

# Fixed Term Contracts & Temporary Workers

W40

Additionally refer to:

- Equality and Diversity Policy
- Management of Corporate and Local Induction
- Disciplinary Policy for Doctors and Dentists
- Pay Protection Policy
- Recruitment & Selection
- Management of Organisational Change
- Occupational Health Service
- Staff Counselling Service
- Disciplinary Policy
- Employee Performance Management Policy
- Secondment Procedure
- Leave Cluster Policy-Chapter 2 Annual Leave Procedure
- Employee Investigations Policy
- Managing Conflicts of Interest in the NHS

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3.1	March 2019	Kate Youlden	Final	Progression through JNCC, PAG, WFC to Trust Board
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## Policy on a Page

- The Trust is committed to ensuring fixed term contracts are only used when it is fair and justifiable to do so.
- All fixed term contracts should clearly state the duration of the contract and the reason it is a fixed term contract.
- Internal appointments from a permanent post to a fixed term post should be on a secondment / acting up basis and line managers are encouraged to support employees in this respect, Managers should only refuse to release an employee on secondment in exceptional circumstances and where there is a strong business reason for doing so.
- Extensions to a fixed term contract should only be made if there is a strong business case for not making the appointment permanent.
- A fixed term employee has the right not to be treated by the Trust less favourably than a comparable permanent employee.
- The expiry of a fixed term contract is regarded as a dismissal and appropriate steps should be taken to ensure the dismissal is fair.
- The decision to end a fixed term contract should only be taken if the Trust is unable to renew or extend the contract.
- Managers should not rely on the expiry of a fixed term contract to manage performance, conduct or other issues and need to ensure they follow the appropriate Trust policy.
- The Manager should confirm to the individual in writing that their fixed term contract is coming to an end and invite them to a meeting. This meeting should take place in sufficient time to allow the Manager to discuss this and to give the employee the relevant notice under the fixed term contract.
- At the meeting, the Manager should discuss the reasons for the non-renewal of the fixed term contract and any alternatives.
- In the majority of cases the legal basis for the contract not being renewed/terminated will be for 'some other substantial reason' or 'redundancy'.
- The manager should give the employee a chance to respond to this and consider any steps that may be taken to support the individual to gain alternative employment.
- Following the meeting the Manager should write to the employee notifying them of the decision/discussion, providing notice and the reasons for not renewing the contract and giving them the right of appeal.
- Employees leaving the Trust at the end of a fixed contract may be entitled to redundancy pay where their fixed term contract has been terminated by reason of redundancy; and their continuous service with the NHS is 2 years or more, subject to national terms and conditions.

## 1 Document Statement

- 1.1 This policy provides advice and guidance for staff on the use of fixed term contracts to ensure a fair, consistent and effective approach. The employment policy of the Trust is to employ people on contracts of employment which appropriately reflect the nature of their work. In the vast majority of cases people will be employed on permanent contracts. However, there will be circumstances in which it would be more appropriate to employ people on fixed term or temporary contracts. This policy sets out when such contracts should be used in place of permanent contracts and will ensure that such contracts are used only when it is both fair and justifiable to do so.

## 2 Overview

- 2.1 This policy applies to all staff employed by the Trust other than doctors and dentists in training level posts (e.g. Foundation Year 1 & 2, Specialty Training Post, Specialist Registrars (SPR)). Special arrangements exist for the appointment of locum medical staff.

## 3 Definitions

- 3.1 A “**fixed term employee**” is a person with a contract of employment which is due to end when:
- A specific date is reached, or
  - A specific event does or does not happen, or
  - A specific task has been completed.

The term therefore covers most forms of non-permanent workers directly employed by the Trust.

- 3.2 Examples of fixed term employees include:

- People employed to cover for maternity, adoption and other carer-related leave.
- People recruited to cover peaks in work and whose contract ends when work returns to normal levels.
- People employed to work on a specific project or task and whose employment is to end when the project/task ends.
- People employed for a specific short period.

- 3.3 A “**temporary worker**” is a person working for a limited duration who is not classified as a fixed term employee. These people are excluded from the relevant legislation and include:

- Students on work experience placements of one year or less that they must complete as part of a higher education course (but note that the policy **does** apply to students doing vacation work or gap year students with contracts that are not part of their course).
- People employed on government-sponsored training, work experience or temporary work schemes designed to provide them with work experience to help them find work.
- Agency staff (as these staff are not employees of the Trust).

## 4. Duties

### 4.1 Trust Board

- 4.1.2 The Board has responsibility to oversee this policy and ensure that appropriate processes and actions are in place to ensure employees are treated in a fair and consistent manner.

## **4.2 Directors/COO/Assistant COO**

4.2.1 Directors/COO/Assistant COO are responsible for ensuring appropriate systems and processes are in place across their Care Groups and Departments to monitor the use of fixed term contracts and ensuring that fixed term contracts are dealt with in a timely manner and in accordance with this policy.

## **4.3 Line Managers**

4.3.1 Line Managers are responsible for making appropriate decisions regarding fixed term contracts, ensuring that this policy is followed in a timely manner and ensuring that staff are aware of this policy.

## **4.4 Workforce Directorate**

4.4.1 The Workforce Directorate team will provide support and guidance to the process to ensure a fair and consistent process is followed.

## **4.5 All Relevant Staff**

4.5.1 As with any other member of the Trust, fixed term employees are bound by the same terms and conditions.

4.5.2 To ensure they meet with their manager in accordance with this policy.

4.5.3 To familiarize themselves with this policy.

## **4.6 Trade Unions**

4.6.1 The role of the trade union representative is to act as an advocate and to provide their member with advice, support and representation on matters relating to this policy if requested.

## **4.7 Trust Employed Work Colleague**

4.7.1 The role of the Trust Employed Work Colleague is to provide the employee with support. They may also take part in relevant meetings and speak on behalf of the employee with their permission.

## **4.8 Employee representation**

4.8.1 An employee has the right to be represented, if they wish, at any formal stage by either a recognised trade union of which they are a member, professional organisation representative or a Trust employed work colleague.

4.8.2 It is strongly advised by the Trust and Staff Side that the employee should seek the support of their trade union representative (TUPO). Where applicable it is the employee's responsibility to liaise with their representative to arrange support. The Trust will facilitate time off for accredited TUPO Representatives and workplace colleagues.

## **5. Appointment of Fixed Term Employees**

5.1.1 A decision whether an appointment is to be made on a fixed term basis should be made **before** the post is advertised. In most cases, posts will be for an indefinite period and people will, therefore, be employed on a "permanent" basis. Only where there is a strong business case to employ someone on a fixed term basis, such as when funding has been granted for a limited period should a fixed term contract be used. All fixed term posts should be advertised in the normal way and should clearly state that the post is fixed term with the duration and the reason.

5.1.2 People who are to be employed on a contract that is expected to last for 4 years or more **must** be employed on a permanent contract, although the expected duration of the role should be specified. Recruiting managers should be aware that any staff employed for longer than 2 years on fixed term contracts for a specific project / task, or where the post attracts specific funding may be entitled to redundancy payments at the end of their contract. This also applies to permanent employees who take a fixed term contract for a specific project or task.

5.1.3 People being appointed to fixed term posts will fall into the following groups:

- Internal appointment from a permanent post - see 5.1.4 below
- Internal appointment from an existing fixed term post - see 5.2 below
- External appointment - see 5.2 below.

#### **5.1.4 Internal appointment from a permanent post**

In this case, the appointment must either be on an acting up arrangement (if within the same team) or as a secondment to the post (if from outside the team) and line managers are encouraged to support this as part of their employees' development. Refusal to release an employee on secondment or to act up would only be considered in exceptional circumstances where there is a strong business reason for doing so, which is supported by the Head of Nursing or equivalent senior manager. The secondment agreement should specify:

- The expected duration of the secondment and
- The post (including band) that the individual will return to at the end of the secondment (normally the individual's substantive post) and
- That Protection of Pay will **not** apply at the end of the secondment or acting up period
- Any special arrangements regarding the end of the secondment e.g. when the individual's substantive post has been disestablished.

The releasing Manager should arrange to cover the secondee's post in an appropriate way. **Reference must be made to W15 Secondments Procedure.**

5.1.5 An ESR Payroll Changes Form must be completed detailing that the post is a secondment and the details of the secondment post including the following:

- Job Title
- Band
- Department
- Duration of Secondment – including start and end dates
- Reason for the secondment
- Number of Hours per week
- Recruitment Number

#### **5.2 Internal appointment from an existing fixed term post/Extension of an existing fixed term contract/ External appointment**

5.2.1 People who have been employed by the Trust on one or more continuous fixed term contracts, which together last for four years or more, **must** be transferred on to a permanent contract if they are re-engaged with no break in continuity of employment unless there is a justifiable reason for continued use of the fixed term contract, for example providing cover for absent employees. This is irrespective of the expected duration of the new post, although this should be specified.

5.2.2 In other cases, the individual should be employed on a new fixed term contract, with continuity of employment being preserved if there has been no break. A break in service **normally** means that there is a clear week (Sunday to Saturday) during which time the individual is not employed by the Trust. However, an individual will retain annual leave, sickness pay and other benefits following a break under the Agenda for Change terms and conditions of service. Managers should refer to Human Resources for advice.

5.2.3 In cases when an existing fixed term contract is extended following agreement between the member of staff and the manager, the manager would need to complete a Payroll Changes form to confirm the duration of the extension, the date it will end and the reason for the fixed term contract. In order to maintain the trusts workforce electronic staff records, Managers must use the next available effective extension date i.e. this is the day after the most recent end date recorded for the temporary contract. This is to ensure continuous service is reflected against the individual.

Extensions should only be made if there is a strong business case for not being able to make a permanent appointment.

5.2.4 All extensions to an existing secondment period must be agreed between the substantive line manager, the individual and the host. This agreement must be confirmed in writing to the employee in line with W15 Secondment Procedure and a Payroll Changes form sent to Pay Services.

5.3 In all cases, it is important that the individual is aware of what will happen at the end of the contract and this should be set out in writing:

- Staff acting up will return to their substantive post on the terms and conditions for that post.
- Staff on secondment will return to their substantive post on the terms and conditions for that post. Except where agreed otherwise at the start of or during the secondment.
- Where a person is on secondment, or acting up, into a fixed term role and they are displaced from that fixed term role the employee will be "at risk" if they cannot return to their substantive permanent post. They will be considered for redeployment in the normal way. That is, the employee will be given preferential consideration for vacancies seen by the Trust as suitable alternative employment at, or in some circumstances one band below, their substantive band (pay protection to the individuals pay in their substantive post will apply). The employee may choose to be redeployed to a post that is more than one band below their substantive permanent post or to a post one band below their substantive band as opposed to the suitable alternative employment identified by the Trust. Please be aware that in these circumstances pay protection will not apply. Managers should refer all such cases to Human Resources.
- In the case of staff employed on fixed term contracts, their employment will end on the due date. This will **not** be covered by the Management of Organisational Change policy. Individuals may apply for vacancies within the Trust and will be given equal consideration with other applicants however they will not be given preferential treatment for posts.. Any new appointment will be on the terms and conditions applicable to the new post and will **not** be covered by the Protection of Pay policy. (Please see exceptions to this in section 6.2 for fixed term contracts ending due to redundancy)



## **5.4 Less Favourable Treatment**

A fixed term employee has the right not to be treated by the Trust less favourably than a comparable permanent employee.

5.4.1 The **terms and conditions of employment of fixed term employees** should be those applicable to comparative permanent employees. Human Resources should be consulted if a Manager sees this as inappropriate before the appointment is made; all exceptions have to be objectively justifiable. An example of an acceptable variation could be the notice periods to be included in the contract.

5.4.2 If a fixed term employee believes that they are being less favourably treated than comparable permanent employees because they are on a fixed term contract then they should raise this with reference to the Trust Grievance Policy. Staff also have a statutory right to request, in writing, written reasons for any difference in treatment, which the manager must respond to within 21 days.

5.4.3 People employed on fixed term contracts will have access to information on vacancies within the Trust through the Trust's main recruitment website 'Belong To Something' and NHS jobs.

## **6. End of Fixed Term Contracts**

A fixed term contract can end in a number of ways:

- End of the contract leading to redundancy (see section 6.2) or dismissal for 'some other substantial reason' (see section 6.3)
- Ending the fixed term contract early (see section 6.4)
- Ending the secondment (see section 6.5)

6.1 The expiry of a fixed term contract is regarded as a dismissal and appropriate steps should be taken to ensure the dismissal is fair. The decision to end a fixed term contract should therefore only be taken if the Trust is unable to renew or extend the contract. Managers should not rely on the expiry of a fixed term contract to manage performance, conduct or other issues and need to ensure they follow the appropriate Trust policy.

### **6.2 Ending the Contract**

As the fixed term period comes near to an end, managers should contact the HR Advisory Team for advice. The Manager should confirm to the individual in writing that their fixed term contract is coming to an end and invite them to a meeting to discuss this. This meeting should take place in sufficient time to allow the Manager to give the employee the relevant notice under the fixed term contract. The required notice periods are outlined within the employment contract

6.2.1 Managers are reminded that this also applies to fixed term employees on maternity leave.

6.2.2 At the meeting, the employee has the right to be represented by their accredited trade union representative, representative from a recognised TUPO or a Trust employed work colleague. Family members or partners who are also employed by the Trust are not able to accompany an individual unless they are required to assist with disabilities or language difficulties or any other extenuating circumstances

6.2.3 At the meeting, the Manager should discuss the reasons for the non-renewal of the fixed term contract and any alternatives. In the majority of cases the legal basis for the contract not being renewed/terminated will be for 'some other substantial reason' (see 6.3), or

'redundancy' (see 6.2). The manager should give the employee a chance to respond to this and consider any steps that may be taken to support the individual to gain alternative employment, including ensuring they have access to internal vacancies and offering assistance with CV Writing and Interview Skills.

6.2.4 Following the meeting the Manager should write to the employee notifying them of the decision/discussion, providing notice and the reasons for not renewing the contract and giving them the right of appeal. The Appeal procedure to be used is that set out in Human Resources policy W7 Disciplinary Procedure.

6.2.5 At the end of the fixed term period, it is the responsibility of the Manager to notify Pay Services of the change using the ESR Payroll Changes form.

### **6.3 Redundancy**

The reason for terminating the contract is likely to be redundancy when the work that the employee was engaged to do has been completed, the funding for the role has come to an end or the requirements for employees to carry out work of a particular kind have diminished. This would cover projects which have run their course, or where specifically funded work has come to an end due to an exhaustion of or non-recurring funding. Managers should contact the Human Resources Advisory Team to establish if there is a genuine redundancy scenario.

6.3.1 In a redundancy situation the employee will be "at risk" and will be considered for redeployment in the normal way. That is, the employee will be given preferential consideration for vacancies seen by the Trust as suitable alternative employment at, or in some circumstances one band below their substantive band (pay protection to the individuals pay in their fixed term post will apply). The employee may choose to be redeployed to a post that is more than one band below their permanent post or to a post one band below their fixed term post as opposed to the suitable alternative employment identified by the Trust. Please be aware that in these circumstances pay protection will not apply. Managers should refer all such cases to Human Resources.

6.3.2 Employees leaving the Trust at the end of a fixed contract may be entitled to redundancy pay where:

- Their fixed term contract has been terminated by reason of redundancy; **and**
- Their continuous service with the NHS is 2 years or more, subject to national terms and conditions.

6.3.3 The continuous period of NHS service may be gained in the course of a single fixed term contract or on account of two or more successive fixed term contracts, whether on the same or different terms, provided that continuity of service has not been broken.

6.3.4 If the fixed term employee is entitled to redundancy pay an estimated redundancy payment should normally be provided at the above meeting along with the terms and conditions for that payment.

### **6.4 Non – Redundancy / 'Some Other Substantial Reason'**

The reason for dismissal is not likely to be redundancy and may constitute 'some other substantial reason' where an employee has been employed on a fixed term contract to cover an employee's absence (i.e. maternity leave) or to cover a very short term increase in demand.

6.4.1 In a non-redundancy situation all reasonable attempts will be made to support the individual to gain further employment, including ensuring they have access to internal vacancies and offering assistance with CV Writing and Interview Skills. However if the employee is unsuccessful in obtaining an alternative role within the Trust or elsewhere within the NHS, the fixed term contract of employment will be terminated on the termination date. People employed on such contracts are encouraged to apply for jobs advertised internally but will not be given preferential consideration for posts.

## **6.5 Ending a Fixed Term Contract Early**

Where it is necessary to end a fixed term contract prior to the agreed end date the Manager should invite the employee to a meeting to discuss this and confirm to the individual that the contract is to end. Managers should confirm this in writing with the reasons for not renewing the contract. Managers should check the early termination clause within the employment contract and provide notice in line with the contract.

6.5.1 If the employee wishes to hand in their notice they must give the notice outlined in their employment contract.

## **6.6 Secondments**

As the secondment period comes near to an end, the Manager should confirm to the individual that their placement is to end and confirm this in writing with the reasons for not renewing the contract and invite them to a meeting to discuss this. This meeting should take place in sufficient time to allow the Manager to give the employee the relevant notice, which could be up to 12 weeks, as outlined within the secondment agreement. The Manager should liaise with the secondees' substantive Manager on the arrangements for the individual's return to their substantive post, as defined in the secondment agreement. In cases where the post no longer exists, Managers should liaise with Human Resources. Notification must be sent to Pay Services that the secondment has ceased, the Payroll Changes form must state the details of the post to which the individual is returning.

## **7. Management of Change and Protection of Pay**

HR38 Management of Organisational Change advises practice and procedure when people are to be displaced from their substantive job through organisational change. The normal consultation processes and management of change procedures will not, therefore, apply in the case of the termination of fixed term posts.

HR11 Protection of Pay is designed to safeguard pay when a person is required to move to a lower paid position as a result of organisational change. Accordingly, the policy **will not apply** to staff on a fixed term contract unless they are affected by management of organisational change or they are at risk of redundancy as a result of their fixed term post coming to an end.

## **8. Fixed term post becomes permanent**

The situation may arise when a fixed term post is to be made permanent.

Where an individual has demonstrated their suitability for a role whilst on a secondment or fixed term contract and the post becomes permanent, in most circumstances they may be appointed directly into it provided that:

- the individual was initially selected for the secondment/fixed term contract through a formal recruitment process (i.e. applying for an advertised post and being selected through interview (and including assessment tests where appropriate));

- there are no significant changes to the job role and no change to the banding at the end of the secondment/fixed term contract;
- the individual has performed satisfactorily in the role as confirmed through appraisal/probationary review meetings;
- the individual would like to accept the role on a permanent basis.
- the individual is the only employee in the role employed on a fixed term contract.

If any of these conditions have not been met, the substantive post should be advertised (internally/externally as appropriate) in the usual way; where the post covers a single specialism the Manager has discretion as to whether to restrict the advertisement to internal candidates, subject to any national standards regarding such appointments. The person filling the fixed term post may apply for the vacancy and will be given equal consideration with other applicants.

## **9. Employment of Temporary Workers**

9.1 Managers engaging agency staff should follow the established arrangements for such workers.

9.2 Managers offering placements to other temporary workers should ensure the relevant procedures are followed and that the individuals sign the appropriate documentation.

## **10 Training Needs**

There is no mandatory training associated with this guidance. If staff have queries about its operation, they should contact their line manager in the first instance.

## **11 Review Process**

11.1 This policy will be reviewed in 3 years and as and when required, or before if there are legislation changes. The monitoring of this policy includes an annual audit that comprises of the following table. Where non-compliance is identified an action plan will be drawn up and monitored at the Workforce Committee. Where remedial action can be taken immediately, the action must be recorded appropriately.

11.2 In order that this document remains current, any of the appendices to the policy can be amended and approved during the lifetime of the document without the document strategy having to return to the ratifying committee.

## **12 Equality Impact Assessment (EQIA)**

This policy applies to all employees equally and does not discriminate positively or negatively between protected characteristics.

## **13 Standards of Business Conduct**

The Trust follows good NHS Business practice as outlined in the Managing Conflicts of Interest in the NHS policy and has robust controls in place to prevent bribery. Due consideration has been given to the Bribery Act 2010 in the review of this policy document and no specific risks were identified.

## 14 Process for monitoring compliance

Aspect of compliance or effectiveness being monitored	Monitoring method	Responsibility for monitoring	Frequency of monitoring	Group or Committee that will review findings and monitor completion of actions
The policy is fairly applied to staff in a transparent manner	Use of workforce database	HR Advisory Team Manager	Yearly	Workforce committee
Number of cases being referred to HR Advisors/Managers for support	Use of workforce database	HR Advisory Team Manager	Yearly	Workforce committee
Number of appeals against decisions taken under this procedure.	Use of workforce database	HR Advisory Team Manager	Yearly	Workforce committee
Ongoing discussions with JNCC representatives	Use of workforce database	Deputy Director of Workforce	Ongoing	JNCC

## 15 References

- Legislation
  - Employment Act 2008
  - Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2008
  - Employment Rights Act 1996 as amended
  - Employment Rights Dispute Resolution Act 1998
  - Employment Relations Act 1999
  - Employment Rights Act 2004.
- The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002
- ACAS Advice and Guidance Fixed Term Work <http://www.acas.org.uk/index.aspx?articleid=4587>
- CIPD Fixed Term Workers Guidance
- Government guidance Fixed Term Employment Contracts <https://www.gov.uk/fixed-term-contracts>
- Government guidance redundancy and consultation <https://www.gov.uk/redundant-your-rights/consultation>

## **16 Associated Documentation**

- Equality and Diversity Policy
- Management of Corporate and Local Induction
- Disciplinary Policy for Doctors and Dentists
- Protection of Pay (Trust Reorganisations)
- Recruitment & Selection
- Management of Organisational Change
- Occupational Health Service
- Staff Counselling Service
- Disciplinary Procedure
- Employee Performance Management Policy
- Secondment Procedure
- Leave Cluster Policy-Chapter 2 Annual Leave Procedure
- Employee Investigations Policy
- Managing Conflicts of Interest in the NHS

All the above are available from:

Internal - [http://intranet/hr/HR\\_Policies.asp](http://intranet/hr/HR_Policies.asp)

External - <https://www.sath.nhs.uk/working-with-us/hr/policies/>