Torbay and South Devon NHS Foundation Trust

FIXED TERM CONTRACT POLICY (H5)

If you require a copy of this policy in an alternative format (for example large print, easy read) or would like any assistance in relation to the content of this policy, please contact the Equality and Diversity team on 01803 656680

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Amendment History

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1 POLICY STATEMENT

1.1 Torbay and South Devon NHS Foundation Trust (TSDFT) (hereafter referred to as the Trust support the following statement, taken from the Fixed Term Employees (Prevention of less favourable treatment) Regulations 2002 regulation 3(1).

"A fixed term employee has the right not to be treated by his employer less favourably than the employer treats a comparable permanent employee:

a) As regards the terms of his contract; or
b) By being subjected to any other detriment by any act, or deliberate failure to act, of his employer".

2 PURPOSE

2.1 The purpose of this policy is to ensure that there is a fair, non - discriminatory and consistent approach to the recruitment, treatment and the ending of employment of employees on fixed term contracts. The main aims of the regulations are:

2.1.1 To prevent fixed term employees from being less favourably treated than similar permanent employees

2.1.2 To improve access to training and information on permanent jobs for fixed term employees

2.1.3 To limit the scope for using a series of fixed term contracts to employ the same person in a 'permanent' position

3 SCOPE

3.1 This policy applies to all those employed by the Trust on a fixed term contract.

4 EQUALITY AND DIVERSITY STATEMENT

4.1 The Trusts are committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (as governed by the Equality Act 2010): sexual orientation; gender; age; gender re-assignment; pregnancy and maternity; disability; religion or belief; race; marriage and civil partnership. In addition to these nine, the Trusts will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union

membership.

4.2 The Trusts are committed to ensuring all services, policies, projects and strategies undergo equality analysis. For more information about equality analysis and Equality Impact Assessments please refer to the Equality and Diversity Policy (policy number 13 - SDHFCT).

5 DEFINITION OF A FIXED TERM CONTRACT

5.1 A fixed term employee is defined as a person with a contract of employment which is due to end when a specified date is reached, a specified event does or does not happen or a specified task has been completed. Fixed-term contracts 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;
- The employment is for the purpose of replacing an employee who is to be absent from work for a period of time (for example on maternity leave);
- The post is dependent on external funding and it is thought likely that the funding will be available for only a temporary period of time.

5.2 The Fixed Term Employee Regulations do not apply to:

- Agency workers, i.e. those who have an employment contract with an employment agency but are placed with and do their work for a third party;
- Apprentices or students on work experience placements of one year or less that they must do as part of a higher education course;
- Fixed term employees on training, work experience or temporary work schemes, specifically designed to provide them with training experience to help them find work where the schemes are wholly or partly funded by an institution of the European Communities or provided under arrangements by the Government;
- Employees under a contract of apprenticeship (see Apprenticeship Policy (HR44 – TSDHCT and HR109 - SDHCFT)).

6 ROLES & RESPONSIBILITIES

6.1 Manager Responsibilities

6.1.1 To ensure that fixed term contracts are being issued for an appropriate reason;

6.1.2 To ensure that when recruited the individual is aware of the reason for the fixed term contract and that at the end of the contract it is expected the employment will be terminated with no automatic offer of extension, renewal or redeployment;

6.1.3 To contact the employee approximately six weeks before the end date of the fixed term contract and to follow the correct procedure regarding the termination or extension of the contract;

6.1.4 To ensure that the minimum notice provisions are applied if the fixed term contract is terminated before its expiry date;

6.1.5 To ensure the employee takes all their annual leave entitlement during the period of employment.

7 PROVIDING EMPLOYEES ON FIXED TERM CONTRACTS WITH NO LESS FAVOURABLE TREATMENT

7.1 Any employee engaged on a fixed-term contract will be entitled to terms and conditions of employment that are no 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. A comparable permanent employee is someone who is engaged in the Trust's workforce, in the same or broadly similar work, taking into account whether the fixed-term employee and the permanent comparator have a similar level of qualifications and skills.

7.2 Fixed-term employees will be treated in the same way as comparable permanent employees in relation to opportunities for training, promotion, transfer and appraisal.

7.3 Fixed-term employees have the right to ask their employer in writing for a written statement giving reasons for any less favourable treatment. The employer must produce the statement within 21 days of the request.

8 NOTIFICATION OF PERMANENT VACANCIES

8.1 Employees engaged on fixed-term contracts will be advised that job vacancies can be viewed and applied for via NHS Jobs.

9 JUSTIFIED USE OF A FIXED TERM CONTRACT

9.1 When advertising a post it is important that managers consider which type of contract is most appropriate. Fixed term contracts should not be used to assess an employee's suitability for the post; however they may be used in the following circumstances:

- The provision of 'cover' for extended absence from work of a substantive (permanent) employee, through maternity or sickness leave, secondment or absence through an employment break scheme;
- The management of organisational change i.e. to retain vacant substantive positions in order to re-deploy permanent staff e.g. due to service re-design;
- For training purposes i.e. when required for a specific period of training e.g. management graduates;
- For specific operational contracts with a finite completion date, i.e. research and development programmes, IT projects and service redesign/development projects;
- When there is a distinct and discrete assignment which the Trust requires to be completed and there is an expected end date, e.g. working on a project;
- When the funding for the role is short term only and not a recurring expenditure within a budget.

9.2 The above list is not intended to be exhaustive and other circumstances may arise where the use of a fixed term contract is deemed to be appropriate. Advice on the issuing of fixed term contracts may be sought from the Human Resources Department.

9.3 It is important when using a fixed term contract to make it clear from the outset that the contract is fixed term for x period of time and where possible it is helpful to include the reason why the post is fixed term e.g. for a 12 month maternity cover. Such information should be clearly stated in the job advertisement, offer letter and the Statement of Particulars.

10 RENEWAL /EXTENSION OF A FIXED TERM CONTRACT

10.1 Prior to renewing or extending a fixed term contract agreement should be sought through the Vacancy control process at Vacancy Control Panel and also with the agreement of the employee and this should then be confirmed to the employee in writing.

10.2 It is good practice for the extension to contract letter to be issued before the expiry of the old contract, stating the date on which the extended contract will terminate.

10.3 Before extending a fixed term contract managers should seek advice and guidance from the Human Resources department.

10.4 If fixed term employees have their contract renewed, or if they are re-engaged on a new fixed term contract, when they already have a period of four years of continuous employment, the renewal or new contract takes effect as permanent, unless objectively justified. If the Trust accepts that the employee's contract is permanent, the permanent contractual notice periods apply and a contract of employment should be issued.

11 FIXED TERM TO PERMANENT CONTRACT

11.1 If the post, which was originally a fixed term contract, has the possibility of becoming a permanent post in the future, this should be stated in the original advert. Advertising that a fixed term contract post has the possibility of becoming permanent should only be stated where the recruiting manager has every confidence that this will be the case.

11.2 Where a fixed term contract becomes permanent and has previously been advertised in this way there will be no requirement for a further advertisement, unless the terms and conditions of the post have changed significantly.

11.3 Where a manager has the opportunity to make a fixed term post permanent and this has not been stated in the original advert it is good practice for the permanent post to be advertised unless the post has been identified as suitable alternative employment for a member of staff at risk.

11.4 If fixed term employees have their contract renewed, or if they are re-engaged on a new fixed term contract, when they already have a period of four years of continuous employment, the renewal or new contract takes effect as permanent, unless objectively justified. The fixed term employee can write to their employer requesting a written confirmation that the contract is to be regarded as permanent. Once the employee's contract is permanent, statutory minimum notice periods apply, unless longer notice periods are contractually agreed.

11.5 An employee who moves from a fixed term contract to a permanent contract will have statutory rights commencing from the beginning of their fixed term contract providing there has been no break between the contracts.

12 ENDING A FIXED TERM CONTRACT AT THE EXPIRY DATE

12.1 Fixed term contracts will normally end automatically when they reach the agreed end date. The employer does not have to give any notice.

12.2 If a contact is not renewed this is considered to be a dismissal, and if the employee has two years' service there must be a fair reason under employment law for not renewing the contract.

13 TERMINATING A FIXED TERM CONTRACT BEFORE ITS EXPIRY DATE

13.1 If a fixed term contract is terminated before its expiry date by either side, the notice periods as set out in the individual's contract will apply.

13.2 Managers are advised to contact the Human Resources department if there is the intention to terminate a fixed term contract before its original end date.

14 REDUNDANCY

14.1 In some cases if a fixed term contract ends after two years' service the employee may be entitled to a redundancy payment.

14.2 Employees on fixed term contracts are not entitled to redundancy payments unless the employee has a least two years' continuous service and the reason for the termination is for 'redundancy'. Both of these conditions must be met. For these purposes continuity is broken where there is a break in employment exceeding one week, which is a complete week starting on a Sunday and ending with a Saturday.

14.3 A number of statutory rights apply depending on the circumstances of the termination of the fixed term contract. Managers are therefore advised to contact the Human Resources department who will guide them through the appropriate process.

15 GOOD PRACTICE PROCESS FOR ENDING A FIXED TERM CONTRACT

- **Remind employees -** A reasonable period before a fixed-term contract is due to end it is advisable to remind the employees in writing of the potential end date.

- **Arrange a meeting -** Well in advance of the end date a meeting should take place with the employee in which they are reminded that the

contract is due to end on the given date and the prospect of the contract being renewed or extended is discussed. If the existing contract cannot be renewed or extended, the employee should be advised of this. The employee should be warned of the risk of dismissal at the end of the term. This meeting should be followed up by a letter which confirms the risk of dismissal at the end of the fixed term.

- **Inform the employee of available vacancies -** Ensure that the individual is advised of where Trust vacancies are advertised, e.g. the Trust intranet site, NHS Jobs and any notice boards.

- **Dismissal -** A reasonable time (at least a month) before the scheduled end of a fixed-term contract, a dismissal letter should be sent confirming the expiry of the fixed term. There is normally no notice period if employment is expected to end on the date specified in the contract.

16 TRAINING AND AWARENESS

16.1 Advice and support will be provided by the HR team to support staff and managers in adhering to this policy and their understanding of the appropriate employment of staff via fixed term contracts.

16.2 The HR team will raise awareness of this policy through the publication of information on iCare and Contact and to advise staff of changes to the policy through the staff bulletin and ratification processes.

17 REFERENCES

17.1 The Fixed Term Employees (Prevention of less Favourable Treatment) Regulations 2002.

17.2 The Fixed Term Employees (Prevention of less Favourable Treatment) Amendment Regulations 2008.

18 CONTACT DETAILS

18.1 Any queries regarding this policy should be directed to the HR team of the Directorate of Workforce and Organisational Development.

- HR Helpline – 01803 655754 (ext. 55754)
- HR department – 01803 654506

19 MONITORING, AUDIT AND REVIEW PROCEDURES

19.1 This policy will be monitored and audited on a regular basis. A full review will take place every two years by the Directorate of Workforce and Organisational Development unless legislative changes determine otherwise.