

Springbank Academy



Character Education Values

Courtesy-Forgiveness-Determination-Self-Discipline-Gratitude-Honesty

Our whole school vision is:

Springbank Primary is a place where all of our children and staff will have the opportunity to excel. Everyone will be safe, happy and cared for. Our curriculum and values will inspire everyone in the school family to be motivated and curious learners and offer core skills, knowledge and enrichment to enable all to gain the foundations for a quality future and a love for life-long learning.

In all we do we remember our school motto:

Caring-Happy-Healthy-Sporty-Scientific

School Values

Sportsmanship-Tolerance- Appreciation- Respect-Friendship-Integrity-Sensitivity-Helpfulness

Nottinghamshire School Fixed Term Contract Guidance

March 2023



Policy Lead: Adam Lumley

Springbank Primary School is committed to equal opportunities for all. It is our aim that every policy is written to have a positive impact on every child/all children irrespective of race; religion; gender; sexual orientation or age.

Springbank = success for all

There is a key that unlocks every child's learning, our job is to find that key.

Every staff member and governor must take the responsibility and accountability to ensure the procedures within this policy are delivered and implemented as per Springbank School Policy.

Nottinghamshire School Fixed Term Contract Guidance

February 2018

**HR Advice, Support and Training
Service**

Fixed-term contract Guidance - Table of Contents

Heading	Page
Introduction	3
Legislation	3
Principals	4
Scope of Fixed Term Contracts	5
Issuing a Fixed term contracts	6
Collaboration and Federations	8
Termination of Fixed term contract	8

FIXED TERM CONTRACTS FOR SCHOOL STAFF

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Please also note that any changes to the original policy documentation will require your governing body or trust to re-consult with the secretaries of the recognised trade unions and staff in your school.

1. Introduction

- 1.1 The purpose of this document is to provide head teachers and governing bodies advice and guidance on the appropriate use of fixed term contracts in schools.
- 1.2 This guidance has been agreed with all of the Nottinghamshire recognised trade unions through the JCNP process. Whilst there are circumstances when the use of such contracts is entirely appropriate, care needs to be exercised to ensure that appointments on fixed term contracts do not contravene equal opportunities legislation. The expiry of a fixed term contract will still count as a dismissal for the purposes of unfair dismissal law, therefore there has to be a fair reason for the contract and the dismissal must be reasonable in all other circumstances.
- 1.3 Governing bodies are strongly advised to adhere to the advice and guidance and seek advice on individual cases from the Local Authority HR Service.
- 1.4 It is recognised that Academy Trusts, foundation or voluntary aided schools may choose to adopt their own guidance or guidance recommended by their Diocesan Authority. Where this is the case the recognised trade unions should be consulted.

2. Legislation

- 2.1 There are two statutes in employment law that substantially affect the management of fixed term contracts and these are the Employment Act 2002 and The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. From 27 October 2008, the regulations were amended to entitle agency workers on contracts of three months or less to statutory sick pay. The regulations were introduced to prevent employers, including schools, from abusing the use of fixed term contracts. The regulations limit the use of successive fixed term contracts to four years, and define successive fixed term contracts as a series of two or more contracts that do not break continuity of employment as defined by the Employment Rights Act 1996. The aim of the regulations is to ensure that fixed term employees are not treated any less favourably than their counterparts employed on permanent contracts in relation to their terms and conditions, pay and benefits and training and development opportunities.
- 2.2 The law provides that an individual employed on a minimum of two successive fixed term contracts for a period of four years, will be deemed to be employed on a permanent contract and be entitled to receive a written statement to that effect. The regulations are not designed to prevent the proper use of fixed term contracts and there will still be circumstances where fixed term contracts are appropriate and circumstances where they may be issued for 4 or more years. However, whenever possible, head teachers and governing bodies should seek to advertise and appoint staff on permanent contracts.

3. Principles

- 3.1 Permanent contracts provide better opportunities for employees to make a more effective contribution to overall standards of teaching and learning at the school, help to retain skilled staff and avoid the extra costs associated with recruiting temporary staff.
- 3.2 The recruitment and retention of appropriately qualified and competent staff continues to be a key factor in maintaining the quality of education in schools.
- 3.3 From 6th April 2012 the law increased the qualifying period for unfair dismissal so that an employee with 2 years continuous service is eligible to make a claim to an Employment Tribunal for unfair dismissal. In some circumstances employees with 2 years continuous service are also entitled to a redundancy payment (which will include individuals employed on a continuous supply basis). **The definition of continuous service in this context requires a member of the teaching or support staff to have been employed each week during term time for a minimum period of two years. Therefore employing staff on a fixed term contract or supply basis does not avoid the requirement to follow appropriate procedures to terminate the contract of employment.**

- 3.4 Where employees have acquired protection against unfair dismissal (after two year's continuous service with the current employer, whether on a single contract or a succession of fixed term contracts or continuous long-term supply) they should be considered for any suitable vacant posts within the school. Head Teachers are legally required to ensure that staff employed on fixed term contracts are notified of vacancies in their own school and within the Council or Academy Trust during the course of their employment.
- 3.5 In some circumstances the post covered by an employee on a fixed term contract may become permanent. For example, if the substantive post-holder does not return or where a post initially established in the short term becomes permanent. In these circumstances the permanent vacancy does not always need to be advertised again provided that all of the following criteria are met:
- the original recruitment process was an external process open to all, fair and conducted in line with the school's recruitment and equal opportunities policy;
 - the advertisement informed all potential applicants, that permanency is a possibility but by no means a right;
 - the successful candidate met all of the essential requirements as stated in the person specification;
 - the post has not changed significantly since the fixed term appointment was made.
- 3.6 The reason and the period for the fixed term nature of the contract must always be included within the job advertisement, job details and contract of employment so that applicants fully understand the nature of their employment.
- 3.7 The employing School and the County Council/Academy Trust will seek redeployment for staff on fixed term contracts who will have accrued employment rights at its expiry. This does not entitle those coming to the end of a fixed term contract automatic entitlement to a permanent post either at their current or any other school unless in certain circumstances where they have been employed in a post at the school for 4 years or more. Head Teachers should proactively work with the HR Service to ensure that such employees are given access to information about other job opportunities in other schools within the County Council or Academy Trust.
- 3.8 Fixed term contract holders must always be carefully considered for continuing employment prior to the non-renewal of their contract and advice sought from the HR Service.

- 3.9 In certain circumstances, however, dismissals will automatically be considered to be unfair, and employees will not be required to have two years' service before making a claim where the reason for the dismissal could be considered discriminatory. These include dismissals for reasons such as pregnancy or maternity leave, trade union membership, whistleblowing, reporting health and safety risks or assertion of other statutory rights. These exceptions are all set out in the Employment Rights Act 1996. All decisions regarding the non-renewal of a fixed term contract should be made in accordance with relevant equalities legislation, the Employment Relations Act 1999, the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2002.

4. Scope of fixed term contracts

- 4.1 A fixed term contract must clearly state the reason for its fixed term nature and should only be used in the following situations:
- 4.2 to cover the long term absence of an employee as a result of sickness, maternity, parental or paternity leave, secondment or other agreed extended long term absence, e.g. for civic duties, or local trade union office.
- 4.3 pending the known appointment of a permanent employee to the vacant post, normally, this will be for no more than one term although in some circumstances, including where a post is re-advertised, this maybe longer.
- 4.4 to cover short-term vacancies arising from or pending the implementation of a school re-organisation. The duration of the fixed term contract should not normally be for more than one year unless there are exceptional circumstances delaying the implementation of staffing changes.
- 4.5 to cover a vacant post where there is firm evidence, supported by a formal notification of a potential staffing reduction ([Appendix 2 of the Reductions in Staffing Procedure](#)) that a school will need to reduce the number of staff within the next 12 months. In such circumstances since it may affect the redundancy selection process, contracts issued on this basis must not extend beyond one year either under one single contract or as a result of a succession of fixed term contracts.
- 4.6 to cover specific time-limited school based initiatives, curriculum developments or time limited funding. This will also include situations where the governing body determines that money will be available within the school budget for additional staff to cover non-contact time so that permanent staff can engage in a specific curriculum or managerial initiatives, again the duration of such a contract should normally be for a maximum of one year.

5 Issuing a fixed term contract

- 5.1 Head teachers are reminded that all appointments to the school must be in accordance with the [schools recruitment and selection policy](#) and adhere to the [statutory Safer Working Checks](#). In understanding these checks it is most important that appropriate references are obtained and where the school is recruiting an employee on a temporary, fixed term contract or supply basis, at least one reference must be obtained from the school at which they were last employed on a permanent basis, even if that employment is not their last job.
- 5.2 On appointment to your school, it is imperative that the period of continuous employment of the successful candidate is fully understood as this may have implications for the Head Teacher on how the expiry of the contract is managed. Schools should seek advice on this from their HR Service Business Partner if this is not clear.
- 5.3 Fixed term contracts must specify both the reason and the duration of the contract. For a teacher, a fixed term contract will normally finish at the end of a school term as defined in the Burgundy Book, i.e. 31st December, 30th April or 31st August. Unless there are exceptional circumstances the fixed term contract will be between one term and one year in length.
- 5.4 In the case of a temporary appointment to cover maternity, sickness or other long term absence, the contract will either terminate at the end of one month's notice following notification of the return of the substantive post holder, or with a minimum of one week's notice, where such notification has been received within one month of the return date. In these cases, the contract will terminate upon the return of the substantive post-holder and notice should be given as soon as the return date of the substantive post-holder is confirmed. School must ensure that fixed term contracts are very carefully worded and contain notice provision.
- 5.5 Teaching assistants employed by schools to provide additional SEN support to individual named pupils have often been employed on a series of successive fixed term contracts. Under the funding arrangements for schools and in line with current legislation and good employment practice, such appointments should normally be made on a permanent basis for whole or part of the contract, depending on the specific circumstances. An assessment of historical funding to the school and contracts will be helpful in making these decisions. Exceptions might be where it is known that the child requiring support will be transferring to another school within less than 12 months. Further specialist advice should be sought on a case by case basis from your named HR Service Business Partner.
- 5.6 Fixed term contracts are occasionally issued by schools on a rolling basis to employ additional teachers or teaching assistants in the

reception class as pupil numbers build up. The practice is acceptable on a “one off” basis, but where this situation becomes a regular employment requirement, schools are strongly advised to seek HR advice. Instead of recruiting annually on a fixed term basis, schools should, wherever appropriate, recruit on a permanent contractual basis. The permanent contract will set out the requirement to work either full or part time between set dates or in a particular term or terms on an “annual basis”. This has many advantages for the school and the employee(e) affected and will ensure continuity of employment, understood by all parties and be fair in terms of training, professional development and appraisal of staff. This approach will ensure all employment rights for such employee(s) and avoid the need for the school to undergo the redundancy procedure each year.

- 5.7 Schools seeking to cover the long term absence of an employee due to illness, wherever possible should recruit on a suitably worded fixed term contract rather than employing staff on a daily supply basis.
- 5.8 All fixed term contracts must specify the start date and date of termination except for contracts covering maternity, sickness or long term absence, which should include an expected date of termination consequent on the return of the substantive post holder. The contract should clearly state that there should be no expectation of further employment beyond the stated end date. The contract of employment must contain a notice clause to enable the contract to be terminated earlier than expected if required. The notice provision should be in line with normal contractual notice requirements. Where the contract is for less than one month, no notice is required. Fixed term contracts terminated early without an early termination clause may lead to a claim of wrongful dismissal.

The following statement must be included in the letter of appointment:

“The appointment is of a temporary nature as a result of * (state reason). At the end of this contract, there is no guarantee of continued employment. This will not affect your statutory employment rights.”

6 Collaboration/Federation

- 6.1 Specific advice is available to Head teachers and to the Chair of Governors (in the case of Executive Head Teacher appointments) where temporary staffing arrangements are put in place for school collaborations or federations. For further information please speak with your HR Business Partner.

7 Termination of a Fixed Term Contract

- 7.1 The termination of fixed term contracts issued to **cover** illness, secondment or maternity etc. are not redundancies as there is no reduction in the overall establishment of the school. Given that the non-renewal of a fixed term contract is a dismissal, it is good employment practice for the Head teacher to consult with all staff employed on fixed term contracts prior to the contract end date to re-confirm the reason for ending the contract and the end date of their contract.
- 7.2 On the 6th April 2012, there was a significant change to the law and since this date the qualifying period of continuous employment providing legal protections against unfair dismissal was extended from one to two years. Therefore, where employees accrue two years continuous employment with their current employer at the date of the most recent fixed term contract (for example either the County Council or an Academy Trust) proper dismissal procedures must be followed. This means that in the case of dismissal due to redundancy, including consultation with the employee and recognised trade unions, a fair selection and hearing/appeals process must be followed. In some cases, where an employee is selected for redundancy on this basis, they may, on advice from their trade union, chose to waive their right to attend a hearing/appeal, which should go ahead in their absence. Individual employees should still be given the opportunity to appeal this decision to the governing body.
- 7.3 Where an employee has met the minimum service requirements for two years continuous employment, they will, in cases of redundancy be entitled to a redundancy payment. Schools are reminded to provide support to such employees to seek redeployment opportunities to avoid the redundancy wherever possible.
- 7.4 Fixed-term employees should not generally be selected for redundancy purely because they are on fixed-term contracts, unless this can be objectively justified. Where fixed-term employees have been brought in specifically for a particular purpose, or to cover for a peak in demand, and that specific purpose is clearly stated in the contract and that purpose or demand no longer exists, it is likely that schools could objectively justify selecting them for redundancy at the end of their contracts.
- 7.5 If however, a person has been employed on fixed term contract(s) or long term supply for no specific or particular reason stated in the contract or have had repeated end on fixed term contracts for a number of years it is likely that the posts should be considered to be part of the wider selection process along with other permanent staff in the school.
- 7.6 The termination of a fixed term contract in respect of (iv) and (v) is a dismissal due to redundancy, i.e. it is known at the outset that the job

will not continue beyond the contract period and the non-renewal of the contract leads to a reduction in the establishment of the school. In order for the dismissal to be fair, it is important that all the contractual requirements are clearly set out and that individuals are consulted about the non-renewal of fixed term contracts. The school follow the Reductions in Staffing Procedure when terminating such contracts. For further guidance see [Schools Portal](#)

- 7.8 This area can be very complex and Head Teachers should seek advice before making any appointments on this basis. New head teachers unsure about the status of staff employed on fixed term contracts should carefully check dates and the reason for the contracts and seek advice from your named HR Service Business Partner on how to manage the renewal or termination of employment. The guidance incorporates a Spreadsheet in **Appendix 1** to assist schools to track the contract status of both permanent and staff employed on fixed term and supply contracts.
- 7.9 In general, staff appointed to fixed term contracts who will have accrued less than 1 years' continuous service at the point of dismissal can be terminated by giving appropriate notice as contained within the contract and there is no procedure to follow, unless there is a redundancy. Advice should always be sought in specific circumstances to avoid successful claims of wrongful or unfair despite not having 1 years' service.

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