

**UNIT 14**

**Recruitment Manual - step by step guide**

**PROBATION**

**14.1 Why should the Council use a formal probationary period on appointment?**

It is normal practice for staff to be required to work a probationary period at commencement of employment. Systems will be in place to review progress in the new job to ensure the Council is satisfied that the appointment can be confirmed.

An offer of employment can be conditional not only for example on receipt of references but also on satisfactory completion of a prescribed probationary period. The concept of such a period is that it gives both parties time to consider whether both have made the right choice and in essence therefore the suitability of the employee for the job.

Employees need two years’ service (there is no service criteria in a case involving any form of discrimination) before they have a right to make a claim of unfair dismissal to an Employment Tribunal. The normal period of probationary service is three to six months depending on the post but it can be for whatever reasonable and appropriate period you choose and it should be included in the contract of employment and/or in your Principal Statement of Particulars of Employment.

The service qualification period may not be circumvented by issuing short-term contracts of a few months. Even if these are separated by short periods the 'employment' may be held to be continuous after for example two years’ service.

During the probationary period the post holder’s performance must be monitored and they are expected to establish their suitability for the post. To this end the progress should be reviewed and assessed with them face to face on a regular basis and if appropriate any necessary improvements highlighted and training or assistance provided if appropriate.

As part of this process it is the responsibility of the Council therefore:-

* to provide guidance and support and ensure that the newly appointed member of staff receives an effective induction;
* to define clearly the set of performance standards and the required procedures to ensure the newly appointed Clerk to the Council understands what is required of them;
* to monitor and assess the performance and competence during the probation period to ensure the member of staff meets the required standards;
* to ensure that relevant guidance and support is given during the probationary period and any appropriate development and training opportunities provided.

As explained above a probationary period may be of any length but the Council must make it clear to the new member of staff that a decision will be made about confirming or not the appointment and by the stated end date. During the probationary period appropriate or contractual notice rules will apply.

The probationary period may be extended if the work, attendance or other relevant performance criteria are deemed unsatisfactory. This is usually only where progress has been made but there are one or two areas that could still be made satisfactory with a bit more time. If the employee is almost completely not meeting the standard required or set of requirements then an extension is not appropriate.

It is usual practice to extend a probationary period only for as long as the required improvements can reasonably take place. The Council may need to consider whether by extending the probationary period and taking account of the notice period it may take the employee beyond the service criteria for making an unfair dismissal claim.

Successful completion of the probationary period will result in confirmation in the post in writing at the end of the probationary period or this may come into force automatically depending on how the employment contract is written.

During or at the conclusion of the probationary period the employment may be terminated in writing by either side if suitability for the post is not established. There is no specific notice period for such termination if the Clerk to the Council has worked for less than one month but during the remainder of the probationary service period one week’s notice in writing is usually required by either side. If appropriate the employment may be terminated by the Council by summary dismissal on grounds of gross misconduct.

**14.2 How should the Council monitor performance during the probationary period?**

Having a probationary period therefore requires a monitoring process to be set in place which should prompt any necessary action before the end of the probationary period and which will in turn give the member of staff sufficient time and opportunity to rectify any concerns. It is recommended that for example if the probationary period is six months the first formal review meeting should be after three months and then at least a month before the end of the period and reaching a decision whether or not to confirm the appointment. However if serious performance concerns or potential misconduct arise the member of staff should be informed as soon as those problems arise and addressed if relevant through the disciplinary procedure rather than waiting to rely on the probationary review process.

During the probationary period the individual monitoring process set in place should ensure therefore that progress is continually reviewed, any performance or other employment related issues are addressed and prompt and appropriate management action is taken before the end of the period and thereby hopefully achieve the improvement or change in behaviour required. Similarly the employee is expected to raise any concerns on their part during the probationary period. Obviously any concerns to be raised with the employee should be based on fact and reality not just any personal likes or dislikes of the individual.

As part of the regular performance monitoring mentioned before or as soon as concerns arise the Council should discuss them with the post holder as soon as possible and thereby hopefully achieve the improvement or change in behaviour required.

Before the end of the probationary period, the Council must consider the employee’s progress and make a decision:-

1. to confirm the appointment on a permanent basis; or
2. to agree an extension of the probationary period in the event of uncertainty; or
3. to terminate the employment on notice.

The probationary period may be extended if the work, attendance or other relevant performance criteria are deemed unsatisfactory. It is usual practice to extend a probationary period only for as long as the required improvements can reasonably take place. The Council may need to consider whether by extending the probationary period and taking account of the notice period it may take the employee beyond the service criteria for making an unfair dismissal claim.

If the probation period is extended the situation should still continue to be monitored and an appropriate decision made prior to the end of the extended period either to confirm the person’s employment on a permanent basis or to terminate the employment.

In all cases the situation must be explained and discussed with the Clerk to the Council and the decision confirmed in writing and successful completion of the probationary period will result in confirmation in the post in writing at the end of the probationary period.

No decision to dismiss should be taken until a formal review meeting has taken place at which time the post holder can have an opportunity to respond.

As part of the regular performance monitoring mentioned before or as soon as concerns arise the Council should discuss them with the post holder as soon as possible and thereby hopefully achieve the improvement or change in behaviour required. The key advice is that the Council must not wait to the end of the probationary period before considering whether the Clerk to the Council’s performance is adequate or not – it is unprofessional and unfair and may even result in a breach of contract.

**14.3 Who should be responsible for monitoring performance during the probationary period?**

It is critical that the Council decides clearly who will be responsible for monitoring the performance of the Clerk to the Council during the probation period and in particular who will have authority to take the final decision to confirm or otherwise the appointment at the end of or during the probation period. With other staff this is likely to be the Clerk to the Council but in the latter case the Council needs to determine formally where this responsibility will rest. The Council may determine for example that it will rest with the full Council, the HR Committee or any other Committee with responsibility for human Resources and/or staffing matters and if so this will need to be made clear in their terms of reference. Additionally, depending on the normal manner in which such decisions are made by a Council, provision may also need to be made for the Chair of the relevant HR or Committee to call an Extraordinary General Meeting of the Council to make or endorse the decision. This will need to be covered in the Council’s Standing Orders.

Whichever approach is preferred the Council must make sure that responsibility and authority to act in the probation process is clear and lawful and the Council needs to bear in mind that, if the contract of employment allows for an appeal right if termination is determined, persons other than those involved in the initial decision should hear the appeal.

**14.4 Specimen Probation Letters**

The following specimen letters are for adaptation and use in connection with the completion of the probation period of a new Clerk or other staff member are attached:-

**Appendix 14(a)** - letter confirming successful completion of probation period

**Appendix 14(b)** - probation period extension letter

**Appendix 14(c)** - termination letter after unsuccessful probationary period.

**14.5 Further Help**

If you require training, help or any other assistance with your recruitment and selection processes or have any questions on anything in the Recruitment Manual please email your county association.

Updated September 2022

**Appendix 14(a) - Letter confirming successful completion of probation period**

**Xxxxxxxxxxx**

**Xxxxxxxxxxx**

**Xxxxxxxxxxx**

**Xxxxxxxxxxx**

**xxxxxxxxxxx**

**Date**

Dear **Enter date**

**Appointment of Job Title**

# Probationary Service Review

As you know, the original offer of employment made to you was subject to completion of a satisfactory **xxxxx** month probationary period.

Your performance during this period since you commenced on **enter date** has been monitored in line with the Council’s policies and your terms and conditions of employment.

I am pleased to write on behalf of **enter name of Council** to advise you that you have successfully completed your probationary period and to confirm your permanent employment with **enter name of Council** from **enter date**.

The Council appreciate your contribution to date and are looking forward to enjoying a happy and successful working relationship with you in the future and for many years to come.

Yours sincerely

**Enter name**

**Enter title**

**Appendix 14(b) - Probation period extension letter**

**Xxxxxxxxxxx**

**Xxxxxxxxxxx**

**Xxxxxxxxxxx**

**Xxxxxxxxxxx**

**xxxxxxxxxxx**

**Date**

Dear **Enter date**

**Appointment of Job Title**

# Probationary Service Review and Extension

In your recent meeting with **enter name and title**, you were reminded that in your offer of appointment dated **enter date** and again in your contract of employment the Council stipulated that your employment was subject to completion of a satisfactory probationary period of **enter number** months from your start date of **enter date**.

Your performance during this period since you commenced your performance **enter date** has been monitored in line with the Council’s policies and your terms and conditions of employment.

It is felt that some improvement is needed in your performance and in particular the need for you to **enter details of concerns**.

The Council appreciates that it can take time to settle into the role and therefore have decided to extend your probationary period until **enter date** during which time the Council hopes that you will address the above issues and show the improvement required. The Council will continue to monitor your progress and support you in making these improvements, working towards a position of being able to confirm your appointment.

I will meet with you periodically to review the situation.

If you wish to discuss this further with me or have any suggestions regarding any areas where the Council can be of assistance or where you feel you do not have sufficient support please contact me immediately.

Yours sincerely

**Enter name**

**Enter title**

**Appendix 14(c) - Termination letter after unsuccessful probationary period**

**Name and Address**

**Date**

Dear **enter date**

**Appointment of** **Job Title**

# Probationary Service Review

I write following our meeting on **enter date** which had been arranged to discuss your performance during your probationary period of service.

In our meeting on **enter date** I reminded you that in your offer of appointment dated **enter date** and again in your contract of employment the Council stipulated that confirmation of your employment was subject to a probationary period of **xxxx** months.

Present at the meeting were **enter names and roles** and ourselves. **You were given the opportunity of being accompanied by a work colleague or trade union official, which you declined.**

At our meeting on **enter date** it was explained that the Council was concerned over your performance to date and whilst we appreciated that it can take time to settle into the role we were specifically looking for improvement in **enter details**.

(Optional clause if appropriate) As a result during this period we agreed to extend your probationary period by **enter xxx** **months** and we expected to see you achieve the improvement required.

As further discussed and explained on **enter date,** we have continued to monitor and assess the progress you have made in the post particularly in respect of our above concerns and in particular **enter details**.

You were given every opportunity to respond to the concerns and stated that **enter summary of response**.

However after due consideration we regretfully concluded that there has been insufficient improvement and we are therefore unable to confirm your appointment in the post of **enter job title**.

As a result I am writing to confirm the notice of termination of your employment in accordance with your contract of employment with effect from **enter date**. Your last day of service will therefore be enter date. Your P45 and any monies due to you will be forwarded as soon as possible.

You have the right of appeal against this decision. Your appeal request should be made in writing to **enter name/ job title** within five (5) working days of receiving this letter stating the grounds of your appeal. The appeal will be conducted in accordance with the Council’s disciplinary procedure.

You are entitled to be accompanied by a work colleague or a Trade Union official of your choice at the appeal meeting. If you appeal against this decision, could you please inform me prior to the meeting who you intend to have accompanying you. Please contact me if you require any assistance in making the arrangements.

I am sorry that this appointment has not worked out for you or the Council and I wish you good fortune in the future.

Yours sincerely

**Name**

**Job Title**

**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***

I acknowledge receipt of the original letter of which this is a copy.

I \*do/do not wish to appeal against this decision.

**Signed:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Date:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\* - delete as appropriate