



Fixed Term Contracts

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Version Control Sheet			
This must be completed and form part of the document appendices each time the document is updated and approved			
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Consultation / Acknowledgements with Stakeholders		
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1 Introduction / Purpose

This Policy provides clear information to ensure a consistent approach across the Trust in relation to the employment of staff on fixed term contracts.

This policy will ensure that all staff employed on a fixed-term contract are treated fairly and equitably and ensure that the Trust complies with its legal obligations in relation to this staff group.

Fixed-term contracts should only be used in specific circumstances, and only when it is in the interests of both the organisation and the individual to do so. The following sections outline the rights of fixed-term workers, when such contracts should be used, and how to end them.

2 General Principles / Target Audience

This Policy applies to all employees, who are recruited on a Fixed Term Contract.

3 Definitions and Abbreviations

DBS Disclosure and Barring Service

4 Policy

4.1 Definition

A fixed-term contract is an employment contract that is agreed for a fixed period, i.e. they have a defined beginning and end date. This contract should only be used when circumstances make it inappropriate to employ an individual under a substantive contract.

Examples of fixed-term employees include staff who are covering the maternity or sick leave of another employee, those hired for a specific project, and staff who are employed on a specific training / educational programme.

4.2 Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002

The Fixed-term Employees Regulations (Crown, 2002) is the legislation that governs fixed term appointments. The basis of the regulation is that employees on fixed term contracts should not be treated less favourably than comparable permanent employees working in the same establishment in relation to:

- Terms and conditions (pay, benefits, access to occupational pension scheme, etc.), albeit on a pro rata basis (where appropriate).
- Opportunities for promotion, transfer or training.
- Securing any permanent position in the establishment (he or she must be informed of any suitable permanent vacancies within the employing organisation).

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Unless there are 'objectively justifiable' circumstances for not doing so (i.e. there is a genuine, necessary and appropriate business reason).

These regulations do not apply to agency workers, apprentices, students on work experience of a year or less, or people on certain training courses and temporary work schemes. The Workforce Advisory Service or the Trusts recognised union representatives can provide advice if you are uncertain as to whether an employee will be covered by these regulations.

4.3 When to Use a Fixed Term Contract

Fixed-term contracts give the advantage of bringing in specific skills and labour as and when they are needed. There are three types of situation when a fixed-term contract may be suitable:

- When a role is needed for a specified **time** period, set in advance;
- When a role is required to undertake a specified **task**;
- When a role is required because a specified **event** will or will not take place.

The reason for establishing a fixed-term contract should be clear and specific. It is important that the reason is shared with the employee upon the commencement of the contract, in order to provide important clarity around the nature of the role.

The use of fixed-term contracts may be justified by reference to one or more of the following reasons:

- To cover for specific absences, e.g. sickness and maternity leave.
- Where there is a demonstrable need in the short-term for defined, specialist input or where there is evidence that the post requires specialist expertise or experience not already available within the Trust.
- Where funding is only guaranteed for a fixed term period.
- Where the contract is clearly defined as being for training or career development for a specific, limited period (e.g. trainee programme).
- Where business demand can be clearly demonstrated as being subject to particularly uncertain fluctuating demand.

The above list is not intended to be exhaustive, and it is recognised that other situations may arise where a fixed-term contract is appropriate.

Managers must always give consideration to the appropriate employment terms before a vacancy is filled. It is not acceptable to offer a position on a fixed term basis to test the performance of an individual.

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4.4 Appointment to Fixed Term Contract

Any appointment to a fixed term contract is subject to the provisions of the Trust's Recruitment and Selection Policy. In particular, the following points should be noted:

4.4.1 Employment Checks

The same checks and standards apply to fixed term contract posts as they do to permanent posts. Therefore, all fixed-term contract posts are subject to:

- Satisfactory employment and medical references prior to an individual being confirmed in post.
- A DBS check, where it is a requirement of the post.

4.4.2 Previous NHS service

On appointment, an employee who has continuous NHS service may have certain employment / contractual rights on appointment, even if the contract with the Trust is for a relatively short fixed term. These apply in particular to redundancy and to certain contractual entitlements (e.g. maternity, annual leave and sick pay).

4.5 Extension to Fixed Term Contract

In order to meet best practice the number of renewals or extensions to a fixed-term contract should be limited. Advice from Workforce Advisory Service and authorisation from Finance should be sought if contracts are extended or renewed after the planned end date. Consideration should be given as to whether this should in fact be a permanent post.

Any approved extensions or changes to the fixed term contract must be confirmed in writing by the manager to the employee and the information sent to payroll in a timely manner using the appropriate assignment change form. The template letter can be found in Appendix 1.

Under the Fixed Term Regulations (Crown, 2002), a fixed term contract that has been renewed or extended will become a permanent contract once the employee has completed 4 years' continuous service, unless there is objective justification for not doing so, (see Section 4.7).

4.6 Ending of a Fixed Term Contract

The ending of a fixed-term contract is classed as a dismissal in legal terms, so it is crucial that before any action is taken, the reason for the contract coming to an end must firstly be determined. In all cases, consideration must be given to whether there is still a requirement for the post and, if so, whether that should be on a fixed term or permanent basis.

Before a fixed term contract is due to expire, it is the line manager's responsibility to consider the appropriate way forward and write to the employee to arrange a meeting with them to discuss this. This meeting must take place no later than one month before the

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expiry of the Fixed Term Contract, (the template letter for the outcome of the meeting can be found in Appendix 2). The member of staff has the right to be accompanied at any meetings held as part of this process by a work colleague or a trade union representative.

If the contract is terminated, by giving notice before its expiry date, then the correct amount of statutory notice should be given. Fixed term employees have the right to a minimum notice period of:

- 1 week for a period of continuous employment of 1 month or more but less than 2 years.
- 1 week for each year of continuous employment of 2 years or more but less than 12 years.

These are the minimum periods and a longer notice period may be specified in individual contracts.

The employee has the right to appeal against the dismissal and this should be submitted in accordance with the Disciplinary and Appeal Procedure (BTHFT - Procedure, 2018).

Employment should only be terminated by reason of the expiry or non-renewal of the fixed-term contract for the reason that has previously been agreed with the employee. If the reason for the expiry or non-renewal of the contract has changed since the contract was agreed, or if termination is being considered for any other reason, e.g. misconduct, poor performance, please refer to the relevant policy and seek advice and guidance from the Workforce Advisory Service.

Any dismissals that are made solely on the grounds of avoiding a fixed-term employee acquiring permanent status and allowing a fixed term contract to expire without renewal and then engaging someone else to do the same work are likely to be unfair and in breach of the regulations noted above. A decision not to renew a fixed-term contract is expressly regarded in law as a dismissal. Whatever their length of service, fixed-term employees can bring claims in relation to any treatment that is less favourable than that offered to comparable permanent employees (unless that treatment can be objectively justified).

Managers should be aware that short gaps between one fixed-term contract and the next will not necessarily break an employee's continuity of service. As per the Agenda for Change *NHS Terms and Conditions of Service Handbook* (NHS Employers, 2019), continuous service is maintained where service has been broken *if* there has not been a break of more than a week (measured Sunday to Saturday) between employments.

4.7 Fixed-Term Contracts Over 4 Years

An employee who has accrued more than 4 years continuous service with the Trust (including a series of fixed-term contracts resulting in continuous employment of 4 years or more), may automatically become a permanent employee, unless the Trust has a good business reason not to do so or a collective agreement removes the right.

An employee who considers that their contract has become permanent can write to their line manager to request clarification of their status. The line manager must respond to

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this, in writing, within 21 days and either agrees that the status has become permanent or provide reasons why the employment continues to be regarded as fixed term.

Managers should be aware of the significance of continuous service not only in relation to fixed-term contracts of over 4 years, but also in terms of other employment rights for fixed-term workers, including redundancy entitlements where applicable.

4.8 Suspicion of Fraudulent Activity

Any suspicions of fraudulent activity will be referred to the Trust's Counter Fraud Specialist for detailed information gathering. Should such an investigation find reasonable grounds to suspect an offence has been committed, further action will be taken, in accordance to the Trust's counter fraud and corruption policy (BTHFT - Procedure, 2020).

Further advice can be obtained from the Trust's Counter Fraud Specialist.

5 References and Associated Documents

BTHFT - Procedure, 2016. *Recruitment and Selection*. [Online]
Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-532.docx>
[Accessed 20 04 2020].

BTHFT - Procedure, 2018. *Disciplinary and Appeal Procedure*. [Online]
Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-PROC-636.docx>
[Accessed 13 01 2020].

BTHFT - Procedure, 2020. *Fraud, Bribery and Corruption Policy*. [Online]
Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-136.pdf>
[Accessed 09 07 2020].

Crown, 2002. *The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002*. [Online]
Available at: <https://www.legislation.gov.uk/ukxi/2002/2034/contents/made>
[Accessed 20 08 2020].

NHS Employers, 2019. *NHS Terms and Conditions of Service Handbook*. [Online]
Available at: <https://www.nhsemployers.org/tchandbook>
[Accessed 23 01 2020].

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Appendix 1: Template letter - Extension of Fixed Term Contract

Date

Private & Confidential

Name

Address

Dear

RE: Extension of Fixed Term Contract

Further to our meeting on (date of meeting) I confirm that your current fixed term contract has been extended for a further period due to (reason for extension of contract) until (new date of expiry).

In all other respects your Fixed Term Contract of employment will continue to be in accordance with the terms stated in your original statement of terms and conditions of service.

Please sign and return the attached copy of this letter to indicate your acceptance of this extension.

May I take this opportunity to thank you for your continued contribution to the Trust.

Yours sincerely

Managers Name

Job Title

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Appendix 2: Template letter - Non-Renewal of Fixed Term Contract

Date

Private & Confidential

Name

Address

Dear

Re: Non-Renewal of Fixed Term Contract

Further to our meeting of (date of meeting) I confirm that you have been formally notified that your last date of employment with the Trust will be (insert date), as this is the date your current fixed term contract expires.

This decision was reached based on the following (insert explanation).

You have the right to appeal against this decision and if you wish to do so, you should write to (Name), Head of Strategic HR within 14 days of receipt of this letter. Your written notice of appeal should state the grounds for your appeal.

Your final pay will include any outstanding annual leave and Management will ensure Payroll is notified of these details.

May I take this opportunity to thank you for your contribution and service with Blackpool Teaching Hospitals NHS Foundation Trust and wish you well for the future.

Yours sincerely

**Manager
Job Title**

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Appendix 3: Equality Impact Assessment Form					
Department	HR & OD	Service or Policy	Fixed term Contract	Date Completed:	
GROUPS TO BE CONSIDERED Deprived communities, homeless, substance misusers, people who have a disability, learning disability, older people, children and families, young people, Lesbian Gay Bi-sexual or Transgender, minority ethnic communities, Gypsy/Roma/Travellers, women/men, parents, carers, staff, wider community, offenders.					
EQUALITY PROTECTED CHARACTERISTICS TO BE CONSIDERED Age, gender, disability, race, sexual orientation, gender identity (or reassignment), religion and belief, carers, Human Rights and social economic / deprivation.					
QUESTION	RESPONSE		IMPACT		
	Issue	Action	Positive	Negative	
What is the service, leaflet or policy development? What are its aims, who are the target audience?	To provide clear information to ensure a consistent approach across the Trust in relation to the employment of individuals on fixed term contracts				
Does the service, leaflet or policy/ development impact on community safety • Crime • Community cohesion	No				
Is there any evidence that groups who should benefit do not? i.e. equal opportunity monitoring of service users and/or staff. If none/insufficient local or national data available consider what information you need.	No				
Does the service, leaflet or development/ policy have a negative impact on any geographical or sub group of the population?	No				
How does the service, leaflet or policy/ development promote equality and diversity?	No				
Does the service, leaflet or policy/ development explicitly include a commitment to equality and diversity and meeting needs? How does it demonstrate its impact?	No				
Does the Organisation or service workforce reflect the local population? Do we employ people from disadvantaged groups	No				
Will the service, leaflet or policy/ development i. Improve economic social conditions in deprived areas ii. Use brown field sites iii. Improve public spaces including creation of green spaces?	No				
Does the service, leaflet or policy/ development promote equity of lifelong learning?	No				
Does the service, leaflet or policy/ development encourage healthy lifestyles and reduce risks to health?	No				
Does the service, leaflet or policy/ development impact on transport? What are the implications of this?	No				
Does the service, leaflet or policy/development impact on housing, housing needs, homelessness, or a person's ability to remain at home?	No				
Are there any groups for whom this policy/ service/leaflet would have an impact? Is it an adverse/negative impact? Does it or could it (or is the perception that it could exclude disadvantaged or marginalised groups?	No				

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Does the policy/development promote access to services and facilities for any group in particular?	No			
Does the service, leaflet or policy/development impact on the environment <ul style="list-style-type: none"> • During development • At implementation? 	No			
ACTION:				
Please identify if you are now required to carry out a Full Equality Analysis		Yes	No	(Please delete as appropriate)
Name of Author: Signature of Author:	Jayne Taylor	Date Signed:		
Name of Lead Person: Signature of Lead Person:	Eleanor Palmer Rigby	Date Signed:		
Name of Manager: Signature of Manager	Lesley Smith-Payne	Date Signed:		

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