

## University and College Union

### Higher Education

To: HE branch and LA secretaries; Fixed term and hourly paid representatives

From Jane Thompson (jthompson@ucu.org.uk)

**Subject Report on the case of Ball v Aberdeen University on when it is objectively justified to use a fixed-term contract.**

The Fixed Term (Prevention of Less Favourable Treatment) Regulations 2002 limit the use of successive fixed-term contracts to a period of four years. Once a fixed term employee has four years' continuous service on two or more contracts (or has had their contract renewed), the contract can be regarded as permanent unless the continued use of a fixed-term contract is objectively justified.

The UCU has always claimed that fixed-term funding is not, of itself, an objective justification for the use of fixed-term contracts beyond four years. Some employers have agreed and have offered permanent contracts after 4 years. Many, however, continue to use fixed-term funding as an excuse for the continued use of fixed-term contracts – especially for researchers in higher education.

However, we have now won recognition of contractual permanence for a researcher, Dr Ball, at the University of Aberdeen, who had been employed continuously on fixed term contracts for nine years at an Employment Tribunal.

Dr Ball had been continuously employed at the university under three successive contracts which began in April 1999. Each contract had been linked to external short term fixed-term funding. His third contract is for the period ending at the end of May 2008, and recently he had been offered a fourth fixed term contract.

When Dr Ball sought confirmation of his permanent status under the Regulations he was advised that as the University had no guarantee of further funding beyond the end date in his contracts they believed there was an objective justification to continue to employ Dr Ball on fixed-term contracts.

The case was taken to tribunal who found that Dr Ball suffered genuine disadvantage in being kept on fixed-term contracts; uncertainty of future employment, disadvantage in terms of career progression and professional development, and potential difficulties in obtaining credit.

These disadvantages were not outweighed by the disadvantages claimed by the university in employing Dr Ball on a permanent basis. These included the difficulty in using the redundancy procedure (which should have been applied to fixed-term researchers in Aberdeen in any case) and the potential impact on industrial relations!

Consequently, the tribunal found that the university could not establish objective grounds for continuing Dr Ball's employment on a fixed term basis.

The tribunal rejected the university's case that short term funding could automatically provide a justification for employment on a fixed term, and found that the university had failed to carry out any assessment as to whether Dr Ball could have been offered a permanent contract in 2002 when his third contract was offered. The tribunal therefore gave a declaration that Dr Ball could consider his post as permanent.

The full text of the case has been posted on Aberdeen UCU's website at <http://www.abdn.ac.uk/ucu/>

Although this case is not binding and each case would have to be considered on its own merits the circumstances Dr Ball found himself in will be familiar to thousands of researchers in UK Higher Education Institutions.

We also need to acknowledge that whilst this is a significant victory for UCU members, permanent contracts, in themselves, do not provide security of employment.

Branches and local associations are therefore encouraged to raise this case with their employers with a view to:

- Negotiating on the use of fixed-term contracts including making it explicitly clear that fixed-term funding is not objective justification for the continued use of fixed-term contracts (advice and a model agreement can be found at <http://www.ucu.org.uk/index.cfm?articleid=1911>)
- Moving fixed-term contract staff with at least 4 years' service to permanent contracts
- Negotiating on the process of consultation that will be undertaken if funding for any post is removed. The focus of any such consultation should be the avoidance of compulsory redundancy and should include robust systems for providing alternative work between funding streams, offering suitable alternative work and redeployment (an example of a redeployment policy can be found as an appendix to the UCU model fixed-term contract policy at [http://www.ucu.org.uk/media/docs/g/j/modelftcpolicy\\_commentary\\_1.rtf](http://www.ucu.org.uk/media/docs/g/j/modelftcpolicy_commentary_1.rtf))

The case has put into sharp focus the need to recognise all redundancies – not just those of permanent staff whose posts are underpinned by core funding. We need to be aware that the dismissal at the end of a fixed-term contract and the ending of an 'open-ended' contract if one funding stream ceases will, in most cases, be a redundancy.

The HESC reaffirmed its opposition to compulsory redundancies of all kinds at its recent meeting in May.

The Higher Education Committee has set up a working group to look at action in light of potential redundancies and the group has been looking at all types of redundancies and considering the possible reaction from some employers in response to the need to move staff from fixed-term to permanent contracts. The group will soon be circulating a short survey to all HE branches / LAs and we would ask you to make every effort to complete the survey to help the group with their important work.