



Human Resources Policy

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Review History

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Fixed Term Contract Policy

1 Policy Statement

All employees within NHS Borders are valued for the contribution they make to the service, regardless of their contractual status. NHS Borders is committed to using permanent contracts of employment as the norm, with fixed-term contracts only being used where necessary and appropriate. Furthermore, NHS Borders 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 Borders is expected to 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 the best practice identified in, 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.

2 Scope

This policy applies to all individuals who work under a contract of employment, the nature of which is fixed-term (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).

3 Purpose

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 fixed-term employees 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

4 Principles & Values

NHS Borders 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, by ensuring effective workforce planning and 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 fixed-term employees
- ✦ 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 any 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 fixed-term employees 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; and
- ✦ Promoting adherence to these same principles and values by partner agencies

5 Appointing Fixed-Term Employees

In certain exceptional circumstances, fixed-term contracts may be a valuable tool to enable managers to cover short-term gaps in essential services, enabling consistent standards of service to be maintained. However, such contracts must only be used as time-limited, short-term options, and individuals should not normally be in non-permanent employment for more than two years (unless this can be objectively justified). Good workforce planning will help to appropriately identify situations where fixed-term contracts are necessary. 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

Consideration should be given to appointing staff on a permanent basis if a risk assessment shows that permanent employment is highly likely to be available at the end of the fixed-term period (for example, due to an area of recognised skills shortage or to the flexibility of the core skills required).

When considering whether to appoint to a post on a fixed term basis, managers should follow the needs assessment framework outlined in **Appendix 1**.

Where a fixed-term post is required as a result of nonrecurring funding, agreement should be reached in advance with the funding body that any exit costs associated with the non-renewal of the fixed-term contract will be covered by the funding body or, 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 above 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 Borders reserves the right to refuse any such appointment. Where existing permanent employees apply for fixed-term contract roles, and where NHS Borders does permit such an appointment, 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.

6 Reviewing Fixed-Term Contracts

All staff on fixed-term contracts will have their position reviewed 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 such discussions:

1. There is a requirement to make the post permanent, in which case the process to be followed is set out below at 6.1; or
2. There is a requirement to extend the length of the contract. Where there is an objective justification for extending the contract, the process for renewal of a fixed-term contract, as detailed below at 6.2, should be followed; or
3. There is no change in the plans and expectations of the fixed-term nature of the contract. The contract will run for the duration originally specified, with the process

for nonrenewal of a fixed-term contract, as detailed below at 6.3 and 6.4, to be followed.

6.1 Requirement to Make the Post Permanent

Where it is determined that a fixed-term role needs to be carried out on a permanent basis, the post requires to be advertised in the normal way and any employee currently undertaking such a role on a fixed-term contract basis would be required to apply. However, given that as a result of the above, the employee's fixed-term contract would not be renewed upon expiry, they would be eligible to apply for such a permanent post via redeployment. However, where the criteria set out below with regard to the use of successive fixed-term contracts are met, there may be circumstances where a fixed-term employee would require to be automatically appointed to the role on a permanent basis without the need to advertise.

6.2 Requirement to Renew Fixed-Term Contract

In circumstances in which there is a requirement for employment to continue beyond the initial fixed-term contract expiry period, consideration needs to be given to the following:

- ⊕ NHS Borders is committed to appointing onto a permanent contract fixed-term employees who have continuous service of more than two years (within successive fixed-term contracts) where the following criteria are **all met in full**:
 - The member of staff has held fixed-term contracts consecutively which were used to protect posts for permanent staff due to planned organisational change, service reconfiguration or redeployment; **AND**
 - The member of staff has been employed for more than two years; **AND**
 - Recurring funds for the post beyond the two-year period exist, which can be used to retain the member of staff, or a positive risk assessment has been carried out to establish the impact on the organisation should it be non-recurring funding

Note: In situations where an employee achieves two years' service, and it is known that the contract will not be renewed within three months of the date of achieving two years' service, the individual's contract of employment will remain fixed-term.

- ⊕ 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 of over four years will be entitled to permanent contractual status under employment law, unless this can be objectively justified. In circumstances in which permanency of employment cannot be offered within a particular role, but where continuation of the fixed-term contract cannot be objectively justified, the employee will be deemed to have a permanent contract with NHS Borders, being subject to redeployment in the same way as any other displaced permanent employee when the fixed-term post comes to an end
- ⊕ Fixed-term contracts should not be renewed on more than two occasions in any one-year period, without first establishing an objective justification. Neither the initial contract nor renewal period should be for less than three months other than for clear, objective and specified reasons (e.g. awaiting confirmation of a permanent

postholder returning from maternity leave (in which 28 days' notice is all that is required from the employee on maternity leave) – in such circumstances it would be reasonable and justifiable to offer one-month renewals). Where a fixed-term contract necessarily and appropriately requires to be renewed, 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

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 renewed, as there is a risk of an implied continuation of the arrangement as an 'open contract'.

6.3 Non-Renewal of a Fixed-Term Contract

Irrespective of the reason for the fixed-term contract, should a situation arise where the employee becomes displaced from the role prior to its agreed point of expiry, NHS Borders has a duty to provide suitable alternative employment for the remainder of the fixed-term, during which organisational change protection of earnings will apply.

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 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 – capability or conduct issues, for example, would not be legitimate grounds for non-renewal, with NHS Borders policies being applied, as appropriate, no differently than would be the case with permanent employees)
- ⊕ 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, any redundancy payment which will 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

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, interview skills etc.

In the case of non-renewal of a fixed-term contract upon expiry (irrespective of the reason for the fixed-term contract), access will be granted to redeployment vacancies, in line with NHS Borders Redeployment policy, no earlier than three months and no later than running concurrent with the employee's notice period. Further details on the process to be followed is contained within NHS Borders Redeployment Policy. It should be noted that while a legal obligation to explore suitable alternative employment only exists in circumstances where the non-renewal of a fixed-term contract meets the definition of redundancy, this policy goes beyond the legislation requiring that access to redeployment be granted in the case of all instances of such non-renewal of a fixed-term contract. However, where more than one applicant applies for a post via redeployment and more than one is appointable, prioritisation should be given depending upon the reason for displacement from the original post (particularly whether or not a legal obligation exists to explore suitable alternative employment).

Reasonable time off will be given by the manager for the employee to attend interviews during the above period.

If the employee has not secured an alternative post prior to the end of their notice period, their employment will be terminated as per the earlier meeting.

6.4 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 requirements apply in order to ensure that the fixed-term contract is ended safely:

- ⊕ 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
- ⊕ Depending on the difference in terms and conditions, and therefore whether any alternative employment opportunity is deemed 'suitable', organisational change protection of earnings will apply
- ⊕ 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

7 Training

To support the fair and consistent application of this policy, and adherence to current relevant employment legislation, NHS Borders will ensure that the use of fixed-term contracts is included within line management development programmes and ensure that any manager who wishes to appoint to a fixed-term contract role has participated in such a programme.

8 Monitoring & Measuring Success

NHS Borders 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.

At an organisational level, the Area Partnership Forum will monitor the development of integrated workforce plans and the organisational learning and development plan, to ensure that fixed-term contracts are only used where necessary and appropriate. In addition to the above, 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 Area Partnership Forum (or equivalent); 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

9 Review of Policy

This policy will be reviewed, in partnership, by NHS Borders on an annual basis.

Appendix 1

Needs Assessment / Review Process

Needs Assessment/Review Process (Individual or Group)

By completing the needs assessment process, managers will be able to make an informed decision as to whether a permanent or fixed-term appointment may be made. Managers should also use this needs assessment process to review the status of fixed-term contracts periodically, to see if it might be possible to make any fixed-term posts permanent.

Any success in ensuring the necessary and appropriate use of fixed-term contracts depends on robust workforce planning processes. However, the checklist below may additionally help managers to identify if fixed-term contracts are necessarily the most appropriate means of filling a post.

Local workforce planning processes will identify areas of recruitment and retention difficulty. Such processes will allow managers to look at issues beyond their own service boundaries and take a more corporate and proactive approach to ensure best practice in staff recruitment and retention, using fixed-term contracts as appropriate.

The checklist below can be used to review individual vacancies. However, at a corporate level an annual risk assessment for individual staff groups should be carried out by the Area Partnership Forum

In weighing up these factors, managers should apply knowledge of their service and any recruitment and retention issues which are unique to their area. The following points are core, but managers may wish to include additional points to suit local circumstances.

Needs Assessment Checklist

	High	Medium	Low
Turnover for staff group			
Vacancy factor			
Average time to fill posts			
Contributory factors (e.g. geography, market and contract duration)			
Ability to recruit			
Proposed service developments			
Impact on service of failure to recruit			
Secondment opportunity			
Cost of post / financial impact			
Consideration of clinical / corporate risk			