

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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1.0 Summary

Leicestershire Partnership NHS Trust (LPT) recognises the need may arise to employ staff on Fixed Term Contracts (FTC). This policy provides guidance for staff and managers about the requirements and processes for staff on Fixed Term Contract, and to ensure they are not treated less favourably than comparable permanent employees unless this treatment can be objectively justified.

Fixed-term contracts can be used for employees to work for a specified length of time or to work on a set project that will usually expire automatically, at the end of the term or project. Fixed-term arrangements are particularly useful for absence cover, to meet increased short-term business demands or for the completion of a specific project.

1.1 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 December 2012	Minor amendments following comments from Policy Group
3	November 2016	Legislation paragraph (5.2 version 2) moved to Introduction 2.0 Section added to clarify what a Fixed Term Contract is 3.0 Added to Line Managers 5.3 and Staff responsibilities 5.4 Added to the Use of Fixed Term Contracts 6.0 Added to 7.4 Recruitment of a fixed term contract post Last bullet point (6.6 version 2) taken out from Continuous NHS service which is now 11.0 Changes made to 12.0 making the post permanent to ensure this is in line with the Recruitment and Selection Policy New section added 13.0 Notification of Permanent Vacancies 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 This has now been replaced by 14.0 Termination of a Fixed Term Contract for Some Other Substantial Reason ('SOSR') and 15.0 Redundancy.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 is not 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. 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. 6.9 (version 2) ending the Fixed Term contract (one or more years employment) has now been removed 6.10 (version 2) Non-renewal of a fixed term contract removed from version 3 6.11 (version 2) Early Termination of Contract which is now 16.0 has had some minor amendments made. 17.0 Comparable permanent employee and 18.0 Objective justification of less favourable treatment some minor changes made to both paragraphs. 19.0 Process for Raising Concerns changes made to bring in line with the Grievance and Disputes Policy.
4	15 th Nov 2019	Policy reviewed no changes made. Privacy Impact Assessment included as Appendix 4
5	25 th July 2023	Policy reviewed and some minor changes and updates made. Section 15.0 Contracts for less than three months added.
5.1	12 July 2026	Extended for 4 Months as requested by WDG

1.2 Key individuals involved in developing and consulting on the document

Name	Designation
Nilam Daji	Senior HR Advisor
For further information contact: HR Advisory Team on lpt.hradvisoryteam@nhs.net	

1.3 Governance

Level 2 or 3 approving delivery group	Level 1 Committee to ratify policy
Strategic Workforce Group	People and Culture Committee

1.4 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.

1.5 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.

1.6 Definitions that apply to this Policy

Fixed Term	An employee on a contract of employment which is due to end on a particular date e.g. covering for maternity leave, or on completion of a specific task, e.g. a project.
Due Regard	• 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	The Employment Rights Act 1996 states that a dismissal by reason of redundancy occurs if the dismissal is wholly or mainly attributed to the following: a) The fact that the employer has ceased or intends to cease to carry on the business for the purpose of which the employee was employed, or has ceased, or intends to cease, to carry on that business in the place where the employee was so employed. Or b) The fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was so employed, have ceased, or diminished or are expected to cease or diminish.
Some Other Substantial Reason ('SOSR')	An employer will be able to rely on 'some other substantial reason' as a potentially fair reason where the fixed-term employee was replacing an employee who is absent on family leave or due to suspension on medical or maternity grounds, the fixed-term employee is dismissed to allow that person to return to work, and the fixed-term employee was informed at the outset that their employment would terminate on that employee's return to work.

2.0 Purpose

- 2.1 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.
- 2.2 Fixed Term Worker Regulations apply only to employees on a fixed-term contract and not to the wider category of workers therefore will not cover:
- Bank workers
 - Agency workers
 - Apprentices
 - Government training schemes - those employed on a scheme designed to provide training or work experience for the purposes of assisting to seek or obtain work which is either provided by the Government or:
 - funded by an Institution of the European Community
 - and those whose employment consists in attending a period of work experience not exceeding one year that they are required to attend as part of a higher education course.

2.3 Introduction

- 2.4 Fixed Term Employees Regulations came into effect on 1 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.
- 2.5 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.
- 2.6 Fixed term contracts are used in a variety of situations including:
1. Covering someone on maternity leave, adoption leave or long-term sickness absence or a career break
 2. Covering peaks in demand and which will expire when demand returns to normal levels
 3. Resourcing a particular project and
 4. where specific funding has been provided to carry out a particular task or activity and expire when that funding runs out.

This above is not an exhaustive list, but it provides examples of when it would be appropriate to use a fixed term contract.

- 2.7 All staff should act in accordance to our Trust leadership behaviours for all and be able to evidence adherence in situations that involve fixed term contracts. A fundamental approach to developing our Leadership behaviours for all is our ability to both give and receive feedback in a positive and insightful way. The feedback method is based on defining; Context, Understanding, Behaviour and Effect (CUBE).

3.0 Duties within the Organisation

- The Trust Board has a legal responsibility for Trust policies and for ensuring that they are carried out effectively.
- Trust Board Sub-committees have the responsibility for ratifying policies and protocols.

3.1 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/specific task.
- 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 permanent vacancies on NHS jobs.

3.2 Responsibility of Staff

- As with any other member of the Trust, fixed term employees are bound by the same terms and conditions
- To ensure they meet with their manager in accordance with this policy.
- Employees on Fixed Term Contracts familiarise themselves with this policy.

3.3 Human Resources responsibilities

- Provide guidance to managers on when the use of a Fixed Term Contract may be appropriate
- Provide support and guidance to the process to ensure a fair and consistent process is followed
- 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 period to be given in accordance with the employee's terms and conditions.

4.0 Use of Fixed Term Contracts

4.1 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, adoption leave, long term sickness absence or career break
 - Where it is known in advance that a particular job/task 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 / re-structuring, 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.

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.

5.0 Recruitment of a fixed term contract post

5.1 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.

5.2 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.

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

5.4 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).

6.0 Employee Rights

6.1 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.

7.0 Extension of a fixed term contract

7.1 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.

7.2 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.

7.3 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.

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

8.0 Right to permanent employment

8.1 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.

9.0 Continuous NHS Service

9.1 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.

10.0 Making the post permanent

- 10.1 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.

11.0 Notification of Permanent Vacancies

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

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

- 12.1 Employees on a fixed term contract covering another employee who is or will be absent for example because of maternity/adoption 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.
- 12.2 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.
- 12.3 Employees whose fixed term contract is coming to an end (as per the original appointment and contractual /extension) will be invited to a meeting by their line manager 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		

- 12.4 Following this meeting the manager will confirm the decision in writing within 5 working days of the meeting being held.
- 12.5 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.

13.0 Redundancy

13.1 The definition of redundancy under the Employment Rights Act 1996 is where:

- The employer has ceased, or intends to cease, continuing the business, or
- The requirements for employees to perform work of a specific type, or to conduct it at the location in which they are employed, has ceased, or diminished, or are expected to do so.

13.2 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.

13.3 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.

13.4 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 4 of the Management of Organisational Change Policy will be applied.

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

14.0 Early Termination of Contract

14.1 Where it is necessary for the Trust to terminate the Fixed Term contract prior to its planned end date, an 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 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.

15.0 Contracts for less than three months

Employees who are on fixed-term contracts which are expected to last three months or less have a right to receive a minimum notice period of one week. This is the case if their contracts are terminated before the expected expiry date and if they have completed at least one month's continuous service. Such employees are also required to provide their employer with at least one week's notice of early termination.

16.0 Comparable permanent employee

16.1 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
- be doing the same or broadly similar work
- consider their skills and qualifications where they are relevant to the job.

16.2 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.

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

17.0 Objective justification of less favourable treatment

17.1 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.

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

18.0 Process for Raising Concerns

18.1 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 Dispute Resolution in the Workplace Policy should be followed.

19.0 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
	Number of staff on fixed term contracts	Our People Data		Workforce Development Group	Bi-monthly

20.0 Standards/Performance Indicators

TARGET/STANDARDS	KEY PERFORMANCE INDICATOR
Care Quality Commission Regulations for Service Providers Regulation 18 Staffing https://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulation-18-staffing	That the trust maintains compliance with CQC regulations for service providers and managers, this policy supports regulation 18

21.0 References and Bibliography

This policy was drafted with reference to the following:

- CIPD – Fixed-term contracts: Understanding the law [CIPD | CIPD The Professional Body for Human Resources and People Development](#)
- Government Services [Fixed-term employment contracts: What counts as a fixed-term contract - GOV.UK \(www.gov.uk\)](#)
- ACAS working for everyone <https://www.acas.org.uk/>
- NHS terms and conditions of service handbook <https://www.nhsemployers.org/publications/tchandbook>
- The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 <https://www.legislation.gov.uk/>
- LPT Management of Organisational Change Policy

Appendix 1 Training Requirements

Training Needs Analysis

Training topic:	There is no training requirement identified within this policy
Type of training: (see study leave policy)	☐ Mandatory (must be on mandatory training register) ☐ Role specific ☐ Personal development
Directorate to which the training is applicable:	☐ Mental Health ☐ Community Health Services ☐ Enabling Services ☐ Families Young People Children / Learning Disability Services ☐ Hosted Services
Staff groups who require the training:	
Regularity of Update requirement:	
Who is responsible for delivery of this training?	
Have resources been identified?	
Has a training plan been agreed?	
Where will completion of this training be recorded?	☐ ULearn ☐ Other (please specify)
How is this training going to be monitored?	

Appendix 2 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	☐
Respond to different needs of different sectors of the population	☐
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	☐

Appendix 3 Due Regard Screening Template

Section 1			
Name of activity/proposal		Fixed Term Contracts Policy	
Date Screening commenced		26 July 2023	
Directorate / Service carrying out the Assessment		Human Resources Advisory Team	
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	26/7/2023
Sign off that this proposal is low risk and does not require a full Equality Analysis			
Head of Service Signed		Date	26/7/2023

Appendix 4 Data Privacy Impact Assessment Screening

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. 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.		
Name of Document:	Fixed Term Contracts Policy	
Completed by:	Nilam Daji	
Job title	Senior HR Advisor	Date 27th July 2023
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 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 employee's health condition or performance concerns may be 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	
If the answer to any of these questions is 'Yes,' please contact the Data Privacy Team via Lpt-dataprivacy@leicspart.secure.nhs.uk In this case, ratification of a procedural document will not take place until review by the Head of Data Privacy.		
Data Privacy approval name:	S Ratcliffe	
Date of approval	15/08/2023	

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