

1	Policy Name	Managing Fixed Term Contracts Policy & Procedure			
2	Accountable Director	Director of Corporate Services			
3	Applies to:	All Employees			
4	Groups / individuals who have overseen the development of this policy	HR, Policy Harmonisation Working Group			
5	Groups which were consulted and have given approval	Joint Partnership Group-October 2019 Executive Management Team-January 2020			
6	Equality Impact Analysis	Policy Screened	Yes	Template Completed	Yes
7	Ratifying Committees & Date of final approval	Joint Partnership Group-October 2019 Executive Management Team-January 2020			
8	Version	1			
9	Available on	Intranet	Yes	Website	No
10	Related documents:	N/A			
11	Disseminated to:	All Employees			
12	Date of implementation	03 February 2020			
13	Date of next formal review	January 2023 or earlier should there be national NHS terms and condition/legislative changes			

# **Managing Fixed Term Contracts Policy & Procedure**

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## **1. Introduction**

- 1.1.** The CCG is committed to ensuring continuity of employment for its staff and to use fixed-term contracts only for transparent and objective reasons where there is a genuine fixed-term need.
- 1.2.** This policy has been developed in accordance with the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and the ACAS Code of Practice 2013. The CCG is committed to the general duty of preventing less favourable treatment for fixed term employees, ensuring equality of opportunity for all its staff.
- 1.3.** The policy applies to all employees on fixed term contracts. The policy does not apply to staff on secondment to the CCG from another organisation; agency/interim workers or acting up arrangements where staff have a substantive permanent post in the CCG.
- 1.4.** The aim of this policy is to explain the criteria for the use of fixed-term contracts; provide an overview of how fixed-term contracts will be managed within the CCG; and specify the procedure required at the termination of a fixed-term contract.

## **2. Roles & Responsibilities**

### **2.1.** All managers are responsible:

- 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.
- To communicate clearly to the employee the end date of the contract and whether any extension/suitable alternative employment has been sought or is obtained via the appropriate written correspondence, templates for which can be found in the appendices of this Policy and Procedure.
- Ensure that the procedure outlined in this guidance is followed.

### **2.2.** All employees are responsible for:

- Ensuring that they meet with their manager in accordance with the fixed term contract policy. Failure to comply with a manager's reasonable request to meet for this purpose may lead to management under the CCG's Disciplinary Procedure.

### **2.3.** Human Resources are responsible:

- To keep a record of all staff on fixed term contracts and to notify a manager with an employee on a fixed term contract of the end date of that contract within good time to allow notice to be given in accordance with the employee's terms and conditions.
- To provide expert advice as to when use of a fixed term contract may be appropriate.
- To provide advice regarding the termination of a fixed term contract, as necessary.
- To provide support / training for manager's about employee's right in relation to fixed term contracts.

## **3. Use of fixed-term contracts**

- 3.1.** The CCG is committed to only using fixed term contracts where there is a genuine service need to do so which can be objectively justified.

**3.2.** The CCG will normally consider a fixed-term contract in the following circumstances:

- Where the post requires specialist expertise or experience not available within the CCG to support a short term project/task.
- Where the appointment is made to complete a temporary/time limited task within a stated period (project work).
- To cover staff absence as appropriate, such as maternity, paternity and adoptive leave, sabbatical leave, secondments etc.
- Where the post is created by time related funding and the funds are available for a specified period only.
- To provide additional cover during exceptionally busy periods

#### **4. Management of Fixed-term Contracts**

**4.1.** The CCG will ensure that:

- Employees on fixed term contracts are employed on the same terms and conditions as permanent employees, and in accordance with Agenda for Change.
- Employees on fixed term contracts are subject to the same policies and procedures as employees in substantive posts.
- All benefits open to permanent employees are available to employees on fixed-term contracts. Employees on fixed term contracts are able to apply for vacancies in the same way as permanent staff.
- Appropriate opportunities to enhance skills and career and career development are provided to all employees.
- Any non-extension of a fixed-term contract complies with relevant legislation as outlined in section 6.
- Employees on fixed-term contract are protected against unfavourable treatment.

**4.2.** Poor performance is not an acceptable reason for the non-renewal of a fixed term contract. Where the performance of an employee on a fixed term contract gives grounds for concern, this must be dealt with in accordance with the CCG's Probation/Capability Policy.

#### **5. Extension of Fixed-term Contracts**

**5.1.** In order to extend an existing fixed-term contract, the manager should complete a change form and send it to Human Resources after obtaining full authorisation including the financial approval. When a manager identifies / confirms a FTC post will subsequently become permanent, the manager should follow the appropriate recruitment process as per the relevant recruitment policy.

**5.2.** In cases where an employee has accrued 4 years' continuity of service on fixed-term contracts with the same employer (these can be in different roles within different business areas) they may automatically acquire permanent status, unless there is an objectively justifiable reason that this should not be the case (e.g. where a FTC is necessary to achieve a legitimate objective). In such cases, the manager should seek advice from HR.

#### **6. Employees on a Fixed Term Contract and Maternity Leave**

**6.1.** An employee on a fixed term contract who is entitled to the occupational maternity pay in line with the eligibility requirements outlined in Maternity Policy & Procedure and whose contract is due to end after the 11th week before the EWC, will have her contract extended to enable her to receive 52 weeks Maternity Leave and the occupational maternity pay

provisions. Under these circumstances, there will be no right of return to be exercised because the contract would have ended if pregnancy and childbirth had not occurred.

**6.2.** Employees who do not satisfy the eligibility requirements for occupational maternity pay in line with the eligibility requirements outlined in the Maternity Policy and Procedure and whose contract ends after the 15th week prior to the EWC but before the 11th week prior to the EWC, will not be entitled to maternity leave but statutory maternity pay may be payable. In this case, the contract will not be extended but the CCG will be responsible for paying any SMP due. Under these circumstances, the employee must inform the CCG if she starts work for another employer following the birth of the baby and must still provide evidence of pregnancy in accordance with Section of this policy and procedure.

**6.3.** Please see the CCG's Maternity Policy and Procedure for further information.

## **7. Termination of Fixed-term Contracts**

**7.1.** The CCG recognises that the non-renewal of a fixed-term contract is a dismissal in law. The CCG will apply the following statutory dismissal procedure when a contract is not to be renewed:

### **7.2. Stage one**

**7.2.1.** Managers are encouraged to have open and transparent discussions with the employees prior to inviting an employee to a formal meeting to discuss their fixed term contract. The manager will formally invite the member of staff on a fixed term contract to a meeting to discuss the expiry of the contract. 5 working days' notice of the meeting should be given in writing. The letter will confirm the right for the member of staff to be accompanied by a Trade Union representative or a CCG work colleague

### **7.3. Stage two**

**7.3.1.** At the meeting the manager will confirm the reasons for the expiry of the fixed-term contract, e.g. the end of a project, and confirm the date the fixed term contract will come to an end. This meeting will also detail the opportunities for alternative employment that may be available or redeployment options.

### **7.4. Stage three**

**7.4.1.** The manager will confirm in writing the discussion at the meeting and the outcome of the meeting, including confirmation when the contract will end and the reasons why the fixed-term contract will expire if the contract will not be re-newed, The letter will also confirm the right to appeal against the decision within 10 working days of receipt of the letter.

## **8. Redundancy Payments**

**8.1.** Where an employee on a fixed-term contract has completed 2 years' continuous service with the CCG, they will be entitled to the same redundancy rights as a permanent employee, including the right to a redundancy payment, if the definition of redundancy is met. Employees appointed on a fixed-term contract for less than 2 years, but have continuous NHS service from another NHS organisation, will be eligible for a redundancy payment at the end of the fixed term contract, if the definition of redundancy is met. Please see section 16 of the Agenda for Change handbook for further information. The manager should seek advice from the HR team.

## **9. Appeal**

**9.1.** An employee whose contract has not been renewed or extended has the right of appeal.

## **10. Appeal process**

**10.1.** Employees whose contract is not renewed will have the right of appeal. An employee who wishes to appeal against the decision to dismiss them under this policy should write to the designated contact detailed in the letter within 10 working days of the date of the outcome letter communicating the decision detailed in section 7.4. The grounds of appeal should include all the information that the employee would like considered as part of the review. An appeal meeting will be convened, chaired by an appropriate manager and assisted by a Human Resources Representative.

**10.2.** The Appeal Panel has discretion in how it conducts any appeal so that the particular circumstances of any single case can be managed in the most appropriate, fair and reasonable way. Generally, however, the following procedure should be followed:

- (1) The employee or her/his representative shall put her/his case in the presence of the CCG manager that took the decision to not re-new the contract.
- (2) The CCG manager and the Appeal Panel shall have the opportunity to ask questions of the employee or her/his representative.
- (3) The CCG manager shall state the CCG's case in the presence of the employee and her/his representative.
- (4) The employee and her/his representative and members of the Appeal Panel shall have the opportunity to ask questions of the CCG manager.
- (5) The CCG manager and the employee or her/his representative shall have the opportunity to sum up their cases. In her/his summing up neither party may introduce any new matter.
- (6) Nothing in the foregoing procedure shall prevent members of the Appeal Panel from seeking to clarify any points from either party.

**10.3** The outcome of decision at the appeal stage will be communicated to the appellant in writing within 10 working days of the appeal meeting. The decision of the Panel Chair will be communicated to the employee in writing, will be final and there is no access to any other CCG procedures.

## **11. Equality Statement**

In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

The Equality Impact Assessment for this policy has been carried out, and is available on request from HR.

## **12. Data Protection / GDPR**

In applying this policy, the Organisation will have due regard for the Data Protection Act 2018 and the General Data Protection Regulation (GDPR). Personal Confidential Data of data subjects will be processed fairly and lawfully and in accordance with the six data protection principles. Data Subject's Rights and freedoms will be respected and measures will be in place to enable employees (data subjects) to exercise those rights. Appropriate technical and organisational measures will be designed and implemented to ensure an appropriate level of security is applied to the processing of personal confidential data. Employees will have access to the CCG's Data Protection Officer for advice in relation to the processing of their personal confidential data and data protection issues.

## **13. Monitoring & Review**

The guidance will be reviewed every 3 years by Human Resources in conjunction with operational managers and Trade Union representatives. Where review is necessary due to legislative change this will happen immediately.

Implementation and operation of this policy will be monitored on an annual basis by the HR Team. It will also be assessed on an ongoing basis as part of the monthly review of performance of NCL CCGs and the annual governance review of NCL CCGs.

## **14. Breach of Policy**

Unauthorised absence and/or the misuse of this guidance will be managed under the Disciplinary Policy.