

TRUST POLICY FOR PAY PROTECTION

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Version Amendment History /	Version	Date	Author	Reason
	1	Dec 2009		Comply with NHSLA Standard Format and update
	2	June 2010	Sue Hawkins Julie Wheatley	As above and amended
	2.1	June 2012	Head of Human Resources	Minor amendments made
Intended Recipients: All Employees of the Trust excluding Medical and Dental Employees				
Training and Dissemination: Policy is launched through Signpost/Synapse and located on intranet; new starters notified of policy at induction; briefings available to all employees; implemented through Partnership Forum.				
To be read in conjunction with: Organisational Change Policy, Capability Policy, Health and Attendance Policy, Disciplinary Policy.				
In consultation with and Date Partnership Forum and Operational Managers (March 2012), Workforce Committee (April 2012), Trust Joint Council (May 2012)				
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Stage two Completed		N/A		
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Approving Body and Date Approved			Minor amendments approved by PDRG on behalf of ME	
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	Extension to December 2023
Contact for Review	Head of Human Resources
Executive Lead Signature	Director of Workforce Management
Approving Executive Signature	Director of Workforce Management

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Trust Policy for Pay Protection

1 Introduction

This policy outlines protection arrangements for employees whose earnings are reduced as a result of circumstances contained in the Organisational Change Policy.

ACAS guidance in such circumstances is that, wherever possible earnings should be protected against a fall in the current rate of pay. Alternatively, there may be opportunities for employees to earn more.

2. Purpose and Outcomes

2.1 The purpose of this policy is to support the achievement of successful organisational change and to provide an affordable alternative to redundancy and is applied in an equitable way. Also, to ensure that protection arrangements are implemented in partnership within a spirit of openness and trust

2.2 Pay protection will be available for employees who, as a result of organisational change, suffer a loss in earnings because of a revised banding or following a change in working patterns. It is available for employees with a minimum of 12 months continuous NHS service on the date the change is implemented.

2.3 Pay protection will not apply to employees

- who have their banding revised or whose working patterns are changed as a result of disciplinary action,
- who have their banding revised or working patterns changed due to capability or ill health, unless the individual is regarded as having a disability as defined by the Equality Act 2010.
- who voluntarily move to a lower banded job or different shift pattern.
- at the end of an acting up arrangement.

2.4 In exceptional circumstances where an Employee has been subjected to bullying and harassment and following due process, the only alternative is for this individual to be redeployed in to another post, then pay protection will apply where available.

2.5 In normal circumstances a change in band of more than one level (band) would not be considered by the Trust as appropriate suitable alternative employment.

3.0 Definitions Used

For the purpose of this policy :

3.1 **Earnings:**

This is an employee's basic salary plus

- Any payments for work outside normal hours (extra duty enhancements)
- On call premia (or local equivalent).
- Contractual overtime * in limited areas where agreed
- Recruitment and retention premia,

But excludes pay for on call hours worked.

3.2 Salary: This is the amount paid to an individual according to the pay point as detailed in the AFC pay scales (pro rata'd for part time employees)

3.3 Pay Protection: This applies to the period of protection and the amount an employee receives when a loss of earnings occurs.

3.4 Redundancy: The statutory definition is when,

- The Employer has ceased or intends to cease, to carry on the business for which the Employee was employed, or to carry on that business in the place where the Employee was employed; or
- The Requirements of the business for Employees to carry out work of a particular kind, or to carry it out in the place in which they are employed , have ceased or diminished, or are expected to cease or diminish.

3.5 Down Banding: This is when the new post, irrespective of the title, is at a lower band than the post held.

3.6 Organisational Change: This means any structural, managerial or operational change in the organisation of services provided by the Trust.

3.7 Employee: Any individual who is in receipt of a salary and has been employed by the NHS for a minimum of 12 months continuous (*please refer to section 12 of terms and conditions) Trust service on the date the change is implemented.

3.8 Trust : University Hospitals of Derby and Burton NHS Foundation Trust

3.9 Companion: An individual may be accompanied by a companion. This companion may be either, an accredited Trade Union/Professional Organisation Representative, or a fellow employee.

4.0 Roles and Responsibilities

4.1 Employees

4.1.1 Employees are to be aware of the policy and how it may impact upon them through organisational change and to consider offers deemed to be suitable alternative employment.

4.1.2 There is an expectation that where Employees finds themselves in a pay protection situation they will 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.

4.1.3 Where Employees have had a revised banding they should apply for and accept any subsequent offer of another suitable alternative post in the Trust which is commensurate with their previous salary.

4.1.4 Employees should participate in any development opportunities offered to them by their Manager/Trust.

4.1.5 An Employee should not initially or subsequently unreasonably refuse to apply for or accept a post, subject to it being suitable alternative employment. 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.

4.1.6 If the above conditions are not met then protection may be withdrawn.

4.2 Managers

4.2.1 Managers are to ensure that where protection applies it is implemented as detailed in this policy.

4.2.2 Managers will ensure they are familiar with the appropriate Trust policies relating to Organisational Change, Health and Attendance, Capability and Disciplinary.

4.2.3 Managers will ensure they consult with the Trade Unions on any change where pay protection may apply.

4.2.4 Managers will ensure timely and correct information is communicated to Employees regarding any entitlement they may have to pay protection as set out in this policy.

- 4.2.5 Managers will ensure any agreements regarding pay protection are followed up in writing to the individuals concerned and a copy kept on their personal file.
- 4.2.6 Managers will assist Employees who are in a protection situation to find suitable posts with a salary commensurate to those prior to protection.
- 4.2.7 Managers will be expected to meet with an Employee, the norm being annually, to identify support which can be given to the individual e.g training, professional updating, secondment etc and to ensure the individual is able to apply for and secure posts at an appropriate level.
- 4.2.8 Managers will ensure Payroll are notified accordingly of any situations involving pay protection as detailed in this policy.

4.3 Human Resources Support and Advice Team

Provide support, advice and guidance on all matters relating to the management of organisation change and pay protection.

4.4 HR Resource Team

Responsible for ensuring correct payment and notification of pay protection arrangements to individuals. They are also responsible for providing an annual report at the end of the financial year to both the Trust Joint Council and the HR Workforce Committee which will include the number of employees requiring protection, the length of protection and the period still to be protected.

4.5 Companion/ Trade Union Support

- 4.5.1 Where the companion is a Trade Union Representative, they can advise individual members about this policy and offer support to the individual.
- 4.5.2 Where the companion is not a Trade Union Representative, they can offer support to the individual.

4.6 Director of Workforce Management

The Director of Workforce Management has responsibility for ensuring implementation and monitoring of the HR Policies and Procedures. This work is maintained by Partnership Forum and reported to HR and Workforce Committee and the Trust Joint Council.

4.7 Workforce Committee

This Committee in place at the time is responsible for the assurance, approval and monitoring of HR Policies and Procedures to ensure that the Trust meets employment legislation, good workforce practice and NHSLA Standards.

4.8 Trust Joint Council

This Council provides formal channels for consultation and negotiation by agreeing and providing the scheme of work for the Partnership Forum and considering and agreeing the recommendations from the Partnership Forum in the formulation of this policy and its associated procedures.

4.9 Partnership Forum

This Forum is responsible for the development and implementation of the HR Policies and Procedures jointly with Trade Union Representatives to ensure that the Trust meets employment legislation, good workforce practice and NHSLA Standards.

5 Protection Arrangements

5.1.1 Protection applies when an Employee's earnings are reduced as a result of moving to a new/alternative post through organisational change at a lower band or same band with loss of earnings.

5.1.2 Long term protection arrangements

Protection applies to the employee's basic salary for contracted hours together with an average of enhanced pay for contracted hours at the point of protection commencement date (e.g. for employees who work shifts which normally attract an enhanced level of pay such as weekends or nights).

5.1.3 During any protection period, the employee will continue to receive annual cost of living pay increases plus any increments remaining within the new (lower) band until such time as the new banding matches or exceeds the previous salary (i.e. Protection will be on a mark time basis).

5.2.1 An exception to the protection terms shown at Section 5.6 would apply to those employees who are within three years of their qualifying retirement age (occupational or state), and who submit, in writing, a date on which they are confirming their intention to retire, and that date falls within three years from the date of the commencement of the period of protection. The employee will continue to have their pay protected and will receive both the

annual pay award and incremental progression, if applicable, for the full period up to retirement (even if they are eligible for less than 3 years pay protection).

5.2.2 In the event that the employee's circumstances change and they do not retire there will be a requirement to pay back some of the monies paid to them i.e. the difference between what they would have been paid under the normal protection arrangement and the amount they actually received.

5.3 The Trust will commit to ensuring that any employee, who, through no fault of their own require pay protection as a consequence of organisational change will, have for the period of their protection (2 or 3 years as applicable, see section 5.6) and for 1 year thereafter, the right to a guaranteed interview for any post at the pre-protection band / earnings for which they meet the essential person specification.

5.4 Failure to apply for, attend interview for, or accept an offer of a job in their former pay band without good reason will result in termination of the protection arrangements.

5.5 An individual on protection, 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 in to a lower band.

5.6 Calculation of Pay and Period of Protection

5.6.1 On being placed in an alternative job with a lower pay band, an employee's basic pay will be determined by whichever of the following is appropriate:

- If their salary (basic pay) is above the maximum of the lower pay band, they will move to the maximum of that band
- If their salary (basic pay) is at or below the maximum of the lower pay band, they will move to the same pay point on the lower band and retain their incremental date.

5.6.2 Calculation of Pay and Period of Protection

The amount to be protected will be calculated based on basic salary together with an average of 4 months enhancements in cases where short term protection does not apply. .

On being placed in a job in a lower pay band, the period of pay protection will be determined by the following:

- An employee who could lose below 15% of their pay will receive protection for two full years.
- An employee who could lose between 15% and 20% will receive

- protection for three full years.
- An employee who could lose more than 20% will be offered protection for three full years.
For staff whose loss is in excess of 20% voluntary redundancy may be considered in line with normal principles of redundancy including impact on service needs and affordability. Where Voluntary redundancy is not deemed to be appropriate full explanation and rationale will be provided and individuals will be able to request a review. The review decision will be final.

5.6.3 The % figure used for the calculation of long term protection will be rounded up to the nearest ½ percentage point.

5.7 Short term protection arrangements

5.7.1 Short term earnings protection may apply to staff whose basic pay is unaffected but whose earnings are reduced as a result of change to working patterns and shift times, for example, by working fewer shifts attracting pay enhancements.

5.7.2 Protection of enhancements will normally be calculated based on the 4 months immediately prior to protection commencing but exceptions may be made if it can be demonstrated this was an atypical period. Overtime payments and increased enhancements related to new working patterns in the new role will not be netted against protected amounts.

5.7.3 The calculation of unsocial hours protection will be based on the unsocial hours worked over a period of four months prior to the implementation date of the new arrangement, or an agreed representative period if no set rota has been worked, eg employees on Maternity leave etc

5.7.4 If staff 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.

5.8 Short –term Protection

5.8.1 Will be calculated, based on length of time an individual has been in receipt of the relevant ‘allowances’ – see below

Length of time in receipt of payment	Period of protection
12 months	3 months
12 - 24 months	6 months
24 months plus	12 months

5.8.2 The only exception to 5.8.1 above is Band 1 staff whose earnings drop as a consequence of loss of enhancements following organisational change. In such situations short term protection will be given as follows :-

Length of time in post	Protection Period	
	Up to 20% loss	More than 20% loss
12 months	3	6
12 – 24 months	9	12
24 months plus	18	18

5.9 Notice

Protection will commence at the end of contractual notice, on the agreed implementation date, no additional notice will be given.

5.9.1 Where an employee suffers a permanent reduction in pensionable pay which is not attributable to their own act or request then, they may elect, within 1 month of the reduction, to have pension benefits preserved at the higher rate of remuneration for their service up to the date of the reduction. The employee needs to inform the Pensions Officer who will forward the request to the NHS Pensions Agency based in Fleetwood, Lancashire.

5.9.2 Further organisational change may occur during a period of protection. In such circumstances, the protection package will continue for the agreed term. Any new protection entitlement 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 drop under normal circumstances this would not be deemed to be suitable.

5.9.3 If employees are aggrieved by the application of this policy then they have recourse to the Trust Grievance Procedure. In this instance the grievance should be addressed to the Manager responsible for the change.

6.0 Monitoring, Compliance and Effectiveness

Monitoring Requirement :	The Trusts Pay Protection process will be monitored to ensure that particular groups are not negatively affected by the implementation of the policy.
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Monitoring Method:	<p>HR Resource Team will monitor the following characteristics within the Trust Pay Protection process to ensure that individuals from the following groups are not affected by the implementation of this policy in a negative way and to include the number of Employees requiring protection, the length of protection in a report at the end of the financial year both to the Trust Joint Council and the HR Workforce Committee.</p> <ul style="list-style-type: none"> • Ethnic and National Origin • Gender • Age • Disability • Sexual Orientation • Religion and or Belief • Part time/full time employees <p>By the following indicators:</p> <ul style="list-style-type: none"> • Number of people currently on pay protection. <p>Number of people coming off protection and the reason why e.g. protection has expired or moved post.</p>
Report Prepared by:	HR Resource Team, (Employment Services)
Monitoring Report presented to:	Trust Joint Council and the recognised Workforce Committee in place at the time.
Frequency of Report	Annually

Review of this Policy and Procedures will be addressed by Partnership Forum through the implementation process with input from the recognised Workforce Committee in place at the time and Trust Joint Council.

7.0 References

Agenda for Change Terms and Conditions Handbook

ACAS

Organisational Change Policy

Employment Rights Act 1996