

## Protection of Pay and Conditions of Service Policy & Procedure

<b>Policy Owner</b>	<b>People Partner</b>
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## **Executive Summary**

This Policy and Procedure outlines Leeds Community Healthcare NHS Trust's approach to managing the protection of pay and conditions of service for employees who are affected by change.

This has been drafted following consideration of bench marking information with other Trusts.

In ensuring good management practice, this Policy and Procedure sets out the arrangements for safeguarding the pay and conditions of service of individual staff adversely affected by organisational change, as an alternative to redundancy and early retirement.

## **Equality Analysis**

Leeds Community Healthcare NHS Trust's vision is to provide the best possible care to every community. In support of the vision, with due regard to the Equality Act 2010 General Duty aims. Equality Analysis has been undertaken on this policy.

## **Pension**

This policy may affect your pensionable pay and could impact on your pension. Further information is available from the NHS Pension agency on [www.nhsbsa.nhs.uk/pensions](http://www.nhsbsa.nhs.uk/pensions) or (0113) 2066222.

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## **1. Introduction**

This document sets out how Leeds Community Healthcare NHS Trust's will manage the protection of pay and conditions of service for employees who are affected by change, in the following circumstances:-

Short-term protection of earnings whether or not downgrading is involved and/or Long-term protection of basic wage/salary where downgrading is involved. The Protection of Pay Policy and Procedure has been drafted to comply with statutory requirements, professional codes of conduct and following ACAS guidance. This should be read together with other relevant Trust policies, procedures and local guidance.

### **1.1 Guiding Principles**

The Trust believes that an integral feature of being successful will depend upon its ability to identify the need for change and to manage that change effectively, taking into account management objectives as well as the aspirations, well-being and employment rights of its staff.

In ensuring good management practice, this Policy sets out the arrangements for safeguarding the pay and conditions of service of individual staff adversely affected by organisational change, as an alternative to redundancy and early retirement.

The Policy and Procedure may be reviewed at the request of Management or Staffside by giving four weeks' written notice with reasons for the review.

## **2. Aims And Objectives**

This Policy will apply where organisational change results in an employee having to move to an alternative post where:

- a) Earnings are lower due to a change in band affecting basic pay i.e. the maximum of the band of the new post is less than the post held previously
- b) Earnings are lower due to a reduction in earnings additional to basic pay (e.g. night duty, unsocial hours etc)

Any one of these reasons, or equally a combination, may result in a loss of earnings and the application of the Protection of Pay Policy.

LONG-TERM pay protection would apply in circumstances relating to (a)

SHORT-TERM pay protection would apply in circumstances relating to (b)

A combination of short-term and long-term pay protection could be paid depending on the circumstances.

The Protection of Pay Policy does not apply to any employee who, as an outcome of a performance, sickness or disciplinary procedure is redeployed to a new post on a lower band as a result of such a move, or receives a reduction in basic contracted working hours and thereby suffers a loss of earning. In addition, it does not apply to an employee that has requested or made choices in relation to step down to retirement.

Protection may be terminated during the protected period, if an employee unreasonably refuses a subsequent offer of suitable alternative employment in a comparable post at the previous band, or a post where the earnings are comparable to the earnings in the previous post. Prior to any decision being made this should be discussed with HR taking account of any individual circumstances.

### **3. Definitions**

#### **3.1 Organisational Change**

This can be as a result of any structural or managerial change in the Trust that impacts on service provision and job content or structure.

#### **3.2 Basic Wage Or Salary**

This is the weekly or monthly sum due in respect of basic hours worked by the employee within the standard working week for his/her staff group, plus any discretionary award referred to in Appendix 1, reckoned on the day immediately preceding the first day of employment in the new post. Excluded are any payments for temporary movement into a higher pay band or other payments made for a temporary period. Also excluded are those payments listed in Appendix 2.

NB The monetary value of a distinction award is protected rather than the award itself.

#### **3.3 Earnings In The New Post**

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

#### **3.4 Reckonable Service**

Entitlement to short-term and long-term protection is subject to 12 months qualifying period. Reckonable service means the total continuous service with the Trust or one of its predecessor organisations. Any service however, which has already been the subject of a redundancy payment will be excluded.

#### **3.5 Alternative Employment**

This occurs when as a result of organisational change, performance, sickness or disciplinary procedures an employee is moved into a new post irrespective of grade or title that carries an hourly rate lower than that for the previous post or a salary scale with a

maximum point of the previous post, or lower than that of the personal grade held in the previous post (see section 2 for circumstances where pay protection applies).

## **4. Responsibilities**

All staff employed by Leeds Community Healthcare NHS Trust must work in accordance with the Leeds Safeguarding Multi-agency Policies and Procedures and local guidelines in relation to any safeguarding concerns they have for service users and the public whom they are in contact with.

### **4.1 Joint Responsibilities**

Good working relations are vital for the Trust to operate successfully and provide its essential services. Management, trade unions and employees accept the responsibility of working together on organisational change issues in good faith and with goodwill with the shared intention of facilitating good working relations.

### **4.2 Manager's Responsibilities**

It is the manager's responsibility to offer support to an employee who is affected by organisational change and to ensure that appraisals and PDPs where appropriate are designed to support employees to maintain skills, knowledge and experience to support them in securing a post at their former band.

It is the responsibility of the manager to make reasonable requests of an employee, whose basic salary and/or variable earnings are protected, to undertake overtime, shift work or other additional duties up to the level at which the employee's earnings in the new post equal the protected earnings.

### **4.3 Senior Manager's Responsibilities**

It is the responsibility of senior managers to ensure that the relevant staff within their areas of responsibility are aware of this Policy and that the procedure is followed.

### **4.4 Employee's Responsibilities**

It is the responsibility of the employee if offered, to accept a suitable post at the protected band/grade. Failure to do so will lead to the loss of the protection arrangement. In addition, it is the employees responsibility to undertake any overtime, shift work or other additional duties, within reason, up to the level at which their earnings in the new post equal the protected earnings. Further to this, employees should make themselves aware, and if appropriate seek help, support and advice to deal with the stress of organisational change where required.

### **4.5 Workforce Department Responsibilities**

The Workforce Department will:

- Work in partnership with Managers and Employee Representatives to ensure employees are treated fairly and consistently within the framework of the policy
- Advise managers of options available should an employee be managed under this policy.

#### 4.6 Trade Union Responsibilities

The trade unions play a vital role in:

- Supporting employees in any meetings
- Articulating the issues and suggesting solutions

#### 4.7 Occupational Health

The Occupational Health Team is available to support managers and employees during times of change.

### 5. Protection Of Pay Procedure

#### 5.1 Short-Term Protection Of Earnings

The earnings (defined in Appendix 2) are subject to short-term protection, provided they are a regular requirement of the job over a previous continuous six-month period, and satisfy the qualifying period under section 3.4 Reckonable service. Short-term protection of earnings will be offered to employees in accordance with the following table:

Continuous service with Leeds Community Healthcare NHS Trust or predecessor organisation/s	Protection period (months)
Less than 1 year	0
1 – 2 years	1
2 – 3 years	2
3 – 4 years	3
4 – 5 years	4
5 – 6 years	5
6+ years	6

The protectable earnings are calculated as an average of the previous 3 months/12 weeks basic salary plus those items listed in Appendix 2.

Earnings in the new post will be offset against protectable earnings. If for any particular pay period the earnings in the new post exceed the protectable earnings, protection of earnings is extinguished.

Short-term protection of earnings will run concurrently with long-term protection of basic salary where downgrading is involved.

Continuation of short-term protection is conditional upon the employee agreeing to undertake any shift work, overtime or other additional duties which may be required up to the level at which earnings in the new post equal the protected earnings. In applying this condition, managers should have due regard to the personal circumstances of the employee and make clear to individuals, prior to commencement of the protection, any regular requirements of the post relating to shift work, overtime etc.

## 6. Long Term Protection

An employee who accepts a post at a lower band as a result of organisational change is entitled to protection of basic wage or salary including the benefits of any subsequent improvements or increments in accordance with the following table:

Completed years of reckonable service with Leeds Community Healthcare NHS Trust or predecessor organisation/s	Protection period (years)
12 months or more qualifying service	2 years

The Trust aims to support staff who find themselves in a long-term protection situation to regain the level at which they had previously been working. As redeployment to a post at a lower band may reduce the scope for an individual to maintain their skills and knowledge at the level previously acquired it is important that the Manager and individual meet regularly to review and agree the development requirements of the individual and the action s/he is taking to prepare and apply for posts commensurate with the level previously held.

In such cases reasonable opportunities will be given to provide relevant training in order to enable the employee to progress to a point where protection of pay is no longer required.

Should an individual not participate in review meetings, nor make reasonable progress/development against the objectives and personal development plan for the post, consideration must be given to withdrawing the protection arrangements in the above sections. At this stage, referral should be made to the 'Managing Concerns with Performance' policy.

Protection will cease if the employee moves on his or her own application to another post, regardless of grade.

## **7. Protection Of Conditions Of Service**

Employees required to move to a new post at a lower grade will retain the following conditions of service appropriate to the former post, during their protection period:

- Subsistence and travel
- Notice period
- Annual Leave (with any subsequent improvements within the protection period)

## **8. Entitlement to opt for terms and conditions of the new (or any subsequent) post**

Employees with an entitlement to long-term protection may at any time opt for the complete package of pay and conditions of service applicable to the new post. This option, once exercised, cannot be cancelled.

## **9. Trial Periods**

If there is a difference between the terms of alternative and the previous employment as outlined in the Redundancy Policy, pay protection will start from commencement of the trial period (subject to the eligibility criteria within this Policy).

## **10. Pay Protection Period**

At the start of pay protection staff will receive the pay and conditions of service of the lower banded post at the equivalent or nearest highest point to current salary before protection. The protected amount is the annual difference between the higher and lower salaries. The pay slips will show the new band and salary plus an additional amount of protection which is equivalent to 1/12<sup>th</sup> of the protected amount each month. (Subject to section 5.1 protectable earnings) At the end of the protection period the salary will be the equivalent to the point on the lower band.

If as a result of organisational change protection is applied staff will retain original increment dates when they accept a post at a lower band.

If subject to further pay protection during the initial protection period, the protection will be applied concurrently. See example below.

Employee at band 8a accepts offer of SAE at band 7 the start date for this is 5 January 2014.

On 5 June 2015 the employee accepts an offer of alternative employment at band 6.

Pay protection would be overlapping e.g. Band 8a 5 January 2014 to 4 January 2016  
Band 7 5 January 2016 to 4 June 2017

Band 8a for 2 years

5 January 2014	4 January 2016
5 June 2015	4 June 2107

Band 7 for 2 years

## **11. Records**

Management is responsible for keeping records of selection interviews and pay protection meetings and appeals. The records will usually be notes of meetings rather than a verbatim record.

## **12. Review Arrangements**

This policy and procedure will be reviewed every 2 years unless circumstances require this to be amended earlier.

## **13. Associated Documents**

Redundancy Policy

## **14. References**

CIPD  
ACAS

## **15. Monitoring Compliance And Effectiveness**

A workforce lead will be identified to monitor compliance with the policy. Issues identified will require the formation of an action plan.

## **16. Approval and Ratification Process**

This policy will be ratified at JNCF and the Remuneration Committee.

## **17. Dissemination and Implementation**

Following ratification this policy will be available to all staff via the Trust intranet site. A short summary of its contents will also be published with a further notification appearing in Community Talk.

## **Appendix 1 - Basic salary/wage/hourly rate definition**

The individual's basic hourly rate in respect of his/her basic contracted hours

PLUS:

- Discretionary awards (NB the monetary value of these will be protected rather than the award itself) e.g. as paid to M&D

Basic salary/wage/hourly rate will be reckoned on the day immediately preceding the first day of employment in the new post.

## **Appendix 2 – Short-term protection of earnings/protectable earnings definition**

Basic salary/wage/hourly rate as defined in Appendix 1, plus the monthly or weekly average earnings over the 3 months immediately preceding the date of the organisational change of the following:

- Overtime\*
- Stand-by\*
- Enhancements relating to Maintaining round the clock services – unsocial hours, on-call\*
- Domiciliary Fee income (M&D)\*
- Sessional payments M&D\*
- Any other additional payments and supplements\*

**Note: \* these items MUST be:**

- (a) A contractual feature of the individual's employment for the items to be included in protectable earnings or
- (b) A regularly and formally-rostered requirement. Under the terms of this agreement regular and formally-rostered means that the department requires this working arrangement to occur and that it is formally-rostered into the individual's working pattern.

**No protection will be afforded to ad hoc payments of any description or those which do not meet the above.**

Protectable earnings will be re-calculated, and any arrears due paid, whenever a retrospective pay award is agreed and the effective date of the pay award falls before or during the 3 month or 12 week computation period.

## LCH Policy Equality analysis

<b>Name of Policy</b>	Pay Protection
Name and role of people completing the equality analysis	Richard Worlock Patient Experience & Inclusion Manager
Date of analysis	8 <sup>th</sup> Sept 2014

<b>The purpose of the policy</b>	<p>This Policy will apply where organisational change results in an employee having to move to an alternative post where:</p> <p>a) Earnings are lower due to a change in band affecting basic pay i.e. the maximum of the band of the new post is less than the post held previously</p> <p>b) Earnings are lower due to a reduction in earnings additional to basic pay (e.g. night duty, unsocial hours etc)</p> <p>Any one of these reasons, or equally a combination, may result in a loss of earnings and the application of the Protection of Pay Policy.</p> <p>LONG-TERM pay protection would apply in circumstances relating to (a) SHORT-TERM pay protection would apply in circumstances relating to (b)</p> <p>A combination of short-term and long-term pay protection could be paid depending on the circumstances.</p> <p>The Protection of Pay Policy does not apply to any employee who, as an outcome of a performance, sickness or disciplinary procedure is redeployed to a new post on a lower band as a result of such a move, or receives a reduction in basic contracted working hours and thereby suffers a loss of earning. In addition, it does not apply to an employee that has requested or made choices in relation to step down to retirement.</p> <p>Protection may be terminated during the protected period, if an employee unreasonably refuses a subsequent offer of suitable alternative employment in a comparable post at the previous band, or a post where the earnings are comparable to the earnings in the previous post. Prior to any decision being made this should be discussed with HR taking account of any individual circumstances.</p>
	<ul style="list-style-type: none"> <li>• <b>Consideration of relevant information – what is known about peoples and groups access, experience or outcomes</b></li> </ul>

<ul style="list-style-type: none"> <li>• Any real or potential impact positive or negative that any policy change will have on the protected groups</li> </ul>	
Age	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 ( <i>only eliminating discrimination</i> )	No
<b>Conclusion</b> – when implemented consistently and transparently this policy will have a neutral effect on the Protected Characteristic groups under the Equality Act 2010.	