

Contracts of Employment – Guidance for Schools

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FOREWORD

The guidance has been the subject of formal negotiation and consultation with the recognised Trade Unions and Professional Associations.

Whilst there has been considerable co-operative development of the document at Schools' Joint Consultative Committee, on this occasion it has not been possible to reach a collective agreement on the whole policy with all the unions.

The School will adopt the guidance, as a fair and comprehensive approach to "Contracts of Employment"

The changes can be summarised as follows:

- The guidance has been updated to provide additional advice on Fixed Term Contracts including advice on managing the end of a fixed-term contract including:
    - When a fixed term post becomes permanent
    - Renewing or extending a fixed term contract
    - Terminating a fixed-term contract
    - Redundancy

- A flow chart has been provided to assist with the actions to be taken when a fixed-term contract end date is reached.

- An additional part has been included which provides further advice on the contractual position of SEND TA's

- The model letters have been removed. These will be available to access separately

- Terminology and references have been updated

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1. INTRODUCTION

This document provides guidance to employers in all schools on:

- Their responsibilities in providing all employees with a Contract of Employment.
- The legal relationship created by the Contract of Employment between an employer and an employee.
- Their responsibilities in relation to Contracts of Employment.
- Statutory requirements.
- Good employee relations practice.
- Relevant employment legislation.

2. BACKGROUND

The Trust Board is the employer in law for Academy Schools and the advice and guidance in this document can also be applied to those Schools who buy the schools HR Advisory Service from Derbyshire County Council.

The absence of a written contract may lead to confusion and uncertainty in the employment relationship, particularly where there is a dispute as to a particular term. The Trust Board, therefore, need to ensure that all employees of the school are provided with a contract of employment which sets out clearly and precisely the full terms and conditions of employment.

The employment relationship is becoming increasingly complex. The Trust Board should note that this document is a brief guide, and they are strongly recommended to seek professional advice about drafting contracts of employment.

This document forms the basis of the Authority's advice and support to Schools.

The Schools HR Advisory Service and HR Services provides the Trust Board with support on Contracts of Employment through its traded services. Schools should contact their HR Consultant for any advice and guidance.

3. THE CONTRACT OF EMPLOYMENT

The Contract of Employment contains the principal rules governing the employment relationship. It sets out the rights and obligations which the employer and the employee have undertaken to each other. It is, therefore, essential that both parties fully understand the agreement they have made.

Contractual terms may be expressed, implied, or determined by custom and practice. The difference is not one of legal effect but the way in which the consent of both parties is

manifested. A ‘Contract’ need not be written down, or signed, in order for it to be enforceable.

There are a number of legal consequences arising from the existence of a Contract of Employment apart from the obvious general obligation not to act in breach of that contract. It is, therefore, good practice to provide written Contracts of Employment which state clearly all the terms which it is intended should form part of the contractual relationship between both parties.

4. THE WRITTEN STATEMENT

The written statement may be provided in more than one document. There is, however, a requirement that certain terms be contained in one 'Principal Statement'. The principal statement must be provided on or before the first day of employment. These are as follows:

- The names of the employee and employer.
- The date that employment began.
- The date the employee's continuous employment began (taking into account any previous period of continuous employment which the employee is entitled to count towards their overall period of continuous employment).
- The scale or rate of pay or the method of calculating it.
- The intervals at which the employee is paid (i.e., weekly/fortnightly/monthly).
- The hours of work.
- The job title or a brief description of the work which the employee is employed to undertake.
- The place of work or, if the employee is required to work at various places, an indication that this is the case, and the employer's address.

Additional particulars can either be contained in the 'Principal Statement' or in the 'Section One Statement'. The employee must be given all the required particulars also known as the wider written statement within two months of commencing work or becoming entitled to receive a statement of terms and conditions, which include the following: -

- Sickness and sick pay provision.
- Pension and pension schemes.
- Notice to be given by the employer and employee to terminate employment.
- Grievance and disciplinary proceedings.

The following information may be provided in instalments, as long as this is done by the end of the second month. This information is provided in a ‘Section One Statement’:

- Terms relating to sickness, injury, and sick pay.
- Details about available pension schemes.
- The length of notice that the employee must give and is entitled to receive to terminate the contract.
- Where the appointment is temporary how long it is likely to last or the termination date of a fixed term contract.
- Collective agreements, which directly affect terms and conditions. Where the employer is not a party the persons by whom they are made must be named.

- Details relating to working outside the UK where this is applicable.
- Terms relating to disciplinary and grievance procedures.

The Principal Statement need not set out all the terms in detail and can refer to documents in which the terms are found. If a Contract of Employment has no terms under one or more of the above headings, the statement should say so.

HR Services can provide examples of the Authority's Principal Statement and Section One Statement of terms and conditions as part of its traded services for Schools.

Written contracts of employment often refer to other documents which may, depending on the context and circumstances, become a part of the contract. This means of incorporating documents into a contract is known as "incorporation by reference". Documents such as the disciplinary procedure, the grievance procedure and collective agreements are common examples of documents which can be incorporated into contracts of employment in this way.

5. VARIATION TO THE CONTRACT OF EMPLOYMENT

It is strongly advised that if a Trust is considering varying an employee's contract of employment, they seek professional advice and where appropriate contact their HR Provider for advice and guidance.

Varying a contract of employment should involve a period of consultation between the employer and the employee and an appropriate notice period. The intention is to reach an agreement. Any variation to contract process will need to be mutually agreed between the employee and employer. The HR Advisory Service has a protocol in place for the variation of contract process - any school wishing to follow this should seek advice, guidance, and support from their HR Consultant.

6. RESPONSIBILITIES OF THE TRUST

Conditions of Service for teachers in maintained schools are derived from three basic sources: -

- The School Teachers' Pay and Conditions of Service document or Blue Book, which sets out provision on teacher's professional duties, working time and cover, and is determined by the Government taking into account recommendations made by the School Teachers Review Body.

- The "Burgundy Book" document, which covers other areas, such areas as sick pay, maternity pay and notice, and is a national agreement between Local Authorities and the Teachers Organisations; and

- Local Agreements, which set out further provisions which are contained in Local Authority Policies & Procedures

Conditions of service for support staff in maintained schools are derived from the following sources: -

- Green Book - National Agreement on Pay and Conditions of Service for Local Government Services Employees
- Derbyshire County Council – Working for Us Booklet – "What You Need to Know"
- Local Agreements - which set out further provisions which are contained in Local Authority Policies & Procedures

The Local Authority

The Local Authority will continue to issue the Principal Statement and the Section One Statement where the Authority has a traded agreement with the school.

Academies, Aided and Foundation Schools

Trust Boards of academies have overall responsibility for employment matters for schools in their Trust.

HR Services will issue a Contract of Employment to an individual on behalf of the Trust Board, providing all the relevant information has been provided and the appropriate appointment procedures have been followed. Appointments are normally made to a specific school.

The School's HR Advisory Service provides advice to Trust Boards which buy their traded HR Advisory Service on job descriptions, person specifications and grades for posts.

7. OTHER DUTIES UNDER THE CONTRACT OF EMPLOYMENT

7.1 Statutory Duties

Trust Boards which buy the HR Service traded services package who wish to make an appointment will provide HR Services with the relevant information relating to the appointment.

7.2 Common Law Duties under a Contract of Employment

This is a complex area of law and brief examples of general duties under common law are:

i. Employer's Duties:

- duty to pay the employee who is willing to work.
- duty to indemnify the employee against expenses incurred in carrying out the work.
- duty to take reasonable care.
- duty of mutual trust and confidence .

ii. Employee's Duties:

- duty of service, i.e., to do the job and to do the job himself/herself.
- duty to act with reasonable care.
- duty of mutual trust and confidence which includes obeying lawful orders, courtesy, honesty, and respecting confidentiality.

8. TEMPORARY AND FIXED TERM CONTRACTS OF EMPLOYMENT

Employment Legislation determines that Trust/local governing committees and Headteachers have a duty to ensure that situations involving staff appointed to temporary or fixed term contracts are managed appropriately and effectively. Employees must not suffer a detriment as a result of being engaged on a temporary or fixed term contract.

All employees have the right not to be unfairly dismissed by their employer. The present law is contained in the Employment Rights Act 1996.

Employees must have been continuously employed for at least two years to complain to an Employment Tribunal. Continuous service in relation to a claim to an employment tribunal is usually defined as employment with the same employer. In some instance continuous service arises because of previous employment.

Continuity of service may not be readily apparent, and in the maintained sector this continuous service may include service at other Local Authority maintained schools in Derbyshire, before the employee was appointed to their present post. Whilst service in academies is not automatically counted for the purpose of continuous service in relation to occupational maternity, sickness pay or leave, for maintained schools, Derbyshire County Council has exercised its discretion to recognise such service from all academies in relation to occupational maternity, sickness pay and leave as well as entitlement to a redundancy payment and this will be replicated by the Trust for existing staff under TUPE.

The expiry and non-renewal of fixed term or temporary contracts is a dismissal in law and these types of contracts cannot simply be terminated without following proper employment procedures. A right to claim for unfair dismissal may arise after 2 years continuous service (also see 8.1 below for temporary contracts exceeding 4 years).

Some types of dismissal are deemed automatically unfair, providing an employee with a right to claim from the commencement of their employment. A fair reason for dismissal would need to be demonstrated namely redundancy or 'some other substantial reason (see flow chart in appendix 3).

Schools need to ensure that they: -

- Undertake a proper dismissal procedure, offering the right of representation and appeal, for all employees.
- Only make temporary appointments where there is a genuine reason for the temporary nature of the post.

- **Do Not** end the temporary contract of an employee and then appoint a new employee on a permanent or temporary contract to the same post. (see paragraph 8.3)

If the reason for a temporary contract is not genuine, or a temporary contract is terminated and a new employee is appointed, or a proper dismissal procedure has not been followed, the employee whose temporary contract has been terminated may make a claim of unfair dismissal to an Employment Tribunal.

Temporary contracts **must not** be used as an on-going strategy to protect the jobs of "permanent" employees and therefore avoid the need for redundancies. This is **not** appropriate. Any dismissal in these circumstances is likely to be a redundancy and schools **must** follow a statutory redundancy procedure which includes notifying and formally consulting the employee(s) concerned and the recognised trade unions on the proposal to reduce the staffing of the establishment. The Trust Board must inform employees of their established employment rights, such as consultation, representation, appeal, and appropriate notice and ensure these are met.

Where an application to an Employment Tribunal for unfair dismissal succeeds the tribunal has a range of remedies available.

- An order for reinstatement or re-engagement. The dismissed employee must be re-employed by their former employer.
- A monetary award.

It is essential, therefore, that schools employ staff on a temporary basis **only** in the following circumstances:

- Where the appointment is to cover the absence of another member of staff on maternity leave, secondment, or long-term sickness (any absence in excess of 4 weeks). (Any cover for short-term illness would normally be on a supply basis).
- Where the school can be reasonably certain that the budget and)/or pupil numbers will fall to such an extent that the existing level of staffing cannot be sustained in the next financial year.
- Where the post is to be filled on a permanent basis but there is a need for a short-term appointment (l*ess than a year*) while a permanent appointment is being made.
- In the lead up to the re-organisation or closure of a school.
- To meet a change in curriculum needs arising from a short-term increase in demand for a particular subject or to provide additional support in a particular area.
- To meet a temporary increase in pupil numbers during the course of a year which necessitates additional staffing for a fixed period.
- Where the duties and responsibilities of the post relate to a new initiative or function for which the longer term future is uncertain.

It is not appropriate to:

- Make temporary appointments as a 'probationary' measure to assess an employee's suitability or competence.
- Dismiss a temporary employee, or refuse them an interview for a continuing post, because there are concerns about their performance or attendance which have not been addressed through proper procedures.

There are Competence and Management of Sickness Absence procedures agreed with the relevant Trade Unions and adopted by the Trust Board, which should be used to address issues of performance or frequent absence.

It is important that the letter of appointment for a fixed term or temporary contract should include:

- A clear statement of the purpose of the contract.
- **A clear explanation as to why the particular post needs to be filled on a fixed term or temporary basis.**
- The anticipated length of the contract.
- The reason why it will terminate once the purpose is fulfilled.

Any request for the LA to advertise a temporary post or issue a temporary contract of employment sent by school to HR Services should include these details. If not, a colleague from HR Services will ask for them and will not place the advert or issue the temporary contract until they have that information.

8.1. Successive renewal of Fixed-Term contracts

If an employee has been continuously employed under a fixed term contract, for a period of four years or more, the contract of employment will need to be converted to a permanent contract. Where the renewal of a fixed-term contract will take the continuous service of the individual to 4 years or more schools should ensure that the individual is issued with a permanent contract in order to comply with the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

There are very specific circumstances where a further fixed-term contract may be justified. The Trust should obtain the advice of the Schools HR Advisory team before any extension can be agreed in these circumstances.

8.2. Managing the end of a fixed-term contract

A flow chart is attached as appendix 3 to guide schools through their responsibilities when reaching the end date of a fixed-term contract.

Schools should ensure that they have in place a robust process to ensure that fixed-term contracts reaching their end dates are reviewed in sufficient time for the appropriate actions to be taken. Good practice would be to clarify the position of a fixed term contract as early as possible and preferably before the end of May.

It would be reasonable to allow sufficient time to allow for:

- Discussions

When the Fixed term contract is nearing the end, the School must determine whether the need for the temporary post still exists.

The Trust Board will need to consider whether the original reason for the fixed term contract still applies, or whether circumstances mean it has changed. The reason for the extension/renewal of the fixed term must be made clear in the employee's contract. This will determine the reason for and process to follow when ending the contract. The employee currently employed under the contract should be offered the extension or renewal.

The successive renewal of fixed term contracts should be avoided.

If the reason for a fixed term or temporary contract has disappeared that would be a legitimate reason for dismissal. If, however, a suitable alternative post is available within the school the individual must be considered for that post.

8.3. When a fixed term post becomes permanent

An employee on a fixed-term contract does not have an automatic right in law to a post if it is decided that a "permanent" appointment will be made.

Where:

- the employee was not offered the fixed term contract through the school's normal recruitment and selection process or
- the duties of the job they were recruited to have substantially changed, normally this will include a change to the grade or salary scale or
- the person in the role is an agency worker, on a relief contract or any other contract that classifies them as a 'worker' rather than 'employee' or
- there are other employees 'at risk' who should be considered for the role or
- the employee was appointed specifically for a short-term/interim period to cover a vacant post (l*ess than a year*) while a permanent appointment process was undertaken

the post must be advertised as permanent. The employee will be able to apply for the post and should be treated on an equal footing with other candidates.

Where the fixed term appointment was to cover the absence of another member of staff on maternity leave, secondment, or long-term sickness and the original member of staff subsequently leaves the employee currently in the post may be slotted/offered the permanent role.

In all other cases the employee should be slotted/ offered the permanent role.

Further advice should be sought from HR before advertising a post in these circumstances.

8.4. Renewing or extending a fixed term contract

If a post covered by an individual employed on a fixed-term contract is to continue unchanged beyond the date of the fixed term, the contract should be renewed. Only if the duties of the post have changed significantly can it be advertised. (See restructure policy)

Extension/renewal of a fixed term contract must be justifiable. It must be clear whether the original reason for the fixed term contract still applies, or whether circumstances mean it has changed. The reason for the extension/renewal of the fixed term must be clear in the

employee's contract. This will determine the reason for and process to follow when ending the contract.

The employee currently employed under the contract should be offered the extension or renewal. If an employee's fixed term contract is extended beyond four years, it is likely that the contract will need to be converted to permanent.

8.5. The Termination of a fixed-term contract

A Code of practice to use when it is necessary to terminate the employment of employees on fixed-term and temporary contracts is included as Appendix 2 of this document.

The process should be completed in time for notice in accordance with the contract of employment to be given as follows:

- Teachers: 2 months terminating at the end of a school term and in the summer term 3 months.
- Support Staff. A minimum of one month

8.6. Redundancy

Any individual with 2 years' continuous employment can claim a statutory redundancy payment upon the ending of their employment if the reason for the expiry of their fixed term contract is redundancy and alternative employment has not been identified.

The letter of appointment for a fixed term or temporary contract will include a clear statement of the purpose of the contract, **and a clear explanation as to why the particular post needs to be filled on a fixed term or temporary basis**. It will also include the anticipated length, and the reason why it will terminate once its purpose is fulfilled.

Fixed term contracts will be made for the minimum period necessary in order to meet identified need.

In adopting this guidance, the Trust acknowledges and will follow the advice from the Schools HR Advisory Service. All contracts of employment will be permanent unless it can be demonstrated that the contract is temporary, or fixed term, for a period of less than 1 year, or for one of the circumstances listed above.

The Trust Board will need to follow an appropriate and proper dismissal procedure when ending temporary or fixed term contracts of employment.

9. Advice & Guidance regarding the contracting of SEND TAs

Schools are advised to appoint SEND TAs on permanent contracts as part of the normal staffing establishment of the school.

These staff can be deployed to meet the needs of the SEND children who are placed in the school over time. Where they provide 1:1 support for individual children the school will deploy them to support different children at different points in their career.

This will mean that no one employee is automatically identified as redundant when a child/ren leaves the school and/or no longer requires that level of support. When a child leaves the school, there will be an expectation that the employee is deployed elsewhere in the school.

Where, as a result of a children leaving the school there is a gap in the agreed funding the school will be required to follow the agreed procedures.

A Redundancy process which will be require the issuing of a S188 Notice and to place all TAs at the appropriate level in a pool for selection may be necessary.

Schools have flexibility in respect of the deployment of their TAs and does not automatically identify an individual for redundancy, purely on the basis of the child/ren leaving the school. Instead, schools will determine appropriate selection criteria for redundancy, which will be reflective of the key skills, knowledge, experience, and qualifications which schools require individual employees have in order to sustain the quality of teaching & learning.

Redeployment support which it is able to provide possible redeployment opportunities to SEND TAs identified “at risk” of redundancy.

Consideration will need to be given to engaging with Headteachers/Governors in respect of how redeployment can be used, perhaps on a cluster basis.

There may be specific circumstances when schools could advertise and recruit to appoint SEND Teaching Assistants on fixed term contracts, which could be due to the provision of a specialist service or the uncertainty of how long the support may be required.

If schools feel that they have particular circumstances as outlined above, which may need them to recruit on a fixed term basis, then they are advised to contact their HR Consultant within Schools HR Advisory Service, prior to advertising and recruitment to the post.

10. SECONDMENTS & TEMPORARY ADDITIONAL HOURS

10.1. Secondments (Internal & External)

Secondments are different to fixed-term contracts and should be issued whenever an employee secures a revised position internally or at another organisation for a temporary period of time. At the end of the temporary period the individual will automatically return to their substantive position.

It is essential that the contract reflects that the individual will revert to their substantive post at the end of the temporary appointment.

Should the substantive school need to restructure during the time that the secondment is in place the individual will be considered within the new staffing structure in accordance with their substantive post.

Any request which is sent by the school to HR Services should be made on the secondment form specifically developed to reflect secondment arrangements. This is required to ensure that the contractual position of a seconded employee is reflected accurately. The secondment form sent to HR Services will need to reflect details of the employee’s current

post, and the employee's new secondment post. The employee will be provided with a new contract for the seconded role and letters related to the changes to the employee's substantive role.

Schools are not required to agree to offer secondments on this basis but it does provide the opportunity to provide development opportunities within or between organisations.

If a secondment cannot be agreed and the employee wishes to accept the position on a fixed-term contract, then they should be made aware at the outset that upon accepting the fixed-term appointment, they will have no right to return to their previously held established job.

Employees may wish to contact their Trade Union or Professional Association for further advice on secondments.

When setting up a temporary secondment arrangement reference should be made to the advice on fixed term and temporary contracts contained in this document to determine whether the circumstances justify a temporary fixed term rather than permanent contract.

10.2. Temporary additional hours

Schools should avoid the use of fixed term contracts wherever possible for existing staff. If an employee takes on an additional role for a temporary period of time schools should consider whether the role falls under the same job role profile and therefore a temporary increase in contractual hours is more appropriate than setting up an additional contract on a fixed term basis.

APPENDIX 1

ASSOCIATED EMPLOYMENT LEGISLATION

i) The Employment Rights Act 1996

Employees are entitled to the protection afforded by the Act, including the right not to be unfairly dismissed, the right to a redundancy payment, guarantee payment, minimum period of notice and payment during periods of suspension on medical or pregnancy-related health and safety grounds.

ii) The Equality Act 2010

This Act protects employees against discrimination on various grounds (the most common being gender, race, and disability).

For specific advice and guidance please contact Schools HR Advisory Service.

iii) Discrimination Against Part-Time Workers

Part-time workers have the right not to be treated less favourably than a 'comparable' (same work, type of contract) full-time worker in the same employment **unless** the employer can justify that treatment.

iv) Discrimination Against Fixed-Term Employees

Fixed-term employees should not be treated less favourably than comparable, permanent employees, unless this is objectively justified.

Treatment may be assessed in 2 ways: -

- By reference to any one of the fixed-term employee's terms and conditions of employment, which should be not less favourable than the comparator's.

Or

- By reference to the fixed-term employee's overall package of terms and conditions of employment, which should not be less favourable.

Fixed-term employees should be given information on permanent vacancies in the organisation.

v) **The Redundancy Payments (Continuity of Employment in Local Government, etc. (Modification) Order 1999.**

Circumstances when service will create continuity in service.

APPENDIX 2

Procedure for the Termination of Temporary and Fixed Term Contracts in Schools

The procedure below should be followed in the case of all staff employed on fixed term or temporary contracts that are coming to an end including SEND Teaching Assistants *(model letters can be found on the Schools HR Advisory Services resources page of S4S*)

Step 1
Headteacher/ Line Manager sets out in writing that it is proposed that the fixed term/temporary contract will not be renewed and offers the employee the opportunity to meet to discuss the matter (the employee may be accompanied by a trade union representative or friend and should be given reasonable notice). Notes should be taken, with a copy kept on the employee's personal file. If the employee does not wish to meet, a decision would be taken in the absence of any representations, but the employee would still have the right to appeal against the dismissal.

Academies in a Multi-Academy Trust should contact their Trust with regard to redeployment arrangements.

Step 2
After the meeting the employee must be informed in writing of the decision and notified of the right to appeal against it if they are not satisfied. Ideally, the meeting should take place before the commencement of the notice period so that the letter after the meeting is the letter confirming dismissal by reason of non-renewal and giving notice. The Headteacher needs to decide whether the individual representations make any difference to the decision not to renew the contract. Any appeal should be lodged within 10 working days of the written notice of the decision.

Step 3
An employee can appeal against a decision not to re-engage them at the end of a fixed term/temporary contract. The appeal must be made in writing to the Headteacher/Line Manager. An appeal hearing, normally involving a: Committee of the LGC and Trust representatives will be held as soon as practicable following receipt of the appeal notice. Employees may be accompanied at this meeting. The appeal hearing will include the school's case, the employee's case and summing up. The result of the appeal hearing must be notified in writing within 5 working days of the meeting.

It is important that the above procedure is started at Step 1 as early as possible in order that it can be completed in time for the employee to be issued with the correct notice period i.e., 2 months or 3 months for teaching staff depending on which term the contract expires one month for Support Staff.

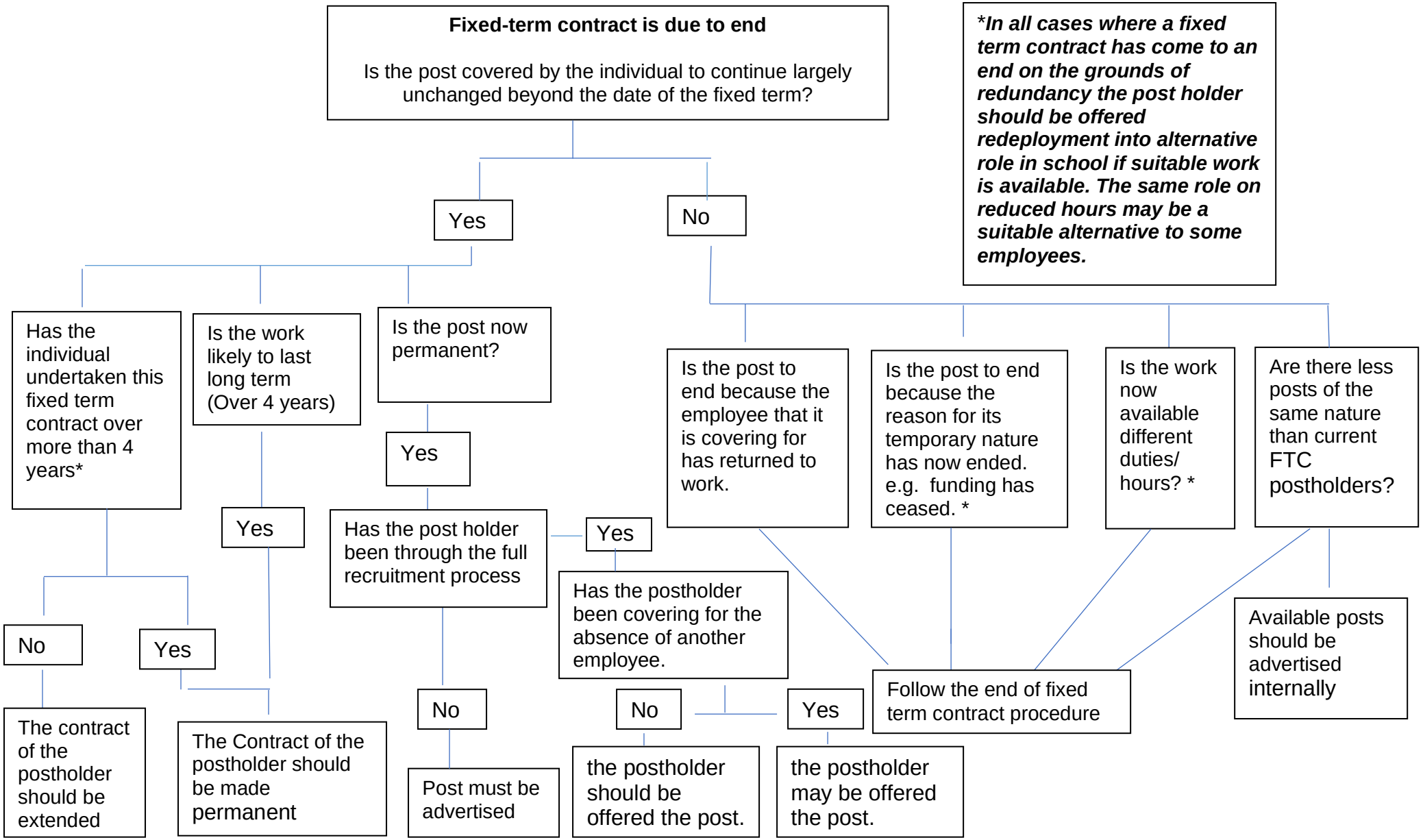
You should ensure that you notify HR Services of the outcome by completing leavers form in order for the notice letter to be issued to the individual.

NB – The reason for not renewing the fixed-term contract is likely to have an impact on the process used. For example, if the reason for non-renewal is a reason which

fits into the definition of 'redundancy' under section 139 of the Employment Rights Act, then the redundancy procedure should be followed, and the employee may be entitled to a redundancy payment.

Not renewing a contract because it is cover for maternity leave which has ended is specifically exempt from being a redundancy and so the redundancy procedure need not be followed, but it is still a dismissal.

Appendix 3


Fixed-term contract is due to end
Is the post covered by the individual to continue largely unchanged beyond the date of the fixed term?
Yes
No
*In all cases where a fixed term contract has come to an end on the grounds of redundancy the post holder should be offered redeployment into alternative role in school if suitable work is available. The same role on reduced hours may be a suitable alternative to some employees.
Has the individual undertaken this fixed term contract over more than 4 years*
Is the work likely to last long term (Over 4 years)
Is the post now permanent?
Is the post to end because the employee that it is covering for has returned to work.
Is the post to end because the reason for its temporary nature has now ended. e.g. funding has ceased. *
Is the work now available different duties/ hours? *
Are there less posts of the same nature than current FTC postholders?
No
Yes
Yes
Yes
Has the post holder been through the full recruitment process
Yes
Has the postholder been covering for the absence of another employee.
Follow the end of fixed term contract procedure
Available posts should be advertised internally
The contract of the postholder should be extended
The Contract of the postholder should be made permanent
No
Post must be advertised
No
Yes
the postholder should be offered the post.
the postholder may be offered the post.