

UCU INFORMATION

Research managers employing fixed-term staff

Advice for **research managers** employing **fixed-term research staff**

UCU has produced this leaflet for research managers, principal investigators and human resources staff who are involved in the management of research staff.

Further advice for UCU members who are research managers can be found at:
www.ucu.org.uk/index.cfm?articleid=3571

For many years the norm within research has been to use fixed-term contracts because they have been seen to provide ‘flexibility’ and to mirror research project funding that is usually provided for a limited duration.

However, since the introduction of the fixed-term employee regulations in 2002, things have started to change:

- Fixed-term staff are now entitled to redundancy payments.
- They can be treated no less favourably than comparable permanent staff
- The regulations seek to put an end to the successive use of fixed-term contracts.

Employment law also means that fixed-term contracts can’t be used to dismiss staff for capability or disciplinary matters – agreed institutional polices should be used for such matters.

Further, the use of fixed-term contracts does not excuse employers from their duty to consult and seek ways to avoid redundancy at the end of the contract.

Therefore, any perceived cost savings or greater flexibility in using fixed-term contracts are now largely illusory. The treatment of fixed-term staff and the inappropriate use of fixed-term contracts can also now be challenged at employment tribunals. It’s therefore important that the institution thinks about its use of fixed-term contracts to make sure not only that they comply with the law but that it makes the best use of its staff resources.

UCU is convinced that the continued widespread use of fixed-term contracts in higher education research is against everyone’s interests – including yours as managers. We also believe that changing the culture, and looking for new ways of doing things, will involve less work than you might think.

What’s the problem with using fixed-term contracts?

The problems include:

- staff feeling undervalued and marginalised
- managers continually losing valuable staff
- resources being wasted as staff look for more secure employment
- projects being jeopardised as staff leave

mid-way through for more secure employment

- managers being forced to dismiss staff on a regular basis.

Although objective justification for the successive use of fixed-term contracts is not defined, such reasons would need to refer to precise and concrete circumstances characterising a given activity which are capable in that particular context of justifying the use of successive fixed-term contracts.

While these circumstances may justify the use of a fixed-term contract, the temporary nature of external funding, will not, of itself, be an objective reason for the use of a fixed-term contract.

What do the fixed-term regulations say?

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 have two main provisions.

- 1 Staff on fixed-term contracts must be treated no less favourably than comparable permanent members of staff, unless less favourable treatment can be objectively justified. Equal treatment will apply not just to contractual terms such as pay and annual leave but to any benefits afforded to permanent staff such as the ability to participate in university governance and committees.
- 2 Staff on at least their second successive contract, or who have had their contracts previously renewed, and have completed 4 years' service will be able to regard their contract as permanent, unless the use of a fixed-term contract can be objectively justified. Staff on their first contract will be able to regard the post as permanent on renewal if they have reached the 4 year limit, unless the continued use of a fixed-term contract can be objectively justified.

The judgement in *Ball v Aberdeen University* was very clear on this point when the tribunal

rejected the university's case that short-term funding could automatically provide a justification for employment on a fixed-term contract.

What should I be doing?

If you are responsible for developing policies you should be negotiating with your local trade unions on a policy on the use of fixed-term contracts and the transfer of staff to permanent contracts.

As a manager you should be:

- helping the university to identify any fixed-term members of staff required to be transferred to a permanent contract
- using permanent contracts as the normal form of employment, and objectively justifying the use of any fixed-term contracts
- ensuring that fixed-term staff are not treated less favourably than permanent colleagues and are made aware of any permanent vacancies
- managing staff development and providing adequate and appropriate training for fixed-term staff.
- ensuring that all staff, including those on fixed-term contracts, have the opportunity to participate in the democratic structures of the institution
- managing staff and projects such that the ending of a funding stream or a fixed-term contract does not result in compulsory redundancies.
- actively seeking redeployment opportunities for research staff if projects end
- checking whether there are any research staff under threat of redundancy before advertising for any new posts
- welcoming redeployed research staff to your area of work.

Remember: permanent contracts should be the normal form of employment for all staff. Fixed-term contracts should only be used if there is an objective justification for the use of such a contract.

Who is responsible for research staff?

The culture of research in universities often leaves managers feeling that they have all the responsibility for managing research staff. However, the university, as the employer, is ultimately responsible for all their staff, including research staff. The university will delegate responsibility for the management of staff to departments or schools but individual managers should not be expected to take full responsibility for the employment of the staff that they manage.

Human resource departments can be used for advice and assistance and they are often more than happy to help – after all it's in their interests that staff are treated lawfully and in accordance with good employment practice.

How can I, and the university, get the most from our research staff?

Evidence from our members suggests that the following would help:

- Use permanent contracts as the normal form of employment.
- Offer sustainable career development.
- Ensure that staff are trained and prepared to move between projects.
- On your projects, be prepared to take on staff from other projects that are coming to an end.
- Stop thinking about research staff in terms of their current project – think about their experience and transferable knowledge and skills.

What are other higher education institutions (HEIs) doing?

A number of institutions have already started to think about how they employ research staff and a number of initiatives have been undertaken in different universities including:

- moving fixed-term staff to permanent contracts
- committing to using permanent contracts as the normal form of employment
- agreeing policies with the UCU on the use of fixed-term contracts
- introducing or re-examining redeployment and training processes
- providing 'bridging funds' between externally funded projects
- providing central funds to underwrite posts – breaking the link between individual research posts and specific research grants
- employing a 'pool' of research staff who are deployed to specific projects as and when funding is awarded.

What happens when project funding comes to an end?

The current funding arrangements for UK research will inevitably result in research projects ending as funding comes to an end. In the first instance, if the research continues to be viable, then alternative funding – either from alternative external sources or from internal sources – should be made available. If no further funding is available, and whether or not research staff working on the project are on permanent or fixed-term contracts, the institution is under a duty to avoid redundancies for affected staff.

At least three months before the end of the project funding, consultation should take place with those involved with the project to discuss alternative options. There may also be a legal requirement to consult with the recognised trade unions.

The institution should take responsibility for making every effort to find alternative employment for affected staff, either through slotting into a suitable alternative post or through an institution-wide redeployment process. Redeployment should focus on transferable knowledge and skills, and training should be provided where appropriate.

Strategically managed research should enable staff to be moved, with any appropriate training, from one research project to another with the minimum of upheaval.

As a last resort the institution's redundancy procedure should apply – and it should apply equally to all staff. In particular, staff on fixed-term contracts should not be selected for redundancy on the basis of the fixed-term nature of their contract (the ending of a fixed-term contract will usually be a redundancy in law), and processes and redundancy payments should not differ between fixed-term and permanent staff.

What does the Concordat say about contracts?

The Concordat to Support the Career Development of Researchers is supported by the employers and funders and sets out the expectations and responsibilities of researchers, their managers, employers and funders.

UCU does not think that the Concordat goes far enough in tackling the problem of insecurity of employment for research staff. However, all institutions should be, as a minimum, adhering to a Concordat that explicitly states:

- Research posts should only be advertised as a fixed-term post where there is a recorded and justifiable reasons.
- Employers are encouraged to value and afford equal treatment to all researchers, regardless of whether they are employed on a fixed-term or similar contract. In particular, employers should ensure that the development of researchers is not undermined by instability of employment contracts.
- Commitment by everyone involved to improving the stability of employment conditions for researchers and implementing and abiding by the principles and terms laid down in the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations (2002) and Joint Negotiating Committee for Higher Education Staff (JNCHES) guidance on the use of fixed-term contracts will provide benefits for researchers, research managers and their organisations.

Note: Nothing in this leaflet should be taken to be a definitive statement of the law.

For further information see the UCU website:
www.ucu.org.uk/fixedterm

