

EXPERT GROUP ON FIXED-TERM AND PART-TIME LECTURERS

SUBMISSION FROM THE IRISH FEDERATION OF UNIVERSITY TEACHERS

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1 INTRODUCTION

1.1 IFUT welcomes the establishment of this Expert Group. We note that the Group has been mandated to “report on the level of Fixed-term and Part-time Employment in Lecturing”. We believe that a full and clear exposé of the extent of the problem by a Group whose work is likely to be recognised and accepted by the representatives of Management in Higher Education and by the trade unions as the representatives of employees will be a very valuable and essential first step in combatting the ill-effects which inevitably arise from the prevalence of such atypical employment.

1.2 We particularly welcome the fact that the Group has been mandated also to have regard to “the importance for Lecturers of stability and security”. It is this issue of the lack of employment stability and security which, more than any other consideration, is the reason why such forms of employment must, as a matter of official policy, be kept to an absolute minimum.

1.3 IFUT deeply regrets the refusal by the Department of Education and Skills to allow the Expert Group to examine the situation regarding Fixed-term and Part-time Employment of Researchers in Higher Education. This is particularly hard to understand given

- (a) The extraordinarily high number of such employment contracts among this group;
- (b) The huge number of disputes which have been fought by unions on behalf of such employees;
- (c) The complexity of the task of resolving this career-wide problem in Higher Education (at least as far as the employers have been claiming); and
- (d) The consequential damage which is being done to Ireland’s reputation as a desirable destination for Researchers.

2 DEFINITIONS

2.1 A Fixed-Term Employee is defined in the Protection of Employees (Fixed-Term Work) Act 2003 as follows:

“Fixed-Term Employee” means a person having a contract of employment entered into directly with an employer where the end of the contract of

employment concerned is determined by an objective condition such as arriving at a specific date, completing a specific task or the occurrence of a specific event, but does not include

- (a) Employees in initial vocational training relationships or apprenticeship schemes; or
- (b) Employees with a contract of employment which has been concluded within the framework of a specific public or publicly supported training, integration or vocational retraining programme.

2.2 So, it is absolutely clear that so-called “Fixed-Purpose Contracts” come under this definition and must therefore be subject to examination by the Expert Group.

2.3 The reference to “the occurrence of a specific event” as a trigger to end a contract of employment makes it clear that contingencies such as the return to work of an absent colleague, the cessation of funding etc. are factors which create a Fixed-Term Contract the nature and duration of which is regulated in Section 6 and Section 9 of the Act.

2.4 The definition of a Part-Time Worker is set out as follows in the Protection of Employees (Part-Time Work) Act 2001:

“Part-Time Employee” means an employee whose normal hours of work are less than the normal hours of work of an employee who is a comparable employee in relation to him or her.

2.5 As most University Lecturers do not have a defined number of working hours it does seem reasonable to regard the definition of “part-timer” in such employments as also including those whose salary (be it weekly, monthly etc.) is less than the salary of equivalent employees who are regarded as full-time employees.

2.6 Casual employment is also covered by the 2001 Act. Under this Act a part-time employee

“Shall be regarded as working on a casual basis if

- (a) At that time

- (i) He or she has been in continuous service of the employer for a period of less than 13 weeks, and
 - (ii) That period of service and any previous period of service by him or her with the employer are not of such a nature as could reasonably be regarded as regular or seasonal employment, or
- (b) By virtue of his or her fulfilling, at that time, conditions specified in an approved collective agreement that has effect in relation to him or her, he or she is regarded for the purposes of that agreement as working on such a basis.

2.7 Thus, a casual employee has the combined disadvantage of being simultaneously both a part-time and a fixed-term (short duration) employee.

3 WHY ARE PART-TIME AND FIXED-TERM EMPLOYMENT CONTRACTS UNDERSIRABLE AND IN NEED OF BEING KEPT TO A MINIMUM?

3.1 Having any number of part-time or fixed-term employees above the absolute minimum required for sound operational reasons is **bad for the University or the Higher Education Institution** for several reasons.

- A university functions best (and is the best reputationally) when it operates as a community of scholars. Having a significant number of employees employed on inferior contracts detracts from such a communitarian ethos.
- The essence of good academic standards is that they are concerned with issues of complexity and detail which require time and perseverance to reveal and describe (the research phase) and a systematic and graduated programme to impart to others (the teaching phase). Such a characterisation is incompatible, partially or totally, with engagement which is limited either time-wise (part-time) or duration-wise (fixed-term).
- Any university which has a relatively high number of such employees in its total Faculty numbers is likely, for the reasons set out above, to suffer significant reputational damage. It is noteworthy that when, recently, the story broke about the very high numbers of staff employed on precarious contracts in British universities, there was an unseemly scramble by the worst offending universities to promise an end to such widespread practices. They did this

because they clearly calculated that they were suffering massive reputational damage internationally.

3.2 Part-time and/or fixed-term employment is bad **for the employee** because

- Of the obvious effects of lower pay (part-timers).
- Of the adverse effects on creditworthiness. Most financial institutions when considering applications for mortgages or other forms of loans will treat a non-permanent, non-fulltime employee as little more than a minor who is un-creditworthy without the support of additional guarantors.

3.3 Such employment is bad for **both the employer and the employee** because

- Every international authority from UNESCO to Education International has recognised that without security of employment real Academic Freedom cannot exist.
- A significant degree of limited and/or insecure employment reduces the attractiveness of a career in higher education. The effect of this is that “the best and the brightest” will apply for careers elsewhere and this, in turn, will inevitably lead to a vicious circle or downward spiral of poor attractiveness leading to lesser quality leading to even less attractiveness and so on.
- Fixed-term Employees (particularly women) become disenchanted with academia during the course of their work as they realise the challenges of balancing family life in an insecure work environment. In many cases the family demands experienced (or anticipated) by young women academics and Researchers are a key reason for their failure to continue in this work.

4 NATIONAL AND INTERNATIONAL POLICIES AND ATTITUDES

4.1 Over the past 5/6 years IFUT has taken on and fought so many cases where employees were (unfairly or even illegally) being subjected to limited and/or insecure employment contracts that it is not surprising that, year after year at successive Annual Delegate Conferences, we have passed policies regarding the negative effects of such contracts. It is also the case that IFUT spends more time dealing with such cases as on all other categories of employment-related grievances combined. A list of all such resolutions is provided as Appendix A of this document.

4.2 On an international basis the issue is a constant source of debate and discussion at conferences organised by Educational International, by its European

Region (ETUCE) and by its Higher Education and Research Groups (HERG) (International and European). The most comprehensive policy statement on the topic is the resolution which was endorsed by EI's World Conference in Berlin in July 2007 and which is attached to this paper as Appendix B.

5 RECOMMENDATIONS

5.1 It must become official policy that part-time and fixed-term employment contracts are kept to a minimum in higher education. Whenever a post is being created or filled it should be the assumption (the default position) that the post will be full-time and of indefinite duration. Only in exceptional circumstances, where clear reasons in support have been detailed and explained, should the post be designated otherwise.

5.2 There is an urgent need to eradicate the growing practice of employing people on "indefinite" contracts which nevertheless have a defined termination date or period specified. Such practices are more than just an affront to the English language and to logic and rationality, they are creating, in effect, a three-tier employment landscape. These tiers are: permanent staff, temporary staff and "permanent staff" who do not share the same security of employment as other "more(!) permanent" staff. This categorisation is contrary to law. The 2003 Act defines a permanent employee as "an employee who is not a fixed-term employee". In simple terms if you are not or cease to be one then you become the other, ipso facto.

5.3 It is settled law arising from several High Court Judgements that when an employee becomes entitled to a Contract of Indefinite Duration by virtue of Section 9(2) and (3) of the 2003 Act the effect of this is that the pre-existing clause in his/her Fixed-Term Contract is voided i.e. it ceases to exist. Furthermore, the High Court has ruled that such an employee must then be treated in the same manner as all of his/her other permanent colleagues. It follows, therefore, that to continue to apply different rules regarding termination of employment cannot be lawful. This illegality taints the current policy promulgated by the Department of Education and Skills that such employees are not protected by the same guarantees against compulsory redundancy as all their "other permanent colleagues" under the Public Service Agreement.

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