

St George's, University of London

PROCEDURE FOR THE MANAGEMENT OF FIXED TERM CONTRACTS

1. Introduction

This procedure is intended to support St George's Policy on the Use of Fixed Term Contracts. It is designed to provide guidelines to assist managers in appointing to, renewing extending or ending fixed term contracts of employment and to ensure fairness and equality for all staff.

It is also intended to ensure that St George's meets its obligations under the relevant employment legislation. Therefore any significant variations to the procedure when dealing with specific cases must be discussed with the [HR Manager for your Division](#) to minimise risk to St George's.

2. Legislative background

The key legislation regarding fixed term contract is the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

The Regulations came into effect on 1 October 2002 and the key elements are:

- They apply to all employees on fixed term contracts of employment;
- Fixed-term employees have the right not to be treated less favourably than colleagues employed on permanent contracts, unless this treatment can be objectively justified.
- Information on vacancies must be made available to fixed term employees whose contracts are likely to or will expire, in order to assist them in securing permanent employment;
- Fixed term employees have the right to request a written statement providing justification for any less favourable treatment (e.g. the renewal of a fixed term contract rather than the offer of an permanent contract) within 21 days of the request;
- An employee whose contract of employment is renewed on a fixed term basis after a period of 4 years service on a fixed term contract (or a succession of fixed term contracts) without objective justification will be deemed to be a permanent employee. This provision applies to renewals which take place on or after 10 July 2006. If objective justification exists then the employee will remain employed on a fixed-term basis.

3. Compliance

3.1 In order to comply with the legislation, it is essential that there are transparent, necessary and objective business reasons for placing a post initially or subsequently on a fixed term contract.

- 3.2 The normal method of employment will be on a permanent contract. However, St George's considers that for some posts, a fixed-term contract is appropriate where the reason for it can be objectively justified (see below).
- 3.3 In considering whether a post is to be fixed-term or permanent, consideration will be given to all available information on anticipated staffing changes through planned retirements, promotions, changes in funding and income streams and other relevant information.
- 3.4 Posts will normally be established on a fixed-term basis in accordance with one or more of the following criteria, although these are non-exhaustive:
- Where funding is available only to employ specific skills to carry out a specific, time-limited piece of work or project, for example a grant funded post;
 - Where an appointment is for the purpose of research training;
 - Where the post requires specialist expertise or recent experience not already available within the institution in the short term;
 - Where the employment is associated with an activity where there is a risk, for example: the financial sustainability of a new course when it is not known whether or not it will succeed or fail, to meet variable and uncertain student or other business demand;
 - To cover specific absences e.g. maternity leave, secondment, sickness, periodic leave, temporary, acting or other appointments etc;
 - Where a former employee is re-engaged following retirement;
 - To teach short courses;
 - To undertake a specific time-limited project;
 - Where there is genuine uncertainty about the continued funding or need for a post in the foreseeable future;
 - Where appointments to posts are made on a rotational basis e.g. Clinical Research Fellows on the Specialist Registrar training programme.
- 3.5 If a post does not meet the criteria for the use of fixed term contracts detailed at 3.4 above and the funding stream is reasonably assured, subject to the approval of the Staffing Review Committee, the member of staff will transfer to an permanent contract. Transfer of a post to a permanent contract will be on the basis of the nature of the post, the work being undertaken and the funding stream, rather than on the attainment of a specific number of years of continuous employment.

4. The Rights of Staff Employed on Fixed Term Contracts

- 4.1 Staff on fixed term contracts must be treated fairly and equally with their colleagues who hold permanent contracts. Discrimination against staff on fixed term contracts is illegal, unless it can be objectively justified.
- 4.2 In keeping with employment law, managers should consult regularly with fixed term employees about the prospects of their future employment.
- 4.3 The individual has the right to be consulted regarding the conclusion of his/her appointment. Consultation should take place through one to one discussions in meetings with the individual and their manager. Discussions must be meaningful in taking note and giving due consideration to the individual's views and suggestions. He/she must be kept informed of the progress of applications for further funding or projects. For example, reasons for the possible ending of the contract should be made clear to the individual and indicate what actions, if any, are proposed at the end of the contract. Topics for the discussion, depending on individual circumstances are listed at are listed at 6.1.8 below. A member of staff

has a right to be accompanied by a colleague or trade union or staff representative at meetings and should notify their manager in advance of their intention to be accompanied. A member of Human Resources Department staff may be invited to be present at any stage in the consultation process. **A failure to consult on the expiry and non-renewal of the contract will render the dismissal unfair.**

5. The Obligations of St George's towards Staff on Fixed Term Contracts

- 5.1 All staff must be treated equally, irrespective of the nature of their contract of employment. In particular, staff on fixed term contracts must receive equal support in terms of the recruitment process (including comprehensive job descriptions and clear person specifications), induction, probation, appraisal, and access to training and development. Similarly, the performance, capability and conduct of staff on fixed term contracts must be properly monitored and managed. Continuing poor performance or misconduct must be addressed during the period of the contract using the probationary procedure or the relevant disciplinary procedure, as appropriate.
- 5.2 Fixed term appointments must **only** be terminated on their expiry for reasons which meet the legal definition of redundancy, i.e. that funding for the post has ceased and/or the requirement for the particular skills set has ceased or diminished and/or the research project or task has concluded.
- 5.3 In circumstances where the capability or conduct of a member of staff has been unsatisfactory, it will be illegal to use the termination of his/her fixed term contract as an alternative to the use of disciplinary, performance management or other appropriate procedures.
- 5.4 The Regulations require employers to inform fixed term employees of available permanent vacancies in the establishment.

6. Procedures for the Management of Fixed Term Contracts

- 6.1 The following steps should be taken in each case where an employee is on a fixed term contract.
 - 6.1.1 Six months before the end of any contract the supervisor/grant holder should have a review with the fixed-term employee to explore career preferences and opportunities.
 - 6.1.2 As early as possible, and **not later than four months** before the end of an employee's fixed term contract, the supervisor should have discussions with the employee about the fixed term contract. It is advisable that supervisors should discuss the situation with staff as soon as they are aware that the contract may end.
 - 6.1.3 For externally funded posts, managers and grant holders should also contact the Joint Research Office to discuss and agree any funding implications related to the fixed term employee's appointment.
 - 6.1.4 (Form FTE1 can be used as a guide for discussion and recording decisions and justification for decisions.) The procedure for consultation is as follows:
 - 6.1.5 **Five months prior to the expiry date of a fixed term contract**, the Human Resources Department (for other fixed term appointments) will issue a memorandum/reminder (FTE 2) to the supervisor/grant holder seeking

confirmation as to whether the appointment is to be extended, together with the discussion form (FTE 1).

- 6.1.6 The manager is required to invite the employee to a meeting to discuss the situation. The sample letter FTE2A could be used to do this.
- 6.1.7 **At the same time** a similar memo (FTE 3) will be sent to the employee reminding them of the situation and that they have the ability to exercise their right to St George's undertaking full consultation with the recognised trade union over the ending of the contract and the actions being taken to minimise the effect of this redundancy. (The Head of Division or supervisor undertakes the consultation on behalf of St George's.)
- 6.1.8 The memo FTE 3 will inform the employee of their right to be accompanied by a colleague or his or her trade union or staff representative to the meeting and they are required to notify their manager in advance of the meeting of his or her intentions to be represented.
- 6.1.9 The appropriate trade unions and staff representatives will also be informed of the potential redundancies at this stage with a list of the names of staff, their contract expiry dates and their division name.
- 6.1.10 The discussion should be held as a structured meeting, in which all the possible options and outcomes are discussed and considered. Suggested topics for the discussion, depending on individual circumstances may include:
- The individual's views in relation to their prospects for further employment at St George's
 - The possibility of transfer to a permanent or continuing appointment; if this is not an option, the reasons should be explained and discussed with the individual
 - The possibility of extending his or her fixed-term contract; the possible length of an extension; and the objective reasons for the contract remaining fixed term – see 3.4 above for criteria
 - If the post is externally funded, the postholder should be updated on the prospects for further funding or alternative sources of funding.
 - Any alternative options or suitable posts for redeployment across St George's, taking into account the individual's aspirations. Redeployment procedures, and St George's vacancy list, should be brought to the individual's attention.
 - Possibilities for re-training to facilitate redeployment may also be considered with the right to reasonable time off to look for work or to arrange training.
 - The likelihood of termination of the contract and time-scale for providing further information
 - Reasons for the ending of the contract
- 6.1.11 **At the end of the meeting, the results of the consultation should be recorded on Form FTE1 which must be signed by the individual and the manager. Form FTE 1 should then be returned to the Human Resources Department no later than three months before the expiry of the fixed term contract.**
- 6.1.12 Further consultation meetings may be required to discuss the progress on possible outcomes of earlier consultation or any decisions made under this policy.

6.2 Transfer to permanent contract

If a post does not meet the criteria for the use of fixed term contracts detailed at 3.4 above and the funding stream is reasonably assured, subject to the approval of the Staffing Review Committee, the member of staff will transfer to a permanent contract. Transfer of a post to a permanent contract will be on the basis of the nature of the post, the work being undertaken and the funding stream, rather than on the attainment of a specific number of years of continuous employment.

- 6.2.1 If a manager considers that transfer to a permanent contract is appropriate the manager should return Form FTE 2 (together with Form FTE 1) to the Human Resources Department no later than three months before the expiry date of the fixed term contract.** The form should state the reasons for a proposed transfer to a permanent contract.
- 6.2.2 The Human Resources Department will advise the manager about submitting a case to the Staffing Review Committee if appropriate.

6.3 Extension/renewal of fixed term contract

- 6.3.1 Managers should in all cases firstly consider whether it is possible to transfer the post to a permanent contract in accordance with the Policy on the Use of Fixed Term Contracts.
- 6.3.2 If objective and necessary reasons exist (see 3.4 above), for the member of staff to remain on a fixed term contract, and the need for the post is to continue for a specific period of time, then managers should consider extending the appointment for a further fixed-term period.
- 6.3.3 Managers should consult with the Joint Research Office (for externally funded posts) to discuss the funding situation, e.g. is there sufficient funding available to extend an employee's fixed term contract.
- 6.3.4 Managers should consult with the member of staff on the reasons and options relating to his or her extension or renewal of contract, or transfer to a permanent appointment, in accordance with 6.2 above.
- 6.3.5 If the decision is to extend or renew the fixed term contract, the manager should return Form FTE 2 (together with Form FTE 1) to the Human Resources Department no later than three months before the expiry date of the fixed term contract.** The form should include clear instructions and the reason for the decision ensuring that renewal/extension on a fixed term basis is in accordance with the criteria listed in 3.4.
- 6.3.6 The Human Resources Department will provide managers with advice as appropriate and on receipt of both Form FTE 1 and FTE 2, will formally notify the postholder of the renewal or extension of the contract with the reason(s) for continuing employment on a fixed term basis.

6.3.7 to 6.3.10 – under review

- 6.3.7 *Managers should consider whether an application for bridging funding might be appropriate. The St George's Research Development Support Scheme provides short term funding for researchers from the following two funding streams, the Human Resources (HR) Bridging Funding Scheme and the Wellcome Trust Value in People (VIP) Awards.*
- 6.3.8 Human Resources (HR) Bridging Funding Scheme:** *St George's has established a central contingency fund to provide salary 'bridging' funding for a limited period, in order to retain key research staff whose current funding*

source is ending, but where there is a good prospect of further funding being confirmed in the near future. This funding originates from HEFCE via its 'Rewarding & Developing Staff' allocation.

Wellcome Trust Value in People (VIP) Awards: *St George's also receives annual funding from The Wellcome Trust, known as 'Value in People (VIP)' awards. VIP funding can be used for salary 'bridging' but also allows other categories of expenditure.*

- 6.3.9 *Applications for bridging funds are considered either where there is a definite source of funding to follow a short gap in external funding, or where funding has expired and the outcome of a submitted application for further grant funding is awaited. The funding is normally available for an initial period of up to 6 months.*
- 6.3.10 *Both sources of bridging funding are administered by the Joint Research Office. Further details about the schemes are available from the Joint Research Office.*

6.4 Termination of employment on expiry of fixed term contract.

In the event that an appointment is not going to be extended, the manager will provide details about the reason for the termination. It is important to take action and consult with a member of staff as soon as this position is known. The procedure for terminating employment on the expiry of a fixed term contracts should as far as possible include the following:

- 6.4.1 At the earliest opportunity (i.e. as soon as the manager is aware that the contract may end) and up to four months before the expiry date, managers should consult with the postholder on the prospects for alternative options, taking account of the postholder's views – see 6.2 above.
- 6.4.2 The manager must then notify the Human Resources Department of the outcome of the discussion by returning Form FTE 1 (completed by the manager and the individual) and returning Form FTE 2 providing details of the reasons for the termination and an instruction for the Human Resources Department to issue the postholder with formal confirmation of termination of the contract.
- 6.4.3 Both the FTE 1 and FTE 2 forms and a copy of the letter FTE2A should be returned no later than three months before the expiry date of the fixed term contract.
- 6.4.4 Fixed term appointments must only be terminated on their expiry for reasons which meet the legal definition of redundancy, i.e. that funding for the post has ceased and/or the requirement for the particular skills set has ceased or diminished and/or the research project or task has concluded.
- 6.4.5 If the reason for non-renewal does not meet the criteria for redundancy, the Human Resources Department must be consulted prior to any discussions with the member of staff.
- 6.4.6 In circumstances where the capability or conduct of a member of staff has been unsatisfactory, it is illegal to use the termination of his/her fixed term contract as an alternative to the use of disciplinary, performance management or other appropriate procedures.

- 6.4.7 If the reason for termination of a contract is called into question at any stage the supervisor/grant holder/Head of Division must involve the Human Resources Department in any discussions with the member of staff.
- 6.4.8 The Human Resources Department will write to the individual with formal notice of termination of the contract, the reasons for termination (normally redundancy) and will inform them of their right to appeal against the decision to dismiss them (FTE 4 or FTE 5 for employees with less than 2 years continuous service and therefore not eligible for a redundancy payment). This letter (FTE 4 or FTE 5) should be sent to the employee one month before the expiry date of the fixed term contract at the latest. ***This letter will also be sent to the individual one month before the expiry date if the manager/grant holder has not responded to the Human Resources Department regarding the expiry of an employee's fixed term contract.***
- 6.4.9 The postholder will be given information about other positions in the Division and elsewhere in St George's by the manager and be reminded of St George's vacancies list on the SGUL portal at: <http://jobs.sgul.ac.uk/> and the School's internal vacancies on the portal at: <https://portal.sgul.ac.uk/org/cs/hr/vacancies-internal>
- 6.4.10 If an individual wishes to appeal against the decision to dismiss them as a result of this procedure, they must submit their appeal in writing to the Director of Human Resources within 10 days of receiving formal notification of termination.

6.5 Redeployment

- 6.5.1 If the employee wishes to seek employment outside St George's, St George's will provide assistance to the employee to secure an appropriate post, including reasonable time off for training and attending interviews.
- 6.5.2 If it is agreed that the employee wants to continue in employment at St George's, St George's will provide help to secure this, this could include: making applications for grant extensions and new funding, exploring other potential research opportunities available within St George's and options for retraining to take advantage of these. The Staff Development Officer will also provide assistance to employees in updating their CVs and applying for jobs.
- 6.5.3 Supervisors should liaise with the Head of Division or Divisional Business Manager or appropriate authority to consider whether the Division's academic needs and operational requirements are such that the individual's work and employment should be continued, and if so, to pursue applications for replacement funding (if not already in progress).
- 6.5.4 Employees should discuss with their supervisors the types of posts in St George's for which she/he might be suitable and identify potentially suitable alternative employment e.g. looking through the jobs on St George's intranet.
- 6.5.5 When supervisors/Heads of Divisions receive applications for advertised vacancies from St George's employees approaching the end of a fixed term contract, they are legally obliged to consider whether those individuals may be suitable for the post. The post should be offered to the most suitable of those individuals in all the circumstances (i.e. bearing in mind the applicants' technical and other skills and abilities, experience, length of service etc). In

practice Divisions are strongly recommended to interview all applicants who are existing employees approaching the end of a fixed term appointment.

- 6.5.6 If it is decided that an internal applicant is insufficiently qualified, or in any other way unsuited to the post, a note should be kept of the reasons for their decision not to appoint him or her; and additionally the reasons for the appointment of the successful applicant.

Relevant vacancies involving a reduction in salary should not be ruled out automatically: they should be discussed with the individual concerned, who has the right to decide whether to pursue such vacancies).

- 6.5.7 The internal applicant approaching the end of a fixed term appointment will be informed of this decision in writing.

The notes, records and letters of the process should be retained for at least six months.

- 6.5.8 Where the best applicant from amongst existing members of staff approaching the end of a fixed term contract may be suitable for a particular vacancy provided he or she receives *reasonable* retraining, the Division is strongly recommended to offer the post to that person on a trial basis for at least four weeks (trial period will depend on the nature and duration of the training required). The Division should send a request to appoint to the Human Resources Department in the usual way, indicating under "any other comments" on the interview decision sheet, that the appointment is subject to a trial period of *n* weeks. Supervisors should agree on a schedule for assessment and relay this to the Human Resources Department. This scheme should only be used when there is a real need for it.

- 6.5.9 The Human Resources Department will send out an appropriate offer letter that will specify a clear statement of performance targets to be met within the trial period.

- 6.5.10 Where the best applicant from amongst existing members of staff approaching the end of a fixed term contract is the most suitable for the post, the appointing Division should send a request to appoint to the Human Resources Department in the usual way.

- 6.5.11 It is for Divisions to define and judge suitability. The legal right to be offered alternative employment only applies in circumstances where the vacancy is suitable for that individual, given reasonable retraining where that is appropriate. What is essential is:-

a) that the Division considers carefully each case, balancing the individual's skills, abilities and experience against the specific job requirements

b) that the Division keeps a full note of the grounds upon which the decision is made whether or not to offer the vacancy to an existing member of staff in St George's approaching the end of his or her fixed term appointment and whose details have been passed to the Division for consideration. It is, therefore, essential that St George's normal recruitment procedures are followed in all cases i.e. that for each vacancy advertised, a full job description and person specification is produced against which candidates can be objectively measured.

c) that those grounds are reasonable and defensible.

HR Department
August 2006

Revised March 2008

Revised February 2009 – to include Bridging Funds information.

Revised August 2009 – to update St George's Researcher Development Scheme information.

Revised September 2011- to reflect change in responsibility from the Joint Research Office to the Human Resources Department for the Fixed Term Contract expiry documentation for externally funded staff.

Summary of steps to be taken in each case where an employee is on a fixed term contract.

WHO	STEP	WHEN
HR	To provide the trade union representatives with a list of the names of potential redundancies, their contract expiry dates and their division name.	Monthly
S/GH	Have a review with the fixed-term employee to explore career preferences and opportunities.	6 months before expiry date of fixed term contract
S/GH	- Decide whether contract needs to be extended - Investigate possibilities e.g. transfer to a permanent or continuing appointment; the possibility of extending the fixed-term contract and possible length of extension; prospects for further funding or alternative sources of funding; the likelihood of termination of the contract; consider whether an application for bridging funding might be appropriate (see section 6.3.6 to 6.3.9 of the Procedure)	6 months before expiry date
HR	Issue a pro-forma/reminder (FTE 2) to the supervisor/grant holder by email, seeking confirmation as to whether the appointment is to be extended, together with the discussion form (FTE 1).	4 to 5 months before expiry date
HR	Send a memo (FTE 3) to the fixed term employee by email, reminding them about the expiry date of their fixed term contract	4 to 5 months before expiry date
S/GH & JRO	Contact designated Research and Development Officer in the Joint Research Office to discuss and agree any funding implications related to the fixed term employee's appointment.	4 to 5 months before expiry date
S/GH	Invite the employee to a meeting to discuss the situation. (Sample letter FTE2A.)	Between 5 months and 4 months before the expiry date
S/GH & E	- Hold a meeting with the employee. - Record the outcome of the meeting on Form FTE1 which	4 months before the expiry date

	must be signed by the individual and the manager. <i>(Further consultation meetings may be required to discuss the progress on possible outcomes of earlier consultation or any decisions made.)</i>	
S/GH	Return completed Forms FTE 1 and FTE 2 and letter FTE2A to the Human Resources Department confirming the decision (i.e. extension/ transfer to permanent contract/ termination) with reasons for the decision.	3 months before expiry date
HR	In the case of termination of employment, write to employee confirming non-renewal decision.	Between 3 months and 1 month before the expiry date of the fixed term contract.

HR= Human Resources Department

JRO= Joint Research Office

S/GH = Supervisor/Manager/Grant Holder

E = Employee