



Fixed Term Employment Policy & Procedure

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1.0 Introduction

1.1 This policy has been ratified by the Board of Trustees of Washwood Heath Multi Academy Trust (WHMAT) to enable it to meet its obligations in the *Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (the Regulations)* and to ensure that fixed term 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 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 This policy does not apply to:

2.3.1 Workers;

2.3.2 Apprentices;

2.3.3 Contractors;

2.3.4 Agency workers;

2.3.5 Employees who are on government-sponsored or European Community-institution-funded training; or

2.3.6 Students on work experience for up to one year as part of a higher education scheme.

3.0 Definitions of key terms

- 'WHMAT' - throughout this policy 'Washwood Heath Multi Academy Trust' is referred to as 'WHMAT'.
- Fixed-term contract - employment contracts that are agreed for a fixed period, i.e. they have a defined beginning and end date. They should only be used when circumstances make it inappropriate to employ an individual under a substantive contract (see section 4.0).
- The Fixed Term Employees (Prevention of Less Favourable Treatment) 2002 – Legislation governing fixed term appointments. The basis of the regulations is that employees on fixed term contracts should be treated no less favourably than their substantive counterparts. Referred to in this policy as 'the Regulations'.

- Less favourable treatment - incorporates the overall package of benefits, whether contractual or not, that a comparable substantive employee gets, or when it is offered on less favourable terms. It includes when an employer fails to do something for a fixed term employee that is done for a substantive employee. For example, pay and annual leave entitlement (pro rata). Employees on fixed-term contracts are entitled to the same terms and conditions of employment on a pro-rata basis as the terms and conditions of a comparable substantive employee.
- Any reference in this Policy to the CEO also includes the Deputy CEO.

4.0 Reasons for fixed-term contracts

- 4.1 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 the business requirements of individual teams or academies. However, Heads and/or other senior leaders/functional directors leading on the recruitment of a fixed-term employee must ensure that they are clear about and understand the rationale for the contract being offered on a fixed-term basis rather than on a permanent basis (see further at 4.2). The agreed reason for taking the employee on must also be stated clearly in the employee's contract of employment.
- 4.2 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):
- 4.2.1 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;
 - 4.2.2 To cover for temporary absences of permanent employees e.g. due to long term sickness, maternity leave, secondments, agreed career breaks/sabbaticals etc;
 - 4.2.3 To provide extra help for seasonal variations in workload e.g. exam invigilators;
 - 4.2.4 The funding for the position comes from an external source and is time-limited or it is not clear whether 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);
 - 4.2.5 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');
 - 4.2.6 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;
 - 4.2.7 To provide additional education for a known limited period;
 - 4.2.8 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;
 - 4.2.9 Because the person is employed on the employment-based teacher training scheme e.g. "Teach first" where the training is time limited;
 - 4.2.10 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.

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

- 4.3.1 Budgetary uncertainty e.g. simple pessimism about the government's funding intentions for academies;
- 4.3.2 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;
- 4.3.3 The short-term needs of the base academy or WHMAT - this is too vague;
- 4.3.4 To test the capability/performance of an employee.

5.0 Recruitment and selection

- 5.1 If the need for a fixed term position is identified by a head of academy or other appropriate senior leader/functional director within WHMAT, prior approval shall be sought from WHMAT finance to ensure the post is affordable, BEFORE the post is advertised. The CEO should also be kept updated on these matters. A recruitment pro-forma will be completed by the relevant manager so that the rationale and costs of the post can be documented. Recruiting a fixed-term employee will be a temporary variation to the existing staffing structure.
- 5.2 Normal recruitment and selection processes will be followed when recruiting fixed-term employees (see further Safer Recruitment Policy at www.whmat.academy policies tab).
- 5.3 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 other 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").
- 5.4 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 happens 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 in the advert and in the contract of employment.
- 5.5 Employees on 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 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, in which case those colleagues, may need to be prioritised for suitable alternative employment.

5.6 If a post has been advertised as permanent, it should not subsequently be appointed to on a fixed-term basis without the agreement of the prospective employee and supported by an objectively justifiable reason(s), for example, a change in service need. This should only occur in exceptional circumstances and the line manager or recruiting manager should speak to WHMAT's People Team in advance.

6.0 Contracts of employment

6.1 All 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 and the reason for it being temporary in nature). In line with employment law, this will be provided on the first day of employment unless there are exceptional circumstances.

6.2 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.

7.0 Protection from less favourable treatment

7.1 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.

7.2 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.

7.3 WHMAT must treat the fixed-term employee no less favourably in respect of the:

7.3.1 Terms of his or her contract (e.g. pay and benefits, including access to an occupational pension scheme);

7.3.2 Periods of service required to qualify for particular terms and conditions (e.g. access to service-related pay rates);

7.3.3 Opportunities to receive training; or

7.3.4 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).

7.4 Other examples of how to avoid less favourable treatment include:

7.4.1 Where the reason for the non-renewal of a fixed-term contract is redundancy i.e. because there is a reduced need for work of that kind, and the employee has at least two years' continuous service, he or she will be entitled to a redundancy payment;

- 7.4.2 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);
- 7.4.3 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;
- 7.4.4 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.
- 7.4.5 Any selection for redundancy will not treat temporary or fixed-term employees more or less favourably than permanent employees.
- 7.5 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.
- 7.6 Employees on 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.

8.0 Written statement of reasons for less favourable treatment

- 8.1 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 core team 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.

9.0 Fixed term employees becoming permanent

- 9.1 Under the Regulations, where an employee has been continuously employed on successive fixed-term contracts for four years or more, without a gap in service, they will automatically become 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. The manager will discuss this with the employee in good time before the contract is due to expire to avoid any surprises (see further at
- 9.2 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 contact WHMAT's HR Operations team at hroperations@whmat.acdemy requesting a written contract variation letter confirming that their contract is no longer fixed term and that they are now a permanent employee. HR operations will review the facts in consultation with the relevant manager and provide a reply to the employee, within 21 days of the request, unless there are exceptional circumstances, confirming whether or not the employee is still

fixed term or whether they are now permanent. WHMAT will ensure that any reply is clear and unambiguous.

10.0 Reviewing and monitoring fixed-term contracts

10.1 WHMAT's HR Operations team will ensure that it maintains an up-to-date log of fixed-term contracts and that it works with relevant managers at least 2 to 3 months before a contract is due to expire to decide on the next steps in consultation with the employee. The manager has 4 options: a) renew; b) extend; c) terminate or d) make permanent. Each case will be considered individually and be based on the circumstances and operational needs for that team or academy. Relevant managers may request support from the HR Operations team at these meetings. A member of the People team must attend if the outcome of the meetings is likely to be that the contract will be terminated. All relevant invite and outcome letters appear in the accompanying toolkit.

11.0 Renewing a fixed-term contract

11.1 Renewing is the appropriate option if a 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.

11.2 In these circumstances, they will ensure that a 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, together with a new job description and person specification may need to be discussed so that the employee can make an informed decision about whether or not to accept the new fixed-term contract being offered.

11.3 If the employee agrees with the proposal for a new fixed-term contract, the appropriate manager will provide a written outcome letter within 5 working days of the meeting, unless there are exceptional circumstances. The HR Operations team will ensure that a new fixed-term contract is provided to the employee from the first day of the new contract, which should start the day after the original fixed-term contract expired.

11.4 If the employee confirms during the meeting at 11.1 above that they do not wish to agree to the proposal for a new fixed-term contract and there are no suitable alternatives that the manager can offer, the manager will confirm that their contract will be terminated at the end of the fixed period, subject to a right of appeal (see further at 14 below).

11.5 The manager will ensure, in consultation with the HR Operations team, that a formal outcome letter is provided to the employee within 5 working days of the meeting, unless there are exceptional circumstances (all letter templates appear in the managers' toolkit).

12.0 Extending a fixed-term contract

12.1 As an alternative to "renewing" a fixed-term contract (see 11.0 above), the appropriate manager may decide to extend i.e. continue with the existing fixed-term contract beyond the expiry date originally agreed. This may be to cover a later than anticipated return of an employee on maternity or long-term sickness, although there may be other legitimate business reasons.

- 12.2 In order to meet best practice the number of extensions to a fixed-term contract should be limited and if contracts are extended after the planned end date this should be in consultation with the HR Operations team and finance. Consideration should be given as to whether this should in fact be a substantive post.
- 12.3 If the line manager perceives that “extension” meets the business needs of WHMAT, the 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. An invite letter appears in the managers’ toolkit.
- 12.4 If the employee agrees with the extension proposal, the manager will provide a written outcome letter within 5 working days of that meeting unless there are exceptional circumstances, confirming the full details of the extension (see template in manager’s toolkit).
- 12.5 If the employee confirms during the meeting at 12.3 above that they do not wish to agree to the extension proposal and there is no other suitable alternative work that can be offered, the manager will confirm that their contract will be terminated at the end of the fixed period, subject to a right of appeal (see further at 15 below). Regardless of the outcome, the manager must ensure that the employee is provided with a formal outcome letter within 5 working days of the meeting, unless there are exceptional circumstances.

Working longer than the contract’s end date

- 12.6 WHMAT recognises that if a fixed-term employee is allowed to continue working beyond the stated expiry date, without being consulted on an outcome (see options at 10.1 above), there’s an implied agreement that the end date has changed. In these circumstances, the manager will need to extend the contract to a future date in consultation with the employee, and follow the process at 13.0 below, should they wish to terminate the contract before this extended fixed-term expires.

13.0 Ending a fixed-term contract

- 13.1 The termination/non-renewal/expiry of a fixed-term contract is a dismissal for employment law purposes. 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.
- 13.2 Managers are encouraged to discuss the tenure of fixed term contracts informally with employees throughout their employment with WHMAT. This is to help manage the expectations of the employee and the manager with regard to extensions, terminations or the advertising of a permanent role in place of a fixed term one. These informal conversations do not replace the requirement for a formal process to be followed in terminating a fixed term contract.
- 13.3 Fixed term contracts issued by WHMAT state that the contract can be ended earlier than the originally agreed date with the appropriate contractual notice from either party (employee or employer). If an appropriate manager needs to end the fixed term contract before the end date specified in the contract of employment, for example if a change in funding occurs, they should contact HR Operations in the first instance. In these circumstances, the process

outlined below will be followed but contractual notice must be provided. The employee will have the right to appeal the decision to terminate a fixed term contract early (see 15 below).

13.4 Managers must deal with cases of poor performance, misconduct, sickness or any other employee relations issues under the appropriate WHMAT policy and procedure (see www.whmat.academy policies tab).

13.5 In light of 13.1 above, the following process will apply:

13.5.1 Throughout the period of a fixed-term contract, the appropriate line manager (CEO/Deputy CEO in case of core team staff) will consider whether or not there is any reasonable prospect of the contract being extended or renewed;

13.5.2 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;

13.5.3 If the fixed-term employee has been undertaking 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;

13.5.4 The appropriate manager will invite the employee to a meeting to discuss the expiry of their contract between 2 and 3 months before it is due to expire (see invite letter in manager's toolkit). They will obtain a copy of the contract of employment, ascertain whether the reasons given in the contract for making it 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. At least 10 working days' notice of the meeting should be given to the employee, so that they can secure representation if they wish to.

13.5.5 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). The manager is advised to be supported by a member of WHMAT's People Team, to ensure that due process is followed.

13.5.6 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 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's People Team. 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.

13.5.7 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/Deputy CEO and/or a board of Trustees within 5 working days of receiving a written outcome letter.

13.5.8 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 peoplematters@whmat.academy within ten working days of receipt of the letter, setting out the grounds of appeal.

14.0 Redundancy

14.1 The termination of some 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.

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

15.0 Appeals

15.1 An employee on a 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/Deputy 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 core team employees, or if the CEO/Deputy CEO has been involved in the earlier stages of the process.

15.2 An employee may appeal in writing to peoplematters@whmat.academy within ten working days of receiving written confirmation that their contract will be terminated. The grounds for the appeal should be accompanied by any additional evidence to be presented in support of the appeal, where relevant.

15.3 WHMAT's People Matters team will promptly notify the manager who chaired the dismissal meeting and prepare the necessary paperwork. If the appeal needs to be heard by an impartial panel of 3 Board Trustees, this will be arranged by WHMAT's Company Secretary. An appeal will be set up as quickly as possible, to take place, other than in exceptional circumstances, within twenty working days of receiving the employee's appeal letter. WHMAT's People Matters team will attempt 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.

15.4 WHMAT's People Matters team shall give at least ten working days' formal notice of the meeting to all the participants, and in the same letter (see manager's toolkit) shall set out the order of the proceedings, and remind the employee of their rights at the hearing, including the right to request to be accompanied by a work place colleague or trade union official. A pack of supporting documents will be enclosed with the letter. Relevant witnesses may be

called and include, the line manager or committee chair who took the decision against which the employee is appealing.

- 15.5 The normal procedure for an appeal hearing is set out in the managers' toolkit.
- 15.6 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).
- 15.7 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 chair of the appeal or committee from choosing to adjourn and reconvening before making a decision. An oral announcement shall be confirmed in writing by WHMAT's People Matters team within five working days of the meeting, unless there are exceptional circumstances (see template in managers' toolkit).

16.0 Heads of academy on fixed-term contracts

- 16.1 In the event of a Head of Academy being employed on a fixed-term contract this procedure shall be followed, with the CEO/Deputy CEO advising on the extension/renewal or non-renewal stage, and the Board of Trustees hearing any appeal. Advice shall be sought from WHMAT's People Team as appropriate.
- 16.2 The CEO/Deputy 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 People Team if it does consider that it has good reason not to advertise.

17.0 Trade union officers

- 17.1 This policy applies equally to local school-based trade union officers who are employed on a fixed-term contract. However, if a line manager is proposing not to renew or extend a contract for a trade union officer, they should discuss this with WHMAT's People Team in advance, to ensure that the rationale is clear. WHMAT's People team will notify a relevant official from that union before the formal dismissal meeting takes place.

18.0 Policy Review

- 18.1 This Policy will be reviewed 24 months from ratification by WHMAT's Board of Trustees. This review will be carried out by WHMAT's People Team to ensure that it complies with employment law and good practice.

Appendix – Flowchart – Fixed Term Contract Procedure

