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HUMAN RESOURCES GUIDANCE

Consultation Guidance for Managers – Fixed Term Contracts and Open Ended
Contracts underpinned by fixed funding

TABLE OF CONTENTS

1. [Introduction to Consulting with Employees on Fixed Term Contracts](#)
2. [Terms of Reference](#)
3. [Scope](#)
4. [Legal Framework](#)
5. [Fixed Term Contracts ending due to SOSR](#)
6. [Redundancy and the Obligation to Formally Consult](#)
7. [Consulting with Employees whose Contracts are Linked to Fixed Funding](#)
8. [Consulting with Employees on Consecutive Fixed Terms](#)
9. [Consulting with fixed term employees of under two years' continuous service](#)
10. [How to Conduct a Redundancy Consultation Meeting](#)

[Appendix 1 Consultation Flowchart – Identifying a Requirement to Formally Consult](#)

[Appendix 2 Consultation Flowchart – Employees on FTCs at Risk of Redundancy
\(Roles and Responsibilities\)](#)

[Appendix 3 – Employees on OECs linked to fixed funds at risk of redundancy
\(Roles and Responsibilities\)](#)

[Appendix 4 - Other Relevant Resources for Managers](#)

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1. Introduction to Consulting with Employees on Fixed Term Contracts

The purpose of this guidance is to provide practical support for managers when consulting with employees who are on fixed term contracts.

The extent to which it is necessary and appropriate to consult will depend on certain factors including the type of fixed term in question.

This guidance aims to equip managers to recognise where there is a legal obligation to consult with staff on fixed term contracts or whose contracts are subject to fixed funding.

The guidance also explains how to go about the consultation process. Managers should read this guidance in conjunction with the Standard Operating Procedure – Fixed term Contracts and Open Ended Contracts underpinned by Fixed Funding.

2. Terms of Reference

2.1 FTC - Fixed Term Contract which is a contract that ends on a particular date, or on completion of a specific task.

2.2 OEC - Open Ended Contract which is a contract without a defined termination date, sometimes referred to as a permanent contract.

2.3 SOSR - Some other substantial reason.

2.4 The Regulations - *Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002*.

2.5 TULRCA - Trade Union and Labour Relations (Consolidation) Act 1992.

3. Scope

This guidance:

3.1 is intended as a resource for managers;

3.2 identifies where there is a legal obligation to consult with employees on [FTCs](#);

3.3 explains how to conduct a consultation meeting;

3.4 provides an overview of the management of the consultation period to ensure that a fair and consistent process is followed;

3.5 covers the process for consulting with employees on [FTCs](#) approaching their four year anniversary;

3.6 includes information on ending [FTCs](#) where there is no legal obligation to formally consult.

3.7 The scope of this guidance is focussed specifically on the topic of consulting with fixed term workers and those on open ended contracts underpinned by fixed funding.

For more general policy and procedural information relating to [FTCs](#) please refer to

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the Standard Operating Procedure – Fixed term Contracts and Open Ended Contracts underpinned by Fixed Funding and Frequently Asked Questions for Managers– Fixed Term Contracts and Open Ended Contracts underpinned by Fixed Funding.

4. Legal Framework

The non-renewal of a [FTC](#) is regarded as a dismissal in law. Most employees on [FTCs](#) are protected by the [Regulations](#)¹ from day one of their employment. Essentially, the [Regulations](#) prohibit less favourable treatment of employees on [FTCs](#), unless it is justified.

Under the [Regulations](#) employees who have been employed for four consecutive years or more by the same employer will automatically be deemed to be permanent (“open-ended”) employees. The exception to this is where an employer can justify issuing another fixed term contract. An example of where this might apply is where it is foreseeable that funding will come to an end in 6 months or less.

Managers should identify a fair reason for ending a [FTC](#). The fair reason for ending a [FTC](#) by allowing it to expire will be either redundancy² or [SOSR](#).

Legal obligation to formally consult

Where the fair reason for dismissal is [SOSR](#), it is good practice to meet with the employee informally and keep them informed. Where the fair reason for ending a fixed term contract is redundancy, there is a legal obligation to consult in accordance with Imperial’s [Change Management Policy and Procedure](#). The extent of the obligation depends on the number of employees who will be made redundant within a specific timescale.

Summary:

- **Not renewing a fixed term/allowing a fixed term to expire amounts to dismissal.**
- **Managers must identify a potentially fair reason for dismissal.**
- **Redundancy and SOSR are potentially fair reasons for dismissal.**
- **If dismissal is for SOSR, the employee should be kept well informed.**
- **If the dismissal is for redundancy, there is a specific legal duty to consult**

¹ The Regulations expressly exclude the following: Apprentices; agency workers; employees on certain work experience or training schemes; students on work experience schemes as part of a degree course (e.g. ‘year in industry’); the armed forces.

² If an employee does not have 2 or more years continuous service they will not be eligible to receive a redundancy payment. However, the fair reason relied on to end their employment will still be redundancy.

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5. Fixed Term Contracts ending due to SOSR

The fair reason for ending fixed term cover posts or temporary assignments on the expiry of the term will be [SOSR](#) and not redundancy. For more information about fixed term cover posts and temporary assignments, managers should refer to sections 7 and 8 of the Standard Operating Procedure – Fixed term Contracts and Open Ended Contracts underpinned by Fixed Funding.

Line managers should communicate regularly with employees, particularly as the end of the fixed term approaches – there should be no surprises. Managers should liaise with the HR Staff Hub for advice and guidance and to ensure that appropriate written correspondence can be issued. The HR Staff Hub will write to the employee prior to the expiry of their [FTC](#) to confirm that their employment is due to end.

6. Redundancy and the Obligation to Formally Consult

Where it is proposed that a [FTC](#) may not be renewed due to the cessation of fixed funding, the potentially fair reason for dismissal will be redundancy. Another example of where a redundancy situation will arise is where the funding underpinning an [OEC](#) is expected to cease.

Where redundancy is the reason why a [FTC](#) is to be ended, a fair redundancy procedure must be carried out, including consultation with the employee. This applies regardless of an employee's length of service.

The extent of this obligation depends on the number of employees who will be made redundant within a specific timescale. Managers should refer to the [Change Management Policy and Procedure](#) for more information.

For guidance on roles and responsibilities relating to consultation with non-academic staff, managers may find it helpful to refer to the flowcharts in the appendices to this guidance. For academic staff, consultation should be in line with the appropriate Annex to the Appendix to the Ordinances.

7. Consulting with Employees whose Contracts are Linked to Fixed Funding

7.1 When it is identified that a [FTC](#) may not be renewed or an [OEC](#) underpinned by external funding which is due to end, the employee's line manager is primarily responsible for consulting with them. **This is a legal requirement** and the consultation process for non-academic staff is broken down in the flowcharts in the appendices to this guidance.

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7.2 Where specifically delegated, another appropriate senior manager who is not the employee's line manager can lead the consultation process.

7.3 The subject of consultation will be the expiry and non-renewal of their [FTC](#), or the termination of their [OEC](#) due to the expiry of fixed funding, effectively resulting in their dismissal. Appropriate support will be provided by the HR Staff Hub team.

7.4 For academic staff consultation should be in line with the appropriate annex to the Appendix to the Ordinances.

7.5 The non-renewal of a contract or expiry of funding should not come as a surprise to the employee. It is, therefore, beneficial to both sides to ensure that employees on [FTCs](#) and [OECs](#) underpinned by external funds are kept fully aware of the state of funding.

7.6 Where the contract is renewed for short periods at a time due to funding uncertainty, consultation may need to be on-going and this should be reflected in written communication sent to the employee.

7.7 Employees subject to the formal stages of this process have a right to seek advice and be represented by a Trade Union official or work colleague. They may also wish to contact Imperial's independent Employee Assistance Provider [Confidential Care](#) for confidential support and advice.

8. Consulting with Employees on Consecutive Fixed Terms

When an employee who is on a fixed term contract approaches four years' continuous service, their line manager should keep them informed as to whether an [OEC](#) will be issued.

An [OEC](#) should be issued once an employee has been employed by Imperial for a continuous period of four consecutive years. The exception to this is where it is ascertained that funding is unlikely to continue for at least 6 months past the employee's four-year anniversary. Where this is the case, Imperial should have justifiable grounds for renewing the existing fixed term.

In instances where no further funds are available to support the employment, line managers must advise the HR Staff Hub of this as soon as possible.

In cases where an employee approaching four consecutive years' continuous employment will not be issued with an [OEC](#), consultation must be carried out (see paragraph 7).

9. Consulting with fixed term employees of under two years' continuous service

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An employee on a [FTC](#) with less than two years' service who is at risk of redundancy is legally entitled to consultation. They are not entitled to receive a redundancy payment.

From a practical perspective, there will be those who have been employed by Imperial for a relatively short time and fully intend to move onto new horizons after their fixed term expires. Imperial does not impose formal consultation on an employee who does not wish to engage in it.

With that in mind, the approach should be to write to the employee in a consultative spirit as per the procedure set out in [Appendix 2](#), offering them an opportunity to raise questions with their line manager or [HR Representative](#) and to attend a consultation meeting should they wish to do so.

Fixed term employees with any length of service are potentially eligible for redeployment and should be signposted to the [Redeployment Policy and Procedure](#).

10. How to Conduct a Redundancy Consultation Meeting*

****In the context of redundancy due to the expiry of a fixed term contract or open-ended contract linked to fixed funding***

- 10.1 The meeting is usually led by an employee's line manager.
- 10.2 An [HR representative](#)³ can be available to provide support where appropriate and practicable.
- 10.3 The employee has a legal right to be accompanied by a Trade Union representative or work colleague.
- 10.4 Under exceptional circumstances the line manager and [HR Representative](#) may consider requests for accompaniment by a relative or friend, this individual must not be a legal representative.
- 10.5 The employee will be given reasonable notice of the meeting, normally 5 working days.

10.6 Format of Consultation Meeting

- a. The line manager introduces all those present. If the employee attends alone, the line manager must ask them if they are happy to proceed without representation. If not,

³ The term HR Representative does not refer to a specific job title or role. The specific role(s) responsible for providing support under this guidance as HR Representative will align with HR operational structures at the appropriate point in time.

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then the meeting should be reconvened to a time when a representative can attend with them, normally within 5 working days.

- b. Where an [HR Representative](#) is present at the meeting, they will provide advice on the process and take brief notes of the meeting. If an [HR Representative](#) is not present at the meeting, the line manager should take brief notes.
- c. The line manager should explain that the purpose of the meeting is to discuss the non-renewal of contract/non procurement of additional funds for open ended posts and potential dismissal due to redundancy.
- d. Full and frank discussions should take place. The employee should have an opportunity to respond to the situation and put forward ideas/concerns. If the employee has valid and reasonable ideas on how to extend the post then these should be explored fully.
- e. Objective reasons need to be given on why the contract may not be renewed, or in the case of an open-ended contract underpinned by external project/research funds, why the procurement of further external funds is not possible.
- f. The non-renewal of a [FTC](#)/termination of an [OEC](#) underpinned by external project/research funds can only be justified under the following circumstances:
 - Where there is no further need for the type of work undertaken by the employee i.e. the research activity or project comes to an end; **and**
 - Where there is no 'suitable alternative' or 'alternative' employment available within Imperial as defined in the [Redeployment Policy and Procedure](#).
- g. Consultation will need to include ways of avoiding redundancy and dismissal. Questions should be asked to establish whether training or re-training is a reasonable possibility. The employee's career plans should be examined and methods to support this considered.
- h. There should be a meaningful discussion regarding the support available (see below), and the [HR Representative](#) (if present) or line manager should signpost the employee to the [Redeployment Policy and Procedure](#) and continue to advise throughout the consultation period.

Signpost the following support for employees at risk of redundancy.

Following the initial consultation, Imperial can provide assistance in the following areas:

- Financial areas - such as information on redundancy pay. In most cases, queries on pension issues will be referred directly to the Pensions team for specialist advice.
- Skills Analysis - assistance in identifying transferable or marketable skills; this may be referred to People and Organisational Development for specialist advice.

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- Redeployment – Employees should be referred to the [Redeployment Policy and Procedure](#). Assistance can be provided with conducting job searches and accessing information/useful resources.
- Assistance with CV preparation/completion of application forms and improving interview techniques if required.
- Employees at risk of redundancy may wish to access Imperial's independent Employee Assistance Provider [Confidential Care](#) for confidential support and advice.

- i. The use of office facilities and the right to reasonable time off to seek alternative employment should also be discussed.
- j. Employees who are made redundant following 2 years or more continuous service at the end of their [FTC](#) or [OEC](#) underpinned by external project/research funds will be eligible for a redundancy payment. Fixed term employees are not (in most cases) entitled to receive payment for their notice as this is contained automatically within their contract and expires when the contract ends. The specific contractual terms should always be checked.
- k. At the end of the first consultation meeting the line manager should make arrangements to have further meetings over the consultation period should this be required.
- l. A 'Following a Consultation Meeting' letter **must** be sent to employee detailing the outcome of the meeting.

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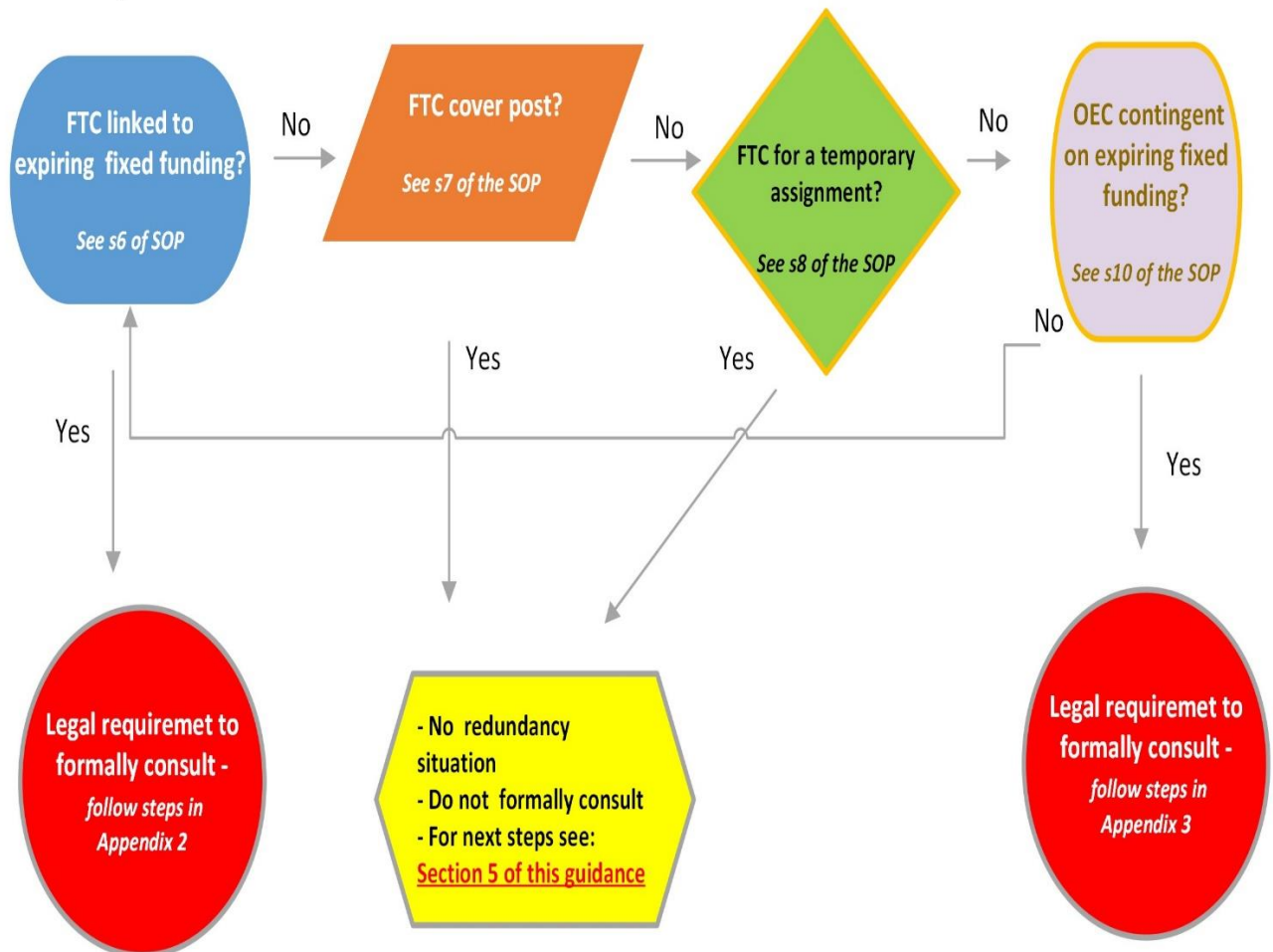
Appendix 1 Flowchart – Identifying a Requirement to Formally Consult

Key:

SOP = Standard Operating Procedure

FTC = Fixed Term Contract

OEC = Open Ended Contract



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Appendix 2 Consultation Flowchart – Employees on [FTCs](#) at Risk of Redundancy (Roles and Responsibilities)

Prior to commencement of consultation period

- **LM** regularly communicates with employees re: status of **FTC**.
- **HRI** updates **PBID** '*Contract Expiry*' dashboard on/around 1st day of each month.
- **LM** reviews data and tries to identify alternative funding.

Prior to commencement of consultation period

- If funding is available, **LM** sends to **HRSH** completed '**Contract change**' form.
- If there is no funding, **LM** sends to **HRSH** completed '**Request to start consultation**' form.

At commencement of consultation period

- **HRSH** sends '**Start of consultation**' letter to employee (copied to **LM** and **JTUs**).
- **LM** signposts employee to the [Redeployment Policy and Procedure](#).
- **HRSH** responds to employee directly on redundancy payment queries.

From issue of start of consultation letter, the employee may in writing:

- Request support from a trade union representative or work colleague.
- Send questions to **HRSH** within **5 working days** (**HRSH** aims to respond within **10 working days**).
- Request a consultation meeting within **5 working days** (**HRSH** issues a **consultation meeting request letter** and the meeting will normally occur within **10 working days** of the request).

After a consultation meeting has taken place

- **HRSH** issues a '**following consultation meeting**' letter to confirm the discussion.

After 30 day consultation period ends

- Where the consultation process has been exhausted, in the event that no future funding has been secured and redeployment has not be possible, and a decision has been made that the contract of employment will expire, **HRSH** will issue an '**End of Consultation - Expiry of Fixed-term Contract**' letter.

Appeal

- Employees have the right of appeal, details of the appeal process will be included in the '**End of Consultation - Expiry of Fixed-term Contract**' letter.

Terms of Reference

LM = Line Manager
HRI = HR Information
PBID = Power BI Dashboard
HRSH = HR Staff Hub
JTUs = Joint Trade Unions

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Appendix 3 Consultation Flowchart – Employees on [OECs](#) linked to fixed funds at risk of redundancy (Roles and Responsibilities)

Prior to commencement of consultation period

- **LM** regularly communicates with employees re: status of their funding expiry.
- **HRI** updates PBID 'Fixed Funding End Dates Expiry' dashboard - on/around 1st day of each month.
- **LM** reviews data and tries to identify alternative funding.

Prior to commencement of consultation period

- If funding is available, **LM** sends to **HRSH** completed '**Contract change**' form.
- If there is no funding, **LM** sends **HRSH** completed '**Request to start consultation**' form.

At commencement of consultation period

- **HRSH** sends '**Start of consultation**' letter to employee (cc. to **LM** and **JTUs**)
- **LM** signposts employee to the [Redeployment Policy and Procedure](#).
- **HRSH** responds to employee directly on redundancy payment queries.

From issue of start of consultation letter, the employee may in writing:

- Request support from a trade union representative or work colleague.
- Send questions to **HRSH** within **5 working days** (**HRSH** aims to respond within **10 working days**).
- Request a consultation meeting within **5 working days** (**HRSH** issues a **consultation meeting request letter** and the meeting will normally occur within **10 working days** of the request).
- Request support to find roles within Imperial via the [Redeployment Policy and Procedure](#) or external roles.

After a consultation meeting has taken place

- **HRSH** issues a '**following consultation meeting**' letter to confirm the discussion

After 30 day consultation period ends

- Where the consultation process has been exhausted, in the event that no future funding has been secured and redeployment has not be possible, and a decision has been made that the contract of employment will expire, **HRSH** will issue an '**End of Consultation - Expiry of Fixed-term Contract**' letter.

Appeal

- Employees have the right of appeal, details of the appeal process will be included in the '**End of Consultation - Expiry of Fixed-term Contract**' letter.

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Appendix 4 - Other Relevant Resources

The chart below identifies other related resources that may be relevant to managers and fixed term workers.

Resources	Aimed at supporting
Fixed Term Working Policy Statement	Managers and fixed term staff
Change Management Policy and Procedure	
Standard Operating Procedure – Fixed term Contracts and Open Ended Contracts underpinned by Fixed Funding	Managers and fixed term staff
Frequently Asked Questions for Managers– Fixed Term Contracts and Open Ended Contracts underpinned by Fixed Funding	Managers
Frequently Asked Questions for Staff– Fixed Term Contracts and Open Ended Contracts underpinned by Fixed Funding	Fixed term staff
Redeployment Policy and Procedure	Managers and fixed term staff
Annexes to the Appendix to the Ordinances which are available on the Central Secretariat webpage	Academic staff