



Protection of Pay

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Divisional and Department:	Human Resources				
Author / Originator and Job Title:	Eleanor Palmer-Rigby, Human Resources Business Partner (HRBP) Jayne Taylor, HR Manager				
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Description of amendments:	Former PCT policies brought in to line with Blackpool Teaching hospital policy. Transition plan agreed for full incorporation from 1st April 2021 and continued previous entitlement to those presently in receipt				
Approved by:	Lesley Smith-Payne, Head of Strategic HR on behalf of Joint Negotiating Consultative Committee (JNCC)				
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Review Date from Date of Approval:	1 Year <input type="checkbox"/>	2 Years <input type="checkbox"/>	3 Years <input checked="" type="checkbox"/> 23/07/2023	4 Years <input type="checkbox"/>	5 Years <input type="checkbox"/>

Version Control Sheet			
This must be completed and form part of the document appendices each time the document is updated and approved			
Date dd/mm/yy	Version	Author	Reason for changes
23/07/20	4	Eleanor Palmer-Rigby, Human Resources Business Partner (HRBP) Jayne Taylor, HR Manager	Former PCT policies brought in to line with Blackpool Teaching hospital policy. Transition plan agreed for full incorporation from 1st April 2021 and continued previous entitlement to those presently in receipt

Consultation / Acknowledgements with Stakeholders		
Name	Designation	Date Response Received
	HR Policy Forum	12/04/2019
	Eleanor Palmer Rigby met with Maggy Heaton (RCN) on	13/05/19
	and Rhia Hardon (UNISON) to discuss how to move forward and following this meeting	23/05/19
	it was confirmed that staff side finally agreed to the amendments	03/06/19

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1 Introduction / Purpose

This policy outlines the arrangements for protecting the pay and conditions of service for employees of the Trust who are adversely affected by organisational change.

In this context organisational change means any structural or managerial change in the organisation of health service provision within the Trust. It will apply when an employee is required by management to move to a new post or to reduce hours or to accept changed practices where there is a consequent reduction in pay or conditions of service. It will not apply where there is a voluntary move to a new post, where there is a change as a result of disciplinary action or where there is a change due to medical capability.

2 General Principles / Target Audience

This policy applies to all employees of the Trust.

3 Policy

Protection of pay must be considered as a last resort when undertaking organisational change.

When protection of pay arrangements applies the employee is obliged to apply for suitable posts commensurate with their previous earnings. Where new skills are required, the Trust will be responsible for providing retraining.

In situations of redundancy the application of these protection provisions will influence the suitability of any alternative employment offered.

3.1 Provision

Provision is made in this policy for:

- a) Protection of basic wage or salary
- b) Protection of other conditions of service

3.2 Definitions

3.2.1 Basic wage or salary

This is the weekly or monthly sum due in respect of basic hours worked within the standard working week on the day immediately preceding the first day of employment in the new post.

3.2.2 Marked Time

An employee will remain on their current salary and will not receive any incremental or annual cost of living rise for the duration of the period or until such time as the total level of pay in the new post exceeds the value of the protected pay, or until such time as the employee changes job voluntarily (whichever is the sooner) at which point the new salary and terms will apply.

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3.2.3 Downgrading

This is when the new post, irrespective of its band or title carries an hourly rate of salary maximum point, which is lower than that applying to the previous post held.

3.2.4 Reckonable Service

The total NHS Service (Aggregated if discontinuous as outlined in the Agenda of Change Terms and Conditions of Service Handbook) but excluding service, which has been subject to a redundancy or termination payment.

3.2.5 Earning in the new post

The sum of the basic wage or salary in the new post and any remuneration in respect of enhancements, shift work and other additional duties.

3.3 Earnings Protection

Earnings protection should take account of the following payments:

- Basic pay, including any contractual overtime
- Recruitment and retention premia
- Shift allowances and other payments related to working outside normal hours
- On-Call payments
- Any locally agreed allowances

3.4 General Conditions

The amount of pay to be protected will be calculated by subtracting the pay in the new or amended post from the pay in the previous post subject to section 4.3. Where levels of pay are variable due to shift patterns and other factors then a reference period of 12 weeks prior to any agreed notice period will be used to determine the rate of pay. Should this reference period not be typical of a person's work patterns, for example if it includes period of long term sick, managers may approve a more representative 12 week period in exceptional circumstances.

Any subsequent improvements or increments applying to the band will be offset against the level of protected pay.

Employees in receipt of pay protection will be required to participate on an equitable basis within departments on the allocation of overtime, shift working or additional duties. Additional payments will be offset against protected earnings.

Staff must not unreasonably refuse a suitable alternative job which subsequently becomes available which would reduce the level of pay protection. This could include a move to a more senior post. Should an employee decline to apply or accept a post commensurate with the protected wage or salary the protection will cease immediately.

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Where there is a reduction in hours in the new post, the employee will be expected to work any available hours in the new role that fall within the former working arrangements up to the level of hours previously worked. Payment for such additional hours will be offset against any protected pay. Failure to work such additional hours may result in the cessation of protection.

Any additional earnings from work in the new post will be remunerated at the rates attached to the new post.

3.5 Periods of Protection

Eligibility for protection payments will be based on the following service at the point of transfer to the revised post (See section 4.2.4.):

Service	Protection
Up to 2 years	1 month
More than 2 years and less than 4 years	3 months
More than 4 years and less than 7 years	6 months
More than 7 years and less than 10 years	9 months
More than 10 years	1 year

3.6 Exclusions

The following circumstances are excluded from being considered for pay protection or will result in pay protection coming to an end earlier than the provision in section 4.4:

- Where an employee moves of his/her own volition to a new post including a lower banded post
- When an employee is appointed to a post which attracts an equal or higher salary
- When an employee is subject to a Disciplinary or Capability sanction that requires them to transfer to a new post
- Due to ill health, where it is determined medical redeployment is appropriate and a suitable post is available.
- When the employee leaves the Trust including those that retire and return.

3.7 Pension Benefits

If pay decreases as a result of reorganisation, the employee may, if the Trust agrees, be able to have their period of membership at the higher rate of pay protected (sometimes known as 'preserved' benefits). This is dependent upon which NHS Pension Scheme the individual is a member of, and will not be permissible in all cases. For further information employees would need to contact the Trust Pension Advisor or NHS Pensions directly.

If the relevant pension scheme permits this option the employee should ask the Trust, in writing, normally before they transfer to the new post but no later than three months after the pay reduction. If the Trust has agreed, the NHS Pensions Agency will calculate benefits in two ways when the employee accesses their pension:

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- Separately for the 2 periods of higher and lower pay
- Using pensionable pay at retirement for all their membership

They will use whichever method gives the bigger pension.

3.8 Subsequent Changes of Post

Each subsequent change of post covered by this agreement shall attract protection in its own right.

3.9 Employee Responsibilities

Staff members have a responsibility to ensure that the pay protection they are receiving is correct. Failure to make appropriate declarations could be deemed fraudulent and/or subject to the Trust disciplinary Policy (BTHFT - Procedure, 2019). Staff must advise their line manager of the following circumstances:

- When pay protection is incorrect
- When the pay protection has not ended in line with the timescales in this policy
- When incremental or cost of living increases have not been reflected in the amount of pay protection received

3.10 Suspicion of Fraudulent Activity

Any suspicions of fraudulent activity will be referred to the Trust's Counter Fraud Specialist for detailed information gathering. Should such an investigation find reasonable grounds to suspect an offence has been committed, further action will be taken, in accordance to the Trust's counter fraud and corruption policy (BTHFT - Procedure, 2020). Further advice can be sought from the trust's Counter Fraud Specialist.

4 References and Associated Documents

BTHFT - Procedure, 2017. *Organisational Change and Redundancy Policy*. [Online] Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-255.docx> [Accessed 18 7 2019].

BTHFT - Procedure, 2019. *Disciplinary Policy*. [Online] Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-525.docx> [Accessed 09 07 2020].

BTHFT - Procedure, 2020. *Fraud, Bribery and Corruption Policy*. [Online] Available at: <http://fcsp.xfyldecoast.nhs.uk/trustdocuments/Documents/CORP-POL-136.pdf> [Accessed 09 07 2020].

NHS Employers, 2019. *NHS Terms and Conditions of Service Handbook*. [Online] Available at: <https://www.nhsemployers.org/tchandbook> [Accessed 18 7 2019].

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Appendix 1: Transition Arrangements for Staff from the Former Blackpool PCT & North Lancashire PCT.

This policy is subject to revision in line with all Trust documentation with the usual life cycle of policies and procedures being no more than 4 years.

The Trust is facing difficult financial hardship and it is essential that our policies and procedures reflect that position whilst also seeking to balance the needs of employees.

This policy combines all three documents which form part of the existing pay protection provision in place across the Trust. This three tier system is resulting in inequality and may result in the loss of key employees, increased turnover and or reduced mobility.

Presently there are 29 employees in receipt of pay protection (18 on long term protection) which is less than 1% of our workforce. It is accepted that a move to the new policy with immediate effect may cause potential financial hardship to those employees who are currently in receipt of extended or permanent (marked time) pay protection.

Following significant dialogue a compromise has been reached that will see the following transition arrangements apply with effect from the ratification date of this policy:

- Employees from the former PCT's who are currently not in receipt of pay protection will transfer to this revised policy with effect from 1st April 2021 which is in line with the current changes to national terms and conditions of employment
- Employees presently in receipt of pay protection, including those on life time protection will continue to retain their pay protection in line with their previous policy arrangements until such time as the pay protection expires
- In both of the above scenarios, this entitlement will cease in the event of a contract renewal / reissue to a Blackpool Teaching Hospital Contract

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Appendix 2: Equality Impact Assessment Form					
Department	HR	Service or Policy	Protection of pay	Date Completed:	1 st February 2019
GROUPS TO BE CONSIDERED Deprived communities, homeless, substance misusers, people who have a disability, learning disability, older people, children and families, young people, Lesbian Gay Bi-sexual or Transgender, minority ethnic communities, Gypsy/Roma/Travellers, women/men, parents, carers, staff, wider community, offenders.					
EQUALITY PROTECTED CHARACTERISTICS TO BE CONSIDERED Age, gender, disability, race, sexual orientation, gender identity (or reassignment), religion and belief, carers, Human Rights and social economic / deprivation.					
QUESTION	RESPONSE		IMPACT		
	Issue	Action	Positive	Negative	
What is the service, leaflet or policy development? What are its aims, who are the target audience?	To offer a level of pay protection to staff who are moved as a consequence of the Trusts actions	None			
Does the service, leaflet or policy/ development impact on community safety • Crime • Community cohesion	No	None			
Is there any evidence that groups who should benefit do not? i.e. equal opportunity monitoring of service users and/or staff. If none/insufficient local or national data available consider what information you need.	No, this document applies to all staff	None			
Does the service, leaflet or development/ policy have a negative impact on any geographical or sub group of the population?	No	None			
How does the service, leaflet or policy/ development promote equality and diversity?	This document applies to all staff so does not specifically promote equality and diversity	None			
Does the service, leaflet or policy/ development explicitly include a commitment to equality and diversity and meeting needs? How does it demonstrate its impact?	No as this document applies to all	None			
Does the Organisation or service workforce reflect the local population? Do we employ people from disadvantaged groups	Not applicable	None			
Will the service, leaflet or policy/ development i. Improve economic social conditions in deprived areas ii. Use brown field sites iii. Improve public spaces including creation of green spaces?	No	None			
Does the service, leaflet or policy/ development promote equity of lifelong learning?	Yes, it promotes retraining if required	None			
Does the service, leaflet or policy/ development encourage healthy lifestyles and reduce risks to health?	Not applicable	None			
Does the service, leaflet or policy/ development impact on transport? What are the implications of this?	Yes, the policy links to a potential transfer or location	None			
Does the service, leaflet or policy/development impact on housing, housing needs, homelessness, or a person's ability to remain at home?	No	None			
Are there any groups for whom this policy/ service/leaflet would have an impact? Is it an adverse/negative impact? Does it or could it (or is the perception that it could exclude disadvantaged or marginalised groups?	No this policy applies to all staff	None	Positive impact for carers		
Does the policy/development promote access to services and facilities for any group in particular?	No	None	Carers		

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Does the service, leaflet or policy/development impact on the environment during development or at implementation?	No	None		
ACTION:				
Please identify if you are now required to carry out a Full Equality Analysis		Yes	No	(Please delete as appropriate)
Name of Author:	Eleanor Palmer-Rigby		Date Signed:	01.02.2019
Signature of Author:				
Name of Lead Person:	Lesley Smith-Payne		Date Signed:	01.02.2019
Signature of Lead Person:				
Name of Manager:	Lesley Smith-Payne		Date Signed:	01.02.2019
Signature of Manager:				

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