

**UNIVERSITY OF LEICESTER
POLICY**

**FIXED TERM CONTRACTS &
EXTERNALLY FUNDED POSTS
(Policy)**

For use in:	All Divisions/Schools/Departments/Colleges of the University
For use by:	All employees
Owner	HR Directorate
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Contact - Comments	Alun Reynolds/Geraldine McAughtry

**POLICY:
FIXED TERM CONTRACTS & EXTERNALLY FUNDED POSTS**

1. Introduction

- 1.1 The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 require that staff employed on a fixed term contract do not receive less favourable treatment than those who are employed on an open-ended contract. They also prohibit abusive recourse to successive fixed term contracts.
- 1.2 The University of Leicester is committed to meeting its legal responsibilities to those staff who are employed on fixed term contracts and will ensure that such contracts are used only where appropriate and where there is a legitimate reason for doing so.
- 1.3 This policy should be read in conjunction with the associated procedure on Fixed Term Contracts & Externally Funded Posts.
- 1.4 This policy and the associated procedure are not contractual and do not form part of the terms and conditions of employment. However, where the University wishes to amend the policy, staff will be consulted on changes via the recognised Trade Unions.

2. Aims

The aims of the policy are:

- 2.1. To ensure that the most appropriate employment contracts are issued and managed fairly, efficiently and effectively for the benefit of staff and the University.
- 2.2. To reduce the use of fixed term contracts within the University.
- 2.3. To support line managers to comply with the legal framework and to provide staff with clear and timely information regarding the status of their fixed term contracts and externally funded posts.
- 2.4. To ensure that existing staff employed on fixed term contracts are transferred, where appropriate, to open-ended contracts when they become eligible for a Fixed Term Contract Review.
- 2.5. To facilitate and support flexibility in terms of resourcing, in line with legislation.

3. Scope

- 3.1. This policy and the associated procedure will apply to all existing and future University employees.

4. Principles

- 4.1. The University will operate this policy and the associated procedure consistently, in line with prevailing legal requirements.
- 4.2. New members of staff will be employed on the most appropriate employment contract, at the outset of their employment.
- 4.3. Staff employed on a fixed term contract will be treated fairly and equitably in the management of their employment status.
- 4.4. Existing staff employed on 2 (or more) successive fixed term contracts will be eligible for a Fixed Term Contract Review of their employment status, when they reach 4 years' service, in line with legislation.
- 4.5. In cases where a member of staff has an inter-dependent contract of employment with the NHS and the University, representatives from the NHS may be included in formal proceedings (where appropriate).
- 4.6. HR and Recruitment will support line managers and Heads of Department with staffing issues, on request. Staff are welcome to contact HR or Recruitment if they have any queries regarding this policy or the associated procedure.

5. Role of HR

- 5.1. The role of HR is to ensure that formal proceedings comply with employment law and the University's policies and procedures. The primary role of HR is to advocate on the part of the institution, not for a manager or a member staff.
- 5.2. During formal proceedings, members of HR will act as independent, advisory guardians and regulators of the process. Members of HR will point out any issues in respect of employment law or the University's policies and procedures during formal meetings.
- 5.3. Members of HR are not permitted to undertake the role of decision maker on individual cases. Questions from members of HR must be asked through the chair of a formal meeting.

6. Right to be accompanied

- 6.1. A member of staff has the right to be accompanied to formal meetings. The chosen companion may be a trade union representative, an official employed by a trade union or a fellow worker.
- 6.2. Where the right to be accompanied is exercised, the normal expectation is that a member of staff will be accompanied by a local Trade Union representative at formal meetings and, where required, by an official employed by the Trade Union at appeal.

- 6.3. Where the Fixed Term Contract and Externally Funded Posts Policy and Procedure refer to a “Trade Union representative”, this includes an official employed by the Trade Union.
- 6.4. In cases where the outcome is likely to end, prematurely, the staff member’s professional career, the Registrar or a Pro-Vice-Chancellor (with advice from the University’s Legal Adviser) may permit the member of staff to have legal representation at the individual’s own cost.
- 6.5. A member of staff who has an inter-dependent contract of employment with the NHS and the University may be accompanied to formal meetings by a representative of a medical defence union.
- 6.6. A member of staff is not normally permitted to be accompanied or represented at informal meetings.

7. Employment Rights of Fixed Term Staff

- 7.1. **The Fixed Term Work (Prevention of Unfavourable Treatment) Regulations 2002 prevents unfavourable treatment of fixed term employees compared to permanent employees where the treatment is (a) on the grounds that the employee is a fixed term employee and (b) is not justified on objective grounds.**
- 7.2. A fixed term employee has the right to receive the same treatment as a permanent member of staff in relation to terms and conditions, training, promotion and career development.
- 7.3. In line with legislation, a member of staff who has been employed for 4 or more years on 2 (or more) successive fixed term contracts is eligible for a Fixed Term Contract Review (to review their employment status).
- 7.4. **Fixed term staff have the same redundancy rights as permanent members of staff.**
- 7.5. **A fixed term member of staff cannot be selected for redundancy because he/she is a fixed term employee, unless the University can objectively justify the choice.**
- 7.6. A fixed term member of staff cannot waive or opt out of his/her right to receive a statutory redundancy payment. Likewise, the University cannot exclude a fixed term member of staff from receiving a statutory redundancy payment, where he/she is entitled to receive one.

8. The Management of Fixed Term Contracts

- 8.1. A fixed term contract will normally be issued to cover a temporary need of 12 weeks (or more) up to a maximum period of 24 months, including notice period. A casual contract will be used for periods of less than 12 weeks.

- 8.2. In some circumstances, appointment to a single fixed term contract of longer than 24 months may be possible but should be discussed with a Recruitment Adviser to ensure compliance with the legislation and the University's Policy and Procedure on Fixed Term Contracts & Externally Funded Posts.
- 8.3. The University of Leicester will seek to transfer existing members of staff employed on fixed term contracts onto open-ended contracts, wherever appropriate.
- 8.4. **The temporary nature of external funding will not, of itself, be an objective reason to issue successive fixed-term contracts.**

9. The Management of Open-ended Contracts

- 9.1. Where a post is externally funded for a fixed term of 24 months or more (including notice period) the University of Leicester will, wherever possible, issue an open-ended contract subject to fixed term funding.

10. The Management of Externally funded posts

- 10.1. The management of externally funded posts is a large and disparate activity that involves managers from a wide variety of areas.
- 10.2. The involvement of HR is driven by external legal requirements rather than internal priorities or demands, finances or the decisions/timescales of external funders. It is a separate process within a wider range of activities that relate to the management of externally funded posts.
- 10.3. This policy (and associated procedure) sets out a framework for the management of externally funded posts to address the legal requirements of staff management in the context of the wider aspects of managing externally funded posts in departments and colleges.
- 10.4. HR will continue to monitor the end dates of fixed term contracts and externally funded posts, in conjunction with departments, to ensure the accuracy of data and to notify departments of the trigger date to review the contract.
- 10.5. The Head of Department, in consultation with the relevant HR Business Partner, will nominate an individual as a central point of contact e.g. Departmental Administrator/Manager, to assist with the co-ordination of all aspects of the administration relating to externally funded posts.
- 10.6. Heads of College have responsibility for the strategic management of externally funded posts within the College.
- 10.7. Heads of Department will plan budgets/staff spend effectively in relation to the additional employment costs of externally funded posts within their departments e.g. recruitment costs, redundancy payments and interim (internal) funding for staff between funding streams/contracts.

- 10.8. Line managers/Principal Investigators will, in liaison with the Head of Department, actively monitor the external funding for their staff on fixed term funding in a timely manner and will liaise with the departmental representative regarding the administration and financing of externally funded posts.
- 10.9. Line managers/Principal Investigators will, in liaison with the Head of Department and wherever possible, submit applications for continued external funding no less than 6 months in advance of a funding end date.

11. Legal Framework for Ending Fixed Term Contracts and Externally Funded Posts

- 11.1. **It is a legal requirement to treat the end of a fixed term contract (and the end of fixed term funding) as a redundancy situation.**
- 11.2. The Trade Union and Labour Relations (Consolidation) Act 1992 applies in three main ways:
- Meaningful consultation must take place with affected staff;
 - There are specific timescales for consultation for all redundancy situations (including termination of FTC);
 - Consultation cannot be run concurrently with notice periods;
 - The employer must actively mitigate the loss and assist with ‘alternative suitable employment’, if appropriate
- 11.3. In terms of consultation timescales, there are statutory requirements for staff and Trade Unions/Representative Bodies within an “establishment” as follows:

Number of employees to be made redundant within a 90 day period	Consultation with Trade Unions, Representative Bodies and staff to be a <i>minimum</i> of:
19 or less	30 days (Good practice)
20 to 99	30 days (Statutory requirement)
100 or more	90 days (Statutory requirement)

- 11.4. **The University is deemed to be one establishment for the purpose of calculating the number of redundancy dismissals. A College or a Division is not considered as an establishment, as it is only part of the University.**
- 11.5. Given that the number of University staff at risk of redundancy fluctuates and can be 100 or more on any given day within a 90 day period, consultation will normally be a *minimum* of 90 days for all fixed term contracts/externally funded posts coming to an end. Further advice on this can be sought from HR.
- 11.6. An example of how the legislation applies to University staff in a redundancy situation (at the end of a fixed term contract/externally funded post) is:

Grades 1-5	=	90 days' consultation 1 month's notice period	=	4 month process <i>(minimum)</i>
Grades 6 (and above)	=	90 days' consultation 3 months' notice period	=	6 month process <i>(minimum)</i>

The above timescales apply to all fixed term contracts or externally funded posts with a duration of more than 9 months.

- 11.7. For contracts between 3 and 9 months (including the notice period), contact HR for advice.
- 11.8. Line managers/Principal Investigators and Heads of Department should note that **a redundancy situation is identified by the fact that the *existing* work, contract or funding is due to come to an end.** The University has a legal obligation to ensure that staff are consulted correctly concerning their potential redundancy, in line with the statutory timescales.
- 11.9. This applies even where decisions for additional external funding are pending. The outcome of a future funding decision will not determine when redundancy consultation should begin.
- 11.10. The University recognises that line managers/Principal Investigators and Heads of Department will need to balance the desire to retain and motivate highly skilled staff and ensure “business as usual”, against the legal obligation to engage in timely redundancy consultation with staff.
- 11.11. Consultation ensures that line managers can have meaningful conversations with members of staff and can discuss a wide range of options available, which may include the pursuit of additional external funding to extend the duration of the post or the provision of temporary bridging funding while awaiting a decision on an application for external funding.
- 11.12. Where, at any point during consultation or after notice of termination is issued, further external funding is secured the Redundancy Procedure will cease and employment will continue on the relevant revised contract.
- 11.13. The Division of HR is committed to providing support and advice to line managers and staff to ensure that this procedure can work, in practice, within the constraints of the legal framework and timescales.
- 11.14. Line managers and staff are encouraged to contact HR for advice.

12. The Procedure for Fixed Term Contracts and Externally Funded Posts

- 12.1. There are two separate procedures outlined in the associated procedure for Fixed Term Contracts and Externally Funded Posts:
 - Procedure A: The Recruitment and Management of Fixed Term Contracts.
 - Procedure B: The Recruitment and Management of Externally Funded Posts.