

Consultation Procedure for the non-renewal of Fixed Term Contracts

1. Principles

The Open University (OU) branch of the University and College Union (UCU) seeks the maximum possible job security for staff on Fixed Term Contracts (FTCs) but recognises that, due to the nature of such appointments, there can be no absolute guarantee of continuity of employment.

The University seeks the flexibility provided by the use of FTCs but recognises that it has an obligation to provide the maximum degree of job security to its staff and, in particular, to seek to find suitable alternative employment for staff as an alternative to dismissing them on the expiry of their FTC .

The University will consult with individuals. This procedure meets the legal obligations required of employers.

2. Application of the Agreement

This procedure applies to Academic, Academic Related, Research and Support staff on Fixed Term Contracts who have at least one year's continuous service.

This procedure is to be used where a Fixed-Term Contract is scheduled to expire on the date expressed within the contract. This procedure will not apply where it is proposed to terminate a Fixed Term Contract earlier than its natural expiry under the terms of the contract for reasons that are unconnected to the individual employee. In such cases, the University's redundancy consultation procedures will apply.

3. Legal Information

Definition of a Fixed-Term Contract.

The expiry of a Fixed Term Contract (i.e. a contract which has a specified start and end date) and the non-renewal of a Fixed Term Contract at its expiry is a dismissal by law which can be contested at an Employment Tribunal.

Consultation With Individuals

It is current University practice that individuals whose FTCs are expiring are consulted.

Suitable Alternative Work

At the end of a Fixed Term Contract, the University considers whether suitable alternative work may be available. Employees should be given sufficient details to enable them to decide whether to apply or accept. The University will offer as much support as possible to staff in seeking alternative employment.

N.B. It is essential that the University is extremely careful in dealing with the expiry or non-renewal of an employee's Fixed Term Contract. Any unit not wishing to renew an individual Fixed Term Contract where the funding is still available, should always first consult with the People Hub before taking any action, since dismissal/non-renewal could potentially be unfair dismissal. Fixed Term Contracts must not be used as a means of managing performance or in lieu of probationary periods.

4. Measures to Avoid Dismissal

The following measures will be implemented by the University in order to meet the University's obligation to avoid, reduce or mitigate the consequences of the expiry of the contract:

- All posts covered by FTCs will be kept under review to determine whether or not the use of FTCs continues to be necessary in the context of the agreed criteria.
- Where posts have moved beyond the agreed FTC criteria, they will be made permanent and the FTC post-holders will be considered for appointment to the new post subject to the Procedure for Converting Fixed Term Appointments to Permanent - where there is a continuing need for the job.
- Where there is a continuing need for the same job (i.e. the major content of the job remains the same) the University and its units will make all possible efforts to secure the funding necessary to permit the extension of FTC appointments. The contract extension will be offered to the post holder without a requirement for a further selection process, provided the member of staff has satisfied the probation requirements, and unless they are subject to a current formal disciplinary warning. In these latter circumstances, individuals would have to take part in the normal competitive process.
- A situation may arise where funding is available to extend the contracts of some but not all of a group of staff doing like work. In such circumstances, the University will consider:
 - a) measures such as job sharing or reduced hours working which might avoid, reduce or mitigate the consequences of the expiry of the contract;
 - or
 - b) failing agreement on (a) above, on the process to be used to select those members of staff to be dismissed.
- A situation may arise where funding is available to extend a post covered by a FTC by re-defining the contract - e.g. by reducing hours. Any new FTC based on the agreed re-definition of a contract, will be offered to the post holder in the first instance, without a requirement for a further selection process.
- The University recognises that it has an obligation to offer reasonable facilities for staff development/training to staff on FTCs to extend or build on current skills, so that such staff can prepare themselves for suitable alternative employment within (and outside) the University. The University will draw this facility to the attention of all staff on FTCs and will not unreasonably refuse requests for funding.

- The University recognises that it has an obligation to seek to find suitable alternative employment for staff on FTCs within the University if:
 - a) they have one year's service with the University, and
 - b) the post covered by their current contract cannot be made permanent or extended as specified above.

5. Fixed Term Contract Renewal or Termination Procedure

- The People Hub will send a reminder email to staff where a FTC is due to expire, approximately 6 months prior to the expiry date. This email will include information such as how to find internal vacancies and access career management resources.
- Six months before the expiry of FTCs, line managers will be sent guidance explaining the actions line managers are advised to take to support their member(s) of staff whose contracts are due to expire. This includes an initial conversation with the individual and, for staff with 12 continuous months' service or more at the expiry date, a final formal meeting to discuss their employment position. Line managers are advised that it is good practice to hold such a final, formal meeting for staff with less than 12 months' continuous service so that they are clear about their employment position.
- If an application is made from an employee who is in receipt of such an email who appears to have the relevant skills, experience etc. to a post of equal or lower grade, a formal selection process will take place. If the employee meets the essential criteria for the post they will be shortlisted and interviewed for the appointment.
- Line managers will arrange for the final formal meeting to take place between the relevant manager and staff member to discuss their employment position, normally no later than 6 weeks prior to the end the Fixed Term Contract. The member of staff has the right to be accompanied at this meeting by a colleague who works at the University or a Trade Union representative, and they should be advised of this. The outcome of this meeting must be a decision that either the contract is ending or that there will be an extension.
- As soon as this meeting has been held (and no more than 10 working days after the meeting) where the decision is that the contract will end, the line manager must advise the People Hub and input the termination date into the People Services system. The People Hub will issue the termination letter to the employee, which sets out the right of appeal. Where the reason for dismissal is redundancy and the individual meets the qualifying service criteria, the People Hub will confirm details of any redundancy payment in writing. Where the decision is that the FTC will be extended, the line manager should make a request to extend the FTC as soon as possible (and within 10 working days of the meeting). Once approval has been received, the People Hub will update the People Services system with the new end date and issue the extension letter to the employee.
- Any appeal must be made in writing to the Head of Unit stating the basis of the appeal, within 10 working days of the date of the letter. The appeal will normally be heard by the Head of Unit (or nominee), who is more senior than the manager who held the meeting under the first step of this process. An appeal should be heard as speedily as possible. Every endeavour should be made to arrange an appeal meeting before the expiry date of the contract, but this may have to be heard after the expiry date of the contract, depending on timescales. Any termination decision stands unless overruled or varied on appeal. The member of staff will have the same right of accompaniment referred to above and they should be advised of this. Any complaint

that a member of staff may have about the end of their Fixed Term Contract will normally be heard at any appeal meeting.

6. Review

The operation of this agreement will be kept under constant review and will be subject to a formal review by the OU/OU branch of UCU Joint Negotiating Committee after three years.

7. Useful references

Fixed Term Contract Policy
Procedure for Converting Fixed Term Appointments to Permanent