

## Policy and Procedure on Contracts of Employment

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### 1 Introduction

- 1.1 This policy clarifies the types of contracts that the University uses for different working arrangements and explains the use of fixed term contracts and permanent contracts and the potential redundancy/termination arrangements that apply.
- 1.2 It is the general policy of the University to, wherever possible, appoint employees on contracts of an indefinite duration.

### 2 Objectives

- 2.1 The University of Manchester's policy is to employ employees on contracts appropriate to the particular requirements and circumstances of the role. The intention is to employ most employees on permanent contracts of employment, terminable on the giving of notice by either party. Where, however, the need for a particular job to be done is clearly temporary, the contract offered will be for a fixed term or limited term (Statute XIII, Paragraph 2(d) (i) and (ii)). In such circumstances, the procedure below seeks to provide fair, effective and transparent mechanisms by which decisions relating to the use of fixed term contracts and permanent contracts can be taken and implemented.
- 2.2 Subject to eligibility criteria set by funders and financial considerations, no researcher (whether on a permanent or fixed term contract) should be unreasonably prevented from applying for grant funding by the University. Where support for an application is withheld, reasons for this should be provided to the would-be applicant.

### **3 Types of Contractual Arrangements**

3.1 The University will mainly use one of the contractual arrangements set out below to employ members of staff:

- permanent contracts
- fixed term contracts ("FTC"s)
- finite funded permanent contracts ("FFPC"s)

3.2 "FFPC"s will be provided to an employee from day one if the University engages an employee where it is known that the project or funding is in place for 4 years or more.

3.3 Thereafter, "FFPC" s will be utilised if an employee who has been on a fixed term contract is made permanent either through the operation of law or where a request for permanency has been approved but employment remains subject to finite funding.

3.4 There may be circumstances where other contractual arrangements are put in place such as term-time contracts, secondments, internships or temporary contracts, but the above categories represent the contractual arrangements for the majority of employees.

### **4 Procedure for Collective Consultation**

4.1 The University and the recognised Campus Trade Unions will meet up to 3 times per year (in accordance with the terms of reference of the Joint University/Trade Unions Fixed Term Contract Committee as set out in Appendix 2) to collectively consult on the likely number of fixed term contracts and permanent contracts which are externally funded and permanent contracts which have grant/project end dates which are due to be terminated over the forthcoming six months.

Such consultations will include consultation about the ways of:

- a) avoiding the dismissals
- b) reducing the numbers of employees to be dismissed
- c) mitigating the consequences of the dismissals.

4.2 The University will meet its Section 188 requirements on collective consultation as expressed in Appendix 1 as well as its obligations agreed under the terms of reference of the Joint University/Trade Union(s) Fixed Term Contract Committee attached to this policy (Appendix 2). While recognising that Appendix 1 reflects the change in the formal legal position, the University, wherever possible, will continue to adhere to the previously agreed and established policy and

practice of - other than in the most exceptional circumstances - consulting at least 90 days before any dismissal may be effected.

In exceptional circumstances the University reserves the right to adopt the following timescales:

- a) where the University is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 45 days, and
- b) otherwise, at least 30 days, before the first of the dismissals takes effect.

## 5 Fixed Term Contracts

5.1 The University's overriding purpose is to give full effect the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and it will take no action contrary thereto.

5.2 The University therefore aims to:

- protect fixed term contract ("FTC") employees from less favourable treatment
- avoid the use wherever possible of successive fixed term contracts
- reduce the existing number of fixed term contracts
- seek to employ on permanent contracts where possible.

This is an opportunity to enhance the quality of employment enjoyed by employees, working towards securing the right balance between flexibility, efficient and fair working practices.

5.3 Fixed term contracts *may* in the first instance be offered

- a) to provide temporary replacement cover for situations such as secondments, study leave, long-term sickness absence, maternity, paternity, shared parental, parental or adoptive leave;
- b) to allow for input from specialist practitioners;
- c) where the employment is for the sole purpose of completing a particular task or project which is inherently finite in nature
- d) where it is known in advance that a particular job or task will definitely come to an end on a specific date
- e) where the post is a first research position and the fixed term is for four years or less.

It is the aim of the University that no fixed term contract will be awarded for a period longer than four years other than in exceptional circumstances. The temporary nature of external funding will not, of itself, be an objective reason for the continued use of a fixed term contract, and all decisions on offering fixed-term contracts will have to be objectively justified on a case by case basis.

5.4 The Fixed Term Employee (Prevention of Less Favourable Treatment) Regulations 2002 require that employees employed on a fixed term basis enjoy the same terms and conditions as permanent employees unless the differential can be objectively justified.

Employees on fixed term contracts shall: -

- a) receive a statement of their terms and conditions;
- b) be treated as favourably as those on permanent contracts, e.g., in relation to pay, staff benefits, training, promotion, career development, redeployment and access to vacancies for permanent posts;
- c) be able to access University facilities such as library and intranet services;
- d) be provided with an equivalent working environment to permanent employees;
- e) within 21 days of a request, receive a written statement of the reasons for any alleged less favourable treatment to which he or she claims to have been subjected;
- f) within 21 days of a request, in the circumstances where an employee has four years' continuous service receive a written statement explaining whether the contract is permanent or the objective reasons for continuing the fixed term employment.

5.5 The Presumption of Permanency & Objective Justification

The University recognises the legal presumption that an employee is automatically deemed to be permanent in the circumstances described below, *unless* it can objectively justify the continued or further use of fixed term contracts:-

- a) the member of staff is on a fixed term contract at the University and the fixed term contract has previously been renewed by the University and
- b) the member of staff has been continuously employed at the University under the current contract or under that contract taken with the previous fixed term contract(s) for a period of four years or more

The issue of objective justification will be considered at the time the fixed term contract was entered into or last renewed. All decisions will have to be objectively justified on a case by case basis and, full account will be taken of the individual's circumstances and employment history with the University.

## 5.6 Appeal

The member of staff has the right to appeal against the decision not to award them a permanent contract. For academic and academic related staff this procedure will be in line with the University's Statutes and Ordinances (Statute XIII Part VI, Ordinance XXVIII). For support staff this will be in line with the University's grievance procedures for support staff.

## 5.7 Extending Fixed Term Contracts

Fixed term contracts can be extended at any time prior to the end date. This will be judged to be an extension of the notice period as distinct from an extension to the contract and will be confirmed in writing. Generally, extension of fixed term contracts will be limited to cover such circumstances as for example to finish a task which may have taken longer than originally planned, to cover a further period of sickness absence or a period of maternity, shared parental, adoptive and parental leave or where funds have been made available to support the post on a temporary basis.

## 5.8 Termination of a Fixed Term Contract

Wherever a fixed term contract is due to terminate then it is essential for Schools/Directorates to make a formal decision on whether the contract will cease in sufficient time for individual and, where appropriate, collective consultation (in accordance with paragraph 8 below) and contractual notice period to be served.

- a) At least five months before the expiry of a fixed term contract the manager will be notified by a member of the People and OD Directorate that the fixed term contract is due to expire.
- b) At least four months before the expiry of a fixed term contract the possible options shall be discussed between the member of staff, their manager and where appropriate the Directorate of People& OD. This will include;
  - the possible renewal of the fixed term contract

- the possible award of a permanent contract.
  - possible redeployment (including retraining)
  - expiry of the fixed term contract with no renewal
- b) The employee will be given redeployee status four months before the potential expiry of their contract.
- c) At least three months before the expiry of the fixed term contract, the Directorate of People&OD will send the employee written confirmation, subject to the consultation process, of any likely change in contractual terms or if unavoidable the expiry or their employment contract. In the latter case such confirmation will also include information about their redundancy pay.

The redeployment process will be ongoing until the termination date or an alternative role is identified prior to termination. (Refer to the Redeployment Policy for further information).

- d) An individual has the right to be accompanied and advised by a Trade Union representative at all stages of the process.
- e) Any research staff whose fixed term contract linked to finite funding expires will be able to opt to extend access to their email accounts and e-resources for a 12 month period beyond the termination date. This extended access policy is designed to assist researchers during the “between contracts” period to maintain contact with the research and teaching community, as they prepare for interviews and finalise manuscripts from their work.

#### 5.9 Appeal

The member of staff has the right to appeal if their contract is not renewed or extended or a permanent contract is not offered at the end of a fixed term contract. The process will mirror the appeal stage in the University’s Grievance Procedures for Support Staff, or, in the case of academic and academic related staff, the appeal procedure is set out at Ordinance XXIII, Part VI.

## 6 Finite Funded Permanent Contracts (FFPC’S)

The University will enter into contracts with employees which, whilst permanent, have a known or foreseeably greater risk of possible redundancy at the outset of their appointment. This is most commonly the case with;

- a) employees whose posts are solely or mainly funded by research grants and contracts, where either the project or funding has a finite duration of at least 4 years.
- b) employees who are working solely on projects (e.g., project managers for systems implementations or capital projects, etc.) where there is a finite task or funding of at least 4 years.
- c) employees who are employed from a source of external funding of at least 4 years which may or may not be controlled via a central fund.
- d) an employee who has been on a fixed term contract is made permanent either through the operation of law or where a request for permanency has been approved but employment remains subject to finite funding.

These employees in such circumstances, will be treated equally in relation to pay, staff benefits, training, promotion, career development, redeployment opportunities, voluntary severance schemes in circumstances where employment may be at risk of termination prior to expiry of funding or project and other conditions of employment. In addition, and in the interests of fairness and transparency, these employees will be informed of the situation by way of letter prior to or on commencement of the start of their employment or their new role with the University in a letter separate from - and forming no part of - their contract of employment. Should these circumstances alter, for example if the funding underpinning their activity is extended or the source of funding is changed, staff will be notified in writing.

The generic wording used for appointments on specific research grants and contracts is:

*“your post is underpinned by external funding from xxx (name of grant) and that this funding is due to continue until xxx. When this funding expires your contract of employment will not automatically terminate, however, subject to the University’s position in relation to compulsory redundancies at that time your employment may be at risk”. We will consult with you at that time in accordance with paragraph 7 of the University’s Policy and Procedure on Contracts of Employment.*

The generic wording to be used for employees assigned to specific projects is:

*“your post is to undertake a specific project which has a limited duration and/or source of funding. Upon completion of the tasks or cessation of the funding, whichever is sooner, your contract of employment will not automatically terminate. However, subject to the University's position in relation to compulsory redundancies at that time, your employment may be at risk. In the first instance the project is estimated to be completed on [funding end date] and your head of department, and their nominee, will keep you informed of the situation”. We will consult with you at that time in accordance with paragraph 7 of the Policy and Procedure on Contracts of Employment.*

## **7 Procedure for employees who are on Finite Funded Permanent Contracts (FFPCs) who are at risk of redundancy due to funding/project end date**

7.1 Wherever an employee who is on an “FFPC” is at risk of redundancy because the funding or project is due to end the following will apply;

- a) The Directorate of People&OD will write to the employee at least 5 months prior to the projected expiry date of the funding stream or project explaining why they may be at risk of redundancy and to discuss possible alternative options.
- b) At least four months before the expiry of the FFPC the Manager will accordingly invite the employee and their Trade Union representative or a work colleague to a series of meetings to discuss and keep under continued review *all* possible alternative options for continued employment in addition to the possibility of redundancy/terminating the contract and to investigate any issues arising before confirming the decision.
- c) The employee will be provided with redeployee status four months before the possible end of the relevant funding stream or project (refer to the University’s Redeployment Policy and the arrangements for permanent members of staff where the funding stream/finite project terminates as outlined in appendix 3).
- d) Where redundancy is ultimately unavoidable, the employee will be served with their full contractual notice period and any rights to a redundancy payment.



The University also recognises the role of the Staffing Committee in this situation and, unless otherwise agreed with the trade unions, will convene the Staffing Committee in accordance with Ordinance XXIII, Part VII.

- 7.2 The employee has the right to request a review of their contract if it is not renewed or extended under the University's Statutes and Ordinance. The process will mirror the appeal stage in the University's Grievance Procedure for Support Staff or in the case of academic and academic related staff the appeal procedure is set out at Ordinance XXIII Part V.

## 8 Monitoring and Review

- 8.1 The implementation of this policy and its impact will be monitored and reviewed through the Collective Consultation and Negotiation Forum/Committee referred to at page 1 above. The University will take appropriate action where it appears that the policy is not being followed.

The University will conduct an Equality Impact Assessment of the policy on its introduction and thereafter on a bi-annual basis.

This policy will be reviewed after 1 year of full operation and thereafter every 2 years.

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## Appendix 1

### **Extracts from Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment) Order 2013**

Sets out the legal requirements on collective consultation effective from 6 April 2013

The normal expiry of fixed term contracts is excluded from Section 188.

#### **Note**

1. Where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals with all the persons who are appropriate representatives of any of the employees who may be [affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.]

The consultation shall begin in good time and in any event –

(a) where the employer is proposing to dismiss 100 or more employees as mentioned in subsection (1), at least 45 days, and

(b) otherwise, at least 30 days,

before the first of the dismissals takes effect.

2. The consultation shall include consultation about ways of –

(a) avoiding the dismissals,

(b) reducing the numbers of employees to be dismissed, and

(c) mitigating the consequences of the dismissals,

and shall be undertaken by the employer with a view to reaching agreement with the appropriate representatives.

3. In determining how many employees an employer is proposing to dismiss as redundant no account shall be taken of employees in respect of whose proposed dismissals for whom consultation has already begun.
4. For the purposes of the consultation the employer shall disclose in writing to the [appropriate] representatives –
  - (a) the reasons for the proposals,
  - (b) the numbers and descriptions of employees whom it is proposed to dismiss as redundant,
  - (c) the total number of employees of any such description employed by the employer at the establishment in question,
  - (d) the proposed method of selecting the employees who may be dismissed,
  - (e) the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect. [and
  - (f) the proposed method of calculating the amount of any redundancy payments to be made (otherwise than in compliance with an obligation imposed by or by virtue of any enactment) to employees who may be dismissed.]
  - (g) the number of agency workers working temporarily for and under the supervision and direction of the employer,
  - (h) the parts of the employer's undertaking in which those agency workers are working, and
  - (i) the type of work those agency workers are carrying out.
5. That information shall be [given to each of the appropriate representatives by being delivered to them] or sent by post to an address notified by them to the employer, or [(in the case of

representatives of a trade union)] sent by post to the union at the address of its head or main office.

## **Appendix 2**

### **Terms of Reference for a Joint University/Trade Union Contracts Committee**

#### **1. Membership**

The Committee will comprise of the following:

- 1.1 The University will be represented by a senior member of People & OD Directorate. The appropriate Vice-Dean & Heads of School and/or a Director of Faculty Operations will attend the meetings as appropriate.
- 1.2 The trade unions (i.e. UCU, UNISON and UNITE) may nominate two representatives each.
- 1.3 Additional members may be co-opted to discuss particular issues by agreement.
- 1.4 Each side will be entitled to bring in advisers acceptable to the other, having given reasonable notice to the other side.
- 1.5 The Committee will be chaired alternatively by the trade union side and the University.

#### **2. Terms of Reference**

- 2.1 The Committee will ensure that the Contracts Policy and Procedure complies with all relevant legislation and is sustainable, fair, workable and commensurate with the University's mission and strategic objectives and applied consistently across the University.
- 2.2 A review of the Contracts Policy and Procedure will be undertaken every 2 years considering the effectiveness of the policy and procedure which includes an impact assessment.
- 2.3 A review of the terms of reference of the Contracts Committee will be undertaken after 24 months in operation.

2.4 The Committee is the mechanism by which the University undertakes its requirement to undertake meaningful collective consultations with the recognised Campus Trade Unions on the possible termination of the fixed term and “FFPC” s on the grounds of redundancy.

(i) The Committee will meet up to three times per year. The University will provide data prior to the meetings on:-

a) the number of contracts terminated in the previous month on the grounds of redundancy.

b) the number of fixed term and “FFPC”s up for the review in the following 9 months, thereby stating the maximum likely to be terminated on the grounds of redundancy (forming the requirement for collective consultation and satisfying section 188 of TULCRA), identified by Faculty/School/PS Directorate.

c) the number of employees on fixed term or “FFPC” s who have

i) been redeployed in the previous six months;

ii) had the funding renewed/extended in the following six months;

iii) had their contract terminated.

d) the number of fixed term and “FFPC” s issued, including any extensions by School/ Faculty/ Professional Services.

e) the above information to provide Equality and Diversity data.

(ii) The University will provide the recognised Campus Trade Unions with copies of the HRI provided as a requirement of TULCRA to meet its Section 188 requirements on collective consultation.

(iii) On an annual basis (December) the University will provide data setting out overall numbers of staff in the categories used for ‘at risk’ and outcomes data so that the Committee can consider the data in context and assess whether there is any reduction in the use of fixed-term contracts.

2.5 The Committee will

- (i) Consider the use of fixed term contracts across the University in accordance with the University's stated aims and make proposals for any improvements in practice in order to avoid any misuse of fixed term contracts.
- (ii) Agree a pragmatic way forward to deal with the current fixed term contracts which require consideration for conversion to permanency.
- (iii) Ensure the fair treatment of employees on fixed term and permanent contracts linked to external funding in accordance with the stated aims in the agreed policy.
- (iiii) Provide a key role in the avoidance of redundancies wherever possible.
- (v) Monitor the level, scope and termination of fixed term contracts and permanent contracts which are externally funded and/or specific projects across the University.
- (vi) Provide such information and input as may be required by the Staffing Committee of the Board of Governors to assist in their consideration of the proposed termination of fixed term or permanent contracts linked to external funding or specific projects.

### **3. Secretarial Support**

The University will provide secretarial support to the Committee and supply agreed minutes of each meeting.

### **4. Conduct of Business**

In conducting business all parties agree to uphold values of respect, courtesy, openness and the need to balance the interests and views of various stakeholders. All parties will not take action or publish or disseminate any information or material relating to this Committee without informing all other parties.

### **5. Failure to Agree**

In the event of a failure to reach agreement, ACAS will be co-opted to facilitate and support a process of conciliation.

## Appendix 3

### **Redundancy Arrangements for employees on Finite Funded Permanent Contracts where funding stream/finite project terminates**

Where an employee is engaged on an “FFPC” (in accordance with paragraphs 6(a) – (e)

- 1 The Directorate of People&OD will write to the employee at least five months prior to the projected expiry date of the funding stream or project explaining why they may be at risk of redundancy and to discuss possible alternative options.
- 2 The Manager will accordingly invite the employee and their Trade Union representative or a work colleague to meetings to discuss and keep under continued review all possible alternative options for continued employment in addition to the possibility of redundancy/terminating the contract and to investigate any issues arising before confirming the decision.
- 3 The employee will be provided with redeployee status four months before the possible end of the relevant funding stream or project (refer to the University’s Redeployment Policy and the arrangements for open ended contracted members of staff where the funding stream/finite project terminates as outlined in appendix 3).
- 4 An employee has the right to be accompanied and advised by a Trade Union representative at all stages of the process.
- 5 At least three months before the expiry of the finite funding stream or finite project, the Directorate of People&OD will send the employee written notice of termination of their employment contract, subject to the consultation process, which will include information about their entitlement to statutory redundancy pay.
- 6 If no alternative employment or alternative source of funding is identified before the relevant funding stream or finite project ends, an employee who has less than four years continuous employment with the University will serve their notice period and their employment will terminate at the end of that period by reason of redundancy. They will be entitled to receive a statutory redundancy payment.
- 7 Where an employee has continuous employment of four years or more as at such end date, the employee will remain in employment as a redeployee and their notice period will be extended for up to a further 3 months, during which time further efforts would continue to be made to seek alternative sources of funding/employment. As the funding stream or project may have ended at this point, the



employee may be reassigned to different suitable short-term work for this period. The affected employee may also use this period, where appropriate, to focus on finding another role within the University and/or externally. In other case, where appropriate, an employee can request reassignment to particular short-term term work in the interests of their career development, and where it is practically possible to meet such a request, subject to right to work requirements, efforts will be made to accommodate any decision to make such a reassignment. The University reserves the right to place the individual on garden leave if no opportunities are available. The employee will continue to be paid at their current rate for the duration of the extended notice period

- 8 Employees who require a Certificate of Sponsorship (CoS) may continue to carry out work that is commensurate and in keeping with their role during this extended three-month period, however due to the legal requirements of their CoS, they cannot be reassigned to different short-term work. In such instances a period of Garden Leave may be considered by the University.
- 9 Employees who are subject to the Academic Technology Approval Scheme (ATAS) and require an ATAS certificate in order to undertake their role at the University may continue to carry out work that is commensurate and in keeping with their role during this extended three-month period, however due to the legal requirements of their ATAS certificate they cannot be reassigned to different short-term work. In such instances a period of Garden Leave may be considered by the University.
- 10 The redeployment process will be ongoing until the termination date, or an alternative role is identified prior to termination. (Refer to the Redeployment Policy for further information).
- 11 At the end of the notice period (or extended notice period if an employee has continuous employment of four years or more) all options have been explored and recognising that, in some circumstances, redundancy is unavoidable, the employee affected would have served their notice period. Their employment would therefore terminate, and they would receive their redundancy payment.
- 12 If an employee's employment is terminated by reason of redundancy and they have continuous employment of four years or more, they can choose to remain a redeployee in an unpaid capacity for up to 3 months after their employment has come to an end whilst alternative sources of funding /employment are being explored. During any such period the individual would not be employed by the University and would not therefore accrue any service or entitlement to benefits such as pension/ sick pay/ annual leave etc. They would, however, have the opportunity to apply for roles within the University on the same basis as internal redeployees.
- 13 If an individual is successful in securing a new post during this three-month post-termination redeployment period, their new employment will commence on a date to be agreed with the

University. Provided that the employee repays their statutory redundancy payment in full within three months of taking up employment, they will be treated for statutory employment right purposes including presumption of permanency as having continuity of employment from the date of commencement of their earlier employment. If the employee is unable for any reason to repay their statutory redundancy payment, there will be no continuity of employment. It is important to understand that if the individual is appointed to a new role which is genuinely fixed term, i.e. a specific project, they may be appointed to that role on a fixed-term basis.

- 14 Any research employees made redundant in this way will also be able to opt to extend access to their email accounts and e-resources for a 12-month period beyond the termination date. This extended access policy is designed to assist researchers during the “between contracts” period to maintain contact with the research and teaching community, as they prepare for interviews and finalise manuscripts from their work.