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MANAGING THE EXPIRY OF FIXED TERM CONTRACTS PROCEDURE

Introduction and Aim

In law, when a fixed term contract expires and is not renewed, it is considered to be a dismissal. Staff with at least one year's service (i.e. 51 weeks service at the date contract is due to end) have the right to a written statement of reasons for this dismissal and the right not to be unfairly dismissed.

In accordance with employment legislation Public Health Wales are required to follow a standard procedure for dismissals, including the non-renewal of a fixed term contract.

Linked Policies, Procedures and Written Control Documents

Redeployment Policy
Redundancy Policy
Recruitment & Selection Policy
Establishment Control - SOP

Scope

This policy applies to all staff.

Equality and Health Impact Assessment	Please refer to the EHIA completed for the Redundancy Policy.
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Accountable Executive Director/Director	Neil Lewis Director of People and Organisational Development
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Disclaimer

If the review date of this document 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 Governance](#).

Summary of reviews/amendments

Version number	Date of Review	Date of Approval	Date published	Summary of Amendments

1 Introduction

Our workforce is at the heart of our ability to deliver, and we require talented people with the right capability, capacity, and commitment to deliver on our strategic priorities.

To deliver our strategy we use a number of different approaches including the use of fixed term contracts, to meet shorter term needs. Across all of our contract types we aspire to be an inclusive and fair employer who people feel proud to work with.

In law, when a fixed term contract expires and is not renewed, it is considered to be a dismissal. Staff with at least one year's service (i.e. 51 weeks service at the date contract is due to end) have the right to a written statement of reasons for this dismissal and the right not to be unfairly dismissed.

In accordance with employment legislation, Public Health Wales follows a standard procedure for dismissals, which includes those relating to the non-renewal of a fixed term contract.

A fixed term contract should only be terminated if there is no longer a requirement for that particular job to be done. This will normally arise as the result of the funding running out, or a cessation or reduction of an activity. Non-renewal of fixed term contracts must not be used as a substitute for good performance management.

Where a fixed term contract expires without being renewed, Public Health Wales may be required to make a redundancy payment to the member of staff concerned. Please see section 2 below.

The legal obligations placed upon an employer in relation to fixed term appointments are complex and line managers should always seek advice from the People & OD Directorate.

When a fixed term contract terminates and is not renewed, the employee is dismissed. The reason for this dismissal will not always be redundancy but there are situations where an employee will be deemed to be in a redundancy situation. This will depend on the circumstances of the particular case in question. N.B. Advice should always be sought from the People & OD Directorate where it is intended that a fixed term contract is not renewed. Where a post is deemed to be redundant, the fixed term employee should not be selected for redundancy purely because they are on a fixed term contract, unless this is objectively justified. For example, where the fixed term employee has been brought in

specifically to complete a particular task or to cover for a peak in demand, it is likely that selecting that employee for redundancy at the end of their contract would be objectively justified.

In the event of the above scenarios we will work with individuals to explore whether there are suitable alternative roles available. If suitable alternative employment cannot be found for an employee whose fixed term contract is coming to an end and they have two years' service, they may be entitled to a redundancy payment, in accordance with the Fixed Term Regulations (2002). Details can be found in the [Redundancy Policy](#).

Fixed term employees with less than two years' service will not be entitled to receive a redundancy payment but will be given a written statement which outlines the reason(s) for the dismissal.

2 Roles and responsibilities

The roles and responsibilities of Line Managers, Employees and the People & OD team are outlined below.

3 Procedure

Public Health Wales employs a significant number of fixed term employees and ensuring that we have procedures in place which comply with our legal obligations can be a sizeable and difficult task. The arrangements described here are designed to provide meaningful and practical help, and to support line managers to manage such issues sensitively, in line with relevant employment legislation. However, advice should always be sought from the People & OD Directorate before any action is taken.

The People and OD Directorate will, via ESR, operate a reminder system whereby Line Managers are advised on a monthly basis of all fixed term contracts which are due to expire in 6 months' time. **In addition it is good practice for Line Managers to put in place their own system to alert them when their fixed term contracts are due to expire.**

For those employed on a Fixed Term contract for less than 6 months, please contact the People and OD Team to discuss arrangements for managing the expiry of the contract.

Public Health Wales has a legal obligation to consult with each fixed term employee prior to their fixed term contract expiry date and to explore options for extension and redeployments with

them. It is the responsibility of the line manager to carry out this consultation process by meeting with the employee concerned.

Line managers who employ fixed term staff should ensure that they are aware of the arrangements contained in this procedure, plus those contained in the [Redeployment Policy](#) and [Redundancy Policy](#), and ensure they seek advice from the People & OD Directorate with regards to administering the procedures.

The various stages of this procedure must be completed within the correct timeframes. **Failure to do so may result in the extension of a Fixed Term Contract for an appropriate period so that adequate notice of termination is given to the employee.**

In advance of the employee's contractual notice period (at least 16 weeks prior to the end date to allow for time on the redeployment register) the Line Manager must write to the employee advising them of the date on which their fixed term contract is due to expire. Our legal obligations require us to do this even though we know that many contracts may eventually be extended or made permanent. However, by writing to all fixed term employees whose contracts are due to expire, it ensures the required legal obligations are met.

3.1 Arranging a Meeting

16 weeks prior to the employee's fixed term contract end date, the line manager must write to the employee, inviting them to a meeting to discuss the end of their fixed term contract (Appendix 2). This letter must state the reason for the impending end of the fixed term contract. If, at the stage of holding the meeting, there is still a possibility that the contract may be extended (e.g. a late funding decision is awaited) this should be discussed with the employee, but it must also be explained that the procedure has to be followed on the basis that the contract is ending. If subsequent to this meeting, a decision is made to extend the contract, the Line Manager should write to the employee without delay, confirming that the expiry of contract is being withdrawn and detailing the extended fixed term date and reason for the extension (Appendix 5). In the event that changes have been made to the employee's ESR record, Payroll should also be notified.

The meeting should be held at least 13 weeks before the end of the employee's fixed term contract end date. The employee should be given at least one week's notice of the meeting. This meeting **must** be held even if there is a possibility that the contract may

be renewed but where the final decision remains outstanding in the run up to their contractual notice period.

The employee has the right to be accompanied by a trade union representative or work colleague at this meeting. Ideally, the employee should confirm if they intend to be accompanied and advise who they wish to bring along.

The line manager (and if necessary a member of the People and OD team) will meet with the employee. It is recommended that where a manager has not undertaken such a meeting before that they seek advice from the People and OD Directorate prior to the meeting date.

If the employee or nominated representative is genuinely unable to attend the meeting, for example due to illness, a reasonable alternative date must be offered. If the employee's representative cannot make the date of the meeting then the line manager should propose another date and time which should be no more than five working days later than the original date. If the employee fails to attend the re-arranged meeting there is no need to set a further meeting date and the confirmation of notice letter can be issued by the Line Manager.

3.2 The Meeting

At the meeting, the reason why the fixed term contract is coming to an end should be discussed. The employee should have an opportunity to respond to the situation and put forward ideas which might influence the decision not to terminate the contract. If no such issues are raised, then the decision to terminate will be confirmed. If the employee presents information at the meeting which casts doubt on the validity of the reason for terminating the contract (e.g. if the employee considers that they have been unfairly selected for redundancy), then further information/clarification should be sought before confirming the position to them. If further investigation is required this should be carried out as quickly as possible by a member of the People & OD team, with a view to completing this stage of the process, where possible, within 5 working days from the date of the meeting.

The possibility of suitable alternative employment through the redeployment process should also be discussed with the employee at this meeting. The line manager should use the *Meeting Proforma* (Appendix 1) to keep a written record of what was discussed and agreed at the meeting and this should be retained

in accordance with the General Data Protection Regulation (GDPR).

Should an employee decline the opportunity to go on to the redeployment register, the reasons for this should be detailed on the meeting proforma and included in the follow up letter below (see section **Following the Meeting**).

If the employee has 104 weeks of continuous full-time or part-time service ('continuous service' means full time or part time employment with the present or any previous NHS employer with no more than a week's break between employments), then they may be eligible for a redundancy payment should no suitable alternative employment be secured. Please speak to a member of the People & OD for advice in relation to the process for applying for this payment.

3.3 Following the Meeting

After the meeting has taken place, the line manager should complete the termination process for the employee on ESR. If there are any pay implications i.e. annual leave to be credited/deducted, then a Termination form should be completed and forwarded to the Payroll Team for processing cc [People Support](#). The only exception to this would be where further investigations need to be carried out as a result of issues that have arisen at the meeting. In which case the termination process should be completed and forwarded as soon as those investigations are complete.

The Line Manager should follow up with a letter to the employee confirming the decision not to renew their fixed term contract and advising them of their right to appeal (Appendix 3). This should also include either confirmation of the employee going onto the redeployment register, or their reason for choosing not to go onto the redeployment register. Copies of any associated letters /proformas'/ meeting notes etc. should be retained on the employee's personal file.

It is good practice for the Line Manager to undertake regular update meetings with the employee up to the point that their contract comes to an end. The purpose of these informal meetings is to discuss and offer support with regards to redeployment opportunities and to discuss any changes or updates in relation to the contract end date i.e. possible identified funding etc.

3.4 Right of Appeal

If the contract is not being renewed, the employee should be informed at the meeting that they have the right to appeal against the decision if they consider that procedure was not properly followed in their case. For example, an employee might consider that they were unfairly selected for redundancy.

Appeals should be submitted in writing to the Assistant Director of People Strategy, Insights and Service within 5 working days of the employee receiving the letter, confirming the decision not to renew the contract. An appeal letter must state the grounds upon which the appeal is being made.

3.5 Suitable Alternative Employment

This is an important area to be considered when someone's fixed term contract is coming to an end, and it must be looked at in detail. It's important to read this in conjunction with the [Redeployment Policy](#). Alternative roles should be considered and discussed by the manager and the employee, with the advice of the People & OD Directorate. The Re-deployment Record Pro-forma can be found in Appendix 1 of the [Redeployment Policy](#).

Opportunities within Public Health Wales will be actively sought for a maximum period of up to 12 weeks once an individual has been placed on the Redeployment Register. This period may include time spent in a temporary post or a secondment, but will exclude any trial periods. Dependent on the circumstances of the case this period may be extended beyond 12 weeks following discussion between the line manager, a member of the People & OD team and trade union representative/staff side representative/work colleague. Conversely, in some circumstances the period will be less than 12 weeks in line with accrued notice periods.

Following submission of the Redeployment Record Pro-forma, the People & OD Directorate will ensure the employee is set up as a redeployment candidate in the Trac recruitment system. Suitable alternative roles will be made available via Trac for the candidates to review, apply for and receive prior consideration for the post.

The employee has a responsibility to monitor any Public Health Wales vacancies on "[NHS Jobs](#)" and bring any potential suitable roles to the attention of their line manager.

Currently there is no All Wales agreement on redeployment (although work is underway on this). However, Public Health

Wales employees are still actively encouraged to look for opportunities within other Health Boards and Trusts.

If a post is identified that may be suitable, the employee should submit an application via Trac. The recruiting manager, with support from the People & OD team, will then give the employee prior consideration and fast-track to an interview if successful at shortlisting stage. Where alternative employment opportunities are identified within Public Health Wales, the procedure described in the Redeployment Policy will be adhered to.

If the individual rejects an offer of redeployment and it is considered by the employer that the post was in fact a suitable alternative, it will be noted that the offer was refused including the reasons given. This may impact on the employee's eligibility for further redeployment opportunities.

Whilst the process of attempting to find a redeployment opportunity is coordinated by the People & OD Directorate the responsibility and ownership for actions taken is fully shared with the relevant Directors and Managers as well as with the individual concerned.

3.6 Final stage

The line manager should write to the employee (Appendix 4) confirming whether or not the contract will be renewed or if it will end on the fixed term contract expiry date 2 weeks before the end of fixed term contract date.

If a decision is made to extend the contract, the Line Manager should write to the employee without delay, confirming that the expiry of contract is being withdrawn and detailing the extended fixed term date and reason for the extension (Appendix 5). The line manager should speak to Payroll as a matter of urgency to ensure the employee's record is updated accurately and the termination process is cancelled. The People & OD team should also be informed.

If there is no extension to the role, and no suitable alternative role has been identified during the prescribed period, the contract will come to an end and, if appropriate, a redundancy payment will be made to the employee.

4 Monitoring compliance

People and OD will monitor and audit this procedure to ensure it is compliant with current legislation and that it is appropriately implemented across Public Health Wales.

We are continually looking to improve our employment practices and welcome any feedback you may have in relation to this procedure. Feedback can be provided by emailing PeopleSupport.PHW@wales.nhs.uk

5 Appendices

Appendix 1

Meeting to discuss expiry of fixed term contract			
Name:		Date of Meeting:	
Present at the Meeting			
Manager:		Employee:	
People and OD Representative (if applicable):		TU Rep/Colleague:	
Record of discussion			
Preparation:			
<ul style="list-style-type: none">• Contact People & OD team in relation to redeployment process			
Points for Consideration:			
<ul style="list-style-type: none">• Confirm purpose of meeting• Confirm right to be accompanied• Discuss reasons for expiry of contract/likelihood of contract being extended• Provide opportunity for employee to respond to the situation and put forward ideas for consideration• Are there any areas which require clarification or further investigation?• Confirm start date, continuous and reckonable service• Does the employee wish to be considered for redeployment?• If the employee does not wish to be considered for redeployment, why not? Ensure they understand that this could affect their rights to redundancy – seek support from People and OD following the meeting			
Follow-up Actions:			
<ul style="list-style-type: none">• Investigate any outstanding issues• Agree date for further meeting			

Meeting to discuss expiry of fixed term contract

- **Employee to submit redeployment pro-forma to: peoplesupport.phw@wales.nhs.uk**
- **Manager to send follow up letter confirming outcome of meeting**

Meeting to discuss expiry of fixed term contract

Appendix 2

PRIVATE AND CONFIDENTIAL

Name
Address

Date

Dear ,

Re: End of Fixed Term Contract

I am writing to confirm that your fixed term contract as <job title> in <base>, is due to expire on <date>.

In view of the regulations and responsibilities I have as your line manager, I am inviting you to attend a meeting with myself to discuss the details of the expiry of your fixed term contract. I request that we meet to discuss the above on <date> at **<venue>** at <time>. If this date and time is not convenient for you, please contact me to agree a convenient date and time for us all.

You have a right to be accompanied by a trade union representative or work colleague at this meeting. Please confirm if you intend to be accompanied and advise me of the name of this person.

Yours sincerely,

Line Manager
Job Title

cc People and OD Representative

Appendix 3

PRIVATE AND CONFIDENTIAL

Name
Address

Date

Dear

Re: End of Fixed Term Contract (13 weeks before FTC end date)

Thank you for meeting with me today to discuss the end of your fixed term contract. [Also in attendance was XXX, People and OD Advisor/Senior People and OD Advisor] – delete/amend as appropriate. You were accompanied by XX / chose not to be accompanied at this meeting.

As discussed, your appointment as *Job Title* was fixed-term to cover a period of maternity leave/long term absence/to undertake specific project (details) within the XX team/directorate. The work and all associated tasks were agreed to be fixed-term until XX/XX/XXXX. As discussed today, and in line with your fixed-term contract end date, your employment as *Job Title* in location, will terminate on xx/xx/xxxx.

The People and OD team will now work with you to identify any suitable alternative employment opportunities within the Trust. If you haven't already, please can you complete and return the attached redeployment pro-forma to peoplesupport.phw@wales.nhs.uk. You will then be entered on to the redeployment register and added as a redeployment candidate to the Trac recruitment system. You will receive prior consideration for posts that match your current pay band and one pay band below. Should you meet the essential criteria, you will be fast-tracked to an interview for a trial period in the role. Trac will automatically send you a welcome e-mail and guidance on setting up a Trac account. Timely reminders of suitably banded vacancies will be sent to you and you will also be able to apply for suitable alternative roles via Trac.

We would also encourage you to search on the NHS Jobs website on a regular basis and notify either myself or the People & OD team if there are any current job vacancies within NHS Wales that you would consider to be suited to your skills and experience.

You will receive a redeployment record form shortly from the People & OD team. Please ensure you keep this document updated and contact me should you require any support with regards to the Redeployment process.

OR

During our discussion you confirmed that you did not wish to be considered for any suitable alternative employment opportunities. You also confirmed your understanding that failure to consider alternative roles means that you would lose your right to a statutory redundancy payment if applicable.

You have the right to appeal against the decision to terminate your employment on the grounds of the fixed term contract coming to an end. If you wish to appeal, you should do so in writing within 5 working days to Karen Williams, Interim Assistant Director of People, Capital Quarter 2, Tyndall Street, Cardiff, CF10 4BZ, stating the grounds for your appeal.

If you have any queries regarding any aspect of this letter please do not hesitate to contact me and I will do my best to help wherever possible.

Yours sincerely

Line Manager
Job Title

cc People and OD Representative

Appendix 4

PRIVATE AND CONFIDENTIAL

Name
Address

Date

Dear ,

Re: End of Fixed Term Contract (2 weeks before end of FTC)

I am writing with reference to the end of your fixed term contract as <job title> in <base>, which is due to end on <date>. I previously notified you of this in writing on <date> and subsequent to that in a meeting on the <date>.

Following the submission of your redeployment pro-forma, you have been given the opportunity to apply for suitable alternative posts via the Trac recruitment system. We have also encouraged you to search on the NHS Jobs website and notify either myself or the People & OD Team if there are any current job vacancies within NHS Wales that you would consider. However, no relevant posts have been identified from current job vacancies within the Trust or other NHS employment. Therefore your last date of employment with the Trust will be the <date>.

Your personnel file indicates that you commenced employment with XXX NHS Trust on <date> and transferred into Public Health Wales on <date>. Therefore on <end date> you will have been employed in continuous NHS employment for <time period in years and months>, and as such will not be entitled to a redundancy payment.

OR

Your personnel file indicates that you commenced employment with Public Health Wales on <date>. Therefore on <end date>, you will have been employed in continuous NHS employment for <time period in years and months> and as such should be entitled to a redundancy payment of 1 month for every completed year of service. You should note however that at this stage your continuous service remains to be verified with the Payroll Department.

To qualify for a redundancy payment, staff member(s) must be an employee, working under a contract of employment for an NHS employer and have at least 104 weeks' of continuous full-time or part-time service; continuous service' means full time or part time employment with the present or any previous NHS employer with no more than a week's break between employments.

As per the Trust's Redundancy Policy, you have the right to appeal against this outcome. You must set out your appeal in writing to People and OD within 21 days of written notification of redundancy.

If you have any queries regarding any aspect of this letter please do not hesitate to contact me and I will do my best to help wherever possible.

Yours sincerely,

Line Manager
Job Title

cc People and OD Representative

Appendix 5

PRIVATE & CONFIDENTIAL

Date

Name
Address

Dear

Offer to Renew the Contract - Withdrawal of Notice to End the Contract

Further to our meeting on **Date**, I write to formally withdraw the served contractual notice period, in respect of the ending of the above fixed term contract.

I can confirm that Public Health Wales is now able to renew your fixed term contract, with effect from **Date**. The renewed contract will automatically expire on the **Date**. The reason for the fixed term contract renewal is **insert the reason (s)**.

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

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

Yours sincerely

Line Manager
Job Title

cc People and OD Representative

Appendix 6: Managing the Expiry of Fixed Term Contracts Flow Chart

