

Written Reason Contract is Temporary Procedure

1. Introduction

If Units receive a request as to why the employee is still on a temporary contract, they have a legal responsibility to respond within 21 days. This only applies to employees who have been on successive fixed term contracts for more than 4 years. Letter A attached sets out a standard response. Letter B attached is to be sent if the employee does not have the necessary length of service.

2. Letter A (Service with the OU of 4 years or more on Fixed Term Contracts)

Points to note:

- Unit must reply within 21 calendar days of receiving the request.
- The request must be in writing. Where the employee makes a verbal request, they should be asked to make a written request, and the 21 days start from the date of the written request.
- The written request can be in the form of email. The reply should always be in letter form, although it can be despatched to the employee via email.
- Reply is to come from the Unit, may be signed off by Dean or Head of Department/Discipline or other relevant senior manager, and copied to the People Hub.
- If the employee addresses the letter to the People Hub, it will immediately be forwarded to the Head of Unit for reply. The People Hub will advise the employee that their letter has been forwarded.
- The template as outlined below should be used.
- The reasons for the fixed term contract must comply with the objective justification criteria, otherwise the procedures for the conversion of fixed term appointments to permanent must be followed and the employee should be advised as such.
- In all text examples given, the Unit is advised to include as much detail as possible so that the employee is fully informed about the context of their position, i.e. why the contract is fixed term and the reason for the anticipated end date.
- Units are also advised wherever possible to have a discussion with the employee explaining the content of the letter. This will allow the employee to ask questions and understand more fully the reasons. If it is not possible to arrange

this meeting within 21 days, Units are advised to give a written reply incorporating a proposed date to discuss the content of the letter.

- In **no** circumstances should a discussion occur instead of replying to the letter, as a written reply is the minimum statutory requirement.
- This letter, or the Fixed Term Employee Regulations are **not applicable**, if the employee is substantively a permanent member of the OU staff, on a secondment to another appointment.
- This letter is to be used for Academic, Research, Academic-Related and Support Staff. It is not to be used for Associate Lecturers.

Letter B (Service with the OU of less than 4 years)

Points to note:

- There is no statutory obligation for an employee with less than 4 years service or on their first fixed term contract to receive a response within 21 days. However, in the interests of maintaining good employee relations, if such an employee does make a written request, Units are encouraged to reply to that member of staff outlining the reasons for their fixed term contract.
- The reasons for the fixed term contract must comply with the criteria for the establishment of a fixed term contract, otherwise the procedures for the conversion of fixed term appointments to permanent must be followed and the employee should be advised as such.

3. Useful References

Fixed Term Contract Policy

Procedure for Converting Fixed Term Appointments to Permanent

Text Of Letter A

- Text in CAPS indicates where the unit make the relevant insertions.
- Individual letters may require minor amendments taking into consideration particular circumstances. If in doubt, contact the People Hub for specific advice on wording.

Dear (NAME OF EMPLOYEE)

I am writing in response to your letter dated (DATE OF LETTER) requesting the reasons why your contract is fixed term in nature and requesting a statement confirming that you are now a permanent employee.

The Fixed Term Employee (Prevention of Less Favourable Treatment) Regulations, 2002, state that where an employee has been employed on successive fixed term contracts for more than 4 years (service before 10 July 2002 does not count), their contract will be considered permanent, unless there is objective justification for the continued use of a fixed term contract.

The Open University is committed to only using fixed term contracts where there is a genuine business need, and only allowing the continuation of fixed term contract beyond 4 years where it considers it essential for business reasons. The criteria below outline what the OU considers to be objective justification for the continued use of fixed term contracts beyond an initial period of 4 years. They are:

- (a) The staff member's contract is funded by an external source, either fully or partly, (this would normally be a research project, but could be teaching or other activities)
- (b) Where it is a requirement of the external grant provider that the funded employee is not a permanent member of the staffing establishment
- (c) The staff member's current post is one which covers a secondment which had been extended beyond its original term.

(UNIT TO INSERT SPECIFIC REASONS HERE)

Examples of text

Option i - As you are employed on the (NAME OF RESEARCH/OTHER PROJECT) and your post is funded by an external source (NAME HERE), as outlined in criteria (a) as above, the University considers that this is reasonable objective justification to continue your contract on a fixed term basis.

Option ii - You are employed on (NAME OF RESEARCH PROJECT) and are funded by (NAME OF FUNDING PROVIDER). It is a requirement of (NAME OF FUNDING PROVIDER) that you can not be a permanent member of the University staffing establishment. The University therefore considers that this is reasonable objective justification to continue your contract on a fixed term basis as outlined in criteria (b) as above.

Option iii - As you are employed to cover the absence of (INSERT EMPLOYEE NAME HERE) who has gone on secondment to the post of (INSERT POST TITLE HERE) and that secondment has been extended (END DATE HERE IF KNOWN), the University considers that this is reasonable objective justification to continue your contract on a fixed term basis as outlined in criteria (c) as above.

I would be happy to meet with you to discuss the content of this letter and (WILL CONTACT YOU TO ARRANGE A TIME) or (I SUGGEST WE MEET AT X TIME ON X DATE, IN X LOCATION).

Yours sincerely,

(NAME OF HEAD/MANAGER)

cc. The People Hub

Text Of Letter B

- Text in CAPS indicates where the unit make the relevant insertions.
- Individual letters may require minor amendments taking into consideration particular circumstances. If in doubt, contact the People Hub for specific advice on wording.

Dear (NAME OF EMPLOYEE)

I am writing in response to your letter dated (DATE OF LETTER) requesting the reasons why your contract is fixed term in nature and requesting a statement confirming that you are now a permanent employee.

The Fixed Term Employee (Prevention of Less Favourable Treatment) Regulations, 2002, state that where an employee has been employed on successive fixed term contracts for more than 4 years (service before 10 July 2002 does not count), their contract will be considered permanent, unless there is objective justification for the continued use of a fixed term contract.

At this point in time, you have not been employed continuously on fixed term contracts for 4 years or more, therefore, The Open University is not under a statutory obligation to consider your post as permanent. However, The Open University is committed to only using fixed term contracts where there is a genuine business reason and only allowing the continuation of fixed term contracts beyond 4 years where it considers it essential for business reasons. The criteria below outline what the OU considers to be objective justification for the continued use of fixed term contracts beyond an initial period of 4 years. They are:

- (a) The staff member's contract is funded by an external source, either fully or partly, (this would normally be a research project, but could be teaching or other activities)
- (b) Where it is a requirement of the external grant provider that the funded employee is not a permanent member of the staffing establishment
- (c) The staff member's current post is one which covers a secondment which had been extended beyond its original term.

Should your post meet one of these criteria at the point where you have 4 years consecutive service, your contract will continue as fixed term.

Your contract is currently fixed term due to (INSERT ANY OTHER KNOWN DETAILS AT THIS POINT ABOUT WHY THE POST IS ACTUALLY FIXED TERM - PROJECT, COVER FOR AN ABSENT EMPLOYEE ETC.)

I would be happy to meet with you to discuss the content of this letter and (WILL CONTACT YOU TO ARRANGE A TIME) or (I SUGGEST WE MEET AT X TIME ON X DATE, IN X LOCATION).

Yours sincerely,

(NAME OF HEAD/MANAGER)

cc. The People Hub