

FIXED TERM CONTRACTS POLICY

1.0 POLICY STATEMENT

It is Birkbeck policy to ensure, as far as possible, security of employment for its staff. The College will in general offer staff open ended contracts when staff are engaged for work. In some circumstances however, where it can be objectively justified, it may be necessary to engage staff on a fixed term basis.

Where the need for fixed term contracts (FTCs) arises, the College will ensure that staff employed on a fixed-term basis are treated fairly and their employment rights respected.

1.1 Scope

The policy for FTCs applies to all staff. However, variations in the application of this policy will also apply based on the duration of the FTC and the member of staff's length of service.

2.0 PROCEDURE

2.1 Objective Justification

The objective justification must be clearly stated when employing an individual on a FTC. Instances where there are legitimate reasons for employing staff on FTCs include the following:

- To provide cover (e.g. sabbaticals, leave of absence, sickness absence, secondments, maternity or adoption leave);
- The post is a clearly defined training or career development position;
- For short/medium term appointments which are project or task related or require specialist skills for a time limited period generally up to 5 years or less e.g. a researcher with a specific skill linked to a project;
- To meet fluctuating demand for short courses, particular modules or schemes of study or to meet seasonal fluctuations in demand for a limited period of up to 4 years continuous service; or
- Where there may be a specific business need to make temporary adjustments to the workforce.

2.2 Authorisation of Fixed Term Contracts

Once the objective justification has been identified, all FTCs will:

- State the reason for the FTC;
- Include an early termination clause allowing either party to give notice;
- Specify the termination date; or
- Identify the key tasks that need to be performed and once achieved the contract will come to an end; or
- End when the absent member of staff returns to their post, or when the absent member of staff confirms that they will not be returning. If the College intends to recruit to the post on an indefinite contract basis, the position would be advertised.

2.3 Extension/Renewal of Fixed Term Contracts

Successive FTCs will generally only be used for a period of 4 years continuous service or less in accordance with legal requirements (see Section 3.1). Where a member of staff has been continuously employed on a FTC(s) for a period of 4 years, the College will undertake a review and Human Resources (HR) will normally issue an open-ended contract unless there are objective justifiable reasons for the issuing of a short extension, in which case HR will confirm that the contract will remain fixed term (i.e. funding is for longer than the current contract length). In such circumstances, the length of any extension should not normally be for longer than 6 months and advice should be sought from HR.

2.4 Termination of Fixed Term Contracts

The non renewal of a FTC is, in law, a dismissal. In many cases the reason for that dismissal will be redundancy but there can be “other substantial reasons” which relate to an individual’s FTC ending as a result of, for example, the return to work of a member of staff who was on leave due to sickness, sabbatical, maternity or career development which subsequently eliminates the need for a FTC.

HR will notify line managers of staff who are nearing the end of their contract (with the exception of Teaching & Scholarship staff* for whom Assistant School Managers (ASMs) are better placed to track forthcoming end dates) and discuss the options open to them.

The line manager, in consultation with HR will undertake a review of staff nearing the end of their FTCs or before that period if funding applications are required. Following the review the line manager may opt to:

- confirm the expiry of the FTC either through redundancy or “some other substantial reason.” For staff with up to 2 years continuous service, (1 year if employment commenced before 1st April 2012) their contract will terminate at the designated date and no meetings will take place;
- submit a request to convert the FTC to an open-ended contract; or
- extend the duration of the contract for a further period where objective justification continues to apply.

Staff with more than 2 years continuous service (1 year if employment commenced before 1st April 2012) will be invited to attend a meeting with their line manager and notified of their right to be accompanied to the meeting by either a trade union representative or a Birkbeck work colleague. Where a meeting occurs, a written record should be kept recording the outcomes and forwarded to HR. The purpose of the meeting is to consult with the staff member regarding the available resources and options e.g. applying for further funding, consideration of alternative vacancies, dismissal. Staff members will have every opportunity to discuss openly, ideas they may have to avoid or mitigate the dismissal situation. Staff will normally be placed on the redeployment register following the meeting (or following their decision to decline the meeting) until they are redeployed or they reach the end of their FTC.

If a decision is made that the individual will be dismissed on the basis of information available at the time, the opportunity for consultation and communication between the line manager, HR, trade unions if/where appropriate and the individual will remain open until the final date of employment as

jobs and funding may become available at any point during this period. Further formal consultation meetings can be arranged if required and may be necessary if alternative jobs and funding opportunities are being explored.

The College will consult, if required to do by law, with the relevant trade unions in relation to the proposed dismissal by reason of redundancy of staff engaged on FTCs, where these are part of a proposal to make 20 or more staff redundant in one establishment in a 90 day period. Please note that, under Government proposals, from April 2013, such consultation with trade unions may only be required where a dismissal occurs prematurely, e.g. prior to the natural end of the fixed term contract in question. Individual consultation with staff will be undertaken as described in this procedure.

HR or the ASM in the case of Teaching & Scholarship staff* will then, dependent on the outcome, take the following action:

- New contract/Contract extension – a letter/contract will be sent to the member of staff setting out the terms of employment (and confirming the withdrawal from the FTC status if applicable).
- Contract termination/dismissal – offer a consultation meeting, where appropriate. A notification will be sent to the member of staff stating:
 - the reason for the dismissal;
 - the contract will be ending on the specified date;
 - the commitment to keep the member of staff informed of vacancies and
 - suitable redeployment options;
 - the amount of any redundancy payment (if employed for over 2 years continuously); and
 - the staff member's right to appeal the dismissal normally within 10 working days.

If the staff member chooses not to attend any meetings they should send a written response to this effect to the line manager. HR or the ASM in the case of Teaching & Scholarship staff* will write to the member of staff confirming that their fixed term contract will be ending on the expiry date. The letter will outline any redundancy payment due as appropriate, direct attention to the College's job vacancy pages and provide information on their right of appeal.

Non-renewal of FTCs must not be used as a substitute for good performance management and effective probationary procedures.

2.5 Dismissal Reasons

2.5.1 Redundancy

The expiry of a FTC is a redundancy if the work for which the staff member was employed has diminished, or ceases to exist. This includes projects which have run their course, or research funded work that has come to an end due to the absence of funding.

Staff terminated on the basis of redundancy will be taken through a process which will include the completion of a business case, consultation, selection and appeal.

Employees have a right to be accompanied at meetings by a Birkbeck trade union representative or a Birkbeck work colleague. Companions may assist staff in stating their case but may not answer

instead of the employee. The right to a companion does not extend to job interviews held as part of the redundancy and redeployment process.

The staff member may be entitled to a redundancy payment provided that they have completed a minimum of 2 years continuous service at the date their employment ends (see [Redundancy](#) and [Redeployment](#) policies).

2.5.2 Some Other Substantial Reason for Dismissal

Individuals who are employed to cover the absence of another member of staff and whose contracts expire on the return of that individual are deemed to be dismissed for “some other substantial reason.” The College has therefore not required a reduction in staff numbers or the work that needs to be undertaken. This will include cases where individuals are:

- employed to provide cover for maternity/paternity/adoption leave until the substantive post-holder returns to work;
- employed to provide cover for prolonged sickness absence until the substantive post-holder is well enough to return to work;
- employed for a period of less than 6 months to cover a vacancy until a permanent appointment is made;
- employed to provide cover for staff on sabbatical, secondment and research leave until the substantive post-holder returns to work; and
- offered work on the grounds that this will provide valuable work experience, career development or training or supports a student in the fulfilment of their studies.

2.6 Appeals Procedure

Any staff member with over 2 years continuous service (1 year, if employed before 6th April 2012) who has received confirmation that they are to be dismissed on the grounds of redundancy, has the right to appeal this decision under this procedure. Staff eligible to appeal may do so either because they feel that they have been unfairly selected for redundancy; or because they feel that there has been a procedural failing.

Any appeal should be made in writing, stating in full the grounds for the appeal, to the Head of HR Services normally within 10 working days of receiving written confirmation of notice of the redundancy. The staff member has the right to be accompanied either by a trade union representative or a Birkbeck work colleague when attending an appeal meeting.

Appeals will be heard without unreasonable delay normally within 10 days of receipt of the appeal. This timescale may be extended depending upon the availability of those involved.

The appeal will be heard by a panel chaired by a senior manager, a panel member from a different department who has not previously been involved directly in the case together with a HR representative. The panel will re-examine the evidence provided and inform the employee in writing of their decision normally within 10 working days of the appeal meeting. The Chair will make the final decision if a consensus cannot be reached.

3.0 GUIDANCE

The information contained in this section reflects legal guidance and good practice which are designed to support the implementation of the policy.

3.1 Legal Requirements

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 provide protection for fixed term staff in the following areas:

- The right not to be treated less favourably than a comparable open-ended employee in respect of contractual terms and conditions nor to be subject to any other detriment on the grounds of their employment status as a fixed-term member of staff;
- The right to a statutory redundancy payment (for staff with over 2 years' continuous service) where the expiry of a FTC gives rise to a redundancy situation;
- Limiting the use of successive FTCs unless the continued use of a FTC can be justified on objective grounds; and
- The right to be informed of open-ended vacancies within the College.

Where it is not possible to provide an objective justification, the contract will be deemed to be open-ended.

3.2 Employment Rights of Fixed-Term Staff

All staff on a FTC will:

- Have the same pay and conditions as staff in equivalent roles on open ended contracts;
- Have the same or equivalent benefits package;
- Have access to a College pension scheme;
- Be informed about open-ended employment opportunities at the College;
- Have protection against selection for redundancy or dismissal purely on the basis of their fixed-term status, unless there is objective justification for doing so.

HR will keep a record of all FTC dismissals to ensure the statutory consultation requirements are met.

Birkbeck reserves the right to review, revise, amend or replace the content of this policy and / or introduce new policies from time to time, subject to good practice principles of consultation where applicable, to reflect the changing needs of the College and to take account of changes in legislation.

4.0 RESPONSIBILITIES

The following have responsibilities under this policy:

- **Line Managers**
 - Ensure there is an objective justifiable reason for recruiting all staff on FTCs.
 - Conduct review of staff on FTCs in consultation with HR.
 - Lead consultation meeting with members of staff nearing contract end dates (and a representative from HR, if required).
 - Record the outcome of consultation meetings and forward to HR.
 - Make staff aware of open ended vacancies.

- **Member of Staff**
 - Attend consultation meetings to discuss employment options.
 - Where a decision has been taken not to attend consultation meetings, forward a letter of confirmation to the line manager outlining decision.
 - If lodging an appeal against dismissal, submit written appeal application to Head of HR Services normally within 10 working days of written notice to dismiss confirming redundancy.

- **HR Manager**
 - Issue contract of employment for staff with the exception of Teaching & Scholarship staff*.
 - Provide advice on extension/renewal of FTCs.
 - Consult with line manager during review of staff on FTCs.
 - Issue appropriate staff with a letter of invitation to consultation meetings.
 - Where appropriate, issue renewal letter or letter of termination to staff.
 - Where appropriate, issue letter of confirmation to member of staff forgoing invitation to consultation meetings.

- **Head of HR Services**
 - Consider appeal request.

- **Assistant School Manager* or Nominee**
 - Issue contract of employment for Teaching and Scholarship staff.
 - Depending on outcome of contract review, issue new contract or contract renewal or letter of termination to Teaching and Scholarship staff and invite the member of staff to a consultation meeting, where required.
 - Where appropriate, issue letter of confirmation to member of Teaching & Scholarship staff forgoing invitation to consultation meetings.
 - Liaise with HR where issuing, extending or terminating contracts.

- **College Secretary/Vice Master or Nominee**
 - Appoint Appeal Panel if required.

* *Contract administration of Teaching and Scholarship staff reflects current practice and is pending review.*