

0045/2006

To each Director of Institute of Technology
President of Dublin Institute of Technology

Protection of Employees (Fixed Term Work) Act 2003

Adjudication process

In September 2005, the Education Partners reached a transitional agreement on certain arrangements for the implementation of the Protection of Employees (Fixed Term Work) Act 2003 in the education sector. Under the Transitional Agreement certain individuals were to be awarded contracts of indefinite duration and a system for adjudication of appeals from aggrieved individuals was to be established.

The attached document sets out how the appeals and adjudication process will operate and the procedures to be followed. Please ensure that a copy of the attached document is given to each fixed term teacher comprehended by the terms of the transitional agreement and in respect of whom a decision on a contract of indefinite duration has been made.

John Keenan
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Principal Officer

26th April 2006

Adjudication Process under the Transitional Agreement on the Protection of Employees (Fixed Term Work) Act 2003

<i>Introduction.....</i>	<i>2</i>
<i>Does this appeal and adjudication system apply to me?</i>	<i>2</i>
<i>Am I entitled to a contract of indefinite duration?</i>	<i>3</i>
<i>What is a contract of indefinite duration?</i>	<i>3</i>
<i>Who may make a claim?</i>	<i>3</i>
<i>How do I make an appeal?</i>	<i>4</i>
<i>What else should I include with the Notice of Appeal?</i>	<i>4</i>
<i>What is the time limit for making an appeal?</i>	<i>5</i>
<i>What happens after I submit the Notice of Appeal?</i>	<i>5</i>
<i>Will I have an opportunity to meet with the Adjudicator?</i>	<i>5</i>
<i>What happens at the oral hearing?.....</i>	<i>5</i>
<i>How will the Adjudicator reach a decision?.....</i>	<i>6</i>
<i>What can the Adjudicator decide?.....</i>	<i>6</i>
<i>When will a decision be made by the Adjudicator?</i>	<i>6</i>
<i>Urgent Applications</i>	<i>7</i>
<i>What if I am unhappy with the outcome of the Adjudication Process?</i>	<i>7</i>
<i>Review of Process</i>	<i>7</i>
<i>FORM FT1.....</i>	<i>8</i>
<i>FORM FT2.....</i>	<i>10</i>
<i>FORM FT3.....</i>	<i>11</i>

Introduction

In September 2005, the Education Partners reached a transitional agreement on certain arrangements for the implementation of the Protection of Employees (Fixed Term Work) Act 2003 (“the Act”) in the education sector. Under the Transitional Agreement certain individuals were to be awarded contracts of indefinite duration and a system for adjudication of appeals from aggrieved individuals was to be established. This document explains how the appeals and adjudication process will operate and the procedures to be followed. The adjudication system is voluntary and intended to facilitate a quick, efficient resolution of disputes arising from the award or refusal to award a contract of indefinite duration. Any party is of course free to pursue statutory relief if so desired.

Does this appeal and adjudication system apply to me?

If you are employed on a fixed term contract and believe you fall within the terms of the Transitional Agreement and are unhappy with the action taken by your employer to implement the terms of the Transitional Agreement, then you may appeal against the action of your employer.

Am I entitled to a contract of indefinite duration?

Under the Transitional Agreement a school or institution must award a contract of indefinite duration ("cid") to certain individuals, previously engaged on fixed term contracts, who have been teaching continuously for more than four years (as at 1st September 2005) and are deemed qualified. An employer can refuse to award a cid if the post will not be viable within a reasonable period and this ground has been specified in writing in a previous contract or if the individual on a fixed term contract is covering for the holder of a post who is absent on an approved scheme of leave of absence. If an employee is qualified and has been teaching continuously but has not received a written contract setting out objective grounds for the fixed term contract since September 2001, then the employer is obliged under the Transitional Agreement to award a cid.

What is a contract of indefinite duration?

A person employed on a contract of indefinite duration means that the person "has an expectation that, subject to the normal date of retirement in the employment, she or he will be retained in the employment and will not be dismissed without there being any good reason such as misconduct or unfitness for their position, or other compelling or unavoidable circumstances. Any dismissal shall be achieved by the application of the agreed termination arrangements for the particular sector or the application of the relevant statute, as the case may be."

Who may make a claim?

A person who

(i) is a fixed term employee and is comprehended within the terms of the Transitional Agreement;

AND

(ii) has 4 or more years successive teaching service on the 1st September 2005;

AND

(iii) has been refused a contract of indefinite duration ("cid") by his/ her employer

OR

has been awarded a cid but is unhappy with the terms of the cid.

may take an appeal.

A trade union can make the claim on behalf of such a person with the consent of the member.

How do I make an appeal?

Complete the Notice of Appeal at the end of this document and send it to

**Ms Breda Quirke
Adjudication of Fixed Term Work Issues
Block 1, Floor 3
Department of Education and Science
Marlborough Street
Dublin 1.**

What else should I include with the Notice of Appeal?

Include full details relating to your employment and the decision to refuse or award you a contract of indefinite duration and any other relevant information in respect of your appeal.

The appeal should give a brief background of the circumstances of your case including details of when employment commenced and a description of the duties or position to which you were assigned. The appeal should also set out the reasons why you are taking the appeal and the grounds upon which you believe you are entitled to be awarded a cid. If you are appealing against the terms of the cid awarded, the appeal should set out clearly why the terms are unsatisfactory and what you believe you are entitled to.

What is the time limit for making an appeal?

If you have been refused a cid, you must make an appeal within 4 working weeks of the date you are notified of the decision by the Board of Management/ Institution to refuse a cid or 6 working weeks after the date of issue of this circular whichever is the later.

If you have been awarded a cid but are not satisfied with the terms of the contract, you must make an appeal within 4 working weeks of the date you are notified of the award and terms of the cid or 6 working weeks after the date of issue of this circular whichever is the later.

The appeal must be made in writing to the Department of Education and Science and it is your responsibility to ensure the appeal is received by the Department of Education and Science within the prescribed time limits. You should also simultaneously forward a copy of the appeal to your employer. Appeals received outside of the prescribed time limits will not be entertained.

What happens after I submit the Notice of Appeal?

The Department of Education and Science will notify your employer of your appeal and a copy of the Notice of Appeal and any material you submit will be sent to your employer. Your employer will be requested to complete a Form of Reply (see samples at the end of this document) and respond to the matters raised in your appeal within 2 weeks of notification of the Appeal. Your employer must also send you a copy of its response to your appeal.

All submissions will then be sent to the Adjudicator appointed to review the appeal. In order to process claims as speedily as possible, individuals are requested to provide as much detail in relation to their appeal as they can. It is intended that the majority of claims will be processed on the basis of the written material submitted to the Department of Education and Science.

Will I have an opportunity to meet with the Adjudicator?

You may apply to the Adjudicator requesting an oral hearing and you must set out clear reasons in your Notice of Appeal why an oral hearing is required. The Adjudicator shall in his/ her absolute discretion decide whether an oral hearing will be granted. Applicants should be aware that due to scheduling difficulties, requests for oral hearings may result in a determination on their appeal being prolonged.

What happens at the oral hearing?

Where the Adjudicator grants a request for an oral hearing, an oral hearing shall be arranged as soon as practicable thereafter. Both parties will be informed of the date and venue of the hearing. Late requests for adjournments will not be entertained. The oral hearing shall proceed informally, but in a structured manner. If you wish, you may be permitted to be represented by your union. The name and contact details of your representative should be notified to the Department of Education and Science if you wish them to represent you.

At the oral hearing you will be asked to outline the grounds for your appeal and elaborate on your written submissions. You will also have an opportunity to raise additional matters directly relevant to your appeal and to clarify any areas of

confusion or misunderstanding. You should bring to the hearing any relevant documents or other evidence which you wish to submit in support of your case. (Please ensure you have at least 3 copies of any documents or materials on which you wish to rely.) In the interests of the smooth and efficient functioning of the appeal process, you are requested to concentrate on the salient points of your appeal in the oral submission. When you have completed your submission, your employer will then be given an opportunity to respond to your appeal and the matters raised. The Adjudicator may question the parties and seek clarification on any issues arising. Where complex matters arise, the Adjudicator may in his/ her discretion decide to extend, or reschedule, the hearing and/ or seek additional information from the parties, where deemed necessary to the determination of issues in the case.

How will the Adjudicator reach a decision?

The Adjudicator will review the written submissions made by both parties (and oral proceedings, where relevant) and may, if he/she requires, seek clarification on any issues arising from any individual or body he/she sees fit. The Adjudicator shall have regard to the principles and the terms of the Protection of Employees (Fixed Term Work) Act 2003; the agreed interpretation thereof set out in the Transitional Agreement on the implementation of the Act in the education sector and any ongoing discussions taking place in the education sector on specified issues arising from the implementation of the Act. It is intended that an Adjudicator appointed shall be legally qualified and shall rely on his or her own legal judgement and expertise in order to provide an efficient and effective adjudication process.

What can the Adjudicator decide?

The Adjudicator may decide to uphold the decision of the Board of Management to refuse a cid. Alternatively, the Adjudicator may decide that the appellant (i.e. the person taking the appeal) is entitled to a cid and shall accordingly set aside the decision of the Board of Management and award the appellant a cid.

Where an appeal is taken against the terms of the cid awarded and the Adjudicator upholds the appeal, then the Adjudicator shall remit the matter to the Board of Management with a recommendation on the terms to be incorporated in the cid and the Board of Management (if they accept the determination) shall issue a cid to the appellant which reflects the revised terms. Alternatively, the Adjudicator may decide that the appeal against the terms has not been substantiated or that the terms of the cid awarded do not warrant interference and shall accordingly dismiss the appeal.

Each party to the appeal shall bear their own costs. The Adjudicator shall have no power to award compensation, costs or expenses to any of the parties.

When will a decision be made by the Adjudicator?

Determinations shall be issued to the Department of Education and Science by the adjudicator within 14 days of receipt (by the Adjudicator) of complete submissions from all parties, however the Adjudicator may extend the time period for issuing a decision, in his/ her absolute discretion, where same is deemed necessary for an effective resolution of the issues arising. The Department of Education and Science shall communicate the determination of the Adjudicator to the parties as soon as practicable thereafter.

Urgent Applications

Where circumstances require a decision on an individual's appeal as a matter of urgency, then you (the appellant) may request that their appeal receive priority. Reasons why an appeal is considered urgent should be set out. (For example, if the determination of an appeal may result in a person no longer continuing to work in a particular school the following academic year.)

What if I am unhappy with the outcome of the Adjudication Process?

The Adjudication process is voluntary and either party has the right to reject the determination of the Adjudicator. If either party wishes to reject the determination, he/ she shall write to the Department of Education and Science stating that they wish to reject the determination. The determination will be set aside and neither party can rely on the determination in any subsequent proceedings brought by the appellant.

The appellant may at any stage pursue their statutory rights under the Protection of Employees (Fixed Term Work) Act, 2003.

Review of Process

The operation and continuation of the Adjudication Process shall be reviewed by the Department of Education and Science every 6 months.

FORM FT1

Notice of Appeal under the Transitional Agreement for the Implementation of Protection of Employees (Fixed Term Work) Act 2003 in the Education Sector

1. Name:
2. Address:
3. Telephone Number:
4. Email:
5. Name of Representative (if any)
6. Address
7. Telephone Number:
8. Email:
9. Name and address of School/ Institution:
10. School Roll No.:
11. Date of commencement of employment:
12. Capacity in which you were employed:
13. Please give dates of any contracts/ renewals of contracts.
If you were provided with any written contracts, please provide copies of the contracts with your appeal.
14. Number of years of continuous teaching service as at **1st September 2005**:
15. Are you qualified for the position? Please provide details of your qualifications.
16. Were you refused a contract of indefinite duration?
17. Date of refusal of contract of indefinite duration:
18. Reason given for refusal of contract of indefinite duration:
(Please include any supporting documentation)
19. Are you dissatisfied with the terms of the contract of indefinite duration awarded to you? If so, please set out clearly why:

20. Please set out fully the reasons for your appeal. Include what you are seeking and why you believe you are entitled to this remedy. Continue on a separate page if necessary.
21. Appeals will be determined on the basis of written submissions received from you and from your employer. If you wish to apply for an oral hearing, please set out fully below the reasons why you wish to have an oral hearing.
22. Are there any exceptional circumstances in your case? Do you require an urgent adjudication/ hearing? Please set out in full any exceptional circumstances and why you believe your case merits priority treatment.
23. Signed: (Claimant or representative) _____

Date: _____

FORM FT2

Appeal under the Transitional Agreement for the Implementation of Protection of Employees (Fixed Term Work) Act 2003 in the Education Sector

To: Board of Management/ VEC/ Institution
Address:

Date:

_____ has lodged an appeal against the decision to refuse a contract of indefinite duration/ the terms of the contract of indefinite duration awarded to him/ her. A copy of the Notice of Appeal is attached.

Please complete the attached form of reply and return it, together with your response to the Notice of Appeal and any further submissions in respect of this matter to

**Ms Breda Quirke,
Adjudication of Fixed Term Work Issues,
Block 1, Floor 3,
Department of Education and Science,
Marlborough Street,
Dublin 1**

within 10 days of the date of this letter. Include any supporting documentation in support of your submission.

The appellant has/ has not sought an oral hearing. This will be scheduled

[Please be advised that the appellant has sought an urgent determination of the matter. Your cooperation is requested to ensure that this matter can be dealt with expeditiously.]

Yours sincerely,

Department of Education and Science

FORM FT3

Form of Reply to an Appeal under the Transitional Agreement for the Implementation of Protection of Employees (Fixed Term Work) Act 2003 in the Education Sector

1. Name of Employee:

2. When was the individual first employed?

3. What capacity was the individual employed?

4. Was the contract renewed?

5. Please provide dates of engagement and details of any changes in the position in which the individual was engaged (if applicable)

6. Do you accept this individual has more than four years successive teaching service?

7. Do you regard this individual as qualified for the position?

8. When was a contract of indefinite duration refused?

9. Why was a contract of indefinite duration refused?

10. Was the individual provided with any written statements in respect of the position? Please provide full details and dates.

11. Please detail any objective grounds justifying the refusal of a contract of indefinite duration.

12. If a contract of indefinite duration was awarded, please explain the basis of the terms upon which the contract was awarded.