

# Fixed Term Contracts Policy

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First adopted by Symphony Learning Trust on	Autumn 2019
Version	1

This guidance aims to provide a clear understanding of the rules and regulations around employing individuals on a fixed term contract.

This guidance is not applicable to:

- Agency staff;
- Individuals who are self-employed;
- Students or trainees on a work experience placement;
- Those working under an apprenticeship contract, or
- Casual workers.

For the purposes of this document schools/academies will be referred to as 'school'.

### **What is a fixed-term contract?**

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In law there is no distinction between fixed-term and temporary contracts of employment and since the introduction of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 such contracts are now referred to as "fixed-term" rather than "temporary".

A fixed-term contract is a contract of employment that will terminate either:

- On a specified date; or
- On completion of a specific task or project;
- When specific funding for the post has or is due to cease; or
- When a specific event has occurred e.g. an employee returns from sick leave, maternity leave, a secondment or a new organisational structure has been implemented.

### **Fixed-Term Employees - The Law**

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The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 give fixed-term employees the right to be treated no less favourably than permanent employees doing the same or broadly similar work.

Therefore employers must not discriminate against employees because of their fixed-term status and must ensure that those employed on a fixed-term basis receive:

- The same pay and conditions as permanent staff (unless it can be objectively justified that a particular term or condition should not be applied - advice should be sought from your HR Adviser);
- The same or equivalent benefits package;
- The same entitlement as permanent employees to paid annual leave;
- The same access and opportunity to apply for permanent positions within the school as permanent employees. N.B If a permanent appointment is

to be made, for example when an employee does not return from maternity leave or long term sick, the fixed term employee does not automatically have the right to be appointed to the permanent post. The post should be subject to the usual recruitment process:

- The same access to learning and development opportunities as permanent employees:
- Protection from less favourable treatment:
- An employer should not select a fixed-term employee for redundancy purely due to the fact that they are employed on a fixed-term basis, unless this can be objectively justified.

The above entitlements apply for the same employer, and **not** an associated organisation.

Employees engaged on fixed term contracts, who have worked continually for the same employer for 2 years or more will have the same redundancy rights as a permanent employee where a redundancy situation exists or where this is relevant. Advice should be sought from your HR Adviser in redundancy situations.

An employee will be entitled to become a permanent employee where they have been employed on successive fixed term contracts for a period of 4 years **unless** there is a legitimate/objective reason that justifies a further renewal of the fixed term contract – please see additional information in Section 9).

### **Using a fixed-term contract – when and why?**

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When employing someone on a fixed term basis, it is essential that the school is able to objectively justify the reasons for doing so rather than recruiting to the post on a permanent basis. These reasons should be clearly stated in the employee's contract of employment.

**Failing to state a detailed and clear reason for the post being fixed term could have implications when ending the contract and on any future organisational change and redundancy processes that the school may need to undertake.**

Examples of objective reasons for a employing someone on a fixed-term contract include the following:

- The contract is to carry out a specific task or project which has a defined timescale for completion;
- The work to be undertaken is subject to external funding which is of a finite amount and/or time limited;
- The contract is to assist the school to meet the demands of a temporary increase in workload;
- The contract is to cover an employee on long term absence/career break/secondment;
- The contract is to cover an employee on maternity leave;

- The contract is to cover a vacant post or to undertake additional work required pending an imminent restructure. In such cases the post will only be required until the conclusion of the restructure process when The new organisational structure comes into effect; or to cover a vacancy whilst a recruitment process for a permanent post is underway.

\*Please note this list is not exhaustive and advice may be sought from your HR Adviser.

Schools must be explicitly clear that the contract will be on a fixed-term basis, along with the expected duration of the contract at all times with details being included:

- In the job advertisement;
- In all recruitment literature;
- When interviewing candidates; and
- When offering the role and in the resulting conditional offer letter.

The reason(s) for the fixed-term contract, the duration and the expected end date must also be clearly stated in the employee's contract of employment.



### **Inappropriate Use of Fixed-Term Contracts**

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It is not appropriate to use a fixed-term contract:

- To create an artificial trial period to assess someone's suitability for a job;
- When there may be a need to reduce employee numbers via the schools organisational change process and the timescales for commencing this process are not currently known.



### **Managing Fixed-Term Contracts**

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The Head Teacher should regularly review any fixed term contracts that are in place within the school to consider:

- Is there a continuing need for the post or is it due to come to an end?
- Does the post need to be extended for a period of time and if so will the employment be on the same basis as before, or different?
- Whether the employee has attained permanent employment status?
- What are the employee's expectations?

Where there is a need to end a fixed term contract, please refer to Process to terminate Fixed Term Contracts.

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## Ending Fixed-Term Contracts

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Fixed-term contracts by their nature are expected to end at some point. However, it is important to establish a fair and transparent reason for the non-renewal of the contract prior to it ending.

The termination of a fixed-term contract is considered a dismissal in law. Therefore a fair dismissal procedure should be followed.

To terminate a fixed-term contract before its end date, the contract must explicitly state that it may be terminated early. If the contract does not state this clearly and the contract is brought to an end earlier, payment could be due to the employee until the stated contract end date.

If an employee continues to work past the end of their contracted end date, without it being formally renewed, there may be an implied agreement that the end date has changed. In such cases the appropriate notice should be given if there is a need to dismiss the employee.

Where a fixed-term contract is terminated early or is not renewed, this is usually considered to be a redundancy situation. An employee with at least 2 years continuous service (under the Redundancy Modifications Order 1999) will be entitled to receive a redundancy payment.

A fixed-term contract to cover an absent employee e.g. someone on maternity leave or on long term sick leave, will end once the substantive post holder returns to work. In such cases the termination of the fixed-term contract is **not** considered to be a redundancy situation and as such the employee **will not** be eligible to receive a redundancy payment (subject to their contract clearly stating the reason for it being fixed term was to cover for an absent member of staff). This will be the case even if the fixed term employee has more than 2 years' continuous service.

Head Teachers should seek advice from their HR Adviser if they are unclear as to whether the termination of a fixed-term contract is as a result of redundancy or not.



## Process to terminate Fixed Term Contracts

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It is good practice for the Head Teacher to keep fixed term employees fully informed of their intentions around the ending of their contract.

In sufficient time towards the end of the contract, the Head Teacher should determine the arrangements and timescales required to carry out the necessary consultation for ending the contract taking into consideration:

- The employees continuous service date;
- How much notice the employee will be required to serve, i.e their statutory or contractual notice period (whichever is greater);
- The date the contract is due to end;

- Whether the contract is being terminated earlier than specified in the contract of employment;
- The rationale for ending the contract.

The following process should then be undertaken;

- a. The Head Teacher should arrange to meet with the employee to start formal consultation on the proposal to end the fixed term contract (consultation should be no less than one week). The employee should be advised that they may be accompanied at the meeting by a trade union representative or work colleague.
- b. At the meeting, the Head Teacher should:
  - Discuss the proposals to terminate their fixed-term contract;
  - Outline the business reason(s) why it is proposed to terminate the contract;
  - Set out the timescales and arrangements for the consultation process, (a template letter is available at Appendix A);
  - Invite the employee to put forward any counter proposals or comments for the Head Teachers consideration;
  - Consider alternative employment – see section below.

A letter should be given to the employee at the end of the meeting outlining all of the above.

- c. At the end of the consultation period, the Head Teacher should fully consider any comments received from the employee and their union rep.
- d. The Head Teacher should then arrange a further meeting with the employee to respond to any comments raised during the consultation and advise the employee of the outcome of the consultation. The employee may be accompanied by a trade union representative or a work colleague.
- e. Where the decision is made to terminate the contract, this must be confirmed to the employee in writing (a template letter is available at Appendix B).
- f. The employee should be advised of their right to appeal.

## **Redundancy Payments**

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If an employee has 2 or more years of continuous service and their post is redundant they will be entitled to a redundancy payment and release of their pension benefits, if aged 55 and over.

Where an organisational change process has been undertaken and the fixed term work is ceasing as a result of this process then again this would be classed as a redundancy situation and employees with 2 or more years' service will be entitled

to a redundancy payment and release of their pension benefits, if aged 55 and over.

Where a fixed term contract ends as a result of a substantive post holder returning to work (following a period of sick leave or maternity leave, for example) this is not considered to be a redundancy situation and therefore the employee will not receive redundancy pay. This will still be the case where an employee has 2 or more years' service.

Head Teachers are strongly advised to seek advice from their HR Adviser where a fixed term employee is on maternity leave and is subject to an organisational change process. Employers have a statutory duty to offer such employees any suitable alternative employment. Such preferential treatment would only apply to posts at the point where they have been selected for redundancy as a result of an organisational change process

## **Redundancy Payments**

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When renewing any fixed term contract, it is important to understand the implications of doing so. The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 state that where an employee has been engaged in a series of successive fixed term contracts, for a period of 4 years or more, they may have the right to become a permanent employee. This is subject to the employee having been:

- Continuously employed on a fixed-term basis, that has been renewed previously,  
or
- Re-engaged on a successive contract for the same post,  
or
- Has, immediately prior to a contract renewal, been employed on a fixed term contract continually for 4 or more years.

Despite this, if the employer can clearly and objectively justify it, the employment contract can remain on a fixed term basis.

In addition to the above it is important to note that there is no limit on the duration of the first fixed-term contract providing that there are clear reasons as to why the position must be fixed term. For example, an employee engaged on a fixed term contract to work exclusively on a 1 to 1 basis with a special needs child may be justifiably employed for a period of 7 years (from the child's entry into the school in Reception until Year 6). In such cases a fixed term contract for a period greater than 4 years could be justified as once the child leaves school the post would no longer be required. However, if the employee was employed on a successive fixed term contract, or the contract is renewed after this period then, unless this can be objectively justified, the employees employment status would change to permanent with effect from the date of renewal.

- It is important to note that a contract must have been renewed or the employee re-engaged in order to qualify for permanent employee status;
- To become eligible for permanent status all the service must be with the same employer.

Once 4 years continuous employment has been completed, the employee can write to the employer to request written confirmation that the contract is to be regarded as permanent. The manager must write to the employee within 21 days of the request being made to confirm the contract is permanent or to confirm why it remains a fixed-term contract.

If permanent, the School should confirm in writing, to the employee, their permanent status.





**Appendix A– Template letter of invitation to meeting to discuss proposal to terminate fixed-term contract**

Dear

**Cessation of Fixed-Term Contract**

Your current fixed-term contract as ..... (insert post title) is due to expire on ..... (*insert date*).

OR

You are currently employed on a fixed-term contract to cover the absence of ..... (*insert name*) for..... (*insert reason for absence, e.g. long term sick, secondment, maternity leave, etc*).

I am writing to inform you that I am proposing to terminate your contract on this date as ..... (*insert reason*). You are therefore offered the opportunity to attend a meeting to discuss this proposal, at which you may be accompanied by a trade union representative or work colleague if you wish.

The meeting will take place on:

**Date:** .....  
**Time:** .....  
**Location:** .....

I enclose copies of supporting documentation, as follows:..... (*insert*).

Yours sincerely,

Name  
Title of post

**Appendix B – Letter informing of decision to terminate fixed-term contract and offering right of appeal**

Dear

***Confirmation of Termination of Fixed-term contract***

On ..... (*insert date*) we met to discuss the proposal to terminate your fixed-term contract of employment as .....(post title) on..... (*insert date*) owing to..... (*insert reason*).

You raised ..... (*insert*) and I explained ..... (*insert*).

After giving full consideration to the points that were made, I advised you that the termination of your employment was justified. I am therefore writing to confirm that your employment will cease on ..... (*insert date*).

You have a right of appeal against this decision. If you wish to appeal, your appeal will be heard under the school’s Appeal Procedure. You are required submit your appeal to me in writing no later than 5 working days from receipt of this letter, specifying the grounds on which you are appealing.

Yours sincerely,

Name  
Title of post



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# Fixed Term Contract Guidance

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Adopted by Symphony Learning Trust on	January 2021
Next Review Due	Change of Regulations

This guidance applies to all staff employed by the Symphony Learning Trust and aims to provide a clear understanding of the rules and regulations around employing individuals on a fixed term contract.

This guidance is not applicable to:

- agency staff,
- individuals who are self-employed,
- students or trainees on a work experience placement,
- those working under an apprenticeship contract, or
- casual workers.

This guidance will be considered in accordance with the Trust's Scheme of Delegation and Articles of Association. The constitution of formal panels will be determined by the Trust's Scheme of Delegation.

This document does not form part of employees' terms and conditions of employment and therefore may be subject to change at the discretion of the Trust/Governing Body.

For the purposes of this document the Head Teacher/Principal will be referred to as 'Head Teacher' and school/academy will be referred to as school. Unless indicated otherwise, all references to 'Head Teacher' include the Executive Head Teacher.

## **1. What is a fixed-term contract?**

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1.1 In law there is no distinction between fixed-term and temporary contracts of employment and since the introduction of the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 such contracts are now referred to as "fixed-term" rather than "temporary".

1.2. A fixed-term contract is a contract of employment that will terminate either:

- on a specified date, or
- on completion of a specific task or project,
- when specific funding for the post has or is due to cease, or
- when a specific event has occurred e.g. an employee returns from sick leave, maternity leave, a secondment or a new organisational structure has been implemented.

## **2. Fixed-Term Employees - The Law**

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2.1 The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 give fixed-term employees the right to be treated no less favourably than permanent employees doing the same or broadly similar work.

2.2 Therefore employers must not discriminate against employees because of their fixed-term status and must ensure that those employed on a fixed-term basis receive:

- the same pay and conditions as permanent staff unless it can be objectively justified that a particular term or condition should not be applied (advice should be sought from your HR Adviser),
  - the same or equivalent benefits package,
  - the same entitlement as permanent employees to paid annual leave,
  - the same access and opportunity to apply for permanent positions within the school as permanent employees. N.B If a permanent appointment is to be made, for example when an employee does not return from maternity leave or long term sick, the fixed term employee does not automatically have the right to be appointed to the permanent post. The post should be subject to the usual recruitment process,
  - the same access to learning and development opportunities as permanent employees;
  - protection from less favourable treatment,
  - an employer should not select a fixed-term employee for redundancy purely because they are employed on a fixed-term basis, unless this can be objectively justified.
- 2.3 The above entitlements apply for the same employer, and **not** an associated organisation.
- 2.4 Employees engaged on fixed term contracts, who have worked continually for the same employer for 2 years or more will have the same [redundancy rights](#) as a permanent employee where a redundancy situation exists or where this is relevant.
- 2.5 An employee will be entitled to become a permanent employee where they have been employed on successive fixed term contracts for a period of 4 years **unless** there is a legitimate or objective reason that justifies a further renewal of the fixed term contract – please see additional information in Section 9.

### **3. Using a fixed-term contract – when and why?**

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- 3.1 When employing someone on a fixed term basis, it is essential that the school is able to objectively justify the reasons for doing so rather than recruiting to the post on a permanent basis. These reasons should be clearly stated in the employee's contract of employment.
- 3.2 Failing to state a detailed and clear reason for the post being fixed term could have implications when ending the contract and on any future organisational change and redundancy processes that the school may need to undertake.
- 3.3 Examples of objective reasons for employing someone on a fixed-term contract include the following:
- the contract is to carry out a specific task or project which has a defined timescale for completion,
  - the work to be undertaken is subject to external funding which is of a finite amount and/or time limited,
  - the contract is to assist the school to meet the demands of a temporary increase in workload,

- the contract is to cover an employee on long term absence/career break/secondment,
- the contract is to cover an employee on maternity leave,
- the contract is to cover a vacant post or to undertake additional work required pending an imminent restructure. In such cases the post will only be required until the conclusion of the restructure process when the new organisational structure comes into effect; or to cover a vacancy whilst a recruitment process for a permanent post is underway.

\* Please note this list is not exhaustive and advice may be sought from your HR Adviser.

3.4 Schools must be explicitly clear that the contract will be on a fixed-term basis, along with the expected duration of the contract at all times with details being included:

- in the job advertisement,
- in all recruitment literature,
- when interviewing candidates, and
- when offering the role and in the resulting conditional offer letter.

3.5 The reason(s) for the fixed-term contract, the duration and the expected end date must also be clearly stated in the employee's contract of employment.

## **4. Inappropriate Use of Fixed-Term Contracts**

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4.1 It is not appropriate to use a fixed-term contract:

- To create an artificial trial period to assess someone's suitability for a job,
- when there may be a need to reduce employee numbers via the schools organisational change process and the timescales for commencing this process are not currently known.

## **5. Managing Fixed-Term Contracts**

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5.1 The Head Teacher should regularly review any fixed term contracts that are in place within the school to consider:

- Is there a continuing need for the post or is it due to come to an end?
- Does the post need to be extended for a period of time and if so will the employment be on the same basis as before, or different?
- Whether the employee has attained permanent employment status?
- What are the employee's expectations?

5.2 Where there is a need to end a fixed term contract, please refer to Section 7 of this document.

## **6. Ending Fixed-Term Contracts**

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6.1 Fixed-term contracts by their nature are expected to end at some point. However, it is important to establish a fair and transparent reason for the non-renewal of the contract prior to it ending.

- 6.2 The termination of a fixed-term contract is considered a dismissal in law. Therefore, a fair dismissal procedure should be followed.
- 6.3 To terminate a fixed-term contract before its end date, the contract must explicitly state that it may be terminated early. If the contract does not state this clearly and the contract is brought to an end earlier, payment could be due to the employee until the stated contract end date.
- 6.4 If an employee continues to work past the end of their contracted end date, without it being formally renewed, there may be an implied agreement that the end date has changed. In such cases the appropriate notice should be given if there is a need to dismiss the employee.
- 6.5 Where a fixed-term contract is terminated early or is not renewed, this may be considered to be a redundancy situation. An employee with at least 2 years continuous service (under the Redundancy Modifications Order 1999) will be entitled to receive a redundancy payment.
- 6.6 A fixed-term contract to cover an absent employee e.g. someone on maternity leave or on long term sick leave, will end once the substantive post holder returns to work. In such cases the termination of the fixed-term contract is **not** considered to be a redundancy situation and as such the employee **will not** be eligible to receive a redundancy payment (subject to their contract clearly stating the reason for it being fixed term was to cover for an absent member of staff). This will be the case even if the fixed term employee has more than 2 years' continuous service.
- 6.7 Head Teachers should seek advice from their HR Adviser if they are unclear as to whether the termination of a fixed-term contract is as a result of redundancy or not.

## **7. Process to Terminate Fixed Term Contracts**

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- 7.1 It is good practice for the Head Teacher to keep fixed term employees fully informed of their intentions regarding the ending of their contract.
- 7.2 In sufficient time towards the end of the contract, the Head Teacher should determine the arrangements and timescales required to carry out the necessary consultation for ending the contract taking into consideration:
- The employees continuous service date,
  - How much notice the employee will be required to serve, e.g. their statutory or contractual notice period (whichever is greater),
  - The date the contract is due to end,
  - Whether the contract is being terminated earlier than specified in the contract of employment,
  - The rationale for ending the contract.
- 7.3 The following process should then be undertaken:

- a. The Head Teacher should arrange to meet with the employee to start formal consultation on the proposal to end the fixed term contract (consultation should be no less than one week). The employee should be advised that they may be accompanied at the meeting by a trade union representative or work colleague.
- b. At the meeting, the Head Teacher should:
  - discuss the proposals to terminate their fixed-term contract,
  - outline the business reason(s) why it is proposed to terminate the contract,
  - set out the timescales and arrangements for the consultation process, (a template letter is available),
  - Invite the employee to put forward any counter proposals or comments for the Head Teachers consideration,
  - consider alternative employment – see section below.

A letter should be given to the employee at the end of the meeting outlining all of the above.

- c. At the end of the consultation period, the Head Teacher should fully consider any comments received from the employee and their union rep.
- d. The Head Teacher should then arrange a further meeting with the employee to respond to any comments raised during the consultation and advise the employee of the outcome of the consultation. The employee may be accompanied by a trade union representative or a work colleague.
- e. Where the decision is made to terminate the contract, this must be confirmed to the employee in writing (a template letter is available).
- f. The employee should be advised of their right to appeal.

**NB.** For maintained schools only – schools should inform your relevant HR Adviser to instruct them to issue an LA will issue a termination letter following notification of the contract ending.

## **8. Redundancy Payments**

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- 8.1 An employee with 2 or more years continuous service whose post is redundant (subject to section 8.2) will be entitled to a redundancy payment and release of their pension benefits, if aged 55 and over.
- 8.2 Where a fixed term contract ends as a result of a substantive post holder returning to work (following a period of sick leave or maternity leave, for example) this is not considered to be a redundancy situation and therefore the employee will **not** receive redundancy pay. This will still be the case where an employee has 2 or more years' service.
- 8.3 Head Teachers are strongly advised to seek advice from their HR Adviser where a fixed term employee is on maternity leave and is subject to an organisational change process. Employers have a statutory duty to offer such employees any



suitable alternative employment. Such preferential treatment would only apply to posts at the point where they have been selected for redundancy as a result of an organisational change process.

## 9. Successive Fixed Term Contracts

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- 9.1 When renewing any fixed term contract, it is important to understand the implications of doing so. The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 state that where an employee has been engaged in a series of successive fixed term contracts, for a period of 4 years or more, they may have the right to become a permanent employee. This is subject to the employee having been:
- continuously employed on a fixed-term basis, that has been renewed previously,
  - or**
  - re-engaged on a successive contract for the same post,
  - or**
  - has, immediately prior to a contract renewal, been employed on a fixed term contract continually for 4 or more years.
- 9.2 If the employer can clearly and objectively justify it, the employment contract can remain on a fixed term basis.
- 9.3 In addition to the above it is important to note that there is no limit on the duration of the first fixed-term contract providing that there are clear reasons as to why the position must be fixed term. For example, an employee engaged on a fixed term contract to work exclusively on a 1 to 1 basis with a child, may be justifiably employed for a period of 7 years (from the child's entry into the school in Reception until Year 6). In such cases a fixed term contract for a period greater than 4 years could be justified as once the child leaves school the post would no longer be required.
- It is important to note that a contract must have been renewed or the employee re-engaged in order to qualify for permanent employee status.
  - To become eligible for permanent status all the service must be with the same employer.
- 9.4 Once 4 years continuous employment has been completed, the employee can write to the employer to request written confirmation that the contract is to be regarded as permanent. The manager must write to the employee within 21 days of the request being made to confirm the contract is permanent or to confirm why it remains a fixed-term contract.