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<https://www.ucu.org.uk/fixed-term>



Your employment rights on a Fixed-Term Contract

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Fixed-term regulations: requesting confirmation of permanence

Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 - Regulation 9 - Requesting confirmation of permanence from your employer

The right to a permanent contract - Regulation 8

Under Regulation 8 of the Regulations, employees have the right to regard their position as permanent if the following conditions are met:

- the employee is on at least their second contract with the same employer or the contract has been previously renewed; and
- the employee has at least four years' continuous service; and
- the use of a fixed-term contract was not justified on objective grounds.

The four years' service must be continuous with the same employer, 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. This will be determined on a case-by-case basis but seek advice from your LA/branch or regional office if you think this may apply to you (for example, if your contract terminates every June and a new one is issued every September).

Whether or not the use of the fixed-term contract is justified on objective grounds will be determined on a case by case basis. If UCU has made a collective agreement with your employer setting out objectively justified reasons for the use of fixed-term contracts then that will determine whether or not your post should be regarded as permanent or remain as fixed-term.

Whether or not your post is permanent after four years is a matter of fact in law - you do not have to do anything nor do the regulations require the employer to take any action.

However, if you believe that by virtue of Regulation 8 you are a permanent employee, you can request in writing from your employer a statement that your contract is no longer fixed-term and that you are now a permanent employee. Your employer must respond within 21 days of your request either:

- confirming that you are a permanent employee or
- providing a statement that your contract remains fixed-term including an explanation of any objective justification for such an assertion (Regulation 9).

If the employer asserts that your post remains fixed-term or does not reply you can apply to an employment tribunal (ET) for a declaration as to whether or not, by virtue of Regulation 8, your post is permanent. You must still be employed by the employer to apply to the ET.

The declaration from the tribunal will determine whether or not you are a permanent employee. However, the effect of such a declaration is to remove the clause in the contract that restricts the duration of the contract, eg the end date. It will not alter any other clauses in the contract and is not a legal protection against redundancy.

Important. You should seek advice from your local UCU branch/LA before taking any action.

If, in consultation with your LA/branch, you decide to write to your employer requesting confirmation of permanence a model letter is provided below.

Model Regulation 9 letter - requesting confirmation of permanence

Please ensure you have involved your local UCU representative before submitting this request.

To [The Director of Personnel/ Human Resources for your employer

Including full address]

From [Your full name, job title and workplace address]

Date [.....]

Dear [Insert name]

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

I have been employed by [name of employer] since [date employment commenced]. I am now on my [nth] contract/my contract was previously renewed on [insert date of last renewal]* (*delete as appropriate).

I do not believe that there are any objective justifications for my employment to be on a fixed-term basis.

I therefore believe that I have the right to regard my position as permanent in accordance with Regulation 8 of the above Regulations.

I am formally writing to request from my employer [name of employer] a written statement confirming that my contract is no longer fixed-term.

I would be grateful if you would provide the statement to me within the statutory 21 days defined in Regulation 9.

Yours sincerely

[.....]

cc [The UCU officer dealing with your case]

- If the employer responds setting out the objective justification for the retention of your fixed-term contract please seek advice from your LA/branch.
- If, in discussions with your local/regional representative you decide that you do not wish to pursue the case at the current time you may wish to submit a letter similar to the one below.
- It will not affect your legal position if you do, or do not, submit such a letter.

Letter rejecting objective justification provided by employer

To [The Director of Personnel/ Human Resources for your employer

Including full address]

From [Your full name, job title and workplace address]

Date [.....]

Dear [Insert name]

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

Thank you for your reply to my recent letter which I received on [insert date of receipt].

You stated in your letter that you believed that there was objective justification for the use of my fixed-term contract. You gave these reasons as [insert details provided by employer].

I do not accept that the reasons given amount to objective justification for the use of a fixed-term contract such that regulation 8(2)(b) is satisfied.

I hereby give notice that I reserve the right to regard the provisions in my contract that restricts the duration of my contract as having no effect and to regard my status as that of a permanent employee. I also reserve the right to apply to the Employment Tribunal for a declaration to that effect.

Yours sincerely,

[.....]

Cc UCU officer dealing with your case

- If your employer responds citing fixed-term funding as the reason for denying you a fixed-term contract, and following discussions with your local/regional representative, you may wish to refer your employer to the case of Ball v Aberdeen University in which the tribunal rejected the university's case that short term funding could automatically provide a justification for employment on a fixed term.

A model letter is set out below.

Letter challenging objective justification of fixed-term funding provided by employer

To [The Director of Personnel/ Human Resources for your employer

Including full address]

From [Your full name, job title and workplace address]

Date [.....]

Dear [Insert name]

Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002

Thank you for your reply to my recent letter which I received on [insert date of receipt].

You state that the objective justification for the use of my fixed-term contract is that there is no guarantee of funding beyond the end date of my current contract.

However, I would like to draw to your attention the case of Ball v Aberdeen University taken under Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

In this case the University of Aberdeen refused Dr Ball a permanent contract under the Regulations on the grounds that his post was funded by a fixed-term research grant beyond which funding could not be guaranteed.

Dr Ball took his case to a tribunal who rejected the University of Aberdeen's case that short term funding could automatically provide a justification for employment on a fixed term.

On the facts of the case, the tribunal found that that the university could not establish objective grounds for continuing Dr Ball's employment on a fixed term basis and therefore gave a declaration that Dr Ball could consider his post as permanent.

I believe the facts of my case are very similar to those in the Ball v Aberdeen University case and I therefore do not accept that the reasons given amount to objective justification for the use of a fixed-term contract such that regulation 8(2)(b) is satisfied and I would ask you to reconsider your position in light of the Ball case.

I hope that you will be able to reconsider your position and provide confirmation that I can regard my post as permanent. In the absence of such confirmation I hereby give notice that I reserve the right to regard the provisions in my contract that restricts the duration of my contract as having no effect and to regard my status as that of a permanent employee. I also reserve the right to apply to the Employment Tribunal for a declaration to that effect. I hope such steps will not be necessary.

Yours sincerely,

[.....]

Cc UCU officer dealing with your case

- If you receive no response and following discussions with your local/regional representative, you may wish to acknowledge the employer's failure to reply by sending a further letter similar to the one below.

Letter following employer's failure to respond

To [The Director of Personnel/ Human Resources for your employer

Including full address]

From [Your full name, job title and workplace address]

Date [.....]

Dear [Insert name]

Fixed-term Employees [Prevention of Less Favourable Treatment] Regulations 2002

I have been employed by [name of employer] since [date employment commenced]. I am now on my [nth] contract/my contract was previously renewed on [insert date of last renewal]* (*delete as appropriate).

On [date] I submitted a regulation 9 letter under the above regulations requesting confirmation that my contract is no longer fixed-term .

The regulations require the employer to respond within 21 days of receipt of my letter and either

- Confirm that my post is permanent under the regulations; or
- Confirm that my post is not permanent under the regulations (i.e. objective justification).

In my case it has done neither. Therefore the university has failed to meet the requirements of regulation 9.

I therefore give notice that I reserve the right to apply to an Employment Tribunal who may consider the lack of response in any consideration of my case and infer facts from this.

Yours sincerely

[.....]

Cc UCU officer dealing with your case

The ending of a fixed-term contract - some information

The ending or expiry of a fixed term contract is regarded as a dismissal in law. For such a dismissal to be fair it must relate to one of the following reasons:

- **redundancy**
- **capability or qualifications to perform the work**
- **conduct**
- complying with legislation
- 'some other substantial reason'.

A member of staff must have completed at least 24 months with the same employer (but not necessarily in the same post or department) to be able to claim for unfair dismissal in an employment tribunal.

Redundancy

Where a member of fixed-term staff is dismissed because the requirements for employees to carry out work of a particular kind have ceased or diminished then the dismissal will be for reason of redundancy. In most cases, the ending of a fixed-term contract will be a redundancy.

If a redundancy is contemplated the employer must inform the employee individually with a view to agreeing, wherever possible, an alternative to redundancy.

If the employer proposes to make 20 or more employees redundant within a 90 day period then they are under a legal obligation to consult with the recognised trade union. However, recent changes to legislation, means that where the redundancies relate to the ending of fixed-term contracts at the end of their term, the requirement to consult UCU no longer applies. Individual consultation requirements are unaffected. However, UCU branches should be seeking local procedural agreements that do provide for such collective consultation in all potential redundancy situations.

In any case, any redundancy process that applies to fixed-term staff should not be less favourable than that afforded to permanent staff. If fixed-term staff are treated less favourably than permanent staff in this regard the employer is likely to be in breach of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 unless in each case less favourable treatment can be objectively justified.

In cases of potential redundancies the employer should also be meeting with the affected members of staff to talk about the situation and discuss ways to avoid any dismissal. In potential redundancy situations employers are also obliged to offer suitable alternative work if it is available and universities should be ensuring that all redeployment opportunities are considered and that training for a new post is provided where necessary.

Selection for redundancy must be fair and any procedure for selection must be reasonably applied. Selection for redundancy based purely on the fixed-term nature of an employee's contract is likely to be a breach of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

Whilst under notice of redundancy, employees, including fixed-term staff, have the right to reasonable paid time off to look for alternative work provided that they have at least 2 years' service with the employer (at the intended date of dismissal).

Where suitable alternative employment is not offered by the employer, employees with more than 2 years' service are entitled to redundancy. Redundancy payments to fixed-term staff should be paid on the same basis as that paid to permanent staff unless different treatment can be objectively justified. It would not be objective justification to pay fixed-term staff less on redundancy than permanent staff purely because they are on fixed-term contracts.

The legal advice above is without prejudice to the UCU policy of opposing compulsory redundancies.

Higher education

In higher education the Joint Negotiating Committee for Higher Education Staff (JNCHES) guidance on fixed-term and casual employment states that the procedure for terminating a fixed-term contract should, wherever possible, include the following components:

- up to four months before expiry of the contract, all the alternative options should be considered e.g. renewal, redeployment etc.
- up to three months before the expiry date, consultation should take place with the postholder on the prospects for alternative options, taking account of the postholder's aspirations
- the postholder should be given information about other positions in the institution
- where the expiry of the contract is a redundancy, consultation should take place with the recognised union(s) in accordance with statutory requirements
- further consultation should take place with the recognised union(s) and the postholder as required.

Higher education LAs/branches should ensure that these steps are included in local procedures.

Fixed-term academic staff (and possibly academic-related staff) in chartered institutions may also be covered by the university's model employment statute and subject to its provisions in relation to redundancy.

Capability or qualification

The dismissal of a fixed-term member of staff on the grounds of performance - before or at the end of the contract - must be dealt with in the same way as for permanent staff ie the university's capability procedure should be followed in all cases. If fixed-term staff are treated less favourably than permanent staff in this regard the employer is likely to be in breach of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

In some universities (in chartered institutions) fixed-term staff may be covered by the university's capability procedure set out in the model employment statute.

If the employer is considering a dismissal for reason of capability they must follow a fair procedure which we would expect to provide adequate opportunity for the member of staff to be supported in improving their performance to an acceptable level.

Conduct

Fixed-term staff should be subject to the same conduct/disciplinary procedures as their permanent colleagues. If fixed-term staff are treated less favourably than permanent staff in this regard the employer is likely to be in breach of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002. In some universities (in chartered institutions) fixed-term staff may be covered by the university's disciplinary procedure set out in the model employment statute.

If the employer is considering a dismissal for reason of conduct they must follow a fair procedure which we would expect to provide for dismissal only in cases of repeated misconduct or a single act of gross misconduct.

Automatically unfair dismissal

Dismissal relating to, inter alia, any of the following is automatically unfair:

- pregnancy and parental rights
- trade union membership
- enforcing a statutory right
- health and safety reasons.

So for an example, the non-renewal of a fixed-term contract on the grounds that the employee is pregnant would be an automatically unfair dismissal (as well as constituting sex discrimination).

Fixed-term regulations: requesting a written statement

Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 - Regulation 5 - Requesting a written statement from your employer

The right to equal treatment

Since 1 October 2002, fixed-term employees have had the right to be treated no less favourably than comparable employees on indefinite contracts. A comparator is someone employed by the same employer, and is defined in the Regulations as 'engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification and skill'. The search for a comparator does not have to be limited to an employee with the same job title or on the same salary scale, but will have to satisfy the requirement of a similar level of qualifications, skills and the nature of the work role.

The right relates to all terms and conditions including pay and pensions as well as training opportunities and the opportunity to apply for permanent posts. It does not only apply to contractual terms and conditions, but to any benefit offered to employees. [Regulation 3]

If a fixed-term employee believes he/she has identified a difference in treatment compared to a permanent employee, he or she has the right to request a written statement from their employer giving reasons for the difference in treatment. An employer must provide the statement within 21 days of the request. [Regulation 5]

In the event of a case progressing to an employment tribunal, this statement may be used in evidence. The failure or refusal to provide a statement without a reasonable excuse, or an evasive or equivocal statement, can be used by the tribunal when determining whether there has been an infringement of the employee's rights.


Getting information for a written request

If you think you have identified less favourable treatment than a comparable permanent employee(s), you may wish to consider requesting a written statement of the reasons for the difference in treatment. A model letter is provided for this purpose. Before submitting the request, please seek advice from your UCU representative.

Model '21 Day' letter - request for written statement



Please ensure you have read the appropriate guidance and involved your local UCU representative before submitting this request.

The text is set you below and can also be downloaded here:  [request for written statement letter draft \[1kb\]](#)**Opens new window**

To [The Director of Personnel/ Human Resources for your employer

Including full address]

From [Your full name, job title and workplace address]

Date [.....]

Fixed-term Employees [Prevention of Less Favourable Treatment] Regulations 2002

I believe I am being treated less favourably than a comparable permanent employee and that this infringes my right under Regulation 3 of the above Regulations not to be treated less favourably than a comparable permanent employee. I believe the difference in treatment to be:

[detail difference in treatment - this may relate to one or more issues]

I am formally writing to request from my employer [.....] a written statement giving particulars of the reasons for the less favourable treatment as detailed above.

I would be grateful if you would provide the statement to me within the statutory 21 days defined in Regulation 5.

Yours sincerely

[.....]

cc [The UCU officer dealing with your case]

Written statement of terms and conditions: your employment contract

Information on what you should expect in writing from your employer relating to your employment contract.

All employees who are employed for one month are entitled to receive a written statement of their main terms and conditions not later than two months after the start of employment[^].

Statement of terms and conditions

1. The names of the employer and the employee*
2. The date the employee's employment began*
3. The date the employee's period of continuous employment began*
4. If employment is not intended to be permanent, the period for which the employment is expected to continue or, the date when it is to end

5. The scale or rate of remuneration or the method of calculating it*
6. The intervals at which remuneration is paid*
7. Any terms and conditions relating to hours of work (including normal hours)*
8. Any terms and conditions relating to holidays, including public holidays, and holiday pay (sufficient to enable the employee's entitlement, including entitlement to accrued holiday pay on termination of employment to be precisely calculated)*
9. The employee's job title or a brief description of his or her work*
10. The employee's place of work or where the employee is required or permitted to work at various places, an indication of that and of the address of the employer*
11. If an employee is required to work outside the UK for a period of more than a month, the period for which the employee is to work, the currency in which remuneration is to be paid, any additional remuneration and benefits and any terms and conditions relating to the employee's return to the UK.

Statement of terms and conditions: particulars for which the employee can be referred to other sources

Reference can be made to an 'accessible document' for:

- any terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay
- any terms and conditions relating to pensions and pension schemes
- any disciplinary rules applicable to the employee
- any 'further steps' consequent on an application expressing dissatisfaction over a disciplinary decision (ie any disciplinary appeals procedure).

Reference can be made to the law or an 'accessible' collective agreement for:

- the length of notice the employee is obliged to give and entitled to receive to terminate his or her contract.

[^] Employment Rights Act 1996 (ERA), Sections 1-7

* All particulars marked with an asterisk must be contained within a single document. Particulars, which are not asterisked, can be given to the employee in instalments. It must be noted that all particulars whether contained within a single document or in instalments must still be given to the employee within two months after the beginning of the employment.