

Harrow Council Temporary and Fixed-Term Employees

1. INTRODUCTION

This policy incorporates into the Harrow Scheme for Pay and Conditions, the Fixed Term Employee (Prevention of Less Favourable Treatment) Regulations 2002, which came into force on 1st October 2002. Where any doubt or uncertainty arises as to this policy, the Regulations should be referred to. This policy will be amended from time-to-time to ensure continued compliance with law and good practice.

2. POLICY STATEMENT

Employees on fixed-term and temporary contracts will not be treated less favourably than comparable permanent employees unless there is an objective justification for this.

Advice to Governing Bodies

This policy has been developed to ensure compliance with the Fixed Term Employee (Prevention of Less Favourable Treatment) Regulations 2002, which came into force on 1st October 2002 and is, therefore, mandatory for adoption by school governing bodies.

3. WHO IS COVERED?

This policy only applies to persons employed on temporary or fixed term contracts of employment, including contracts which are:

- specified to end on a certain date
- specified to end when a specified event occurs or does not occur
- specified to end when a specified task has been completed

Such employees are referred to as “relevant employees.”

This policy does not apply to various categories of persons, including:

- (1) agency workers;
- (2) persons employed under schemes, provided under arrangements made by the Government or funded by an Institution of the European Community, which are designed to provide training or work experience to help such persons to seek or obtain work;
- (3) persons employed under contracts of apprenticeship;
- (4) casual workers / as and when workers.

4. EMPLOYMENT TERMS AND CONDITIONS

1. If appointed for up to and including 4 weeks, relevant employees must be issued with an Appointment Letter, stating the expected date for the end of employment and the reasons why the appointment is temporary
2. If appointed for more than 4 weeks, relevant employees must be issued with a Statement of Particulars and an Employee Handbook.
3. On a pro-rata basis, relevant employees will be subject to the same terms and conditions of employment as comparable permanent employees:-

Salary / Pay

Rates of pay for temporary and fixed-term appointments must be in accordance (pro-rata) with the grade for the same or equivalent permanent post.

Sick Pay

Statutory Sick Pay will be payable from date of appointment. After three months Occupational Sick Pay will be payable in accordance with the LB Harrow scheme.

Bank Holidays

Provided they are not specifically required to work on bank holidays, relevant employees will be entitled to paid Bank Holidays in the same manner as employees on permanent contracts.

Annual Leave

Employees will be entitled to paid annual leave from the date of appointment.

Probation Procedure

If the contract is for less than 6 months probationary checks on the employee's progress will take place in a similar way to employees on a permanent contract and employees will only have a right of appeal at officer level.

Pension

Relevant employees whose contracts are over 12 weeks duration will automatically be included in the Local Government Pension Scheme. Where a shorter contract is extended beyond 12 weeks the employee will be included in the scheme from that date and given the option to pay contributions for the first 12 weeks.

Teachers employed to work on full-time temporary or fixed term contracts will automatically be included in the Teachers' Pension Scheme. Teachers employed to work on part-time temporary or fixed term contracts part-time who wish to contribute to the Teachers' Pension Scheme may elect to do so from their first day of employment.

Grievance Procedure

Employees will have access to the Grievance Procedure from date of joining.

Disciplinary Procedure

Employees with contracts of 6 months or more will be subject to the Council's Disciplinary Procedure. For contracts of less than 6 months see Probation above.

Absence Procedure

Employees with contracts of 6 months or more will be subject to the Council Absence procedure. For contracts of less than 6 months see Probation above.

Notice

If the contract is for less than one month no notice is required. Otherwise, relevant employees are entitled to receive and must give the same notice period as applies to comparable permanent employees. Where this is not appropriate in view of the length of the contract advice should be sought from Human Resources.

Pay Interval

Employees who are employed on a temporary or fixed-term basis will be paid monthly.

References

All contracts in excess of 6 months are subject to satisfactory references prior to commencing work. For contracts of less than 6 months references will be taken up according to job requirements.

CRB Checks

Appointments to certain posts (which involve access to children and/or vulnerable adults, etc) will be subject to a satisfactory check carried out by the Criminal Records Bureau.

Medical clearance

Employees are subject to medical clearance before commencing employment.

Special Leave

Employees are entitled to be considered for Special Leave from date of joining.

Car Allowances

Employee on temporary and fixed-term contracts who are covering posts carrying Essential User car allowance will be entitled to claim the Essential User car allowance. However, employees will only be able to take out a car loan if the term of the loan is shorter than their period of employment.

5. OBJECTIVE JUSTIFICATION

Relevant employees can only be lawfully treated less favourably than comparable permanent employees, where the less favourable treatment is objectively justified.

It is objectively justified for a relevant employee to be treated less favourably than a comparable permanent employee in respect of a particular term of his contract, providing that, taken as a whole, the terms of the relevant employee's contract are *at least* as favourable as the terms of the comparable permanent employee's contract.

It *may* be objectively justifiable for certain terms of relevant employees' contracts to be less favourable than certain terms of comparable permanent employees where:

- the permanent employee has greater responsibilities, greater experience or greater length of service than the relevant employee
- the less favourable treatment is reasonably necessary due to market forces or for reasons of administrative efficiency
- the less favourable treatment is reasonably necessary to achieve a legitimate objective, for example a genuine business objective;

For example, due to the administrative difficulties involved, it would be objectively justifiable not to include in the Local Authority's pensions scheme, a relevant employee employed for only a very short period of time, such as a week or a month.

In considering whether less favourable treatment is justified, the needs and rights of the individual employees should be considered and balanced against business objectives. Consideration should be given to whether it is possible to offer relevant employees certain benefits on a pro-rata basis. It may be, however, that the cost of offering a particular benefit to a relevant employee may be disproportionate when compared to the benefit the employee would receive, and this may objectively justify different treatment.

In all circumstances where a Manager wishes to employ a relevant employee on less favourable terms than a comparable permanent employee, the Manager should contact Human Resources for specific advice.

6. LIMIT ON THE USE OF SUCCESSIVE FIXED TERM CONTRACTS

Where an employee is continuously employed for four years or more on a number of successive temporary or fixed-term contracts, unless it is objectively justified for the last contract to be fixed term or temporary, it will take effect as a permanent contract.

In respect of the four year period mentioned above, the accumulation of continuous service commences at zero from 10th July 2002.

There is no limit on the duration of the first fixed-term contract but, according to rules stated in the above paragraph, any renewal may result in a permanent contact coming into existence.

7. CONTINUOUS SERVICE

Periods of continuous service will be calculated in accordance with the law. Where there is over a week's gap between successive contracts the gap may or may not break continuity, depending on the circumstances.

8. TERMINATION OF TEMPORARY AND FIXED TERM CONTRACTS

Letter

Before the end of a temporary or fixed term contract the employee should be sent a letter confirming that, in accordance with their appointment letter, the Council does not intend to renew their fixed term contract and will be terminating their employment on a specific date and the reasons for this decision. This will constitute formal notice (where possible). The letter should be sent to the employee and should offer the employee the opportunity to attend a meeting to discuss this decision with their Manager.

Meeting

If the employee does request a meeting, they should be given at least 5 days notice of the meeting and will have a statutory right to be accompanied at the meeting by a trade union representative or work colleague. The meeting must take place before the contract comes to an end. It is vital that the meeting is scheduled at a reasonable time and place and provision should be made to ensure that the employee, and the person accompanying them, is able to attend. Similarly, the employee should take reasonable steps to attend the meeting.

At the meeting the Council's decision should be discussed together with the reasons the decision is being taken. Any suitable alternative employment should be discussed with the employee.

After the meeting the employee must be notified of the decision in writing and informed of their right of appeal and who to address their appeal to.

Appeal

If the employee does wish to appeal they must register their appeal within 5

days of receiving the notification of the decision. Appeals registered after this timescale will only be considered in exceptional circumstances.

The employee should then be invited to attend a further meeting.

Appeal Meeting

A Manager more senior than the Manager who made the decision to terminate the employment should hear the Appeal. The employee has a statutory right to be accompanied at the meeting by a trade union representative or work colleague. The employee must take all reasonable steps to attend the meeting.

The appeal meeting need not take place before the dismissal takes effect.

The purpose of the meeting is to determine whether the reasons for the dismissal are fair.

After the appeal meeting the employer must inform the employee of the final decision.

Redundancy

Where employees are continuously employed for 2 years or more they will be entitled to a redundancy payment.

Where a relevant employee is employed on a specific purpose contract to cover an absence (eg Career break), a redundancy situation will not arise where the contract ends but the post or work continues to exist. This should be made clear in contracts of this nature. However, it is always advisable to consider redeployment opportunities across the Council for the employee, towards the end of their contract.

Unless it is objectively justified, relevant employees must not be selected for redundancy because they have temporary or fixed-term contracts.

STAFF VACANCIES

Relevant employees must receive notification of permanent job vacancies in the same way as permanent staff. Like permanent employees, relevant employees must be treated as internal candidates for the purposes of the recruitment process provided they are in the Council's employ on the day their application is submitted.

9. RE-EMPLOYMENT OF EARLY RETIRED EMPLOYEES

The London Borough of Harrow will, during any period of re-employment in local government (including employment with an admitted body if the person is, in that employment, a member of the Local Government Pension Scheme (LGPS)), reduce or suspend annual compensation (ie pension awarded in respect of compensatory added years).

Due to changes in pension legislation this will only affect pre April 2007 employees who retired on redundancy or efficiency grounds and were awarded annual compensation.

10. COMPLAINTS

If a relevant employee considers that (s)he is being treated less favourably than a permanent comparator (s)he can request from Harrow a written statement setting out the reasons for the alleged less favourable treatment.

If, by virtue of section 5 above, a relevant employee considers that (s)he is a permanent employee, (s)he can request from Harrow a written statement setting out the reasons for the alleged less favourable treatment.

In either case, the relevant employee's manager must provide the statement within 21 days of the request. Assistance in preparing this document should be sought from Human Resources.

Comparators

A comparator is a permanent employee who is employed by the same employer to do the same or broadly similar work. Where relevant the comparator should have similar skills and qualifications to the relevant employee.

Remedies Available

If an employee on temporary or fixed-term contract is dissatisfied with the written statement provided by their Manager in accordance with section 10 above, (s)he must, in the first instance, use the Council's Grievance Procedure.