# **Cumbria County Council**





# **Guidance for Managers/Headteachers on How to Fulfil a Resourcing Need**

The following **suite of resourcing options** is designed to support and guide Managers/Headteachers in engaging and managing the most appropriate resource to best fit their operational need, ie:

- Employee (contractual arrangement):
  - permanent or fixed term (including fixed term internal transfer);
  - o full or part-time;
  - annualised hours:
  - o term time / part year
  - o zero hours
- Casual Worker Agreement (not a contractual arrangement)

These options must all be properly considered before the use of Agency Workers or Selfemployed Consultant / Contractor may be undertaken. Additional guidance regarding **Agency Workers and Consultants** is provided at the end of this guidance and must be adhered to.

## **Operational Requirements**

Shift systems / rotas must be in line with operational need and should be clearly communicated. Other working patterns will be in line with business need and as agreed with Managers/Headteachers, eg, "normal office hours".

Where a change to working patterns is required in order to fit changes to business need, normal procedures must be followed. Requests for flexible working will be considered in line with the agile working/changes to working arrangements procedures.

Managers/Headteachers must ensure all contracted hours are worked and that employee availability is matched to operational need. There are no "guaranteed" or "variable" hours arrangements within the council.

Where appointments are made on a fixed term basis, Managers/Headteachers must ensure the circumstances regarding the reason for the fixed term provision are properly discussed with the individual and full details must be provided to the Service Centre/HR and Payroll provider in order to ensure proper employment arrangements are made. Further guidance regarding **fixed term contracts** is provided in this document.

## **Resourcing Options**

The **table below** provides a summary of the resourcing options available to Managers/Headteachers when considering how best to fill a "people" resource gap. Additional guidance, and relevant procedures, regarding the recruitment, selection and appointment of staff is available on the Council's intranet (InTouch) or on the schools portal.

The "best fit" option will vary dependent on a number of factors, which include the following:

- the operational requirements of the service in terms of what types of work patterns etc are required and can be accommodated;
- the urgency of the need;
- whether the need is on a permanent or fixed term basis;
- whether the need is for a short-term ad hoc assignment(s)
- whether there is any regularity to the hours of work

Zero Hours contracts and Casual Worker Agreements can **only** be made on a fixed term basis and <u>cannot exceed 1 year in length.</u>

All other options (ie with the exception of Zero Hours contracts and Casual Worker Agreements), **could** be made on a <u>fixed term</u> basis. They would normally be expected to be maximum 1 year in duration, but could be longer depending on service need and where this can be objectively justified. In all events they must never exceed 4 years, including extensions. Where the fixed term need is filled by an internal transfer the employee's substantive position will be preserved. Managers/Headteachers must be mindful of the relevant "knock-on" effects where further fixed term arrangements are made to facilitate this. Additional guidance regarding fixed term appointments is provided here.

Annualised hours contracts should be made on a fixed term basis in the first instance (max 1 year in length) and, following subsequent review, could be confirmed as permanent where appropriate and where this best meets business need.

Where regular patterns of work or an expectation of work become established on Zero Hours contracts or Casual Worker Agreements Managers/Headteachers <u>must</u> review the arrangement immediately and consider whether an alternative arrangement is more appropriate. Managers/Headteachers must consider the "reality" of the arrangements.

"Regular patterns of work" can include where hours are worked on a regular basis over a period of time (weeks / months), but not necessarily in every week, and may include where hours are worked at specific times every year, eg seasonal work. Managers/Headteachers should be mindful that where hours are worked on a regular basis a contract of employment could be

implied based on the working pattern regardless of whether a written contract of employment has been provided; including in the case of Casual Workers.

### **Employment Rights**

The main employment rights of "employees" and "workers" are outlined below:

Employees AND Workers	Employees ONLY (ie not Casual Workers)
National Minimum Wage	Written statement of particulars (contract of employment)
	Minimum notice period
Paid Annual Leave (inc Bank Holidays)	Redundancy pay / collective redundancy consultation
Rest Breaks	Unfair dismissal rights
Maximum Working Week	Continuous service
(over 17 week reference period)	
Maximum nightshift hours & health assessment	Written statement of reasons for dismissal
Protection in the event of Whistleblowing	Sick pay / leave
Right to be accompanied in the event of discipline / grievance	Maternity / paternity / adoption pay / leave
Part time working protection	Time off for antenatal care
Night working protection	Time off for dependants care
Protection for unlawful deductions from	Right to request to work flexibly
wages	Right to request time off to train
Protection against discrimination	Parental Leave
The right to exercise any of the above rights	Fixed term working protection
	Protection under TUPE

#### **Casual Workers**

Managers/Headteachers **must** ensure continuous monitoring of their use of casual workers and review hours worked on casual agreements **regularly**. They **must** ensure that casual workers are not actually working on a regular part-time basis or that they could be deemed to have become employees through a regular working pattern.

Where a regular / ongoing pattern of work develops and / or where there is an expectation that hours will be offered / should be accepted, it is likely that a Tribunal would consider there to have been a change in the employment relationship regardless of there being a casual worker agreement in place. The individual could then be deemed to have become an employee with full employment rights. Therefore Managers/Headteachers will be required to ensure such "drift" does not occur and where the operational need moves from that of a casual worker to a

more regularised arrangement then a different resourcing option may be more appropriate, eg, annualised hours, part-time, fixed term, zero hours.

The engagement of Agency Workers or Consultants must not be considered until <u>all other options have been considered</u>.

Additional guidance regarding for core County Council only **Agency Workers and Consultants** is provided at the end of this document.

# **Resourcing Options**

Resourcing option	What is it	How does it work	When to use it
Full-time working (permanent or fixed term)	When an employee works 37 hours per week (or an average of 37 hours per week) - the Council's "normal working week"	Hours can be worked in varying patterns from a standard week of office-type hours to compressed hours eg. an average of 37 hours per week across 2 or 4 weeks	Many roles suit full-time working (assuming sufficient business need)
Part Time working (permanent or fixed term)	When an employee works fewer than 37 hours per week	Hours fit business need and support work-life balance	Part-time working can apply to a wide variety of roles subject to the needs of the service
Term Time working (permanent or fixed term)	Where an employee works for an agreed number of weeks per year which coincide with school terms	Generally hours are worked as follows: 38 weeks during term time and 2 weeks during school closure periods. (but may be different subject to the needs of the service)  The employee receives a pro rata salary (including pro rata holiday entitlement), but this is paid all year round in equal instalments (equated pay)	The main users of term-time contracts are school-based staff, however, term-time hours can be used for other staff groups to support work-life balance where this can be accommodated in the service area.
Part Year working (permanent or fixed term)	Where an employee works for an agreed number of weeks per year not in line with school terms	Hours are worked during specified weeks of the year depending on operational need or the needs of a work-life balance provision (assuming business need can be met)  The employee receives a pro rata salary (including pro rata holiday entitlement), but this is paid all year round in equal instalments (equated pay)	Part year hours can be used to support work-life balance as an alternative to term-time working or annualised hours where this can be accommodated in the service area.

Resourcing option	What is it	How does it work	When to use it
Annualised hours  (initially fixed term with option to be made permanent assuming business need is met)	Eg 37 hours per week equates to 1929 hours per year; and 18.5 hours per	Annualised hours contracts can only be offered on a fixed term basis (max 1 year duration) in the first instance. In the event of continuing need after 1 year, Managers/Headteachers must review hours worked and determine future need.  Weekly hours are scheduled on a rota basis around varying levels of workload.  Hours per week may vary between 'nil' hours some weeks to 37 hours or more other weeks.  Annualised hours can support an employee's work-life balance and aid retention.  Salary is based on annual contracted hours and is paid in equal monthly instalments throughout the year (equated pay)  Leave entitlement is allocated based on contracted 'working' hours and must be managed in the normal way	Areas which might benefit from annualised hours include seasonal work; project work; where work is ad hoc but there is a need for an experienced retained staff group eg cover for absence across the year; fluctuations in the needs of service users etc.  Managers/Headteachers must ensure that, during more intense working weeks, the provisions of the working time regulations are observed e.g. daily and weekly breaks; average 48-hour week (over 17 week reference period).
		<ul> <li>Managers/Headteachers are required to en and to closely manage the "call off" of hour</li> <li>Managers must act upon a reminder which we to the end of the fixed term appointment. In with the HR/Payroll provider to review and measure the particular of the Directive are met, particularly the Employees on annualised hours contracts are relit is not compatible with working under an annual</li> </ul>	s worked  will be issued from the Service Centre prior schools arrangements should be in place onitor fixed term appointments.  provisions and requirements of the y at times of peak demand not eligible for the Flexi-time Scheme as

Resourcing option	What is it	How does it work	When to use it
Zero hours contract (fixed term)	Zero hours  Contract  Where hours are worked on an "as and when required" basis	Zero hours contracts can only be offered on a fixed term basis (max 1 year duration). In the event of continuing need after 1 year, Managers/Headteachers must review hours worked and determine future need.  Individuals on Zero hours contracts are employees and have full employment rights.  Where hours are 'reasonably offered' (i.e. in line with an employee's stated availability) there is an expectation that these will be accepted under normal circumstances.  Failure to accept hours 'reasonably offered' on 3 occasions will normally result in no future offers of work Pay is based on hours worked.	Areas which might benefit from zero hours arrangements are where there is an on-going need for short-term ad hoc shifts to be worked.  Managers/Headteachers need to regularly review hours worked under a zero hours contract and ensure that staff are not actually working on a regular part-time basis.
		Leave entitlement is accrued based on hours worked.  Sick pay is based on an average day's pay (calculated over previous 12 calendar weeks)  Managers/Headteachers are required to closely mana contract hours where a regular pattern of work is estal necessary.	
		<ul> <li>Managers/Headteachers must act upon a reminder which Centre prior to the end of the fixed term appointment.</li> <li>Where a regular pattern of work develops and / or whe hours will be offered / should be accepted, the arrange different resourcing option may be more appropriate, of fixed term.</li> <li>Managers/Headteachers must ensure the provisions a Time Directive are met, particularly where individuals in the control of the provisions and the control of the control of</li></ul>	ere there is an expectation that ement <b>must</b> be reviewed and a eg annualised hours; part-time; and requirements of the Working

Resourcing option	What is it	How does it work	When to use it
		posts either within or between service areas. Relevan expected to liaise accordingly with each other.	t Managers/Headteachers are
		Employees on zero hours contracts are not eligible for compatible with working under a zero hours contract	the Flexi-time Scheme as it is not

Resourcing option	What is it	How does it work	When to use it
Casual worker agreement (fixed term)	Where hours are worked on an 'as and when required' basis where there would otherwise be a significant impact on service provision eg to cover sickness absence, unforeseen circumstances or short term peak workloads.  Not to be used for ongoing or regular working patterns or where there is an intention of continual employment.  Encompasses all casual, relief, "supply",	Casual worker agreements can only be offered on a fixed term basis (max 1 year duration)  Casual workers are "workers" not employees; they have no "contract of employment" and have limited employment rights.  No hours are guaranteed; there is no obligation on the Council to offer work and where hours are offered there is no obligation on the worker to accept them (no mutuality of obligation).  Failure to accept hours 'reasonably offered' on 3 occasions will normally result in no future offers of work  Pay is based on hours worked.  Leave entitlement is accrued based on hours worked and is "earned" at statutory levels only, ie 20 days annual leave + 8 days' bank holidays.	Areas which might benefit from casual worker agreements are where there is an on-going need for short-term ad hoc shifts to be worked.  Where current employees undertake additional work in another post or establishment in order to provide "relief" cover this should be undertaken under a Casual Worker Agreement (may be set up retrospectively in emergency situation)  Managers/Headteachers must review hours worked on casual agreements regularly and must ensure that casual workers are not actually working on a regular part-time basis or could be deemed to have become employees through a regular working pattern.
"bank" worker requirements		<ul> <li>Where a regular / ongoing pattern of work deprectation that hours will be offered / should would consider there to have been a change</li> </ul>	ld be accepted, it is likely that a Tribunal

Resourcing option	What is it	How does it work	When to use it
		of the casual worker agreement (ie has beco rights) and the arrangement <b>must</b> be reviewed option may be more appropriate, eg, annualis	ed. It may be that a different resourcing
		<ul> <li>Whilst the nature of a Casual Worker Agreem exceed 48 hours pw over a 17 week reference ensure the provisions and requirements of the particularly where individuals work over a numbetween service areas. Relevant Managers/accordingly with each other.</li> <li>Casual Workers are not eligible for the Flexi-</li> </ul>	ce period, Managers/Headteachers must e Working Time Directive are met, mber of different posts either within or Headteachers are expected to liaise

Resourcing	What is it	How does it work	When to use it
option  Supply Staff in Schools – Teaching Assistants	To provide short/long term cover on an as and when required basis eg to cover sickness, unforeseen circumstances.  To provide short/long	The Learning Support Service - Teaching Assistant service is a professional staffing agency providing qualified and skilled teaching assistants to work with schools, and other educational establishments, in the support of pupils with statutory and non-statutory educational needs.	When schools/settings do not directly employ Teaching Assistants and need short term/longer term support  When schools/settings require immediate short term deployment to cover one of their own staff absences to ensure business continuity
	term cover to meet the needs of a SEN statement.  It is strongly	All staff have a DBS Enhanced check for regulated activity (which includes the barred list), DBA clearance and are qualified to the relevant TA/STA minimum standard.	When school/setting has a pupil with an SEN Statement and require the relevant support for the time covered in the statement
	recommended that Headteachers/SENCo's consult the local authority LSS Service. Contact details are on	The service undertakes regular checks on the skills/knowledge of the Teaching Assistants and update necessary renewals. All Teaching Assistants are required to have Safeguarding Level 1 as a minimum before they are deployed	

Resourcing option	What is it	How does it work	When to use it
	the county council website.	to schools.  This service can provide schools/establishments with Teaching Assistants, Senior Teaching Assistants and Higher Level Teaching Assistants.	
		The deployment of a Teaching Assistant can be on a short term (i.e. number of days to 2-3 weeks) or longer term (i.e. on a termly basis, or academic year basis).	
		Schools/Settings have the option to purchase absence cover, which requires the service to cover sickness/absence of their employee free of charge to the school/setting.	

Resourcing option	What is it	How does it work	When to use it
Supply Teachers in Schools	To provide short/long term cover on an as and when required basis eg to cover sickness, unforeseen circumstances.  It is strongly recommended that Headteachers/Managers consult the local authority supply register in the first instance.	The local authority supply register gives Headteachers/managers access to qualified and skilled Teachers who are available to work in schools, and other educational establishments.  All staff have a DBS Enhanced check for regulated activity (which includes the barred list), DBA clearance and are qualified to the relevant minimum standard. All pre- employment checks have been carried out. Headteachers/managers can access the	This service may be of benefit where there is a need for an experienced and qualified teacher to cover for absence at short notice across the year or for other fluctuations in the requirements of the school.

Resourcing option	What is it	How does it work	When to use it
		register via the schools portal.	

Managers/Headteachers are required to regularly review working arrangements (eg changes in demand / working pattern) and ensure the most appropriate resourcing options are being utilised.

### **Fixed Term Working**

A fixed-term contract is one that ends on a specified date or on the occurrence of a particular event such as the completion of a task, the loss of funding or the return to work / resignation of the person being covered, eg: specific project (eg single status); specific grant funding; sick / maternity cover for a named person.

Managers/Headteachers <u>must</u> provide a valid reason for the fixed term nature of the appointment as this must be stated in the contract; in line with one of the following template fixed term clauses:

- You are employed in this post on a fixed term basis to xx/xx/xxxx for the specific purpose
  of supporting the xxxxxx Project. Your employment in this post will terminate on
  xx/xx/xxxx, at which time it will automatically expire without further notice unless
  otherwise agreed in writing by the Council with yourself.
- You are employed in this post on a fixed term basis to xx/xx/xxxx as your employment is dependent on xxxxxx funding. Your employment in this post will terminate on xx/xx/xxxx, at which time it will automatically expire without further notice unless otherwise agreed in writing by the Council with yourself.
- You are employed in this post on a fixed term basis for the purpose of providing cover for the post of xxxxxxx whilst the current post holder xxxx xxxxxx is absent from the post. Your employment in this post will terminate when xxxx xxxxxx returns to or resigns from the post, at which time it will automatically expire without further notice unless otherwise agreed in writing by the Council with yourself. The Council cannot confirm how long xxxx xxxxxx's absence from the post will last but it is likely that your employment will come to an end on or around xx/xx/xxxx. It is a condition of this contract that you agree that your contract of employment will terminate on xxxx xxxxxx's return to or resignation from the post.

Fixed term appointments are protected in law under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and have specific employment protection from Day 1.

Normally, the expiry of a fixed term contract will be fair, **as long as** it is clear that the expiry of the fixed-term is the real reason and the employer has acted reasonably. There is an expectation that employers will review carefully whether alternative employment can be offered. Within the Council, this would include providing Alternative Employment Support where the employee has more than 1 years' service. This support should be in place for the duration of the employee's notice period and Managers should take into account the notice which the employee is entitled to receive when arranging this.

In a school based setting the Headteacher should in the first instance give consideration to any available positions within the school which would provide suitable alternative employment. For Community and Voluntary Controlled Schools only, the Headteacher should make contact with the local authority for access to the Alternative Employment Scheme and the council's job search support programme.

Dependant on service (2+ years) the employee could be entitled to redundancy pay (but not normally where covering the absence of an individual).

The natural expiry (without renewal) of a fixed term contract is automatic and neither party need give notice BUT Managers/Headteachers must follow a normal fair procedure; see "How to deal with the natural expiry of a Fixed-term contract" below.

In addition, notice can be issued to end a fixed term contract prior to the natural date of expiry. Again, Managers/Headteachers must follow a fair procedure see "Dismissal Procedure for the termination of a fixed-term appointment for reasons other than natural expiry" below.

A fixed term contract could be extended where operationally necessary. An offer and acceptance to extend a fixed term appointment prior to the expiry date is a contract variation (not dismissal and re-engagement). An employee who has four years' continuity of employment on multiple fixed-term contracts will automatically become a permanent employee (except in exceptional circumstances) and will be confirmed with a permanent contract. A <u>single</u> fixed term contract can be for 4 years or more without being deemed to be permanent.

Selection for termination / redundancy purely on the basis of fixed term status is unlikely to be deemed to be fair and highly likely to be unlawful.

#### How to deal with the natural expiry of a Fixed Term contract:

Managers/Headteachers must establish a fair reason for non-renewal ahead of expiry of the fixed-term contract and be able to demonstrate the reason. This could be redundancy (where the work has ceased or diminished) or "some other substantial reason" (e.g. end of a maternity cover). The manager/Headteacher should invite the fixed-term employee, in writing, to a meeting to discuss the intended non-renewal of the contract and provide the opportunity for him or her to appeal the decision not to renew the contract. The right of appeal should be to a more senior manager, usually the manager's direct line manager.

In a school based setting the expiry of a fixed term contract will be dealt with by the Headteacher where Governors have delegated the power to dismiss. School based staff should submit an appeal in writing to the Chair of Governors.

The employee may be accompanied to this meeting, but if not available this should not delay the meeting.

As mentioned above, the fixed-term contract will terminate automatically at the end of the fixed term without the need for the employer or the employee to give notice. However, as a matter of good practice, Managers/Headteachers should keep fixed-term employees informed of their intentions around the contract's expiry.

#### Points to note:

Provide alternative employment support, ensuring other vacancies which may be suitable are brought to the attention of the employee.

Natural expiry of a fixed term contract must not be used to manage a capability issue. Allowing a contract to naturally expire and then engaging someone else to do the same job could be seen as discriminatory.

Where the non-renewal of the fixed term contract is due to redundancy, any redundancy payment will be dependent on length of service.

Please see Appendix 1. Template fixed term expiry meeting invite letter.

# Dismissal Procedure for the termination of a fixed-term appointment for reasons other than natural expiry:

The manager must write to the employee confirming the circumstances that are leading to potential dismissal and inviting them to a meeting to discuss the matter and advising them of their right to be accompanied by a trade union representative or work colleague. The employee will be notified of the meeting as soon as possible but must be given not less than five working days' notice in writing of the date, time and place of the hearing.

The manager will notify the relevant senior manager who will conduct the meeting.

In a school based setting the expiry of a fixed term contract will be dealt with by the Headteacher where Governors have delegated the power to dismiss. School based staff should submit an appeal in writing to the Chair of Governors.

The employee must take all reasonable steps to attend the meeting. If the employee has a reasonable excuse for being unable to attend the meeting, or his/her trade union representative or work colleague is unable to attend, a postponement will be arranged. A new date will be set which does not delay the process unduly. However, where the employee is persistently unable or unwilling to attend without good cause, a decision will be made on the available evidence.

The employee and/or their representative will be given the opportunity to state their case. The manager/Headteacher will provide information on what actions have been taken.

After the meeting the senior manager must notify the employee in writing of the decision and notify the employee of their right to appeal against the decision if they are not satisfied with it. This will include details of the senior manager who the appeal should be addressed to.

If the employee does wish to appeal they must inform the senior manager within 5 working days of the date of notification of the decision of the meeting. The appeal will be acknowledged within 5 working days.

The employee will be invited to a further meeting and must take all reasonable steps to attend. Employees have the right to be accompanied by a trade union representative or work colleague at this meeting.

After the appeal meeting the manager/Headteacher concerned must inform the employee in writing of the final decision.

There is no further right of appeal.

**July 2015** 

### **Agency Workers/Consultants**

Consideration of the engagement of Agency workers or Consultants can only be <u>after all other options</u> <u>have been considered</u> and must be for a clearly defined reason (eg specific project, skill set) and for as short a period as possible.

Normal Resource Management procedures (ie CEX approval) **MUST** be undertaken prior to engagement.

Additional guidance regarding the key points and responsibilities in engaging Agency Workers and Consultants must be adhered to.

	What is it	How does it work	When to use it
Agency Worker	A worker supplied by a 3 <sup>rd</sup> party temporary work agency	The agency supplies candidate(s) to fill a defined length resource gap.  The agency submits invoices to the end user (Cumbria) and then pays the agency worker.  Agency workers should only be engaged through our framework provider (currently Randstad).	Where there is an urgent need which cannot be filled through other means such as zero hours; casual worker; additional hours etc e.g.:  While recruitment takes place Short-term absence
Self- employed consultant / contractor	Consultants / Contractors operate a business in their own right	They provide services to an organisation either personally or through their company but remain independent.  They submit invoices to the end user (Cumbria) and are responsible for their own tax and NI.	Where specific specialist skills / expertise are needed that are not available inhouse.  Procurement procedures must be followed

# Management Guidance - Agency Workers and Self-employed Consultants (core County Council use only)

Consideration of the engagement of Agency Workers or Consultants can only be <u>after all other</u> <u>options have been considered</u> and must be for a clearly defined reason (eg specific project, skill set) and for as short a period as possible.

Normal Resource Management procedures (ie CEX approval) **MUST** be undertaken prior to engagement.

Agency workers and Consultants / Contractors are not employees. However, when their engagement is properly set up and managed they can provide a pragmatic solution for filling a time-limited resource / skill gap.

The document attached highlights the key issues regarding Agency Workers and Consultants / Contractors, contains guidance on the engagement procedure and provides relevant contact details:



Appendix	1.
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Date

#### **Private and Confidential**

Name/address

Dear {Name}

#### Fixed term contract expiry

As you will be aware your fixed term contract for the position of *{job title}* within the *{add team / department/school}* is due to come to an end on *{date}*.

Please could we meet at {date / time / venue} to discuss the end of your contract and any issues or concerns you may have around this.

If this time or date is inconvenient for you, please let me know.

I look forward to seeing you on {date}.

Yours sincerely

#### {Name}

Line Manager/Headteacher