

## The Ordinances Part 3: Dismissal, Discipline, Grievance Procedures and related matters pursuant to Statute 7

### 3.8 Fixed-Term Contracts Procedure

#### *Part I : Introduction and Definitions*

1. This Ordinance is promulgated in accordance with the provisions of Part V Clause 16 of Statute 7 and sets out procedures relating to members of staff on fixed-term contracts, including dismissals arising from the expiry and non-renewal of fixed-term contracts, and for handling appeals against such dismissals.
2. In this Ordinance, unless the context indicates otherwise:-
  - i. 'The Statute' shall mean Statute 7;
  - ii. 'member of staff' shall mean any member of staff as defined by Clause 1(1) of The Statute;
  - iii. in relation to any decision or action that the University is required to make or to perform under this Ordinance, 'the University' shall mean: any member of staff who usually makes such decisions or performs such actions on behalf of the University, or who in the normal course of events may reasonably be expected to do so;
  - iv. a reference to 'clinical staff' shall be taken to mean a reference to any member of staff defined in Clause 20(1) of The Statute;
  - v. references to Deans shall be construed so as to include references to Heads of Professional Services or other equivalent units (and vice versa), and where there is no Dean, Head of Professional Service or equivalent unit, the President and Vice-Chancellor or his or her nominated representative may appoint a member of staff from such Faculty, Professional Service or equivalent unit to undertake the duties required of a Dean or Head of Professional Service by this Ordinance;
  - vi. references to University postholders (including those referred to in sub-paragraph (v) above) shall be construed to refer either to the postholder or to an appropriate member of staff nominated by the postholder to act with full authority on the postholder's behalf;
  - vii. where a post is held jointly by two or more postholders, a reference to the postholder shall be construed as a reference to any or all postholders holding that post, and any action authorised or required under this Ordinance may be taken by any such postholder.
3. For the purposes of this Ordinance, a 'fixed-term' contract is defined in accordance with the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 as a contract of employment that will, in its normal course, terminate:-
  - i. on the expiry of a specific term, or
  - ii. on the completion of a particular task, or
  - iii. on the occurrence or non-occurrence of any other specific event other than the attainment by the member of staff of the University's normal retirement age.
4. A 'permanent' contract is a contract which is open-ended and is not for a fixed term.
5. For the purposes of Part V Clause 16 of The Statute and of this Ordinance a person appointed by the Dean or Head of Professional Service or equivalent unit (or his or her designated representative) for this purpose shall act as the President and Vice-Chancellor's nominated

representative, and he or she shall also be deemed to be the 'Appointed Officer' for the purposes of paragraph 18 below.

*Part II : Application and Scope*

6. This Ordinance applies to members of staff as defined by Clause 1(1) of The Statute with the exception of the President and Vice-Chancellor, namely:-
  - i. members of the academic staff;
  - ii. members of staff with a grade of Level 4 or above in the University's grading structure, or an equivalent grade;who are employed under a fixed-term contract as defined in paragraph 3 of this Ordinance.
7. This Ordinance shall not apply to the removal from appointment as Pro-Vice Chancellor or Dean or such other posts as have been designated by the Council to which a member of staff has been elected or appointed and which is distinct from that individual's substantive post, where dismissal from the substantive post is not contemplated.

*Part III : General Principles*

**Confidentiality**

8. Throughout any proceedings under this Ordinance, the University shall seek to ensure that confidentiality is maintained. However, this shall not preclude the University from disclosing information where necessary for the discharge of duties or as required by law, nor shall this preclude the University, where appropriate, from disclosing information about any outcome under this Ordinance.
9. There may be cases where it is appropriate to preserve confidentiality in relation to the identity of witnesses, where there is reasonably perceived to be a need to protect any member of staff from the risk of intimidation or retribution. Likewise, it may be necessary to adapt these procedures where it is considered undesirable for any one person to give evidence in the presence of another.

**Right to be accompanied**

10. At any hearing convened under this Ordinance (other than informal discussions) the member of staff may be accompanied by a workplace colleague or trade union representative. If a member of clinical staff is called to a hearing under this Ordinance in relation to a proposal to terminate his or her employment and the hearing will involve consideration of issues related to the member of staff's clinical conduct or competence, the person conducting the hearing (or chair of the panel as appropriate) may permit the member of staff to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity.
11. If the member of staff's representative is not available at the time proposed for the hearing, the member of staff may request that the hearing be postponed to another reasonable time and must offer a date which is not later than five working days after the date first proposed for the hearing. The representative may attend the hearing with the member of staff and may speak on the member of staff's behalf, but that representative may not answer questions (relating to the issues in dispute) on the member of staff's behalf.

**Use of fixed-term contracts**

12. An appointment will be made on a fixed-term basis, including renewal on a fixed-term basis, only where this can be justified for transparent, necessary and objective reasons which relate to one of the following categories agreed between the University and Southampton UCU Joint Negotiating Committee (30 October 2003):-

- i. the post requires specialist expertise or recent experience not already available within the institution in the short term;
  - ii. to cover staff absence where there is likely to be a return to post (e.g. parental and adoptive leave, long-term sickness, sabbatical leave or secondment);
  - iii. the contract is to provide a secondment or career development opportunity;
  - iv. input from specialist practitioners;
  - v. where the student or other business demand can be clearly demonstrated as particularly uncertain;
  - vi. where there is no reasonably foreseeable prospect of short-term funding being renewed or other external or internal funding being available or becoming available. Where the short-term funding has already been renewed, continuing use of the fixed-term contract would need to be justified by objective reasons.
13. The Fixed-Term Employees (Prevention of less Favourable Treatment) Regulations 2002 require that staff employed on a fixed-term basis enjoy no less favourable terms and conditions, taking their contract as a whole, as permanent staff. Members of staff on fixed-term contracts shall be entitled, for example:-
  - i. to receive a statement of their terms and conditions of employment;
  - ii. to be treated as favourably as those on permanent contracts: for example, in relation to training, career development and information about job vacancies, except where any difference in treatment is justified on objective grounds;
  - iii. to discuss whether permanent employment is justified and what their career options might be.

#### **Termination of fixed-term contracts**

14. Fixed-term contracts may be terminated prior to their anticipated expiry date under procedures prescribed by other Ordinances. However, the procedures in this Ordinance relating to termination of a fixed-term contract at expiry shall apply even if action under other procedures has not been exhausted.
15. A decision neither to renew nor to extend a fixed-term contract at its expiry date nor to offer a contract of indefinite duration must be justified on the basis of a fair reason within the meaning of [section 98 of the Employment Rights Act 1996](#).

#### *Part IV : Procedure relating to the termination of a fixed-term contract at its expiry date*

##### **Informal discussion**

16. The member of staff may discuss with his or her line manager the possible options for renewal, permanency, redeployment or expiry at term of the fixed-term contract from time to time as appropriate during the period of fixed-term employment.

##### **Instigation of procedure**

17. Six months before the date on which the contract is due to expire, the member of staff shall be notified in writing by Human Resources that the contract is due to terminate at the expiry date, that the member of staff will be consulted individually (in accordance with the provisions of paragraph 18 below) before any decision is taken to dismiss him or her as a consequence of the expiry of the fixed-term contract, and that he or she will have the right to appeal such decision.

##### **Meeting with the Appointed Officer**

18. No later than four months before the expiry of the fixed-term contract (or one month for a fixed-term contract with an initial duration of six months or less), the member of staff shall be

notified in writing by the Appointed Officer of the proposed action on the expiry of the fixed-term contract and the reasons. If it is proposed that the member of staff's employment will terminate upon the expiry of the fixed-term contract, the letter will include a statement to that effect. The member of staff shall be invited to a meeting with the Appointed Officer at which he or she can make oral or written representations. Such meeting may include discussion of the alternatives to dismissal which may include renewal or extension of the fixed-term contract, offer of a permanent contract or redeployment to an alternative post within the University in accordance with the University's redeployment procedure.

19. For the avoidance of doubt, the member of staff has the right to be represented or accompanied at this meeting in accordance with the provisions of paragraph 10 above.
20. Where necessary, a further meeting or meetings shall be arranged to discuss any representations made by the member of staff and/or his or her representative.

#### **Confirmation of decision**

21. Following the meetings referred to in paragraphs 18 and 20 above, the member of staff shall be advised in writing of the outcome. In the event that the contract is to terminate at its expiry date, the Director of Human Resources or his or her nominee shall write to the member of staff no later than three months before the expiry date of the contract (or no later than one month if there are three months or less until expiry of the contract) to confirm that his or her employment will terminate at the expiry of the fixed-term contract, providing full reasons for the decision and giving appropriate notice of the dismissal; and to confirm his or her entitlement to redundancy pay (if applicable). The member of staff will be informed of his or her right to appeal against the dismissal under Part V below, including any applicable time limits for the making of such an appeal.
22. If appropriate, opportunities for redeployment of the member of staff to an alternative post within the University will be explored in accordance with the University's redeployment procedure as a result of the notification of dismissal in paragraph 21 above.
23. Any timescales in paragraphs 18 to 21 above may be shortened for contracts of less than six months' duration in the light of the length of the contract, any applicable notice period or short-term renewal.

#### *Part V : Appeals*

24. A member of staff (hereafter called the 'Appellant') who wishes to appeal the decision in paragraph 21 above should do so in writing to the Director of Human Resources within ten working days of the date of written notification of the decision. The Appellant should set out in full the grounds of his or her appeal and, if the Appellant is proposing to rely upon new evidence, he or she should provide details and a copy of any relevant documentation.
25. The appeal will be heard by a panel (the 'Appeal Panel') convened by the Director of Human Resources or his or her nominee on a case-by-case basis in accordance with the following rules:-
  - i. each Appeal Panel shall consist of a Dean or Chief Operating Officer who shall act as Chair and a member of Human Resources;
  - ii. if the Appellant is a member of clinical staff and the appeal hearing will involve consideration of issues related to his or her clinical conduct or competence, the chair of the Appeal Panel may permit the Appellant to be represented or accompanied by a member of his or her defence organisation. Such a representative may be legally qualified but he or she will not, however, be representing the member of clinical staff in any legal capacity;
  - iii. no panel member shall have had any previous involvement in the member of staff's case.

26. The Director of Human Resources or his or her nominee shall appoint a member of Human Resources to act as Secretary to the Appeal Panel.
27. An appeal under this Part shall not normally take the form of a re-hearing of the evidence and witnesses may be called only with the Appeal Panel's permission. However, if there is evidence that could not reasonably have been presented at the hearing, and/or if new evidence has emerged since the hearing, this may be presented at the appeal.
28. No later than ten working days before the Appeal Panel Hearing the Appellant shall be notified by the Secretary to the Appeal Panel of:-
  - i. the date, time and place of the Appeal Hearing;
  - ii. his or her right to be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 10 above; and
  - iii. so far as they are known at the time, the names of the persons to be present at the hearing including the members of the Appeal Panel, and the name of any person attending to present the reason for the decision to dismiss on behalf of the University.
29. The Appellant may be represented or accompanied at the Appeal Hearing in accordance with the provisions of paragraph 10 above.
30. At least three working days before the Appeal Hearing the name and address of the Appellant's representative must be notified in writing to the Secretary to the Appeal Panel.
31. The Appellant shall take all reasonable steps to attend the Appeal Hearing and/or any adjournment or postponement of the Appeal Hearing. Where the Appellant indicates to the Appeal Panel that he or she does not wish to exercise his or her right to be heard or fails to attend or leaves the Appeal Hearing or any postponement or adjournment of the Appeal Hearing without good cause, the Appeal Panel shall be entitled to proceed in the Appellant's absence.
32. The procedure to be followed in preparation for and at the Appeal Hearing shall be at the discretion of the Appeal Panel, which may include without limitation:-
  - i. determining which documents (if any) shall be provided for the Appeal Panel's consideration and at what stage;
  - ii. determining the extent (if any) to which witnesses may be called and questioned; and
  - iii. deciding whether it would be appropriate to adjourn or postpone the Appeal Hearing.
33. The Appeal Panel shall notify the Appellant in writing of the reasons for its decision, normally within ten working days of the Appeal Hearing. A report of the decision will also be sent to the Council. The Appeal Panel may:-
  - i. uphold the decision reached by the Appointed Officer;
  - ii. overturn that decision; or
  - iii. remit the matter for further consideration by the Appointed Officer.
34. The decision of the Appeal Panel shall be final.
35. Any dismissal under this procedure shall remain in force pending the outcome of an appeal. If the decision to dismiss is overturned, continuity of employment shall be restored.