

6. Reviewing Fixed-term Contracts

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HR Code of Practice - Reviewing Fixed-term Contracts

Section 1: Employee Application for Permanent Contract



Preamble

This Code of Practice falls into two separate parts.

Section 1: Employee Application for a Permanent Contract

sets out the review process **initiated by the employee** if they claim that they have the legal right to a permanent contract.

Section 2: End of Contract Review:

sets out the review process **initiated by the College** as a fixed-term contract nears its end date. For staff with successive fixed-term contracts and 4 years' continuous service, the *End of Contract Review* will always consider whether the employee already has the legal right to a permanent contract.

Aim of this Section

The aim is to:

- 1 enable managers to respond in good time, lawfully and in accordance with College policy to claims from fixed-term employees that they qualify for permanent contract;
- 2 enable managers to review the objective justification for the fixed-term contract in good time, lawfully, sensitively, and in accordance with College policy on the proper use of fixed-term contracts as set out in Ordinance C2;
- 3 promote good practice in the use of fixed-term contracts.

Key points

College staff employed on **successive** fixed-term contracts have a legal right to a permanent contract if:

- 1 they have 4 years' or more continuous service; and
- 2 the fixed-term in the contract cannot be justified on objective grounds¹.

1. See Appendix 2, which sets out College policy on the objective justification for the use of fixed-term contracts.

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Section 1: Employee Application for Permanent Contract

Moreover, staff on successive fixed-term contracts have the legal right to:

- 1 apply for written confirmation that the College considers their contract to be permanent;
- 2 written confirmation, within 21 days¹ that, either:
 - their contract is now considered permanent; or
 - that the contract remains fixed-term and the objective justification for the decision.



If an employee on a fixed-term contract applies for written confirmation that they are regarded as a permanent employee, managers will:

- 1 comply with the legally imposed timescale for providing a written response, or explain in writing the reasons for not doing so¹;
- 2 consider the merits of the employee's application (see Appendix 1)
- 3 seek approval as appropriate² before confirming any staff as "permanent";
- 4 if the contract is to be made permanent, explain this in writing;
- 5 if the use of the fixed-term contract can be objectively justified (for one of the reasons set out in Appendix 1):
 - explain the objective justification in writing;
 - tell the employee in writing that they have no further right of appeal.

-
1. *The regulations recognise that there may be good reasons for not meeting the 21 day deadline. For example, key decision makers not be available or due to meet within the time scale, there may be a delay in getting information from external funding bodies, etc.*
 2. *In the School of Medicine and Dentistry the Warden's Management Team make the decision, in the rest of the College, the decision lies with the Vice-Principal and the Chief Administrative Officer.*

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Section 1: Employee Application for Permanent Contract

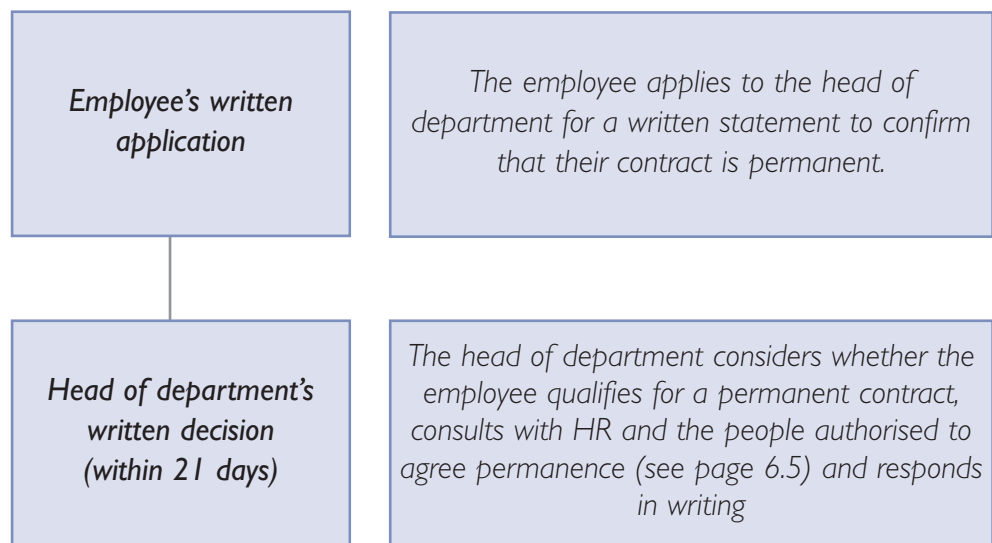


Outline of the procedure

The procedure has two basic steps:

- 1 application;
- 2 notifying the decision in writing.

There is no right of appeal under this section of the Code.



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Section 1: Employee Application for Permanent Contract

Timescales

Employee's written application	Staff will not normally apply for confirmation that their contract is regarded as permanent until they: <ol style="list-style-type: none">1 have at least 4 years' service; and2 are employed on (at least) the second of a succession of fixed-term contracts.
Head of department's written decision	Within 21 days ¹ .



1. This period is set out in law. However, the Regulations recognise that there may be good reasons for not meeting the deadline. If this is the case the manager will explain in writing why the timescale cannot be met and when a full response can be expected.

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Section 1: Employee Application for Permanent Contract



Authority to make decisions

The head of department or institute (or another line manager they nominate ¹)	Authority to <ul style="list-style-type: none">- investigate whether the fixed-term in the contract can be objectively justified;- consult with the relevant decision makers (see below) over any proposal to make the contract permanent- write to the employee setting out the decision
Chief Administrative Officer and Senior Vice-principal	Authority to approve a proposal to offer a permanent contract of employment in the College.
Chief Administrative Officer and Chief Operating Officer	Authority to approve a proposal to offer a permanent contract of employment in the School of Medicine and Dentistry.

1. For staff engaged in research, the head of department may opt to nominate the Principal Investigator (or another person with line management responsibility for the employee) to review the fixed-term contract.

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Section 1: Employee Application for Permanent Contract

Written application by the employee



The employee:	The head of department¹ will:
<ul style="list-style-type: none"> ❖ is responsible for: <ol style="list-style-type: none"> 1 applying in writing to the head of department if they wish to have written confirmation that their contract is now considered to be permanent. ❖ is entitled to: <ol style="list-style-type: none"> 1 a permanent contract if they have been: <ul style="list-style-type: none"> - employed on two or more successive fixed-term contracts; and - employed continuously for a period of 4 years or more; and - the fixed-term in the contract cannot be objectively justified; 2 a written decision within 21 days stating either that: <ul style="list-style-type: none"> - their contract is now permanent; or - their contract remains fixed-term and the reasons for the decision. 	<ol style="list-style-type: none"> 1 note the date the application is received; 2 plan to deal with the matter in good time, taking into account the 21 day legal time limit for giving a written response²; 3 if need be, take advice from the HR department on: <ul style="list-style-type: none"> - the legal merits of the application; - the employee's continuous service; - any objective justification for the fixed-term in the contract; - the consequences of a refusal; 4 if need be, identify funding for a permanent post and seek approval from the appropriate body³.



1. Or another person they nominate.
 2. If the time limit cannot be met, the manager will explain to the employee, in writing, the reasons why the time limit cannot be met and the timescale by which they can expect a full written response.
 3. See page 6:5 "Authority to Make Decisions".

HR Code of Practice - Reviewing Fixed-term Contracts

Section 1: Employee Application for Permanent Contract



Head of department's written decision



<i>The head of department¹ will:</i>	<i>The employee:</i>
<ol style="list-style-type: none"> 1 determine whether: <ul style="list-style-type: none"> - the employee has been employed on at least two successive fixed-term contracts; and - the employee has 4 years' continuous service; and - the fixed-term contract can be objectively justified²; or - the employee is entitled to a permanent contract; 2 if need be, identify funding for a permanent post and seek approval from the appropriate body³; 3 respond in writing within the 21 day time limit⁴; setting out: <ul style="list-style-type: none"> - the decision; and - the reason for it. 	<ul style="list-style-type: none"> ❖ is entitled to: <ol style="list-style-type: none"> 1 a permanent contract if: <ul style="list-style-type: none"> - they have been employed on successive fixed term contracts; and - they have at least four years continuous service; and - there is no objective justification for the fixed-term in the contract; 2 written confirmation, either; that: <ul style="list-style-type: none"> - their contract is now considered permanent; or - the contract continues for a fixed-term, and the objective justification for this².

1. Or another person they nominate.
2. The objective justification for the fixed-term will be one of the reasons set out in Appendix 2 on page 6:23. Giving fixed-term staff clear, robust and well documented explanations of the reason for the fixed-term in their contract is good practice and is likely to minimise unwarranted claims for permanence. If there is no objective justification for the fixed-term but the employee has less than 4 years' service, the effective date of the permanent contract will occur when the employee has 4 years' continuous service.
3. See page 6:5 "Authority to Make Decisions".
4. If the time limit cannot be met, the manager will explain to the employee, in writing, the reasons why the time limit cannot be met and the timescale by which they can expect a full written response.

HR Code of Practice - Reviewing Fixed-term Contracts

Section 2: End of Contract Review

Preamble

This Code of Practice falls into two separate sections. This part, **Section 2: End of Contract Review**, sets out the review process **initiated by the College** as a fixed-term contract nears its end date. For staff with successive fixed-term contracts and 4 years' continuous service, the *End of Contract Review* will always consider whether the employee already has the legal right to a permanent contract.

Section 1: Employee Application for a Permanent Contract

sets out the review process **initiated by the employee** if they claim that they have the legal right to a permanent contract.



Aim of this section

The aim is to:

- 1 provide contracts of employment that define our legal relationship with employees and build trust through clarity, understanding and openness;
- 2 achieve a proper balance between flexible and efficient working and fair and secure employment;
- 3 review fixed-term contracts as their end-date approaches and:
 - issue any new contracts in accordance with College policy and legal constraints;
 - implement any dismissals or redundancies lawfully and sensitively;
- 4 set out in practical terms, the processes required for the College to implement its Statutes and Ordinances covering fixed-term contracts¹.

1. Ordinance C2 section E sets out the College's arrangements for dealing with dismissals arising from the non-renewal of a fixed-term contract. In any dispute about interpretation, the Statutes and Ordinances take priority over this Code of Practice.

HR Code of Practice - Reviewing Fixed-term Contracts

Section 2: End of Contract Review



Key points

When issuing any fixed-term contract, managers will:

- 1 act in accord with College policy¹ to employ people on fixed-term contracts only where the fixed-term can be objectively justified;
- 2 identify the objective justification and notify the HR department so that the reason for the fixed-term can be recorded in the contract documentation.

During any fixed-term contract, managers will:

- 1 treat staff on a fixed-term contract no less favourably than comparable² permanent employees (unless they can justify the treatment on objective grounds);
- 2 ensure that staff have access to information about any "available vacancies" so that they may seek permanent employment with the College.

At the end of a fixed-term contract, managers will, for any employee with at least 1 year's continuous employment:

- 1 investigate and review any options for continued employment under the terms of this Code of Practice;
- 2 handle the matter sensitively and in good time;
- 3 recognise the legal requirement to treat the expiry of a fixed term contract without some form of renewal as a dismissal;
- 4 comply with any legal requirements for redundancy dismissals and dismissing fairly³;
- 5 recognise the legal right of staff on successive fixed-term contracts to be considered permanent once they have 4 years' continuous service - unless the fixed-term in the contract can be objectively justified;

-
1. Ordinance C2 describes when it is appropriate to use a fixed-term contract. The relevant extracts are in Appendix 2 on page 6:23.
 2. Any comparator must work for the College, and be doing the same or broadly similar work. In assessing whether the work is the same or broadly similar the comparator's skills and qualifications (or equivalent experience) must be taken into account if they are relevant to the job.
 3. Section 1 of this Code includes actions to ensure that managers comply with the legal framework governing redundancy dismissals. This Code is to be used where the prime reason for the redundancy is the expiry of the fixed-term. The Code of Practice on Redundancy is to be used for any other redundancy due to happen before the end date in the contract.

HR Code of Practice - Reviewing Fixed-term Contracts

Section 2: End of Contract Review

There are three potential results of the review. The manager may (**subject to funding and approval**):

- 1 offer a permanent contract; or
- 2 offer a further fixed-term contract; or
- 3 dismiss the employee and seek to redeploy them.



Offering a permanent contract

The manager will, before offering the contract:

- 1 ensure that funding is available in the normal way; and
- 2 seek approval from the relevant people (see page 6:13 "Authority to make decisions").

Appendix 1 sets out the legal entitlement to a permanent contract and explains how the decision can be made.

Offering a further fixed-term contract

The manager will, *before offering the contract*,

- 1 ensure that funding is available in the normal way;
- 2 identify the objective justification for employing on a fixed-term contract;
- 3 explain to the employee in writing the objective justification for the fixed-term;
- 4 if the employee already has more than 4 years' continuous service in successive fixed-term contracts, explain in writing the decision not to make the contract permanent.

Appendix 2 lists the objective justifications accepted by the College for issuing any fixed-term contract.

Proposing to dismiss

(because no further contract is to be offered)

The manager will tell the employee in writing:

- 1 the reason for the proposal;
- 2 that they have a right to meet with the manager to discuss the proposal;
- 3 that they have the right of appeal to a panel with authority to hear the case;
- 4 the period of notice they are entitled to;
- 5 that they will seek suitable alternative employment in the College during the notice period;
- 6 if the employee already has more than 4 years' continuous service in successive fixed-term contracts, explain in writing the decision not to make the contract permanent.

Appendix 3 lists the reasons and factors accepted by the College for making a decision to dismiss.

HR Code of Practice - Reviewing Fixed-term Contracts

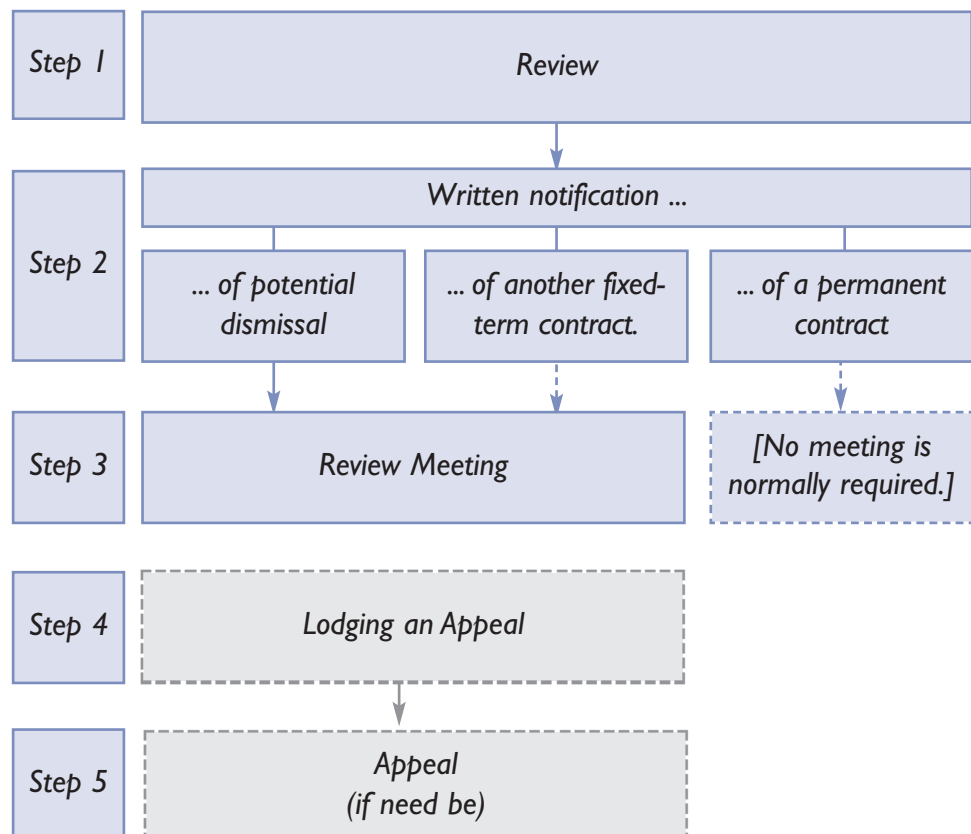
Section 2: End of Contract Review



Outline of the procedure

The procedure:

- 1 applies only if the employee has more than 1 year's continuous employment with the College at the end of their fixed-term contract;
- 2 may have as many as five steps depending on the nature of the decision and whether the employee wishes to appeal the decision:
 - 1 **reviewing** the issues and gathering evidence;
 - 2 **notifying** the decision in writing;
 - 3 **hearing** the matter in a meeting with the employee;
 - 4 **lodging** an appeal, if need be;
 - 5 **hearing** any appeal.



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Section 2: End of Contract Review

Timescales



Review	<p>Managers will assess the position of staff on fixed-term contracts in good time so as to:</p> <ol style="list-style-type: none"> 1 honour the employee's entitlement to notice¹ 2 enable the manager to seek the relevant funding and approval for any new contract; 3 permit, if need be a reasonable job search (using the Redeployment Key Concepts); 4 have any appeal heard by a panel with authority to decide the case; 5 comply with the legal minimum period² for formal consultation if 20 or more staff face redundancy at the same establishment
Notifying the employee	<p>With no undue delay after the review is complete. The manager will give at least 5 working days notice of the hearing. The meeting should happen at least 25 working days³ before the end of the contract.</p>
Assessment Meeting	<p>Without undue delay, and in good time to honour the employee's right to notice.</p>
Written Decision	<p>Within 5 working days of the completion of the hearing.</p>
Lodging an Appeal	<p>Within 10 working days of the written outcome of the hearing.</p>
Appeal Panel Hearing	<p>Without undue delay after the decision that formal action is required. The employee is entitled to 5 working days notice of the hearing. The panel should hear the case during the notice period, normally within 20 working days of an appeal being lodged.</p>
Written Decision	<p>Within 5 working days of the meeting.</p>

1. Normally, HR will issue reminders to enable managers to begin the process at least 3 months before the contract is due to expire.
2. 30 days' notice for 20 to 100 redundancies
90 days notice for more than 100 redundancies
3. 25 day is the absolute minimum. HR normally prompts management action at least 3 months before the contract is due to end.

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Section 2: End of Contract Review



Authority to make decisions

<p>The head of department or institute (or another line manager they nominate¹)</p>	<p>Authority to review fixed-term contracts as they end.</p> <p>Authority to dismiss and determine the reason for any dismissal.</p> <p>Authority to decide whether a further fixed-term contract can be objectively justified;</p>
<p>Chief Administrative Officer and Senior Vice-principal</p>	<p>Authority to approve a proposal to offer a permanent contract of employment in the College.</p>
<p>Chief Administrative Officer and Chief Operating Officer</p>	<p>Authority to approve a proposal to offer a permanent contract of employment in the School of Medicine and Dentistry.</p>
<p>Appeal Panel</p>	<p>Authority to determine any appeal against a decision in the <i>End of Contract Review</i> procedure² to:</p> <ul style="list-style-type: none"> - dismiss; and/or - not offer a permanent contract.

-
1. For staff engaged in research, the head of department may opt to nominate the Principal Investigator (or another person with line management responsibility for the employee) to review the fixed-term contract.
 2. As opposed to the “Employee Application for a Permanent Contract” procedure described in Section 1.

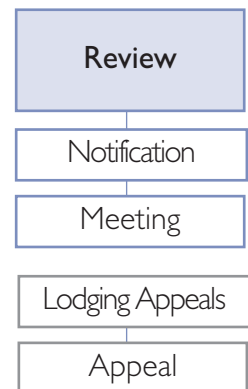
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Section 2: End of Contract Review

Review



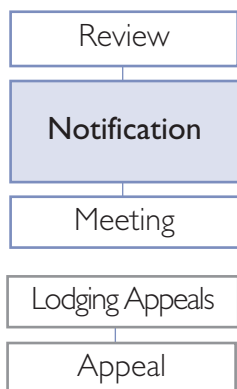
The manager will:	The employee is entitled to:
<ol style="list-style-type: none"> 1 investigate and give careful consideration to the following matters: <ul style="list-style-type: none"> - whether the employee is to be offered further work¹; and - the objective justification for the fixed-term in any new or revised contract²; and - if the employee has 4 years' continuous service on successive fixed-term contracts, whether they already have a legal right to a permanent contract³, 2 consult the employee and, if need be, trade union representatives⁴ over any potential redundancies; 3 decide whether they should: <ul style="list-style-type: none"> - offer a permanent contract (subject to approval from the relevant body⁵); - offer a new or extended fixed-term contract (subject to the need for the work and the availability of funding); or - dismiss and seek to redeploy the employee. 	<ol style="list-style-type: none"> 1 accurate, reasonable and timely information about: <ul style="list-style-type: none"> - their job prospects; - suitable alternative work with the College; 2 the opportunity to apply for permanent work with the College. 3 treatment that is consistent with comparable staff on permanent contracts, unless any less favourable treatment can be justified on objective grounds; 4 be told in writing, the decision and the reason for it; 5 a meeting to discuss the decision; 6 in addition, if the proposal is to dismiss: <ul style="list-style-type: none"> - notice as set out in the contract; - a search for a suitable alternative job using the College's redeployment procedure⁶; - any redundancy payment for which they qualify.



1. If no further contract is to be offered, this amounts, in law, to a dismissal. The reason for the dismissal will be taken from those set out in Appendix 3.
2. College policy is to offer a permanent contract unless a fixed-term in the contract can objectively justified. See Appendix 2.
3. See Appendix 1 which sets out the legal entitlement and explains how to make the decision.
4. The HR department carries out collective consultation on redundancies at the end of a fixed-term, but the manager must consult the individual.
5. See page 6:13 "Authority to make decisions"
6. This process is set out in the Redeployment Key Concepts .

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Section 2: End of Contract Review



Notification of proposal and meeting¹

The manager will:	The employee:
<ol style="list-style-type: none"> 1 notify the employee in writing of: <ul style="list-style-type: none"> - the proposals - the date of the meeting¹; - who will be at the meeting from the management side; - their right to be represented, to ask questions and to put their side of the matter; 2 if no further contract is to be offered, explain, in writing that the employee's job is at risk and the reasons why²; 3 if the employee has 4 years' continuous service on successive fixed-term contracts but no legal right to a permanent contract, explain why³, in writing; 4 if the employee is to be offered a further <i>fixed-term</i> contract, explain, in writing the objective justification for the fixed-term in the contract⁴. 	<ul style="list-style-type: none"> ❖ is entitled to: <ol style="list-style-type: none"> 1 reasonable written notice (normally at least 5 working days, but less by mutual agreement) of the date of the meeting; 2 the opportunity to be represented by another person; 3 postpone the meeting to another reasonable time within 5 working days of the original date - if their representative will not be available at the time proposed; 4 a full and open two-way discussion of the issues. ❖ is responsible for: <ol style="list-style-type: none"> 1 co-operating with the College in arranging and attending the meeting; 2 arranging to be represented, if need be; 3 keeping the manager informed of any relevant facts and issues.

1. A meeting is always needed to discuss:
 - any potential dismissal - in law, the end of a fixed-term contract without renewal is a dismissal;
 - the objective justification for any further fixed-term contract;
 - the reason for a decision not to offer a permanent contract to an employee with 4 years' continuous service on successive contracts.
 If a permanent contract is to be offered no meeting is normally needed.
2. The reason(s) will be taken from those given in Appendix 3.
3. See Appendix 1.
4. The reason will fall into one of the 8 categories set out in Appendix 2. A clear, robust and well documented explanation of the reason is good practice and is likely to minimise unwarranted claims for permanence.

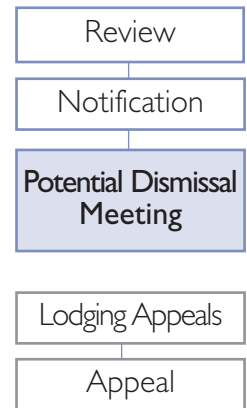
HR Code of Practice - Reviewing Fixed-term Contracts

Section 2: End of Contract Review

Review Meeting¹



The manager will:	The employee is entitled to:
<ol style="list-style-type: none"> 1 meet with the employee and outline their proposals and the results of the review; 2 explain the reason for the proposal if the employee is to be offered no further contract; 3 explain the reason for the decision if the employee has 4 years' continuous service on successive contracts but is not to be offered a permanent contract; 4 explain the objective justification if the employee is to be offered a further fixed-term contract²; 5 take into account any comments or explanation offered by the employee or their representative; 6 ensure that adequate notes are kept; 7 make the decision(s) on the balance of probabilities and confirm them in writing, setting out any right of appeal, within 5 working days. 	<ol style="list-style-type: none"> 1 be notified of the meeting as set out on page 6:15; 2 the opportunity to be represented by another person; 3 put their side of the matter; ask questions and hear the manager's response; 4 written confirmation of the decision with reasons and the right to lodge an appeal as set out on page 6:17; 5 the following, if the decision is to dismiss: <ul style="list-style-type: none"> - at least the notice period set out in their contract; - a search for a suitable alternative job using the College's redeployment procedure³; - any redundancy payment for which they qualify (if the reason for the dismissal is redundancy); - reasonable time off to search for alternative work.



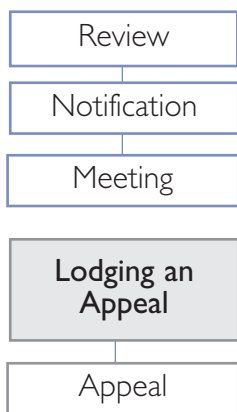
1. *If a permanent contract is to be offered no meeting is normally needed. However, a meeting is always needed to discuss:*
 - any potential dismissal - in law, the end of a fixed-term contract without renewal is a dismissal;
 - the objective justification for any further fixed-term contract;
 - the reason for a decision not to offer a permanent contract to an employee with 4 years' continuous service on successive contracts.
2. *Giving fixed-term staff clear robust and well documented explanations of the reason for the fixed-term in their contract is good practice and is likely to minimise unwarranted claims for permanence.*
3. *This process is described in the Redeployment Key Concepts.*

HR Code of Practice - Reviewing Fixed-term Contracts

Section 2: End of Contract Review



Lodging an Appeal



The employee:

- ❖ **is entitled to:**
 - 1 lodge an appeal against:
 - a decision to dismiss¹; or
 - a decision that the employee is not entitled in law to a permanent contract; or
 - a decision that a further fixed-term contract can be objectively justified; or
 - more than one² of the issues above.
- ❖ **is responsible for:**
 - 1 setting out all the grounds of appeal in full and in writing²;
 - 2 lodging the appeal with the Director of HR within 10 working days of the date they receive the written decision and the reasons for it.

The Director of HR will:

- 1 reject any appeal that is out of time;
- 2 appoint a panel³ to hear the case within 20 working days;
- 3 if need be, appoint an appropriate Secretary to the panel.

1. In law there is no dismissal if the decision is to renew or extend the employee's contract; or to make it permanent.
2. The employee may, for example lodge an appeal on one or more of the following issues:
 - the procedure was applied incorrectly;
 - the reason for the decision(s) is (are) not supported by the facts.
 The employee may support their grounds of appeal with any new evidence that comes to light after the original hearing.
3. The panel will be as set out on page 9 of the Introduction to the Codes of Practice.

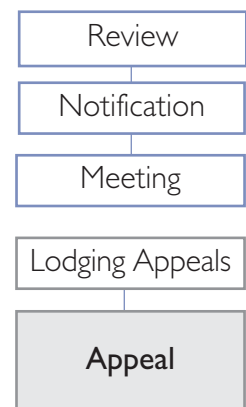
HR Code of Practice - Reviewing Fixed-term Contracts

Section 2: End of Contract Review

Appeal



The panel hearing the appeal will:	The employee is entitled to:
<ol style="list-style-type: none"> 1 conduct the meeting to establish the relevant facts, ensuring good order and natural justice; 2 decide any disputes about procedure; 3 consider the valid grounds of appeal and give the reason why any of the grounds of appeal are considered invalid¹; 4 consider if the reasons for the original decision(s) are reasonable and supportable; 5 if need be, change the original decision(s); 6 confirm the panel's decision and the reasons for it, in writing to the employee and the relevant managers², within 5 working days. 	<ol style="list-style-type: none"> 1 reasonable written notice (normally at least 5 working days, but less by mutual agreement) of the date of the meeting; 2 the opportunity to be represented by another person; 3 postpone the meeting to another reasonable time within 5 working days of the original date - if their representative will not be available at the time proposed; 4 put their side of the matter; ask questions and hear the manager's response.



¹ In cases where the employee's appeal includes the claim that they are already entitled to a permanent contract, the panel may opt to consider that issue first, since in practice, a decision that the employee does have a legal right to a permanent contract over-rides any decision to dismiss.

² This will include informing the relevant decision-making body (see page 6:13) if the panel's decision is to appoint to a permanent contract. The panel's decision is final.

HR Code of Practice - Reviewing Fixed-term Contracts

Section 2: End of Contract Review



Employment rights if dismissed

In law, an employee who is dismissed is entitled to notice (or pay in lieu of notice). In practice, the College gives notice of the expiry date of any fixed-term contract by including the end-date in the terms of the contract at the outset¹.

If the reason for the dismissal is redundancy², the employee is also entitled (in law) to:

- 1 an offer of suitable alternative work with the College (if there is any);
- 2 reasonable time off with pay to search for another job outside the College;
- 3 redundancy pay, unless they have:
 - less than 2 years' continuous service with the College;
 - made a valid agreement in writing to waive redundancy³.

-
1. *However, the HR department normally reminds the employee that their contract is due to end 3 months in advance.*
 2. *The Employment Rights Act 1996 defines redundancy as a dismissal for which the prime reason is that, in the place in which the employee has worked, either:*
 - 1 *the employer intends to stop carrying on the business ; or*
 - 2 *the business is expected to require fewer employees for work of a particular kind.*
 3. *Redundancy waivers are unlawful in any contract entered into, renewed or extended on or after 1st October 2002.*

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Section 2: End of Contract Review

Employment rights if a further contract is offered

The College is entitled to offer the employee a permanent contract on new terms unless the employee has the *legal right* to a permanent contract¹.

Where the employee does have the *legal right*¹ to a permanent contract, the end date is simply removed from the employee's current contract which otherwise remains unchanged.

Where the employee does not have the legal right to a permanent contract but is, instead, offered new terms, the following conditions will apply:

- 1 the College's provisions on pay protection for redundant staff² will apply;
- 2 the College will waive its policies on open advertising and appoint without competition if:
 - the new contract is permanent and the employee has at least 4 years' continuous service; or
 - the new contract is for a fixed-term which can be objectively justified; and
 - the head of department is satisfied that the employee has the skills and abilities to carry out the work; and
 - the head of department can show that the employee was originally appointed following competitive selection⁴;
- 3 where, following consultation, the employee opts not to accept an offer of further employment, the manager will convene a potential dismissal meeting.



-
1. *The legal right to a permanent contract arises only if:*
 - *the employee has 4 years' continuous service; and*
 - *they have been employed on successive fixed-term contracts; and*
 - *the fixed term in the current contract cannot be justified.*
 2. *Set out in the document "Key Concepts - Redundancy".*
 3. *Successive fixed-term contracts must not be used to circumvent the College's policies on equal opportunity in selection.*



Appendix I

The legal entitlement to a permanent post Issues to consider

The employee is entitled to a permanent contract only if 4 conditions are all met:

- 1 the employee must currently be employed on a fixed-term contract; and
- 2 either:
 - that contract has been renewed; or
 - the employee was employed on previous fixed-term contract(s); and
- 3 the employee's continuous service across the successive fixed-term contracts with the College amounts to 4 years or more; and
- 4 the employer cannot give an objective justification for the fixed-term in the contract (see Appendix 2).

Successive contracts

Staff employed on a single fixed-term contract of more than 4 years duration are not entitled to a permanent contract. However, should a further fixed-term contract be issued without any objective justification for the fixed-term in it, the employee would then have the right to a permanent contract.

Continuous service

This is a complex legal issue. It is explained in the Key Concepts handbook in the section on fixed-term contracts. But in practice it is best always to take advice from the HR department.

In cases where:

- 1 the duration of the successive contracts is more than 4 years; but
- 2 the employee currently has less than 4 years' service; and
- 3 there is no objective justification for the fixed-term in the contract ...

the employee will become a permanent employee when they come to have 4 years' continuous service.

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Appendix 1

For example, someone employed, without objective justification, on two successive 3 year contracts:

- is not entitled to a permanent contract at the start of the second contract; but
- will become entitled to one after 1 year in the second contract as they will then have 4 years' continuous service.



Objective justification

College Ordinance C2 (see Appendix 2) describes the College's policy on the use of fixed-term and permanent contracts. It also lists the reasons that managers can cite as the objective justification for a fixed-term contract¹. The effect of the Ordinance is also discussed in greater depth in the handbook "Implementing the HR Codes of Practice" in the section dealing with *key concepts* for fixed-term contracts.

In law, the College must be able to provide an objective justification that applied *at the time* that the employee's fixed-term contract was last issued (or renewed). However, there is no requirement to provide objective justification for any earlier contract.

1. *Giving fixed-term staff clear robust and well documented explanations of the reason for the fixed-term in their contract is good practice and is likely to minimise unwarranted claims for permanence.*



Appendix 2

Ordinance C2:

College policy on the appropriate use of fixed-term contracts

It is good practice to give fixed-term staff clear, robust and well-documented explanations of the reason(s) why a fixed-term contract is thought to be appropriate. Doing so is likely to minimise unwarranted claims for permanence¹. An extract from Ordinance C2 setting out the basic reasons for using fixed-term contracts is in the box below (and on the next page):

Objective Justifications for Fixed-term Contracts ***Extract from Ordinance C2***

- E1 The policy of Queen Mary is to appoint staff on appropriate contracts. This will be a “permanent” contract unless a limited-term contract can be justified for one of the reasons set out below. Fixed-term contracts of any duration, including those of under a year, are appropriate only if:
- [a] the post requires input from specialist practitioners whose expertise or experience is not part of the core competencies required within the College, department or institute. The expression “core competencies” refers to the attributes, skills, experience or capacity of the employee rather than core subject areas;
 - [b] the post is appropriate to cover staff absence (e.g. parental and adoptive leave, long-term sickness, sabbatical leave or secondment);
 - [c] the post is to provide interim cover while arrangements are being made to appoint on a permanent basis (e.g. the effect of an unexpected resignation, a skills shortage or a delay in making a permanent appointment can be worked around by making an interim appointment to provide short-term cover);

1. *If the reason for issuing a fixed-term contract falls into more than one of the categories; or if there is more than one reason, all should be cited.*

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Appendix 2

- [d] the contract includes a specific and finite training, developmental or educational component, such as secondment, career development opportunity, studentship, or apprenticeship, etc;
- [e] the student or other business demand can be clearly demonstrated as particularly uncertain;
- [f] the post is to cover a peak in demand due, for example, to seasonal fluctuations or the requirements of a particular stage in a project;
- [g] there is no reasonable prospect of funding being renewed or becoming available. Where funding has already been renewed, continuing use of the fixed-term contract would need to be justified by objective reasons;
- [h] the post is one in which the College offers work to a succession of its current students on the grounds that this will offer valuable work experience; or support the student during their studies; or is convenient for the College.



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Appendix 3:



Appendix 3

Potential reasons for dismissal Issues to consider

College Ordinance C2 sets out the College's policy on the use of fixed-term and permanent contracts. It also lists the reasons that managers can rely on as the reason for a decision to dismiss.

Any decision not to offer a further contract must be justified in respect of one or more of the following considerations:

- [a] the availability of funding for the post (for example, the termination of the funding for a project), or the financial situation;
- [b] the individual's performance¹, following appropriate warnings and counselling (as defined in the relevant Code of Practice);
- [c] the need for the post or the duties attaching to the post (for example, the project for which the post was created has been completed);
- [d] the nature and character of the post (for example, the post was providing cover for a member of staff on maternity leave who has now returned);
- [e] the desirability of making the post permanent and appointing to it after open competition (for example, to meet equal opportunities requirements).

1. This may be a fair reason for dismissal if the employee

- *has a current final warning on file under another Code of Practice; and*
- *has not achieved the standard required by the College.*

