UCU University of Liverpool Branch

**Making a Request for Permanency Under the Fixed Term Employees Regulations**

We are keen to encourage all members to apply for permanency if they have been working at the University for 4 years or more. There is no guarantee that we will be able to win those cases, and we need to be honest with members about this. But we must give them every chance to realise their right to a permanent job in law. Full information on this process is available on the UCU website [here](https://www.ucu.org.uk/article/3567/Fixed-term-regulations-requesting-confirmation-of-permanence).

**STEP 1**: GET THE MEMBER TO SEND THE LETTER BELOW

It is common for members to be reluctant to apply for permanency, since they think this will be seen as an antagonistic move by their immediate managers and will weaken their chances of securing work. However, our experience of representing members is the opposite: initiating this process tends to strengthen the chances of continuing work. NOTE THAT THE UNIVERSITY IS REQUIRED BY LAW TO REPLY WITHIN 21 DAYS OF RECEIPT OF THE LETTER.

*To: Keith Watkinson, Human Resources Department, Hart Building, Mount Pleasant, Liverpool L3 5TQ*

*Date xxxx*

*Dear Mr Watkinson,*

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

*I have been employed by the University of Liverpool since xxxx. My latest contract ends on xxxx*

*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, the University of Liverpool, a written statement confirming that my contract is no longer fixed-term. I would be grateful of you would provide the statement to me within the statutory 21 days defined in Regulation 9.*

*Yours sincerely*

*Xxxx*

*cc UCU representative*

**STEP 2:** EXPECT A NEGATIVE REPLY

It is likely that the HR business partner responsible for your School/Institute/Department, rather than Keith Watkinson, will reply. The most common reasons for rejection are:

* That there was a break in service in the 4 year period which constituted a “break in contract.”
* That there was an objective justification for the contract not being renewed because of the temporary nature of the cover required.
* That the funding source was intended to create a fixed term position.

**Very often *all three* of those grounds can be challenged.** For example, in Universities, some breaks in service - say between June and September - may be regarded as a “temporary cessation of service” and not a break in contract. In such cases, members can claim uninterrupted period of employment. Also, there is case law that indicates that employers cannot claim that fixed-term research grants give them “objective justification” to deny permanency status.

**STEP 3:** DO NOT ACCEPT UNIVERSITY’S REFUSAL. IT IS NORMAL FOR THE UNIVERSITY TO RESPOND NEGATIVELY EVEN IN CASES WHERE YOU HAVE A STRONG LEGAL FOOTING. MANY SUCCESSFUL CASES ARE REFUSED AT STEP 2. **STICK TO YOUR GUNS!**

The member’s reply should include a correction of any inaccuracies or points of dispute in the response from HR and a statement that re-asserts your right to permanency and disputes the grounds for the University’s rejection. Your letter should also include a version of the following statement: ***“****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.”*

There are example letters that you can send at this stage provided on the UCU website here.

**STEP 4:** LEGAL SUPPORT

If there is still no positive response from HR, then this is the point at which the branch would be looking to engage legal support from the UCU Regional Office to represent the member. This is the point at which the case should be lodged with the ACAS Early Conciliation process. If this does not happen within “three months minus one day” from when HR receive the first letter, then the case stops and it cannot go to an Employment Tribunal.

Securing full UCU legal support will depend upon whether UCU regional office judges the case to be of merit and whether they have the capacity to support the case. It is likely that the volume of such claims at this time is going to be huge, and there is no guarantee that we can secure representation, but at the very least, we can obtain some sound legal advice.

Bear in mind that members can pursue the case at an Employment Tribunal without *full* legal representation, i.e. by representing themselves, or with support from the branch.