

# Ending Employment Policy



***Please complete the table below:***

*To be added by corporate team once policy approved and before placing on website*

<b>Policy ref no:</b>	37
<b>Responsible Executive Director:</b>	Deputy Chief Executive & Chief Finance Officer
<b>Author and Job Title:</b>	HR Manager/HR Business Partner
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<b>Approved by:</b>	Deputy Chief Executive & Chief Finance Officer
<b>Date of next review:</b>	29 April 2022

	Yes/No/NA	Supporting information
Has an Equality Impact Assessment Screening been completed?	Yes	
Has the review taken account of latest Guidance/Legislation?	Yes	
Has legal advice been sought?	No	
Has HR been consulted?	Yes	
Have training issues been addressed?	Yes	
Are there other HR related issues that need to be considered?	No	
Has the policy been reviewed by JCC?	No	For SPF to review
Are there financial issues and have they been addressed?	No	
What engagement has there been with patients/members of the public in preparing this policy?	None	Internal Staff only
Are there linked policies and procedures?	Yes	Grievance Policy Disciplinary Policy Flexible Working Managing Performance (Capability) Policy Organisational Change Policy Sickness Absence Policy
Has the lead Executive Director approved the policy?		To be confirmed
Which Committees have assured the policy?		
Has an implementation plan been provided?		To be developed
How will the policy be shared with: <ul style="list-style-type: none"> <li>Staff?</li> <li>Patients?</li> <li>Public?</li> </ul>	Yes	Intranet and internal communications. Directorate cascade
Will an audit trail demonstrating receipt of policy by staff be required; how will this be done?	Yes	



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# Ending Employment

## 1. Introduction

BNSSG Clinical Commissioning Group acknowledges that employees will leave the organisation to progress their careers and due to personal reasons. The CCG also recognises that at times the CCG will need to terminate individual's employment. This policy provides a framework and guidance for the termination of employment to ensure that all employees are treated fairly and consistently.

When an individual leaves the CCG it is important for the CCG to understand the reasons why, so that appropriate learning and action can take place. There is no legislation governing employee resignations (other than the notice requirements contained in the Employment Rights Act 1996). However Equality Act 2010 expects public organisations to take active steps to eliminate sources of discrimination in their own employment practices and promote equality.

### **What is meant by Termination of Employment**

For the purposes of this policy and procedure, termination of employment means the ending of the contract of employment by the organisation. If an employee decides to leave the organisation for by reason of resignation the employee would be required to give notice as set out in the contract of employment. With the exception of resignation and retirement, managers terminating employment should seek advice from Human Resources to ensure that the termination of employment complies with current legislation and relevant organisation policies.

This policy and procedure includes dismissals for the following reasons:

- Non – renewal of a fixed term contract.
- Capability (see Managing Poor Performance and Capability Policy).
- Ill health (see Sickness Absence Policy).
- Conduct (see Disciplinary Policy).
- Some Other Substantial Reason (SOSR)
- Redundancy (see Redundancy Policy).

### **Ending employment- reasons and notice periods.**

Employment may be terminated in a number of circumstances led by the employee e.g. resignation or retirement. Alternatively the CCG, as the employer, may terminate employment on grounds of conduct, capability, redundancy, statutory bar (e.g. an employee losing their entitlement to live in the UK), or “some other substantial reason”. Employer-led termination is often referred to as dismissal. In some circumstances, the employee and the CCG may come to a mutual agreement to

terminate the contract of employment- where appropriate, the terms of such an agreement may be negotiated on an individual basis.

There are a number of payroll and associated processes and procedures that need to be followed when an employee is due to leave the organisation- these are largely independent from the reason for ending employment.

Notice periods are governed by a range of contractually defined entitlements and statutory provisions. (see Section 4).

## 2. Purpose and scope

To ensure a consistent and proactive approach to managing the process of ending employment contracts for employees leaving the CCG and ensuring compliance with current legislation.

The policy will apply to all employees who hold an employment contract with the CCG through either a permanent, fixed term or bank contract. Additionally, it will also apply to interim employees where applicable to their relevant terms of engagement, specifically in the area of recovery of CCG property and equipment at the end of a contracted assignment.

## 3. Duties and responsibilities

### Directors

All Directors have a responsibility to ensure that the policy is consistently applied across their area of responsibility.

### Head of Service/Managers

All Heads of Service Managers/ Managers must ensure the policy is consistently applied in the termination of fixed term employees and when staff are leaving employment within their area of responsibility.

### Line Managers

Managers must ensure that each element of this Policy and Procedure is implemented consistently within his/her area of responsibility by ensuring that:

- All employees are aware of this Policy and Procedure and how to access it.
- Ensure a termination form is completed as soon as a formal resignation is received and accepted or when a contract of employment is to be ceased on a confirmed date. Line managers must ensure this form is submitted a minimum

- of 1 month before termination date to Consult HR and in time to meet payroll cutoff.
- Late submission of the termination form may result in unnecessary overpayment causing cost to the CCG and delay the individual receiving their exit questionnaire.

### Employees

It is the responsibility of each employee who wishes to resign from their employment, to be aware of the procedural sections of this policy and to resign in accordance with their notice period.

### Human Resources

It is the responsibility of the Human Resources to support and advise managers and employees in the application of this Policy and Procedure, ensuring consistency is applied.

## 4. Notice Periods

The notice period which should be given if employment is terminated by the employer or the employee is shown on the statement of main terms and conditions (contract of employment) issued to staff on appointment or as detailed in any subsequent change of circumstance form following appointment.

Unless a contract states otherwise, notice can be given on any day of the week. The notice period runs from the start of the day following the day on which the notice was given e.g. if a month's notice is given on a Monday, the period of notice will begin on the Tuesday and will expire after one month.

Normally, an employee's last day in service will be the last day of the notice period. If the employee uses any accrued annual leave immediately prior to their last day in service this will not affect their service end date.

Whilst an employee is working their notice, the CCG expects the employee to continue to conduct themselves in an entirely appropriate manner, and uphold the high standards of performance required of employees.

### Employee Notice

Bands 1-5 will be required to give four weeks' notice to terminate employment.

Bands 6 and 7 will be required to give eight weeks' notice to terminate employment.

Bands 8 and above will be required to give twelve weeks' notice to terminate employment. Managers may accept a shorter period of notice from an employee, or an employee may give longer notice than is contractually required. Such discretion should

be exercised consistently and equitably, and if appropriate, may be waived on compassionate grounds.

For Very Senior Managers (VSMs) and Clinical Leads, please refer to the employee's individual contract of employment.

### **Employer Notice**

Subject to the right of the organisation to terminate an employee's employment without notice in appropriate circumstances, the organisation will give an employee the following period of notice to terminate their employment:

- Four weeks' notice if the period of continuous employment with the organisation is less than four years.
- One week's notice for each year of continuous employment with the organisation if the period of continuous employment is four years or more but less than twelve years.
- Twelve weeks' notice if the period of continuous employment with the organisation is twelve years or more.

The organisation reserves the right to make a payment in lieu of notice. Such payment will be limited to basic salary only and nothing in this clause entitles an employee to a payment in lieu of notice unless the organisation exercises its option to make such payment.

### **Secondments Notice Period**

Secondments shall be subject to the notice periods agreed in the secondment agreement between all parties. It should be noted that notice periods in secondments may differ from the notice periods set out by payband as above.

The CCG reserves the right to end secondments ahead of the specified end date by serving notice as per the secondment agreement.

For internal secondments within the CCG, a notice period of one month shall apply for cessation of secondment unless an alternative notice period is specified elsewhere.

### **Leaving without notice**

Employees who leave without giving notice or leave before the end of their notice period without the permission of the CCG will be regarded as taking unauthorised absence and will not be entitled to be paid for the day(s) not worked within their contracted notice period.

If, in exceptional cases, the CCG decides to waive the need for an individual to work their normal notice period this must be agreed with the Line Manager and Human Resources. Payroll must also be notified via the leavers form.



### **Pay in Lieu of Notice**

The CCG may make a payment in lieu of notice for all or any part of an employee's notice period on termination of their employment (rather than the employee working their notice period). This provision, which is at the CCG's discretion, applies whether notice to terminate the contract is given by the employee or by the CCG.

### **Summary Dismissal**

In the case of gross misconduct, which warrants summary dismissal under the Disciplinary Policy, the organisation reserves the right to dismiss without notice and without compensation.

### **Annual Leave during notice periods**

Any outstanding annual leave should be taken prior to the agreed last day of service and should not extend the employees notice period.

If, prior to notice of termination being given by either party, the CCG has authorised an employee's annual leave request, and the annual leave is scheduled to take place during the notice period, the CCG will seek to honour this arrangement.

If, on termination of an employee's employment, the employee has accrued annual leave that they have not taken, they will be paid in lieu of this as part of their final salary. The employee will only receive annual leave for the full months which they have worked, annual leave entitlement will not be granted for part months service. If, on termination of an employee's employment, the employee has taken paid holiday leave in excess of the earned entitlement, they will be required to reimburse the CCG (by means of deduction from salary) in respect of such holiday.

### **Outstanding payments to the employee**

An employee who wishes to claim expenses incurred in the course of their duties must do so before the end of their notice period. Any Expenses incurred in the last month of employment must be submitted for approval by the last working day to enable payment in the final months salary or as a supplementary payment post termination.

Any expenses incurred that are not claimed before the individual leaves employment of BNSSG CCG will be forfeit and will not be paid.

### **Outstanding payments due from the employee**

Any payments owed by the employee at the time of cessation of their employment with BNSSG CCG will have these reclaimed from their final salary where possible. These payments may include (but are not limited to):

- Overpayments of salary
- Overpayments of allowances (e.g. Recruitment and Retention Premia, On-Call)

- Overpayments of Expenses
- Outstanding payments for Lease Car arrangements
- Outstanding payments for Cycle to Work Schemes
- Outstanding payments for any Travel loans or discount cards
- Payments owed for Paid Courses or Training funded by the CCG as per any learning agreements
- Payments owed for Occupational Maternity/Adoption leave where individuals fail to return to work for at least three months

Where the full amount owed is not covered by the individuals final salary, an invoice will be raised by the CCG Finance team to the individual requesting re-payment of the debt over an agreed time period.

## 5. Resignation

Employees who wish to leave their post with the CCG in order to take up employment with a different organisation or pursue non-work interests are able to resign by providing written notice in accordance with the contractual notice periods. Employees and managers should follow appropriate procedures to ensure a smooth handover and address all relevant practical issues.

Employees are required to submit their resignation by letter or e-mail to their line manager, setting out the effective date of the resignation. They are also able to indicate their reasons for leaving in that letter.

### **Withdrawing notice of resignation.**

An employee may decide to withdraw a formal letter of resignation. The line manager should decide whether withdrawing the resignation would be practicable and beneficial to the CCG. If the manager decides to agree to the withdrawal of notice, they should contact ConsultHR immediately asking for the resignation to be cancelled.

### **Resignation during disciplinary proceedings**

If an employee tenders their resignation while being under investigation for allegations of misconduct, the CCG will reserve the right to continue with an ongoing investigation. If the allegations relate to safeguarding concerns, the CCG will always investigate them as thoroughly as possible.

The CCG will also endeavour to investigate allegations relating to fraud or other actions and/or omissions which may have caused financial/reputational damage to the organisation. This is an important consideration in the light of the CCG's commitment to transparency and accountability, and would facilitate the gathering of relevant evidence if allegations may give rise to the CCG seeking redress against one or more of its [current or former] employees in the civil courts. Detailed advice is available from the Internal Audit team and HR.

If there are no safeguarding requirements or serious financial/reputational implications, management should take advice from HR and assess whether it would be in the interests of the CCG to continue with the process until its conclusion.

If an investigation is concluded and a decision is made to proceed to a disciplinary hearing, the employee will have the right to be invited to the hearing and be accompanied [normally by a work colleague or union representative], even if the hearing takes place after their last day of service. Managers need to bear in mind that in certain cases the outcome of a disciplinary hearing may affect registration of a regulatory body.

## 6. Termination of Employment by the CCG

### Ill Health

Where an employee is dismissed on the grounds of incapability due to ill health, they are entitled to a period of notice on the termination of their contract. This period will not be less than the statutory minimum period of notice.

### Dismissal/Gross Misconduct/Summary Dismissal

Where the CCG dismisses an employee, it will give the employee his/her full contractual/statutory notice. However, employees who are summarily dismissed from the CCG will not be entitled to payment in lieu of notice. For further information refer to the Disciplinary Policy and Procedure for the Management Performance and Capability.

In certain circumstances, including dismissals for gross misconduct, the CCG may dismiss the employee without notice. If this is the case, the CCG will explain the reason(s) why.

### Dismissal due to the end of a fixed term contract

If the dismissal is due to the non-renewal of a fixed term contract, managers should contact the Human Resources at least three months before the expiry of the contract to ensure that the employee receives adequate notice and the correct process is followed.

Further to this: The manager should write to the employee in line with their notice period, explaining why the contract has not been renewed and inviting the employee to a meeting to discuss the termination of their contract. The employee should have the opportunity to express their views and discuss any suitable potential employment opportunities within the organisation. After the meeting, the manager should inform the employee, in writing, of the outcome of the meeting with reasons.

### **Dismissal due to redundancy**

Where the CCG dismisses an employee by reason of redundancy, the CCG will provide the employee with their full contractual/statutory notice and will require the employee to work the full period of notice. For further information refer to the Organisational Change Management Policy.

## **7. Fixed Term Contracts**

A Fixed Term Contract (FTC) means a contract due to end on a specified date. Such a contract might be used, for example, to cover time limited project or research, a funded piece of work or for maternity cover.

### **Termination of Fixed Term Contract - Procedure to be followed**

When a fixed term contract is coming to an end, the Line Manager should arrange a formal meeting with the employee.

The employee has the right to be accompanied by a companion. The chosen companion may be a fellow CCG employee, or a trade union/professional organisation representative. The purpose of the meeting is to review the fixed term contract of employment and confirm whether the contract will cease in accordance with the employees notice period.

The meeting needs to be scheduled to allow the employee sufficient time to be served with their appropriate notice after the meeting, therefore in accordance with the appropriate notice periods set out in this policy.

Whilst an employee will generally be informed of the outcome at the conclusion of the meeting, it must also be confirmed in writing, usually within seven calendar days of the meeting.

Employees will be advised at the meeting and in the letter confirming the outcome of their right to appeal and will be given details of to whom any appeals should be addressed. It is the responsibility of the manager chairing the meeting to ensure that this letter is sent.

Appeals must be lodged in writing by the employee or their companion within 10 working days of the date of the letter confirming the outcome and the grounds for the appeal which must be outlined in full.

The format and nature of the appeal hearing will be consistent with Appeal hearings as detailed in the Appeals Policy.

### **Termination of Fixed Term Contracts on other grounds**

Human Resources should be contacted in the first instance if the following apply;

- If the reason for the expiry or non-renewal of the contract is different to the reason that the contract was established, or the last reason (in case of a succession of fixed term contracts) as to why the contract was varied on a fixed term arrangement,
- A fixed term contract needs to end before the end date specified in the contract of employment as a result of either a conduct or change management issue. Managers must deal with cases of poor performance, misconduct, capability, sickness and any other employment relations issues under the appropriate CCG Policy and Procedure and not under this policy.

### **Exceptions to Normal Termination process for a Fixed Term Contract**

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. Where this is the case Line Managers should contact Human Resources in the first instance for further guidance.

If this is the case, employees on fixed-term contracts qualify for statutory maternity leave and pay in the same way as permanent employees. Although statutory maternity leave will come to an end on the expiry of a fixed-term contract, the right to statutory maternity pay continues if the employee already qualifies for it.

The non-renewal of a fixed-term contract will be unlawful if the reason for the non-renewal is related to pregnancy, childbirth or maternity leave

### **Employees with more than 2 years NHS continuous service**

Employees with more than 2 years NHS continuous service at the time of the termination of their fixed term contract may be entitled to redundancy.

If an employee is employed in a post for a fixed period to complete a project/temporary role that is no longer required and the employee has more than 2 years' service, the dismissal may be by reason of redundancy. In those cases, the CCG's Organisational Change Management Policy will apply and managers must contact Human Resources if they consider that these circumstances apply prior to any decisions being made and communicated to the affected employee.

### **Right to permanent employment**

There is no limit on the duration of a fixed term contract however if a contract is renewed or extended beyond 4 years (these can be in different roles within different business areas) the contract will automatically become permanent, unless there is an objective reason that justifies further renewal.

### **NHS Continuous Service – Effect on Redundancy Claims**

Employees who are appointed on a fixed term contract for less than 2 years, but have continuous NHS service from another NHS Organisation which exceed a total of 2 years at the point at which the fixed term contract would cease, may be eligible for a

redundancy payment at the end of the fixed term contract, if the definition of redundancy is met.

Existing employees who transfer to a fixed term position retain all rights as a permanent employee including the right to redundancy as linked to continuous NHS service. Where this is proposed or envisaged advice must be sought from Human Resources prior to any agreements being reached.

## 8. Death in Service

When an employee dies in service the manager must take appropriate action quickly and sensitively. The guidance below may need to be varied in the light of all the circumstances of the case and subject to the wishes of the employee's family.

When notified of an employee's death the manager should:

- Inform their senior manager.
- Offer condolences to the partner / family.
- Establish details of the funeral arrangements and whether floral tributes and the attendance of colleagues at the funeral service would be welcome.
- Inform the HR department so that they can contact the Pensions Team who will contact the next of kin to discuss any benefits that may be received and the paperwork that needs to be completed.
- Complete a termination form and send to the HR Department. This should give the date of death, indicate any outstanding annual leave and give the name of the next of kin or person to contact regarding the estate.
- Agree with the next of kin / partner / family the return of any significant organisation assets that the deceased held as an employee e.g. mobile phone, IT equipment, lease car etc.

### Payment

The employee's estate will receive a salary payment up to the day of their death, together with any outstanding annual leave and the relevant pension application form is completed if they are a member.

Further information can be found on the NHS Pensions website - [www.nhsbsa.nhs.uk](http://www.nhsbsa.nhs.uk)

## 9. Retirement

There is no Compulsory retirement age for employees. Employees should, wherever possible, be permitted to continue working for as long as they wish to do so. Employees may voluntarily retire at a time of their choosing and, depending on the terms of their pension scheme, they may be entitled to claim pension benefits. Please contact the pension agency for further advice.

### Ill-health retirement

Early retirement may be appropriate for, and available to, employees who are unable to continue working due to health reasons, however the process will depend on pension scheme arrangements and occupational health advice. Please contact the pension agency for further advice.

### Flexible Retirement

Employees may apply for flexible retirement in accordance with the Flexible Working Policy.

### Retirement Procedure

Employees intending to retire must give a minimum of **3 months' written notice** of their intended retirement date. Whilst this may be longer than the contractual notice period but not a requirement of the employment contract, it is so this enables the necessary pension arrangements to be made and for the required replacement to be recruited in good time. Please contact the pension agency for further advice.

## 10. Exit Interviews/Questionnaire

Leavers must be offered an exit interview by the line manager. The exit interview should normally be undertaken by the individual's line manager (or a senior manager if more appropriate). The line manager generally has the best knowledge of the leaver and his/her job and is in the best position to talk through the reasons for leaving.

The leaver may request an exit interview with Human Resources if they feel unable to have this meeting with their line manager or an alternative suitable manager within the CCG.

The interview allows for identifying areas of good practice which the organisation can take learning from, analysing and monitoring to inform future recruitment, retention and turnover, gaining constructive feedback relating to any negative aspects of a leaver's employment to ensure that steps can be taken to minimise future occurrences, and displaying openness and integrity by providing all employees leaving the CCG the opportunity to provide feedback.

All leavers are encouraged to complete the leaver's questionnaire which is accessed through ESR. Staff will be sent the link to ESR to complete their leaver's questionnaire once the Leavers form is received by Consult HR.

It is essential that line managers submit the Leavers form in a timely manner at least one month before the leaving date to enable the staff member time to complete their questionnaire and have an exit interview if requested. Failure to do so will prevent



individuals from providing feedback on their experience of working at the CCG, as well as potentially cause unnecessary overpayment of salary.

## 11. Leaver Checklist & Returning CCG Property

The Line Manager must ensure that they secure recovery of all CCG property and equipment from any leaver and to disable their access to all CCG secure systems and accommodation on or before their last day, for example; ID badge, uniform, door entry fobs or cards, keys and any other property / IT equipment.

If the employee fails to return any property belonging to the CCG by the required date, the last day of employment, the CCG will withhold the whole or any part of any pay due from the CCG to the employee up to the current market value of the property not returned, i.e. based on the value of the property at the time that it is not returned and not on a replacement cost basis. The CCG may also issue civil proceedings against the employee for breach of contract and/or trespass to goods, to the extent that any outstanding pay withheld does not cover the current market value of the property not returned.

If the employee has a lease car the employee must liaise with the CCG to ensure that the vehicle is returned prior to their final date of employment. If the employee has resigned they are liable for any early termination fees associated with the return of the lease car.

## 12. Training requirements

Training and support will be available to all line managers in the implementation and application of this policy.

## 13. Equality Impact Assessment

All relevant persons are required to comply with this document and must demonstrate sensitivity and competence in relation to the nine protected characteristics as defined by the Equality Act 2010. The Act prohibits discrimination on the basis of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion/belief, sex or sexual orientation. It also means that each manager or member of staff involved in implementing the policy must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity between those who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not.



If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Document Lead (author) who will then actively respond to the enquiry.

## **14. Monitoring compliance and effectiveness**

This policy will be reviewed every 3 years but can be reviewed at any time if the CCG deems it necessary to do so or a review is requested by management or staff.

## **15. Counter fraud**

The CCG is committed to the NHS Protect Counter Fraud Policy – to reduce fraud in the NHS to a minimum, keep it at that level and put funds stolen by fraud back into patient care. Therefore, consideration has been given to the inclusion of guidance with regard to the potential for fraud and corruption to occur and what action should be taken in such circumstances during the development of this procedural document.

## **16. References, acknowledgements and associated documents**

Grievance Policy  
Disciplinary Policy  
Flexible Working  
Managing Performance (Capability) Policy  
Organisational Change Policy  
Sickness Absence Policy