

# Fixed Term Contract Guidance Policy

(Replacing Policy No. TP/WF/213 V.2)

POLICY NUMBER	TP/WF/213
VERSION	V.3
RATIFYING COMMITTEE	Trust Partnership Forum
DATE RATIFIED	August 2020
DATE OF EQUALITY & HUMAN RIGHTS IMPACT ANALYSIS	
NEXT REVIEW DATE	August 2023
EXECUTIVE SPONSOR	Director of Workforce & Organisational Development
POLICY AUTHOR	HR Business Partner

**If you require this document in another format such as large print, audio or other community language please contact the Corporate Governance Office on 01903 843041 or email; [policies@sussexpartnership.nhs.uk](mailto:policies@sussexpartnership.nhs.uk)**

## Contents

	<b>Page</b>
<b>1.0 Introduction</b>	3
<b>2.0 Principles</b>	3
<b>3.0 Appropriate Use of Fixed Term Contracts</b>	3
<b>4.0 Expiry of Contract</b>	4
<b>5.0 Extending a Fixed Term Contract</b>	5
<b>6.0 Managing Posts that become permanent vacancies</b>	5
<b>7.0 Organisational Change</b>	6
<b>8.0 Appendices</b>	
1. Letter Inviting Fixed Term Employee to a Meeting	7
2. Letter Confirming End of Fixed Term Contract	8

## Guiding principles of our workforce policies

We are committed to improving staff experience and wellbeing, making sure our staff feel valued, supported and cared for. As part of this we want to do everything possible to ensure our policies are progressive, easy to understand and are used and applied in a fair and meaningful way. We also want to ensure our policies support staff even in difficult or challenging circumstances, facilitating decisions being made with transparency and impartiality.

### 1. Introduction

The guidance applies to all Trust employees employed on fixed term contracts. This guidance does not apply to workers employed or supplied by agencies working in the Trust or to Bank only workers. For information regarding temporary changes to contracts of employment for permanent or substantive staff please refer to the Secondment and Temporary Promotion Policy.

### 2. Principles

This guidance has been developed to comply with the Fixed Term Employee's (Prevention of Less Favourable Treatment) Regulations 2002.

Employees on fixed term contracts will be employed on the same terms and conditions as those enjoyed by comparable permanent employees.

All employees on fixed term contracts are subject to the same policies and procedures as employees on substantive posts.

Poor performance will not be accepted as grounds for early termination of a fixed term contract. Where the performance of an employee gives grounds for concern, this must be dealt with in the same way as a substantive employee and the appropriate Trust Policy and Procedure must be complied with

### 3. Appropriate use of Fixed Term Contracts

All vacancies of a fixed term nature must be recruited to in accordance with the Trust Recruitment and Selection Policy.

Fixed term contracts should only be used for objectively justifiable reasons, such as to complete a specific task or event or to cover a long-term absence. Fixed term contracts can be appropriately used for the following reasons:

- a specific project that requires additional resources or specific expertise;
- an identified period of long-term staff absence (e.g. sickness, maternity, adoption, secondment, employment break, training);
- short term additional funding for a position that is not expected to be renewed;
- a specific period of higher than usual workload.

Fixed term contracts should always be for a defined period of at least three months and **not more than 22 months**.

All fixed term contracts **must**:

- Specify an end date or, where applicable, a specific event, (for example, a

maternity leaver's return to work)

- Clearly state the reason for the fixed term status.

Employees on fixed term contracts should not be treated less favourably than permanent employees. This means that individuals recruited to fixed term contracts:

- should be subject to the same equal opportunities best practice in recruitment and selection as for permanent staff;
- should have the same access to training and development;
- should have the same supervision and appraisal processes;
- will be paid on the same scale for the role as people on permanent contracts and will be eligible for the same terms and conditions; and
- depending on their length of NHS or Trust service, may be eligible for maternity, adoption and paternity leave and pay.

#### **4. Expiry of Contract**

When a fixed term contract ends on the agreed end date; the manager should follow the process described below for giving notice.

If the work ends after two years' service, however, the employee may be entitled to a redundancy payment, and will be entitled to the same redundancy rights as a permanent employee. This includes giving formal notice and contractual notice periods.

If the work ends before the agreed end date, the employer should give the appropriate notice period. The Trust may be in breach of contract if they wish to end the contract and there is no provision to do so in the contract of employment.

Steps to be undertaken when formal notice is required:

##### **Step 1**

The manager will formally invite the member of staff to a meeting to discuss the expiry of the contract. The letter will confirm the right to be accompanied by a Trade Union representative or a workplace colleague. (Appendix 1)

Trade union workplace representatives, otherwise known as stewards, are elected representatives whose role includes representing members both individually and collectively. All stewards have basic training in representation and access to regular training courses. They can gain support, advice and information from their branch, paid union officials via their regional offices and their union's online resources. Stewards are bound by the rules and governance structures of their union and are expected to keep up to date with relevant training.

##### **Step 2**

At the meeting the manager will confirm the reasons for the expiry of the fixed term contract (normally this will be as recorded on the fixed term contract e.g. end of a project). This meeting will also detail any opportunities that have already been explored/will be explored for alternative other employment. At the meeting the

manager should also discuss praise for successful projects and the position regarding providing references for future job searches.

### Step 3

The manager will confirm in writing the discussion at the meeting and the reason/s why the fixed term contract will expire giving appropriate notice. The letter will also confirm the right to appeal against this decision to the next level of management within 10 working days of receipt of the letter. (Appendix 2)

Any employee on fixed-term contracts for 4 or more years will become a permanent employee, unless the Trust can show it has a good business reason not to do so. This will be the case irrespective of whether the successive contracts are on the same, or different, terms and conditions.

## 5. Extending a Fixed Term Contract

In advance of the termination date, careful consideration should be given to any circumstances that might require the contract to be extended. If the employee has over 2 years' NHS service they may become eligible for redundancy pay on the eventual termination of the contract. Any extension that will result in this length of service being exceeded should be discussed with Human Resources and authorisation must be obtained from the Service Director (or equivalent). A staff Contract Amendment Form must be completed for all extensions, giving the reason for the extension and the new expiry date of the contract.

If an employee has been on successive fixed term contracts lasting for four years or more for the same role, their contract will become permanent. The manager should discuss the implications of this change with Human Resources. In exceptional cases fixed term contracts can be renewed beyond four years if the reasons can be objectively justified and they are necessary and appropriate to achieving a legitimate aim. The manager should also discuss this situation with Human Resources.

An employee who considers that they have assumed permanent status but who has not received confirmation of this should initially discuss this with their manager. If they are unhappy with the outcome of this discussion they can write to their manager requesting a written statement confirming that the contract is no longer a fixed term contract. The manager must reply within 21 days, either to confirm the employee is permanent or to give reasons why the contract continues to be fixed term.

## 6. Managing Posts that become permanent vacancies

6.1 If a post that has been filled on a fixed term basis becomes permanent then the post should normally be advertised on a substantive basis. This is to ensure that permanent posts are recruited to on a fair and equitable basis in line with the Trust's Recruitment and Selection Policy. However, should the original reason for the fixed-term basis be due to non-permanent funding that is subsequently secured within 12 months and the post-holder was recruited to the post via formal recruitment, the post holder can be made substantive without further need to advertise and interview for the role.

6.2 If the post-holder has been in the role for 2 years or more, and there are no other staff deemed at risk in the organisation for which the post may be suitable alternative employment, they should be “slotted in” to the role without competition. In cases where “at risk” permanent staff are also suitable for the role then competition should include them, unless excluded by the guidance outlined in section 6.1.

6.3 If it can be demonstrated that only a very limited number of internal employees would have the necessary skills and experience for a role, then it may be recruited to on an ‘expressions of interest’ basis. For more advice on managing these circumstances please contact Human Resources.

## **7. Organisational Change**

Staff on fixed term contracts should be included in any consultations and discussions on organisational change in line with the processes in the Management of Organisational Change Policy and Procedure.

## Letter Inviting Fixed Term Employee to a Meeting

[Date]

PRIVATE & CONFIDENTIAL

[Name]

[Address]

Dear

### Termination of Fixed Term Contract

You will be aware that your fixed term contract as a [Post Title] is due to end on [contract expiry date].

I would like to meet with you to discuss the ending of your employment contract. Therefore I would be grateful if you would meet with me on [meeting date/time/venue].

You are entitled to be accompanied to the meeting by a union representative or workplace colleague for support.

If you are unable to attend at this time please let me know as soon as possible so that alternative arrangements can be made.

Yours sincerely

[Manager's Name]

[Post Title]

## Letter Confirming End of Fixed Term Contract

[Date]

PRIVATE & CONFIDENTIAL

[Name]

[Address]

Dear

### Termination of Fixed Term Contract

I am writing with reference to the above and to confirm the outcome of our meeting held on [meeting date] with [list those present]. I advised that it was proposed to terminate your fixed term contract as previously agreed on [contract end date] because [state reason e.g. return of substantive employee from maternity leave/sickness absence, end of project etc.].

I discussed with you the following available vacancies, [list available vacancies], and how you could apply for these. We will continue to make you aware of vacancies that may be suitable for you until the end of your contract.

*Or (in the case of organisational change)*

I advised you that regrettably there are no suitable vacancies to which you could be redeployed. I have given you a Redeployment Information Form so that your details can be entered into our redeployment register and we will continue to seek alternative employment for you until the end of your contract.

*(Include any objections/issues raised by the employee)*

I am now writing to confirm that your fixed term employment contract as a [post title] will end on [date].

### **Paragraphs to include if redundancy pay is payable – please discuss with HR**

*(We also discussed the fact that the reason for this termination of your contract is considered redundancy and you will be entitled to a redundancy payment. This has been estimated as £XXX. Please note this is an estimate and the precise figure will be subject to confirmation at the date of redundancy. The calculation is based upon the appropriate national agreement. Attached is some written information showing how the estimate has been calculated in your case.)*

*(The payment will be made to you as part of the normal salary run at the end of [month]. In addition to the redundancy payment you will be receiving an adjustment for any outstanding annual leave and/or any outstanding time off in lieu.)*

*(As part of this process, I need to ask that you sign to confirm that you have received this letter and that you accept the normal conditions of the payment of a redundancy payment. A second copy is therefore enclosed, with an endorsement for you to sign at the foot of the letter. I would be grateful if you could return the signed copy to me as soon as you can. Your redundancy payment cannot be made until this is received.)*

Should you wish to appeal against the decision to terminate your fixed term contract, you should write me within 10 days of the date of this letter stating the grounds of your appeal. I will then arrange for a hearing which will be chaired by a Senior Manager if practicable. Where this is not practicable, a manager of equivalent status will be asked to chair the hearing. The hearing will be held on a mutually convenient date and you are entitled to be accompanied by a trade union representative (or work colleague). If you are to be represented/accompanied, please let me know the name and status of the person who will be accompanying you to the hearing.

If you have any queries, or if there is anything further that you wish to discuss in relation to the contents of this letter, please feel free to contact me.

On behalf of the Sussex Partnership NHS Foundation Trust, I would like to take this opportunity to thank you for your contribution to our services, to wish you every success in the next step of your chosen career and to confirm that the Trust would be prepared to give any future employer a reference, upon request.

Yours sincerely

[name of line manager]  
[job title]

***Only include if redundancy pay is payable***

**Endorsement:**

I confirm that I have received the top copy of this letter and understand that my employment is to be terminated on grounds of redundancy on [date].

I also confirm that I have not obtained or been offered, or unreasonably refused to apply for or accept, suitable alternative NHS employment, commencing without a break, or with a break not exceeding four weeks from the date of termination.

I understand that the redundancy payment is only made on this condition and I undertake to refund the full payment if this condition is not satisfied.

Signed..... Date.....

Name (in capitals).....