This document sets out some basic information for NUT members about fixed-term and temporary contracts, including about their conditions of service and employment rights when employed on such contracts.

INTRODUCTION

The NUT has for many years campaigned against the misuse of fixed term and temporary contracts in teaching. Inappropriate use of fixed term contracts in anticipation of school budget problems or as a form of probation, for example, has for many years been all too common.

Teachers employed on fixed-term and temporary contracts nevertheless have a range of statutory and contractual employment rights. National provisions on pay and conditions have for many years applied equally in most respects to teachers on fixed term and temporary contracts as to teachers on permanent contracts. The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 now provide that all employers must not treat fixed term or temporary employees less favourably than similar permanent employees with regard to pay, conditions of service and pensions and also place restrictions on the repeated use of fixed term contracts.

DIFFERENCES BETWEEN FIXED-TERM AND TEMPORARY CONTRACTS

Fixed-term Contracts

A fixed-term contract is one which terminates on a specified date or on the occurrence of an event which is certain to occur on a particular date. The Union regards the following as circumstances in which use of fixed-term contracts may be acceptable:

• to cover a period of leave where the end date is known;
• to cover a period of secondment or in-service or educational training;

• to fill a post pending appointment being made or pending an appointee taking up the post, provided that the permanent appointment is not unreasonably delayed for longer than a term.

**Temporary contracts**

A temporary contract is normally used when no end date is known and its termination is dependent on an event such as return from sick leave or maternity leave, or completion of a job. Temporary contracts may be acceptable in the following circumstances:

• to cover sickness;

• to cover maternity leave where the date that the substantive post holder will return is not known;

• to cover any other period of paid/unpaid leave where the end date is not known;

• to cover a temporary reduction in the hours of a member of staff;

• to cover a short-term temporary increase in workload.

**Unacceptable uses of fixed-term or temporary contracts**

In both cases acceptability will depend on the particular circumstances. The Union objects to circumstances being contrived to justify fixed-term and temporary contract usage. In addition, the NUT regards the following circumstances as unacceptable for using fixed-term or temporary contracts:

• where schools anticipate falling rolls or budgetary restrictions and wish to use fixed-term contracts as a means of achieving staffing reduction by not renewing these at a future date; and

• where schools wish to impose a probationary period upon a teacher before confirming their appointment on a permanent basis.

**PAY AND CONDITIONS IMPLICATIONS OF FIXED TERM CONTRACTS**

**Pay and Conditions of Service**

If you are employed on a fixed-term or temporary contract in an LEA maintained school, the national pay and conditions provisions set out in the School Teachers’ Pay and Conditions Document, the “Burgundy Book” national conditions of service agreement and any relevant local agreements apply to you in most cases in the same way as they do to permanent employees. The main points are set out below.
Pay – Your salary should be assessed on the same basis as that of permanent employees according to the LEA and school salary policy.

Notice periods – If you are employed for more than one term, then the usual notice periods as set out in the Burgundy Book apply should you or your employer wish to terminate the contract before it expires. You should however remember that a fixed-term contract terminates upon expiry and is then subject to renewal and no notice is therefore required to confirm the expiry date, unless your contract specifically says otherwise.

Sick leave – If you are absent from work due to illness whilst employed on a fixed-term contract, you are entitled to sick pay under the Burgundy Book scheme. Your entitlement is based upon your aggregated teaching service in state schools rather than your continuous service with the current employer.

Maternity leave – Entitlement to the Burgundy Book maternity pay scheme is based on length of continuous service, which may be with one or more LEAs. It is, however, also dependent on returning to the same job for 13 weeks after the end of the period of maternity leave. If your contract expires before you can fulfill this condition, you may not be entitled to maternity pay other than basic Statutory Maternity Pay. The fact that you are or have been on maternity leave should not, however, be used as a reason for not renewing your contract and thereby denying you the full maternity pay entitlement.

Superannuation – If you are employed on a full-time fixed-term or temporary contract, you automatically pay superannuation contributions to the Teachers' Pension Scheme unless you choose to opt out. If you are employed on a part-time contract, you will need to elect to pay contributions.

Disciplinary and capability procedures – If disciplinary or capability procedures are taken against you, you are entitled to a full hearing, adequate notice of such hearings and union representation.

Independent schools are not obliged to follow the pay and conditions of service agreed for teachers in the state sector, although some may choose to do so. If you are offered a fixed-term contract in an independent school, you may seek advice from the appropriate NUT office about the terms and conditions offered.

Expiry Dates for Fixed Term Contracts

For the purposes of salary arrangements, the Burgundy Book defines the three school terms as follows:

- 1 September to 31 December;
- 1 January to 30 April; and
- 1 May to 31 August.
Where teachers are employed on fixed-term contracts to teach for a complete term, the expiry dates should be as set out above.

The only time when an earlier expiry date may be acceptable is when the contract is a temporary one covering a period of sickness or maternity leave or other short-term leave of absence of the substantive post holder and the substantive post holder has a predicted return date earlier than the end of the school’s working term.

Newly Qualified Teachers (NQTs)

Now that all NQTs are required to complete the statutory induction programme, there is no reason for them to be employed on fixed-term contracts.

Advantages of Employment on Fixed-Term Contracts over Supply Teaching

Provided it is properly paid as indicated above, there are a number of ways in which employment on a fixed-term or temporary contract is preferable for short periods of teaching to employment on a supply basis. Firstly, fixed-term contracts provide greater security of employment. Secondly, such teachers are entitled to paid sick leave and maternity leave (subject to the qualifying conditions of the scheme) while most supply teachers are only paid for those days on which they actually work.

EMPLOYMENT RIGHTS UNDER FIXED-TERM CONTRACTS

Continuous Employment

Under employment legislation, many employment rights depend upon the employee having completed a specified period of continuous service with the same employer. Rights to complain about unfair dismissal are acquired after one year’s continuous employment and rights to redundancy payments may be acquired after two years' continuous employment.

These provisions apply to employees on fixed term and temporary contracts in the same way as to other employees. If you have been employed by the same employer on a series of fixed-term or temporary contracts which have followed on from one another, you will acquire these employment rights after the appropriate period of continuous service even if your current contract of employment is for only one term in duration.
In some cases, short breaks of service may not break continuity of employment if they are regarded as only “temporary cessations of work” between contracts with the same employer.

**Protection against unfair dismissal**

The non-renewal of a fixed-term contract is in law a dismissal for all employment protection purposes. Providing you have one year’s continuous employment, you have the right not to be unfairly dismissed and to make a complaint of unfair dismissal if your employer fails to renew your contract without giving you a fair reason.

A “fair” dismissal would be, for example, on the return of the substantive post holder or the completion of the job for which the contract was given. Dismissal might be unfair if your contract was not renewed but another person was appointed to do the job on another fixed-term contract.

Dismissal due to redundancy will be unfair if the selection for redundancy was solely on the basis of the contract being fixed term or temporary. Non-renewal of a fixed-term contract due to redundancy may also be unfair dismissal in other circumstances. Dismissal on grounds of redundancy may be unfair if consultation procedures were not complied with, the basis for selection was discriminatory or the employer failed to consider alternative employment for the person involved.

**Entitlement to redundancy payments**

If you have completed two years’ continuous service with your employer, you have the statutory right to a redundancy payment if your contract is not renewed for reasons of redundancy. In addition, employees on fixed term or temporary contracts are now entitled to the same level of contractual redundancy payments as permanent employees unless the different treatment can be justified by the employer.

**Waiver clauses**

Waiver clauses are contractual provisions under which employees sign away their rights to complain of unfair dismissal and/or entitlement to a redundancy payment. Waiver clauses in respect of unfair dismissal have been illegal since 1999, while redundancy waiver clauses for teachers employed in the state sector have been illegal since 10 July 2002 (1 October 2002 for teachers in the independent sector), although this does not affect any redundancy waiver clause entered into before those dates. This means that employers may no longer ask teachers to sign away these rights.
Protection against less favourable treatment

The 2002 Regulations state that an employee on a fixed term contract has the right not to be treated by his/her employer less favourably than the employer treats comparable permanent employees, by virtue of the fixed term contract, unless such treatment can be objectively justified.

As noted above, teachers on fixed term and temporary contracts are generally treated in the same way as permanent employees with regard to pay and conditions of service. Where any such less favourable treatment appears to exist, advice and assistance should be sought from the appropriate NUT office.

In addition, anti discrimination law can be used to secure protection for such teachers. Fixed-term contract usage very commonly has a disproportionate impact on women teachers who for a variety of social and other reasons tend to predominate amongst fixed-term contract holders. The Union has previously established in the courts that this effect is unlawful if there is no objectively justified reason for fixed-term contract usage. The same protection may also be available on racial grounds for teachers working in sectors of the education service where ethnic minority teachers predominate e.g. in the EMAG services. No qualifying period of employment is necessary to benefit from this protection.

Entitlement to a permanent contract

The 2002 Regulations include a mechanism for restricting the use of successive fixed-term contracts. Successive fixed term contracts will not be allowed to last longer than a combined period of four years. A fixed term employee who has been engaged for four years on two or more fixed term contracts will be entitled to become a permanent member of staff, unless the use of a fixed term contract is objectively justified. It is important to note, however, that the four-year period is not retrospective and only started running from 10 July 2002. Any service on a fixed term contract which before this date does not count as part of the four-year period.

Training and notification of vacancies

The 2002 Regulations state that employees on fixed term contracts should have the same opportunity to receive training as permanent employees unless unequal treatment can be justified. The NUT does not envisage any circumstances where treating such employees differently could be justified.

The 2002 Regulations also state that employees on fixed term contracts have the right to be informed of available vacancies at their workplace. Posting of vacancies on a public notice board or LEA intranet would be an acceptable way of doing this.

National Union of Teachers
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