

# Fixed Term Workers Policy & Procedure

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## Policy Development Overview

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<sup>1</sup> BSO Policy Sub Group is recognised as consultation on behalf of PHA

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## 1.0 Introduction

1.1 The Public Health Agency (PHA) is committed where possible to:

- Offering contracts of employment on a permanent basis except where there is a clear need for a particular job to be done on a temporary basis;
- Showing that all staff are valued for their contribution to delivering the PHA's services.

1.2 Employment legislation provides protection and certain rights for staff to prevent employers using such fixed-term contracts and successive renewals as a method of avoiding liability for unfair dismissal or redundancy. Staff 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 staff member, unless there is an objective reason for offering different terms.

## 2.0 Scope of Policy

2.1 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 completion of a particular task; or
- Terminates upon the occurrence or non-occurrence of any other specified event.

2.2 The following groups are out with the scope of this policy:

- Agency workers;
- Apprentices & Trainees;
- Bank staff contracts (*except where such staff are employees and the contract is for a fixed duration*);
- Permanent employees seconded or acting into fixed-term posts;
- Students on work experience placements.

## 3.0 Purpose

3.1 The purpose of this policy and procedure is to:

- Provide clear principles which will govern the appropriate use of fixed-term contracts;
- Ensure compliance with legislation on the employment of employees on fixed-term contracts;
- Ensure all steps are taken to prevent less favourable treatment of employees on fixed-term employment contracts;
- 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.

3.2 This policy aims to ensure that:

- Fixed-term contracts are used only in defined circumstances, and are clearly time limited;
- Fixed-term employees are treated no less favourably than comparable permanent employees unless there is an objective reason to do so;
- Fixed-term employees are treated in the same way as comparable permanent employees in relation to opportunities for training, promotion, transfer and appraisal and have equal access to apply for permanent vacancies and can apply for such vacancies via the HSC Recruit website.

## 4.0 Responsibilities

### 4.1 Managers

To ensure that the Policy is applied fairly Managers must:

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

is a clear business need to do so, in line with the Fixed-Term Employees (*Prevention of Less Favourable Treatment*) Regulations (*Northern Ireland*) 2002;

- provide permanent employment wherever possible using flexible forms of contract based on effective workforce planning;
- ensure that all fixed-term contracts have a start and end date or specific duration, and contain the same contractual terms and conditions of employment as permanent staff in line with the legislative framework.
- review the appropriateness of the contract on a regular basis in line with the needs of the service.
- keep a record of all employees on Fixed Term Contracts and follow the correct processes in terminating/extending the contract.
- 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 all fixed-term employees have a clear understanding of the current and planned future status of their post and are given the opportunity to apply for any suitable permanent positions which may arise.

## 4.2 Employees

- To behave as any other employee of PHA, bound by same Terms & Conditions and in accordance with the HSC Values.
- To ensure they meet with their manager in accordance with the termination of contract procedure outlined within this procedure. Failure to comply with a manager's reasonable request to meet for this purpose may lead to being addressed under the Regional Disciplinary policy.

## 4.3 Human Resources

- To provide 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.

## 5.0 Procedure

5.1 In certain circumstances, fixed-term contracts may be a valuable tool to enable the PHA to cover short-term gaps in essential services, thus enabling maintenance of consistent standards of service. Such contracts must only be used **as a short-term option, be time limited and should not normally involve individuals in fixed-term contracts of 2 years or more.**

5.2 Circumstances where such contracts might be used include:

- Where it is known in advance that a particular job will come to an end on a specific date;
- Where it is required to protect posts for staff due to organisational change, for example, restructuring or re-provisioning of services;
- Where the employment is for the purpose of completing a particular task or project;
- Where the employment is for the purpose of replacing a staff member who is to be absent from work for a period of time (*for example on maternity leave*);
- Where the post is dependent on external funding and the funding will be available for only a temporary period of time.

### Recruitment of a Fixed Term Contract Post

5.3 Where a post is fixed-term it will be advertised in the normal manner but will state that the contract is fixed-term. The end date/reason for fixed term contract should be stated. Managers must ensure they follow the required PHA scrutiny approval processes.

5.4 If a post has been advertised as permanent, it should not subsequently be appointed to on a fixed-term basis without the agreement of the prospective employee supported by an objectively justifiable reason(s), for example, a change in service need. This should only occur in exceptional circumstances.

- 5.5 It is not acceptable to offer a position on a fixed term basis to test the performance of an individual.
- 5.6 It is acknowledged that PHA on occasion may have non-recurrent funding for various posts and projects. Where a fixed-term post is required as a result of non-recurrent funding, consideration should be made for consideration of exit costs in partnership with funding body.

### Extension of Fixed Term Contracts

- 5.7 In order to meet best practice the number of renewals or extensions to a fixed-term contract should be limited. If contracts are extended or renewed after the planned end date or beyond two years this should be in consultation with Human Resources and Finance. Consideration should be given as to whether this should in fact be a substantive post.
- 5.8 Any approved extensions or changes to the fixed term contract must be confirmed verbally and followed up in writing by the manager to the employee. The manager must also ensure they instruct the BSO Human Resources Team to extend the fixed term contract, including the rationale for same and confirm the new fixed term end date, the BSO HR Team will confirm the extension with the employee in writing.
- 5.9 In accordance with Regulation 8 of the Fixed-term Employees (*Prevention of Less Favourable Treatment*) Regulations (*Northern Ireland*) 2002; Where an employee has accrued 4 years continuous service on fixed-term contracts with the same employer (*these can be in different roles within different business areas*) they will 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*).

### Termination of Contract

- 5.10 Managers are encouraged to discuss the tenure of fixed term contracts informally with employees throughout their employment with the PHA. This is to help manage the expectations of the employee and the manager with regard to extensions, terminations or the advertising of a permanent role in place of a fixed term one. These informal conversations do not replace the requirement for a formal process to be followed in terminating a fixed term contract.

- 5.11 When taking the decision not to renew a fixed term contract, it must be shown that it was reasonable not to renew the contract and that the statutory 3 step dismissal procedure was followed, otherwise the dismissal will be automatically unfair.
- 5.12 The manager must write to the employee a minimum of 1 month before the fixed term contract is due to end (Appendix 1), inviting them to a meeting and warning that a possible outcome of the meeting is the termination of their contract.
- 5.13 Where possible the meeting should take place within 10 days of this letter being sent and before the fixed term contract end date.
- 5.14 The employee is entitled to bring a Trade Union representative or a trusted work colleague who is an employee of the PHA along to the meeting. The employee must ensure that they attend this meeting. It may be appropriate for a member of the BSO HR Team to provide support to the employee and manager at this meeting.
- 5.15 At the meeting, the manager must explain the reason for the fixed-term contract ending and give the employee the opportunity to respond and suggest alternatives.
- 5.16 The employee should be served with notice (*in line with their contract of employment*) that their contract will be terminated either upon expiry of the fixed-term or on the amended end date. The employee should be advised that they will be placed on their organisation's redeployment register, and the redeployment process should be discussed with them. The staff member should be advised that they are entitled to remain on the register until the date of the end of the fixed-term contract.
- 5.17 Where appropriate any redundancy payment which will apply should suitable alternative employment not be obtained, should be shared with the employee. It should be noted that, should an employee not accept a suitable alternative post identified for them, they will waive their right to receive a redundancy payment. See section 5.7 below.
- 5.18 The manager must write to the employee to confirm the outcome of this meeting (Appendix 2). The manager should send a copy of this letter to HR.
- 5.19 The employee must be informed of the right to appeal against the decision.

## Working Longer than the Contract End Date

- 5.20 If an employee continues working past the end of a contract without it being formally renewed, there's an 'implied agreement' that the end date has changed.
- 5.21 In this circumstance the manager will need to extend the contract to a future date (*contractual notice is not required*) and follow the process set out in section 5.3 should they wish to terminate the contract.

## Termination of Fixed Term Contracts on other grounds

- 5.22 Fixed term contracts issued by the PHA state that the contract can be ended earlier than the originally agreed date with the appropriate contractual notice from either party (*employee or employer*).
- 5.23 If a Manager needs to end the fixed term contract before the end date specified in the contract of employment, for example if a change in funding occurs, they should contact BSO HR in the first instance. In this circumstance the process outlined in section 5.3 will be followed but contractual notice must be provided. The employee will have the right to appeal the decision to terminate a fixed term contract early in line with the PHA Appeals process set out in section 5.8.
- 5.24 Managers must deal with cases of poor performance, misconduct and capability, sickness and any other employee relations issues under the appropriate PHA policy and procedure.

## Exceptions to the normal Terminations process

- 5.25 In certain circumstances it may not be appropriate to terminate a fixed term contract at its end date, for example if the employee is pregnant. In these circumstances it may be appropriate to extend the fixed term post for the period of pregnancy / maternity before completing a termination process on their return.
- 5.26 Where this is the case managers should contact BSO HR in the first instance for further guidance.

## Redundancy

5.27 The Employment Rights (*Northern Ireland*) Order 1996 states that redundancy arises when employees are dismissed in the following circumstances:

- where the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed;
- or where the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed;
- or where the requirements of the business for employees to carry out work of a particular kind, in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.

5.28 Employees dismissed by reason of redundancy will have the right to claim redundancy payments after continuous employment of two years.

5.29 The extension of Fixed Term Contracts beyond a two-year duration (*or the use of fixed term contracts longer than two years*) should therefore be considered carefully and should only be used in where there is a strong business reason for doing so and following a discussion with the relevant Senior Manager/Assistant Director and HR representative.

## Appeals

5.30 An employee whose contract has not been renewed or extended has the right of appeal. The appeal must be made to the BSO Director of People & Place within 14 days of receiving the outcome of termination letter (Appendix 2).

## 6.0 Reviewing the Policy

6.1 It will be the responsibility of the BSO Senior HR Manager - Attendance Management, Employee Relations and Pay & Conditions to review the implementation of this guidance.

## 7.0 Equality & Human Rights

- 7.1 This policy has been screened for equality implications as required by Section 75 and Schedule 9 of the Northern Ireland Act 1998. The screening has identified specific equality impacts for Gender, Age, Dependent Status, Ethnicity and Disability and outlines the way these will be addressed.

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## Appendix 1

DATE

**PRIVATE & CONFIDENTIAL**

Name

A1

A2

A3

A4

Postcode

**Directorate of Insert**

2 Franklin Street

BELFAST

BT2 8DQ

**Tel:** (028) 95 363001 Option 5**Email:**

Dear TITLE NAME

**Re: Invitation to meeting regarding termination of Fixed Term Contract of Employment**

As you will be aware your fixed term contract is due to expire on *DATE* as a result of *REASON FOR THE END OF THEIR FIXED TERM CONTRACT*. In line with the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002, I would like to discuss the proposed ending of your fixed term contract with you, to explain the reasons for this in detail and offer you the opportunity respond or suggest alternatives. This meeting has been arranged for *DATE* at *TIME* and in *ROOM*.

You should be aware that one possible outcome of this meeting is the termination of your fixed term contract of employment.

You have the right to be accompanied by a trade union representative or trusted work colleague, who is an employee of the PHA at this meeting.

If you are unable to attend this meeting or would like further information then please do not hesitate to contact me.

Yours sincerely

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**Line Manager Name**  
**Job Title**Cc HR Rep  
TU Rep

## Appendix 2

DATE

**PRIVATE & CONFIDENTIAL**

Name

A1

A2

A3

A4

Postcode

**Directorate of Insert**

2 Franklin Street

BELFAST

BT2 8DQ

**Tel:** (028) 95 363001 Option 5**Email:**

Dear TITLE NAME,

**Re: Termination of Fixed Term Contract of Employment: Outcome Letter**

Thank you for meeting with myself on [DATE] regarding your fixed term contract of employment.

You were informed of your right to be represented at this meeting by a trade union representative or a trusted work colleague, who is an employee of the PHA. *<You were represented by X / You were accompanied by X / You were happy to have this meeting without a representative with you >(select as applicable).*

I explained that we were meeting in line with the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (Northern Ireland) 2002 in order to discuss the possible ending of your fixed term contract of employment as *<job title>* in *<department>*.

As stated in your contract of employment this post was a fixed term role until *<date>* due to *<reason for fixed term contract>*. As a result it is my intention to end your fixed term contract on *<date>*.

I asked you to suggest any alternatives to the ending of your fixed term contract. *You stated <Insert any alternatives suggested by the employee as an alternative to the ending of the contract and the reasons that these could not be accommodated>*.

*[For insertion where redeployment options are appropriate - I provided you access to the Redeployment form for completion and return to me at your earliest convenience. I explained the redeployment process and confirmed with you that you would remain on your Organisations redeployment register until the end of your contract. You were advised that you would be notified of any suitable offers of alternative temporary employment by the BSO Employee Relations team].*

Based on all of the above information, I confirmed that your fixed term contract of employment will cease on <date>.

*Should a suitable alternative post not be identified for you, as you have accrued <insert years> service you will be entitled to receive a redundancy payment which will be paid to you in your final salary. Please be advised that should you decline an offer of suitable alternative employment you will forgo any entitlement to receive a redundancy payment (\*delete para if not applicable – seek HR advice before including)*

I would advise that you have the right to appeal against this decision. In order to do so you must write to Mrs Paula Smyth, Director of People & Place, Business Services Organisation Headquarters, 2 Franklin Street, BELFAST, BT2 8DQ within 14 days of receipt of this letter, clearly outlining the grounds for your appeal.

I would also like to take this opportunity to thank you for the work you have done in the department and wish you well for the future.

Please do not hesitate to contact me if you wish to discuss anything further on this.  
Yours sincerely

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**Line Manager Name**  
**Job Title**

Cc HR Rep  
TU Rep

