

Policy Document Control Page

Title

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- **Policy Harmonisation**

Originator

Originated By: Ruth Parton

Designation: Senior HR Business Partner

Equality Impact Assessment (EIA) Process

Equality Relevance Assessment Undertaken by: Ruth Parton

ERA Undertaken on: 28.01.16

ERA approved by EIA Work group February 2016

Where policy deemed relevant to equality-

EIA undertaken by: Ruth Parton

EIA undertaken on: 28.01.16

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Approval and Ratification

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Executive Director Lead: Director of Operations

Circulation

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Policy to be uploaded to the Trust's External Website? Yes

Review

Review Date: January 2019

Responsibility of: Workforce & OD

Designation: Director of Workforce & OD

This policy is to be disseminated to all relevant staff.

This policy must be posted on the intranet.

Date Posted: 19th October 2016

PROTECTION OF PAY POLICY

1. INTRODUCTION

- 1.1 This policy sets out the arrangements for safeguarding the pay of staff adversely affected by organisational change as an alternative to redundancy or early retirement. The trust recognises its responsibilities to treat individuals as fairly as possible, to protect their interests as much as it can and to keep staff and their representatives fully informed about the situation,
- 1.2 Staff and their representatives have the right to be consulted about changes to their normal jobs except where the changes are of a short term operational nature to cover an emergency. Staff side representatives will be informed prior to any changes so that they can be involved in any discussions. Where changes are planned and where there is no immediate agreement, the trusts negotiating and consultative committee may be used to resolve differences.

2. SCOPE

- 2.1 This policy applies to any employee who, as a consequence of organisational change, is required by management to move to a new post or suffers a reduction in their basic hours worked within the standard working week.
- 2.2 This policy will not apply if there is a new national policy on protection, which covers reorganisations and redeployment generally
- 2.3 The policy applies to all staff with permanent contracts of employment and more than four months' service with the trust

3. DEFINITIONS

- 3.1 The following expressions in this policy have the meaning ascribed to them below:

Organisational change – means any structural or managerial change in the organisation of health service provision

Basic wage or salary – this is the weekly or monthly sum due in respect of basic hours worked by the individual concerned within the standard working week as defined in the functional council agreements, plus any responsibility allowances, proficiency payment, pharmaceutical officers personal allowance or distinction award reckoned on the day immediately preceding the first of employment in the new post, but excluding any payments made in respect of acting

up, clinical membership of Trust Management steam stand by and on-call duty.

The monetary value of a distinction award is protected rather than the award itself. Also excluded are payments listed as additional earnings at Appendix A

Protected Earnings – are basic wage or salary (as defined above) plus the average of the previous four months earnings immediately preceding the date the change is notified. It includes basic pay, overtime, leaves, allowances and enhancements. It excludes any payments made during that period which are not a regular feature of the contract of employment of that member of staff, for example acting up allowances.

Earnings in the new post – mean the sum of the basic wage or salary in the new post and any remuneration in respect of overtime; shift work and any other additional duties.

Downgrading – occurs when the new post, irrespective of its grade title carries an hourly rate, or salary scale with maximum point, lower than that applying to the post held previously, or lower than that of the personal band held in the previous post.

A more senior post – is a post, which carries an hourly rate, or salary scale is a maximum point higher than that applying to the new post or any subsequent post to which an employee may have moved.

Reckonable service – is total NHS service (aggregated if discontinuous) but excluding service which has been subject to a redundancy payment or any other compensatory or terminal payment or where otherwise defined

Commencement of protection – Protection of band and / or earnings will commence on the first day in the new post or new working arrangements. Management will endeavour to give staff at least 90 days prior notice or legal notice period of such a change, subject to the exigencies of the service.

4. DURATION OF PROTECTION OF PAY

- 4.1 Short term protection** applies where an employee is required to undertake changes of a nature which may affect their wage or salary but do not require a change of band for example changes to their pattern of work / shift etc.

An employee whom this policy applies to is entitled to have certain earnings (see definition above) protected in accordance with the table in appendix B, depending on predecessor trust

- 4.2 Short term protection of earnings will run consecutively with long terms protection of basic salary if this applies to the situation
- 4.3 Earnings in the new post will be offset against protected earnings. If for any particular pay period the earnings in the new post exceed the protectable earnings; earnings in the new post are paid in full for that particular pay period. For example if an employee works extra hours and payment for these would exceed the protected pay; the individual would be paid for the hours that they have actually worked for that particular month.
- 4.4 If short term protection is not defined in a predecessor policy then the table in appendix B should be referred to
- 4.5 **Long term protection** – applies where an employee as a consequence of organisational change is required to undertake changes of a nature which may affect their wage or salary, for example where an employee is downgraded as a result of the change is entitled to full protection of their basic wage or salary including the benefits of any subsequent improvements or increments remaining; their salary (and any subsequent increments etc.) will therefore be frozen on that particular year's pay scales for the duration of the protection period.

Two situations could arise in long term protection; they are:

- If the individual was at the top of the previous band (e.g top of band 7), they will remain frozen at this point until the cost of living awards applied to the new lower band (e.g band 6) catches up with their protected salary (e.g top of band 7), at this point they would then transfer onto the lower band and the protection of pay would cease and they would continue in the lower band receiving increments and cost of living awards as normal
 - If the individual was actually on a pay point which is above the top of the new lower band, but they were not yet at the top of the previous band (e.g point 33 on band 7) they will still continue to receive increments on the old band (e.g within band 7) however these increment rates are frozen on the relevant years pay bands (e.g April 2015 rates). This enable the new band (e.g band 6) to catch up with the protected band (e.g band 7)
- 4.6 The protection rate will be in accordance with the table in appendix B, according to rates in predecessor trusts.

5. END OF PROTECTION PERIOD

- 5.1 At the end of the period the employee's salary will revert to the appropriate band for the job
- 5.2 An employee who moves to another post voluntarily during the period of protection will not maintain their protection rights where the pay of the new post exceeds the protected pay.
- 5.3 Where the basic wage or salary of the new post is equal to or exceeds the protected basic wage or salary the protection period shall cease.

6. PROTECTION OF CONDITIONS OF SERVICE

- 6.1 Annual leave entitlement will be protected with subsequent improvements whilst basic pay is fully protected. After the protection period annual leave will be at the level appropriate to the new post
- 6.2 Notice entitlements will be protected throughout the whole period of protection

7. PROTECTION OF OTHER PAYMENTS

- 7.1 Other payments will be protected during the period of protection of earnings only in accordance with 4.4 above. However where the sum of the new basic rate of pay for the job and any allowances payable for the job exceed the protected basic pay, the employee will be paid the new rate and the relevant allowances and leads immediately and protection will no longer apply for that pay period (e.g week for weekly paid staff)

8. CONTRACTURAL STATUS OF PROTECTED EMPLOYEES

- 8.1 Staff who receive protected pay under these provisions will receive a new contract of employment stating the new terms and conditions of the new post accompanied by a letter stating the terms of their protection arrangement

9. PROTECTION FROM PREVIOUS EMPLOYMENT

- 9.1 This will not be taken over by the trust if an employee applies for and moves to a different employer

10. EFFECT OF PAY AWARDS AND INCREMENTS

- 10.1 The annual lay award (cost of living) will be to the substantive pay (new post) not to the protected pay (previous post) as the protected pay will be frozen on those particular years pay scales for the duration of the protection period. Where a pay award increases the substantive pay to match or be greater than the protected pay during the periods of protection, the protection will end. Where a pay award does not have that effect, the protection will continue for the remaining period.
- 10.2 If increment points still remain within the band, they will affect both short term and long term protection. Where an employee receives an increment and this increases the substantive pay to match or be greater than the protected pay during the period of protection, the protection will end. Where an increment does not have that effect, the protection will continue for the remaining period.

11. PENSION

- 11.1 Employees who suffer a reduction in basic pay as a result of organisational change, who are members of the pension scheme, may be able to preserve their benefits earned on the higher level of pay. Further advice may be obtained from the pensions officer; however, the main conditions are:
- The reduction of pay has come about through a management change and though no fault of the employee
 - The employee must have at least two years qualifying service
 - The employee must write to the pensions officer within one month of the reduction asking for benefits to be preserved
- 11.2 In view of the limited timescales involved, any manager or staff side representative dealing with a potential protection situation should bring this to the attention of the employee concerned at an early stage

12. REDEPLOYMENT

- 12.1 The trust will protect the pay of a member of staff who is redeployed to a post of a lower band due to an industrial injury where the trust is liable for that injury. Cases will be considered on an individual basis
- 12.2 The trust will endeavour to redeploy protected staff to a suitable post which is on the same band as their protected post as a matter of priority. A protected employee must accept any reasonable offer of redeployment. Rejection of such a reasonable offer will result in the withdrawal of protected status.
- 12.3 Staff who are in receipt of pay protection for redeployment purposes should endeavour to apply for posts that are advertised either via the

'at risk' or internal vacancy bulletins. If staff fail to apply for posts that would be deemed a suitable alternative post they may forfeit their right to pay protection.

12.4 Staff who are in a redeployment situation will continue to receive the 'at risk' vacancy list if they accept a post at a lower salary band to their substantive band and will be expected to continue to apply for posts at their substantive salary band.

12.5 Please refer to the redeployment policy for further information.

13. APPEALS

13.1 Any appeals in respect of this policy should be dealt with in accordance with the Trust grievance procedure

14. REVIEW

14.1 This policy will be reviewed in three years' time

APPENDIX A

Payments eligible for protection

The following payments should be included in the computation of the 4 month average only if they are a regular requirement of the job

Overtime

Allowances for:

Shift duty

Night duty

Split duty

Unsocial hours

Stand by and on-call duty

APPENDIX B

Predecessor Trust pay protection rates:

Pennine Care:

Short term protection period

Reckonable service	Protection
4-12 months	2 months
1 - 2 years	4 months
2 – 3 years	6 months
3 – 4 years	8 months
4 – 5 years	10 months
Plus 5 years	12 months

Long term protection period

Reckonable service	Protection
4-12 months	equivalent to notice period
1 - 3 years	6 months
3 – 5 years	1 year
Plus 5 years	2 years

Community Services Bury:

Short term protection period

Reckonable Service	Protection
Up to 1 year	No protection
1 – 3 years	3 months
3 – 5 years	6 months
More than 5 years	12 months

Long term protection period

Reckonable service	Protection
Up to 1 year	3 months
1 – 3 years	6 months
3 – 5 years	1 year
Over 5 years	2 years
Over 10 years	3 years

Community Services Oldham:

Reckonable service	Protection
Less than 12 months	Contractual notice period
1 – 3 years	1 year
3 – 5 years	2 years
5 – 10 years	3 years
Over 10 years	5 years

Community services Trafford:

Reckonable service	Protection
Up to 1 year	0
1 – 3 years	1 year
3 – 5 years	2 years
Over 5 years	3 years

Community Services HMR:

Short term protection period

Reckonable service	Protection
4 – 12 months	2 months
1 – 2 years	4 months
2 – 3 years	6 months
3 – 4 years	8 months
4 – 5 years	10 months
Over 5 years	12 months

Long term protection period:

Reckonable service	Protection
Up to 1 months	1 year
1 – 3 years	1 year
3 – 5 year	2 years
Over 5 years	3 years
Over 10 years	5 years