



**South Gloucestershire
Clinical Commissioning Group**

**TERMINATION OF EMPLOYMENT POLICY AND PROCEDURE AND
FIXED TERM CONTRACTS GUIDE**

APPROVED BY:	DATE
South Gloucestershire Clinical Commissioning Group Quality and Governance Committee	February 2016

Date of Issue: February 2016

Version No: 2.0

Date of Review: February 2018

Author: NBT HR and Sue Brown, Head of Governance and Quality

Document status: Current		
Version	Date	Comments
Version 1	12.02.2014	
Version 2.0	24.02.2016	Final version following approval by Quality and Governance Committee

CONTENTS

Section	Summary of Section	Page
Cont	Contents	3
1	What is meant by Termination of Employment?	4
2	Key Principles for the Policy and Procedure	4
3	CCG Responsibilities	4
4	Managers Responsibilities	5
5	My responsibilities	5
6	Equal Opportunities/Equalities Impact Assessment	6
7	Review Date	6
Appendix		
Appendix 1	Letter inviting a member of staff to a termination of employment meeting	7
Appendix 2	Fixed Term Contract Guidance	8

1. WHAT IS MEANT BY TERMINATION OF EMPLOYMENT?

- 1.1. For the purposes of this policy and procedure, termination of employment means the ending of your contract of employment by the CCG. If you decide to leave the CCG for any reason this policy and procedure does not apply – instead you would be required to give notice as set out in your contract of employment.
- 1.2. This policy and procedure includes dismissals for the following reasons:
 - non – renewal of a fixed term contract (see Appendix 2)
 - capability (see Capability Policy)
 - ill health (see Sickness Absence Policy)
 - conduct (see Disciplinary Policy)
 - redundancy (see Redundancy Policy)

2. KEY PRINCIPLES FOR THE POLICY AND PROCEDURE

- 2.1 The policy and procedure feature general good practice and comply with employment legislation (the Employment Act 2002 (dispute resolution) Regulations 2004 and associated provisions in the Employment Act 2002)
- 2.2 Managers must seek advice from Human Resources at all stages of the process
- 2.3 Members of staff have the right to be accompanied by a colleague not acting in a legal capacity
- 2.4 Each step and action of the procedure will be taken without reasonable delay
- 2.5 The timing and location of meetings will be reasonable
- 2.6 Both managers and members of staff will be able to explain their cases at meetings

3. CCG'S RESPONSIBILITIES

- 3.1. The CCG must ensure that all dismissals are fair. The reason for dismissal must be one allowed by law. These reasons are:
 - Capability or qualifications of the member of staff
 - Conduct of the member of staff
 - Redundancy
 - Contravention of a duty or restriction prohibiting the continuation of employment
 - Some other substantial reason which justifies the dismissal, for example the non-renewal of a fixed term contract in certain circumstances
- 3.2 In addition the CCG must act fairly by:

- Having procedures that encourage members of staff to improve where possible, rather than just imposing a sanction
- Informing a member of staff about the complaint against him/her and giving the member of staff an opportunity to state his/her case before reaching a decision
- Ensuring that members of staff know that they have a right to be accompanied at meetings
- Not taking disciplinary action until the facts of the case have been established
- Not dismissing a member of staff for a first disciplinary offence, unless it is a case of gross misconduct
- Always giving a member of staff an explanation, in writing, for their dismissal.

4 MANAGERS RESPONSIBILITIES

4.1 He/she will discuss the matter with the CCG's appropriate dismissing officer who will ultimately sign the letter terminating the contract. A dismissing officer will be a Director.

4.2 If the dismissal is because of capability or ill-health your manager will follow the procedure set out in the capability policy and procedure and/or the sickness absence policy

4.3 If the dismissal is because of your conduct, your manager will follow the disciplinary policy and procedure

4.4 If the dismissal is due to the non-renewal of a fixed term contract (see Fixed Term Contract Guidance at Appendix 2), your manager will contact Human Resources at least two months before the expiry of your contract to ensure that you receive adequate notice and the correct process is followed. Further to this:

- At least one month before your contract ends your manager will write to you explaining the circumstances why your contract has not been renewed and will invite you to a meeting to discuss the termination of your contract. You will have the opportunity to express your views and discuss any suitable potential employment opportunities within the CCG. (see Appendix 1)
- After the meeting, your manager will inform you, in writing, of the outcome, the reasons and of your right to appeal

4.5 If the dismissal is due to redundancy, your manager will follow the process set out in the CCG Redundancy policy.

5 MY RESPONSIBILITIES

5.1 You must make every effort to attend the meeting that your manager arranges to discuss the termination of your contract.

5.2 If you wish to appeal, you must use the CCG's appeal policy

5.3 You must take reasonable steps to attend an appeal hearing

6. EQUAL OPPORTUNITIES/EQUALITIES IMPACT ASSESSMENT

6.1 An Equality Impact Assessment has been completed for this policy and procedure and it does not marginalise or discriminate minority groups.

7. REVIEW DATE

7.1 This policy and procedure will be reviewed after 2 years, or earlier at the request of either staff or management side, or in light of any changes to legislation or National Guidance.

Template letter for inviting a member of staff to a termination of employment meeting

Dear ***

I am writing to confirm that your current contract as ***** is due to expire on *****. The reason/s for this is/are *****

Further to this I would like to invite you to attend a meeting to discuss this further. This has been arranged for *** am/pm at (venue) with (manager) (and HR representative dependent upon the circumstances).

A friend not acting in a legal capacity may accompany you, if you wish.

Can you please confirm your attendance and the name of your representative as soon as possible I look forward to hearing from you.

Yours sincerely

Name of Manager

Copy Human Resources Department

FIXED TERM CONTRACT GUIDANCE

DEFINITION

A Fixed Term Contract (FTC) means a contract due to end on a specified date. Such a contract might be used, for example, to cover time limited research, a funded piece of work or for maternity cover.

LEGAL FRAMEWORK

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations

These regulations give those individuals on FTC the following provisions

- Members of staff shall not be treated less favourably than comparable permanent members of staff on the grounds they are fixed term, unless the different treatment can be objectively justified
- limit the use of successive (or a single) fixed term contracts to 4 years, otherwise the contract is to be regarded as substantive and the individual should be treated as any other permanent member of staff
- the right not to be unfairly dismissed after 2 years' service (effective for contracts starting on or after 6 April 2012)
- the right to a written statement of reasons for dismissal if the contract is terminated before the agreed date
- Where a member of staff has had a break in NHS service of 12 months or less the period of NHS employment prior to the break counts as reckonable service **but** not as qualifying service

OTHER CONSIDERATIONS

If the contract is extended (with no changes to the terms of the contract) or renewed under broadly the same terms there will be no dismissal.

If a different role / terms are offered, this will constitute a dismissal and re-engagement with no break in service

Continuity of service is preserved if the renewal (of the same contract) or re-engagement (under a different contract) with the same employer takes place within 4 weeks of the expiry of the existing contract.

If a FTC expires and the member of staff continues working for the CCG without any action such as offering renewal/extension of the FTC, the member of staff will be regarded as working under a normal, open ended contract

Use of Fixed Term Contracts

Given the potential liabilities described above, managers should ensure FTC are used appropriately from the outset and regularly reviewed in line with the potential risks prior to the end of two and four years of an individual's employment with the CCG.

If the termination of a FTC is challenged, one of the important considerations will be whether there was '*genuine temporary need*' in the first place to warrant the FTC. Can the manager demonstrate it had a genuine need to employ the person on a FTC to cover a short term or temporary contingency?

An Employment Tribunal will assess the balance between protecting employers with a genuine need for fixed term employment and protecting members of staff being deprived of their employment rights through the use of temporary fixed term contracts.

DISMISSAL AND NON RENEWAL OF FIXED TERM CONTRACTS

In order to act fairly and consistently, managers should take into account the following considerations:

Length of successive fixed term contracts

If the 4-year rule (see above) has been breached, the member of staff should be regarded as substantive. Ask HR can advise you on the process that should be adopted to bring the contract fairly to an end and highlight the liabilities (e.g. redundancy) that may be involved.

What is the reason you have decided that the contract would not be renewed on expiry? Is the natural expiry of the fixed term the principle reason for dismissal? If yes, this dismissal will normally be classed as being on the grounds of 'Some Other Substantial Reason'. However, if in reality the reason for dismissal relates to the person's competence or conduct, a separate process for dismissal must be followed to be legally compliant and in line with CCG policy. In these circumstances, please call Ask HR for further advice.

Following fair procedures for termination and considering other opportunities

There is an important distinction in the case of a fixed term member of staff whose employment has been known to be temporary and non-renewable from the outset, or another whose contract has been renewed year after year for example.

There is no general rule to the effect a comparatively short term member of staff whose contract has not been renewed has any right of priority of appointment to an available suitable post over and above any other suitable candidate, in particular a better qualified candidate. In other words, the CCG is not required to appoint a temporary member of staff in preference to advertising posts more widely.

In cases of organisational change, there is no requirement to count fixed term members of staff for the purpose of collective consultation requirements or to

consult with them if the contract is due to expire naturally at the original fixed term contract end date. However there are 2 exceptions to this rule

1. If the individual has four years' continuous service over two or more contracts, then he or she is deemed to be a permanent member of staff and needs to be treated as such in terms of the organisational change process.
2. If the manager wishes to bring the contract to an end early due to organisational change the member of staff should be treated as though a permanent member of staff. This means they should be placed 'at risk', be given prior and equal consideration to those 'at risk' holding substantive contracts and served with redundancy notice as appropriate.

Generally, dismissal on the expiry of a fixed-term contract will be fair provided that:

- the fixed-term contract was set up for a genuine purpose;
- the purpose of the contract and the reason for its being for a fixed term were known to the member of staff; and
- the underlying purpose of the contract had ceased to be applicable when the member of staff was dismissed.

RIGHT OF APPEAL

A right of appeal is not relevant following the expiry of a fixed term contract. The necessity to provide a right of appeal can be determined on a case by case basis. In these circumstances, please call Ask HR for further advice.

PRACTICAL GUIDANCE AND HELP

In each case Ask HR can assist you carrying out a risk assessment in order to inform the process adopted.

Relevant factors for the above discussion might include

- Original purpose of the fixed term contract. Is it quite clear the original contract was always intended to be for a temporary period and specific purpose? Was this made quite clear to the member of staff? What was the reason given for the fixed term contract?
- Length of the (successive) fixed term contracts. Have there been at least two successive fixed term contracts? What key risk points have been triggered – two and four years?
- Other relevant background to the case. For example, has the person secured another post elsewhere?
- Is the reason for dismissal simply the expiry and non-renewal of the contract or are there other potential contributors? For example, are there conduct or capability considerations?

The risk assessment will involve the interplay between all of these factors. It is also useful to bear in mind that most members of staff acknowledge the short-term nature of the initial (and subsequent) contract. There is a balance therefore, between managing risk and creating unnecessary problems.

This document is intended to provide guidance to staff and managers. It does not create any contractual or other rights and may be amended from time to time by the Trust without advance notice. In the event of any conflict with any contractual documentation or Trust procedures, the contracts and/or procedures will take precedence.