



Bargaining &  
Negotiations  
Department

# Negotiating on casualisation in higher education

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A UCU bargaining guide for branches

January 2016

**In brief...**

This bargaining support pack pulls together all the union's key guidance to help branches in higher education negotiate around tackling casualisation.



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## Introduction:

This bargaining support pack contains all the relevant guidance we have produced to help branches to negotiate around casualisation. In this pack you will find guidance on:

1. Assimilating hourly paid staff to the national pay spine
2. Ensuring that hourly paid staff are paid properly
3. Moving staff off zero hours contracts onto fractional or variable hours contracts
4. Limiting the use of fixed-term contracts
5. Arguments to use in negotiations

This is a turbulent time in higher education and we recognise that branch officers face many competing demands. However, UCU must prioritise the fight for staff on casual contracts, firstly because it's the right thing to do for hard-working staff on casual contracts, often struggling to make ends meet, always struggling to build an academic career. But it's also important because if we accept the status quo for casualised staff it encourages universities to look to drag down conditions for everyone. Finally, if we're going to build our union as an effective voice for the academic community in the workplace, we have to ensure that we are an effective advocate for staff on casual contracts.

We have an opportunity at the current time to build some public pressure. There is continued public interest in precarious employment contracts, coupled with a growing concern among universities about their ability to demonstrate the quality of their teaching to bolster their reputations. This conjuncture demands that the union press the interests of our casualised staff with all possible energy.

UCU's national strategy involves working to raise the public and political profile of casualisation in our sector and then turning this into pressure and leverage to support targeted campaigning, organising and collective bargaining at local level. The political profile of zero hours contracts has provided a useful context for this strategy.

If we want to deliver for casualised staff *now*, however, our key lever is the local collective agreement. With colleges and universities pitched against one another in greater competition, our strategy is to focus resources on winning progress in key institutions which we can then use to try to bargain up their competitors.

What's our leverage? Quality. UCU has made arguments based on fairness, justice, equity and the need to sustain viable academic careers for years. Universities have shown themselves largely immune to such appeals. They are, however, anxious to be able to show their quality. That gives us a powerful lever because we know, and our casualised members know, exactly how difficult it is to do their jobs employed on precarious contracts. To be clear, this is not the fault of hard-working teaching staff. It is that the conditions of their employment make it impossible to maintain the same kind of sustained, developmental attention to students' education, demand that they perform long hours of unpaid labour just to ensure that their students' work is properly marked, compel them to prepare and read around their subjects in their own time. Researchers find that their contracts end before research has been properly reviewed and written up, that grant and contract lengths drive them toward short-term big bang projects and outputs rather than properly articulated development of knowledge.

We need to make the argument for greater attention to job security and continuity of employment on the grounds of the quality of provision it allows.

And we need to be prepared to campaign in support of our negotiations to convince managements that they need to engage with our arguments. Effective campaigns have been built by branches who are prepared to argue for the centrality of this issue with their core membership, engage their members in support of casualised staff, take the arguments out to their communities, to the local and national press and most importantly, to build creative campaigning alliances with their students. We have produced guidance to help branches with this which you can download here:

[http://www.ucu.org.uk/media/pdf/k/c/ucu\\_buildingeffectiveanticascampaigns\\_jun15.pdf](http://www.ucu.org.uk/media/pdf/k/c/ucu_buildingeffectiveanticascampaigns_jun15.pdf)

All the bargaining guidance contained in this pack has already been published but we have collected it together into one pack to assist branches in exploiting this opportunity to push their institutions in negotiations around the various forms of casualisation and help them to bargain for better jobs.

# Negotiators' resource: Assimilation of hourly paid staff to the national pay spine in higher education

The National Framework Agreement requires all staff to be transferred to the national pay spine in a fair and transparent manner and have a normal expectation of progression. The key passages are as follows:

HE institutions applying this agreement will use the single pay spine detailed in Appendix B to determine pay rates for all\* staff (other than clinical academics) covered by national agreements in force on 31 July 2003. \* including hourly-paid staff (p2).

All staff covered by this agreement will have pay progression opportunities within the pay range for their grade.

Arrangements for such progression should be: designed to offer equal opportunities for all staff in each particular grade, and to reward the acquisition of experience and contribution; and operated with demonstrable fairness, transparency and objectivity.

Progression within each pay range will depend in part on an individual's length of service in the grade and in part on an assessment of their contribution; although staff will have a normal expectation of annual progression up to the contribution threshold for their grade, subject exceptionally to established procedures for dealing with performance problems (p3).

[www.ucu.org.uk/media/pdf/frameworkagreement.pdf](http://www.ucu.org.uk/media/pdf/frameworkagreement.pdf)

You can find further bargaining advice on negotiating assimilation for hourly-paid staff:

[www.ucu.org.uk/index.cfm?articleid=3533](http://www.ucu.org.uk/index.cfm?articleid=3533)

# Negotiators' resources: Checklist for negotiating assimilation of Hourly Paid lecturers to the National Pay Spine

All roles occupied by hourly paid staff to be included in role analysis/JE	
For academic staff, assimilation to grading structure should be by matching to the national academic role profiles	
The national role profiles should not be amended such that they no longer read across (eg T&S 2, T&R 2 and Research 2 should all be on the same grade)	
Current levels of pay/job titles should NOT determine grade	
Hourly paid lecturing staff should be assumed to be on at least Grade Ac2	
Effective date of implementation as for other staff - BUT cannot restrict members' rights to pursue Equal Pay claims	
Progression within grade assured	
Progression between grades consistent with comparable staff	
Pro-rata contracts secured	
Permanent contracts secured	
Negotiate for harmonisation of terms and conditions	
If hourly-rates continue, follow JNCHES guidance (post-92) or negotiate on method of calculation, paid holiday and multiplier (pre-92)	
Communicate to hourly-paid staff (members and non-members)	
Involve hourly-paid members	
Ensure support of hourly-paid members before any agreements made	
Publicise any successes!	

## Negotiators' resources: Ensuring staff on hourly-paid contracts are properly paid

Our policy calls for hourly paid staff to be moved onto fractional contracts. However, it may be the case that some staff wish to remain on hourly-paid contracts. During negotiations, it may also be necessary to allow the option that some staff might wish to remain hourly-paid, or on variable-hours contracts. If hourly-paid contracts are retained by institutions, we have to make sure that these are used for staff who wish to be on them and that they are as good as possible.

This means ensuring that hourly-paid lecturers have a decent comprehensive rate that ensures employees are paid for the full range of duties, a contract of employment that recognises employee status and contains a guarantee of hours together with some mechanism for ensuring continuity and predictability of employment.

There are a number of ways of ensuring continuity of employment for hourly-paid staff. One option is to create permanent hourly-paid staff posts for those who wish to remain on such contracts. Another option is to seek an agreement that staff will be offered a permanent contract after a certain period of working on fixed-term contracts (no more than four years in any case).

For equal pay purposes, the rate of pay for hourly-paid staff must be related to the pay and grading of non-hourly-paid staff, so it's vital to determine the appropriate grade for any staff remaining on hourly-paid contracts. The posts of hourly-paid staff should be subject to the same role analysis process as for non hourly-paid employees, to determine their appropriate pay grade.

There are then two approaches to payment:

- 1 payment for each hour worked to deliver effectively the teaching and any other related duties required by the institution, for example preparation, marking, student support, administration, research, attendance at meetings and development



2 calculation of a comprehensive rate which includes payment for teaching and all associated work such as preparation, marking, student support, administration, research, and development

Holiday pay should be paid when holiday is taken – holiday entitlement should be calculated on a pro-rata basis and should be paid accordingly.

If a comprehensive rate of pay is being used then the UCU method of calculation assumes a weighting of at least 2.5 for every teaching hour to take account of preparation, etc.

However, the weighting of 2.5 should be increased by local agreement where it can be demonstrated that the time taken to prepare, etc, is greater than 1.5 hours for every teaching hour. For example, marking can add significantly to workloads and there can be a case for weighting multipliers or establishing marking pay rates to properly reflect this. You can find detailed advice on calculating rates of pay at: [www.ucu.org.uk/3538](http://www.ucu.org.uk/3538)

Note: If your negotiations involve the assimilation of hourly-paid staff to the single pay spine as part of outstanding national framework discussions, the outcome will need to come before the national ratification panel. Please refer to your regional official.

UCU branches in post-92 universities should refer to the JNCHES guidance from 2004 on hourly-paid lecturers, which can be found at:

[www.ucea.ac.uk/ucea/filemanager/root/site\\_assets/jnches/JNCHES Hourly-paid Lecturers Guidance.pdf](http://www.ucea.ac.uk/ucea/filemanager/root/site_assets/jnches/JNCHES_Hourly-paid_Lecturers_Guidance.pdf)



## Negotiators' resources: Bargaining to move staff off zero hours contracts:

If we're going to help staff on zero-hours contracts, we need to win improvements for them that guarantee them regular income, that provide for continuity of employment and that ensure that they are no less favourably treated by their employers than permanent staff.

The best way of achieving this is through a collective agreement that commits the employer to not using these contracts and moving existing staff onto better ones. This is also an opportunity to get an agreement that governs the way your institution uses a wider range of casualised contracts. There are several ways open to us to achieve this. You should aim to get a policy agreed that combines these in the manner that best suits your institution.

### Fractional contracts

The simplest and fairest way to achieve our objectives would be to negotiate an agreement that moves as many employees as we can off zero-hours and hourly-paid contracts and onto fractional contracts (a part-time contract expressed as a fraction of a full-time equivalent, for example, 0.5).

This is easier to argue for where employees are working a large number of hours regularly. Fractional contracts would ensure that staff who are regularly working a large number of hours are paid properly and receive all the same terms and conditions enjoyed by full-time colleagues on a pro-rata basis. This is particularly the case where someone is working a significant part of a teaching year. 'Significant' might be defined as anything that represents more than 0.1 of a teaching year, for example.

It's important to ensure that posts are fractional in every respect. That means that the fractional contract must include pro-rata access to incremental progression and pro-rata access to all other terms and conditions.

To calculate a fractional contract/pro rata salary, you need to establish:

- 1 the correct grade and pay point within the grade for the comparison

2 the measure by which a full-time equivalent post is determined in order to compare the hours worked

3 the number of hours actually worked by the members of staff.

*Grade:*

The correct grade will be established by role analysis and the national academic role profiles and will be grade 2 or above (from point 30 of the national spine upwards). For the national role profiles see: [www.ucu.org.uk/index.cfm?articleid=1969#profiles](http://www.ucu.org.uk/index.cfm?articleid=1969#profiles) Grading must be established with reference to the duties actually carried out and not just those in the current job title.

*Full-time equivalent:*

For a post-92 university, a full-time equivalent post is measured with reference to the national contract which establishes a maximum of 550 formal teaching hours per year and 18 hours per week.

Some pre-92 universities have workload agreements that measure formal teaching hours, in which case a full-time equivalent comparator will be determined in the same way.

In those pre-92 universities and other institutions where formal teaching hours are not used to measure full-time equivalence, we have to work out fractions in a different way. We can do this by calculating the number of hours worked by a comparable employee on a full-time contract. This would be calculated as follows: assuming a full time working week of 37 hours, six weeks of annual leave (30 days) three working weeks of public holidays and closure days:

$52 - (6+3) = 43$  working weeks

$43 \times 37$  hours = 1591 hours a year

*Number of hours worked:*

In post-92 universities and those institutions with a simple formal teaching hours workload

model, this is simply worked out with reference to the formal teaching hours worked by the zero-hours member of staff.

In pre-92 universities and other institutions that don't use formal teaching hours to measure full-time equivalence, we need to refer to all the hours worked by the member of staff, including preparation, course design, marking, student support, supervision, administration, attendance at meetings and many other things besides.

You can find detailed advice on calculating hours worked for hourly-paid staff in pre-92 universities for the purposes of fractionalisation at: [www.ucu.org.uk/3537](http://www.ucu.org.uk/3537)

## Variable-hours contracts

Employers will argue against fractional contracts on the grounds that they need flexibility to deal with fluctuating student demand.

UCU branches should attempt to get agreement on moving as many zero-hours or hourly-paid staff as possible onto fractional contracts.

However, one way of negotiating around the need for flexibility is to seek agreement on the use of variable-hours contracts with a guaranteed minimum.

Variable-hours contracts should only be used in situations where the requirement for flexibility by employers could not be accommodated by more traditional fractional contracts AND where their introduction will improve the position of our members.

The key objectives here are:

- to ensure that variable-hours contracts have a reasonable guaranteed minimum hours of work per year
- to ensure that there are controls on an employer's ability to change these hours
- to ensure there is a path for staff on variable-hours contracts to move to fractionalised contracts.

## Safeguards for the use of variable-hours contracts in further and higher education

- 1 The terms and conditions in variable-hours contracts should be the same as for comparable permanent full-time or fractional staff, except that there is some flexibility in the hours of work built into the contract.
- 2 Variable-hours contracts should specify a reasonable guaranteed minimum number of hours work per year.
- 3 There should be agreement on a threshold (expressed as a percentage of a full-time equivalent contract) above which staff could move onto permanent, non-variable fractional contracts. This percentage should be as low as possible to maximise the opportunity for staff to move to permanent, pro-rata (non-variable) contracts.
- 4 The guaranteed minimum should be based on a realistic expectation of the workload. This could be assessed by looking back over a number of years to calculate the average hours and use that as the minimum. The minimum should not be set so low as to be, in effect, a zero-hours contract.
- 5 The ratio of the guaranteed minimum to the flexible hours will need to be negotiated. The more flexibility that employers have to increase the flexible hours before triggering the right of the member of staff to have their minimum hours increased, the more likely they are to try and set the minimum hours at an unrealistically low level. The objective, from our perspective, is to get the guaranteed minimum hours set as high as possible.
- 6 Any agreement should ensure that part-time and hourly-paid staff on variable-hours contracts are entitled to a review of their guaranteed minimum contracted hours. Such a review should be at least annual but should be earlier in certain circumstances.
- 7 If total average hours actually worked are in excess of the original minimum hours, staff should have the right to have their minimum hours increased accordingly.
- 8 No agreement on variable-hours should allow for the employer to reduce the member of staff's working hours to less than the guaranteed minimum hours without triggering redundancy procedures.

## Negotiators' resource: Checklist for negotiating around zero hours contracts and hourly paid lecturers

Checklist for negotiating around zero hours contracts and hourly paid lecturers	
Has the employer confirmed that all casualised staff have 'employee' status (as opposed to being simply 'workers')?	
Has the employer agreed not to use zero-hours contracts in any form?	
Is there agreement on a mechanism for moving zero-hours staff to fractional contracts?	
If variable-hours contracts are being used, is there a guaranteed minimum 'core' hours with a ratio of at least 2:1 in relation to 'flexible hours'.	
If variable-hours contracts are being used, is there a limit on how far the employer can reduce hours without triggering a redundancy process?	
If variable-hours contracts are being used, is there an upper limit on flexible hours that can be added on without triggering an upward revision of core hours and/or fractionalisation?	
Will any remaining hourly-paid staff have defined hours written into their contracts?	
Are hourly-paid staff paid an hourly rate equivalent to a full-time lecturer?	
Do staff being moved off zero-hours contracts have the same access to pay progression and no less favourable treatment in other terms and conditions?	
Is there a policy in place for transferring fixed-term staff onto permanent contracts?	
Are any agency staff to be transferred to direct employment?	

## Negotiators' Resource: Arguments to use in negotiation on casual contracts

<p><i>'We don't really have zero hours contracts here'</i></p>	<p>The most fundamental common feature of zero hours contracts is the absence of any guaranteed working hours. If your college or university is using any form of contract that does not guarantee to provide hours of work, it is using zero hours contracts, whatever the job title claims.</p> <p>UCU's FOI request asked for data on the number of staff employed on contracts under which the employer has <i>no obligation to offer work and guarantees no minimum hours of work</i>. The results showed that this kind of contract is in fact very widely used across the university and college sector.</p>
<p><i>'Zero hours/Casual contracts can benefit employees by providing valuable flexibility that they want'</i></p>	<p>This is a convenient myth. There's very little evidence that the vast majority of people employed on zero hours contracts are happy to be on them and plenty that they are not.</p> <p>Why is this? Because employees on these contracts are completely dependent on their employer to provide them with work. This unique level of dependence means that they fear being seen as rocking the boat and regularly take on and conduct work far beyond what they are paid for, particularly spending many unpaid hours marking work.</p> <p>This is a common problem among the many thousands of hourly paid lecturers in the sector but it particularly affects those with no guaranteed minimum hours and no expectation of work from their employer.</p> <p>Ultimately, the easiest way to check what staff on these contracts want is to survey them. Every survey or consultation conducted so far indicates that the large majority of staff on such contracts would NOT choose to be so and feel highly vulnerable and open to exploitation.</p>



	<p>If some staff genuinely want to retain flexibility over their hours, there are ways of achieving this by using properly regulated variable hours contracts with guaranteed minima in them, rather than by using deeply exploitative zero hours contracts.</p>
<p>They say: <i>'We need flexibility to cope with fluctuating student demand and other factors'</i></p>	<p>We understand the need for some degree of workforce flexibility, but the reality is that their use is not restricted to situations where work is limited or unpredictable. Teaching work is typically organized on an annual, or termly or semesterised basis.</p> <p>The need for some flexibility may necessitate a small flexible 'peripheral' workforce but it's not credible to suggest that this explains the huge scale of use of ZHCs in further and higher education.</p> <p>All institutions are feeling competitive pressures and changes in student demand, but not all of them are using ZHCs. Almost half of institutions in further and higher education indicate that they are able to manage their flexibility in other ways.</p> <p>There is no common 'profile' of institutions using or not using ZHCs. Rather it appears to be a simple, and we would say, inadequate, management choice. Many employers find it perfectly possible to manage their flexibility without recourse to super-exploitative contracts.</p> <p>Institutions may crave flexibility but they also need to protect quality for their students and recognise their duties and responsibilities toward staff. Where they are widely used, zero hours and casual contracts can be damaging for the quality of provision.</p> <p>For example, whole areas of provision or subjects can rely on a completely unpredictable staffing complement. This can make effective workforce planning almost impossible.</p> <p>Often these staff do not have enough paid time to do the necessary work, struggling to go the extra mile with their</p>

	<p>students because they hold down multiple contracts with several institutions to make ends meet.</p> <p>Similarly, excluding staff from robust recruitment, induction, training and professional development programs can affect the quality of provision.</p>
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# Negotiators' Resource: Bargaining to limit the use of fixed-term contracts

It is UCU policy to seek, and campaign for, a significant reduction in the use of fixed-term contracts in higher education. For hourly-paid staff there is also a commitment to seek conversion to fractional (pro-rata) or full-time posts as appropriate. In the post-92 sector conversion should be to the national contract and in the pre-92 sector conversion should be to contracts with the same terms and conditions as salaried academic and related staff.

One method to help achieve this objective is to negotiate on the introduction of a Fixed-Term Contract Policy. It will not always be appropriate to seek to negotiate a policy and advice should be sought from your regional office before doing so. However, there will be situations where the agreement of a model policy will lead to many staff being transferred to permanent contracts and such policies may contribute to a change in culture away from the use of fixed-term contracts in higher education.

The Fixed Term Employee (Prevention of Less Favourable Treatment) Regulations 2002 (the Regulations) came into force in October 2002. The Regulations:

- Prevent less favourable treatment of fixed-term staff and
- Restrict the successive use of fixed-term contracts unless less favourable treatment or the successive use of fixed-term contracts can be justified on objective grounds.

The Regulations can be viewed at <http://www.opsi.gov.uk/si/si2002/20022034.html>

## Developing a Policy

The starting point in developing a local policy should be to get as many fixed-term staff transferred to permanent contracts as possible and to secure a reduction of their use in the future. Local priorities can also be fed into the process.

The development of a policy is a first step in tackling the issue of the use of fixed-term contracts in higher education but a massive culture shift will be required to tackle the issue effectively. It is therefore important that any policy is endorsed by the appropriate university bodies and has buy-in at all levels. It is also important that the policy is binding on all departments; guidance alone has been found to be ineffective in tackling the issue. Equally important is that any agreed policy is communicated to all staff and that managers are well

briefed in its content.

It is important that any policy that has been agreed by the UCU is supported by its members, especially those on fixed-term contracts themselves. In relation to the successive use of fixed-term contracts, the Regulations provide for collective or workplace agreements to override the statutory provisions so it is very important that any agreements made do not offer less protection to members than they are afforded by the Regulations.

Advice from our legal department in the light of the *Ball v Aberdeen* case is that including specific examples of potentially objectively justified use, of or continuation, of fixed term contracts – in either national or local agreements – is unhelpful and potentially misleading. In every case the employer should be required to show that it has a real need to employ the employee on a fixed term contract, and that the benefits to the employer in doing so outweigh the detriment to the employee caused by remaining employed on a fixed term.

We are seeking agreements that make it clear that fixed-term contracts should only be used in the circumstances described above. In addition, we are seeking a commitment that fixed-term contracts will not be used for a period beyond four years.

Branches / LAS are encouraged to negotiate for the introduction of a policy that:

- includes commitments from the university to reduce the use of fixed-term contracts
- and to effectively manage any remaining fixed-term contracts;
- specifies that fixed-term contracts will only be used for transparent and objective reasons where the employer can demonstrate there is a genuine fixed-term need;
- provides for transfer to permanent contracts after (at most) 4 years' service;
- does NOT give specific examples of when a fixed-term contract can be used;
- identifies any particular issues and commitments relating to specific groups of staff;
- sets down procedures for the management of fixed-term contracts;
- includes a commitment to joint monitoring and review.

# Negotiators' Resource: The UCU Model Policy – Commentary

## *1. Introduction*

It is important to get commitment to continuity of employment within the policy itself.

The requirement to treat fixed-term staff no less favourably (unless such treatment is objectively justified) and to inform fixed-term staff of permanent vacancies are both legal requirements under the Regulations.

The requirement to all transfer staff to permanent contracts after 4 years or before if appropriate goes beyond the legal requirements in the Regulations but UCU believe that the majority of staff would be entitled to a permanent contract under the Regulations after 4 years and that it would be very difficult to objectively justify the continued use of fixed-term contracts after 4 years. Our aim should be to get all such staff onto permanent contracts.

It is important that any agreed policy applies to all staff.

It is also important to build a review date into any agreed policy

## *2. Purpose*

It is useful that the purpose of the policy is agreed up front. It should not be merely about complying with the legislation – there needs to be a commitment to really start to tackle the problem of the endemic use of fixed-term contracts. An annual audit, including equalities data ensures that the policy remains a working document.

## *3. Reduction in the use of fixed-term contracts*

Again, commitment to the reduction in the use of fixed-term contracts is stated and a commitment to using permanent contracts as the normal form of employment. This will represent a significant shift in employment practices in most universities.

It is also useful to make clear within the policy that the university, as the employer, takes responsibility for implementation of the policy.

## *4. Transfer of staff to permanent contracts*

The Regulations state that those members of staff on at least their second contract, or who have had their contract renewed, and who have at least 4 years' service, can regard their posts as permanent – unless the employer can objectively justify the use of a fixed-term contract.

The UCU model policy builds on the spirit of the Regulations and requires that:

- All staff with more than 4 years' service be placed on a permanent contract
- All staff with less than 4 years' service be placed on a permanent contract unless the
- use of a fixed-term contract can be linked to a genuine fixed-term need
- Hourly-paid staff be transferred to pro-rata / full-time permanent contracts other than in exceptional circumstances
- The model policy also includes commitments in relation to staff acquiring 4 years' service and compulsory redundancies. These are both areas around which members have raised concerns and it is therefore important to secure commitments of this nature to allay any fears that fixed-term staff may have about the effect of any agreed policy.

##### *5. The circumstances in which fixed-term contracts may be considered*

Following legal advice, we have moved away from advising branches / LAs to agree to specified circumstances in which fixed-term contracts may be considered. Any policy should include a statement to the effect of:

“Fixed-term contracts should only be used on those occasions where the employer can demonstrate a real need, i.e. that the employer can identify facts evidencing an objective which can only be met by the use of a fixed term. Where an objective is identified but can be achieved by alternative means which do not involve the use of a fixed term, the employer will not have established a real need.”

Even where a real need is established the use of a fixed term contract may not be justified if, after consideration of all the facts, it is apparent that the detriment caused to the employee by remaining on a fixed term contract outweighs the expected benefits accruing to the employer by the use of a fixed term contract. It follows that on every occasion the employer must adopt an individual approach to the issue rather than apply a blanket rule. Whilst it may be appropriate to offer fixed-term contracts for short periods of time with an aggregate period

of less than 4 years in the circumstances outline above, fixed-term contracts should not be used for a period beyond 4 years of continuous employment.

### *6. Management of fixed-term contracts*

In recognising that there will be situations in which the use of a fixed-term contract will be objectively justified (for service of less than 4 years) it is important to get commitments on the management and treatment of staff on fixed-term contracts.

Key to this is a commitment to not treat fixed-term staff less favourably than permanent employees. It is useful to give example of this within the policy to make it clear that the less favourable treatment provisions apply to all terms and conditions of employment – contractual and otherwise. E.g. pay, access to library facilities.

Under the Regulations fixed-term staff have the right to request a written statement of reasons for less-favourable treatment which must be supplied within 21 days of the request. They also have the right, if they consider they are entitled to regard their post as permanent, to request a written statement confirming that the contract is no longer fixed-term. Within 21 days of that request the employer must either provide such a statement or provide a statement giving the reasons why the contract remains fixed-term.

### *7. Particular groups of Staff*

Any policy agreed should apply to all staff but is worth noting some of the particular issues that are likely to arise for particular groups of staff. The JNCHES guidance identifies contract research staff and hourly-paid staff as groups for which the Regulations will have a significant impact.

#### *7.1 Contract research staff*

It is important to get some level of commitment to breaking the link between a particular funding stream (e.g. a research project grant) and the employment of an individual researcher. Commitment to investing in the research infrastructure and looking at research funding as a whole, rather than on a project by project basis, can go some way to changing the culture of short term-ism within HE research.

#### *7.2 Fixed-term hourly-paid staff*



In addition to seeking permanence for hourly-paid staff in the same way as other staff, we should be negotiating for the transfer of hourly-paid staff to pro-rata / full-time contracts as appropriate. There may be limited circumstances in which an hourly-paid contract is appropriate but for most staff a part-time or full time contract (depending on hours worked) is most appropriate and is more easily demonstrable in meeting equal pay considerations.

#### *8. Ending a fixed-term contract*

It is important, if we recognise that some fixed-term contracts will remain in use, that procedures are built into the policy that deal with the ending of a fixed-term contract. The aim of these provisions is to move away from the current expectation that the expiration of a fixed-term contract will result in an automatic dismissal – in most cases a compulsory redundancy. The provisions build on the JNCHES guidance and are aimed at avoiding compulsory redundancies.

The example of a redeployment policy requires active intervention from the employer to identify suitable alternative employment – it is not sufficient to leave it to the affected member of staff to seek suitable vacancies and competitively apply for them.

If a fixed-term member of staff is made redundant this should be on the same basis as comparable permanent members of staff – including levels of redundancy pay, and the procedure should be no less favourable.

Redundancy waiver clauses signed after October 2002 are void but we should seek a commitment from the employer that they will not seek to enforce waiver clauses signed before that date.

# Negotiators' Resource: Model fixed-term contact policy

This policy has been agreed between X University and XUCU and will commence on (insert date)

## 1. *Introduction*

The University is committed to ensuring continuity of employment for its staff and to use fixed-term contracts only for transparent and objective reasons where there is a genuine fixed-term need.

The University will avoid the successive use of fixed-term contracts and will transfer staff to permanent contracts once they have completed four years' service, or earlier if appropriate. Where fixed-term contracts are used the University will ensure that staff are treated no less favourably than permanent staff and are informed of permanent vacancies.

The University will not take any action that it is contrary to the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

This policy will apply to the use and management of fixed-term contracts for academic (including research) and academic related staff across all departments.

This policy will be effective from (insert date) and will be jointly reviewed every two years or whenever there is a change in relevant legislation.

## 2. *Purpose*

The aim of this policy is to

- reduce the use of fixed-term contracts within the University
- provide for the transfer of fixed-term staff to permanent contracts
- specify how fixed-term contracts will be managed
- identify specific issues in relation to contract research staff and hourly-paid staff
- specify the action required at the termination of a fixed-term contract.

As part of this policy, the University will carry out an annual audit of the use of fixed-term contracts across the University which will include equality data and will share the results with

the UCU. If the use of fixed-term contracts does not significantly reduce or there are equality implications the university will take action, agreed with the UCU, to address the situation.

### *3. Reduction in the use of fixed-term contracts*

The University is committed to a significant reduction in the existing numbers of fixed-term contracts and to limiting their future use.

In future, permanent contracts will be the normal form of employment for all staff and fixed-term contracts will only be used when there are transparent and objective reasons where there is a genuine fixed-term need. This test for whether there is a genuine fixed-term need should be applied in each and every case. The University is the employer and therefore overall responsibility for the management of fixed-term contracts is held centrally. Decisions on the use of fixed-term contracts should not be made solely by Heads of Departments or line managers but must be referred to personnel / human resources to ensure that they are in line with University policy and in accordance with the fixed-term employee regulations.

The University recognises that this will represent a significant shift from current practices and will ensure that this policy is brought to the attention of all managers and staff and is well publicised.

The University will also take steps to monitor the implementation of the policy centrally and will take appropriate action where it appears that the policy is not being followed within departments.

### *4. Transfer of staff to permanent contracts*

All staff on fixed-term contracts will be transferred to permanent contracts immediately if they have at least four years' service or when they have completed 4 years' service.

All fixed-term staff with less than 4 years' service will be transferred to permanent contracts by (insert date) unless the continued use of the fixed-term contract can be demonstrated to be linked to a genuine fixed-term need.

Hourly-paid staff should also be transferred to pro-rata or full-time contracts as appropriate other than in exceptional circumstances (see 7.2).

In pursuing this policy, the University gives its commitment that the acquiring of 4 years' service will not be regarded as a legitimate reason for the expiry of a fixed-term contract.

The University gives a commitment to no compulsory redundancies as a direct result of this policy.

#### 5. *The circumstances in which fixed-term contracts may be considered*

Fixed-term contracts should only be used on those occasions where the employer can demonstrate a real business need, i.e. that the employer can identify facts evidencing a business objective which can only be met by the use of a fixed term. Where a business objective is identified but can be achieved by alternative means which do not involve the use of a fixed term, the employer will not have established a real business need.

Even where a real business need is established the use of a fixed term contract may not be justified if, after consideration of all the facts, it is apparent that the detriment caused to the employee by remaining on a fixed term contract outweighs the expected benefits accruing to the employer by the use of a fixed term contract. It follows that on every occasion the employer must adopt an individual approach to the issue rather than apply a blanket rule.

Whilst it may be appropriate to offer fixed-term contracts for short periods of time with an aggregate period of less than 4 years, fixed-term contracts should not be used for a period beyond 4 years of continuous employment.

#### 6. *Management of fixed-term contracts*

Where staff are placed on a fixed-term contract in accordance with paragraph 5 they shall be treated no less favourably than comparable staff on permanent contracts.

In particular, fixed-term staff will:

- Have equivalent terms and conditions of employment to colleagues on comparable permanent contracts including pay, absence provisions, pensions;
- Be provided with a suitable working environment;
- Have the same opportunity as other staff to access services to develop their career such as staff development, training, appraisal and careers advice;
- Be provided with information on, and the opportunity to apply for, permanent positions in the university;
- Be able to access university facilities such as libraries and intranet services;
- Have the right to participate in university governance and committees;
- Have their contracts regularly reviewed to consider whether the continued use of their fixed-term contract remains justifiable on objective grounds as set out in paragraph 5;

- On request, be provided with a written statement within 21 days explaining any differences in their employment arrangements from those of comparable permanent employees on a 'term by term' basis;
- After 4 years' service be provided with confirmation that the post is now permanent;
- On request, at any time, be provided with the objective justification for the post to be on a fixed-term basis.

## 7. *Particular Groups of Staff*

### 7.1 *Contract Research Staff (CRS)*

The University recognises that the use of fixed-term contracts within research for the employment of CRS is widespread. This policy applies to CRS as it applies to other staff groups and the commitment to the use of permanent contracts as the normal form of employment extends to research staff.

Research staff will only be placed on a fixed-term contract if the use of such a contract is in accordance with paragraph 5.

The University acknowledges that this represents a major overhaul of the way in which research staff are employed with a significant transfer to, and future use of, permanent contracts. CRS will no longer be appropriate terminology for groups of research staff who should be referred to by reference to their job title (e.g. level 2 researchers).

The University recognises that additional funding provided for research through full economic costing will allow for investment in the research staffing infrastructure including investment that will allow continuity of employment between externally funded research projects.

Examples could include the use of bridging funds, retraining budgets, the establishment of pools of researchers or a redeployment database.

In this way the University will retain high quality, experienced staff and employees will maintain their continuity of employment.

The University also re-iterates its commitment to the active management of research careers and the concordat for the career management of contract research staff.

### 7.2 *Fixed-term hourly-paid staff*

The University also recognises that hourly-paid staff also form a large and distinctive group particularly affected by the use of fixed-term contracts.

The University will transfer hourly-paid staff to permanent contracts in accordance with paragraph 4 of this policy.

The University will also undertake to transfer hourly-paid staff to pro-rata or full time contracts as appropriate other than in exceptional circumstances that have been agreed with the UCU.

The transfer to pro-rata contracts will meet equal pay considerations with staff being transferred to a salary point on the appropriate grade.

The method of calculation of pro-rata contracts will be by reference to the national contract (or to an agreed lower workload agreement) in post-92 institutions and subject to agreement with the UCU in pre-92 institutions.

#### *8. Ending of a fixed-term contract*

The University will take all necessary and appropriate steps to avoid compulsory redundancies of both permanent and fixed-term staff.

Up to four months before the expiry of a fixed-term contract, all alternative options should be considered e.g. alternative funding arrangements, renewal, use of bridging funds, retraining and redeployment.

Up to three months before the expiry date, consultation should take place with the postholder on the prospects of alternative options. The postholder may be accompanied by a trade union representative at any discussions about his/her post.

At the same time, the University will consult with the recognised trade unions about any potential redundancies.

In the first instance consideration should be given to transferring the employee to a permanent contract if the work is on-going, extending the fixed-term contract (in accordance with paragraph 5), providing alternative work or funds for a temporary period (for example between grants) or slotting the employee into a suitable vacancy (either on a permanent or a fixed-term contract in accordance with paragraph 5).

If these options are not available, or at the employee's request, formal redeployment will be considered.

As part of that process the University will actively seek suitable alternative employment for the member of staff. This will include any posts for which training may be required. The redeployment process is about matching transferable skills not necessarily seeking an exact job match. The University will also ensure that that departments / schools / centres are willing to take on staff who have been redeployed, including staff that may need significant retraining.

Where the employee does not want to be considered for redeployment or the redeployment process has been unsuccessful, the university's redundancy procedure should be applied. However, the fact that a member of staff is in a particular fixed-term post the funding for which has ceased, will not be the sole criteria for selection for redundancy.

The redundancy procedure will be applied to fixed-term staff in the same way as it is applied to comparable permanent members of staff including any redundancy payments.

The University will not seek to enforce any redundancy waiver clauses.

The UCU reserves the right to oppose any compulsory redundancies.

### *Conclusion*

The University recognises that this policy represents a significant cultural shift in the use of fixed-term contracts. However, the University believes that to meet both its legal and moral obligations, and to strengthen its sustainable research capacity, such a policy is both necessary and welcome.

This policy is endorsed by the University at the highest level and all managers and members of staff are obliged to comply with its content.

## Negotiators' resource: Checklist on negotiating a Fixed-Term/Open-Ended contract policy

	Yes	No	Partial	Comment (notes on areas for further negotiation)
Has the proposed agreement been negotiated formally with UCU?				
Will the collective agreement be incorporated into individual employment contracts?				
Has the Regional Official been informed or consulted over the proposal?				
If YES, what advice did the branch receive?				
Have all affected groups of members been consulted?				
If YES, please provide feedback.				
If NO, please advise when this will take place.				
Is the final proposal in writing?				
How will the final agreement be published and what format is it published in (pdf)?				
Where can members access the policy?				
Is it applicable to all staff groups (including research staff and hourly-paid staff)?				
Is the procedure, open, transparent and equitable?				
Does it comply with any existing UCU guidance				



(please indicate details of compliance overall)?				
Policy supported by fixed-term staff committee and/or fixed-term representatives and fixed-term members?				
Agreement that permanent contracts will be the normal form of employment?				
Agreement that the number of fixed-term contracts in use now and in the future will be reduced?				
Agreement that the regulations/ provisions of the policy will not be used as a reason for nonrenewal of a fixed-term contract?				
Agreement that fixed-term contracts will only be used for transparent and objective reasons where there is a genuine fixed-term need, even the first use of a fixed-term contract?				
Agreement that fixed-term contracts will not be used a period beyond 4 years of continuous employment?				
No 'blanket' agreement on the specified circumstances in which a fixed-term contract can be used?				
Agreement on how individual cases will be assessed to see if they meet the objective justification criteria and UCU involvement in such assessment?				
Agreement on the process and timetable to be used for				

the transfer of existing fixed-term staff to permanent contracts?				
Agreement on the management of any remaining fixed-term contracts to include no less favourable treatment?				
Commitment to seek further alternative funding or alternative employment for staff at the end of a fixed-term contract?				
Has the Regional Official been informed or consulted over details/advice?				
Equality impact assessment carried out?				
Is there a review procedure? How will the agreed text be preserved? Note: electronic storage requires pdf format to avoid the possibility of editing without agreement				
Is there a monitoring process for the use of the procedure?				
Will UCU locally monitor the use of this procedure?				
What training will be provided and to who, in the use of and application of the procedure?				
How will UCU inform local branch officers of the procedure and its application?				
Can UCU use this procedure in local organising and recruitment initiatives?				
Agreement on the process to be applied when a fixed-term				

contract is coming to an end to include meetings with individuals and trade unions and consideration of redeployment?				
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