

## Fixed-Term Contracts Policy

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<b>CONSULTATION AND DISTRIBUTION RECORD</b>	
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<b>CHANGE RECORD</b>			
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March 2017	Geraldine Reilly	Para 4.2 re-worded to reflect actual practice	2
May `18	Deputy HRD	GDPR statement added into section 3 and updated name of Data Protection Act	2
Nov `19	Head of HR Policy & Governance	<ul style="list-style-type: none"> <li>• Review date amended</li> <li>• Distribution list updated</li> </ul>	2
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## 1. **INTRODUCTION**

All employees within NHS Lanarkshire are valued for the contribution they make to the service, regardless of their contractual status.

NHS Lanarkshire is committed to using permanent contracts of employment as the norm, with fixed-term contracts only being used where necessary and appropriate. Furthermore, NHS Lanarkshire is committed to treating those employed on fixed-term contracts no less favourably than its permanent employees unless this can be objectively justified.

The Staff Governance Standard states that NHSScotland staff should be treated fairly and consistently, and NHS Lanarkshire will review its use of fixed-term contracts in order to be able to demonstrate that fixed term contracts are only used within the organisation where necessary and appropriate.

This policy has been developed in partnership with local trade union/professional organisation representatives. It reflects best practice and meets the minimum standards set out in the Fixed-Term Contracts Partnership Information Network (PIN) Policy.

**The policy also reflects relevant current employment legislation, specifically the Fixed Term Employees (Prevention of Less Favourable Treatment) regulations 2002, which state that an individual with a succession of fixed-term contracts which amount to four years or more service will be entitled to permanent contractual status, unless this can be objectively justified.**

## 2. **AIM, PURPOSE AND OUTCOMES**

The purpose of this policy is to:

- Provide clear principles and values which will govern the appropriate use of fixed-term contracts;
- Ensure compliance with legislation governing the employment of people on fixed-term contracts;
- Ensure all necessary steps are taken to prevent employees on fixed term contracts from being treated less favourably than comparable permanent employees;
- Clarify the circumstances in which the use of fixed-term contracts may be appropriate; and
- Provide a procedure for dealing with fixed-term contracts which is fair and equitable, and has both the interests of the employee and the effective operation of the service as its goals.

## 3. **SCOPE**

This policy applies to all individuals who work under a fixed-term contract; i.e. it is for a specific term that is fixed in advance; or terminates on the completion of a particular task; or terminates upon the occurrence or non-occurrence of any other specified event.

The policy applies to all directly employed staff with NHS Lanarkshire, irrespective of age, sex, disability, ethnicity/race, marital or civil partnership status, sexual orientation, religion or belief, pregnancy or maternity or gender reassignment.

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NHS Lanarkshire takes care to ensure your personal information is only accessible to authorised people. Our staff have a legal and contractual duty to keep personal health information secure, and confidential. In order to find out more about current data protection legislation and how we process your information, please visit the Data Protection Notice on our website at [www.nhslanarkshire.scot.nhs.uk](http://www.nhslanarkshire.scot.nhs.uk) or ask a member of staff for a copy of our Data Protection Notice.

### 4. **PRINCIPAL CONTENT**

#### 4.1 **Principles & Values**

NHS Lanarkshire is committed to:

- Using permanent contracts of employment wherever possible and only using fixed-term contracts where this is necessary and appropriate, based on genuine organisational need.
- Ensuring effective workforce planning by regularly reviewing and monitoring the use of fixed-term contracts on a partnership basis;
- Complying with employment legislation which applies in the case of employees on fixed-term contracts ;
- Ensuring that all fixed-term contracts have a start and end date, or specific duration where appropriate, which reflects the needs of the role to be covered, with no more than two renewals within any one-year period, unless this can be objectively justified;
- Ensuring that fixed-term employees are not treated less favourably than permanent employees, and are employed on the same core contractual terms and conditions of employment as comparable permanent staff, unless this can be objectively justified;
- Ensuring that appropriate communication takes place with employees on fixed-term contracts to discuss issues relating to their employment status and address any concerns;
- Ensuring that, by implementing the above, all employees on fixed-term contracts feel valued as employees; have equal access to development opportunities that meet their identified needs; have a clear understanding of the current and planned future status of their post; and are given the opportunity to apply for a permanent contract if a suitable position arises;
- Promoting adherence to these same principles and values by partner agencies.
- Applying the same rigorous approach to recruitment of fixed-term posts as permanent posts.

#### 4.2 **Management of Fixed-Term Contracts**

Circumstances where such contracts might be used include:

- Protecting posts for staff due to organisational change e.g. restructuring or redesign of services;
- Covering leave e.g. sickness absence; maternity leave; study leave; special or other leave;
- Project or research posts;
- Posts which are not funded on a recurring basis; or
- Backfill for short-term secondment.

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Where a fixed-term post is required as a result of non-recurring funding, agreement should be reached in advance with the funding body that exit costs associated with the non-renewal of the fixed-term contract will be covered by the funding body. Alternatively, posts will be offered for a lesser period to ensure that funding is sufficient to cover any exit costs.

Where appointing to a post on a fixed-term contract basis, managers must be able to clearly define the duration of the post, where appropriate, and the reason for the fixed-term nature of the post. The fixed-term nature of the post should be clearly evident in the advertisement, job information package, letter offering employment, and subsequent contract of employment. It should also be discussed at interview. The following paragraph should be inserted, as appropriate, into the documentation:

“This contract is for a fixed-term until [date/duration]. The reason for the fixed-term contract is [reason].”

Where individuals with continuous service within the NHS apply for fixed-term contract roles, NHS Lanarkshire reserves the right to refuse any such appointment, in certain circumstances. For example, a refusal may apply in the situation where a large number of similar graded employees have been on the Redeployment register without a successful match, for a significant period of time. Where existing permanent employees apply for fixed-term contract roles, the current line manager should be encouraged to second the employee. Where a secondment is not approved and the employee applies for a fixed-term post, it must be made clear, in writing, to the employee that in doing so their existing permanent contract has come to an end, and their new contract is fixed-term. Staff with continuous service who intend to apply for fixed-term roles must read this policy in conjunction with the Redeployment policy, so that they are fully aware of the consequences of their actions.

The recruiting manager will be responsible for any costs associated with ending a fixed-term contract (e.g. redundancy) when an employee with continuous NHS service is appointed to a fixed-term post. The recruiting manager should seek advice from an HR advisor regarding the calculation of such payments.

### **4.3 Reviewing Fixed-Term Contracts**

Managers will review the fixed-term contract mid-term and thereafter as appropriate. The outcome of this review must be discussed directly with the employee and confirmed in writing.

There are three options which may arise during the discussion:

- There is no change to the fixed-term nature of the contract. The contract will run for the duration originally specified, with the process to be followed for non-renewal of a fixed-term contract detailed at 4.5
- There is an opportunity to make the post permanent, in which case the process set out at 4.4 will be followed;
- There is an opportunity to extend the fixed-term contract. Managers must be mindful of the following if extending a fixed-term contract;

Fixed-term contracts should not be extended on more than two occasions in any one-year period, without first establishing an objective justification. Neither the initial contract nor extension period should be for less than three months other than for clear, objective and

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specified reasons e.g. awaiting confirmation of a permanent postholder returning from maternity leave. In this situation, 28 days notice is required from the permanent postholder, therefore an extension of 28 days would be reasonable and justified.

Where a fixed-term contract necessarily and appropriately requires to be extended, the manager should secure agreement from the employee for the fixed-term contract to be extended.

The manager will then arrange for a variation to the contract of employment to be issued to the employee using existing organisational documentation i.e. a change form.

Managers should be equally mindful of the need to take care to avoid employees on fixed-term contracts working past the specified expiry date, where the contract has not been formally extended, as there is a risk of an implied continuation of the arrangement as an 'open contract'.

Managers must ensure that they have the necessary authorisations in place prior to extending a fixed-term post or making a fixed-term post permanent.

### **4.4 Requirement to Make the Post Permanent**

Where a fixed-term role is required permanently, the post must be advertised in accordance with normal practice. The employee currently undertaking the role on a fixed-term basis would be eligible to apply, in accordance with normal practice i.e. via the Redeployment procedure

Managers must also be mindful of the legislation which applies with regard to the use of successive fixed-term contracts. Individuals with a succession of fixed-term contracts which amount to four years or more will be entitled to permanent contractual status under employment law, unless non-appointment can be objectively justified.

Where an employee achieves permanent status (due to a succession of fixed-term contracts which amount to four years or more) but the post they occupy is not permanently funded, alternative employment must be found for the individual via the Redeployment process, when the post is ended.

In this situation, the ongoing cost of employing the individual will be met by the individual's most recent manager.

### **4.5 Non-Renewal of a Fixed-Term Contract**

**There are two possible outcomes arising from the non-renewal of a fixed-term contract:**

1. Where an employee on a fixed-term contract becomes displaced from the role prior to its agreed point of expiry, e.g. where a secondee returns early NHS Lanarkshire has a duty to provide suitable alternative employment for the remainder of the fixed-term, during which organisational change protection of earnings will apply.
2. Where it is known that an employee's fixed-term contract will not be renewed upon expiry, the relevant manager with the authority to dismiss must meet with the

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employee, ideally three months prior to the expiry date of the fixed-term contract (and no later than the contractual notice period), to discuss the following:

- To confirm that the fixed-term contract will not be renewed upon expiry;
- To confirm the grounds for non-renewal of the fixed-term contract, which must be for a legitimate reason e.g. withdrawal of funding, return of a secondee or employee on maternity leave.
- To serve the employee with notice, in line with their contract of employment that their contract will be terminated upon expiry of the fixed-term;
- To advise the employee that they will be placed on the redeployment register, and to discuss the redeployment process. The employee should be advised that they will remain on the register until the date of the end of the fixed-term contract;
- To confirm, where appropriate, the redundancy payment which would apply should suitable alternative employment not be obtained;
- To advise the employee of their right of appeal; and
- To discuss any other matters in preparation for the termination date.

The employee will have the right to be accompanied at the meeting by a representative of their trade union/professional organisation or a work colleague. A representative from Human Resources should also be present.

Confirmation of the above details should subsequently be issued in writing to the employee without unreasonable delay and within 10 working days of the meeting... In addition, the Human Resources department may be able to advise on available support for the individual to help them find alternative employment, such as CV preparation or interview skills.

Where a fixed-term contract is not renewed, the employee will be placed on the Redeployment register, no earlier than three months prior to the expiry date of their fixed-term contract. Should a suitable post arise, they will be considered by the Redeployment panel, in accordance with normal practice. Employees should be mindful of the following;

- An employee may choose to apply for, and accept, an alternative post where the difference in terms and conditions is such that protection of earnings will not apply. In such circumstances, the employee should be advised that, if they choose to accept such a post, they will forfeit any entitlement to a redundancy payment which would otherwise apply should their employment be terminated on grounds of redundancy and with no suitable alternative employment opportunities having been identified.
- Employees should be advised that, should they unreasonably fail to apply for suitable alternative employment opportunities which may arise or to accept any such post offered, they may forfeit any entitlement to a redundancy payment.

### **4.6 Termination Which Meets the Definition of Redundancy**

In circumstances where the termination of a fixed-term contract meets the definition of redundancy the following additional requirement applies in order to ensure that the fixed-term contract is ended legally:



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- Where an employee has been unable, as at the termination date, to obtain suitable alternative employment, their contract will be terminated as detailed above. Additionally, however, where they have more than 104 weeks' continuous service, they will be entitled to a redundancy payment in line with Agenda for Change Terms and Conditions. Previous NHS service will count as reckonable service for the payment due where there has been a break of less than 12 months and redundancy has not previously been payable for any part of that service.

### 5. **ROLES AND RESPONSIBILITIES**

#### Employees must

- Ensure they are familiar with the policy and procedures
- Comply with the policy
- Attend training as necessary
- Actively pursue alternative employment opportunities

#### Managers must

- Ensure they communicate with staff about the policy
- Consistently implement the policy at their local level
- Keep accurate records
- Ensure that employees whose fixed-term contracts are not-renewed or made permanent are placed on the Redeployment register.

#### Staff Side Representatives must

- Support the principles and procedures in the policy
- Act in accordance with NHS Lanarkshire's Partnership Agreement
- Undertake training as appropriate

#### Human Resources Staff must

- Provide expert advice and support on the application of the policy
- Monitor and review the policy

### 6. **RESOURCE IMPLICATIONS**

Possible need to fund redundancy payments

### 7. **COMMUNICATION PLAN**

This policy will be launched using the weekly staff briefing and it will be available on Firstport.

This policy will also be discussed at the appropriate management team meetings and local partnership fora.

### 8. **QUALITY IMPROVEMENT – Monitoring and Review**

#### 8.1 **Monitoring & Measuring Success**

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NHS Lanarkshire will monitor and measure the successful implementation of this policy, in partnership, on an ongoing basis. This information will be used as part of the review of the policy, as well as being used to demonstrate the appropriate use of fixed-term contracts for national monitoring purposes under the Staff Governance Standard.

The appropriate use of fixed-term contracts will be measured through;

- Quantitative data (numbers of, and reasons for, fixed-term contracts); and
- Qualitative data gathered, for example, through the use of exit interviews/questionnaires. This type of questionnaire will explore the extent to which individual fixed-term employees felt that they:
  - Had equal access to development opportunities;
  - Were kept informed about the current and likely future status of their post;
  - Had the opportunity to discuss any issues of concern; and
  - Had the opportunity to gain equal access to suitable alternative employment within the organisation.

This information will be monitored at two levels:

- At an organisational level, through the Human Resources Forum and
- At an individual service/directorate level, with arrangements being agreed locally at this level for reviewing individual fixed-term contracts, in partnership, on a quarterly basis.

This policy will be reviewed every 3 years via the Joint Policy Forum

### 9. **EQUALITY AND DIVERSITY IMPACT ASSESSMENT**

This policy meets NHS Lanarkshire's EDIA



(tick box)

### 10. **SUMMARY**

This policy provides a framework within which fixed-term contracts will be managed, ensuring compliance with national policy and legislation. In particular it addresses circumstances where the use of a fixed-term contract is appropriate and also how to review a fixed-term contract. The policy also covers the renewal and non renewal of a fixed-term contract and circumstances where a redundancy situation might apply.

### 11. **REFERENCES**

- General Data Protection Regulations 2018
- Fixed-Term Contracts Partnership Information Network (PIN) Policy
- Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002