

## MANAGEMENT OF PROTECTION OF PAY AND TERMS AND CONDITIONS POLICY

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Version / Amendment History	Version	Date	Author	Reason
	Legacy Derby Policy (V2.1)  Legacy Burton Policy (V6)	August 2023	Faye Bradley	Review and unification of legacy Trust Policies.
<b>Intended Recipients:</b> All colleagues of the Trust excluding Medical and Dental staff. The Policy applies to all employees who are affected by organisational change and in receipt of pay protection arrangements from the date of implementation.				
<b>Training and Dissemination:</b> The Policy is launched through the Trust communications channels, via the intranet and development of an advisory note. Support for managers and colleagues is provided by the People Services Advisory Team.				
<b>To be read in conjunction with:</b> Organisational Change Policy, Redeployment Guidelines, Health, Attendance and Wellbeing Policy, Managing Performance Policy, Disciplinary Policy; Concerns Resolution Policy. The NHS terms and conditions of service - specific sections relating to Pay Protection where Agenda for Change AfC clauses will apply.				
<b>In consultation with and Date:</b> Informal: People Services and HRBP's; Network Leads; Stakeholder Managers Formal: People Policy Review Group (PPRG); Trust Joint Partnership Forum (TJPF); People and Culture Group (PCG); Trust Delivery Group (TDG)				
<b>EIRA stage One:</b> The policy has undergone full engagement and consultation with staff side and key stakeholders, and can evidence that feedback from interested parties has been listened to and incorporated.				
<b>Approving Body and Date Approved</b>			Trust Delivery Group (TDG)	
<b>Date of Issue</b>			February 2024	
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<b>Contact for Review</b>			Assistant Director, People Services	

<b>Executive Lead</b>	Chief People Officer
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# TRUST POLICY FOR THE MANAGEMENT OF PAY PROTECTION

## 1. PURPOSE

The purpose of this policy is to provide guidance on the management of long or short term pay protection arrangements for employees on NHS Agenda for Change (AfC) terms and conditions, whose earnings are reduced because of circumstances affected by Organisational Change. Organisational change relates to changes to ways of working which impact on staff and their contractual terms and conditions of employment.

This policy should be read in conjunction with the Trust Management of Organisational Change Policy.

Change is a constant factor within the NHS and most employees will be affected by it at some stage in their career. In this way, organisational change may affect staff across the organisation, or within specific services, departments or roles.

The Trust is committed to designing and implementing pathways and services that meet the diverse demands and needs of our patients, as a result, organisational change will sometimes be necessary in order to meet these challenges.

However, the Trust recognises how difficult it can be for employees whose earnings may be affected by organisational change. This policy is intended to provide support and guidance throughout the process to ensure a fair and consistent approach across the Trust.

The purpose of pay protection is to mitigate an immediate reduction in take home pay, and to allow for a transition period to the new pay level. It provides a period of protection during which affected employees can prepare for their future reduction in pay. The Trust is committed to supporting all colleagues who are in receipt of pay protection to apply for posts at the pre protection band. Employees affected, will therefore be placed on At Risk/Redeployment register to provide support and time for them to seek alternative work, that will restore their earnings to the previous level which is the desired aim.

## 2. SCOPE

- 2.1 This policy replaces all previous agreements on pay protection operating in the organisation.
- 2.2 Employees currently subject to existing pay protection will continue to be protected on a personal basis under the previous protection agreement until this expires.
- 2.3 This policy will apply to all employees who are subject to an organisational change that has been initiated by the Trust which has resulted in a loss of earnings or change to terms and conditions of employment as outlined within this policy.
- 2.4 There are two forms of protection, long and short-term protection depending on the nature of the change.
- 2.5 This policy does not apply to:
  - 2.5.1 Employees who voluntarily move to a lower banded job or different shift pattern.

- 2.5.2 Where a change of contract has been agreed on a temporary basis, i.e. acting up, trial period, or temporary contractual terms.
- 2.5.3 Individuals who are on bank worker agreements.
- 2.5.4 Where the banding is revised or working pattern is changed as an outcome of a formal disciplinary sanction.
- 2.5.5 Where the banding has been revised or working patterns changed as an outcome of managing performance and supporting staff (capability) procedure.
  - Where the banding has been revised or working patterns changed due to ill-health and the outcome is related to the Health, Wellbeing and Attendance Policy and process.
- 2.5.6 Where the change to pay or terms and conditions is made at the request of the member of staff.
- 2.5.7 Where the change of band is more than one band lower as it would not be considered by the Trust as appropriate suitable alternative employment.

### **3. EQUALITY STATEMENT**

In applying this policy, the Trust will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

### **4. SHORT TERM PROTECTION OF EARNINGS**

4.1 Following an organisational change, short term earnings protection will apply when employees' earnings are reduced because of a change of working including, contracted overtime, unsocial hours, on call allowances, and sessional payment. Short term protection will apply if the individual has been in receipt of the payment for a minimum of 12 months or the reckonable amount of service applicable, where the individual may have less than 12 months service in post.

4.2 The calculation of short-term protection will be based on the previous 52 weeks (12 months) average earnings prior to the implementation date of the new arrangement, or the amount of reckonable service where less than 12 months in post.

or

an agreed representative period if no set rota has been worked. e.g. colleagues on maternity leave or other absence such as sick leave.

Increased enhancements relating to the new working patterns in the new role will be netted off against protected amounts. This means that if an individual earns more in the new working pattern than they did prior, they will not receive short-term protection for that applicable period (typically the pay month). An individual who works additional hours outside of their contracted hours will have this calculated out separately and will not be netted off.

4.3 Where employees are redeployed to an area where there is no requirement to work unsocial hours they should still receive the protected pay for unsocial hours or and shift pay.

4.4 In exceptional circumstances where employees move to a shift pattern that isn't fixed each month and therefore total earnings will vary, the average percentage loss of pay protection, will be reviewed after 3 months to ensure that the calculation remains accurate.

Short Term protection is calculated as follows.

	Percentage loss	Length of Short-Term Protection based on average salary of last 52 weeks or reckonable service where less than 12 months in post
1	less than 7.49%	6 months
2	7.49% +	12 months

## 5. LONG TERM PAY PROTECTION ARRANGEMENTS

a. Following an organisational change, long term pay protection will apply when employees' Salary is reduced, due to a move to a lower band. If the change of band is more than one band lower as it would not be considered by the Trust as appropriate suitable alternative employment

b. The calculation for long term pay protection will be based on average basic earnings over the previous 12 months period prior to the implementation date of the change. The calculation of basic salary should include the following:

- Salary for basic hours worked under their substantive contract.
- Long term recruitment and retention premia (in receipt for 12 months or more)

It will exclude overtime unless it has been previously deemed to be contractual and been in receipt for a minimum of 12 months or the reckonable service for those employees with less than 12 months service in post.

c. Long term pay protection is applied in accordance with the percentage loss calculated against total earnings. The percentage figure used for the calculation of long-term protection will be rounded up to the nearest 0.5 percentage point.

	Percentage Loss	Length of Long-Term Protection.
1	Less than 9.5%	24 months
2	More than 9.5% but less than 20%	36 months
3	More than 20% +	Due consideration of the proposed role and banding will take place for suitability

- d. In exceptional circumstances, both short-term and long-term pay protection may be applied to mitigate the impact, where an employee is both subject to downbanding and also loses their unsocial hours payments.

On being placed in an alternative job with a lower pay band/salary, the employee will move to the band, based on the following:

- If the individual's salary on the current band, is equal to a salary point on the lower band or grade, the individual will move across to that salary point on the lower band or grade and protection of basic pay will not be necessary. The individual will retain their pay step date.
  - If the individual's salary on the current band is greater than the maximum salary point on the lower band, the individual will move across to the maximum salary point on the lower band, and long term pay protection will apply.
  - If the individual's salary on the current band, is a value between two salary points on the lower band or grade, the individual will move across to the lower band, on an off-scale salary point of the same value and protection of basic pay will apply. The individual will retain their pay step date. At the next pay step date, the individual will move up to the next salary point on the lower band.
- e. The pay protection will cease after the protection time has lapsed or if the lower salary exceeds the protected salary.
  - f. During the pay protection period, the annual cost of living pay award will be applied on the lower pay band that the individual is moving to, and not on the protected salary. This will include lump sums of money which form part of the annual pay award. The protected amount is therefore locked and overtime, additional payments, etc are not netted off.
  - g. On-call, enhancements, or overtime payments due in the new role, will be paid at the rate for the new role.
  - h. Employees who are down banded and granted protection of basic pay, and who are entitled to a longer period of notice from the Trust in their current role than in the new role, will continue to benefit from the longer period of notice for the period of pay protection chosen. After which the period of notice will fall to that applicable to the new post
  - i. An exception to the protection terms would apply to those employees who are within three years of their qualifying retirement age (as per NHS pension scheme) and who submit, in writing the date they intend to retire, and that date falls within the three years from the date of the commencement of the period of pay protection. In these circumstances, the colleague will continue to have their pay protected and will receive the annual cost of living pay award for the full period up to retirement (even if they are eligible for less than 3 years pay protection). In the event the employees' circumstances change and they do not retire, there will be a requirement to pay back the difference between what they would have been paid under the normal protection arrangement and the amount they received.

### 5.1 Pay protection will cease when:

- the basic pay of the new post exceeds the protected basic pay, or
- the employee is appointed to a different post where the basic pay equals or exceeds the protected basic pay, or
- the employee is offered another suitable post with higher basic pay and unreasonably refuses to accept it, or
- the employee chooses to move to another post with basic pay lower than in the down banded post, or if the employee leaves the employment of the Trust.

## 6. Redeployment

Where the Trust requests an employee to apply for/ attend interview or accept an offer of a job at their former pay band during a period of pay protection and the employee fails to do so without good reason, then the Trust reserves the right to end the pay protection arrangements, after due consideration of the employee's rationale.

However, an employee who is subsequently placed back in their former higher pay band, will enter at the point they would have reached had they not been redeployed into a lower band.

## 7. Pension Implications

Where an employee suffers a permanent reduction in pensionable pay as a result of the Trust implementing an organisational change, the following applies;

If they are deferred members of the 1995/2008 section of the Pension scheme, then they may elect within one month of the reduction to have their pension benefits preserved at the higher rate of remuneration for their service up to the date of the reduction. The member has 3 months from the date of reduced pay to submit application form SMR9 (request to protect pensionable pay) to the Trust Pensions Team. The form is available on the NHS Pensions website. The Trust team then submit the completed form along with form SMR9 EA to NHS Pensions. The People Services Advisory team will ensure that the employee understands that they will need to inform the Trust Pensions Team directly of the request.

However, this option does not apply to benefits within the 2015 scheme or those employees who are solely in the 2015 scheme.

## 8. Further Organisational Change

Further organisational change may occur during a period of protection. In these circumstances the protection package will continue for the agreed term. Any new protection package would be calculated from the date of the subsequent change but would only give rise to a payment where the value of the new entitlement exceeds the value of the original entitlement. Where a change occurs resulting in an overall reduction of more than one band, then this would not normally be deemed as a suitable alternative.

## 9. Concerns Resolution

Where employees are concerned by the application of this policy, then they have recourse to the Trust Concerns Resolution Policy. However, the Trust will make all reasonable attempts to resolve any issues related to pay protection as informally as possible.

## **10. Monitoring Compliance and Effectiveness**

The Policy will be monitored by People Services, and updates to the policy will be presented to the People and Culture Group (PCG) and Trust Joint Partnership Forum (TJPF).



**DEFINITIONS**

Basic Salary	This is the amount of basic pay paid to an individual according to their pay step. Pro rata for part time colleagues.
Pay award/Cost of Living	The annual pay award negotiated nationally by the Pay Review Bodies.
Extra Duty Enhancements	These are payments for work outside normal hours paid in line with terms and conditions of service.
Long Term Pay Protection	Pay Protection applied to average salary when an individual's pay band is reduced because of organisational change.
Short Term Pay Protection	Pay Protection applied when salary is affected by changes to working patterns. This includes on-call allowances, short term RRP, contracted overtime, unsocial hours, and sessional payment.
On- Call Premia	These are payments made for being available to work during a designated on- call period.
Pension Protection	The application for Pension protection via NHS Pensions.
Reckonable Service	Is the definition of reckonable service as per relevant terms and conditions.
Recruitment and Retention Premia	An incentive payment made for recruitment and retention, paid in addition to salary in accordance with national terms and conditions.

### MUTUAL RESPONSIBILITIES

Good working relations are vital for the organisation to operate successfully and provide services. There is a joint responsibility for management, trade unions and employees to accept the responsibility of working together on issues in good faith and with the shared intention of facilitating good working relations.

#### Employees

It is the responsibility of employees to ensure that they:

- Are aware of this Pay Protection Policy as well as associated policies relating to Organisational Change and Redeployment, Health and Attendance, Managing Performance and the Disciplinary Policy as applicable, and how it may impact upon them through organisational change. If there is anything that is not understood, then initially raise this with their line manager.
- Comply with the Policy on Protection of Pay and Terms and Conditions of Service, particularly in relation to accepting alternative employment or undertaking duties up to the level that they are receiving protection.
- Attend any consultation meetings or training as requested in line with redeployment opportunities or maximising opportunities for redeployment.
- Remain on the Redeployment/At Risk Register with agreement, to enable access to suitable alternative posts and opportunities.
- Actively apply for posts and accept any subsequent offer of another suitable alternative post in the Trust which is commensurate with the previous salary.
- Participate in any development opportunities offered by the Trust to support the above. Employees will receive contractual notice of a change to contract, and you will receive confirmation of the pay protection arrangements in writing. Managers will communicate the change to payroll.
- Undertake any reasonable overtime, shift working or other additional duties (e.g. on call) which they previously worked and are required to work in the new post whilst on pay protection.
- Do not unreasonably refuse to apply for or accept a suitable alternative post. Suitable alternative employment is defined in terms of pay, working hours, status, band, duties and responsibilities, the way the work is carried out and location. It must also be suitable to the individual's circumstances, skills and experience, and training may be offered. A trial period must always be explored in support of the employee.
- Are aware that Pay Protection may be withdrawn where they refuse all offers to move to a suitable alternative post. However, discussion between the individual, manager and People Services Advisory team will take place first to discuss the reasons and to find a resolution.

## **Line Managers**

It is the responsibility of line managers to ensure that they:

- Are familiar with the appropriate Trust policies relating to Organisational Change and Redeployment, Health and Attendance, Managing Performance and the Disciplinary Policy.
- Consult with their employees and employee representatives (supported by the People Services Advisory team) regarding any change within the work environment that may affect terms and conditions of employment.
- Inform employees of the Trust's policy for pay protection, where the change impacts upon pay.
- Follow up any agreements regarding pay protection timely and in writing to the individuals concerned and a copy is kept on their personal file.
- Arrange and hold one to one consultation meetings with individual employees where they are potentially affected by organisational change.
- Ensure outcomes of all formal meetings are confirmed to the individual in writing.
- Inform the payroll team of any situations involving pay protection as detailed in this policy.
- Work with employees supported by the People Services Advisory team, to redeploy them to suitable alternative employment.
- Ensure that employees are supported with appropriate and reasonable development opportunities to aid applications for posts at your previous band.
- Enable employees who have been down banded reasonable opportunities through annual appraisal, to retain and/or develop the skills and knowledge to apply for posts at their former level when available.
- Support employees who are in a protection situation to find suitable posts with a salary commensurate to those prior to protection.
- Meet with employees on a regular basis to identify support which can be given in the form of training, professional updating, secondment etc, and to ensure they are able to apply for and secure posts at an appropriate level.

## **People Services Advisory Team**

It is the responsibility of the People Services Advisory Team to ensure that they:

- Support managers at all stages of the policy and application
- Provide support, advice and guidance on all matters relating to the management of organisation change and pay protection.
- Provide information and guidance on the policy and process as required.
- Place employees on the At Risk/Redeployment register and in conjunction with managers notify them of suitable posts as they arise.
- Ensure that correct payment and notification of pay protection arrangements are sent to individuals.

- Safeguard the wellbeing of employees affected by change in conjunction with managers.

### **Trade Union Support**

It is the responsibility of Trade Unions to ensure that they:

- Advise individual members about the policy and offer support to them at all stages of change, including being put At Risk and Redeployment.
- Direct members to wellbeing support via the People Services Advisory Team, where adversely affected by proposed change.

### **Executive Chief People Officer**

- Is responsible for ensuring the implementation and monitoring of the People Service Policies and Procedures.

## **APPENDIX THREE**

### **What you can expect as a colleague:**

1. To be consulted on any proposal for organisational change or a change to your employment contract. If this impacts on your pay, you will be informed of the Trust's policy for pay protection.
2. Managers will ensure that they consult with the Trade Unions on any change where pay protection may apply.
3. You will receive timely and correct information on the effect of the change on your pay and your entitlement to pay protection.
4. You will receive contractual notice of a change to contract, and you will receive confirmation of the pay protection arrangements in writing. Your manager will communicate the change to payroll.
5. You will be supported with appropriate and reasonable development opportunities to aid applications for posts at your previous band.
6. You will be supported appropriately and within reason to apply for posts that will return your previous band. Your development and opportunities will be discussed as part of your annual appraisal.
7. Information and guidance from the People Services Advisory Team on the policy and process will be given as required.
8. You will remain on the At Risk/Redeployment register by agreement to enable access to suitable alternative posts and opportunities.

### **What the Trust will expect from you:**

1. There is an expectation that where you find yourself in a pay protection situation you will undertake any reasonable overtime, shift working or other additional duties (e.g. on-call) which you previously worked and are required in the new post.
2. That you will actively apply for posts and accept any subsequent offer of another suitable alternative post in the Trust which is commensurate with your previous salary.
3. That you will participate in any development opportunities offered to you by the Trust to support the above.