If WHMAT operates an enhanced redundancy payment scheme, the fixed-term employee is entitled to an enhanced redundancy payment, unless WHMAT can objectively justify any difference in treatment between the fixed-term employee and comparable permanent employee.
 - 6.4.2 Ensuring that a fixed-term employee is entitled to a pro-rata/proportion of the pay and benefits that a comparable permanent employee is entitled to as is reasonable in the circumstances (taking into account length of the contract and terms on which pay and benefits are offered).
 - 6.4.3 WHMAT should not select a fixed-term employee for redundancy purely because he or she is employed on a fixed-term contract, unless it can objectively justify the selection.
 - 6.4.4 Fixed-term employees are entitled to the same post-termination access to benefits such as outplacement assistance, unless WHMAT can objectively justify a difference in treatment.
 - 6.4.5 WHMAT must ensure that it meets all statutory rights such as the entitlement to minimum periods of annual leave. Therefore, it must pay for any accrued but untaken annual leave, on termination, in accordance with the usual rules.
 - 6.4.6 Any selection for redundancy will not treat temporary or fixed-term employees more or less favourably than permanent employees.

- 6.5 Fixed-term employees are also entitled not to be subjected to any other detriment (for example bullying and harassment) by their employer because of their fixed-term status.

- 6.6 Employees on temporary or fixed-term contracts should not be treated less favourably than permanent or comparable employees in respect of training opportunities, unless this can be

objectively justified, for example, if the training course lasts beyond the duration of the contract or there is not enough time for the employer to benefit from the employee's training.

7.0 Written statement of reasons for less favourable treatment

7.1 Fixed-term employees who feel that they have been treated less favourably than a comparable permanent employee are entitled to ask their Head of Academy (CEO in the case of head office staff), for a written statement giving the reasons for the less favourable treatment. In these circumstances, a written reply will be provided within 21 days of the request, unless there are exceptional circumstances.

7.2 The contents of the employer's written reply may be admissible in evidence before an employment tribunal.

8.0 Fixed term employees acquiring permanent status

8.1 Under the Regulations, where an employee has been continuously employed on successive fixed-term contracts for four years or more, s/he will automatically achieve permanent status at the four-year point, unless there is an objective reason for renewing it for a further "fixed-period". For example, if the task or project on which the fixed-term employee is working is due to come to an end shortly after the four-year point.

8.2 An employee who considers that their fixed-term contract has been automatically made permanent (as a consequence of the provisions on successive fixed-term contracts) can write to HR requesting a written statement of variation confirming that their contract is no longer fixed term or that they are now a permanent employee. If so, HR will provide the statement or a statement giving reasons why the contract remains "fixed-term", within 21 days of the request, unless there are exceptional circumstances and following consultation with the Head of Academy (or CEO in case of Head Office employees). A failure by WHMAT to reply or an evasive or ambiguous reply may be taken into account in any later employment tribunal proceedings.

9.0 Renewing a temporary or fixed-term contract

9.1 If the CEO/Head of Academy or other nominated manager wishes to offer a fixed-term employee a new fixed-term contract, for a different reason or role within WHMAT, to start on the expiry of their current contract, they will ensure that a face-to-face meeting takes place with the employee as soon as reasonably possible before the originally agreed end date stated in the contract so that the possible renewal and rationale can be discussed with the employee in good time. New contract terms may need to be discussed and agreed, and/or a new job description and person specification provided and discussed.

9.2 If the employee agrees with the proposal for a new fixed-term contract, the employer will provide a written outcome letter, together with a new fixed term contract of employment within a reasonable period after the meeting.

9.3 If the employee confirms during the meeting at 9.1 above that they do not wish to agree to the proposal for a new fixed-term contract, the employer will confirm this in writing within a reasonable period after the meeting and their contract will be brought to an end, subject to a right of appeal (see further at 13 below).

10.0 Extending a temporary or fixed-term contract

- 10.1 As an alternative to renewing a fixed-term contract (see 9.0 above), WHMAT may decide to extend/continue the contract of an existing fixed-term employee beyond the expiry date of the fixed term e.g. to cover a later than anticipated return of an employee on maternity or long term sickness.
- 10.2 The CEO/Head of Academy or other appropriate manager will ensure that a face-to-face meeting takes place with the employee as soon as reasonably possible before the originally agreed end date stated in the contract so that the possible extension and rationale can be discussed with the employee.
- 10.3 If the employee agrees with the extension proposal, the employer will provide a written outcome letter within a reasonable period after the meeting confirming the full details of the extension.
- 10.4 If the employee confirms during the meeting at 10.2 above that they do not wish to agree to the extension proposal, the employer will confirm this in writing within a reasonable period after the meeting and their contract will be brought to an end, subject to a right of appeal (see further at 13 below).
- 10.5 WHMAT recognises that if a person employed on a temporary or fixed-term contract is allowed to continue working without a formal extension beyond the date in the contract, or without a new temporary or fixed-term contract with a different reason, then the employment will become open-ended/permanent by default. If WHMAT does not continue to employ the fixed-term employee on the expiry of that term and simply lets the contract expire, it will be deemed to have dismissed the employee at the point of that expiry.

11.0 Ending a temporary or fixed-term contract

- 11.1 The expiry/non-renewal of a temporary or fixed-term contract is a dismissal in law, whether or not an end date has been specified. If a relevant employee has two years' continuous service at the date of expiry, they have the right to bring an unfair dismissal claim if a fair process has not been followed and/or the dismissal was not for one of the five fair reasons in law.
- 11.2 In light of 11.1 above, the following process will apply:
- 11.2.1 Throughout the period of a temporary and/or fixed-term contract, the Head of Academy (CEO in case of head office staff) will consider whether or not there is any reasonable prospect of the contract being extended or renewed.
- 11.2.2 The appropriate manager should review the contract and business case for ending, renewing or extending in good time before the stated expiry date in the contract.
- 11.2.3 If the temporary or fixed-term employee has been undertaking doing the job of an absent employee who decides not to return (for whatever reason), the employee

will be invited to apply for the post in the normal way and any appointment made on the basis of skills/competencies during an interview. They will not be guaranteed an extension or renewal just because they have been undertaking the role previously.

- 11.2.4 The appropriate manager will invite the employee to a meeting to discuss the expiry of their contract between 2 and 4 months before it is due to expire. They will obtain a copy of the letter of appointment and contract of employment, ascertain whether the reasons given in the contract for making it temporary or fixed term are due to materialise, consider again whether any alternative employment is available or likely to become available in WHMAT (having regard to the qualifications and experience of the employee) and remind the employee that the contract is due to expire.
- 11.2.5 The employee may be accompanied at this meeting by a work place colleague or trade union representative, although this is not obligatory. Reasonable notice will be given (see letter in manager's toolkit). A copy of the letter and any supporting papers should be enclosed for the employee's representative. It is helpful to agree a date with the employee's union/professional association if they are already involved in the case, before sending the formal letter of invite to attend the meeting. The employee may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. The nominated manager may reject this suggestion but will do so only if it is unreasonable and will take advice from WHMAT HR. The employee shall be invited to provide any documentation at least five working days before the meeting. There is no requirement on the employee to submit any documentation.
- 11.2.6 In the meeting, the appropriate manager should confirm whether or not the proposal is to terminate and the reason(s) for terminating. The employee should be informed of all existing vacancies across WHMAT (fixed-term and permanent). If the decision by management is to terminate/not renew, the employee will be informed of their right of appeal to the CEO and/or a board of Trustees within 5 working days of receiving a written outcome letter.
- 11.2.7 Following the meeting, the outcome will be confirmed to the employee in writing within 5 working days of the meeting. If no further employment is offered, the letter will confirm this and state the right of appeal, including the requirement to give notice of appeal to the clerk to the governing body within ten working days of receipt of the letter, setting out the grounds of appeal.

12.0 Redundancy

- 12.1 The termination of some temporary and fixed-term contracts will be a redundancy. Circumstances in which a redundancy payment is due (provided that the employee has at least two years' continuous service in accordance with the Modification Order and provided that the employee does not obtain other employment covered by the Modification Order within four weeks of the expiry of the contract), may include the closure of a workplace, reduced need for employees and the cessation of a particular service or project (whether externally funded or not). When the employee has been employed during the absence of another employee, there is no reduction in work when the absent employee returns, so there is no redundancy.

12.2 Advice should be taken from HR **in good time before the anticipated contract expiry date** if there is a question over redundancy on the termination of a temporary or fixed-term contract.

13.0 Appeals

13.1 An employee on a temporary or fixed-term contract has the right of appeal against the expiry of the contract without an offer of further employment. An appeal shall be to the CEO if they have not been involved in the management of a contract, or to the Board of Trustees for WHMAT in the case of head office employees, or if the CEO has been involved in the earlier stages of the process.

13.2 An employee may appeal in writing to the clerk to the Board of Trustees within ten working days of receiving written confirmation that their contract will expire without further employment. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal.

13.3 The clerk to the Board of Trustees will immediately notify the CEO (or Board of Trustees as appropriate) of all the grounds of appeal and any additional evidence and arrange an appeal hearing as quickly as possible, to take place, other than in exceptional circumstances, within twenty working days of receiving the employee's appeal letter. The clerk should make every effort to agree a date with the employee's union if they are already involved in the case, before sending the formal invite letter. The employee may suggest an alternative time and date as long as it is reasonable and is not more than five working days after the original date. The committee or CEO may reject this suggestion if it is unreasonable and may proceed to hear the case in the absence of the employee or the employee's representative, but also has the discretion to defer the date of the hearing in order to reach mutual agreement on a convenient date, having particular regard to the availability of the employee's representative.

13.4 The clerk to the committee shall give at least ten working days' formal notice of the hearing to all the participants, and in the same letter (see Managers Toolkit) shall set out the order of the proceedings, remind the employee of the employee's rights at the hearing, including the right to request to be accompanied by a representative of his or her choice who is either a union official or another of the employer's employees, list the members of the appeal committee, give the names of witnesses, and confirm the options for action which the appeal committee may take (see below). All documents relevant to an appeal hearing shall be enclosed with the letter. The witnesses may include, as appropriate to the circumstances of the case, the Head of Academy and/or a member of the committee which took the decision against which the employee is appealing, or the person who presented the case if that person was not the Head of Academy.

13.5 The normal procedure for an appeal hearing is set out in the Managers' Toolkit.

13.6 The appeal committee may dismiss the appeal or uphold the appeal. If it upholds the appeal it may either offer the appellant a new contract of employment (for a different reason) or extend the current contract if there is good reason for an extension (for example, if special funding has been extended or the absence or the special work or project is lasting longer than anticipated).

13.7 The appellant may choose whether to hear the appeal committee's decision in person or receive it in writing, but this choice shall not prevent the committee from choosing to adjourn and reconvene before making a decision. An oral announcement shall be confirmed in writing by the clerk to the Board of Trustees within ten working days of the hearing (see Managers' Toolkit).

14.0 A head of academy on a temporary or fixed-term contract

14.1 In the event of a Head of Academy being employed on a temporary or fixed-term contract this procedure shall be followed, with the CEO advising on the extension/renewal or non-renewal stage, and the Board of Trustees hearing any appeal. Advice shall be sought from HR as appropriate.

14.2 The CEO will follow the requirement of the WHMAT's Safer Recruitment Procedure insofar as vacant posts for Heads of Academy will be advertised unless there is good reason not to, and will consult with the Director of HR if it does consider that it has good reason not to advertise.

15.0 Trade Union Officers

15.1 Normal employment requirements should apply to trade union officers. However, dismissal of a trade union officer can be misconstrued as an attack on the union. Such problems can be avoided by early discussion with HR and/or a senior trade union representative as appropriate.

16.0 Policy Review

16.1 This Policy will be reviewed annually by the Director of HR so that its application and outcomes can be monitored. Changes may be proposed as appropriate in line with employment law and/or HR practice and subject to consultation.