

Protection of Pay and Conditions of Service Policy (Replacing Policy No. TPWF224 V.1)

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1.0 Introduction

1.1 Purpose of policy

This policy is designed to support successful organisational change in providing suitable alternatives to redundancy which safeguard pay for a defined period. It contains the detailed provisions for an employee accepting redeployment from a higher to a lower paid post in the Trust. The policy should be read in conjunction with the Trust's Management of Organisational Change Policy and Procedure, which provides details of how to manage change, including the consultation processes.

1.2 Scope of policy

These arrangements apply to all staff employed on permanent contracts in the Trust who, because of organisational change, suffer a loss of earnings due to:

- the downgrading of an existing post or a move to a new post at a lower grade; or
- changes in working patterns or practices in an existing or new post.

There will be no entitlement to pay protection under this policy where the reduction of band or enhancement is due to:

- the lack of ability or competence of the employee to perform the duties of their existing band (refer to the [Capability](#) and/or Performance Management policies);
- redeployment to a lower banded post under the provisions of the [Disciplinary Policy and Procedure](#);
- redeployment following ill health (refer to the [Sickness Absence Management Policy](#));
- the employee, at their own volition, seeking to be redeployed to a lower banded post; or
- acting up or a temporary upgrading reaching its end, or finishing early. **Note:** where the arrangement finishes early due to service needs an employee should normally be given two weeks' notice.

No payment will be given unless there is an actual reduction in total earnings calculated as an average over a 12 week period prior to the date of change. Where this period does not reflect normal earnings, for example because of maternity leave, an appropriate 12 week period will be used.

See also Section 15 for the application of this policy to temporary or fixed term contract staff.

All protection arrangements will be based on length of continuous NHS service with the Trust (or predecessor organisation in the case of TUPE) but excludes service which has been the subject of a redundancy payment or any other compensatory payment relating to the termination of employment.

1.3 Principles

The provision of protection of pay and conditions of service following a transfer to a lower-graded post is a key policy in enabling organisational change which the Trust is committed to managing in a fair and supportive manner, in line with best practice and statutory requirements. This policy has been designed to ensure that the following principles are followed fairly and equitably across the Trust.

- Pay protection will be provided to cushion the impact of a reduction of individual earnings due to organisational change.
- Where protection arrangements reflect length of service in the organisation these have been designed to comply with the Equality Act 2010.
- The arrangements will be simple, clear, easily understood, and easy to operate.
- This will present the major underlying beliefs on which the policy is based

2.0 Policy Statement

Organisational change can result in the need for staff to change both jobs and work locations. The Protection of Pay and Conditions of Service Policy documents the extent to which the Trust will cushion a reduction in earnings following a transfer to a lower-graded post. It also sets out arrangements for the temporary reimbursement of additional travelling expenses if an employee is transferred to a new work location which involves a longer journey to work than hitherto.

3.0 Duties

3.1 Director of Human Resources and Organisational Development

The Director of HR and OD is responsible for regularly reviewing the effectiveness of the policy and for drafting any amendments that may be required.

3.2 Other Directors, Senior Managers and Heads of Department

Other directors, deputy and assistant directors, senior managers and heads of department are responsible for:

- the effective implementation of this policy within their directorates;

- providing resources for putting this policy into practice within their directorates; and
- ensuring that this policy is followed within their directorates.

3.3 Human Resource Business Partners and Advisers

Human Resources Business Partners and Advisers are responsible for providing support and advice to managers and supervisors in the implementation of this policy and for ensuring the policy is reviewed and updated in accordance with any changes in the relevant legislation or nationally negotiated terms and conditions of employment.

4.0 Protection Arrangements

4.1 Application

Long term protection arrangements will normally apply where redeployment is to a post at one band below the employee's substantive job. Alternative options may be considered, subject to a Service Director review of the operational and financial implications and in discussion with the employee and their representative. Advice should be sought from the HR Department.

Where individuals wish to apply for a post in a band lower than set out above, i.e. a post two or more bands below, they are able to do so but pay protection will not then apply.

Individuals transferring to another band must meet the person specification for the role, or be able to attain this level within no more than six months, and be able to demonstrate at least a 70% match with the post as determined by the criteria set out in the Role Comparison Assessment Form included in Appendix 7 of the Management of Organisational Change Policy and Procedure.

4.2 Costs of Pay Protection

Prior to agreeing any pay protection arrangements the cost of such arrangements must be considered. If the cost is considered to be too high to be in the best interests of the organisation, and there is a more cost effective solution, then the Trust reserves the right to offer alternatives, for example redundancy.

Where employees are redeployed into a different service with pay protection applying, the employee's new service will be responsible for the cost of the pay protection. The service to which the employee is redeployed may receive funding for the cost of pay protection with the agreement of the Financial Management Department. Further advice on this can be obtained from the Finance department.

4.3 Cessation of Protection

Protection of earnings or salary will cease if the employee declines an opportunity to apply for or to accept a suitable alternative post on their previous grade and conditions. Otherwise, protection will cease at the end of the protection period (see Section 7 below) or when the amount of protection payable falls to zero (see Section 7 below).

4.4 Authorisation Process

A proposal to apply pay protection should be submitted using a [Contract Amendment Form](#) (CAF) and is subject to the normal approval and authorisation process for that form.

5.0 Long Term Protection

5.1 Description

Long term pay protection applies to the basic salary due for an employee's standard working week, plus any responsibility or qualification allowances, proficiency payments or distinction awards already being made. Any other payments, including those listed as additional earnings, are excluded.

At the end of the protection period the basic salary will revert to that applicable to the new post.

5.2 Part Time Employees

For part time employees, pay protection will result in their hours being calculated at the hourly rate appropriate to the former post, up to the number of hours per week previously worked. Any extra hours worked in the new post will be paid at the rate applicable to the new post.

5.3 Conditions

It is a condition of the protection arrangement that the employee undertakes to transfer to another suitable post offering a comparable level of earnings to those afforded by the previous post if such a job becomes available during the protection period.

Protection may be terminated if an employee unreasonably refuses a subsequent offer of a post within the Trust on the previous band or equivalent.

5.4 Marked Time

Mark time' or 'marked time' protection means that the rate of the earnings is preserved without the benefit of any subsequent increments or pay awards, until the new earnings reach the level of the previous earnings or until such time as otherwise agreed.

6.0 Short Term Protection

6.1 Description

Short term pay protection is confined to those earnings additional to the basic wage or salary that either formed part of the contract of employment or have been paid for a continuous period of 24 months or more.

Payments eligible for protection are:

- contractual overtime;
- special duty payments; and
- excess hours payments

Allowances eligible for protection are:

- shift duty;
- night duty;
- split duty;
- unsocial hours; and
- stand-by and on-call duty

The above are subject to any nationally negotiated changes.

Additional regularly rostered earnings will be calculated and an average taken over the 12 weeks prior to the date of change unless this timescale is not appropriate, for example following maternity leave, when a more appropriate period will be agreed.

If, for any particular pay period, the earnings in the new/amended post exceed the protected earnings, then pay protection will not apply for that period.

6.2 Increases in Basic Pay

If an employee's basic pay increases as a result of reorganisation but overall earnings drop, e.g. enhancements such as shift allowance or regular overtime have decreased, then the basic pay will be included in the calculation of short term protection.

Example:

	Basic Wage	Enhancements		Total		
				(shift allowance, overtime, etc)		
(i)	Old salary	£10,000	+	£3,000	=	£13,000
(ii)	New salary	£12,000	+	Nil	=	£12,000

Short term protection would therefore be applied to the difference between the new total salary and the old, which is £1,000.

6.3 Conditions

Short term pay protection is conditional on the employee continuing to undertake, if required in the new post, unsocial hours, on call etc up to the level undertaken before the change in terms and conditions. After the end of the protection period any relevant enhancements, allowances or supplements to base salary will be determined by reference to the new post.

7.0 Protection Periods

Length of Service	Protection Period	Long-term	Short-term
2 years and over	1 year	6 months	

8.0 Pay Awards and Incremental Progression

Long term and short term protection will be limited to the pay in the former post at the time of transfer. This rate of pay will be 'frozen' and no annual pay awards or increments will be added. Increments and pay awards will be applied to the rate of pay of the new post, thus reducing the amount of protection payable. Pay protection will cease once the salary in the new post is equal to or greater than the (frozen) salary in the old post even though the pay protection period may not have been completed. This is commonly known as 'mark-time' pay protection.

9.0 Further Changes of Post

Each subsequent change of post due to an organisational change will be covered by the arrangements outlined in this policy and attract protection in its own right.

The protection period for the second and subsequent changes of post will begin on the date the employee takes up the subsequent post. However, the second protection arrangements will be overridden by the first protection arrangements until they expire.

If an employee changes post voluntarily through the normal application process protection will cease.

10.0 Lump Sum Payments

At the discretion of the Trust, staff may be offered lump sum payments as an alternative to protection.

11.0 Excess Travel

As part of 'management of change' processes, staff may be eligible to claim Excess Travel if they have had to move base as a result of their new job. If eligible, staff will have the details confirmed to them by their manager in a 'Change of Base' letter as per Appendix 1.

For a period of up to four years, eligible staff can claim the difference between the cost of travel from their home to their new base and the cost of travel from their home to their old base. If they drive to work, then the Trust will pay this difference based on the agenda for change 'reserve rate'. Those who commute by public transport may claim up to the same value, using relevant evidence (e.g. bus or rail tickets) of the difference between what they now pay and what they used to pay. For advice on claiming excess travel when also travelling on Trust business, see the examples in Appendix 2.

Claims should be made on the Trust's mileage and expenses claim form which can be found on the intranet under 'Forms » Finance forms'. These should be completed by the member of staff and approved by the line manager before being sent directly to Payroll Services. Members of staff should keep copies for their own personal reference. Guidance notes for both the completion and authorisation of expenses claims are available on the intranet.

If a member of staff with a Trust lease car is in position to claim excess travel costs following a change of base, this will trigger the car fuel benefit tax charge, which may make claiming excess travel uneconomic. This is due to HM Revenue and Customs rules and is not related to Trust policy in any way. Please contact [HM Revenue and Customs](#) for further advice.

12.0 Protection of Conditions of Service

Except as specified above, other terms and conditions will not be protected and employees required to move to a new post will take on the hours and other conditions appropriate to the new post.

13.0 Personal Development Plans

The employee will commit to, and their manager will support, ongoing development in order that the employee will maximise opportunities for redeployment at their former substantive band either internal or external to the organisation.

14.0 Effect on Pensions

If, as a result of a reorganisation or a disability (as defined by the Equality Act 2010), an employee's pay goes down (following the period of protected pay) their membership in the pension scheme at the higher rate of pay can be protected, providing they have at least two years qualifying membership. To take advantage of protecting their pension at the higher rate of pay the employee must apply in writing to the Pensions Agency within three months of their pay going down. Early contact with the Trust Payroll Pension Officer is advised as there are forms that need to be completed.

To apply you must be a protected member of the 1995 or 2008 Section or have a salary link to 1995/2008 Section preserved rights where you have moved over to the 2015 Scheme. If you have membership in the 2015 Scheme only you cannot apply to protect your pension as it is not relevant due to the way benefits are calculated.

The Pensions Agency should be informed on each occasion this happens and at any stage of an individual's employment, not just when an employee is within a certain number of years of retirement.

More information is available from the [NHS Business Services Authority](#)

15.0 Staff Employed on Temporary or Fixed Term Contracts

If a member of staff is employed on a temporary or fixed term contract, and has had that contract renewed or extended beyond 24 months, he/she should be granted pay protection where permanent employment is to be offered and he/she will be substantially disadvantaged by the organisational changes. This does not apply to acting up or secondment arrangements.

16.0 Appeals

Any appeal arising out of the application of these arrangements shall be dealt with under the Trust grievance procedure.

17.0 Development, Consultation and Ratification

This policy has been updated from the original one which was developed in partnership with staff side colleagues and benchmarked with a range of other NHS Trusts, including Mental Health Foundation Trusts. The updated policy has been ratified at the Trust Partnership Forum

18.0 Equality and Human Rights Impact Analysis

An equality and human rights impact analysis has been completed which recorded that this policy will have a neutral impact.

19.0 Monitoring Compliance

Existing systems within the management of organisational change and approval/authorisation processes for redundancy payments and pay protection will be used. Feedback on the operation of the policy can be obtained through the Executive Director of Finance and the Director of HR & OD.

20.0 Dissemination and Implementation of Policy

This policy will be circulated to employees through team meetings, and will be placed on the Trust intranet.. New staff will be made aware of all the Trust's policies as part of their induction. Paper copies will be made available by line managers for those without access to the intranet. This policy will be specifically brought to the attention of staff who are directly affected by organisational change.

21.0 Document Control including Archive Arrangements

It will be the responsibility of the sponsor and author of this policy document to ensure that it is kept up to date with any changes to legislation and national or local policy. This policy will be managed in accordance with the Policy for the Development and Management of Procedural Documents.

22.0 Reference Documents

This policy is to be read in conjunction with the following policies:

- Grievance Policy and Procedure
- Management of Organisational Change Policy and Procedure
- Redeployment Policy and Procedure

23.0 Appendices

- 1 Change of Base Template Letter
- 2 Excess Mileage Examples

Appendix 1

PRIVATE & CONFIDENTIAL

Name
Address
Address
Postcode

Dear [Name]

Change of Base

Following the recent staff consultation I am writing to confirm that your work base has moved from xxxxxxxxxxxxxx to xxxxxxxxxxxxxxxxxxxxxx. Although xxxxxxxxxxxxxxxxxxxxxx is your work base you may at times be required to work from other bases/buildings.

You may be entitled to payment for excess mileage following the transfer. If your new home to base mileage is greater than your home to xxxxxxxxxxxxxxxxxxxxxx mileage, the Trust will pay the excess for a period of four years from the date of transfer. Any excess payments are paid at the current reserve rate. You will be required to complete and agree an Authority to Pay Excess Travel Form and then you will need to complete a travel claim form each month which should be authorised by your manager. If you will be travelling by public transport you will be entitled to claim any excess fares (e.g. bus or train fares). If you voluntarily move jobs and / or base within the four year period your entitlement to excess mileage will cease.

Please sign one copy below and return as proof that you have received this letter.

Thank you for your patience over this period.

Yours sincerely

Manager
Manager Job Title

cc: HR file

I agree that I have read and understood the contents of this letter.

Name _____

Date _____

Appendix 2

EXCESS MILEAGE

Excess mileage is paid to staff when their work base is changed through a change management process. It is intended to ensure that staff are not financially penalised by having to travel further to get to their place of work.

An easy way of identifying whether or not excess or business mileage should be claimed is to look at the total amount of miles travelled during the day and whether or not the work base was visited during the day. In order to claim any mileage the total mileage for the day needs to exceed the original home-to-base mileage (that is the miles you would normally have travelled in order to get to work before your base was changed).

The following examples illustrate various scenarios:

Normal home-to-base journey

Original home-to-base mileage – 20 miles

New home-to-base mileage – 25 miles

Excess mileage claimed – 5 miles

Original home-to-base mileage – 20 miles

New home-to-base mileage – 15 miles

Excess mileage claimed – nil

Journey includes visit to base plus other appointments

Original home-to-base mileage – 20 miles

New home-to-base mileage – 25 miles

Additional miles in respect of appointments on way to/from/during work – 10 miles

Total miles travelled – 35 miles

Excess mileage claimed – 5 miles

Business mileage claimed – 10 miles

Journey includes appointments but no visit to base

Original home-to-base mileage – 20 miles

New home-to-base mileage – 25 miles

Appointments during day but not going to base – 10 miles

Total miles travelled – 10 miles

Excess mileage claimed – nil

Business mileage claimed – nil

Journey includes appointments but no visit to base

Original home-to-base mileage – 20 miles

New home-to-base mileage – 25 miles

Appointments during day but not going to base – 30 miles

Total miles travelled – 30 miles

Excess mileage claimed – nil

Business mileage claimed – 10 miles