

Fixed Term Contracts Policy

This document outlines the process for managers on the use of fixed term contracts and staff on fixed term contracts.

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Which Relevant CQC Fundamental Standards?	18	

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Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
1	1 st June 2012	Based on LRCNHS Guidance on the use of Fixed Term Contracts and updated in line with legislation.
2	3 rd Dec 2012	Minor amendments following comments from Policy Group
3	November 2016	<p>Legislation paragraph (5.2 version 2) moved to Introduction 2.0</p> <p>Section added to clarify what a Fixed Term Contract is 3.0</p> <p>Added to Line Managers 5.3 and Staff responsibilities 5.4</p> <p>Added to the Use of Fixed Term Contracts 6.0</p> <p>Added to 7.4 Recruitment of a fixed term contract post</p> <p>Last bullet point (6.6 version 2) taken out from Continuous NHS service which is now 11.0</p> <p>Changes made to 12.0 making the post permanent to ensure this is in line with the Recruitment and Selection Policy</p> <p>New section added 13.0 Notification of Permanent Vacancies</p> <p>Changes made Termination of a Fixed Term Contract 6.7 and Redundancy 6.12 (version 2). Consultation with employees 6.8 removed (version 2). This has now been replaced by 14.0 Termination of a Fixed Term Contract for Some Other Substantial Reason ('SOSR') and 15.0 Redundancy. These sections are made clearer when an employee's Fixed Term Contract is being ended due to SOSR and at risk status isn't applied. It is clearer that 'At Risk' status is only applied in a redundancy situation and in line with appendix 1 of Management of Change Policy.</p> <p>Termination of Apprenticeship 6.7.5 to 6.7.7 in version 2 taken out from version 3 as Fixed Term Contract Regulations exclude Apprentices.</p> <p>6.9 (version 2) ending the Fixed Term contract (one or more years employment) has now been removed</p> <p>6.10 (version 2) Non-renewal of a fixed term contract removed from version 3</p>

		<p>6.11 (version 2) Early Termination of Contract which is now 16.0 has had some minor amendments made.</p> <p>17.0 Comparable permanent employee and 18.0 Objective justification of less favourable treatment some minor changes made to both paragraphs.</p> <p>19.0 Process for Raising Concerns changes made to bring in line with the Grievance and Disputes Policy.</p>
4	15 th Nov 2019	Policy reviewed no changes made. Privacy Impact Assessment included as Appendix 4

For further information contact:

Senior HR Advisor, 07557190593

Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

Due Regard

LPT will ensure that Due regard for equality is taken and as such will undertake an analysis of equality (assessment of impact) on existing and new policies in line with the Equality Act 2010. This process will help to ensure that:

- Strategies, policies and services are free from discrimination;
- LPT complies with current equality legislation;
- Due regard is given to equality in decision making and subsequent processes;
- Opportunities for promoting equality are identified.

Please refer to due regard assessment (Appendix 3) of this policy.

Definitions that apply to this Policy

Fixed Term	An employee on a contract of employment which is due to end when a specified date is reached (e.g. date of funding ceasing or return of employee from maternity leave), or a completion of specified task/project.
Due Regard	<ul style="list-style-type: none"> • Removing or minimising disadvantages suffered by people due to their protected characteristics. • Taking steps to meet the needs of people from protected groups where these are different from the needs of other people. • Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.
Redundancy	<p>The Employment Rights Act 1996 Section 139 states that redundancy arises when employees are dismissed in the following circumstances:</p> <ul style="list-style-type: none"> • “where the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed; or where the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or • where the requirements of the business for employees to carry out work of a particular kind, in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.”
Some Other Substantial Reason ('SOSR')	The expiry of a fixed term contract to amount to SOSR must be shown that the contract was adopted for a genuine purpose, which was known to the employee, and that this purpose has ceased to be applicable. Where an employee is engaged in order to cover for another employee who is, or will be, absent because of pregnancy, childbirth, adoption leave, shared parental leave, or medical or maternity suspension, his or her dismissal upon the assumption of work by the original employee will be treated as being for SOSR.

1.0 Purpose

- 1.1 The aim of this policy is to provide guidance to managers to ensure the Trust meets its legal obligations arising from The Fixed term Employees (Prevention of Less Favourable Treatment) Regulations 2002.
- 1.2 Fixed Term Worker Regulations apply only to employees not to the wider category of workers therefore they will not cover genuine bank workers.

Also excluded are:

- Apprentices
- Agency workers
- Those employed on training schemes supported by the Government or an Institution of the European Community; and
- Those employed on work experience placements of one year or less that they are required to attend as part of a higher education course.

2.0. Summary

- 2.1 Leicestershire Partnership NHS Trust recognises the need may arise to employ staff on Fixed Term Contracts this procedure provides guidance for staff and managers about the requirements and processes for staff on Fixed Term Contracts.

3.0. Introduction

- 3.1 Fixed Term Employees Regulations came into effect on 1st October 2002 to ensure consistent and fair treatment of staff on fixed term contracts and to ensure they are not treated less favourably than comparable permanent employees unless this treatment can be objectively justified. The main acts and regulations covering workers on fixed-term contracts are:

- The Fixed term Employees (Prevention of Less Favourable Treatment) Regulations 2002
- The Employment Act 2002

4.0 What is a Fixed Term Contract?

- 4.1 A fixed term contract is a contract of employment that, 'in the normal course', will terminate on:

- The expiry of a specific term;
- The completion of a particular task; or
- The occurrence or non-occurrence of any other specific event, for example, a contract dependent on the existence of specific funding and which will terminate when that funding comes to an end.

- 4.2 This could cover:

- Contracts intended specifically to cover for maternity, paternity leave or sick leave;
- Contracts that cover peaks in demand and which will expire when demand returns to normal levels;

- Contracts that will expire when a specific task is complete (setting up a new database or running a training course) and
- Contracts that are linked to a specific pot of funding and will expire when that funding runs out.

5.0. Duties within the Organisation

5.1 The Trust Board has a legal responsibility for Trust policies and for ensuring that they are carried out effectively.

5.2 Trust Board Sub-committees have the responsibility for ratifying policies and protocols.

5.3 Managers and Team leaders are responsible for:

- Ensuring that fixed term contracts are only issued in line with service needs such as covering maternity leave, sickness or to provide support to a time limit project
- Managers should ensure they are aware of the potential cost and implications of employing staff with previous NHS service. Please seek advice from HR before making an offer of employment
- To review the appropriateness of the contract on a regular basis in line with the needs of the service
- To communicate clearly to the employee the end date of the contract and whether any extension has been sought or is obtained via written correspondence
- Ensuring that staff employed on fixed term contracts are treated no less favourably
- Highlight to staff that they can look for vacancies on NHS jobs.

5.4 Responsibility of Staff

- To behave as any other member of the Trust bound by the same terms and conditions
- To ensure they meet with their manager in accordance with the termination of contract procedure as outlined within this procedure
- Employees on Fixed Term Contracts to familiarise themselves with this policy.

5.5 Human Resources responsibilities

- Give guidance to managers on when the use of a Fixed Term Contract may be appropriate
- To provide advice regarding the termination of a Fixed Term Contract as necessary
- To keep a record of all staff on Fixed Term Contracts and to notify managers of an employee's fixed term contract end date within good time to allow appropriate notice to be given in accordance with the employee's terms and conditions.

6.0 Use of Fixed Term Contracts

6.1 Consideration should initially be given as to whether the need can be met through internal cover e.g. a secondment opportunity, acting up or temporary re-arrangement of duties. Only when other options have been considered should fixed-term contracts be looked into and is issued to an employee where there is a specific need for the post to be appointed on a temporary basis for example:

- To provide cover for extended absence from work of a substantive employee through maternity leave, long term illness or career break
- Where it is known in advance that a particular job will come to an end on a specific date
- Time-limited project work. This must be for a specific project with a pre-determined remit and expected outcomes. This may include externally funded, fixed-term projects
- Temporary post required in order to take into account future plans / restructuring, identified within the department business plan. There must be a clear link to a longer-term plan e.g. to avoid potential redundancies
- Where the contract is for training or career development e.g. clinical staff undertaking professional training.

6.2 The above list is not intended to be exhaustive and other circumstances may arise where the use of a fixed term contract is deemed to be appropriate. Advice on the issuing of fixed term contracts may be sought from the Human Resources Department.

7.0 Recruitment of a fixed term contract post

7.1 Where a post is fixed term it will be advertised in the normal manner but will state that the contract is fixed term. The end date and reason for a fixed term contract should be stated on the advert and contract.

7.2 If a post has been advertised as permanent, it should not subsequently be appointed to on a fixed term basis without the agreement of the prospective employee supported by an objectively justifiable reason(s), for example, a change in service need. This should only occur in exceptional circumstances.

7.3 It is not acceptable to offer a position on a fixed term basis to test the performance of an individual.

7.4 Managers should be aware that, 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 entitlements (e.g. maternity, annual leave and sick pay).

8.0 Employee Rights

8.1 Staff employed on a fixed term contract receive many of the same entitlements as their comparators on permanent contracts. This means that fixed term employees have the right to;

- The same pay and conditions
- Entitlement to annual leave and bank holidays
- Sickness entitlement
- Service qualification
- Notice periods
- Access to pension scheme
- Access to Training and Development
- Notification of all vacancies available.

9.0 Extension of a fixed term contract

9.1 Consideration should be given as to whether an extension to the contract is possible. If it is, and funding is available this should be agreed with Finance and the Director/Head of Service. A meeting should then take place with the individual to discuss the likely period of the new contract extension agreed. Appointments should only be for a fixed period if there are strong organisational reasons for not being able to make a permanent appointment.

9.2 In order to meet best practice the number of renewals or extensions to a fixed term contract should be limited. Once a fixed term contract has been extended to a period that exceeds 3 years, consideration should be given to offering the employee a substantive role. If a contract exceeds a total of 4 years the employee will automatically become a permanent employee unless there is a good business reason not to.

9.3 The relevant HR Advisor should be informed of approved extensions or changes to the fixed term contract, the HR Advisor will then be able to provide advice on any potential redundancy liability.

9.4 Managers must confirm an extension to contract in writing to the employee and complete a change of circumstances form in a timely manner.

10.0 Right to permanent employment

10.1 There is no limit on the duration of a fixed term contract however if a contract is renewed or extended beyond 4 years (these can be in different roles within different business areas) the contract will automatically become permanent , unless there is an objective reason that justifies further renewal.

11.0 Continuous NHS Service

11.1 NHS service must be continuous if it is to count towards the 4 year statutory maximum. However, it is important to note that certain breaks in service will count towards continuous service as follows:

- Maternity Leave, Paternity Leave, Adoption Leave (statutory or extended)
- Breaks of service of 1 week or less where a new contract is agreed after the expiry of a preceding contract.

12.0 Making the post permanent

12.1 If permanent funding becomes available and the need for the post is clearly identified, the post must be advertised in line with the Recruitment and Selection Policy, through the Employee Resourcing Team and be subject to a competitive recruitment process.

13.0 Notification of Permanent Vacancies

13.1 Employees on fixed term contracts will be advised that job vacancies can be viewed and applied for via NHS jobs.

14.0 Termination of a Fixed Term Contract for Some Other Substantial Reason ('SOSR')

14.1 Employees on a fixed term contract covering another employee who is or will be absent because of maternity leave/career break/secondment/training post or limited funding/project post, the termination of the contract of employment will be classed as a dismissal for SOSR and is considered to be one of the fair reasons for dismissal.

14.2 In these circumstances, fixed term employees have a number of statutory rights as follows:

- The right not to be unfairly dismissed. To qualify employees need to have;
 - at least one year's continuous service if they commenced employment prior to 6 April 2012 **or**
 - Two years for employees starting employment on or after 6 April 2012

14.3 Employees whose fixed term contract is coming to an end (as per the original appointment and contractual /extension) will be invited to a meeting to discuss the reasons why the contract is due to expire. The meeting will be arranged to allow sufficient time for written contractual notice to be issued and no later than the **required statutory or contractual notice periods** (see table), **whichever is longer**.

Band 1	Band 2	Band 3	Band 4	Band 5	Band 6	Band 7	Band 8	Band 9
4 weeks					8 weeks	12 weeks		

(Employees appointed to a Band 5 post with effect from 1st December 2016 will be issued 8 weeks' notice)

14.4 Following this meeting the manager will confirm the decision in writing within 5 working days of the meeting being held.

14.5 Whilst employees are under notice all reasonable attempts will be made to secure suitable alternative employment this will be via NHS jobs. 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.

15.0 Redundancy

15.1 The definition of redundancy under the Employment Rights Act is where:

- The employee has ceased or intends to cease to carry on the business for the purposes of which the employee was employed or
- The requirements of the business for employees to carry out work of a particular kind has ceased or diminished or is expected to cease or diminish.

15.2 Fixed term employees must not be selected for redundancy purely on the basis of being fixed term employees unless the selection can be objectively justified.

15.3 Fixed Term employees that have accrued NHS service, managers with support from Human Resources should look to establish if there is a genuine redundancy scenario as it might be the case that the reason for the ending of any fixed term contract is for SOSR and not redundancy e.g. the end of maternity cover in which case the individual may not necessarily be entitled to a redundancy payment at all.

15.4 In the event that fixed term employees do become at risk of redundancy 12 weeks' notice of dismissal by reason of redundancy will be given, regardless of their entitlement to contractual or statutory notice. All of the normal support mechanisms will be offered to employees at risk of redundancy and appendix 1 of the Management of Organisational Change Policy will be applied.

15.5 Redundancy payments will be made in accordance with Section 16 of the Agenda for Change Terms and Conditions handbook.

16.0 Early Termination of Contract

16.1 Where it is necessary for the Trust to terminate the Fixed Term contract prior to its planned end date, appropriate notice period as stated in the contract of employment will be given unless the reason for termination is gross misconduct. In this situation, the manager must seek advice from the Human Resources in advance of taking any such action. The Trust will not be liable for payment for the remaining period of the fixed term.

17.0 Comparable permanent employee

17.1 Employees on a fixed-term contract can compare their treatment to the treatment of a 'comparable permanent employee' as follows:

- works for the same employer
- works in the same organisation
- be doing the same or broadly similar work
- consider their skills and qualifications where they are relevant to the job.

17.2 If there is no comparable permanent employee that works in the same organisation, a comparator (comparable permanent employee) in another part of the organisation can be used.

17.3 Employees cannot compare conditions with someone at an associated employer's organisation.

18.0 Objective justification of less favourable treatment

18.1 Less favourable treatment of fixed-term employees is allowed if the Trust can show that there is a good reason to do so. This is known as 'objective justification' less favourable treatment will be objectively justified if it can be shown that it is:

- to achieve a legitimate objective, for example a genuine business objective
- necessary to achieve that objective
- an appropriate way to achieve that objective.

18.2 Line managers, with the support from Human Resources must consider whether less favourable treatment is objectively justified on a case by case basis.

19.0 Process for Raising Concerns

19.1 In the event that a fixed term employee believes they have received less favourable treatment than a comparable permanent employee, the employee should meet with their immediate line manager to try and resolve the matter informally. If it is not possible to reach a mutually acceptable solution, the formal procedure of the Trust Grievance and Disputes Policy and Procedure should be followed.

20.0. Training needs

There is no training requirement identified within this policy

21.0. Monitoring Compliance and Effectiveness

Human Resources will ensure that a process is undertaken to monitor the compliance and effectiveness of this policy and procedure. This will include:

Ref	Minimum Requirements	Evidence for Self-assessment	Process for Monitoring	Responsible Individual / Group	Frequency of monitoring
9	Review/extension of Fixed Term Contracts (FTC)	9.0 & 10	HR to send managers email reminders of when employees FTC ending. Managers to meet with their employees to	Workforce and Wellbeing Group	Monthly

Ref	Minimum Requirements	Evidence for Self-assessment	Process for Monitoring	Responsible Individual / Group	Frequency of monitoring
			discuss possibility of extension and complete of circs form		
10	Termination of Fixed Term Contracts	14.0 to 14.5	HR to send managers email reminders of when employees FTC is ending and to ensure appropriate notice period is issued	Workforce and Wellbeing Group	Monthly
10 & 11	Employees made redundant as a result of the termination of Fixed Term Contract	15.0 to 15.5	HR to send managers email reminders of when employees FTC ending and meet with the employee. Finance to be notified of cost of redundancy	Workforce and Wellbeing Group	Monthly

22.0 Standards/Performance Indicators

TARGET/STANDARDS	KEY PERFORMANCE INDICATOR
Care Quality Commission registration standards (outcome 14) <i>Supporting Workers</i> (21) of the Health & Social Care Act (2008) (Regulated Activities Regulations 2010 CQC essential standards)	That the trust maintains compliance with CQC registration standards, this policy supports outcome standards 14

23.0 References and Bibliography

This policy was drafted with reference to the following:

CIPD HR resources employment law on Fixed Term Contracts - Available at www.cipd.co.uk

Government Services <https://www.gov.uk/fixed-term-contracts/what-counts-as-a-fixedterm-contract>

ACAS Help and advice for Employers and Employees <http://www.acas.org.uk>

NHS terms and conditions of service handbook. Available at www.nhsemployers.org/

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 available at <http://www.legislation.gov.uk/>

LPT Management of Organisational Change Policy

The NHS Constitution

The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services

Shape its services around the needs and preferences of individual patients, their families and their carers	<input type="checkbox"/>
Respond to different needs of different sectors of the population	<input type="checkbox"/>
Work continuously to improve quality services and to minimise errors	✓
Support and value its staff	✓
Work together with others to ensure a seamless service for patients	✓
Help keep people healthy and work to reduce health inequalities	✓
Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance	<input type="checkbox"/>

Stakeholders and Consultation**Key individuals involved in developing the document**

Name	Designation
Nilam Daji	Senior HR Advisor

Circulated to the following individuals for comment

Name	Designation
Directors / Heads of Service and Direct Reports	
Operational HR Team	
Equalities Team	
Staffside	
Workforce & Wellbeing Group	

Due Regard Screening Template

Section 1			
Name of activity/proposal	Fixed Term Contracts Policy		
Date Screening commenced	15 th November 2019		
Directorate / Service carrying out the Assessment	Human Resources and Organisational Development		
Name and role of person undertaking this Due Regard (Equality Analysis)	Nilam Daji, Senior HR Advisor		
Give an overview of the aims, objectives and purpose of the proposal:			
AIMS: The aim of this policy is to provide guidance to managers to ensure the Trust meets its legal obligations arising from The Fixed term Employees (Prevention of Less Favourable Treatment) Regulations 2002.			
OBJECTIVES: The Trust recognises that the need may arise to employ staff on Fixed Term Contracts for short term projects and funding received. This procedure provides guidance for staff and managers about the requirements and processes for staff on Fixed Term Contracts and to ensure they are not treated less favourably than comparable permanent employees unless this treatment can be objectively justified.			
Section 2			
Protected Characteristic	If the proposal/s have a positive or negative impact please give brief details		
Age	Positive impact as this policy is supportive to staff who fall within the fixed term s contract will not be treated less favourably than those on permanent contracts.		
Disability	As Above		
Gender reassignment	As Above		
Marriage & Civil Partnership	As Above		
Pregnancy & Maternity	As Above		
Race	As Above		
Religion and Belief	As Above		
Sex	As Above		
Sexual Orientation	As Above		
Other equality groups?	As Above		
Section 3			
Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please <u>tick</u> appropriate box below.			
Yes		No	
High risk: Complete a full EIA starting click here to proceed to Part B		Low risk: Go to Section 4.	✓
Section 4			
If this proposal is low risk please give evidence or justification for how you reached this decision:			
This policy is accessible and supports all staff that are on Fixed Term Contracts.			
Signed by reviewer/assessor		Date	15/11/2019
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
Head of Service Signed		Date	

DATA PRIVACY IMPACT ASSESSMENT SCREENING

<p>Data Privacy impact assessment (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy.</p> <p>The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Data Privacy must be involved.</p>		
Name of Document:	Fixed Term Contracts Policy	
Completed by:	Nilam Daji	
Job title	Senior HR Advisor	Date 20/11/2019
Screening Questions	Yes/No	Explanatory Note
1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.	No	
2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to carry out the process described within the document.	No	
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?	Yes	Information will be passed onto the new manager however they would go through internal recruitment checks as well
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	No	
5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.	No	
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?	Yes	Potential outcome maybe be redundancy
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.	Yes	Details of reasonable adjustments in relation to an employees health condition or performance concerns maybe provided to new manager if employee finds a suitable post within the Trust
8. Will the process require you to contact individuals in ways which they may find intrusive?	No	
<p>If the answer to any of these questions is 'Yes' please contact the Data Privacy Team via Lpt-dataprivacy@leicspart.secure.nhs.uk</p> <p>In this case, ratification of a procedural document will not take place until review by the Head of Data Privacy.</p>		
Data Privacy approval name:	Sam Kirkland, Head of Data Privacy	
		
Date of approval	04/12/2019	

Acknowledgement: This is based on the work of Princess Alexandra Hospital NHS Trust