

# **Wales Negotiating Committee Further Education**

**March 2021**

## **Joint Agreement for the Employment of Fixed-Term Employees**

## **1. Context**

1.1. Colleges recognise the responsibilities placed on them by the Fixed Term Employees (prevention of Less Favourable Treatment) Regulations 2002.

1.2. Where fixed-term contracts are used, Colleges will ensure that staff are treated no less favourably than staff with permanent contracts and are informed of all vacancies.

1.3. Colleges will, where possible, avoid the successive use of fixed-term contracts. Individual fixed term contracts will be reviewed on completion of two years' service, or earlier if appropriate and consideration will be given to extending the contract on a permanent basis.

1.4. Fixed-term contracts will only be used where evidence can be provided of time-limited circumstances.

1.5. The reasons for the use of a fixed term contract will be communicated to staff in writing at the outset of the offer of employment.

1.6. Colleges will carry out an annual equality data monitoring exercise which includes the use of fixed term contracts. This will be shared with the recognised unions.

## **1. Status**

2.1. This agreement has been jointly agreed between the trade unions and employers in the Wales Negotiating Committee Further Education.

2.2. This agreement is for use by individual Colleges in order to develop policy and procedure for the use of fixed term contracts. In determining local policy, normal consultation arrangements should apply with recognised trade unions in accordance with the terms set out in this collective agreement.

2.3. This agreement was impact assessed at a national level to assist Colleges in meeting the requirements of Equality legislation and the Welsh Language Act. The Equality Impact

Assessment is detailed in Appendix 1. It is for each College to undertake their own equality impact assessment at local level.

## **2. Scope**

3.1. This agreement applies to all staff employed on fixed term contracts.

- 3.2. Colleges are committed to maximising opportunities to provide continuity of employment for all staff and to use fixed-term contracts responsibly and justifiably.

### **3. Policy requirements**

- 4.1. The aim of this agreement is to enable Colleges to develop policy in order to
- set out and limit where possible the use of fixed-term contracts
  - provide for the transfer of fixed-term staff to permanent contracts where possible and specify the circumstances in which fixed-term contracts may be used
  - specify how fixed-term contracts will be managed
  - specify the action required at the termination of a fixed-term contract

### **5. Procedural requirements**

#### **5.1. The circumstances in which fixed-term contracts may be considered**

5.1.1 Every case needs to be looked at individually. Examples of circumstances where the use of fixed term contracts may be appropriate are given below (this list is not exhaustive):

- i. The post is a clearly defined training or career development position;
- ii. The post is a secondment;
- iii. The post requires specialist skills for a limited period or is to accomplish a particular task or project for a limited period;
- iv. The appointment is to provide cover for a member of the College's staff who is absent for a limited period (for example on maternity leave, sickness absence, career break, secondment or sabbatical leave);
- v. The post is externally funded for a fixed period.

5.1.2 Notwithstanding the examples given above, in all cases the concept of objective reasons should refer to precise and concrete circumstances characterising a given activity which are capable in that particular context of justifying the use of fixed-term contracts.

5.1.3 The guidance on objective justification above will be reviewed in light of developing case law.

## **5.2. Limiting the use of fixed-term contracts**

5.2.1 Colleges are committed to limiting the use of fixed-term contracts except where the conditions in section 5.1 apply. Colleges will ensure their policy for the use of fixed term contracts is brought to the attention of all managers and staff and is well publicised. It also commits to ensuring that all managers receive appropriate training on the implementation of this policy.

5.2.2 Fixed-term contracts will only be used when there are transparent and objective reasons and where there is a genuine fixed-term need. This test for whether there is a genuine fixed-term need should be applied in each and every case.

5.2.3 Overall responsibility for the management of fixed-term contracts should lie with the human resources department or the senior manager responsible for HR matters. Decisions on the use of fixed-term contracts should not be made solely by heads of departments or line managers but must be referred to the human resources department to ensure that they are in line with College policy and in accordance with the fixed-term employee regulations.

5.2.4 Colleges will also take steps to monitor the implementation of the policy centrally and will take appropriate action where it appears that the policy is not being followed within departments.

## **5.3 Transfer of staff to permanent contracts**

5.3.1 Colleges will review fixed term contracts on completion of three years' service, or earlier if appropriate and consideration will be given to extending the contract on a permanent basis

5.3.2 Employees will be issued with a permanent contract on completion of two consecutive years' service at the latest unless there is an objective justification for not doing so.

5.3.3 Where there is an objective justification a written record will be made of the reasons for the decision, and the staff member will be informed in writing of the specific reasons and objective justification for that decision.

## **5.4 Management of fixed-term contracts**

5.4.1 Where staff are placed on a fixed-term contract in accordance with section 5.1 they shall be treated no less favourably than comparable staff on permanent contracts.

5.4.2 In particular, fixed-term staff will:

- i. have equivalent terms and conditions of employment to colleagues on comparable permanent contracts including pay, absence provisions, pensions;
- ii. be provided with a suitable working environment;
- iii. have the same opportunity as other staff to access services to develop their career such as staff development, training, appraisal and careers advice
- iv. be provided with information on, and the opportunity to apply for positions in the College.
- v. be able to access College facilities such as libraries and intranet services
- vi. have the right to participate in College governance and committees;
- vii. have their contracts reviewed annually to consider whether the continued use of their fixed-term contract remains justifiable on objective grounds

## 5.5 **Ending of a fixed-term contract**

- 5.5.1 Colleges recognise that the ending of a fixed-term contract is a dismissal in law.
- 5.5.2 On completion of 2 years' continuous service the ending of a fixed-term contract will constitute a redundancy.
- 5.5.3 The termination of a fixed term contract must not be used for the sole purpose of preventing the accrual of employment and/or contractual rights.
- 5.5.4 Colleges will use its best endeavors to avoid compulsory redundancies of both permanent and fixed-term staff.
- 5.5.5 Sufficiently in advance of the expiry of a fixed-term contract to enable meaningful consultation to take place Colleges should:
  - consider all alternative options e.g. alternative funding arrangements, renewal, retraining and redeployment;
  - consult with the post holder on the reason for non-renewal and the alternative options. A written invitation to a consultation meeting should be sent to the post holder. The letter shall confirm that the post holder may be accompanied by a trade union representative at the consultation meeting and at any further discussions about his/her post.

- 5.5.6 At the same time, it is good practice to consult with individuals together with trade union representation about any potential redundancies.
- 5.5.7 As part of that process Colleges will ensure that any suitable alternative employment opportunities are brought to the attention of the member of staff. This will include considering any posts for which training may be required. The redeployment process is about matching transferable skills not necessarily seeking an exact job match.
- 5.5.8 Where the redeployment process has been unsuccessful following a trial period, which may be extended with agreement, the redundancy procedure should be applied.
- 5.5.9 A post holder will be given the right to appeal any decision not to renew his/her contract in accordance with the redundancy procedure.

#### **5.6 When a fixed term post becomes permanent**

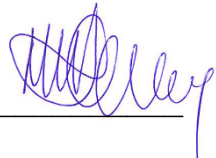



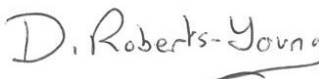



There may be occasions whereby a fixed term post becomes permanent during, or on expiry of a fixed term period. Colleges should agree procedures locally with trade unions to determine whether the fixed term post holder has automatic right to be considered for the permanent post.

### **6 Monitoring and review**

This agreement will be monitored and reviewed every three years by the Wales Negotiating Committee Further Education. Next review date February 2018.

# Wales Negotiating Committee Further Education Fixed Term Agreement for the Employment of Fixed-Term Employees

## SIGNATURES OF THE PARTIES TO THIS AGREEMENT

- (a) ColegauCymru Principals' Forum 
- (b) GMB 
- (c) NASUWT CYMRU 
- (d) NEU 
- (e) UCAC 
- (f) UCU 
- (g) UNISON 
- (h) UNITE 

Date of commencement of this agreement: March 2021