Use of Fixed-Term and Open-Ended Employment Contracts

Policy

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Use of Fixed-Term and Open-Ended Employment Contracts

Policy

1 General Principles
The University recognises and values the contribution made by all staff regardless of fixed-term/open-ended contract status. The University is also committed to reducing as far as possible the use of fixed term contracts within the overall context of the University’s ambitions as a leading international technological university with core values of respect for others and equality of opportunity, openness, integrity and honesty.

The University seeks to provide continuity of employment for its staff as far as is practicable. Fixed-term contracts are only used for transparent and objective reasons where there is a genuine finite need. In committing to minimise the use of fixed-term contracts, it is acknowledged that there will be potential redundancy scenarios which arise from time to time, particularly for those on open-ended contracts related to fixed-term funded grants and finite initiatives.

2 Purpose of Policy
The purpose of this policy is to:

- Ensure that fixed-term contracts are used only where appropriate objective justification exists
- Provide for the transfer of fixed-term appointments to open-ended appointments, where appropriate
- Specify how fixed-term contracts and open-ended contracts related to fixed-term externally funded grants and initiatives will be managed
- Specify action required in relation to the termination of a fixed-term contract or open-ended contract related to fixed-term externally funded grants and initiatives, or, exceptionally, the protocols for the termination of an open-ended contract or early termination of a fixed-term contract in other circumstances.
- Ensure compliance with legislative duties as set out in the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002

3 Scope
This policy covers all employees of the University but is particularly designed to address issues relating to:

- Those employees who are employed on fixed-term contracts with a specified end date
- Those employees on an open-ended contract directly related to grants and initiatives which are fixed-term in nature.
4 Definitions

A fixed-term contract is a contract of employment

- which is for a specific term which is fixed in advance but which can be terminated early by appropriate notice being given by either side within the period.
- which terminates automatically on the completion of a particular task. Also known as a ‘task contract’, e.g. the installation of a system or the building of a piece of equipment.
- which terminates automatically upon the occurrence or non-occurrence of an event of which the postholder is aware, e.g. where the substantive postholder returns from maternity or sabbatical leave or a course does not run due to lack of student numbers.

An open-ended contract is defined in law as, “a contract of employment that is not fixed-term”. Such contracts may also have been known as permanent, indefinite or continuing contracts where there is no fixed end date. Following due process, open-ended contracts may be lawfully terminated by the giving of an appropriate period of notice if necessary and as allowed for in the specific contract of employment in circumstances such as resignation, ill-health, misconduct and redundancy.

5 Appropriate use of fixed-term contracts

The use of fixed-term contracts will continue to remain appropriate in certain circumstances where there is a clear business need. Such contracts will be utilised only where there is a transparent and objective justification at the time the contract is first established or upon renewal, for example as summarised below.

Objective justification may include:

- where funding is limited to a specified period and there is no reasonable or foreseeable prospect from the outset of it being extended (this would be the case where a research project is limited in terms of time, money and skills required to complete, and where the possibility of further associated follow-up work being secured is unlikely or highly uncertain).
- where there is no reasonable or foreseeable prospect of short-term funding being renewed nor other external or internal funding being available or becoming available.
- where a post has been established to deliver specific project/task based work which is finite in nature, without any anticipated requirement for such work to continue beyond that task/project.
- to provide backfill cover for activities in the absence of another member of staff who is expected to return to their post e.g. sickness, maternity leave, secondment, sabbatical, etc.
- where there is a short-term requirement for specialist practitioners to input to specific teaching or research programmes.
- where the student or other business demand can be clearly demonstrated as uncertain.
- where a post has been created to satisfy a short-term/seasonal demand.

It is intended that fixed-term employees should:

- have contracts which contain the same core contractual terms and conditions of employment as comparable staff on continuing appointments in line with the legislative framework and including pay, absence provisions, pensions
- enjoy equal access to development opportunities that meet their identified needs. This includes the provision of appropriate opportunities to develop their career paths. The University’s Researcher Development Programme provides particular support for staff within the Research-focused staff category
- have a clear understanding of the current and planned future status of their post
- be provided with a suitable working environment
- be provided with information on, and the opportunity to apply for, other positions within the University
- be able to access facilities such as libraries and intranet services
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- be eligible to participate in University governance and committees
- on request, be provided with a written statement within 21 days explaining any differences in their employment arrangements from those of comparable employees on continuing contracts
- have an expectation that after 4 years’ service they will normally be provided with confirmation that their post is continuing unless clear objective justification applies
- on request, at any time, be provided with the objective justification for the fixed-term nature of appointment.

6 Renewal of Fixed-Term Contracts

Normally, a member of staff will be deemed to hold an open-ended contract if -

- their contract has been previously renewed; and
- they have previously been employed on a fixed-term basis at the University without a break in service; and
- where the new contract period will result in the employment extending beyond four years or more

There will be cases where the extension provides for continuous service of four years or more but where the further funding for the post remains a significant risk. Such cases will be reviewed individually and where future funding is considered unlikely or highly uncertain, objective justification for the continued use of a fixed-term contract beyond the four year point may apply. In all cases where the further use of a fixed-term contract extends service beyond the four year point, a written statement of the rationale will be provided (usually as part of the individual’s contract extension paperwork).

In cases where an open-ended contract is being issued but where this relates to finite funding or a finite initiative, the individual will normally be advised of this at the point that the open-ended contract is issued, either at appointment or at renewal.

In pursuing this policy, the University gives its commitment that acquiring four years’ service will not be regarded as a legitimate reason for the expiry of a fixed term contract.

7 Ending of Fixed-Term Contracts or Open-Ended Contracts

The ending of a fixed-term contract is deemed to be a dismissal in law. It follows therefore that the University must adhere to a dismissal procedure which is compliant with the relevant statutory requirements.

There may be some instances where the reason for dismissal upon the expiry of the contract is for ‘some other substantial reason’, e.g. upon the return of an absent member of staff for whom cover has been provided, but in the majority of cases the reason will be redundancy. There will also be cases where it is necessary for the University to consider the termination of open-ended contract as a result of redundancy, for example related to staff who have been engaged on open-ended contracts but where the underpinning fixed-term externally funded grants/initiatives come to an end without equivalent replacement. The process therefore for managing these scenarios is similar.

A potential redundancy occurs where –

- the volume of work diminishes either permanently or temporarily, e.g. upon withdrawal of external funding or
- the volume of work remains undiminished but the University requires fewer staff to carry out work, e.g. upon a reorganisation and reallocation of duties or
- there is a change in the nature of the work but the overall volume of that work and the number of staff required remains the same, e.g. where significant changes bring about a requirement for different kinds of skills.
In cases where two or more ‘in scope’ posts exist to undertake work as above, there may be a need to consider selection for redundancy where there is a need for a proportion of the work, and therefore one post or more, to continue. In these cases contractual status will not be the sole criteria for a factor in selection e.g. the redundancy pool can comprise those on open-ended as well as fixed-term contracts.

The University will make all reasonable efforts to ensure the continuity of employment for individuals where possible and, towards this end, consideration will be given to a variety of measures including the use of bridging funding, retraining and, where applicable, redeployment.

The following procedures shall apply where a fixed-term contract is in operation or where an open-ended contract is coming to an end, for example as a result of a withdrawal of fixed term funded grants or the ending of fixed term initiatives.

Normally, at least four months prior to the expected end date of the fixed-term contract, the line manager and relevant Head of Department/Head of School/Director will receive a report from Human Resources, highlighting the impending expiry of the contract. In the case of continuing contracts, potentially impacted by the expiry of funding, the communication will be issued from the Finance Office.

The appropriate line manager shall discuss with the member of staff what alternative options are available. This discussion will be in line with the requirement for individual consultation outlined within redundancy legislation. The employee may be accompanied by a colleague or trade union representative if they wish.

The discussion of possible options will include –

- a further renewal of the fixed-term contract arising from renewal of funding, the sourcing of additional funding, the requirement for work to continue for a further period and so forth.
- the relevance of considering transfer to an open-ended contract.
- the expiry of the fixed-term contract with no renewal.
- the termination of an open-ended contract subject to payment of the appropriate notice period for the contract.
- where applicable, seeking alternative employment via the formal redeployment process, this to include reasonable retaining as applicable.

The line manager, Head of Department/Head of School/Director, or their nominee, will advise Human Resources of the outcome of these discussions via email, in sufficient time to allow for the undernoted.

- Where practicable, three months before the expected end date of the fixed-term contract the member of staff will receive from Human Resources confirmation of any likely changes in contractual terms, of the expiry of their fixed-term contract or the termination of the continuing contract.
- Where the decision is that a contract should not be renewed the member of staff’s attention shall be drawn to the formal University policy in respect to redeployment and to information on other positions within the University.
- In cases where it is established that it is necessary to consider the termination of an open-ended contract, as a result of the pending cessation of external funding or for other reasons, the termination will be subject to the approval of the Director of Human Resources, always with due regard to the provisions of the University’s Statutes. Where approval is granted, the open-ended contract will be terminated by the issuing of notice, with due exploration of redeployment and other support options as detailed above and in other relevant University policies.

The University pays statutory redundancy terms to staff whose employment is terminated by the University at the end of a fixed-term contract period and in any other redundancy cases where it has not proven possible to avoid termination of the contract.
The University will not seek to enforce any redundancy waiver clauses.

8 **Appeal**

An employee may Appeal against the termination of their employment on the grounds of redundancy. To do so, they should write to the Director of HR, setting out their grounds for appeal, within 10 working days from the date of the letter confirming the end of their employment. Appeals will be heard by a senior University employee who has not been previously involved in the case.

9 **Collective Consultation**

The University recognises its legal duty in relation to collective consultation on redundancy. Collective consultation will be undertaken as per the University's Avoidance of Redundancy Policy and in line with the relevant legislation.

10 **Review**

This policy will be reviewed periodically in consultation with the Campus Unions and to reflect changes in relevant legislation. On an annual basis, the University will conduct an audit of its use of fixed term contracts; this will include appropriate equality impact data.