

Implementing the HR Codes of Practice
QMUL Contracts of Employment

Purpose	1
Contracts used in the College	1
Administering permanent contracts	3
Administering fixed-term contracts	4
Administering “temporary” contracts	5
Administering “as-and-when” contracts	6
Finding agency staff	9
Legal rights for staff on non-permanent contracts	10
Continuous service for staff on non-permanent contracts	11
Unintended consequences of non-permanent contracts	11
Misuse of non-permanent contracts	13
Forms of permanent and fixed-term contract used in the College	14
Forming the Contract	16
Appendix I: Employed or Self-employed	17



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Purpose

This guidance describes the kinds of employment contracts that the College uses and how these are most appropriately deployed. The aim is to:

- ❖ enable managers to offer lawful contracts appropriate to the kind of role the employee is undertaking
- ❖ promote an understanding of the consequences of issuing successive fixed-term contracts
- ❖ enable managers to amend [or end] the contracts of staff lawfully.

Contracts used in the College

Fundamentally, the College uses four kinds of contract:

- 1 permanent
- 2 fixed-term
- 3 temporary
- 4 as-and when (or casual).

“**Permanent**” contracts: these are contracts which have no end date other than the date the employee is due to retire. However, in practice, no contract is permanent and College contracts provide for the employment to be ended on both sides by the giving of notice.

Permanent contracts are normally appropriate where there is a long term requirement for the role. Staff on permanent contracts are normally paid in terms of a full-time equivalent (or on a fractional basis if they are part-year or part-time staff).

For Teaching Assistants a *permanent* contract may be appropriate if they are required to work each of the three terms a year, any breaks in paid work coincide with the break between terms and there is an evident requirement for them to be employed over several successive years. Even if there is uncertainty about the number of hours that are required in successive years, a permanent contract can make provision for this.

Fixed-term staff who have 4 years’ continuous service over successive contracts have the right to claim permanence, and such



a claim must be agreed unless there is an objective justification for the fixed-term in the contract. (see below).

Fixed-term contracts: these have an end-date other than the employee's retirement date. They are often used for research staff in jobs tied to external grant funding and will normally last for at least six months.

Council has approved the use of fixed-term contracts in Queen Mary of any duration, including those of under a year, only in the following situations:

- [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);
- [d] the contract includes a specific and finite training, developmental or educational component, such as **secondment, career development** opportunity or **apprenticeship**;
- [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.

Temporary contracts: such contracts are used for short to medium periods of employment that are nearly always less than a



year, and are often for less than six months. Such contracts always include an end date, and staff on them are paid an hourly rate derived from Queen Mary's pay scales. They are used, for example to employ:

- ❖ Teaching Assistants during term times (provided there is no long term requirement for them in a continuous role);
- ❖ conference staff required during the SCS department's peak summer months;
- ❖ to cover staff absent on maternity leave, etc.

Apart from Teaching Assistant roles, temporary jobs for more than 6 months must be advertised.

As-and-when contracts (also known as casual contracts) are used where there is no mutual obligation on the parties. Queen Mary is not required to provide work, and if it does offer work, the worker is not obliged to accept it. The University uses such contracts to cover short term or one off activities to achieve set objectives. Normally the hours of work will be unplanned or ad hoc. Typically a worker on an as and when contract will remain on the pay roll but will have periods of work with breaks in between where no work is done. Such staff are normally paid on timesheets.

Each kind of contract has different legal and administrative advantages (and disadvantages) associated with them. These considerations will normally dictate which contract type is the most appropriate.

Administering permanent contracts

College policy is to employ people on appropriate contracts. This will be permanent unless a fixed-term, temporary or an as-and-when contract can be objectively justified.

In practice, getting approval to create a permanent post may be more onerous than for more temporary arrangements. The approval process is described, in full, on the HR Website at: <http://qm-web.hr.qmul.ac.uk/procedures/recruitment/index.html>

You will need to:

- ❖ make a robust business case (especially for new posts)
- ❖ get approval at senior level:



- from the relevant Vice-Principal (for academic departments in the College); or
 - from the Chief Administrative Officer (in Central Services departments); or
 - (for all academic posts and any with NHS or Hefce funding in the SMD) from the Institute/ General Manager, the Institute Director, and the Chief Operating Officer; or
 - (for other posts in the SMD) from the Centre Lead/Grant Holder and the Institute/General Manager.
- ❖ get approval from the Finance Department
 - ❖ recruit in accord with the College's HR Code of Practice on Recruitment which means (among other things):
 - writing or reviewing the job profile and person specification;
 - getting a job-evaluated grade for the job (except for clinical posts);
 - open advertising (with the approval of the HR Department);
 - convening an appropriate selection panel;
 - appointing on merit and keeping records that show that you have done so;
 - completing and submitting "equalities" monitoring information to the HR Department.

Only the HR Department is authorised to issue permanent contracts on behalf of the College.

Administering fixed-term contracts

The approval and recruitment process for fixed-term contracts is identical to that for permanent staff. In addition you must notify HR of the objective justification for the fixed-term so that this can be recorded in the contract.

Only the HR Department is authorised to issue fixed-term contracts on behalf of the College.

The College generally uses fixed-term contracts for its grant-funded research staff.

One practical reason why the College uses fixed-term contracts is that for staff made redundant at the end of such a contract, the



College has a streamlined redundancy process. In practice, notice is given at the time the contract is instigated. The process to be followed at the end of the Contract is set out in the HR Code of Practice and is available from:

<http://qm-web.hr.qmul.ac.uk/procedures/exitandretirement/fixedterm/index.html>

Staff on fixed-term contracts are protected in law from being treated less favourably than comparable staff on permanent contracts. In addition, staff appointed on successive fixed-term contracts with 4 years or more continuous service are entitled to a permanent contract (unless the fixed-term in their contract can be objectively justified).

The advantages and disadvantages of fixed-term contracts and the potential pit-falls that arise from their use are discussed in the document “Key Concepts: Reviewing Fixed-term Contracts” which is available from:

<http://qm-web.hr.qmul.ac.uk/procedures/exitandretirement/fixedterm/index.html>

Administering “temporary” contracts

The College has three sorts of temporary contract for:

- 1 Hourly-paid Teaching Assistants;
- 2 Temporary staff on time-sheets;
- 3 Temporary or part-year staff who are not on time-sheets.

“Temporary contracts” is the name the College uses for short-term fixed-term contracts. The maximum period for a temporary contract varies:

- ❖ contracts for hourly paid Teaching Assistants must not extend beyond 1 academic year;
- ❖ all other temporary contracts must not normally extend beyond 6 months.

Since they are for a short duration, the College demands less onerous approval and administrative processes than for its permanent and fixed-term contracts.



Thus:

- ❖ the Head of Department/Institute Director/Institute Manager (as opposed to more senior staff) can approve the business case for the role;
- ❖ approval is still required from the Finance Department;
- ❖ there is no requirement that the post be openly advertised; or that there is a job profile; or that there is a person specification; or that the job is graded using the job evaluation scheme;
- ❖ the recruitment process must be lawful but is not monitored for equalities issues by the HR Department;
- ❖ the employing department issues the contract (though close liaison with the HR Department is required so that the employee can be put on the payroll);
- ❖ the department (as opposed to HR) carries out Border Agency checks on the applicant's eligibility to work in the UK, and supplies documentary evidence of this to the HR Department.

People on “temporary” contracts have all the legal protection that applies to staff employed on a fixed-term contract. It is unlawful to treat them less favourably than comparable permanent staff, and if they are given successive contracts, they can claim permanence after 4 years in post.

However, in practice, temporary staff dismissed at (or before) the end of their contract have no right to claim unfair dismissal unless they have continuous service of one year or more. The College does not therefore require the employing department to follow a formal dismissal procedure unless the employee qualifies for protection against unfair dismissal.

Administering “as-and-when” contracts

The College applies a number of different arrangements to its as-and-when staff depending on whether they are

- ❖ casual staff working for the *Students Union*; or
- ❖ *student demonstrators*; or
- ❖ other casual staff whose work is more occasional and who can be paid by a **one-off-payment**.



The HR Department does not monitor (on behalf of the College) the way the employing department recruits and advertises for casual roles, and with the exception of student demonstrators, it does not monitor the department's verification of the employee's right to work in the UK. However:

- ❖ the recruitment process must be lawful; and
- ❖ it is a criminal offence punishable by a substantial fine to employ someone with no right to work in the UK.

Student Union Staff

The Student Union gives its *as-and-when* workers a written casual contract. They then submit time-sheets to the Student Union Office which arranges for payment by the HR Department. The timesheet must be completed and submitted on a weekly basis.

Student Demonstrators

Student demonstrators are not given a written contract. To be paid, the worker must fill in a Student Demonstrators' Claim Form (and with the first one, a completed Personal Details Form). These documents are authorised by the employing Department and submitted to HR. The Claim Form must be completed and submitted on a weekly basis.

The Claim Form is available from:

<http://qm-web.hr.qmul.ac.uk/forms/pay/index.html>

Administering one-off payments

A one-off payment for *as-and-when* staff is not to be confused with one-off payments for staff with more permanent written contracts of employment. (Permanent College employees might get a one-off payment, for example, as a result of an award under the Contribution Reward Scheme, or through an Additional Hours Payment.)

Normally, people carrying out short-term work for QMUL are paid through the payroll and are on an appropriate contract. However, it may, sometimes be appropriate to make a payment to someone for one-off duties or to contract with them to supply services on a self-employed basis. In such cases, the one-off duty will normally be linked to a single payment which is processed after the service has been satisfactorily provided.



Departments can instruct either the HR Department or the Finance Department to make “one-off” payments. Payments through the **HR Department** are appropriate if the person is regarded as an **employee**. Payments through the **Finance Department** are only appropriate if the person is **self-employed**. There is one exception to these arrangements: for staff contracted to *give lectures*, all payments must be made through the HR Department, even if they can show that they are self-employed.

In most cases, determining someone’s employment status is straightforward. As a general rule, a worker is:

- ❖ **employed** (even if they are not on the payroll) if they work for you and don’t have the risks of running a business;
- ❖ **self-employed** if they’re in business on their own account and are responsible for the success or failure of their business.

If you are not sure about someone’s employment status, the HMRC web-site has an “Employment Status Indicator”:
<http://www.hmrc.gov.uk/calcs/esi-01.htm>

You should use this tool to assess someone’s employment status. Each assessment made using the HMRC tool produces a results page with a unique reference number. If the person is self-employed you will need to print this document and send it, with the invoice, to the Finance Department when seeking a “one off payment” for a self-employed person.

One-off payments administered by the HR Department

For one-off payments through the HR Department there is:

- ❖ no written contract (unless the department describes the arrangements with the worker/contractor in writing);
- ❖ no requirement to advertise;
- ❖ no monitoring of any recruitment and selection process;
- ❖ no monitoring by HR of the right to work in the UK;
- ❖ no requirement for a time-sheet.

The department should give the instruction to make a one-off-payment using the “One-off Payment Form” available from:
<http://qm-web.hr.qmul.ac.uk/forms/pay/index.html>

The completed form should be sent to the relevant payroll officer with a Personal Details Form completed by the employee.



Provided that the Head of Department approves the payment and a cost code is given, the HR Department will require no further approval. Payments made through the College's payroll are subject to deductions of tax and national insurance. Three payments in any one tax year will normally be permitted, after which you should consider whether it would be more appropriate to use another form of contract.

One-off payments administered by the Finance Department

For people who are genuinely self-employed, you can make the payment through Finance. Such payments are not subject to deductions of tax and national insurance but Queen Mary always reports them to Her Majesty's Revenue and Customs (HMRC).

When requesting the payment you will need to provide a copy of the contract of service on which you employed the consultant or business person. In addition you should provide the results page and the unique reference number provided by the HMRC "Employment Status Indicator" – otherwise the payment cannot be processed:

<http://www.hmrc.gov.uk/calcs/esi-01.htm>

You can instruct the Finance Department to make a one-off payment using the "Invoice Label for Off-Payroll Staff Pay" form, available from:

<http://qm-web.finance.qmul.ac.uk/forms.htm>

You can also use the Agresso web-based requisition system to arrange the payment but you will still need to complete the "Invoice Label for Off-Payroll Staff Pay" form."

In addition, you should treat one-off payments just as you would any other procurement exercise. Bear in mind that the tendering process changes as the amount to be paid reaches certain thresholds:

<http://qm-web.finance.qmul.ac.uk/purchasing/index.html>

Finding agency staff

The Finance Department administers the College's procedures for the procurement of goods and services. There are five preferred temporary staff agencies that the College uses:



- ❖ Adecco
- ❖ Hays
- ❖ Keystone Recruitment
- ❖ Prospectus
- ❖ Reed Employment

You should only look elsewhere for agency staff once these suppliers have all been tried. The provisions for using agency staff in the College are described more fully at:

<http://qm-web.finance.qmul.ac.uk/purchasing/buy/items/9904.html>

For professional jobs or jobs that involve working with vulnerable people, the agency has the duty to obtain copies of the relevant qualifications and two references. If it has been unable to do this, it must be brought to the hirer's attention.

Legal rights for staff on non-permanent contracts

Legal rights for staff accrue with the passage of time, irrespective of the kind of contract that the employee has. Appendix I of the Key Concepts: Fixed-term Contracts sets out a comprehensive list the rights that employees accrue over time:

<http://qm-web.hr.qmul.ac.uk/procedures/exitandretirement/fixedterm/index.html>

So even if they are not working on a permanent contract, all staff employed by the College will accrue:

- ❖ **after 1 year**, the legal right to:
 - protection from unfair dismissal;
 - a pre-defined fair procedure to implement any proposal to dismiss them;
 - an offer of suitable alternative employment if their job is redundant - provided such a job is available;
- ❖ **after 2 years**, the legal right to:
 - a statutory redundancy payment if they are redundant and no suitable job can be found;
- ❖ **after 4 years**, the legal right to:
 - a permanent contract (provided that the employee has been employed on successive fixed-term contracts and that there is no objective justification for the fixed-term in the contract).



In addition, staff employed on fixed-term or part-time contracts have the right not to be less favourably treated than comparable permanent or full-time staff (unless the difference in treatment can be objectively justified).

Continuous service for staff on non-permanent contracts

The law on continuous service has the effect that a break in service may be disregarded if it amounts to a “temporary cessation of work”. In practice, the break between semesters counts as a “temporary cessation of work” and therefore does not break continuous service.

Unintended consequences of non-permanent contracts

It follows from the two previous sections that staff can accrue employment rights that their managers have not envisaged (nor budgeted for). For example, some managers may be surprised to find that they are required, by law, to:

- ❖ allow someone on a very short-term contract to take paid or unpaid maternity leave;
- ❖ follow a formal dismissal process at the end of the contract. (You should note that the end of a fixed-term contract is, in law, a dismissal and that to be considered fair, the employer must follow prescribed procedures. The contract cannot just be allowed to expire.);
- ❖ offer an employee whose contract has been extended often enough:
 - the right to redeployment; or
 - the right to a redundancy payment;
- ❖ offer a permanent job to someone employed on successive fixed-term contracts (including for example, some who have been employed from year-to-year as hourly-paid teaching assistants, or indeed people paid on a succession of one-off payments).

Bear in mind too that under the rules of USS, Saul and the NHS pension funds, some employees made redundant after the age of 50 have the right to take early retirement. This is true even if the employee is made redundant at the end of a fixed-term contract.



The cost of the early retirement can be very high and must be borne by the College (not the employee or the pension fund). In some cases the cost of early retirement has exceeded all the pay the employee received throughout their fixed-term contract.

Good Practice when Issuing Non-permanent Contracts

Therefore, when issuing or renewing a fixed-term or temporary contract, always:

- ❖ be robust in identifying and specifying the objective justification for offering a fixed-term contract, taking the reason(s) set out on page 3;
- ❖ tell the employee what the objective justification is;
- ❖ notify the HR department so that they can record this in the contract documents;
- ❖ review carefully, before you issue or renew a contract, or make any offer of further work, the legal and financial obligations which the College will face at the end of the contract, or when the employee has 4 years continuous service;
- ❖ plan to follow appropriate dismissal or review procedures at the end of the contract, taking into account all the employee's continuous service;
- ❖ at the end of any contract, consider whether the fixed-term is still warranted in any future contract. If so, explain this to the employee. Make sure to record fully the objective justification and the reasons for your thinking in the appropriate sections on the "Extend or End" Form;
- ❖ be accurate in recording and applying your funding codes. It is not helpful if you seek to justify a fixed-term contract because the funding is limited when other documents indicate that the funding is from a "permanent" HEFCE source;
- ❖ think through the pensions' implications of employing staff on fixed-term contracts:
 - bear in mind that some staff made redundant after the age of 50 may have the right to take early retirement; and
 - take advice from HR on ways to minimise the risks.
- ❖ take care not to create an unnecessary employment relationship with people to whom you make one-off payments when these can legitimately be treated as self-employed or as contractors:



- specify the outputs you require rather than the way the work is to be done
- ensure that the outputs are supplied to the agreed standard rather than directly supervise the work.

Misuse of non-permanent contracts

Clearly, some forms of contract are easier to administer and get approval for than others. However, you should never use a non-permanent contract to subvert or get round the College's employment policies or the law. You should not:

- ❖ issue a fixed-term contract without good reason;
- ❖ seek to issue a succession of temporary contracts when you expect the employment to last longer than the maximum period allowed under that contract;
- ❖ use agency staff over an extended period;
- ❖ make a succession of one-off payments to an employee when the duties aren't really "one-off";
- ❖ make a tax-free one-off payment (through the Finance Department) to someone unless they are genuinely self-employed or a contractor.

Like all employers, the College is bound to adhere to employment and equality law. But because it is a public body, the College has a further legal duty to *promote equality*. It is not therefore appropriate for College managers to use non-permanent contracts in a way which might circumvent its equality in recruitment policies.

Individuals responsible for employing people who do not have the right to work in the UK are committing a criminal offence and are personally liable to substantial fines.

In any case, there are significant drawbacks to using temporary or fixed-term contracts. These are described in detail on page 1 of the document *Key Concepts: Reviewing Fixed-term Contracts*; http://qm-web.hr.qmul.ac.uk/docs/policies_procedures/exitandretirement/6262.pdf



Different forms of permanent and fixed-term contract used in the College

The HR Department uses the same contractual pro-forma for both fixed-term and permanent employees. The issue of whether the contract is for a fixed-term or is permanent is simply dealt with as one of the terms contained in the standard contract.

Standard Contracts

Most of the College's contracts are made up of three parts:

- 1 an appointment letter; and
- 2 a statement of the key elements of the contract specific to the person in the post (eg start date, end date, grade, spine point, etc); and
- 3 a statement of the general terms and conditions that apply to that post and others similar to it.

The College has six general sets of terms and conditions that it uses in its contracts:. They are for:

- 1 Academic Staff (including clinical academics other than Consultants)
- 2 Research Staff
- 3 Professional Staff
- 4 Support staff
- 5 Nursery staff
- 6 Security staff.

The current general terms and conditions are available from:

<http://qm-web.hr.qmul.ac.uk/procedures/contracts/termsandconditions/index.html>

Consultants' Contracts

The College also issues contracts specifically developed for academic staff who have honorary contracts at consultant level with a partner NHS Trust. These are known as:

- 1 the Consultants' Contract;
- 2 the Senior Academic GPs' (SAGP) Contract



The matters described in such contracts cover a range of specialist issues relating to pay, programmed activities, joint working with the NHS, clinical excellence, pay progression, seniority, etc., which do not apply to other clinical academic staff. In addition, rather than being set out in 3 documents, the contractual arrangements are described in two: an appointment letter and the contract itself.

Honorary Contracts and the Joint Protocol

For clinical academics (including consultants and SAGPs) who are required to engage in clinical work and are (for that purpose):

- ❖ registered with licence to practice with the General Medical Council: or
- ❖ registered with the General Dental Council ...

the employee has a contract with both the College and the NHS Trust(s) for whom the clinical work is carried out.

Normally, the College is the substantive employer and the NHS offers an “honorary” contract – it is the College that directly pays the employee, administers leave, offers pension arrangements etc.. However the College also offers honorary academic contracts to clinical staff who have substantive contracts with the NHS. This is appropriate when the balance of clinical to teaching duties warrants such an approach.

The College has agreed a “Joint Protocol” with Barts and the London NHS Trust which describes the way the two employers will cooperate in handling any matters of discipline, dismissal or grievance that may arise.

“Teaching Only” and “Teaching and Scholarship” Contracts

In the past, the College has, occasionally, issued contracts to academic staff which emphasise teaching responsibilities over research duties. However, there is no need to specify in detail the duties expected of the employee *in the contract itself*. These matters can be more appropriately covered in the job description and the performance standards for a given role. The College does not, therefore intend to issue “Teaching Only” or “Teaching and Scholarship” contracts in the future.



Forming the Contract

Withdrawing an offer

A contract is not binding until it is agreed. Agreement happens when the offer is both **made** and **accepted**. Neither the offer nor the acceptance need be in writing to be binding. However, the person making the offer must have authority from the employer to make a binding contract on their behalf. Since there is no contract before the offer is accepted, an offer can normally be withdrawn at any time before the applicant gives their acceptance.

Conditional offers

Most offers made by the College are conditional: the offer is made subject to, for example, medical clearance, the receipt of satisfactory references, etc. If the applicant fails to meet the conditions the contract will not take effect.

Moreover, failure to meet a condition can be relied upon at a later time to end the contract. For example, an academic new to the HE sector might be required, as a condition set out *in their contract*, to successfully complete the College's Postgraduate Certificate in Academic Practice (PGCAP) course in their probationary period. A failure to attend or complete the course in the specified time-scale would give the College the right to end the contract.



Appendix I

Employment Status – Employed or Self-employed

Determining whether a worker is an employee or is self-employed is important because it affects the way their tax and national insurance contributions are calculated. The College can be fined if it misapplies HMRC rules on these matters.

The HMRC web-site says that:

“Employment status isn’t a matter of choice for either you or the worker. It’s a matter of fact, based on key terms and conditions of your working relationship with them.

How to determine a worker's employment status

In most cases, employment status is straightforward. As a general rule, a worker is:

- ❖ **employed** if they work for you and don't have the risks of running a business
- ❖ **self-employed** if they're in business on their own account and are responsible for the success or failure of their business.

The sections below contain a series of further pointers that will help you determine a worker's employment status.

Indications that a worker is your employee

An individual is likely to be employed by you if most of the following statements apply to them.

- ❖ you can tell them what work to do, as well as how, where and when to do it;
- ❖ they have to do their work themselves;
- ❖ you can move the worker from task to task;
- ❖ they're contracted to work a set number of hours;
- ❖ they get a regular wage or salary, even if there is no work available;
- ❖ they have benefits such as paid leave or a pension as part of their contract;
- ❖ they manage anyone else who works for you.



Indications that a worker is self-employed

If **any** of these statements applies, your worker is likely to be self-employed:

- ❖ they can hire someone else to do the work you've given them, or take on helpers at their own expense;
- ❖ they can decide where to provide their services, as well as when and how to do the work you've given them;
- ❖ you pay them an agreed fixed price - it doesn't depend on how long the job takes to finish;
- ❖ they can make a loss or a profit.

Even if none of the statements in the previous list applies, your worker is still likely to be self-employed if **most** of the following apply to them:

- ❖ they use their own money to buy business assets, pay for running costs, etc.;
- ❖ they're responsible for putting right any unsatisfactory work, at their own expense and in their own time;
- ❖ they provide the main tools and equipment needed to do their work."

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