

Pay Protection Policy

Policy reference – HR002

SUMMARY	This policy outlines the framework relating to the protection of pay and conditions of service for staff that are affected by organisational change.
AUTHOR	Human Resources
VERSION	2.0 FINAL
EFFECTIVE DATE	February 2018
APPLIES TO	This document applies to all staff employed by the CCG
APPROVAL BODY	CCG Remuneration Committee
REVIEW DATE	February 2021

This policy has been aligned to Greater Huddersfield and North Kirklees CCGs in light of shared staff working across the CCGs.

THIS POLICY HAS BEEN SUBJECT TO A FULL EQUALITY IMPACT ASSESSMENT

VERSION CONTROL SHEET

Version	Date	Author	Status/Approval Body	Circulation
0.1	N/A	Paul Appleyard	Draft	Creation of core elements
0.2	04.09.2014	Kelly Brook	Draft	Draft policy prepared for SMT
0.3	16.09.2014	Kelly Brook	Draft	Amends made following SMT
0.4	05.11.2014	Kelly Brook	Draft	Further amends made to the policy following HR Policy Working Group
1.0	18.12.2014	Kelly Brook	Final	Minor amends made following Remuneration Committee
1.1	22.01.2018	Tazeem Hanif	Draft	Revised policy aligned to GH/NK CCGs submitted to SMT for comment – policy approved.
1.2	04.01.2018	Tazeem Hanif	Draft	Policy approved by Trade Unions at the Social Partnership Forum
2.0	28.02.2018	Tazeem Hanif	Final	Policy Approved by the Remuneration Committee, in line with the electronic policy approval process.

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1. POLICY STATEMENT

- 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 employees across the organisation, or within specific services, departments or roles.
- 1.2 This policy applies to any employee on Agenda for Change terms and conditions 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. SCOPE

- 2.1 This policy replaces all previous agreements on pay protection operating in the CCG and applies to all employees of the CCG.
- 2.2 This policy covers:
 - Short term protection of earnings where downgrading is not involved.
 - Long term protection of basic wage or salary where downgrading is involved.
 - 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:
 - Where the downgrading is as a result of action under the organisation's disciplinary or capability procedures.
 - Where the change to pay or terms and conditions is made at the request of the member of staff.
 - Where a change of contract has been agreed on a temporary basis, i.e. acting up.
 - Where a member of staff voluntarily moves post.
 - Where the change results from the breakdown of a job share agreement.

3. RESPONSIBILITY

- 3.1 Good working relations are vital for the CCG 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.

3.2 **Line Managers**

Line managers have an important role to play in the management of absence. The key responsibilities for managers include:

- Ensure that Line Managers comply with this policy during any organisational change and seek advice where necessary from HR on the application of this policy.
- 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 by HR.
- Advising employee's to seek advice in relation to pension arrangements
- Where employees are to be redeployed, the manager, supported by the HR team, will work with the employee to find suitable alternative employment.
- Through the appraisal 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 familiar with the CCGs HR policies.
- Notify Payroll when employee pay protection arrangements are put in place.

3.3 **Employees**

It is the responsibility of the employee to ensure that they:

- Comply with the policy, 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 content discussing any concerns with their Line Manager.
- Responsible for checking their pay and seeking advice on pension arrangements (where applicable).

3.4 **Human Resources**

The key responsibilities for Human Resources are:

- Advise Line Managers and employees about the operation and implication of this policy, where appropriate seeking alternative roles to avoid the need for pay protection.
- Ensure Line Managers are updated on the contents of this policy and management best practice in relation to organisational change and protection of pay. Also ensure that the policy is available on the intranet.
- Ensure the terms of any protection are confirmed to the employee in writing.
- Ensure managers have sufficient opportunities to access appropriate levels of training/awareness for all HR policies.
- Maintain a database of employees receiving protection in conjunction with Payroll.

3.5 Trade Union Representatives

- Attend and support members meetings with employees on proposed on changes.
- Advise union members on their rights and responsibilities.

4. EQUALITY STATEMENT

4.1 In applying this policy, the CCG 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, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, carers and sexual orientation. A single Equality Impact Assessment is used for all policies and procedures.

5. ACCOUNTABILITY

5.1 The Chief Officer is accountable for this policy.

6. IMPLEMENTATION AND MONITORING

6.1 The Remuneration Committee is responsible for the formal approval of this policy. Following approval, the policy will be disseminated to staff via internal communication methods and available through the staff intranet.

6.2 The policy and procedure will be reviewed periodically by the HR Team in conjunction with Trade Union representatives. Where review is necessary due to legislative change, this will happen sooner.

7. 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 4 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 allowance, sessional payments.

7.3 Service counted for the purposes of protection will be continuous service with the CCG (including service deemed to be continuous under TUPE/COSOP).

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. 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 but not incremental progression. Long term pay protection will be implemented from the effective date of the change and applicable for 3 years until one of the following occurs:

- The employee accepts a suitable post in which the normal basic wage or salary is equal to or exceeds the protected wage or salary; or
- The employee moves of his/her own accord to a position with a basic wage or salary which is equal to or lower than that of the existing post; or
- The employee retires or otherwise leaves the organisation; or
- They unreasonably refuse the offer of a suitable alternative post or
- The basic salary for the job is above their protected pay.

8.2 Service counted for the purposes of protection will be continuous service with the CCG (including service deemed to be continuous under TUPE/COSOP).

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

8.3 Any employee who is 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. Employees may request a preferential interview for roles advertised at their former level.

9. PROTECTION OF OTHER TERMS AND CONDITIONS - Recruitment and Retention Premia

9.1 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:

- Nationally and locally agreed long-term recruitment and retention premia will be protected in line with national terms and conditions.
- Locally agreed short-term recruitment and retention premia will be protected for six months in line with national terms and conditions.

9.2 The recruitment and retention premia will be protected at the level paid at the time the employee left their previous post.

9.3 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.

10. CHANGE IN HOURS

- 10.1 In situations of organisational change where long-term protection applies to an individual, the CCG 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:
- 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.
 - 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.
 - Where working patterns are different in the new post or there were was an arrangement to work flexibly in the former post the CCG 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.

11. Change of Base

- 11.1 Where an employee is required to change their base of work, in line with contractual arrangements and national terms and conditions as a result of reorganisation, amalgamation of NHS employers or from acceptance of another post in consequence of redundancy, they will qualify for reimbursement of their extra daily travelling expenses for a maximum period of 4 years from the date of transfer.

12. PENSIONS

- 12.1 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 qualifying membership of the NHS Pension Scheme. It is important that employees discuss their pension with the NHS Pension Scheme Advisors directly or the Pensions Officer within the Payroll team.
- 12.2 It is advised that all CCG employees to whom this may apply take their own independent advice on how their pension may be affected and seek clarity from the Pensions Agency on the protection available to them.

13. CONDITIONS OF ELIGIBILITY FOR PROTECTION

- 13.1 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.
- 13.2 Employees receiving protection may be required to undertake duties or responsibilities up to the level at which they are protected. Such an arrangement will not break or extend the period of protection.
- 13.3 Protection will cease should the employee move to another post through their own application, or leave the organisation.
- 13.4 It is conditional that staff in receipt of protected earnings under these procedures will not unreasonably refuse any the offer of a suitable post based on their experience, knowledge and skills which would enable them to return to their previous substantive band or hours. **If the employee unreasonably refuses to move to another post, they could forfeit their right to pay protection and pay protection would cease with immediate effect.**
- 13.5 Protection will be offset against earnings in the new post. In any pay period where earnings in the new post exceed the protected earnings (i.e. total earnings for short term protection, basic salary for long term protection) the protection of earnings is extinguished for that period.
- 13.6 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.
- 13.7 At the end of the protection period the employee on protection will receive the pay band and conditions of service of the substantive post.
- 13.8 Payment of protection is conditional on an employee being committed to training and development identified in order to maximise opportunities for redeployment.

14. OTHER PROVISIONS

- 14.1 At the end of the long term pay protection period employees will move onto the band of the role they have been undertaking, they will be placed on the nearest point to their current salary. Where pay scales overlap, individuals will not receive a promotional increase as a result of redeployment.
- 14.2 At the end of short term protection payments will cease, for short term protection where the four month calculation period includes a period of maternity, adoption or paternity leave or where the employee was on approved unpaid leave (including an employment break) or sick leave, average earnings will be calculated taking into account the working pattern prior to the period of leave.
- 14.3 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.
- 14.4 Employees returning from agreed employment breaks under the CCGs 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.
- 14.5 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 CCG.
- 14.6 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 attract pay protection when the arrangements cease.

15. APPEALS

- 15.1. Any appeal arising from the application of this policy will be dealt with under the CCGs Grievance procedure.

Appendix 1 - Equality Impact Assessment

Title of policy	Pay Protection Policy	
Names and roles of people completing the assessment	Tazeem Hanif – HR Business Partner Kate Bell- Equality Lead	
Date assessment started/completed	28.03.2018	01.03.2018

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			
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; eliminate unlawful discrimination; advance equality of opportunity; foster good relations			
	Are there any likely impacts? Are any groups going to be affected differently? Please describe.	Are these negative or positive?	What action will be taken to address any negative impacts or enhance positive ones?
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		
If any negative/positive impacts were identified are they valid, legal and/or justifiable? Please detail.			
		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.	

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	Tazeem Hanif	Review date:	01.02.2021

5. Sign off		
Lead Officer	Kate Bell	
	Date approved:	01.03.2018