

Fixed term contracts

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1 Introduction

- 1.1 The University wishes to provide reasonable and appropriate levels of support to staff on fixed term contracts.
- 1.2 The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 protects employees engaged on fixed term contracts from being treated less favourably than comparable employees in open-ended contracts and limits the overall duration of a series of fixed term contracts from July 2002 to four continuous years, after which the contract becomes open-ended, unless there is a justifiable objective reason for it remaining fixed term. This provision does not apply to single fixed term contracts there needs to be a series of contracts for the provision to apply.
- 1.3 These guidelines set out how the University will meet its aims, and also meet legislative requirements.
- 1.4 This policy applies to all staff groups (full-time, part-time, term-time, and hourly paid employment and staff from the Temporary Staff Unit.)

2 Purpose and scope

- 2.1 The purpose of this policy/guidance is to specify the arrangements for managing fixed term contracts; it applies to all fixed term contracts.

3 Principles

- 3.1 Whilst the University recognises the need to retain sufficient flexibility to meet variable funding and student demand, it is committed to limiting the number of fixed term contracts and to ensuring that their future use is justified through transparent, necessary and objective reasons. The aim is to achieve a balance between flexibility and the appropriate management of identified risk on the one hand, and security of employment and fair treatment of employees on the other.

4 Legislation

- 4.1 Impact of other legislation to be taken into consideration includes:

- Equal Pay Act 1970 and Equal Pay (Amendment) Regulations 2003
- Sex Discriminations Acts 1975 and 1986
- Race Relations Act 1976
- Race Relations (Amendment) Act 2000
- Disability Discrimination Act 1995
- Employment Equality (Religion and Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Age Regulations) 2006
- Employment Act 2008
- The Equality Act 2010 (including the Public sector Equality Duties)

5 Objective reasons for employment on a fixed-term contract

- 5.1 The creation of a fixed-term contract needs to be justified by transparent, necessary and objective reasons. It will usually be specified under one or more of the following categories:
- 5.1.1 as cover for a planned absence of a member of staff (e.g. maternity leave, parental leave and adoptive leave, secondments, sabbaticals);
- 5.1.2 to cover the unplanned absence of a member of staff (e.g. long term sickness absence);
- 5.1.3 to undertake a short term, clearly identifiable task resourced specifically to achieve a specified outcome normally for a maximum of 2 years (e.g. project work) NB In the case of TSU staff this would normally be for a maximum of 9 months);
- 5.1.4 the post requires specialist expertise or recent experience for a finite period;

5.1.5 the post is set up as a training or career development post e.g. graduate traineeships, placement student.

5.2 At the appointment stage fixed term contract staff will be issued with a written statement as part of their offer letter and in conjunction with terms and conditions, outlining the objective reason for a fixed term contract and confirming the expected end date.

6 Assessment of continuity of employment

6.1 Continuity of employment is assessed at the start of employment by Human Resources who may require evidence to confirm the continuous service date. A list of employers covered by the Modification Order can be accessed at www.lge.gov.uk/lge/aio/132428

7 Annual review and consultation

7.1 The University is committed to consult with individuals when a fixed-term contract comes to an end and to provide regular information to Trades Unions about fixed term contracts.

7.2 The use of successive fixed term contracts will be limited to four years at which time an open ended contract will normally be offered unless the use of a further fixed term contract is justified by an objective reason, as set out in 5.1.

7.3 The position of all fixed term contracts should be reviewed by the line manager¹ and Human Resources prior to the expiry of the contract, and in line with the redeployment procedure, to establish whether the reasons for the nature of the contract fall into one of the above criteria. This review will be initiated 4 months before the expiry of the contract as outlined in Appendix 4.

7.4 Fixed term contracts are also reviewed as part of the University's annual planning process.

8 Redundancy procedure and redeployment procedure

8.1 This policy should be read in conjunction with the University's 'redeployment procedure' which gives detailed information about the processes that apply.

8.2 The University is legally obliged to consider redeployment opportunities for staff who are at risk of redundancy and who have two years service or more. Information relating to specific staff groups is contained in the appendices.

¹ Line manager would normally be interpreted as VC, DVC, AVC, Head of Department, Faculty Academic Registrar, Technical Manager, Head of Service/Head of Section

8.3 Employees with less than one year's continuous service at the expiry of their fixed term contract (two years service will be required from 1 January 2015) have equal access to vacancy information and may apply for vacancies on open ended contracts but do not have a right to be given prior consideration.

8.4 The process for terminating fixed term contracts is outlined in Appendix 4.

9 **Equality of opportunity**

9.1 The University is committed to ensuring that staff on fixed term contracts have equal and appropriate access to a range of processes.

9.2 Under the Fixed Term Employees Regulations 2002 staff on fixed term contracts have the right not to be treated less favourably than comparable permanent employees (i.e. staff engaged in broadly similar work and within the same employment group). For example they are entitled to:

- Training and development i.e. given opportunities to enhance skills
- An annual performance and development review
- Access to opportunities to develop and progress their career
- Opportunity to apply for vacancies

9.3 Individuals who wish to question the justification of a fixed term contract or their treatment as a holder of a fixed term contract should do so by raising the issue on an informal basis with their manager. Where the issue is unresolved an individual would normally pursue their individual case via the formal stage of the grievance procedure.

9.4 Information about current vacancies is available to all staff via the Human Resources intranet site.

10 **Monitoring of this policy**

10.1 Human Resources will, on a regular basis, issue the Trades Unions with a list of fixed term contracts. Should the Trade Unions wish to raise questions or seek further clarification they should do so via Human Resources.

10.2 Human Resources will engage in periodic surveys (including Contract Research On Line Survey and others) in order to ensure that the continuous employment of fixed term staff is monitored.

11 **Specific staff groups**

11.1 Where information is relevant to a specific staff group this is contained in the appendices.

Appendix 1

The use of fixed term contracts in relation to research staff

The following broad principles will apply to the employment of research staff:

- a. The University recognises that many research posts in principle will fall under category 5.1c) of this policy as they are limited in duration and the funding is for a particular task. However the University's aim is to seek to minimise the use of fixed term contracts for these staff where possible.
- b. It is recognised that although researchers are often funded on a limited duration basis, nonetheless many researchers and/or research teams develop funding streams over time. However this is more likely to be the case in a research team than with a lone researcher.
- c. Where a track record of funding has been established either by a team or lone researcher this establishes the basis on which conversion to an open ended contract can be considered.
- d. Although a track record of income may be established against an income stream, the more variable this is, the more appropriate it will be to manage the risk through fixed term contracts.
- e. A quarterly review will take place of all research staff in a faculty to review current funding streams, their security and duration, and future funding duration and security.
- f. Managers will meet with Human Resources to consider the options for converting research staff to open ended contracts or redeployment or redundancy as appropriate. If there is a case for conversion this will be made to the Deputy Vice Chancellor.

The following statement has been agreed with Research, Business and Innovation and Financial Services in relation to the employment of research staff on fixed term contracts,

1. The University upholds the 'Concordat' agreed by the funders and employers of researchers in the UK that includes the expectation that "organisational systems must be capable of supporting continuity of employment for researchers, such as funding between grants, other schemes for supporting time between grant funding, or systems for redeploying researchers within organisations where resources allow".
2. UWE, is committed to providing career opportunities and continuity of employment for research staff and are mindful of the need to ensure the financial sustainability of our research. We work to the principle that

proposals for the extension of contracts for research staff, where possible, should be funded from external sources. If such sources are not available, the Faculty may make a case for continuation based on funding from an identified source or range of sources, including Quality Related, provided this is part of its overall agreed research investment strategy, and for as long as the source(s) of funding is (are) secure. Such a case is not guaranteed to be accepted but will be considered on an individual basis.

3. Faculties may also make a proposal to support research staff on annually reviewed open-ended contracts where a business case can be made that makes realistic predictions regarding future success in securing external funding by a particular group or Centre. In these cases the Faculty is responsible for covering the costs of such staff should these income streams not materialise, and the University will have to take appropriate action in terms of those on such contracts in terms of redeployment or, as a last resort, termination due to lack of resources.
4. Normally researchers will move to an open ended contract after four years continuous employment. Where a contract has to be terminated at some point in the future the cost of this redundancy will continue to be met by faculties. Individual redundancy rights commence after two years continuous employment.

Staff employed on temporary contracts

1 General

- 1.1 The Temporary Staff Unit, Human Resources, manages the appointment and employment of temporary staff in the University.
- 1.2 Staff employed as temporary staff via the Temporary Staff Unit are engaged on fixed term contracts for each temporary assignment and are therefore subject to the Fixed Term Regulations and the University's policy on the use of fixed term contracts.
- 1.3 Temporary staff receive comparable terms of conditions of employment to those staff on open ended contracts. However the nature of their employment differs from other staff and the general principles underlying this employment are outlined below.
- 1.4 The University will seek to ensure compliance with the Regulations by obtaining relevant information from managers about their need for a temporary post. This information will be considered in relation to the objective reasons specified under section 4.1 before the temporary assignment is approved. This information will also be sought when an extension of contract is requested. The Temporary Staff Unit will record the reason for the assignment with the aim of monitoring this data on a regular basis.

2 Length of temporary appointment

- 2.1. Appointment to a temporary vacancy via the Temporary Staff Unit would normally be for no longer than 9 months. Where it is clear that the appointment is for a longer period the post would normally be advertised by Human Resources as a fixed term post.
- 2.2 An extension beyond 9 months may be considered on an exceptional basis but would not normally exceed a year.

3 'Nominated' temporary staff

- 3.1 From time to time a temporary member of staff may be 'nominated' by a manager for a specific post. One example would be a research post where specific skills and experience are required and are usually only possessed by a particular individual. This is generally an exceptional arrangement as staff required in such roles would usually be appointed to a fixed term contract.
- 3.2 Where a person is a 'nominated' member of temporary staff s/he would be appointed into a specific role and hence their employment would normally be terminated at the end of the contract. Should they wish to

join the temporary staff 'bank' then they would be expected to apply through the temporary staff appointment process.

4 Continuous service

- 4.1 The Temporary Staff Unit will manage the continuity of employment in relation to temporary staff to ensure that the overall principle of equity and fairness of treatment for staff employed on fixed term contracts is maintained. It is not possible to be prescriptive in relation to assessing continuity of employment because the nature, number and length of individual contracts will vary. However generally where the employment relationship has been long term, with a regular pattern of employment and where the employee has made themselves available for work, the case for continuity of service is likely to be stronger.
- 4.2 If the University is enforcing a period of non working for a particular temporary member of staff in order that the holiday obligations of the Working Time Regulations are met then it would be unreasonable for this to affect continuity. Where accrued holiday is being taken then continuity of service will not be affected. However continuity of service will be broken if the member of staff takes more holiday than they have accrued and there is also a break of more than one week.
- 4.3 Staff employed to meet term time only needs would not normally be considered to have broken their continuity of service during vacation periods.
- 4.4 The University closure days e.g. at Christmas and Easter, do not constitute a break in continuity as this would also be classified as a 'temporary cessation of work' as long as the member of staff had worked in the weeks immediately either side of the closure period.

5 Redundancy rights

- 5.1 Temporary staff with two or more years' continuous service accrue statutory redundancy rights if no further temporary work is offered. Therefore, when allocating assignments the Temporary Staff Unit will give priority to staff who have accrued such rights; such staff will be redeployed into another temporary post as appropriate. In the event that no further work can be found for such staff within a reasonable period, normally four weeks, then a statutory redundancy payment will be made.
- 5.2. With the exception of staff engaged to meet term time only needs, if a member of staff is not offered work for a continuous period of four weeks then their employment will be terminated. Where the temp has a minimum of one years' continuous service then the contract will be terminated via the process at Appendix 4.

6 **Permanent positions**

- 6.1 A temporary member of staff cannot be assigned directly to a permanent role. Temporary staff who wish to be considered for appointment into such a role would apply for a vacancy and be considered via the normal selection process. Information about vacancies available in the University are available to all staff.
- 6.2 Where a post is advertised on an 'internal only' basis then temporary staff are eligible to apply for such posts. However this opportunity would not be given where posts are ring fenced as a result of restructuring or redundancy.

Employment of Associate Lecturers

1. Associate lecturers (ALs) make a valuable contribution to the core teaching programmes and flexibility of the academic workforce. ALs may be employed on fixed term contracts where the requirement of the role is time limited and where it meets one of the objective reasons outlined in paragraph 3.1. Hence the employment of ALs on fixed term contracts comes within the scope of the Regulations.

2. Associate Lecturers are currently employed in one of three ways,

- a) as occasional staff working less than 30 hours per year
- b) on a fixed term contract where one of the justifiable reasons is appropriate (as listed at 3.1)
- c) on a permanent contract.

3. As a consequence of the implementation of the Fixed Term Contract Regulations 2002 the following principles will apply to who are employed on fixed term contracts:

- a) The continuous service date will be the date from which an individual has been employed by the University without breaks. For the purposes of determining continuity of service, breaks for normal University vacation periods at Christmas, Easter and in the summer will be ignored provided an individual has had contracted work in each of the three periods in an academic year.
- b) When it is intended to terminate the contract of an employee who has a minimum of one years' continuous service the University's process will be followed - See Appendix 4.
- c) An associate lecturer cannot be assigned directly to a full UWE academic role. Associate Lecturers who wish to be considered for appointment into such a role would apply for a vacancy and be considered via the normal selection process. Information about vacancies available in the University are available to all staff.

Process for termination of a fixed term contract

1. The non renewal of a fixed term contract is a dismissal and the following outlines the process that will be followed to ensure legal compliance. A parallel process will be followed for staff with less than one years' service, however the right to redeployment will not accrue in this case.
2. It is essential that the reasons for a fixed term contract are made explicit to the employee on commencement and also if at any time the contract is renewed/extended on a fixed term basis e.g. where a contract is due to end on 31 March and the Faculty/Service anticipates further external/research funding by 1 June, the Faculty/Service may decide to provide funds to maintain the employment, pending the new funds becoming available. This must be made clear to Human Resources and to the employee, as must be the likely outcome if the new funding does not materialise.

Step 1

- approximately 4 months before the contract expiry date Human Resources will contact the Faculty/Service to request that the appropriate manager considers possible options for continued employment

Action - HR Administration to send standard note giving details of the contract and required actions, timescale etc to Associate Dean, Resources

Action - Associate Dean, Resources, will identify and work with the responsible manager/primary investigator

- approximately 4 months prior to the end of the fixed term contract, employees will be notified of their approaching contract end date and employees with one years continuous service by the contract expiry date will be asked to decide whether or not they wish to opt for redeployment (see redeployment procedure for the detailed procedure) if their contract is not renewed.

Action – HR Administration to send a standard letter to the employee, copied to the Faculty contact to pass to the responsible manager.

Step 2

- as soon as a non renewal decision is made, or 5 weeks before the contract end date, whichever is the earlier, the line manager² provides a written statement to the fixed term employee setting out the reasons why the contract is ending (copying to HR Administrator) and inviting the employee to a meeting to discuss those reasons further (giving at least 5 days' notice), and advising them of their right to be

accompanied at the meeting by a work colleague or Trade Union representative

Action – Responsible manager identified by Faculty/Service

Action – HR to provide a template draft statement for use by the local manager

If the employee does not take up the invitation to a meeting then no further action is required and the contract terminates. Note to HR from Faculty/Service confirming this outcome.

- If the employee opts to attend the meeting, the line manager explains the reasons for non renewal and considers any additional information offered by the employee. The line manager will keep notes of the meeting

Action - Line manager to pass copy of notes to HR.

Step 3

- If the line manager is still unable to renew the contract in the light of the discussion at the meeting, this is confirmed in writing by Human Resources together with notification of the employee's right of appeal against that decision, to be lodged with the Director of Human Resources within 10 clear working days of the date of the letter

Action – Line manager to confirm non renewal to HR

Action – HR to write to employee