

UoB UCU & UNISON Fact Sheet: Fixed Term Contracts (FTCs)

Introduction

This fact sheet is aimed at staff on fixed term, fractional, and fixed funding contracts to help us navigate policy at UoB and to help us know our rights in law. Particularly with regard to the right to a permanent contract after four years and protection from unfair dismissal and unfair treatment that staff on FTCs are often faced with.

In light of the Covid-19 pandemic and the University's refusal to date to rule out job losses it is more important than ever that you know your rights, and if you are entitled to be made permanent that you notify the University as soon as possible.

This fact sheet should not be considered formal legal advice – for which you should contact the [UCU legal help scheme](#). For further case work advice please contact the branch on admin@birminghamucu.org or visit [our website](#).

You can also download and print a pdf version of this briefing here: [Fixed term contracts (FTCs) (pdf)]: Please feel free to share!

What is a fixed term contract and what are my rights?

A fixed term contract is any employment contract with a specified end date. At the University of Birmingham there are a variety of FTC in use plus a third category of staff employed on permanent contracts with funding end dates (PFED). These can vary from term time only teaching contracts, fractional or part time contracts, research appointments, to full-time teaching and research appointments. If you are on a short term contract of 12 weeks or less you should check your contract or work agreement to see if you are considered an 'employee' or a 'worker', as many of the protections for staff on FTCs apply to 'employees' only (BCUCU have campaigned for some time for full employment status for all casualised staff).

There are a number of protections in place to prevent the less favourable treatment of employees on fixed term contracts, particularly the [Fixed-term Employees \(Prevention of Less Favourable Treatment\) Regulations 2002](#). These are summarised on the [gov.uk website](#) as follows:

Employers must not treat workers on fixed-term contracts less favourably than permanent employees doing the same or largely the same job, unless the employer can show that there is a good business reason to do so.

Employers must also ensure that fixed-term employees get:

- *the same pay and conditions as permanent staff*
- *the same or equivalent benefits package*
- *information about permanent vacancies in the organisation*
- *protection against redundancy or dismissal*

At the University of Birmingham we have very large numbers of staff on FTCs and by far the most common grievance is unfair dismissal. The University automatically issues more than a thousand dismissal notices to staff on FTCs per year, usually with no consideration of your rights under the prevention of less favourable treatment regulations.

The ‘objective justification’ and unfair dismissal

For staff who have been employed for *at least two years*, you are able to bring a claim for unfair dismissal to tribunal drawing on both the prevention of less favourable treatment regulations and general employment law. However, anyone who’s dismissal may be considered ‘automatically unfair’ has the right to bring a claim from day one. These include any dismissals that are discriminatory under equalities legislation, or relate to whistleblowing or to trade union activities. Such claims are also often subject to higher or unlimited compensation. See the [gov.uk page on dismissing staff](#).

The specific protections under the prevention of less favourable treatment regulations can sometimes be unclear and we have to rely on case law as well as statute for our interpretations. Under these regulations, the point of dispute often comes down to whether or not there is an ‘objective justification’ for treating the member of staff less favourably due to their FTC status. A typical example of an ‘objective justification’ for less favourable treatment may be access to a private rather than a shared office if the length of the contract is too short to make a private office available and if the overall employment package is at least as favourable to comparable colleagues on permanent contracts. However, what is unlikely to be considered objective justification is the open ended or poorly defined use of the ‘objective justification’ clause when refusing to make staff permanent or when dismissing staff without clear or specific explanation.

Given the high proportion of staff at the University of Birmingham on FTCs performing core business activities the University should not normally dismiss a member of staff simply because their contract is coming to an end or because specific funding streams are coming to an end. See the following [legal advice from Thompson’s solicitors and the widely cited case of Ball vs the University of Aberdeen](#) in which UCU successfully challenged such a dismissal at tribunal.

As Thompson’s point out, case law is incomplete, but courts have shown that they are prepared to challenge employers. They suggest three key questions when challenging an employers on their use of ‘objective justification’:

- *Is the employer’s stated business need a legitimate aim? A blanket policy that has not taken a fixed term employee’s particular circumstances into account will not of itself amount to a legitimate aim.*
- *Is it necessary to achieve that aim? A blanket policy of putting all employees who have short term funding (as in academia) on fixed term contracts may not be the only way of achieving that aim, particularly if there is a possibility of further funding.*
- *Is it appropriate? This will be a question of fact balancing the disadvantages to the employee such as uncertainty of future employment, adverse impact on career progression/professional development and credit worthiness versus advantages to the employer.*

In particular, for redundancies resulting from the current Covid-19 pandemic affecting FTC staff, BUCU calls for full statutory consultation and for all staff to be treated on an equal basis under the prevention of less favourable treatment regulations.

If you are having difficulty getting your contract extended or made permanent for this reason we ask you to contact the branch as a matter of urgency.

When and how to request to be made permanent

According to the [government's guidance on FTCs](#): 'Any employee on fixed-term contracts for four or more years will automatically become a permanent employee, unless the employer can show there is a good business reason not to do so'. This requires four years' continuous service, which must be with the same employer, and for you to be on at least your second contract. It does not, however, affect your rights if you have worked in different departments or had changes to your contract in that period.

Some breaks in service may be regarded as a temporary cessation of service and not a break in contract. For example, if your contract terminates every June and a new one is issued every September.

The difficulty we face as a branch is typically where a case to be made permanent is not supported by a line manager. HR will then typically cite 'objective justification' and not make the individual permanent. This has led to many members of staff working for as many as 15 years on successive FTCs without being made permanent. This can and should be challenged, and the University have accepted in negotiations that this should not take place.

Typically, where you are performing core or continuing business activity you should be 'automatically' made permanent after four years. Unfortunately, despite the best efforts of BUCU and despite the implementation of New Core, the University still does not have any automatic system in place for making FTC permanent beyond four years, instead relying on staff to put in individual requests to HR. In our experience HR will look into these requests and will in many cases make the member of staff permanent at this point.

If you are in this situation, please follow the national [UCU guidance on requesting to be made permanent](#). This includes a model letter that should be sent to HR via your college HR contact. If HR refuse to make you permanent at this point, perhaps because your application has not been supported by your line manager, please contact BUCU and request a case worker by contacting admin@birminghamucu.org.

The national UCU guidance linked above also includes a model follow up letter challenging the employer's 'objective justification' and a model follow up letter should the employer fail to respond within the statutory 21 days. A caseworker will look to resolve the dispute with HR and your line manager in the first instance and will be able to support you through any dismissal process.

Permanent with funding end date contracts (PFEDs)

The [PFED 'process' is outlined on the University's intranet](#), and details the process for dismissal or extension of contracts for staff on contracts with a fixed funding end date. BUCU have protested at the use of this process, which we feel goes against [our agreement with the University on mitigating redundancies](#) and unfairly discriminates against staff working on research funded projects in an attempt to side step the agreement with us. In particular, the process provides for a shorter consultation period of 45 days, makes no mention of collective consultation or our right to trade union representation, and goes directly against the finding in the case of [Ball vs the University of Aberdeen](#) in which a court found that the expiry of funding is not itself a reasonable or fair justification for dismissal.

In particular, where alternative sources of funding are ongoing, where the work or a substantive part of the work being performed is ongoing, or where other members of the project team are treated differently, we believe any dismissals under PFED are likely to be unfair. We would therefore strongly advise any member facing dismissal under PFED to ask for casework support at admin@birminghamucu.org. In the first case you should seek to have your contract extended or to be transferred onto a permanent contract. If you are still facing dismissal you may wish to seek redeployment in the first instance and then look to lodge an appeal against your dismissal with HR.

Redeployment

The University of Birmingham has a duty to identify suitable alternative employment within the university to avoid staff redundancies and dismissals. You should be able to access the redeployment scheme as you approach the end of a fixed-term contract, if you are facing redundancy, or are facing dismissal for medical reasons or other personal reasons. [Full details can be found on the University's intranet](#).

However, where dismissals are unfair in the first place there are a number of issues to be aware of. The key advice to members making use of the redeployment scheme is to become fully familiar with the scheme and to ensure that line managers and HR stick to the scheme when you are applying for posts through redeployment. There is some [excellent advice on the UoB UNISON website](#) which you should refer to.

We have come across many cases where the redeployment scheme is not correctly applied, jobs are not advertised to redeployment candidates as they should be, and redeployment candidates are not correctly interviewed or assessed for the roles they are applying for. This may ultimately become part of your appeal case against the dismissal and may be used as evidence if you take your case to an employment tribunal so it is important that you document these failings in full.

One recent such case was *Royal Surrey County NHS Foundation Trust v Drzymala [2018]*, in which a tribunal found that the dismissal was unfair because the Trust treated the claimant poorly, failed to pursue a discussion about alternative roles, and by not providing a right of appeal. This breached the employees rights under the Fixed-term employees regulations 2002.

Useful resources

BUCU agreement with the University of Birmingham on mitigating redundancies:

<https://birminghamucu.org/2013/03/22/agreement-between-the-university-of-birmingham-and-bucu-on-seeking-to-avoid-compulsory-redundancies-arising-from-restructuring-proposals/>

Fixed-term employees (prevention of less favourable treatment) regulations 2002:

<http://www.legislation.gov.uk/uksi/2002/2034/contents/made>

Gov.uk guidance on fixed term employment contracts: <https://www.gov.uk/fixed-term-contracts>

Thompsons Solicitors advice for part time and fixed term workers:

<https://www.thompsonstradeunion.law/news/lelr/weekly-issue-122-archive/part-time-and-fixed-term-workers>

UCU guidance on asking to be made permanent:

<https://www.ucu.org.uk/article/3567/Fixed-term-regulations-requesting-confirmation-of-permanence>

University of Birmingham redeployment scheme:

<https://intranet.birmingham.ac.uk/hr/Working-at-UoB/redeployment.aspx>

UCU tribunal case, Ball vs The University of Aberdeen:

<https://www.ucu.org.uk/article/3340/UCU-wins-landmark-fixed-term-employment-tribunal>

UCU legal help scheme: <https://www.ucu.org.uk/legal>

UCU hourly paid staff survival guide: https://www.ucu.org.uk/media/4647/UCU-hourly-paid-survival-guide/pdf/ucu_hourlypaidssurvivalguide_jan20.pdf

UNISON guidance on the redeployment scheme: <https://uobunison.org.uk/redeployment>