# Pay Protection Policy

**Version: 1**

## Summary:
This document provides details to managers and employees of Southern Health NHS Foundation Trust on pay protection arrangements.

## Keywords:
- pay protection
- retention
- redundancy
- redeployment
- reduction
- short term
- long term
- organisational change
- work related injury

## Target Audience:
All Southern Health NHS Foundation staff, covered by NHS Terms and Conditions and local terms of conditions. Managers of these staff.

## Next Review Date:
April 2020

## Approved & Ratified by:
JCNC

## Date issued:
August 2015

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## Director:
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JCNC 21 July 2015
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### Change Record

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<th>Version</th>
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### Reviewers/contributors

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
<th>Version Reviewed &amp; Date</th>
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Pay Protection Policy  
Version 1  
August 2015
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Pay Protection Policy

1. Introduction

1.1 As a consequence of mergers and acquisitions, Southern Health NHS Foundation Trust operated three (3) different legacy pay protection schemes. To remove inequalities for staff in respect of protection arrangements, the Trust has sought to harmonise the pay protection scheme under one policy and has worked, in partnership with staff representatives, to develop a new policy underpinned by principles of fairness, equality and flexibility to meet the needs of the Trust and its staff.

1.2 This policy is designed to support the retention of staff in suitable positions as an alternative to redundancy and facilitate redeployment. These arrangements apply to employees who, as a consequence of organisational change, are required to move to a new post involving a reduction in pay.

1.3 A reduction in pay may be the result of:

- A reduction in basic salary (i.e. banding),
- A reduction of total earnings (i.e. payments for work outside normal hours).

1.4 The scheme provides:

- Short-term protection of earnings, where down banding is not involved.
- Long-term protection of basic salary where down banding is involved.

1.5 The process for managing organisational change is outlined in the Organisational Change Policy and Procedure SH HR1 & SH HR1.1. Pay protection is recognised as a financial safeguard to protect earnings whilst people are afforded time where possible to get back into jobs at their previous band through continued redeployment support.

1.6 The Trust’s redeployment process enables staff in receipt of pay protection to be kept informed of suitable vacancies at their former banding and to seek preferential interviews for such posts if they meet the essential criteria. Full details of the redeployment process for staff under pay protection is available in SH HR 1.1.

1.7 The pay protection scheme will also apply to eligible employees who have to change jobs permanently to a position on lower pay due to a work related injury, illness and/or other health condition. For further details on work related injury and the provision of pay protection in these circumstances, please refer to Managing Sickness Absence Policy and Procedure toolkit for injury allowance and/ or section 22 of the Agenda for Change Handbook.

1.8 Pay protection arrangements do not apply in the following circumstances:-

- Redeployment or a change of working pattern agreed with the employee as a result of capability due to sickness (Managing Sickness Absence Policy and Procedure, SH HR54 & SH HR55).
- Redeployment as a result of action under the Trust’s Disciplinary Policy & Procedure (SH HR28 & SH HR29).
- Redeployment as a result of action under the Managing Performance (Capability) Procedure (SH HR22 & SH HR23)
- Voluntary transfer - Staff moving to a post in a lower band at their own initiative shall normally enter the new band on the same pay point, if this is at a point where the pay bands overlap or at the maximum point of the band.
- The natural or early termination of a period of acting up or a return from secondment.
2. Who does this policy apply to?

2.1 All Southern Health NHS Foundation staff covered by NHS terms and Conditions, and local terms of conditions and managers of these staff.

3. Definitions

3.1 Mark time – 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 the protection ends.

3.2 Total earnings - calculated based on an average of the previous 3 months from the date of change and includes regularly paid supplements (i.e. recruitment and retention premia, payments for work outside normal hours and high cost area supplements). This calculation will exclude any complete weeks of sickness absence. Consideration will be made, in exceptional circumstances, to vary by agreement the average period for calculation.

4. Pay Protection Scheme

Short term Pay Protection

4.1 Short term protection applies when an employee is required to move to a new post because of organisational change on the same band, and the total earnings in the new post are less.

4.2 The protection period is based on continuous time served in the band as follows:

<table>
<thead>
<tr>
<th>Time served in band / grade</th>
<th>Protection period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 4 months</td>
<td>No protection</td>
</tr>
<tr>
<td>4 to 12 months</td>
<td>2 months</td>
</tr>
<tr>
<td>More than one year but less than 5 years</td>
<td>6 months</td>
</tr>
<tr>
<td>5 years or more</td>
<td>12 months</td>
</tr>
</tbody>
</table>

Long term Pay Protection

4.4 When an employee is required to move to a new post because of organisational change that attracts a lower basic annual salary.

4.5 Protection will be afforded of basic pay for the current pay band, on a mark time basis. The protection period is based on continuous time served in the band as follows:

<table>
<thead>
<tr>
<th>Time served in band / grade</th>
<th>Protection period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 1 year</td>
<td>3 months</td>
</tr>
<tr>
<td>1 year but less than 2 years</td>
<td>12 months</td>
</tr>
<tr>
<td>2 years but less than 5 years</td>
<td>18 months</td>
</tr>
<tr>
<td>5 years or more</td>
<td>3 years</td>
</tr>
</tbody>
</table>
4.6 The protection of pay is conditional on the individual moving to, or applying for a suitable post more in keeping with their protected conditions as and when such a suitable post becomes available.

4.7 If a backdated pay award affects the pay protection calculation, the protected pay figures will be recalculated accordingly.

4.8 At the conclusion of the pay protection period, the employee will receive the correct pay for the post into which they have been redeployed.

Other Conditions of Service

4.9 Following transfer to a new post all contractual terms and conditions of service, with the exception of the pay protection arrangements, and in some cases annual leave (see 4.10), will be those pertaining to the band of the new post and a new employment contract will be issued.

Annual Leave

4.10 Annual leave is accrued on the basis of continuous service and not usually affected by redeployment unless between national NHS and other local terms and conditions. If a member of staff is redeployed to a post with a reduced annual leave entitlement, they will be protected on a long term basis according to the length of time they have received a greater leave entitlement.

Suitable Alternative Employment

Banding change – difference of more than one band

4.11 During a process of organisational change staff may be asked to express preferences for roles for which they meet the person specification and which are the same band or only a difference of one band.

4.12 If, however, at the end of a consultation process no suitable alternative posts have been identified and the staff member is likely to become at risk, or is already at risk of redundancy, it may be prudent to consider pay protection for posts that are two (2) bands lower than the current post. There may be circumstances where this additional flexibility is welcomed and agreed by the staff member (for example to support working longer/step down etc.). Consideration must, however, be made by management in respect of the cost of pay protection versus redundancy alongside other relevant resourcing factors.

Reduction in working hours

4.13 If staff are required to reduce their working hours as an alternative to redundancy, there is no automatic entitlement to protection of earnings. A reduction of hours should be considered as part of the overall suitability of the alternative post with staff agreement, taking account of the extent of any change.

Redeployment to another NHS Trust

4.14 In certain circumstances the Trust will proactively support staff to look externally for suitable alternative employment, especially where job opportunities may be greater externally than they are internally. If a suitable alternative post is not available within the Trust and the member of staff is likely to become at risk or is already at risk of redundancy, it may be prudent to consider meeting pay protection costs in order to facilitate an appointment to a lower banded post in another NHS Trust. Consideration must however be made in respect of the cost of pay protection versus redundancy, alongside other relevant resourcing factors.
Continuous professional development

4.15 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.

Preservation of NHS pension benefits

4.16 Under the provisions of the NHS pension scheme, an employee subject to down banding due to organisational change may apply to preserve their pension benefits, based on the previous level of pay. Applications must be made within three months of the date from which pensionable salary is to be reduced e.g. the end of the pay protection period.

4.17 Staff who wish to consider this option should contact the pension's officer for advice, preferably before transfer to the new post as this needs to be actioned with the Pension Agency within three (3) months of the change.

More information is available from the NHS Business Services Authority: http://www.nhsbsa.nhs.uk/

Protection of pay member factsheet:
http://www.nhsbsa.nhs.uk/Pensions/Documents/Pensions/Protection_of_Pay_Member_Factsheet_V1.0_07.2013(1).pdf

Application form SM R9 App:

Appeals

4.18 If an employee considers they have suffered a detriment as a result of this process they need to raise their complaint through the Trusts Grievance Procedure SH HR 26. This will be dealt with in line with the principles outlined in stage 3 of the Grievance Procedure.

5. Policy review

5.1 The policy and processes contained within these documents will be in place for three years, following approval of a review and amendments. An earlier review can take place should exceptional circumstances arise resulting from this policy; in whole or in part, being insufficient for the purpose and/or if there are legislative changes.

6. Associated trust documents

- Organisational Change Policy and Procedure SH HR1 & SH HR1.1
- Disciplinary Policy & Procedure (SH HR28 & SH HR29).
- Managing Performance (Capability) Procedure (SH HR22 & SH HR23).
- Grievance Procedure SH HR 26.

7. Supporting references

- Agenda for Change Handbook
Appendix 1: Equality Impact Assessment

The Equality Analysis is a written record that demonstrates that you have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by the Equality Act 2010.

Stage 1: Screening

<table>
<thead>
<tr>
<th>Date of assessment:</th>
<th>June 2015</th>
</tr>
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<tbody>
<tr>
<td>Name of person completing the assessment:</td>
<td>Ricky Somal</td>
</tr>
<tr>
<td>Job title:</td>
<td>Equality and Diversity Lead</td>
</tr>
<tr>
<td>Responsible department:</td>
<td>Human Resources</td>
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**Intended equality outcomes:**

Pay protection is a way of safeguarding the pay and conditions of service of employees whose pay is adversely affected by organisational change. It is meant to allow the individual to find another post at their original pay band or to adjust to the lower salary within the protection period.

It benefits the employer because it enables organisational change to be developed/delivered in a more open way. Employee may be more open and willing to change if they can see that their pay will be protected for a period after the new change. Protection can facilitate change.

**Who was involved in the consultation of this document?**

JCNC Terms and Conditions Sub Group
JCNC Members
LNC Members

Please describe the positive and any potential negative impact of the policy on service users or staff.

In the case of negative impact, please indicate any measures planned to mitigate against this by completing stage 2. Supporting information can be found be following the link: [www.legislation.gov.uk/ukpga/2010/15/contents](http://www.legislation.gov.uk/ukpga/2010/15/contents)

<table>
<thead>
<tr>
<th>Protected Characteristic</th>
<th>Positive impact</th>
<th>Negative impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age</td>
<td>The Employment Statutory Code of Practice produced by the Equality and Human Rights Commission; under Exceptions for service related benefits. Schedule 9, Para 10 (1) of the Equality Act 2010 states: “In many cases, employers require a certain length of service before increasing or awarding a benefit, such as pay increments, holiday entitlement, access to company cars or financial advice. On the face of it, such rules could amount to indirect age discrimination because older workers are more likely to have completed the length of service than younger workers. However, the Act</td>
<td>The policy (in terms of short term protection) might adversely affect younger staff who are likely to have less service but this can be objectively justified within the Equality Act. Final Pension allowances may be affected by changes in salary. Depending on Pension scheme and age the affects will differ. Negative impacts of changes can be mitigated by requesting protection of pension entitlements</td>
</tr>
</tbody>
</table>
provides a specific exception for benefits based on five years’ service or less*

Disability

Section 22 of Agenda for Change on Injury Benefit:
“22.14 Eligible employees who have to change jobs permanently to a position on lower pay due to a work related injury, illness and/or other health condition, will receive a period of protected pay that is the same as local provision for pay protection during organisational change.”

<table>
<thead>
<tr>
<th>Gender reassignment</th>
<th>No adverse impacts identified at this stage of screening</th>
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<tbody>
<tr>
<td>Marriage &amp; civil partnership</td>
<td>No adverse impacts identified at this stage of screening</td>
</tr>
<tr>
<td>Pregnancy &amp; maternity</td>
<td>No adverse impacts identified at this stage of screening</td>
</tr>
<tr>
<td>Race</td>
<td>No adverse impacts identified at this stage of screening</td>
</tr>
<tr>
<td>Religion</td>
<td>No adverse impacts identified at this stage of screening</td>
</tr>
<tr>
<td>Sex</td>
<td>Decision making around pay protection is not based on any protected characteristics as the policy will be implemented for all permanent staff irrespective of particular groups an employee may belong to. Though it is acknowledged that the scale of protection is based on length of service, which will more adversely affect employees with short service and so potentially younger employees (with less continuous service); or people who have taken a career break, for example women - are more likely to be affected by this business arrangement.</td>
</tr>
<tr>
<td>Sexual orientation</td>
<td>No adverse impacts identified at this stage of screening</td>
</tr>
</tbody>
</table>

Stage 2: Full impact assessment

<table>
<thead>
<tr>
<th>What is the impact?</th>
<th>Mitigating actions</th>
<th>Monitoring of actions</th>
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