

**Managing Fixed Term Contracts Guidance**

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**DOCUMENT CONTROL**

Date	Version	Action	Amendments

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

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## Introduction

Islington CCG is committed to ensuring continuity of employment for its staff and to use fixed-term or temporary contracts only for transparent and objective reasons where there is a genuine fixed-term need.

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.

The policy applies to all fixed-term employees at Islington CCG as defined at Section 2. It does not cover temporary workers who do not have a contract of employment with the CCG.

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.

## Policies statement

Islington CCG's policies set out the organisation's standards and intentions, and are written with the aim of being as clear and comprehensive as possible. However, we operate in a dynamic and evolving work environment and attention should be paid to the spirit of the policy as well as the letter. Policies by themselves cannot guarantee effective behaviour or the delivery of key objectives. While they are designed to support the CCG, and the people working within it, our success depends on continuous, high quality effort by everyone the policy covers. Therefore thought must be given to good practice when applying or interpreting any of the CCG's policies, and you should read any guidance or supporting documentation that relates to this policy to help you do this. In addition, this policy should work in accordance with national and local guidance on child and adult safeguarding as applicable.

## Definitions

**Fixed-term** – a fixed-term contract is one that ends on a specified date or on the occurrence of a specific event or the completion of a task.

**Temporary** – employment for which there is no expectation of permanence but where the termination date or the event on which the employment will terminate is not specified (i.e. where it is not a fixed-term contract) e.g. agency staff

**Permanent** – staff with no contract end date (and staff with over 4 years' service where there is no justification for the individual to remain as fixed-term).

## Roles & Responsibilities

### Line Manager

- To make appropriate decisions regarding Fixed Term Contracts including only requesting a fixed term appointment in appropriate circumstances.

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- 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 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.

### **Employee**

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

### **Human Resources**

- 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.

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

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.

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

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

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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.
- Fixed-term employees are able to apply for suitable permanent vacancies within the CCG and have the opportunity to apply for the 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.

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 Capability Policy.

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

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.

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 substantive 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). The manager should seek advice from HR.

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

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:

#### **Stage one**

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

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accompanied by a Trade Union representative or a work colleague (Appendix 1, Sample Letters).

### **Stage two**

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 give appropriate notice. This meeting will also detail the opportunities for alternative employment that may be available (Appendix 2, Fixed-term Contract Expiry Meeting Format).

### **Stage three**

The manager will confirm in writing the discussion at the meeting and the reasons why the fixed-term contract will expire, issuing appropriate notice. The letter will also confirm the right to appeal against the decision within 10 working days of receipt of the letter (Appendix 1, Sample Letters).

The minimum notification period before the contract is due to expire is determined by the length of an employee's contractual notice period. The manager should hold the meeting at least one month before their notice period is due to start.

### **Redundancy Payments**

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.

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 their HR representative.

### **Appeal**

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

### **Monitoring & Review**

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

### **Breach of Policy**

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

**Appendix 1: Sample Letter: Invitation to a meeting to discuss the end of a fixed-term contract**

Dear \_\_\_\_\_

You are currently on a fixed-term contract which is due to end on (date).

This is to advise you that it is unlikely that we will be able to extend your fixed-term contract beyond this date. We would like you to attend a meeting to discuss the possibility of the non-renewal of your contract and the reasons for it.

The details of the meeting are:

**Date:**

**Time:**

**Location:**

You have the right, if you wish, to be represented at the meeting by a Trade Union representative or a work colleague. Please confirm your attendance to the meeting by (date) together with the name of your representative.

Please contact me if you have any questions or would like any further information.

Yours sincerely,

Line manager's name

Job Title

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**Appendix 2: Sample Letter: Outcome letter following meeting to discuss end of fixed term contract**

Dear \_\_\_\_\_

I write further to our meeting of (date) to discuss your fixed term contract which is due to end on XXX.

You were accompanied by XXX, work colleague/trade union representative. You advised me that you were happy to proceed without a trade union representative/CCG work colleague.

We discussed the reasons why your contract could not be renewed which I confirmed as the following *[delete as appropriate]*:

- Your contract was to specifically cover an employee taking maternity leave/paternity leave/parental leave/sick leave/specialist training/secondment/career break. The employee concerned is due to return to work shortly.
- Your contract was to undertake a specific task or project which was time limited and is due to come an end shortly.
- Your contract was to provide additional cover during exceptionally busy period and this has now come to an end

I have given careful consideration to the points you raised during the meeting which are as follows:

- *Summarise main points made*

As your contract will not be renewed, your employment with XXX CCG will terminate on (date) by reason of expiry of the fixed-term contract, which contains your notice period of (insert the length of contractual notice). I informed you that information on the current vacancies across the CCG are via Health Jobs, which you can access via the following link:

XXXX

I note that, by (date), you will have accrued [number] days' holiday. You have already used or booked [number] days' holiday in this holiday year, leaving you with [number] days left. I ask that you arrange with [your line manager/name of individual] to use this annual leave between now and your final date of employment.

[OR

I note that, by (date), you will have accrued [number] days' holiday. You have already used or booked [number] days' holiday in this holiday year. You will not therefore be entitled to take any additional annual leave between now and your final date of employment.]

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You have the right to appeal the non-renewal of your fixed term contract. Should you wish to appeal, you must do so in writing to Name, Job Title within 10 working days of receiving this letter. Any letter of appeal should include the reasons for appeal.

Should you require any support during this time you may wish to contact the Employee Assistance Programme. The following link will take you to information on the Employee Assistance Programme provided by our healthcare provider AXA Healthcare:

<http://www.axabesupported.co.uk/default.aspx>

The Employee Assistance Programme can provide support in a range of areas relating to work and personal matters.

To access the service, the username is NHSnortheast and the password is supported

AXA can also be contacted by telephone on 0800 072 7072.

Finally, I would like to take this opportunity to thank you for all of the work you have undertaken with our service and wish you all the very best for the future.

If you have any queries or require any further information please do not hesitate to contact me.

Yours sincerely,

Line manager's name

Job title

### **Appendix 3: Meeting guide for to discuss the end of a fixed-term contract**

#### *Introductions*

- 1) If the member of staff attends alone then you must ask them if they are happy to proceed without a trade union representative or CCG work colleague. If not, then the meeting should be reconvened at a date when a representative will be available, normally within 5 working days.
- 2) You should take brief notes of the meeting.
- 3) You should explain that the purpose of the meeting is to discuss the fixed term contract which is due to come to an end on XXX.
- 4) Advise the employee that it is unlikely that the contract will be renewed. You should discuss the reasons for the non-renewal of the contract. Full and frank discussions should take place. The member of staff should have an opportunity to put forward ideas/concerns/comments/alternative proposals to the ending of the fixed term contract. If the member of staff has valid and reasonable ideas on how to extend the post then these should be fully considered.
- 5) Objective reasons need to be given on why the contract may not be renewed. The non-renewal of a fixed term contract can be justified under the following circumstances [examples]:
  - Your contract was to specifically cover an employee taking maternity leave/paternity leave/parental leave/sick leave/specialist training/secondment/career break. The employee concerned is due to return to work shortly.
  - Your contract was to undertake a specific task or project which was time limited and is due to come an end shortly.
  - Your contract was to provide additional cover during exceptionally busy period and this has now come to an end
  - Where there is no 'suitable alternative' or 'alternative' employment available within the CCG.
- 6) The discussion should also include ways of avoiding dismissal such as redeployment opportunities within the team/CCG if available. Questions should be asked to establish whether training or re-training is a reasonable possibility. The member of staff's career plans should be examined and methods to support this considered.
- 7) Explore with the member of staff if any support can be provided until their last day.
- 8) Fixed-term contract staff are not entitled to receive payment/additional time for their notice as this is contained automatically within their contract and expires when the contract ends.

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- 9) As uncertainty about ongoing employment creates anxiety for many fixed-term employees, support in terms of the Employee Assistance Programme should be offered to the member of staff at the meeting.

### **Equality Analysis Initial Assessment**

**Title of the change proposal or policy:**

Fixed Term Contract Guidance

**Brief description of the proposal:**

To ensure that the scheme is fit for purpose, complies with NHS LA Standards and takes account of best practice.

**Name(s) and role(s) of staff completing this assessment:**

Darshna Pankhania, HR Business Partner; Kasia Parfieniuk – HR Advisor

**Date of assessment:** 01 July 2015

**Please answer the following questions in relation to the proposed change:**

**Will it affect employees, customers, and/or the public? Please state which.**

Yes it will affect employees.

**Is it a major change affecting how a service or policy is delivered or accessed?**

No

**Will it have an effect on how other organisations operate in terms of equality?**

No

**If you conclude that there will not be a detrimental impact on any equality group, caused by the proposed change, please state how you have reached that conclusion:**

No anticipated detrimental impact on any equality group. The guidance adheres to the NHS LA Standards, AFC Terms and Conditions, is legally compliant and takes account of best practice. Makes all reasonable provision to ensure equity of access to all staff. There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic.

**Please return a copy of the completed form to the Equality & Diversity**