



FIXED TERM CONTRACT POLICY

Introduction

The policy sets out the following key information for CTMUHB staff in respect of fixed term contracts:

- Employee's rights.
- When fixed term contracts should be used.
- The process to be followed when making fixed term contract appointments.
- The process to be followed when ending or renewing a fixed term contract.

Objectives

There are a number of objectives, including:

- Clear principles to govern the appropriate use of fixed term contracts.
- A process for dealing with fixed term contracts which is fair and equitable for the employee and the service.
- Ensure managers are aware of their responsibilities especially when a fixed term contract is coming to an end.

Operational Date

00/00/0000

Expiry Date

Formal – three years
Informal – one year

Scope

This policy applies to all staff (including Medical and Dental Staff) on all locations across CTMUHB on fixed term contracts apart from the exceptions in the policy.

Equality Impact Assessment

An Equality Impact Assessment has been undertaken.

Distribution

All staff via intranet and team briefings.

To be read by

All staff will need to be aware of the policy.

Documents to read alongside this Policy	The Fixed Term Employees (Prevention of Less Favorable Treatment) Regulations 2002
Approved by	Workforce Policy Review Group, Local Partnership Form, People and Culture Committee
Accountable Executive / Lead Director (responsible for formal review every three years)	Director of Workforce and Organisational Development
Author / Management Lead (carries out informal review annually)	Claire Nicholas Workforce and Organisational Development
Freedom of Information Status	Open
<p>If the review date of this policy has passed, please ensure that the version you are using is the most up to date either by contacting the document author or the Corporate Services Department.</p> <p>To avoid use of out of date policies please do not print and then store hard copy of this document.</p> <p>Out of date policies cannot be relied upon.</p>	

Max 2 pages to this point

Amendment Record

If a change has been made to the document, the changes must be noted and circulated to the appropriate colleagues.

Detail of change	Why change made?	Page number	Date of change	Version	Name of Policy Author

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1. PURPOSE

The policy sets out the following key information for CTMUHB staff in respect of fixed term contracts:

- Employee's rights.
- When fixed term contracts should be used.
- The process to be followed when making fixed term contract appointments.
- The process to be followed when ending or renewing a fixed term contract.

In addition to this policy, assistance and advice relating to this matter may also be sought from the Workforce and Organisational Development Department.

2. POLICY STATEMENT

It is the policy of Cwm Taf Morgannwg University Health Board (CTMUHB) to only employ staff on fixed term contracts of employment when it is necessary and appropriate.

CTMUHB is committed to fair and equitable treatment for all its employees. Any employee engaged on a fixed term contract will be entitled to terms and conditions of employment that are not 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. Fixed term employees will be treated in the same way as comparable permanent employees in relation to opportunities for training, promotion, transfer and appraisal.

3. SCOPE

This policy applies to all members of staff who are employed on fixed term contracts apart from the following exceptions:

- Agency and bank workers.
- Apprentices or students on work experience placements (as part of a higher education course) of one year or less.
- 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 made by the Government.
- Existing NHS staff who act up, or who are seconded into another post, such staff retain their status as permanent employees.

- Junior doctors in recognised training posts who are employed via a succession of fixed term contracts as part of a planned programme of training as administered by the Wales Deanery.

4. LEGISLATIVE AND NHS REQUIREMENTS

4.1 Fixed Term Contracts Employee's Rights and Protection

The Fixed Term Employees (Prevention of Less Favorable Treatment) Regulations 2002 provide employee's employed on these contracts with the same legal and contractual rights as employee's employed on substantive contracts.

A fixed term contract must never be used by an appointing manager to test the suitability of a candidate for a post. Where such a reason is used to appoint into a fixed term contract, the dismissal at the end of the contract would in all probability be deemed to be unfair.

An employee with **more than 2 years** continuous service has the right to claim unfair dismissal.

An employee with **less than 2 years** continuous service can still bring an Employment Tribunal claim if they believe the dismissal is linked to any of the following grounds:

- Act(s) of discrimination.
- Making a protected disclosure.
- Raising health and safety concerns.
- Asserting a statutory right e.g. Working Time Regulations, Transfer of Undertaking (Protection of Employment) Regulations 2006 or unlawful deduction from pay.
- Trade Union Representative Role or activities.
- Breach of contract e.g. failing to comply with the terms of the employment contract.

It is therefore important that a fair dismissal process is always followed when ending a fixed term contract.

If an employee believes that they have been treated less favorably than a comparable permanent employee, they may submit a request in writing to their line manager asking for a written statement, which gives the reasons for the differing treatment. The response must be provided within 21 calendar days of the employee's request. Where appropriate it may include proposed action to rectify the issue.

5. PROCEDURE

5.1 Genuine Fixed Term Contract Situations

Fixed term contracts can be used by CTMUHB to provide certainty and flexibility, for example in the following circumstances:

- **For a specific time** – e.g. Where fixed and time limited funding is coming from an internal or external source and it may not be renewed after the agreed period; or
- **For a specific job or project** – e.g. CTMUHB needs to employ someone to undertake a specific job or project; or
- **For a specific event** – e.g. to provide cover during a period of maternity, sabbatical or long-term sick absence leave etc.
- During an **agreed planning** process for structural and **organisational change** to avoid unnecessary redundancies.

5.2 Advertising Fixed Term Posts

When advertising a fixed term post the advertisement and recruitment documentation must clearly state the:

- the appointment is fixed term;
- duration of the contract i.e. the end date; and
- the reason for the fixed term nature of the appointment.

5.3 Appointment Documentation

The appointment manager is responsible for checking the issued offer letter/ contract of employment, to ensure that the necessary and accurate fixed term information has been included. If the information is not correct, the manager must liaise with the NWSSP Recruitment Team/Medical Workforce, to request that it is amended and re-issued to the appointed employee.

5.4 Review of a Fixed Term Contract

It is good practice for the manager to arrange regular reviews with those on fixed term contracts to provide advice, guidance and support, as they would with permanent employees, as well as to discuss whether:

- there is a need to extend the contract;
- the contract will run for the duration originally stated;
- the post is to be made permanent.

A written record of any review undertaken should be kept and shared with those on fixed term contracts as a note of their discussions.

5.5 Renewing Fixed Term Contracts

In order to ensure best practice, the number of renewals or extensions to a fixed term contract should be limited and if contracts are extended or renewed after the planned end date, this should be in consultation with the Workforce and OD Department and Finance Department. Consideration should be given as to whether this should in fact be a substantive post.

There may be occasions when a fixed term contract will be renewed, e.g. a project has not completed on time, additional funding is secured or an employee does not return to work by the expected date. In such circumstances, the manager should obtain the necessary approval and liaise with the Workforce and OD and Finance Departments to update them regarding the renewal and to ensure that the employee is provided with an amendment to contract letter. The manager should complete a staff changes form for payroll.

5.6 Successive Fixed Term Contracts

The Regulations state that if fixed term employees have their contracts renewed, or if they are re-engaged on a new fixed term contract when they already have a period of four or more years of continuous employment, the renewal or new contract takes effect as a permanent contract.

In practice within CTMUHB there would be very few circumstances where successive fixed term contracts of more than four years would be justified or desirable. Where a manager has an employee who potentially meet the eligibility criteria to achieve permanent employment status, they should seek advice and discuss this matter with the Workforce and OD Department, to ensure appropriate action is taken.

5.7 Making the Post Permanent

If permanent funding becomes available and the need for the post is clearly identified, the post should be advertised using the usual recruitment processes.

5.8 Grounds for Fairly Ending a Fixed Term Contract

A fixed term contract will normally terminate automatically upon the original contract end date or on occurrence of the specific event (e.g. employee returns from maternity leave), as specified in the offer letter/contract of employment. It should be noted that although the contract has an agreed end date, the ending of such a contract constitutes a dismissal. The ending of a fixed term contract is potentially a fair reason for dismissal, as long as

the reason for using the fixed term contract in the first place and ending of it complies with the terms set out in the employee's contract of employment.

Fixed term contracts can be ended early, if the contract of employment contains a "break or termination clause". As the current All Wales contract of employment does not contain such a clause, CTMUHB may be in breach of contract, unless agreement was reached to pay up the salary for the outstanding time to run on the contract. In these circumstances a fair procedure for bringing the Fixed Term contract to an end must still be followed which will include the requirement to provide the relevant contractual notice period.

5.9 Potential Fair Reasons for Ending a Fixed Term Contract

The following are the two potential fair reasons for dismissal when ending a fixed term contract:

- i) **Redundancy** – where the specific funding or job/project have come to an end and there is no requirement for the work to continue; or
- ii) **Some Other Substantial Reason** – where a specified specific event will occur e.g. employee returns to their post after a period of maternity leave.

If a fixed term contract is being terminated, the fixed term employee should be advised of any suitable vacancies as they arise by the line manager with support from the Workforce Department Team. In addition, the manager will provide the opportunity for the employee to receive advice on available support to help them in their search for alternative employment, for example, CV preparation. Reasonable time off will be given by the manager for the employee to attend interviews within one month prior to the expiry of the fixed term contract.

If the employee has **more than 2 years'** continuous NHS service (this includes other NHS organisations), they may be entitled to a contractual redundancy payment. Contractual redundancy pay will be calculated on the basis of one month's pay for each **completed** year of reckonable service, subject to a minimum of two years' continuous service and a maximum of 24 years' reckonable service being counted. Where an employee's contract is terminated for some other substantial reason, other than redundancy, they will not be entitled to receive a redundancy payment. **Guidance must be sought from the workforce department in all situations where a redundancy payment may be applicable.** Under the Scheme of Delegation, redundancy payments must be approved by the Remuneration Committee.

If the employee has ***less than two years'*** continuous service while they are not entitled to a contractual redundancy payment, they are entitled to the same support to search for alternative employment as a fixed term employee with 2 years or more continuous service or a permanent employee.

The procedure for ending a fixed term contract is as follows for all staff groups including Medical and Dental:

Step 1: The line manager must write to the employee informing the employee why the fixed term contract is coming to an end and invite the employee to a meeting to discuss this, no later than four to six weeks before the expiry of the contract.

Employees have the right to be accompanied by a staff side representative or workplace colleague not acting in a legal capacity.

All the available options should be considered, taking into account the views of the employee: These are:

- agreeing an extension to the original fixed term contract (see 5.5);
- making the post permanent (see 5.6 and 5.7);
- ending the fixed term contract.

Step 2: Following the meeting, the manager must inform the employee of the outcome of the meeting. The letter must outline the reason for ending the contract and confirm the notice period and contract end date. If the employee is entitled to a contractual redundancy payment, this information must also be outlined in the letter (Appendix 2).

The employee will be informed that they have 14 days to lodge an appeal to the Deputy Director of Workforce and Organisational Development.

Step 3: If an appeal is lodged, the employee should be invited to a further meeting with a more Senior Manager (Appendix 3).

Step 4: The Senior Manager will write to the employee setting out the outcome of the appeal (Appendix 4).

It is important that managers are aware of the date on which a fixed term contract is due to expire, so that they can ensure this procedure is followed

in a timely way. ESR automatically sends notifications to managers informing them when a fixed term contract is due to end.

Failure to meet the employee at the appropriate time may result in the contract being extended to cover the employee's contractual notice period.

In certain circumstances it may not be appropriate to terminate a fixed term contract at its end date, for example if an employee is pregnant. In these circumstances please contact the Workforce and OD Department for further guidance.

Non-renewal of fixed term contracts for reasons of poor/unacceptable performance may amount to unfair dismissal. Managers must deal with cases of poor performance, misconduct, capability, sickness and any other employee relations issues under the appropriate CTMUHB Policy.

5.10 Notice Periods

Employees must be given written notice of the termination as soon as possible and no later than the required statutory or contractual notice periods, whichever is longer.

The minimum statutory notice period is:

- one weeks' notice if the employee has been employed by the employer continuously for one month or more, but for less than two years.
- two weeks' notice if the employee has been employed by the employer continuously for two years, and one additional week's notice for each further complete year of continuous employment, up to a maximum of 12 weeks. For example if an employee has worked for 5 years then they are entitled to 5 weeks' notice.

Contractual notice period:

- For agenda for change staff, one weeks' notice for each completed year of service up to and including a maximum of 12 weeks' notice after 12 years of continuous employment.
- For medical and dental staff the following periods will apply:

Grade	Contractual Notice Period
Consultant	Three months
Associate Specialists	Three months
Specialty Doctors	Three months
Senior Clinical Fellow	Three months
Locum Appointment for Service (StR Higher)	Three months
Part-time Medical or Dental Officers	Two months
Locum Appointment for Service (StR Lower)	One month
Junior Clinical Fellow	One month

Locum Appointment for Service (FY2)	One month
Locum Appointment for Service (FY1)	Two weeks

5.11 Resources

The implementation of this policy will not require any additional resources. However, when considering offering a fixed term contract, managers should include the potential cost of a redundancy payment into the financial considerations.

6. TRAINING IMPLICATIONS

Any training implications in the implementation of this policy will be provided as required.

7. REVIEW, MONITORING AND AUDIT ARRANGEMENTS

This policy will be reviewed every 3 years, additional reviews may be required if any changes are made to Legislation or Terms and Conditions of Service apply.

8. MANAGERIAL RESPONSIBILITIES

Managers must take overall responsibility for ensuring that this policy is implemented and monitored effectively, they must ensure that all of their employees are aware of their responsibilities.

9. RETENTION/ARCHIVING

The Director of Workforce and Organisational Development will ensure that copies of this policy are archived and stored in line with UHB records management policy, and are made available for reference purposes should any situation arise where they are required.

10. NON-CONFORMANCE

All employees are expected to comply with this policy, failure to comply with the policy is a serious offence and could result in disciplinary action.

11. EQUALITY IMPACT ASSESSMENT STATEMENT

This policy has been subject to a full Equality Impact Assessment and no implications found.

12. PRIVACY IMPACT ASSESSMENT STATEMENT

A full Privacy Impact Assessment has been undertaken and no impact identified.

13. APPENDICIES

APPENDIX 1 – INVITE LETTER

(Insert today's date here)

PRIVATE & CONFIDENTIAL

Dear.....

RE : End of Fixed Term Contract of Employment

As you are aware your fixed term contract of employment in respect of the post of **(post title)** is due to end automatically on the **(date)**.

The reason for the ending of your contract is **(specify reason(s) originally given for fixed term contract)**. I wish to meet with you to discuss the ending of your fixed term contract, prior to the contract expiry date.

I would therefore like to meet with you on **(date, time)** at **(venue)**. At this meeting **(name, job title)** from the Workforce and OD Department will also be present.

As this meeting is of a formal nature, you have the right to be accompanied. You are welcome to make the arrangements for a staff side/professional organisation representative or a workplace colleague not acting in a legal capacity to accompany you.

In the meantime, should you have any queries regarding the content of this letter please do not hesitate to contact me.

Yours sincerely

Manager's Name
Job Title

Appendix 2 – Outcome Letter

(insert today's date here)

PRIVATE & CONFIDENTIAL

Dear

RE: Confirmation of Meeting to Discuss Termination of Fixed Term Contract of Employment

Thank you for attending the above meeting on **(date)** where you were accompanied by **(name of Staff Side/Professional Organisation Rep or Colleague)**. Also in attendance was **(name, job title of Workforce and OD Rep)**.

Or.....

You confirmed that you did not wish to be accompanied at this meeting by a staff side representative or workplace colleague. Also in attendance was **(name, job title of Workforce and OD Rep)**.

During the meeting we discussed the reason(s) why your fixed term contract of employment was being terminated, which were **(insert the reasons which must mirror the original reason for the fixed term nature of the contract)**. As such, the underpinning reason for ending the fixed term contract is ***Redundancy. Must only state this reason if the contract is ending because the funding or the specific job or project is coming to an end and not being extended.**

Or ...

***Some Other Substantive Reason. - must only state this reason if the contract is ending because of a specific event e.g. employee returning to their post following maternity, secondment etc. * delete as applicable**

To assist with a search for a suitable alternative employment post your **(name and job title Workforce and OD Rep)**, will inform you of any suitable vacancies that arise during the notice period. To assist this process, should you wish to participate, you are required to provide **(name and job title Workforce and OD Rep)** with an up to date copy of your Curriculum Vitae (CV).

During the meeting, you were provided with an opportunity to raise any issues or concerns you had regarding the termination of your fixed term contract. In response you outlined the following concerns, which I addressed with you during the meeting:

- ***(insert issues/concerns raised and any responses provided by manager/workforce)***

This letter provides you with the required notice that your fixed term contract will end. It is therefore confirmed that your fixed term contract will end on the **(date)**.

As discussed, you have the right of appeal against the decision end the fixed term contract. Any appeal and the grounds for your appeal should be made in writing to the Deputy Director of Workforce and OD, within 14 days of the date contained on this letter.

I would like to take this opportunity on behalf of Cwm Taf Morgannwg University Health Board and the **(department name)** to thank you for your hard work and for the contribution you have made during your period of employment with us. I would also like to wish you all the very best for the future. Should you require an employment reference, I would be more than happy to provide one on behalf of Cwm Taf Morgannwg University Health Board.

In the meantime should you have any queries regarding the content of this letter, please do not hesitate to contact me.

Yours sincerely

Manager's Name
Job Title

C.C. ***(insert name and Job Title Workforce Rep)***
(insert name Staff Side/Prof Org Rep or Colleague)

Appendix 3 – Appeal Hearing Invite

(insert today's date here)

PRIVATE & CONFIDENTIAL

Dear

RE: Appeal against the Termination of Your Fixed Term Contract

Thank you for your letter dated **(date)** where you lodged your appeal against the termination of your fixed term contract of employment, following our meeting on **(date)**.

You confirmed that your grounds of appeal are **(state what they are here)**.

The appeal will take the form of a review of your grounds of appeal, as well as the reasons given by your manager for the termination of your fixed term contract of employment. The appeal will be undertaken by **(name of the next senior manager)** and will take place on:

Date:

Time:

Venue:

Accompanying me at the appeal hearing will be **(name the attendees and job titles here)**.

If you wish, you may be accompanied at this appeal hearing by a staff side representative or workplace colleague not acting in a legal capacity. It will be your responsibility to check the availability of any representative or colleague you wish to bring to the hearing, and to inform them of all the arrangements.

Should you wish to submit any further information or documentation in support of your case, this should be forwarded to **(name and job title Workforce and OD Rep and address)** by no later than **(date)**.

If you have any questions about this process please contact me on **(telephone number)**.

Yours sincerely,

(Name)

(Title)

C.C. **(insert name and Job Title Workforce Rep)**
(insert name Staff Side/Prof Organisation Rep or Colleague)
(insert names of any other attendees)

Appendix 4 - Appeal Hearing Outcome

(insert today's date here)

PRIVATE & CONFIDENTIAL

Dear ...

RE: Termination of Your Fixed Term Contract of Employment

An appeal hearing was held on **(date)** to discuss the termination of your fixed term contract. I heard your case supported by **(name and job title Workforce and OD Rep)**. You were accompanied by **(name staff side/professional organisation representative or colleague here)**.

If individual was NOT represented, include the following: You were unaccompanied at the appeal hearing despite being reminded of your right to representation.

After careful consideration, a decision was taken to uphold the reasons for the termination of your fixed term contract of employment. These reasons were **(give reasons for end of fixed term contract of employment)**.

I would like to thank you for your service to Cwm Taf Morgannwg University Health Board and wish you all the best in your future career.

Or ...

After careful consideration a decision has been reached to uphold your appeal. The reason(s) for the decision are: **(insert the rationale for the decision to renew the fixed term contract)**.

It is therefore confirmed that your fixed-term contract of employment with Cwm Taf Morgannwg University Health Board will be renewed with effect from **(insert renewed contract date)** and will expire automatically on the **(insert contract end date)**.

All of your existing terms and conditions of employment within this post will remain unchanged, other than your agreed end of contract date.

Should you have any queries regarding the content of this letter, please do not hesitate to contact me.

In the meantime, your line manager will arrange to meet with you to confirm the arrangements relating to the renewal of your fixed term contract.

Yours sincerely,

(Insert name)

(Insert job title)

**c.c. *(insert name and Job Title Workforce and OD Rep)*
*(insert name Staff Side/Professional Organisation Rep or Colleague)***