

# END OF FIXED TERM CONTRACT POLICY

November 2021

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<b>Document title</b>		
End of Fixed Term Contract Policy		
<b>Document author and department</b>		
Human Resources		
<b>Approving body</b>		
People, Culture & Engagement Committee		
<b>Date of approval</b>		
November 2021		
<b>Review date</b>		
November 2024		
<b>Edition no.</b>		
001		
<b>ID Code</b>		
253		
<b>Date of effect</b>		
November 2021		
<b>EITHER</b> For public access online (internet)? <i>Tick as appropriate</i>		YES
For public access on request copy to be mailed <i>Tick as appropriate</i>		YES
<b>OR</b> For staff access only (intranet)? <i>Tick as appropriate</i>		
Password protected <i>Tick as appropriate</i>		NO
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## 1. Introduction

- 1.1 The Board of Governors has delegated responsibility to the People, Culture and Engagement Committee for the effective operation of this policy and for its subsequent revision and amendment. Day to day responsibility for operating this policy and ensuring its maintenance and review has been delegated to the Chief People Officer.
- 1.2 This policy has been implemented following consultation with the recognised trade unions, UCU and UNISON.
- 1.3 This policy does not form part of any contract of employment although there are statutory entitlements referred to within it.
- 1.4 The University Equality Impact Procedure was used in the development of this policy.

## 2. Purpose

- 2.1 The non-renewal of a fixed term contract falls within the definition of a dismissal but notice does not have to be given (unless the contract reserves the right to be terminated earlier on specified grounds) because the contract automatically ends at the expiry date.
- 2.2 The University of Portsmouth strives to be a good employer. The ACAS Code of Practice on Disciplinary and Grievance Procedures does not apply to the non-renewal of fixed terms but the University has adopted this policy in order to promote certainty, fairness and consistency of practice across the University.

## 3. Scope

- 3.1 Where there are conduct or performance reasons for terminating the contract earlier than the expiry date upon notice, this policy will not be used. The appropriate University policy will be instigated instead.
- 3.2 Where within a re-structure fixed term employee are within a pool for redundancy selection this policy will not be used and the appropriate policy will be followed instead.
- 3.3 Where a fixed term contract has been converted to a permanent contract under the Fixed Term Employee Regs 2002 this policy will not be used for terminating the contract. The appropriate University policy will be instigated instead.

## 4. Guiding principles

- 4.1 In some cases, employees who have acquired two years continuous service at the contract expiry date, either with the University of Portsmouth or through an employer detailed in The Redundancy Payments (Continuity of Employment in Local Government, etc) (Modification) Order 1999 as amended (RMO), will be entitled to a redundancy payment.

This will be calculated on the basis of the statutory redundancy payment scheme but using actual weeks' pay as detailed within the Organisational Change and Redundancy Policy (OCR). Where two or more separate and distinct contracts are running concurrently continuity and redundancy pay is calculated on the basis of the contract that is expiring.

- 4.2 Where an offer of employment has been made by an employer listed within the RMO to an employee under notice of redundancy and employment starts within 4 weeks of the end date at the University there will be no entitlement to a redundancy payment.
- 4.3 Where it has been made clear at the outset of employment that the fixed term contract has been used to cover the absence of a permanent employee, whether due to sickness, family related reasons or secondment, and will terminate upon that employees return to work, a redundancy payment will not be paid as this does not amount to a redundancy situation.

## 5. Commencing the Process

- 5.1 The appropriate manager should establish, in a timely manner, if the continuation of the post is required further funding is available or in cases where there is funding available, if the post can become permanent. The manager should make efforts to discuss the situation of the contract informally with the employee in advance of the expiry date.
- 5.2 Around three months before the contract is due to expire:
  - Notice should be sent to the appropriate Trade Union notifying them of the details of the fixed term that is due to expire.
  - A letter should be sent by the line manager to the employee specifying the date on which the fixed term contract is due to expire, providing an explanation of the reason for the fixed term and the reason for the expiry of the contract. The background to any prior discussions should be briefly recorded. The level of detail will depend on the circumstances, particularly whether the reason for and duration of the contract were clear from the outset and whether there has been any expectation of a possible extension. The letter should state that a meeting will take place at which the parties will discuss the expiry of the contract and give details of the time and place of that meeting. The employee should be informed of their right to be accompanied by an accredited trade union representative or University of Portsmouth (UoP) work colleague. The employee should be reminded of how to access permanent vacancies across the University and details of any vacant posts within the Faculty/Department should be included within the letter.

## 6. Right to be accompanied

- 6.1 Any request made by an employee to be accompanied to the meeting to discuss the expiry of the contract must be within reasonable timescales. What is reasonable will depend on the circumstances of each individual case.
- 6.2 A companion is allowed reasonable time off from duties without loss of pay but no one is obliged to act as a companion if they do not wish to do so.

- 6.3 The trade union representative or UoP work colleague will be allowed to address the meeting to sum up the employee's case and confer with the employee during the meeting. The trade union representative or UoP work colleague does not, however, have the right to answer questions on the employee's behalf, address the meeting if the employee does not wish it or prevent the employee from explaining their case. If the employee's representative cannot attend on a proposed date for a meeting the employee must notify the person arranging the meeting as soon as possible and is able to suggest an alternative time and date so long as it is reasonable and it is not normally more than 5 working days after the original date.

## **7. Meeting**

- 7.1 The meeting should be held without unreasonable delay. The manager will summarise the background and rationale for the expiry of the contract and the employee given the opportunity to comment or make suggestions. The manager should explain the nature of the redeployment process and discuss any alternative employment within the Faculty/Department and ensure that the employee understands how to access the redeployment system and its advantages. The manager should also outline the support available to the employee, including details of the Employee Assistance Programme, support from Learning & Development and Pension contacts where relevant.
- 7.2 The manager must keep the situation under review and if there is any change of circumstances consider whether they impact upon the situation and if so arrange a further meeting with the employee to discuss.

## **8. Following the meeting**

- 8.1 A second letter should be sent to the employee either confirming the date of the expiry of the contract or setting out any alternative decisions reached. This is subject to the situation being under constant review. If the employee is entitled to a redundancy payment (see 4.1) the calculation of the payment will be set out and the employee will be entitled to take a reasonable amount of paid time off to look for another job or retraining. If the contract is to expire the employee will be offered a right of appeal.

## **9. Appeals**

- 9.1 In the event of termination of employment through the expiry of the fixed term there is a right of appeal. To exercise this right the employee should set out their full grounds of appeal in writing to the Chief People Officer within 10 working days of the issue date of the termination letter.
- 9.2 The appeal hearing will normally be dealt with by way of review of the fairness of the original decision in light of the procedure that was followed and any new information that may have come to light. However, there may be some circumstances where the hearing will be dealt with by way of a re-hearing. This will be at the discretion of the University depending upon the circumstances of the case. In any event the appeal will be dealt with as impartially as possible.

- 9.3 The date on which termination of the contract takes effect will not be delayed pending the outcome of the appeal. However, if the appeal is successful the employment will be reinstated/ re- engaged with no loss of continuity or pay.
- 9.4 The appeal notification and grounds of appeal will be forwarded to the HR Employment Practice Team who will assist in the coordination of the case and the compilation / distribution of the documentation for the appeal hearing.
- 9.5 The appeal hearing will be conducted impartially by a panel of at least two senior managers at Grade 10 or above who have had no previous involvement in the case, are more senior than the manager who decided that the fixed term should not be renewed and who have completed the appropriate training. The panel may be advised by a member of HR. The panel composition will, where possible, reflect equality and diversity principles. Panel composition will be nominated by the Chief People Officer or Deputy Directors of HR.
- 9.6 The employee has the right to be accompanied at the appeal hearing by a UoP work colleague or accredited union representative. The procedure is as set out at section 6.
- 9.7 If the grounds of appeal raise new matters any documentary evidence in support must be included with the appeal notification and if this involves new witnesses their evidence must be submitted within a written statement. New evidence will only be considered if relevant and there is good reason why this had not been included as part of the original hearing. This may delay the listing of the appeal as management may need to undertake further investigation in order to respond. If management provide new information this will be disclosed as a summary including, where appropriate, copies of additional relevant documents and witness statements. The employee will be provided with a reasonable opportunity to consider the information.
- 9.8 The appeal panel may need to adjourn the appeal hearing to allow further investigation into any new and relevant points raised at the hearing. The employee will be given a reasonable opportunity to consider any new information obtained before the hearing is convened.

## **10. Notification of the Hearing**

- 10.1 The employee will be provided with written details of the appeal hearing which will be arranged without unreasonable delay. This notification will normally be within 10 working days of receipt of the appeal notification and grounds and will include:
- Details of the date time and venue for the appeal hearing
  - Confirmation of the right to be accompanied by a UoP work colleague or accredited union representative
  - The names of the panel members
  - The names of the persons who will be present at the hearing
  - The format that the appeal will take
  - A guidance note as to the procedure that will be followed

- 10.2 Upon receipt of this notification, by return, the employee must confirm their attendance, or propose an alternative date in accordance with section 6, and provide details of their companion. The employee must take all reasonable steps to attend the appeal hearing and an unreasonable refusal to do so may result in the panel making a decision in the employee's absence on the basis of the available evidence. With the consent of the employee arrangements can be made for the UoP work colleague or accredited union representative to be in attendance where it is known the employee will absent at the hearing.

## **11. Appeal Documentation**

- 11.1 The appeal documentation comprising the documentation upon which the parties will rely will be prepared by the HR Employment Practice Team and sent to the employee, management and the panel members and trade union representative where requested by the employee not less than 10 working days before the hearing date.

## **12. The Appeal outcome**

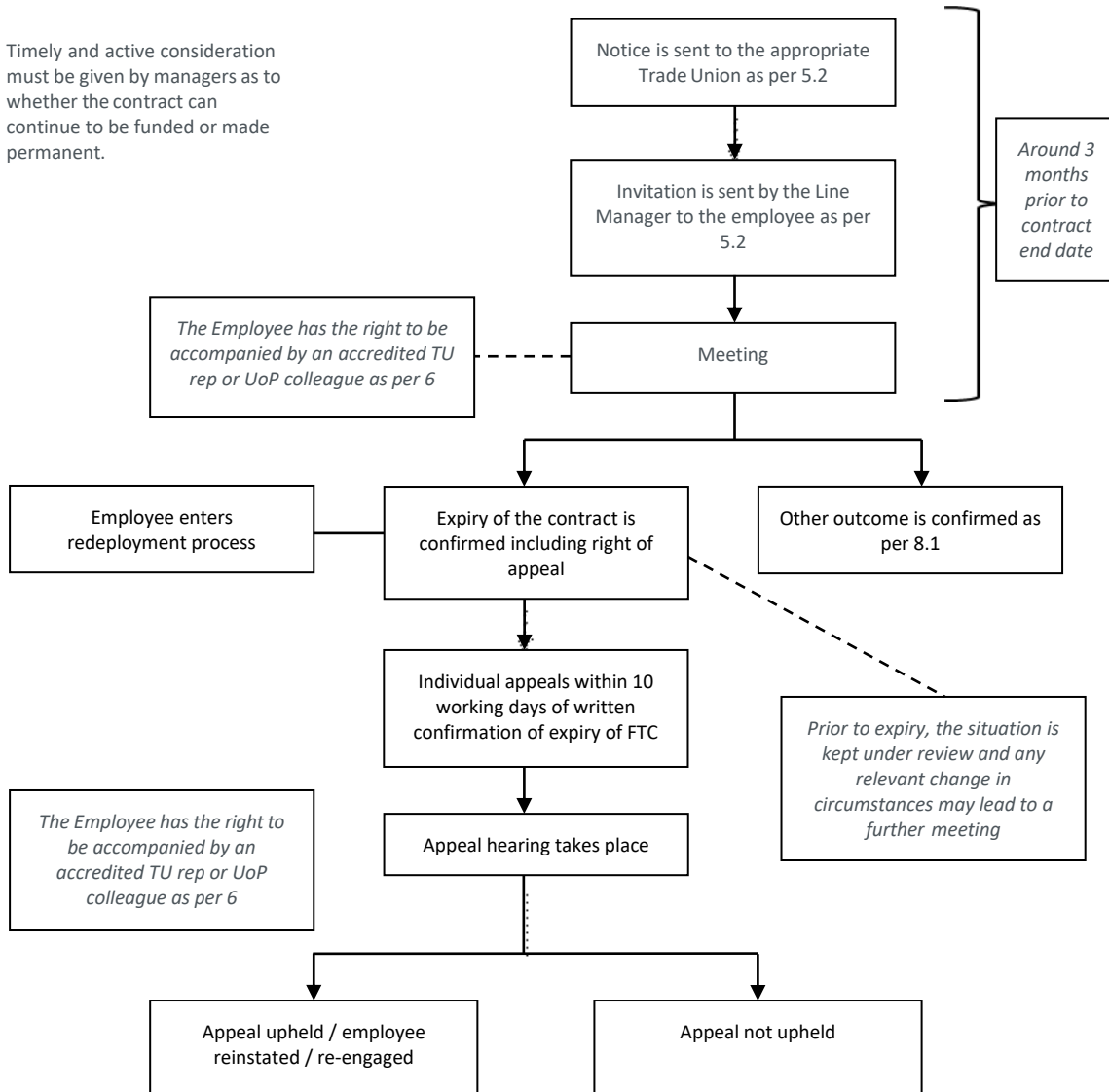
- 12.1 The appeal hearing will usually be adjourned for a short period to enable the Panel to arrive at a decision. The decision may be conveyed orally in the presence of the parties and will be confirmed in writing with full reasons as soon as reasonably practicable, usually within 5 working days. However, after a lengthy hearing, the process may be adjourned and reconvened at another time to consider the decision. In such cases it may be agreed to communicate the outcome by telephone/further meeting before confirming the decision in writing. The method for communicating the outcome will be indicated by the Panel Chair at the Hearing. The Panel may:

- Confirm the original decision
- Revoke the original decision (where this is the outcome, a meeting with the employee, line manager and HR will take place to agree any support required regarding the return to work.)

- 12.2 The appeal decision is final. There is no further right of appeal.

**13. Appendix 1 – End of Fixed Term Contract Flowchart**

Timely and active consideration must be given by managers as to whether the contract can continue to be funded or made permanent.



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