

**TRUST CORPORATE POLICY :
 FIXED-TERM CONTRACTS POLICY**

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| APPROVING COMMITTEE(S) | Trust Policies Committee | Date approved: | 19 September 2013 |
| EFFECTIVE FROM | Date of approval | | |
| DISTRIBUTION | All Managers in CAGs and Directorates via Trust Bulletin and all staff via Trust intranet | | |
| RELATED DOCUMENTS | Managing Change Policy Recruitment and Selection Policy Leave for New and Expectant Parents Policy | | |
| OWNER | (Designate) Director of HR and (Designate) CEO | | |
| AUTHOR/FURTHER INFORMATION | Author: HR Manager | | |
| EXTERNAL REFERENCES | | | |
| SUPERCEDED DOCUMENTS | Fixed-Term Contracts Policies (legacy policies) | | |
| REVIEW DUE | 3 years from the date of approval shown or earlier subject to legislative or national policy changes or organisational need. | | |
| KEYWORDS | Fixed term, short term | | |
| INTRANET LOCATION(S) | http://bartshealthintranet/Policies/Policies.aspx | | |
| CONSULTATION | <i>Proposed Barts Health Working Groups</i> | Policy Development Working Group Merger Governance Lead | |
| | External Partners | Capital Hospitals via the New Hospital Control Team for Barts and the London NHS Trust | |
| SCOPE | <i>For the groups listed below, failure to comply with this policy may result in investigation and management action; this may include formal action in line with the Trust's disciplinary or capability procedures for Trust employees; and other action in relation to organisations contracted to the Trust, which may result in the termination of a contract, assignment, placement, secondment or honorary arrangement.</i> | | |
| | Application: All Trust staff employed on a contract of employment | | |
| | Exclusions: none | | |

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Please note that where words/phrases are inside square brackets [], this indicates that you can click on the word/phrase when and it will send you to the relevant area of the policy or (if you are using a Trust PC) the relevant supporting document/template.

This Policy is available in Braille, large print, Easy-Read and alternative languages by request. It is a manager's responsibility to ensure employees are aware of these options.

FIXED-TERM CONTRACTS

1 INTRODUCTION AND AIMS OF POLICY

1.1 Barts Health (“The Trust”) is committed to supporting the health and wellbeing of its employees, which in turn allows the Trust to provide a consistently high standard of care to its patients and service users.

1.2 The aim of this policy is:

- to ensure that there is a consistent approach to recruiting and terminating fixed-term contracts across the Trust
- to ensure the Trust adheres to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 & 2008 (amendment)
- to ensure this approach is fair and consistent and without discrimination in relation to any of the [\[protected characteristics\]](#)
- to ensure that this policy is applied in line with the Equality Act 2010
- to ensure efficient and high quality care for our patients
- monitored to ensure effectiveness of implementation

2 VISION, VALUES & BEHAVIOURS

2.1 In order to establish a sense of organisational community during the development of Barts Health, the ‘Creating our Future together Campaign’ was established. The Campaign engaged patients, carers, staff and partners to identify a set of values and behaviours we can all share to make Barts Health a great organisation. Our vision is to change lives.

2.2 Our values define what is important in the way we deliver this vision. Our core behaviours set out how all of us will work regardless of the role we hold in the organisation. These behaviours consistently carried out will help embed the values in our everyday working lives and ultimately consistently ‘doing the right thing’ will affect our organisation’s culture. Every time individually we do the right thing it makes it easier for others to follow our example.

2.3 At Barts Health we champion dignity, compassion and respect, putting the individual at the heart of all decisions, striving to get it right for every person, every time.

2.4 As Managers and staff we must ensure we implement the principals held by the values & behaviours so we can support the achievement of our vision to ‘Change Lives’.

Our Values:

- Caring and compassionate with patients, each other and our partners
- Actively listening, understanding and responding to patients, staff and our partners
- Relentlessly improving and innovating for patient safety
- Achieving ambitious results by working together
- Valuing every member of staff and their contribution to the care of our patients.

2.5 All of us, managers and staff are responsible for ensuring the values and behaviours are integral to how we implement this policy. Through this implementation together we can affect the organisational culture and change lives.

3 DEFINITIONS

3.1 The following definitions are used in this policy:

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| <p>Fixed term contract</p> | <p>A fixed term contract is defined as a contract of employment which either;</p> <ul style="list-style-type: none"> • ends on a specific date, or • ends with the completion of a specified task, or • ends when a specified event does or does not take place <p>The Trust uses fixed-term contracts of employment for staff employed on work permits, to cover maternity or other extended periods of leave, or to work on time specific projects or where there is limited funding available. Some locum medical staff are also appointed using fixed term contracts.</p> <p>If you are unsure about whether to appoint an employee using a fixed-term contract, please make contact with HR to discuss the purpose and implications of using this type of contract.</p> |
| <p>Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 & 2008</p> | <p>The Fixed Term Employee Regulations aim to ensure that employees on fixed-term contracts are treated no less favourably than comparable permanent employees. Under the regulations fixed-term employees have the right to the same terms and conditions of employment as comparable permanent employees unless the Trust can objectively justify less favourable treatment.</p> <p>An employee with a fixed-term contract who believes that he or she is being treated less favourably than a comparable permanent employee may make a complaint using the Trust's Grievance and Employee Complaints Policy.</p> |
| <p>Equality Act 2010</p> | <p>No member of staff on a fixed-term contract will be treated less favourably due to any of the protected characteristics defined by the Equality Act 2010. Action will be taken to ensure reasonable adjustment and positive promotion for the employment of people with disabilities.</p> |
| <p>Successive Use of Fixed-term Contracts</p> | <p>Any employee who has been on one or a series of renewed fixed-term contract(s) with the Trust continuously for four or more years (excluding any period before 10 July 2002) is generally regarded as a permanent employee upon the next renewal of their contract. The only exemption to this is when the Trust can demonstrate that continuing fixed-term status is justified on objective grounds.</p> <p>A fixed-term employee can ask the Trust for a written statement confirming that their contract is permanent or setting out the objective justification for using the fixed-term contract beyond the four-year period. The written statement must be provided within 21 days of the request.</p> |
| <p>Representative</p> | <p>A representative of a recognised Trade Union, an accredited Staffside representative or an Employee of the Trust.</p> <p>Employees are not permitted to bring legal representation to internal informal or formal meetings.</p> |
| <p>Notice Periods</p> | <p>Where the fixed-term contract is due to end on the original contract expiry date an informal notice meeting should be held 3 months before the expiry date and a formal meeting should be held 1 month before the expiry date.</p> <p>Notice periods for the early termination of fixed-term contracts should normally be the same as for an equivalent permanent employee. However, if this would mean an employee being given a period of notice longer than the period of the contract itself, a shorter notice period may be applied, subject to the statutory minimum.</p> <p>Locum medical appointments are contractually entitled to a 3 month notice period, a formal meeting to issue notice should be held 3 months prior to the contract expiry</p> |

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| | date. |
| Redundancy | <p>Redundancy is when the Trust dismisses an employee because the Trust no longer:</p> <ul style="list-style-type: none"> • carries out/expects to carry out the business for which they are employed • carries out/expects to carry out the business in the place where they are employed • requires them/expects them to carry out work of a particular kind <p>Or where the above has reduced or is expected to reduce to such an extent that the Trust will need fewer posts. For a redundancy to be genuine, the Trust must demonstrate that the employee's job will no longer exist.</p> |
| Exclusions from the policy | <p>The following categories of temporary employees/workers are not covered by this policy:</p> <ul style="list-style-type: none"> • Agency workers who are placed with the Trust by a temporary work agency • Staff employed through internal Staff Bank • Apprentices or students on work experience placements of 1 year or less which are undertaken as part of a higher education course • Those employed on training, work experience or temporary work schemes which are funded by the government or an EC institution. (The regulations do apply however, to those employed on the New Deal subsidised employment option.) |

4 DUTIES AND RESPONSIBILITIES

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| Employee | <ul style="list-style-type: none"> • Engage in the process and scheduled meetings with their line manager towards the end of the contract term • Exercise right to representation at formal meetings/hearings if they wish • Where a representative is unavailable on a formal meeting date, the employee will provide their manager with an alternative within 7 calendar days of the original date or an extension to this by mutual agreement to take place within a reasonable timeframe • Actively seek suitable alternative employment towards the end of the fixed-term contract, particularly if the termination is on the grounds of redundancy. |
| Manager/ Clinical Lead/ Clinical Director | <ul style="list-style-type: none"> • To make appropriate decisions regarding fixed term contracts including only requesting a fixed term appointment in appropriate circumstances. • To review the appropriateness of the contract on a regular basis in line with the needs of the service. • Treat fixed-term employees no less favourably than permanent employees. • Ensure the procedure and implications for employing staff on fixed-term contracts and renewing/not renewing fixed-term contracts is fully understood. • Ensure employees are aware of and understand the policy and their responsibilities (this may include helping them to get a copy in an alternative language, in Braille/large print or reading it to them). • Conduct meetings with the employee within the specified timeframes toward the end of the contract term. • Keep the employee informed of suitable vacancies within the Trust. • Complete the electronic Termination Form in a timely manner if the fixed-term contract is renewed or terminated. |
| Human Resources | <ul style="list-style-type: none"> • Provide advice and support to managers about the application of this policy • Explain the application of the policy to employees where needed |

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| Staffside/ Trade Union representative | <ul style="list-style-type: none"> • Represent members at formal meetings where requested by employee, for example, meetings where fixed-term employees are advised of the non-renewal of their contract. |
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5 RECRUITING TO A FIXED TERM CONTRACT POST

- 5.1 Trust procedures for recruitment, including the preparation of job descriptions and person specifications and undertaking pre-employment checks should be followed in the same way for fixed-term appointments as for permanent appointments.
- 5.2 When advertising/interviewing for a fixed-term post, the recruiting manager and the recruitment team should make it clear to applicants at each stage of the process that the post is fixed-term, the expected duration of the contract and the reasons for this.
- 5.3 At interview the candidates should be informed of the following:
 - the reason for the appointment being temporary;
 - the duration/likely duration of the period of employment;
 - and/or the event that will bring about the termination of the contract.
- 5.4 The successful candidate's offer letter should also confirm the above details.
- 5.5 A probationary period of six months will apply to those employees on a fixed-term contract where the length of the contract is longer than six months.

6 APPOINTED FIXED TERM EMPLOYEES

6.1 The Trust has an obligation to ensure that fixed-term employees are not treated less favourably than comparable permanent employees. This includes the following aspects;

- Employees with fixed-term contracts should participate in Trust induction and all relevant and appropriate statutory and mandatory training, as if they were permanent members of staff.
- Employees with fixed-term contracts should receive regular appraisals and up-to-date personal development plans, in line with Trust procedures for all employees. This process should be linked to the specific project detailing the task/role for which the individual has been employed.

7 ACCESS TO PERMANENT POSTS WITHIN THE TRUST

7.1 An employee on a fixed-term contract has the right to be kept informed of suitable vacancies within the Trust. Vacancies can be reviewed via the Trust's Intranet site and NHS Jobs, managers should highlight internal vacancies to all employees on fixed-term contracts.

7.2 An employee on a fixed-term contract does not have an automatic right to a post if it is decided that a permanent appointment will be made, for example where a member of staff decides not to return following maternity leave or permanent funding for the post is established. The post will be advertised internally and recruited into following normal Trust recruitment procedures. However the employee will be eligible to apply for the post and should be treated equally to other candidates.

8 TRANSFER TO / FROM A PERMANENT TO A FIXED-TERM CONTRACT

8.1. When an existing employee with a permanent contract is appointed to a new post with a fixed-term contract, it should be made clear in the appointment letter that the normal fixed-term contract procedures would apply at the end of the contract term and that, if no suitable alternative post is available, their contract may be terminated on the grounds of the fixed term contract coming to an end.

9 RENEWING A FIXED TERM CONTRACT

9.1 If a post covered by an employee on a fixed-term contract is to continue unchanged beyond the original expiry date, the contract should be extended and an electronic Changes to Assignment Details form should be completed advising on the reasons for the contract extension and the length of the extension. Non-renewal of fixed-term contracts for reasons of poor/unacceptable capability, attendance or disciplinary issues may amount to unfair dismissal. Where there are capability, attendance or disciplinary issues with the employee they should be managed in line with the appropriate Trust policy and procedure.

9.2 If the duties of the post change substantially or the post becomes permanent the vacancy should be advertised through the normal Trust's recruitment procedure.

10 EXPIRY OF A FIXED-TERM CONTRACT

10.1 The expiry of a fixed-term contract is regarded as a dismissal for the purposes of unfair dismissal law, as a result the statutory dismissal procedure must be adhered to when ending a fixed-term contract (regardless of whether the fixed-term contract will end on the original expiry date or has been brought forward to an earlier termination date).

10.2 Managers should hold an informal meeting with the employee **at least three months** in advance of the contract end date to inform them that their contract will expire on the date originally indicated on

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their contract or at an earlier termination date. Where the length of the fixed-term contract does not allow for this, the meeting should be held at the earliest possible opportunity. There is no right to representation at this meeting but if the employee wishes to bring a representative it may be permitted provided that the manager gives prior approval.

10.3 At this informal meeting, the manager should discuss:

- Whether the fixed-term contract is likely to be extended or not;
- if the contract will be coming to an end, the employee should be informed of the reason;
- the possibility of suitable alternative employment within the Trust;
- any proposals in place to secure alternative employment;
- draw the employee's attention to any suitable alternative posts currently available and continue to do so on a regular basis from the date of the informal meeting until the contract end date.

10.4 See Notice Period under section 3 Definitions for information on whether a statutory notice period should be issued to the employee.

10.5 The details of this meeting should be confirmed in writing, if the fixed-term contract will end the reason should be included in the letter.

10.6 A formal meeting should be held **one month before** the expiry of the fixed-term contract and only if no suitable alternative employment has been identified, the manager must write to the employee inviting them to attend a formal meeting to discuss the termination of the fixed-term contract. The employee must be advised in writing that they are entitled to bring representation to accompany them during the meeting.

10.7 At this formal meeting, the manager should:

- discuss the attempts that have been made to facilitate securing a suitable alternative post;
- confirm that the contract is due to come to an end at its expiry;

10.8 The details of this meeting should be confirmed in writing.

10.9 Managers should ensure that they have considered all possible alternatives to termination and whether there is a substantial reason for terminating the contract at the set date. The automatic dismissal of an employee at the end of a fixed-term contract (i.e. dismissal without following the procedures described within section 10 of this policy) simply because the contract has expired would be automatically unfair. The employee may then have grounds to make a claim of unfair dismissal to the employment tribunal.

10.10 If the employee wishes to appeal, it must be lodged in line with the appeal procedure as outlined in the Trust's Disciplinary Policy.

10.11 Managers should advise Payroll of the termination of a fixed-term contract by completing the electronic Termination Form in the usual way, in a timely manner.

10.12 If an employee is dismissed for asserting rights under the Fixed Term Workers Regulations, either for him or herself or for a colleague, that dismissal would be automatically deemed to be unfair.

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10.13 Locum Medical Appointments are entitled to a contractual notice period of 3 months, a formal meeting to issue notice should be held 3 months in advance of the contract expiry date. The points detailed in paragraph 10.3 should be discussed during this meeting.

11 REDUNDANCY

11.1 In some instances employees with fixed-term contracts may be entitled to redundancy payments, provided the following points are satisfied;

- the reason for the contract termination is on the grounds of redundancy and;
- no suitable alternative employment has been identified and;
- the employee has at least 104 weeks **continuous NHS service**. Continuous NHS service includes full and part time service with this Trust or another NHS organisation.

11.2 The entitlement to redundancy payments is detailed in the Agenda for Change: NHS Terms and Conditions of Service Handbook. Copies are available on the Trust's Intranet site or through line managers and staff side representatives. Full redundancy payment details will be provided for individual employees on a confidential basis where this is applicable.

11.3 The expiry of a fixed-term contract which was to cover another employee's absence, for example, maternity leave, a long-term sickness absence or a career break, does not fall within the definition of redundancy. If the absent employee does not return, thus creating a vacancy which is advertised through the normal Trust recruitment procedures and not filled by the fixed-term employee, dismissal is not for redundancy but may be for 'some other substantial reason'.

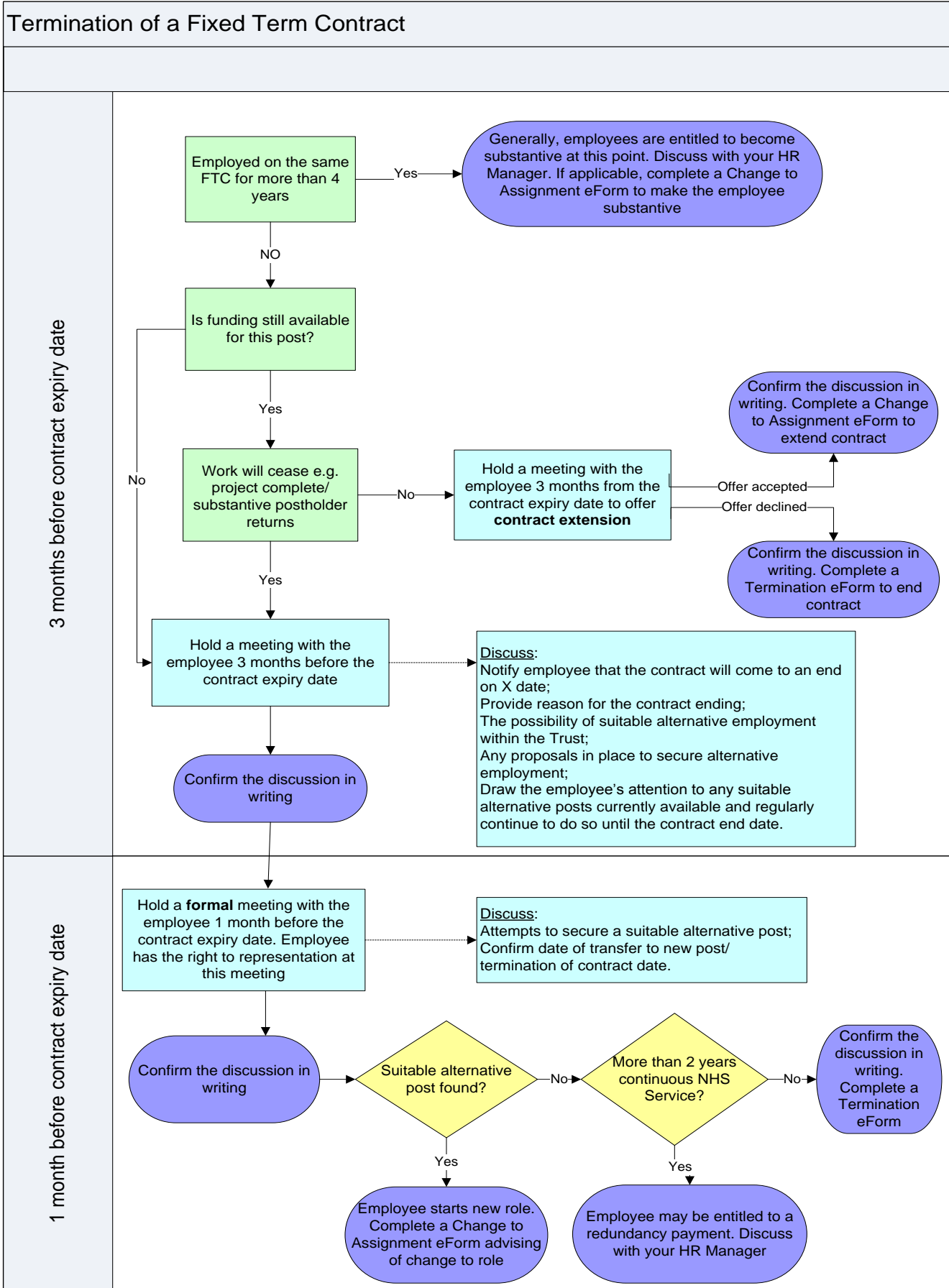
12 ORGANISATIONAL CHANGE

12.1 Fixed-term employees should be treated no less favourably than comparable permanent employees during organisational change. In most cases, they will be included in restructuring exercises and pools for redundancy if the role that they are occupying is affected by organisational change. It should be noted that selection for redundancy purely on the basis that the employee is employed on a fixed-term contract may automatically constitute unfair dismissal unless it can be objectively justified.

12.2 An exception to this would be when fixed-term employees have been brought into the Trust specifically to complete particular tasks, cover another employee's absence or to cover for a peak in demand. In such instances it is likely that the Trust could objectively justify not including them in a restructuring exercise.

13 PROCESS FOR TERMINATING FIXED TERM CONTRACT

13.1 The following process should be followed when terminating a fixed-term contract.



14 PREGNANCY, MATERNITY & ADOPTION LEAVE

- 14.1 The non-renewal of a fixed-term contract for reasons of Pregnancy, maternity leave or other reasons connected with pregnancy/maternity leave is unlawful.
- 14.2 Employees with fixed-term contracts which expire after the eleventh week before the expected week of childbirth and who qualify for NHS Maternity/Adoption benefits shall have their contracts extended so as to allow them to receive the 52 weeks, which includes paid contractual and statutory maternity pay, and the remaining 13 weeks of unpaid maternity/adoption Leave.
- 14.3. If there is no right of return to be exercised because the contract would have ended if pregnancy, childbirth or adoption had not occurred, the repayment provisions that would normally apply to employees not returning from maternity or adoption Leave do not apply.
- 14.4 Employees on fixed-term contracts who do not qualify for NHS Maternity/Adoption benefits may qualify for Statutory Maternity/Adoption Pay and where this exists the contract will be extended for the period of Maternity/Adoption Leave.
- 14.5 Where the contract is due to end before the 29th week of pregnancy, the employee will not be entitled to maternity/adoption leave or Occupational Maternity Pay. In this instance, the employee should contact Job Centre Plus to find out if they would be entitled to Maternity Allowance.
- 14.6 If a fixed-term post occupied by an employee who is pregnant or on maternity/adoption leave is removed from the establishment due to organisational change and no suitable alternative employment is available, the employee will be issued notice of redundancy in the normal way. If at the end of the notice period no suitable alternative employment has been found the employee will be made redundant. If the date of redundancy occurs before or during the maternity/adoption leave a lump sum payment for the maternity/adoption pay will be paid to the employee if they qualify for NHS Maternity/Adoption benefits.
- 14.7 Rotational training contracts for junior doctors: Where an employee is on a planned rotation of appointments with one or more NHS employers, as part of an agreed programme of training, she shall have the right to return to work in the same post or in the next planned post, irrespective of whether the contract would otherwise have ended if pregnancy and childbirth had not occurred. In such circumstances the employee's contract will be extended to enable the practitioner to complete the agreed programme of training.

15 USE OF SUCCESSIVE FIXED-TERM CONTRACTS

- 15.1 Employees who have been employed on successive fixed-term contracts for a period of four continuous years may acquire a substantive contract, unless the continued use of a fixed-term contract can be objectively justified. This will include cases where the original contract has been renewed or extended. Such employees have the right to ask their manager for a statement confirming that they are a permanent employee.
- 15.2 The manager must respond to the employee within 21 days of the date of the request.
- 15.3 If the manager is able to confirm that the contract is permanent then a statement must be written by the manager and the fixed-term element of the contract will be removed. All other terms of the contract will remain the same (unless expressly varied). The manager must also complete an electronic Changes to Assignment Details form which advise of the change in contract type and the reason for the change.
- 15.4 If the manager is unable to confirm that the contract is permanent then they must write to the employee detailing this and give clear, objective reasons why the contract must remain Fixed Term within 21 days of the date of the request, with a copy to Human Resources.

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15.5 Use of successive Fixed Term Contracts will only be justified where these are to meet the needs of a particular profession or business need of the employer, for example where a brief extension past the four year period is required to complete a project. Such situations will be exceptional rather than the norm. In such circumstances, the Trust would be obliged to inform the fixed-term employee of any permanent vacancies arising in the future.

16 IMPACT AND EQUALITIES ASSESSMENTS

16.1 An Equality Analysis has been carried out for this policy and has concluded that there are no detrimental effects and some positive effects of this policy. The analysis has been included here:

17 MONITORING THE EFFECTIVENESS OF THIS POLICY

| Issue being monitored | Monitoring method | Responsibility | Frequency | Reviewed and followed up by |
|--|-------------------|-----------------|----------------------------|-----------------------------|
| Compliance with duties within Equality Act | | Human Resources | Bi-Annual (every 6 months) | Trust Management Executive |
| Compliance with Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations | | Human Resources | Bi-Annual (every 6 months) | Trust Management Executive |
| Other monitoring: Reasons for FTC usage and renewals, reasons for termination, number of pay/overpay errors, number of contracts lasting 4 years or more, etc. | Ad hoc reports | Human Resources | | |

END

APPENDIX 1: GLOSSARY OF TERMS

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| <p>Equality Act 2010</p> | <p>Replaces previous discrimination law (e.g. Disability Discrimination Act 1995) and includes the following:</p> <ul style="list-style-type: none"> • Extends the groups protected (protected characteristics) • Removal of health questionnaires • Bans discrimination by association • Bans direct and indirect discrimination • Bans harassment, victimisation and failure to make reasonable adjustments • Replaces all previous discrimination law • Introduces harassment by third parties • Also relates to provision of services to patients, not just employment |
| <p>Protected Characteristics (part of the Equality Act 2010)</p> | <ul style="list-style-type: none"> • Age • Disability • Gender Reassignment • Marriage and Civil Partnership • Race • Religion or Belief • Sex • Sexual Orientation • (Pregnancy and Maternity – only some elements apply) |
| <p>Reasonable Adjustments (part of the Equality Act 2010)</p> | <p>An 'adjustment' is a change. This can be a physical change or a change in the way something is done.</p> <p>'Reasonable' will depend on a number of circumstances but the tests include:</p> <ul style="list-style-type: none"> • How much will a reasonable adjustment reduce the disadvantage? • The practicality of the change. • The financial and other costs and the extent of any disruption caused. • The extent of the Trust's financial & other resources. <p>Although the Trust must consider reasonable adjustments for employees who have a disability or are pregnant, it is best practice for them to be considered for all employees to facilitate attendance and implemented where service delivery allows.</p> |
| <p>Statutory Notice Period</p> | <p>The minimum legal notice period to be given by the Trust is:</p> <ul style="list-style-type: none"> • one week's notice if the employee has been employed by the Trust continuously for one month or more, but for less than two years • two weeks' notice if the employee has been employed by the Trust continuously for two years, and one additional week's notice for each further complete year of continuous employment, up to a maximum of 12 weeks. |
| <p>Unfair Dismissal</p> | <p>A claim for unfair dismissal may be made if the Trust terminates the contract without a fair reason and/or without following the Fixed-Term Contract Policy. On 6 April 2012 the qualifying period for unfair dismissal claims increased from one to two years. The change only affects those employees starting their employment with the Trust on or after 6 April 2012. Those who were employed before 6 April 2012 will continue to require just 1 year's continuous employment.</p> <p>There is no qualifying period required for an individual to claim sex, race, disability or age discrimination, etc.</p> |

APPENDIX 2: OTHER LINKED TRUST POLICIES AND GUIDELINES

| | Title differences where policies have not been amalgamated | | |
|--|--|-------------------|-------------------------|
| | Barts and The London (& CHS) | Newham University | Whipps Cross University |
| | Fixed-Term Contract Policy | N/A | N/A |
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