

Fixed Term Contract Policy

Introduction and Benefits

1. This policy details the use of Fixed Term Contracts within the Trust and ensures a legal and consistent application and use for all involved in the process. Fixed Term Contracts are currently used by the Trust to employ an applicant for a set period of time, including medical locum appointments.
2. This policy seeks to clarify the procedure for the use and termination of Fixed Term Contracts.

Application

3. The policy applies to everyone who is currently employed by the Trust on a Fixed Term Contract and for applicants who are recruited onto a Fixed Term Contract.
4. This policy does not apply to agency workers who are employed by a third party agency to provide casual work for the Trust.
5. A Fixed Term Employee is defined as a person with a contract of employment which is due to end when a specified date is reached, or a specified task has been completed.

Purpose

6. The purpose of this policy is to provide the Trust with a consistent process for managing Fixed Term Contracts. It details when it is appropriate to employ someone on a Fixed Term Contract, how to extend the Contract and how to terminate the Contract. This policy also clarifies the Employee's and Employer's Rights with regards to Fixed Term Contracts and ensures the Trust meets the requirements of the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
7. This policy will ensure the Trust works within The National Health Service (Appointment of Consultants) Regulations 1996 (as amended) and accompanying Good Practice Guidance (latest version 2005) ensuring appointments to Locum Consultant positions are of no more than twelve months' duration.

Policy Statement

8. The Trust is committed to ensuring that its procedures and policies prevent less favourable treatment in the workplace by ensuring Fixed Term Contracts are applied appropriately and within the guidelines of a clear and structured policy.
9. The Trust undertakes to create a fair and balanced procedure for dealing with the termination of Fixed Term Contracts.
10. Termination of employment at the end of a Fixed Term Contract constitutes a dismissal in law and therefore a fair and robust process must be followed.

Responsibilities

11. Line Managers are responsible for implementing the policy and should:
 - 11.1 ensure that Fixed Term Employees are not treated less favourably than permanent employees (unless there is objective justification for such differential treatment)
 - 11.2 be aware of the circumstances where it is appropriate to use a Fixed Term Contract
 - 11.3 write on the Interview Form where a Fixed Term Contract is being offered to an applicant as part of the recruitment process
 - 11.4 ensure that the member of staff is treated fairly in line with this policy
12. The Recruitment Centre and Medical Staffing Department will be responsible for sending out Fixed Term Contracts to employees as directed by the recruiting manager or supervising consultant.

Monitoring and Review

13. The policy will be monitored by the Workforce Committee, and formally reviewed by the HR Policy Group every three years.
14. The policy has been equality impact assessed to ensure that it does not result in unlawful discrimination and that it promotes equal opportunities and good relations between diverse groups within the organisation.
15. Every three months the HR Department will provide a report from the Electronic Staff Record detailing employees that are coming to the end of their Fixed Term Contract in the next six months. This will be sent to the Directorate Managers to send to their teams.

16. The report should only be used as a reminder and flag. Managers/clinicians are responsible for monitoring their own staff who are employed on Fixed Term Contracts.

Training and Development

17. The principles of the policy will be incorporated into the HR Management Toolkit training sessions for managers.

Associated Documents and Policies

This policy should be read in conjunction with the following documents:

<i>Appendix 1</i>	Procedure for the use of Fixed Term Contracts
<i>Appendix 2</i>	Guidelines for the use of Fixed Term Contracts
<i>Appendix 3</i>	Template letters
<i>Appendix 4</i>	Flowchart for terminating a fixed term contract

**FIXED TERM CONTRACT
PROCESS**

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APPENDIX 1: Fixed Term Contract Procedure

Introduction

The purpose of these procedures and guidelines is to explain the requirements of the Fixed Term Employees Regulations (2002) to employers, managers, union representatives and employees who may be affected by them and to let staff know about their rights as Fixed Term Employees.

Fixed Term Employees have the right not to be treated less favourably than comparable permanent employees because they are Fixed Term, unless the different treatment can be objectively justified.

Where employees are recruited onto a Fixed Term Contract, their contract will clearly state the expiry date of the contract.

Fixed Term Employees are entitled to the same benefits and terms and conditions as staff on a substantive contract or terms which are, as a whole, at least as favourable as the terms of the comparable permanent employee's contract.

Right to Request making a Fixed Term Contract Permanent

From 10th July 2006 employees who have been employed on successive Fixed Term Contracts for a period of four continuous years may acquire a substantive contract, unless the continued use of a Fixed Term Contract can be objectively justified. This will include cases where the original contract has been renewed or extended. Such employees have the right to ask their manager for a statement confirming that they are a permanent employee.

The manager must respond to the employee within 21 days of the date of the request.

If the manager is able to confirm that the contract is permanent then a statement must be written by the manager (see Appendix 3a Letter 1) with a copy sent to Human Resources, and the fixed term element of the contract will be removed. All other terms of the contract will remain the same (unless expressly varied).

If the manager is unable to confirm that the contract is permanent then they must write to the employee detailing this and give clear, objective reasons why the contract must remain Fixed Term (see Appendix 3b Letter 2), within 21 days of the date of the request, with a copy to Human Resources.

Use of successive Fixed Term Contracts will only be justified where these are to meet the needs of a particular profession or business need of the employer, for example where a brief extension past the four year period is required to complete a project. Such situations will be exceptional rather than the norm. In such circumstances, the Trust would be obliged to inform the Fixed Term Employee of any permanent vacancies arising in the future.

Termination of Fixed Term Contracts

Termination of employment through the expiry of a Fixed Term Contract is a dismissal in law, and is subject to the law of unfair dismissal.

In order to demonstrate that a dismissal under a Fixed Term Contract is fair, the reason for dismissal must be one of the fair reasons as set in section 98 of the Employees Relation Act 1996 and the employer must demonstrate that it has carried out a fair procedure when dismissing.

A line manager considering non-renewal of a Fixed Term Contract should consult their HR Consultant to talk through the issues and confirm that non-renewal is justified. If non-renewal is felt to be justified then the Procedure for Termination of a Fixed Term Contract must be followed.

Fair reasons for dismissal

Below are examples of the circumstances in which a Fixed Term contract is not renewed:

If the Trust is employing a Fixed Term Employee to cover for an absent employee then the reason for dismissal is 'some other substantial reason', (for example, maternity leave) their contract comes to an end when they are replaced by the employee returning from maternity leave.

If an employee's leave to remain in the UK has expired and it has been established it cannot be renewed, the reason for dismissal is to avoid the 'contravention of a statutory obligation'.

If a post in which an employee was employed in for a fixed period to complete a project is no longer required, the dismissal may be by reason of redundancy. In those cases, the Trust's Avoidance and Handling of Redundancies Policy no.9 will be used and all efforts will be made to redeploy the individual in a suitable alternative.

Expiry of Fixed Term Contracts where an employee requires a Certificate of Sponsorship or has limited leave to remain in the UK.

If the employee was employed on a Fixed Term Contract in line with their Certificate of Sponsorship (CoS), and their CoS is not renewed or extended then termination of their contract will be dealt with as 'contravention of a statutory obligation'.

Where staff are employed on a Fixed Term Contract which runs alongside their CoS and is due for extension, the manager must consider whether it is justifiable to apply for an extension or renewal. This consideration must be made a minimum of 4 weeks prior to expiry of the CoS.

Where an extension to a CoS is required, an application can be made even if the post can be filled with a resident worker, where the individual has specialist skills.

In order to apply for the CoS extension or new CoS the manager must be able to declare that they 'know of no suitable resident worker who will be displaced or excluded as a result of employing (the individual)' (Home Office; CoS Application Form). If the manager knows of suitable candidates for the post, particularly where there is a waiting list of resident workers ready to be recruited, then the permit should not normally be applied for.

If a post is considered to be a shortage occupation as declared by the Home Office, then an application for a CoS or extension, is likely to be successful.

Where the employee is applying for residency in the UK or an extension to their leave to remain in the UK, they can normally remain legally employed by the Trust until a decision is made by the Home Office, even if this decision is made beyond the expiry of their leave to remain in the UK. In these circumstances the Fixed Term Contract can be extended until this decision is made however the employee must provide written proof that the application for residency was made prior to the expiry of their Fixed Term Contract.

In some circumstances where a new application for a work permit/certificate of sponsorship is required, for example where an employee is no longer eligible to work on their married partner's permit, and the manager cannot fill the post with a resident worker, a case for why the CoS is required will need to be made. In these circumstances managers must consult HR for advice.

If a new CoS application is required and the manager would be able to recruit to the post with a resident worker, or where the application for a CoS or extension to leave to remain has been rejected, the manager may have to terminate the Fixed Term Contract on grounds of 'contravention of a statutory obligation'. In these circumstances the Procedure for Termination of a Fixed Term Contract must be followed. (see Appendix 4)

Procedure for Termination of a Fixed Term Contract

STEP 1

In order to terminate a Fixed Term Contract the manager must write to the individual inviting them to a meeting (see Appendix 3c Letter 3) to discuss the non-renewal of contract at least 4 weeks before their contractual notice begins. The letter must also include a management statement detailing the circumstances and case for non-renewal of the contract.

The employee must receive the letter and statement at least five working days in advance of the meeting.

The employee has the right to be accompanied to the meeting by a Trade Union Representative or work colleague and must be informed of this in the letter.

The line manager is responsible for setting up the meeting and inviting the staff member, union rep/workplace colleague and Chair (line manager's manager) and an HR Consultant to support the Chair.

STEP 2

The meeting will consider the proposal for non-renewal of the Fixed Term Contract. The employee is able to bring documents to support their case.

The Fixed Term Employee's manager must present their case for non-renewal to their line manager (the Chair) who may be accompanied by an HR Consultant.

The employee will then be given their chance to respond to the information presented.

After both sides have been heard, the Chair will adjourn the meeting while a decision is made. If it is not possible to make a decision on the day of the meeting then it will be reconvened at the earliest possible opportunity in order to give the outcome.

If the Chair decides that there will be non-renewal of the contract then the Chair will liaise with the relevant Director to ensure that the decision to dismiss is sanctioned. This will then be confirmed in writing to the individual by the dismissing Director and sent to the employee within 48 hours of the meeting, where possible. (Appendix 3d Letter 4; Appendix 3e Letter 5)

If the decision is made that the contract is not being renewed by reasons of redundancy, then the employee will (where appropriate) be treated in line with staff facing redundancy according to the Trust's Avoidance and Handling of Redundancies Policy No 9 and suitable redeployment opportunities will be sought, where appropriate.

STEP 3

The employee has the right to appeal against the outcome of the meeting. The individual must write to the Chair detailing their grounds for appeal, within five working days of receipt of their dismissal letter.

An appeal meeting will be set up within ten working days of receipt of the appeal request where possible.

The employee has the right to be accompanied by a trade union representative, or work colleague.

The appeal meeting should be considered by a manager of equivalent or higher level to the Chair in Step 2, supported by an HR Consultant.

The appeal meeting should ideally be held prior to the dismissal taking effect but this is not essential.

The manager that is hearing the appeal is responsible for ensuring that an outcome letter is sent to the employee within 48 hours of the meeting.

APPENDIX 2: Guidelines for the use of Fixed Term Contracts

Fixed term contracts - key dates

After one year in post, fixed term workers acquire unfair dismissal rights.

After two years in post, fixed term workers may acquire redundancy rights.

After four years in post, fixed term workers may acquire the right to become a permanent member of staff.

Employment runs from the initial date of appointment with the Trust, not from the appointment date to the fixed term contract if this occurs after the original appointment. This may include previous service with the Trust.

Fixed term contract - key considerations

Fixed term (locum) contracts should only be used in a limited number of situations. For example:

- Where necessary, in line with the end date of a Certificate of Sponsorship or leave to remain in the UK;
- A Locum Consultant appointment (that by statute, can be set for a maximum of twelve months' duration);
- Where funding is only available for a limited time;
- When the post has been established to undertake a specific task or project;
- When the post is to cover a career break, secondment or some other significant absence; and/ or
- To cover an ad hoc peak in demand.

When requesting a fixed term contract, give a start and end date.

Ending a fixed term contract constitutes a dismissal in employment law, and therefore contractual notice should be given at the appropriate time.

Always manage the duration of a fixed term contract and do not allow it to simply roll-over without giving due consideration to the issues listed above.

Consult your HR Consultant before agreeing the terms of a fixed term contract.

Appendix 3a: Letter 1 Template

Statement of Permanent Post

Dear

Re: Fixed Term Contract - Statement of Permanent Employment status

Thank you for your letter of ...in which you request confirmation of your employment status.

You have been employed by the Trust on a Fixed Term Contract for X years and, in line with Trust Policy No. 29 Fixed Term Contract Policy, I am pleased to write and confirm that your Fixed Term Contract of employment is now permanent.

All other Terms and Conditions remain the same.

Yours sincerely

Manager

Cc: HR Workforce Planning Team

Appendix 3b: Letter 2 - Template

Request for Permanent Employment Status

Dear

Re: Fixed Term Contract - Request for Permanent Employment Status

Thank you for your letter dated **DATE** in which you request confirmation that your Fixed Term Contract is made permanent. I have looked at your contract and the requirements of your role and have to inform you that the Trust is unable to make your post permanent.

The reasons for this are as follows:

The date of expiry of your Fixed Term Contract is **DATE**. If circumstances or business needs change before the expiry of your contract then I would be happy to review your contract status again.

Yours sincerely

Manager

Cc: HR Workforce Planning Team

Appendix 3c: Letter 3 Template

Invite to Meeting to consider non-renewal of Fixed Term Contract

Dear

Re: Formal meeting to consider non-renewal of your Fixed Term Contract

I am writing to confirm that your Fixed Term Contract of Employment is due to end on DATE and I would like have a meeting with you to discuss its non-renewal. Could we meet on {date} at {time} am/pm at {location of meeting}. If at the meeting a decision is made to terminate your employment at the end of your Fixed Term Contract, it may be possible to place your name on the At Risk register and you will be made aware of any redeployment opportunity becoming available.

I enclose a copy of my reasons for non-renewal, which will be referred to in the course of the meeting. If you wish to provide a statement, please make this available prior to the meeting so that I can consider it.

You have the option of being represented by a Trade Union Representative or accompanied by a colleague. If you require any further information on the meeting please contact (*name of HR link*).

I would be grateful if you could please inform me, in writing, that you will be attending the meeting.

Yours sincerely

Manager

Enc. Management Statement

Cc: Human Resources Consultant

Appendix 3d: Letter 4 Template

Non-Renewal of your Fixed Term Contract by 'Some other Substantial Reason'

Dear

Re: Non-renewal of your Fixed Term Contract

I am writing to confirm the outcome of the meeting on {date of hearing}, the purpose of which was to discuss your line manager's recommendation that your Fixed Term Contract is not renewed.

As a result (name of Chair) has provided me with a report of the meeting which recommends that your Fixed Term Contract is not renewed. I have considered this recommendation carefully and have endorsed their recommendation.

I must now inform you that your Fixed Term Contract will expire on **DATE** from this date, you are no longer employed by the Trust.

I have included your period of notice in calculating your last day of employment and I would be grateful if you could ensure the safe return of your ID badge and any Trust property to your line manager on your last working day.

If you have any questions with regard to my correspondence or you require other support, could I ask that in the first instance you approach **NAME**, Human Resources Consultant.

You have the right of appeal against this decision which should be made in writing within 5 working days of receipt of this letter. This appeal letter should be addressed to (HR Consultant supporting Chair).

I would like to take this opportunity to wish you every success for the future.

Yours sincerely

Director
Cc: Human Resources Consultant

Appendix 3e: Letter 5 Template

Non-Renewal of Fixed Term Contract and expiry of leave to remain in the UK

Dear

Re: Non-renewal of Fixed Term Contract and Expiry leave to remain in the UK

I am writing to confirm the outcome of the meeting on {date of hearing}, the purpose of which was to discuss your line manager's recommendation that your leave to remain in the UK has expired and is not renewed.

As a result (name of Chair) has provided me with a report of the meeting which recommends that your leave to remain in the UK is not extended and therefore your Fixed Term Contract is not renewed. I have considered this carefully and have endorsed their recommendation.

I must therefore inform you that your Fixed Term Contract will expire on **DATE** and that you are being dismissed by reason of the fact that the expiry of your work permit means that the Trust can no longer employ you without contravention of a statutory obligation.

I have included your period of notice in calculating your last day of employment and I would be grateful if you could ensure the safe return of your ID badge and any Trust property to your line manager on your last working day.

Should your leave to remain the UK be renewed in the future, please do not hesitate to make an application to join the team at Oxford Radcliffe Hospitals NHS Trust. This process will not have any bearing on the judgements made in recruiting to a new position.

If you have any questions with regard to my correspondence, could I ask that in the first instance you approach **NAME**, Human Resources Consultant. You have the right of appeal against this decision which should be made in writing within five working days of receipt of this letter. This appeal letter should be addressed to (HR Consultant supporting Chair).

Yours sincerely

Dismissing Director
Cc: Human Resources Consultant

APPENDIX 4: Flowchart for terminating a Fixed Term Contract

