

POLICY ON PROTECTION OF PAY AND CONDITIONS OF SERVICE

Policy reference – LWHR10

SUMMARY	To provide protection of pay and conditions of service to employees affected by Organisational change.
AUTHOR	Paul Appleyard, Senior HR Associate
VERSION	Final
EFFECTIVE DATE	7 th May 2014
APPLIES TO	All Employees
APPROVAL BODY	Assurance Committee
RELATED DOCUMENTS	Organisational Change
REVIEW DATE	August 2017

VERSION CONTROL SHEET

Version	Date	Author	Status	Comment
1.1	21/11/13	Paul Appleyard	Draft	

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1.0. PURPOSE

- 1.1. Change is a constant factor within the NHS and most employees will be affected by it at some stage in their career. Organisational change may affect staff across the organisation, or within specific services, departments or roles.
- 1.2. This policy applies to any employee on Agenda for Change terms or any employee who has transferred into the organisation on TUPE protected terms and conditions and who, as a consequence of organisational change, is required to move to a new post; or suffers a reduction in basic hours within their standard working week or a reduction in contractual earnings.
- 1.3. The section on Managing Organisational Change must also be referred to alongside this policy.
- 1.4. Pay protection is justifiable for a limited period to address issues of equity. This policy will be monitored to ensure it remains compliant with legislation and case law.

2.0. SCOPE

- 2.1. This policy replaces all previous agreements on pay protection operating in the organisation and applies to all employees of the organisation.
- 2.2. This policy covers:
 - 2.2.1. Short term protection of earnings where downgrading is not involved.
 - 2.2.2. Long term protection of basic wage or salary where downgrading is involved.
 - 2.2.3. Protection of other terms and conditions of service.
- 2.3. Employees currently subject to existing protection will continue to be protected on a personal basis under the previous protection agreement until this expires.
- 2.4. This policy does not apply in the following situations:
 - 2.4.1. Where the downgrading is as a result of action under the organisation's disciplinary or capability procedures.
 - 2.4.2. Where the change to pay or terms and conditions is made at the request of the member of staff.
 - 2.4.3. Where a change of contract has been agreed on a temporary basis, i.e. acting up.
 - 2.4.4. Where a member of staff voluntarily moves post.
 - 2.4.5. Where the change results from the breakdown of a job share agreement.

3.0 EQUALITY STATEMENT

- 3.1 In applying this policy, the organisation 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. A single Equality Impact Assessment is used for all policies and procedures.

4.0 ACCOUNTABILITY

4.1 The Chief Officer is accountable for this policy.

5.0 IMPLEMENTATION AND MONITORING

5.1 The Assurance Committee is responsible for formal approval and monitoring compliance with this policy. Following ratification the policy will be disseminated to staff via the intranet. The policy to be reviewed three years from the date of implementation unless there is good reason to update this more frequently, such as changes in employment law and good practice.

5.2 The policy and procedure will be reviewed periodically by Human Resources in conjunction with managers and Trade Union representatives where applicable. Where review is necessary due to legislative change, this will happen immediately.

6.0 RESPONSIBILITIES

6.1 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.

6.2 Employees

6.2.1 It is the responsibility of employees to ensure that they:

- 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.
- To access and be aware of the policy and read the content, if there is anything that is not understood then initially raises this with their line manager.

6.3 Line Managers

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

- Ensure that the policy is complied with during any organisational change.
- Consult with their employees and employee representatives (supported by the HR team) regarding any change within the work environment that may affect their terms and conditions of employment.
- 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. The exact terms of any protection will be confirmed in writing to the employee.
- Where employees are to be redeployed, the manager, supported by the HR team, will work with them to try to redeploy them to suitable alternative employment.
- Through the Personal Development Review [PDR] process ensure that employees who have been downgraded are given reasonable opportunities to retain and/or develop the skills and knowledge to apply for posts at their former level when available.
- Attend all relevant management training and to ensure they are broadly familiar with organisation's HR policies.

- Ensure that employees are aware of the policy will be brought to the attention of the team through the team brief process.

6.4 Human Resources Team

- 6.4.1 The Human Resource representative will provide advice and support on all aspects of this policy to ensure application and support.

7.0 SHORT TERM PROTECTION OF EARNINGS

- 7.1. An employee who suffers a reduction in earnings (but is not downgraded), as a result of organisational change, will continue to receive the average of the previous 3 months earnings.
- 7.2. Short term protection will apply where organisational change leads to any loss of contractual enhancements due to change in working pattern including overtime, unsocial hours, stand-by payments, on call allowances, sessional payments.
- 7.3. Service counted for the purposes of protection will be continuous service with the organisation (including service deemed to be continuous under TUPE).
- 7.4. Short term protection entitlement will be calculated in relation to the individual's completed years of continuous service:

Length of Service	Protection
4 months to 1 year	2 months
1 to 2 years	4 months
2 to 3 years	6 months
3 to 4 years	8 months
4 to 5 years	10 months
More than 5 years	12 months

8.0. LONG TERM PROTECTION OF EARNINGS

- 8.1. An employee who is downgraded as a result of organisational change, will receive protection on basic salary including benefits from any future cost of living awards in accordance with section 8.2.
- 8.2. Service counted for the purposes of protection will be continuous service with the organisation (including service deemed to be continuous under TUPE).

Length of Service	Protection
12 months or more qualifying service	3 years

- 8.3. Any employee downgraded will be given reasonable opportunities to retain and/or develop the skills and knowledge to apply for posts at their former level, when available.

9.0. PROTECTION OF OTHER TERMS AND CONDITIONS

9.1. Recruitment and Retention Premia

- 9.1.1. Recruitment and retention premia are applied to a post, not an individual, and do not transfer with the individual if they change post. However, where an individual changes post for reasons that mean they are eligible for protection of salary, and they were previously in a post that received recruitment or retention premia the following rules will apply:
- 9.1.2. Nationally and locally agreed long-term recruitment and retention premia will be protected in line with national terms and conditions (section 5, annexes J and R) for the period of protection.
- 9.1.3. Locally agreed short-term recruitment and retention premia will be protected for six months in line with national terms and conditions (section 5).
- 9.1.4. The recruitment and retention premia will be protected at the level paid at the time the employee left their previous post.
- 9.1.5. Should a recruitment and retention premia apply in the new post the individual will receive that which is most beneficial for the period of protection.

9.2. Change in Hours

- 9.2.1. In situations of organisational change where long-term protection applies to an individual the organisation will attempt to ensure that there is a match between posts in terms of hours and pattern of work but this may not be possible. In such cases the following will apply:
- 9.2.2. Where the hours of work are greater in the new post, the protected employee will normally continue to work their former hours for the period of protection. If this is not possible any payment for additional hours will be paid at the protected hourly rate of pay for the period of protection.
- 9.2.3. Where the hours of work are less in the new post, the protected employee will have the option to continue to work their former hours for the period of protection. If they opt to reduce their hours the protected payment will be reduced proportionally, based on the protected hourly rate. Any payments for additional hours and overtime will be remunerated at the protected hourly rate of pay for the period of protection.
- 9.2.4. Where working patterns are different in the new post or there were was an arrangement to work flexibly in the former post the organisation will make all reasonable efforts to support the protected employee to maintain their working pattern, provided this does not impact adversely on the delivery of the service. Where this is not possible the individual will be given reasonable notice (a minimum of 12 weeks, unless otherwise agreed) to make any changes necessary. Support for carers is available from the Childcare Co-ordinator service.

9.3. Change of Base

- 9.3.1. Where an employee is required to change their base of work, in line with contractual arrangements and national terms and conditions (paragraph 17.25 of the NHS Terms and Conditions of Service Handbook, change of base of work resulting from amalgamation of NHS employers or from acceptance of another post in consequence

of redundancy), they may qualify for reimbursement of their extra daily travelling expenses for a period of 4 years from the date of transfer.

9.4. Lease Cars (excluding salary sacrifice scheme)

- 9.4.1. If the employee has contracted for a lease car through the organisations lease car scheme the employee will not suffer a financial detriment from organisational change.
- 9.4.2. If a lease car is not required for the new post the employee will not suffer any financial penalty from the early surrender of the car. However, if it is still possible for the employee to retain the car and they choose to do so, the employee will be responsible for all costs arising from the lease arrangement.
- 9.4.3. Where the new post still meets the lease car scheme criteria the employee will not be responsible for any additional costs arising from the existing lease arrangement until the expiry of the existing lease. Any subsequent lease will be calculated based on the requirements of the new post and will not be subject to any protection.
- 9.4.4. Any employee on a salary sacrifice lease car scheme would continue with these arrangements under the terms of the scheme.

9.5. Pensions

- 9.5.1 Members of the NHS pension scheme may apply to have their period of membership at a higher rate of pay treated as “preserved” membership subject to the terms and conditions of the NHS Pension Scheme. It is important that employees discuss their pension with the pension’s advisor in the payroll team where they suffer a reduction in earnings.

10.0. CONDITIONS OF ELIGIBILITY FOR PROTECTION

- 10.1. Protection will no longer apply where an employee, currently receiving protection, unreasonably refuses alternative employment in any post on the banding which they are protected.
- 10.2. Employees receiving protection may be required to undertake duties or responsibilities up to the level at which they are protected on a temporary basis. Such an arrangement will not break or extend the period of protection.
- 10.3. Protection will cease should the employee move to another post through their own application, or leave the organisation.
- 10.4. Protection will be offset against earnings in the new post. In any pay period where earnings in the new post exceed the protected earnings (ie total earnings for short term protection, basic salary for long term protection) the protection of earnings is extinguished for that period.
- 10.5 Long and short term protection may run concurrently, this is known as joint protection. The protection paid will be that most favourable to the employee whilst the joint protection lasts.
- 10.6 At the end of the protection period the employee on protection will receive the pay band and conditions of service of the substantive post.
- 10.7 Payment of protection is conditional on an employee being committed to training and development identified in order to maximise opportunities for redeployment.

11.0. OTHER PROVISIONS

- 11.1. Employees will move onto a new band on the nearest point to their current salary. Where pay scales overlap individuals will not receive a promotional increase as a result of redeployment. They will however progress up the pay scale incrementally as normal in future, and will retain their incremental date.
- 11.2. Where the three month calculation period includes a period of maternity, adoption or paternity leave or where the employee was on approved unpaid leave (including a employment break) or sick leave, average earnings will be calculated taking into account the working pattern prior to the period of leave.
- 11.3. Where an employee becomes eligible for a second period of protection whilst already receiving protection, the initial protection will run its course. The second period of protection will run concurrently from the date of the second change in accordance with the arrangements within this policy.
- 11.4. Employees returning from agreed employment breaks under the organisation's policy, who cannot be slotted back into a post at the equivalent grade to that which they took the break from, will be eligible for long term protection from the date of their return.
- 11.5. Employees absent during a period of organisational change i.e. on sick leave, secondment or maternity have the same right to be consulted with as other staff. Any protection arrangement necessitated by organisational change will come into effect from the date of the change, not the date of their return to the organisation.
- 11.6. Changes to terms and conditions that are not substantive i.e. are agreed for a temporary/fixed-term period i.e. acting-up, additional hours will not be subject to protection.

12.0. APPEALS

- 12.1 Any appeal arising from the application of this policy will be dealt with under the organisation's Grievance procedure

13.0. DEFINITIONS

- 13.1. Organisational Change: any structural or managerial change to services provided by the organisation
- 13.2. Salary: the monthly sum due in respect of basic hours worked by the employee, within the standard working week, as defined for their staff group. The following are excluded for the purposes of long term protection (but those marked* may be subject to short term protection if they are a contractual feature or a regular requirement):
 - Acting up Allowances
 - Standby*
 - On-call*
 - Earnings from other contracts eg bank contracts
 - Reimbursement for expenses no longer incurred
 - Special duty payments eg shift allowances, weekend enhancements etc*
 - One off lump sum payment

Equality Impact Assessment

Title of policy	Protection of Pay and Conditions of Service Policy	
Names and roles of people completing the assessment	Angela Kilmartin, Senior HR Associate Nadeem Murtuja, Senior Associate E&D	
Date assessment started/completed	12/02/14	05/03/14

1. Outline	
Give a brief summary of the policy	<p>This policy applies to any employee on Agenda for Change terms or any employee who has transferred into the CCG on TUPE protected terms and conditions and who, as a consequence of organisational change, is required to move to a new post; or suffers a reduction in basic hours within their standard working week or a reduction in contractual earnings</p> <p>Pay protection is justifiable for a limited period to address issues of equity. This policy will be monitored to ensure it remains compliant with the legislation and case law.</p>
What outcomes do you want to achieve	For the policy to comply with statutory requirements, NHS Litigation Authority Standards and best practice

2. Analysis of impact			
<p>This is the core of the assessment, using the information above detail the actual or likely impact on protected groups, with consideration of the general duty to;</p> <p>eliminate unlawful discrimination; advance equality of opportunity; foster good relations</p>			
	<p>Are there any likely impacts?</p> <p>Are any groups going to be affected differently?</p> <p>Please describe.</p>	<p>Are these negative or positive?</p>	<p>What action will be taken to address any negative impacts or enhance positive ones?</p>
Age	No		
Carers	No		
Disability	No		

Sex	No		
Race	No		
Religion or belief	No		
Sexual orientation	No		
Gender reassignment	No		
Pregnancy and maternity	No		
Marriage and civil partnership	No		
Other relevant group	No		
<p>If any negative/positive impacts were identified are they valid, legal and/or justifiable?</p> <p>Please detail.</p>		<p>The policy is applicable to all employees and adheres to the NHS Litigation Authority Standards, statutory requirements and best practice. Makes all reasonable provision to ensure equity of access to all employees. There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic.</p>	

4. Monitoring, Review and Publication			
How will you review/monitor the impact and effectiveness of your actions	The impact of this policy will be considered alongside the organisational change policy to ensure protected groups are not disadvantaged.		
Lead Officer	Angela Kilmartin	Review date:	July 15
5. Sign off			
Lead Officer	Angela Kilmartin		
Director	Diane Hampshire	Date approved:	25/03/14