



# Guidance for Managing Fixed-Term Contracts

This Policy is currently being reviewed by the [Fixed Term Contract Working Group](#) and the joint management and union casualisation working group.

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## Introduction

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King's College London has given its commitment to the equitable and non-discriminatory treatment of its staff employed on fixed-term contracts to ensure they are not disadvantaged in any way when compared to their colleagues employed on open-ended contracts. The university is also committed to reducing the number of fixed-term contracts, only using them where it is justifiable to do so.

The objectives of this guidance are to:

- provide guidance to managers to help them decide when it is appropriate to use fixed-term contracts,
- make managers aware of the legal and managerial obligations they have towards staff employed on fixed-term contracts and the particular nature of their contractual arrangements with the university, and
- outline the university's legal obligations as well as the principles of good practice in fixed-term employment.

In case of uncertainty about any of the matters explained in this document, the local [HR Business Partner](#) can be consulted for more detailed advice.

## Using Fixed-term Contracts

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There should be transparent, necessary and objective reasons for using fixed-term contracts. They should be used only when it is appropriate and where there is a legitimate reason for doing so (an 'objective justification').

Fixed-term contracts are used when employment will terminate:

- on the expiry of a specific term,
- on the completion of a particular task, or
- on the occurrence or non-occurrence of any other specific event.

Examples may include:

- the need for short-term cover of staff absences (e.g. long-term sickness or family leave),
- the need to cover maternity or adoption leave,
- the need for short-term specialist input,
- a secondment or career development opportunity,
- statutory limitations i.e. limit on right to work in the UK,
- student or business demand can be demonstrated as particularly uncertain, or
- there is a specific project to be completed which is unlikely to be extended.

Contracts of employment should be offered to staff for the maximum length of time available at the time of issuing. In exceptional circumstances where a shorter period of contract is being proposed, it must be fully justified by objective criteria.

## Legislation and University Policy

All staff holding a contract of employment with the university are employees of the university. The fact that their appointment is for a fixed-term or may be funded by external sources does not justify less favourable treatment in comparison to staff on open-ended contracts.

Staff employed on fixed-term contracts have the same entitlement as staff on open-ended appointments to annual leave, family-friendly leave such as maternity or paternity and partner's leave, sick leave, and training and development opportunities. Similarly, the appointments of these staff are subject to normal university policy and practice in relation to advertising, salary setting and promotion; this includes the provision for advancement on the appropriate scales in accordance with agreed practice.

The performance of employees engaged on fixed-term contracts should be assessed and managed in the same way as that of staff on open-ended contracts, including the use of the [probationary period](#) and the [Performance Development Review process](#) (objective setting, measuring and reviewing performance and development etc.), as well as capability or disciplinary procedures.

Legislation gives fixed-term employees the right not to be treated less favourably than comparable employees unless the difference in treatment can be justified on legitimate grounds. Employees have the right to request a written statement giving the reason for any less favourable treatment they believe has occurred. This statement must be given within 21 days of the request and demonstrate as fully as possible that:

- there is a legitimate objective for such treatment,
- it is necessary to achieve that objective, and
- the treatment is an appropriate way to achieve that objective.

### **Career Development**

To support their career development, all staff can use the available opportunities to enhance their skills and career development from the commencement of their employment with the university, subject to the approval of their line manager. Learning and development can occur through a wide range of activities, both formal and informal, arranged both locally and at a university level. The Organisation Development team can advise staff on how to develop their work-related skills, knowledge and outlook. Details may be found on the [Organisation Development webpages](#).

More specifically, the Centre for Research Staff Development has responsibility for providing and co-ordinating training and career development opportunities for research staff. More information and contact details are available from the [Centre for Research Staff Development website](#).

## **The Management of Fixed-Term Contracts**

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### **Contract Review**

The university will endeavour to establish whether a fixed-term contract can be renewed or transferred to an open-ended contract of employment at the earliest possible juncture.

Relevant faculty or directorate contacts will receive reminders when contracts held by their employees are due to expire. This will usually be no later than six months before the expiry date, and then on a monthly basis. The manager will be prompted to consider whether:

- an open-ended contract of employment is possible, or
  - a further fixed-term extension is possible, and that there is an objectively justifiable reason for so doing,
- or

- it is the Department's intention not to extend the contract of employment further.

The employee will also receive communication from Human Resources before the contract is due to expire reminding them of the contract expiry and advising them to meet with their line manager to discuss this matter. This communication will also constitute formal notice of termination.

After the meeting, the line manager should confirm to Human Resources which of the options above is to be followed. The Human Resources department will then notify the member of staff accordingly.

If the outcome is a contract renewal or transition from a fixed-term to an open-ended appointment, considerations should be given as outlined below in [Contract Renewal](#).

If the outcome is not to renew the contract, the procedures below at [Non-renewal of a Fixed-term Contract](#) and [Consultation with Individuals](#) should be followed.

### **Contract Renewal**

If a renewal or extension is to be offered, consideration shall be given to whether the contract of employment is to be for a further fixed-term period or transferred to an open-ended contract.

### **Further Fixed-term Extension**

Where a further fixed-term extension is made, the objective reason for this being a fixed-term contract will be stated by the manager in the request to Human Resources. The offer or extension of a fixed-term contract will include an explanation as to why the contract is renewed for a further fixed-term rather than on an ongoing basis.

When recruiting or extending a contract, the University will always ask for the reason for offering fixed-term employment. This information is available to applicants and to current staff whose contracts are being extended for a further fixed-term period.

### **Renewal After Four Years**

It is not lawful to employ staff on successive contracts exceeding a period of four years unless there are objective reasons for so doing and it can be demonstrated that a further fixed-term contract is:

- to achieve a legitimate objective (e.g. a genuine business objective),
- necessary to achieve that objective, and
- an appropriate way to achieve that objective.

Employees who have been employed by the university on a fixed term contract for over four years have the right to request an open-ended contract or a written statement demonstrating that a further fixed-term contract satisfies the above requirements. The statement must be provided by the line manager within 21 days of the request.

Further information on requesting an open-ended contract is in Appendix 2.

## **Continuity of Employment**

The limitation on successive fixed-term contracts will apply only where the employee has been continuously employed for the whole period. Under certain circumstances, an employee may be considered to be continuously employed even where there is a gap between successive contracts. The interval between contracts that results in continuous service being broken is determined by case law and statute and varies according to the circumstances. Advice on this aspect can be obtained from Human Resources.

## **Transition from Fixed-term to Open-ended Appointments**

In some cases, the university may decide that a requirement for a post that was initially designated fixed-term has become open-ended. While reviewing staffing needs, departments may decide that there is an ongoing need for a particular post and there is no objective justification for a further extension to the fixed-term appointment.

The department will then need to consider whether or not the job description and person specification for the open-ended post will differ significantly from those of the fixed-term post. If there are considerable differences, there may be grounds for advertising before making an open-ended appointment. Where they are essentially the same, the current postholder should be appointed to an open-ended post at the same grade.

Where only one open-ended post is arising in the department already employing more than one individual in similar duties on a fixed-term basis, there may be a rationale for advertising before making the appointment.

## **Non-renewal of a Fixed-term Contract**

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The non-renewal of a fixed-term contract is deemed a dismissal at law. Where the reason is redundancy, i.e. it falls within the definition set out in Section 139 of the Employment Rights Act 1996, the consultation procedures in managing the redundancy must be followed as outlined below. If the dismissal relates to Academic Staff, the [Regulation pertaining to Redundancy Procedure for Academic Staff](#) should be followed.

The formula for the calculation of severance payments (which include statutory redundancy payments) for eligible staff is set out in the university's [Severance Scheme](#).

## **Redundancy Protection**

Additional redundancy protection is in place for pregnant employees, employees on Maternity or Adoption leave and for employees who have taken Shared Parental Leave for a period of 6 continuous weeks. This protection continues until 18 months after the date of birth, placement or for overseas adoptions, when the child arrived in the UK.

Whilst the additional protection applies, these employees should be offered suitable alternative employment, where it exists, in preference to other employees who have also been selected for redundancy.

When a fixed-term contract is due to expire during a period of maternity, adoption, paternity and partner's leave, or shared parental leave, the university will aim wherever practicable to carry out a contract review in accordance with this guidance prior to the commencement of the period of leave. If this is not practicable, the contract review will be carried out during the period of leave and the employee will be invited to participate either in person or by telephone, email or videoconference, at the employee's option.

[Appendix 1](#) below sets out statutory and occupational pay provisions for staff whose fixed-term contracts will expire before, during or after maternity, adoption, or shared parental leave.

## Consultation with Individuals

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No less than one month before the contractual notice period commences, the line manager should open formal consultation with the individual by writing to them to invite them to a meeting to consider the expiry of their fixed-term contract. The purpose of the meeting is to:

- discuss possible alternative sources of funding or any other ways in which the work and hence the contract might be continued,
- consider suitable alternative work which may be or become available,
- draw the employee's attention to the [HR web pages](#) listing job opportunities at the university,
- draw the employee's attention to the option to join the redeployment register which will notify them of newly advertised positions at the university,
- draw the employee's attention to the university's [Policy for the Redeployment of Staff](#); and
- inform the member of staff that the contract may need to be terminated if no suitable alternative arises.

The correspondence inviting the member of staff to the meeting must contain certain information as detailed in the [sample invitation letter](#). The employee should also be sent copies of any documentation that will be produced at the meeting.

There is also a [pro-forma](#) for the meeting, during which:

- all the areas indicated in the pro-forma should be discussed,
- the line manager should explain the circumstances surrounding the proposed expiry of the contract and go through the documentation that has been gathered,
- the employee should be allowed to set out their views and suggest for examination any alternatives to dismissal, and
- the employee should also be allowed to ask questions, present evidence, and be given an opportunity to raise points about any information provided in the meeting.

At the end of the meeting, both parties should sign and date the pro-forma. This should be kept by the manager.

After the meeting, the line manager must take the employee's comments into account and then decide whether an alternative to the proposed redundancy has been identified. The line manager must notify the member of staff of the outcome and notify Human Resources. Advice can be sought from the local [HR Business Partner](#).

If the employee wishes to be considered for alternative posts at the university, then they should frequently check the [HR web pages](#) listing job opportunities. Employees may additionally wish to subscribe to the redeployment register notifying them of newly advertised positions at the university.

If the employee wishes to be considered for redeployment, then the university's separate [Policy for the Redeployment of Staff](#) should be followed.

If the postholder does not wish to be considered for redeployment within the university, they should confirm this in writing to the Head of Department, with a copy sent to Human Resources. If this is established at the Consultation Meeting, this should be documented in the meeting pro-forma.

Managers must ensure that prorated annual leave entitlements should be taken during the period of the contract. Payment in lieu of leave not taken is an additional employment cost that is not usually allowed for by grant-giving bodies.

## **The Right to Appeal**

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Employees who have been advised that their post is to end have the opportunity to request an Appeal of that decision. Examples of concerns that an employee may choose to raise for an Appeal include:

- they think the decision to dismiss is unfair;
- new evidence comes to light; or
- they think the procedure was not used correctly.

A member of staff employed on a fixed-term contract who requests an Appeal of the decision against the non-renewal of their contract (dismissal) must submit notice of the request for an Appeal to the relevant [Director of People](#), in writing, within ten working days of receipt of the written confirmation of the decision. to dismiss including reasons for the request for an Appeal.

Once the request for an appeal is received the procedure will be as follows:

- an Appeal Manager will be appointed to conduct the Appeal. The Appeal Manager should be more senior to, or at least at the same level as, the person who made the provisional decision to terminate the employment. They may ask another to assist if desired.
- The Appeal will be conducted within ten working days of receipt of the request for an Appeal, or as soon as is reasonably practicable.

Records and notes of the original consultation meeting will be made available to the Appeal Manager.

The Appeal may be undertaken entirely by correspondence or, at the Appeal Manager's discretion, with the addition of a meeting with the member of staff. Should such a meeting take place, the member of staff requesting the Appeal shall have the right to be accompanied by a work colleague or a trade union representative and may make representations to the hearing.

The Appeal will consider:

- whether the dismissal process had been fairly applied,
- whether dismissal was appropriate under the circumstances,
- any new evidence that was not previously available.

After considering the information a decision will be taken at the Appeal to take one of the following options on how to proceed:

- to accept that the member of staff's concern(s) are valid and that it is appropriate to revoke the redundancy dismissal

- to modify the proposed remedial action intended to prevent the dismissal; or
- to reject the concern(s) or consider that defects in the process are not so substantial as to make the proposed dismissal unfair, and therefore confirm the dismissal.

The appeal outcome will be confirmed to the member of staff in writing by Human Resources within ten working days or as soon as is practicable after the Appeal. The outcome of the Appeal hearing will be final.

## **Right to a Companion**

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Employees may be accompanied by a work colleague or a trade union representative ('a companion') at formal meetings relating to the termination of their fixed-term contract. The companion will be allowed to address the meeting in order to put the member of staff's case, sum up the member of staff's case, and respond on behalf of the member of staff to any view expressed at the meeting. The companion does not have a right to answer questions on the member of staff's behalf.

Where reasonably practical, the member of staff should provide the name and relevant details of their companion to the line manager. It is the member of staff's responsibility to notify the representative of the arrangements for the meeting, and to ensure that they have all of the relevant paperwork.

The member of staff should make all reasonable efforts to attend any meeting to which they are invited under this procedure. In the event of failure to attend or make reasonable efforts to attend the alternative meeting dates arranged, a decision will be made in their absence.

## **Keeping Records**

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It is important for the manager to keep written records, which should include:

- the documentation relating to contractual funding,
- the employee's views and any suggestions for alternatives to dismissal, including alternative employment,
- findings made and actions taken,
- the reason for actions taken, and
- if applicable: the outcome of the Review and subsequent developments.

Records should be treated as confidential and may be disposed of six months after the member of staff's last day of service.

## **Additional Support**

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Human Resources, Faculties, Schools, Divisions and Departments of the university are responsible for the fair and consistent application of policy and procedures relating to the use and management of fixed-term contracts, as outlined in this document.

Human Resources will help managers to comply with the relevant legal requirements and to ensure that fixed-term staff are treated as fairly as possible across the university and the use of fixed-term contract is minimised and controlled.



In day-to-day practice, this means that Human Resources will:

- assist with the assessment of the need to recruit on a fixed-term rather than open-ended basis,
- send renewal forms to Departments,
- confirm extensions/renewals and terminations of fixed-term contracts, as appropriate,
- advise managers and individuals on redundancy consultation as appropriate, and
- facilitate the redeployment process as outlined in the university's [Policy for the Redeployment of Staff](#).

Advice on any aspect of these guidelines can be obtained from the local [HR Business Partner](#).

### **Employee Assistance Programme**

Further support is available from the [Employee Assistance Programme](#) (EAP), which provides independent expert advice on both home and work concerns. Experts can provide practical information, fact sheets and packs, referrals to services in the local area and services such as short-term telephone counselling. This service is entirely independent from the university and is confidential. The EAP is paid for by the university and is free to university employees.

# Appendix 1: Maternity, Adoption, and Shared Parental Pay

## Maternity and Adoption Pay

In circumstances where an employee is on or due to go on Maternity or Adoption leave and the fixed-term contract is not renewed or extended, the employee may be entitled to receive Statutory or Occupational Maternity or Adoption Pay after the contract expiry. This is regardless of whether the individual commences Maternity or Adoption Leave before or after the contract expiry.

If the (former) employee meets the eligibility requirements for the university to pay Statutory Maternity Pay (SMP) or Statutory Adoption Pay (SAP), they will continue to receive this after the fixed-term contract has expired, as they would if they remained an employee of King's College London.

Upon the expiry of a fixed-term contract, the former employee will be eligible to receive any outstanding Occupational Maternity or Adoption Pay, provided that the following conditions are met:

- the individual remains entitled to SMP or SAP from King's College London throughout the period that they wish to receive King's maternity or adoption pay (subject to the maximum number of weeks' entitlement to the Occupational pay as set out in the respective policy),
- the non-renewal, non-extension or non-transfer to an open-ended appointment is through no fault of the employee, e.g. it is not a conduct or capability dismissal,
- the individual has not declined an offer of suitable alternative employment at King's, and
- the individual has provided the university with the necessary notice and proof of the pregnancy or adoption.

An employee in this situation will not normally be required to repay any of the Occupational Pay that is usually repayable if employees do not return to work and complete 3 months' service (the 'back to work period'). This also applies if the fixed-term contract expires during that 3-month back to work period.

Any outstanding Occupational or Statutory Pay to which the employee is eligible will be paid as a one-off payment in the next available payroll following the termination of the fixed-term contract.

## Occupational Shared Parental Pay

The same principles apply as above. The only difference concerns the timing of any Statutory/Occupational Shared Parental Pay once the fixed-term contract has terminated.

Where there are blocks of Shared Parental Pay following the termination of the fixed-term contract, any outstanding Occupational and Statutory Shared Parental Pay to which the member of staff is eligible will be paid as a one-off payment in the next available payroll following the termination of the fixed-term contract.

It should be noted that the legislation governing Shared Parental Leave and Shared Parental Pay is complex and employees are strongly advised to refer to the university's [Shared Parental Leave and Pay Scheme](#) for further information.

## Appendix 2. Right to Request an Open-Ended Contract

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Employees who have been employed by the university on a fixed term contract for over four years have the right to request an open-ended contract.

An open-ended contract will then be issued unless there remains an objective justification for the continued use of a fixed term contract.

The reasons for the continued use of a fixed term contract include:

- Externally funded appointments where funding is finite or where there is no reasonably foreseeable prospect of the funding being renewed or reasonable prospect of alternative funding (either internal or external) being available.
- The contract includes a training programme of fixed duration.
- There is an educational element such as a studentship or apprenticeship.
- The post is for work experience.
- The post requires specialist expertise or experience not available in the university in the short-term.
- The post is to cover for staff absences including parental leave, long-term sickness or study leave.
- To provide interim cover whilst a permanent appointment is being made.
- The post is a secondment.
- The post relates to a specific activity or event or project which is expected to end at an identifiable point or date (includes seasonal work)

Being engaged on a research project supported by short-term funding is not on its own justification for continued use of a fixed term contract. In addition, it will need to be demonstrated that there is no foreseeable prospect of further funding or alternative employment being identified.

To request an open-ended contract, employee's should contact [hr@kcl.ac.uk](mailto:hr@kcl.ac.uk). After considering the request, employee will either be:

- issued an open-ended contract, or
- remain on a fixed term contract and provided with a letter explaining the reasons why.

### Appeal

To appeal the outcome of an open-ended contract request, employee's must submit notice of the appeal in writing, including the grounds for the appeal, to the relevant [Director of People](#) within 10 working days of receipt of the written outcome. An appeal will be heard by a Panel appointed by the relevant [Director of People](#) or their designate.

Employee's will be given at least 10 working days' notice of the appeal meeting and will be advised of the right to a companion. The decision of the appeal panel will be final, with no further opportunity to appeal the decision.

If a companion is unavailable at the time scheduled, employee's should propose an alternative time. This should be within 5 working days of the day originally scheduled and should be chosen so that it is mutually convenient to those involved.