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FIXED TERM CONTRACT PROCEDURE

Introduction and Aim

The purpose of this Procedure is to provide a framework to ensure that Fixed Term contracts are used appropriately and that all staff employed on Fixed Term contracts are not treated less favourably than those employed on a permanent basis.

It ensures that Cardiff and Vale UHB is compliant with the Fixed Term Employees (Prevention of Less favourable Treatment) Regulations 2002 and the Statutory Grievance and Dismissal Procedure 2004.

The UHB is committed to fair and equitable treatment for all its employees. Any employee engaged on a Fixed Term contract will be entitled to terms and conditions of employment that are not less favourable on a pro-rata basis than the terms and conditions of a comparable permanent employee, unless there is an objective reason for offering different terms. Fixed Term employees will be treated in the same way as comparable permanent employees in relation to opportunities for training, promotion, transfer and appraisal.

Objectives

- To provide a framework for managers and staff to ensure all obligations are both understood and met when a Fixed Term appointment is made.
- To ensure posts are filled on a Fixed Term basis only where appropriate.
- To ensure managers are aware of their responsibilities when a Fixed Term contract is due to end.
- To ensure that individuals employed on Fixed-Term contracts feel valued as employees, have equal access to development opportunities, have a clear understanding of the current and future status of their post and have the opportunity to apply for a position on a permanent contract, should a suitable position arise.
- To ensure that when a Fixed Term contract comes to an end the Statutory dismissal procedures set out in the Statutory Minimum Grievance and Disciplinary Procedures 2004 are followed. This includes Fixed Term contracts which are not renewed, are terminated at the end of a specific piece of work, or are terminated early.

Scope

This Procedure applies to all staff who are employed on Fixed Term contracts unless this has been objectively justified. Exclusions are:-

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- Existing NHS staff who temporarily move into a higher pay band or who are seconded into another post; who retain permanent employment status.
- Junior doctors in recognised training posts who are employed via a succession of Fixed-Term contracts a part of a planned programme of training, as administered by the Wales Deanery.
- Fixed-Term employees on training, work-experience or temporary work schemes specifically designed to help them find work and is either provided under Government arrangements or funded by an institution of the European Community.
- Apprentices or students on work experience placements (as part of a higher education course) of one year or less.
- Agency and bank workers

Equality and Health Impact Assessment	An Equality and Health Impact Assessment (EHIA) has been completed for the Recruitment and Selection Policy and procedure and the Fixed Term contract Procedure and this has found there to be a positive impact.
Documents to read alongside this Procedure	Recruitment and Selection Policy and Procedure Secondment Policy Redeployment Policy and Procedure
Accountable Executive or Clinical Board Director	Executive Director of Workforce and OD
Author(s)	Judith Harrhy, AHOWOD / CSP

Disclaimer

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Summary of Reviews/Amendments			
Version Number	Date Review Approved	Date Published	Summary of Amendments
1	29/01/2013	22/03/2013	Updated to UHB Format. Replaced previous Trust guidelines reference no. 297
2	29/07/2014	15/09/2014	Changed from guidelines to Policy as it sets out statutory requirements to be followed
3	09/01/2019	22/01/2019	<ul style="list-style-type: none"> • Change from a Policy to a Procedure as it sits under the Recruitment and Selection Policy • Page 4 Additional responsibility added- ensuring end date of appointment is reflected in contract issued. • Policy Statement removed and incorporated into Recruitment and Selection Policy • Page 4. Employment act 2002 deleted. Replaced with Statutory Grievance and Dismissal procedure 2004. • Page 7 Point 6. Points iv and v added. • Page 7 Inserted <i>advice should be sought from the HR dept. before doing</i>

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1. Roles & Responsibilities

The Executive Director of Workforce and OD is responsible for ensuring that this Procedure is up to date, effective and compliant with legislation.

The Directors of Operations and Assistant Directors are responsible for:

- The effective implementation of this Procedure within their Clinical and Service Boards and Corporate Directorates, providing any resources required for putting this Procedure into practice.
- Ensuring that this Procedure is followed within their Clinical/ Service Boards/ Corporate Directorates.

Line managers are responsible for:

- Ensuring that Fixed Term Contracts are used only in appropriate circumstances. Reviewing the use of Fixed Term contracts on a regular basis to ensure that their use is appropriate, both in line with legislation and service needs.
- Ensuring they meet with the employee as directed in the Procedure.
- Seeking Human Resources advice before extending a Fixed Term Contract.
- Communicating clearly to the employee the end date of the contract and whether or not any extension has been sought or has been obtained.
- Ensuring that the start and end dates of Fixed Term appointments are stipulated in the contract issued to the employee.
- This communication should be undertaken via the appropriate written correspondence.

Employees are responsible as follows:

- Employees on a Fixed Term contract must behave in the same way as any other member of staff bound by the same terms and conditions of service. They are also bound by their relevant Professional Code and the UHB Values.
- Employees on a Fixed Term contracts must ensure they meet with their manager in accordance with the termination procedure outlined in this Procedure.

2. Definitions

A Fixed Term contract is a contract that lasts for a specified period and will terminate on the expiry of its specific timescale, and should be used where there is a particular need for a job to be done. There are two types of fixed term contract: specific term and specific performance.

- A specific term contract is one that will last for a maximum definite period; not for a minimum period with provision for an extension. Even

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though this contract is for a specific term, it may contain a provision allowing it to be terminated, by notice, before the fixed term expires. This type of contract should be offered for temporary long term vacancies, usually of more than one year, when it is known how long the job will need to be covered, e.g. for someone on a 3 year career break.

- ii. A specific performance contract is a contract which will end at some undetermined date when the purpose for the job has been fulfilled. Specific performance contracts are sometimes known as temporary contracts.

In addition, the UHB utilises medical contracts offering specialty-specific experience and/or research opportunity for a prescribed period. These may be reviewed and extended in line with agreed UHB principles.

3. Process

Fixed Term contracts should only be issued where there is a specific need for the post to be appointed to on a temporary basis and the period of the temporary appointment is known. This will generally be offered where:

- It is known in advance that a particular job will come to an end on a specific date
- The employment is for the purpose of completing a particular task or obtaining specific experience
- The employment is for the purpose of replacing an employee who is planned to be absent from work for a period of time (e.g. on maternity leave or secondment)
- The post is dependent on external funding and it is expected that the funding will be available for a specific temporary period of time.

Managers must be mindful of the implications of employing staff on a Fixed Term contract; particularly in relation to the issue of subsequent Fixed Term contracts for a period totalling four or more years.

A Fixed term contract should not be used to assess a candidate's suitability for a post.

4. Recruitment to a Fixed Term Contract

If a Fixed term contract is deemed appropriate, 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. If the end date is not known, the advert should state that the contract is for an indeterminate period which will expire once the job has been completed or the funding has expired. This information should be expressly stated in the letter of appointment and contract of employment.

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It is important that a record of these details is retained by the line manager on the employee's personal file.

If a post has been advertised as permanent, it should not be appointed to on a fixed term basis without the agreement of the prospective employee, supported by an objective justification. This should be documented and a copy retained on the employee's personal file. This should occur only in exceptional circumstances and advice should be sought from the HR department before doing so.

5. Right to a Written Statement

If an employee believes that they have been treated less favourably than a comparable permanent employee, they may submit a request in writing to their line manager asking for a written statement giving the reasons for the differing treatment. The response must be provided within 21 calendar days of the employee's request. Where appropriate, this may include details of proposed action(s) to rectify the issue.

6. Review of a Fixed Term Contract

It is good practice for the manager to arrange regular reviews with those on Fixed Term contracts to provide advice, guidance and support, as they would do with permanent employees. This will also include a discussion regarding whether:

- i. there is a need to extend the contract
- ii. the contract is to continue to run for the duration originally stated
- iii. the post is to be made permanent
- iv. if the contract has been renewed and the employee has reached 4 years' service (or will reach 4 years before the new expiry date), the manager should consider whether there were objective grounds at the time renewal took place for the continued use of a Fixed Term contract and record those grounds. Advice should be sought from the HR department in such cases.
- v. Where it is agreed that an employee achieves permanent status as a result of being employed on successive Fixed Term contracts amounting to 4 or more years, the employee should receive a written statement of variation to their contract.

A written record of any review undertaken should be kept and shared with those on Fixed Term contracts as a note of their discussions.

7. Extension of a Fixed Term Contract

In order to ensure best practice, the number of renewals or extensions to a fixed term contract should be limited. If contracts are extended or renewed after the planned end date, this should be objectively justified and should be

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in consultation with Human Resources/ Medical Workforce and Finance. Consideration should be given to why this post cannot be a permanent post.

Any approved extensions or changes to the Fixed Term contract must be confirmed in writing by the line manager; having considered whether there are objective grounds for a Fixed Term rather than a permanent contract. This will be confirmed by the Medical Workforce Dept. in the case of medical staff. This change should be reflected on ESR in a timely manner.

8. Right to Permanent Employment

The regulations limit the use of successive fixed term contracts by imposing a cut-off of 4 years' continuity of service in successive contracts, after which an employee will automatically achieve permanent status, unless there is objective justification for a further extension. These successive contracts can be in different roles within different business areas of the UHB. Managers considering such an extension should consult the HR department before doing so.

If an employee is employed on a single Fixed Term contract of more than 4 years and the contract is not extended or renewed, they will not achieve permanent status. The employment has to form part of a series of successive contracts to qualify.

If an employee believes their contract should be regarded as permanent, they have the right to request in writing a written statement from their line manager either confirming their contract is permanent or giving reasons why their employment is to continue on a Fixed Term contract.

A gap between two contracts does not necessarily break continuity or prevent there being a renewal. In such cases, advice should be sought from the HR department before doing so.

9. Making the Post Permanent

If permanent funding becomes available and the need for the post is clearly identified, the post should be advertised using the usual recruitment processes.

10. Termination of a Fixed Term Contract

The termination of a Fixed Term contract is classed as a dismissal under the Regulations. In order to demonstrate that the dismissal was fair, it is essential that all terminations are conducted according to the statutory minimum dismissal and disciplinary procedures. This involves meeting with the employee, giving the reasons for the termination of the contract and ensuring that the required notice period is given.

The procedure for terminating a Fixed Term contract is as follows:

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1. Approximately 16 weeks before the expiry date of the Fixed Term contract the manager should write to the employee (using Standard Letter 1), inviting them to a meeting to discuss the termination of their contract. This meeting should take place within 21 days of this letter being sent. Employees have the right to be accompanied by a trade union representative or workplace colleague not acting in a legal capacity.

All the available options should be considered, taking into account the views of the employee: These are:

- agreeing an extension to the original Fixed Term contract
 - making the post permanent
 - ending the Fixed Term contract
 - redeployment to another suitable post
2. Once a decision has been made the manager must inform the employee of the outcome of the meeting in writing (using Standard Letter 2). The employee should be informed that they have 14 days to lodge an appeal against the decision, should they wish to do so.
 3. If the appeal is lodged, the employee should be invited to a further meeting with a more senior manager. (Standard Letter 3 should be used to issue this invitation).
 4. If the decision to terminate is upheld at appeal, the employer will write to the employee setting out the reasons (using Standard Letter 4).

It is important that managers are aware of the date on which a Fixed Term contract is due to expire, so that they can ensure this procedure is followed in a timely way. Failure to meet the employee at the appropriate time may result in the contract being extended to cover the employee's contractual notice period.

In certain circumstances it may not be appropriate to terminate a fixed term contract at its end date, for example if an employee is pregnant. In these circumstances please refer to the relevant policy (e.g. Maternity, Adoption and Paternity Guidance Notes) and contact Human Resources for further guidance.

Non-renewal of fixed term contracts for reasons of poor/unacceptable performance may amount to unfair dismissal. Managers must deal with cases of poor performance, misconduct, capability, sickness and any other employee relations issues under the appropriate UHB Policy.

11. Notice Periods

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Employees must be given written notice of the termination as soon as possible and no later than the required Statutory or contractual notice periods, whichever is longer. The minimum Statutory notice period is:

- One week's notice if the employee has been employed by the employer continuously for one month or more, but for less than two years. Two weeks' notice if the employee has been employed by the employer 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. For example if an employee has worked for 5 years then they are entitled to 5 weeks' notice etc.

12. Ending a Fixed Term Contract Early

It is possible to end the Fixed Term contract before the specified end date, provided that this is clearly stated within the appointment letter and contract of employment issued at the start of employment. In these circumstances, and providing that the employee has been given the appropriate notice period, there will not be a breach of contract.

13. Eligibility for Redundancy

When a Fixed Term contract is not renewed because the work has ended, the reason for the dismissal may be redundancy. If this is the reason, and the employee has more than two years' continuous service with the NHS, they will be entitled to a redundancy payment if suitable alternative work cannot be found.

It is important that when considering whether redundancy payments apply, managers identify all of the employee's prior NHS continuous service and not just consider the service they have with the UHB. An employee's previous continuous service with any NHS employer counts as reckonable service in respect of NHS agreements on redundancy. To count as reckonable service for the purposes of redundancy, any break in the continuous service has to be of 12 months or less.

However, guidance should be sought from the HR department, as the reason for dismissal is not always redundancy. For example, if the contract is ending because the need to provide cover for maternity leave has come to an end, the reason for dismissal may be 'some other substantial reason' and the individual may not necessarily be entitled to a redundancy payment.