

PAY PROTECTION POLICY

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Target audience:	All employees, including non-executives but excludes contractors & temporary staff

CONSULTATION SCHEDULE

Name and Title of Individual/Group Consulted	Date Consulted
Head of HR	May 2019
Staff Engagement Group	May 2019
Regional Staff Side	July 2019

APPROVALS & RATIFICATION SCHEDULE

Name of Committee approving Policy	Date
Communications, Engagement, Equalities & Employment	June 2019
Governing Body Meetings in Common	Nov 2019
Integrated Care Board	July 2022

VERSION CONTROL

V	Version/Description of amendments	Date	Author/amended by
1	New Policy	June 2019	M&L CSU
2	Adapted for the ICB	July 2022	Jane Chapman
3	Reviewed and updated, as per schedule	May 2023	Zena Richards

IMPACT ASSESSMENTS – available on request

	Stage	Complete	Comments
Equality Impact Assessment	1	Nov 2020	Will be completed when policy is finalised
Quality Impact Assessment			
Privacy Impact Assessment			

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1. POLICY STATEMENT

- 1.1 NHS Staffordshire and Stoke on Trent Integrated Care Board (hereafter referred to as the ICB) aims to be an exciting and innovative place to work. We want to ensure we are an excellent organisation at the forefront of best employment practice, and that our employees have the highest possible level of employment security.
- 1.2 The aim of this policy is to ensure that the arrangements for pay protection are clear and applied appropriately and fairly for those members of staff who may require protection of their pay at some point during their employment with the ICB.
- 1.3 The purpose of pay protection is to provide an employee with a period of time to prepare for a reduction of earnings or secure an alternative role at the previous salary during the pay period.

2. SCOPE

- 2.1 This policy applies to all employees of the ICB. Its purpose is to provide a framework for effective implementation of arrangements for the protection of pay and conditions of service that will apply to employees when required (as a result of organisational change) by management to:
- Move to a suitable/alternative role at a lower band of post (usually one pay band below substantive post)
 - Accept a reduction of basic contractual hours
 - Move to a new post where changes to allowances that form part of the contractual terms and conditions, (excluding overtime), would result in a loss of earnings
- 2.2 This policy also provides a short-term protection provision, if staff experience a reduction in their total income, as a result of loss or reduction in additional earnings.
- 2.3 The principles of this policy also apply to staff who require pay protection in the following situations:
- Where there has been a re-evaluation of the banding of their post, which results in a lower band, whilst adhering to the existing commitment of only reviewing AFC bandings when a significant proportion of the role has changed
 - Where the employee has operated in a job share role and the ICB has been unable to find a replacement job share partner, requiring changes to the role or redeployment;
 - Where 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

- 2.4 These arrangements apply to staff who hold a permanent or fixed term contract (over 24 months only) of employment. This policy does not apply to temporary positions; bank contracts or where staff are redeployed as a result of disciplinary action, for capability/performance reasons or as a result of sickness absence management (with the exception of section 22 of NHS Terms and Conditions Handbook) – see 5.9 for further details
- 2.5 The policy applies at the date of implementation and does not supersede any arrangements agreed under the previous policy versions.

3. ROLES & RESPONSIBILITIES

3.1 The ICB is responsible for:

Establishing and reviewing pay protection protocols and assessing their impact on staff and their effect on wider service provision and business efficiency

3.2 Employees are responsible for:

- a) Ensuring they are familiar with this policy if they are placed under pay protection;
- b) Actively considering and applying for opportunities for suitable alternative employment in which the total pay and other conditions are equal to or exceed those protected (documentation or supporting evidence may be requested); and
- c) Being open to re-training and development opportunities in order to maximise options for suitable alternative employment

3.3 Line Managers are responsible for:

- a) Ensuring they are familiar with this policy and seeking advice from HR before initiating organisational change and/or confirming pay protection arrangements
- b) Ensuring that they have a detailed understanding of this policy and that they are able to apply the principles
- c) Ensuring their staff are aware of and understand the policy and are notified of any changes
- d) Regularly reviewing the protection arrangements of their staff and the impact of any subsequent pay changes that may have an impact on these
- e) Where an individual is subject to protection it is recommended that managers are proactively supporting their career development

3.4 Human Resources are responsible for:

- a) Overseeing the implementation of this policy, ensuring legal and procedural updates are incorporated in a timely manner

- b) Ensuring that managers are supported in the implementation of this policy and that managers undertake regular reviews of any protection arrangements that apply to their staff
- c) Monitoring the implementation of this policy and ensuring that associated practices are managed fairly and consistently across the organisation
- d) Supporting line managers with training and guidance on the operation and implementation of this policy

3.5 **Trade Unions** are responsible for:

- a) Engaging in the development, review and monitoring of this policy
- b) Assisting members with enquiries about the application of this policy as requested

4. DEFINITIONS

4.1 ORGANISATIONAL CHANGE

Any NHS or management initiated change in the organisation, including both structural and managerial alterations.

4.2 MARKED TIME

Pay and pay related conditions are frozen and remain unchanged by inflationary pay awards, incremental or other progression.

4.3 DOWNGRADING

Where a new post, irrespective of its banding, carries an hourly rate lower than that of the previous post. Furthermore, a salary scale with a maximum point lower than the maximum point for the previous post, or lower than that of the Band held in the previous post.

4.4 SHORT-TERM PROTECTION

Protection of an employee's additional earnings (i.e. other than basic salary) where employee's total income is reduced as a result of changes to their post, such as; hours, contractual overtime, additional duties that attract a payment, unsocial hours, on call, high cost area supplement etc.

Where an employee has accepted a post as suitable alternative employment which does not attract the AfC Recruitment & Retention premia, but their current post does, then Recruitment & Retention premia pay shall be protected to the last day of the 12 month period for which it was applied.

Short term pay protection does not include pay relating to additional hours, additional responsibilities, voluntary overtime.

4.5 LONG-TERM PROTECTION

Protection of basic salary on a marked time basis (refer to para 4.2). This applies where a member of staff is downgraded as a result of organisational change and will

be implemented from the effective date of the change. In many cases this could minimise the actual impact to the employee at the end of the pay protection period.

Please note: short and long term protection will run concurrently where applicable.

4.6 BASIC SALARY OR WAGE

This is the weekly or monthly sum due in respect of basic hours worked by the member of staff concerned within the standard working week. It excludes any payments made in respect of acting up (or additional responsibilities), overtime, working outside normal hours payments, AFC recruitment and retention premia, standby or on call duty.

4.7 RECKONABLE NHS SERVICE

For the purposes of protection, reckonable NHS service is calculated on the basis of the NHS service up to the date of the change and means continuous full time or part time employment with the present or any previous NHS employer. Where there has been a break in service of 12 months or less, the period of employment prior to the break will count as reckonable service (in line with section 16 of the NHS Terms and Conditions of Service Handbook).

5. PRINCIPLES

5.1 The Pay Protection policy will be applied to staff in accordance with the organisation's Diversity in Employment Policy. The fair and equitable implementation of this policy will be monitored locally by Human Resources

5.2 This policy should be read in conjunction with the ICB's Organisational Change policy.

5.3 Pay Protection shall only be applied to an employee's substantive post.

5.4 There is no automatic entitlement to a lower band post with protection as an alternative to redundancy. The relevant Line Manager will have the option of offering pay protection in accordance with the terms of this policy. In each case s/he will take into account the effect of placing an individual in a lower graded post and consider whether the new post is suitable alternative employment, with the member of staff, within the terms of ICB's Organisational Change Policy.

5.5 The organisation will endeavour at all times to redeploy staff who are at risk into new roles which match the levels of skills and responsibilities required in the previous pay band and to provide reasonable training to enable staff to fulfil a new role. However, it is recognised that this may not always be possible.

5.6 Protection of pay may cease if a member of staff unreasonably refuses any subsequent offer of another suitable post within the organisation, (as defined in the

Organisational Change Policy: (para 19.3) which attracts a basic salary or wage the same or in excess of that applying to the old post. If a staff member unreasonably refuses to accept such an offer, protection will cease with immediate effect. The employee will have the right to appeal, in accordance with Section 8.

5.7 Any earnings over and above basic pay (excluding overtime) derived from work in the new post will be paid at the rate appropriate for the new post.

5.8 Each subsequent change to the post due to an organisational change covered by this agreement shall attract protection in its own right. Periods of protection will run concurrently.

5.9 When Pay Protection *Will Not Apply*

Pay protection will not apply in the following circumstances:

- Redeployment due to lack of ability/competence to perform the duties of the existing band, as per the ICB's Performance Management Policy
- Redeployment as a disciplinary sanction
- As a result of sickness absence management (with the exception of section 22 of NHS Terms and Conditions Handbook)
- Where an employee applies for and accepts a lower band post due to personal reasons
- Following periods of secondment (whether internal or external), acting up or temporary promotion, or removal of short or long term recruitment and retention premia
- The last two pay points in Agenda for Change pay bands 8c, 8d and 9 (the annually earned points) awarded after 1 April 2014 will not be subject to pay protection
- If a member of staff is employed on a temporary or fixed term contract and has been for less than 24 months

6. PROTECTION PROVISIONS

6.1 During the period of protection, the rates used when calculating earnings in the new post will be those applicable to the new post, for example any unsociable hours worked as a requirement of the new role, shall be paid at the same rate as the new role

6.2 The affected member of staff is entitled to protection of their earnings on a marked time basis (ref para 4.2) for a maximum period as outlined below, or until the first of 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.

- The employee unreasonably refuses the offer of a suitable alternative post (ref. para 5.6)
- The basic salary for the job is above the protected pay
- The period of protection expires

6.3 LONG -TERM PROTECTION

A member of staff to whom this agreement applies who is moved from one post to another and who is downgraded as a result of the move is entitled to protection of basic wage or salary according to the table below:

For staff appointed to the CCG from 1st August 2013

Length of service with the CCG/ICB	Years of protection
Less than 12 months service	1 years pay protection
Over 1 years' service	2 years pay protection

For staff appointed to the CCG prior to 1st August 2013 or that transferred from a PCT on 1st April 2013

Length of service with the CCG/ICB	Years of protection
Less than 12 months service	1 years pay protection
Between 1 and 3 years' service	2 years pay protection
Over 3 years' service	3 years pay protection

6.4 SHORT-TERM PROTECTION

A member of staff whom this agreement applies is entitled to have certain elements of their pay in their former post in accordance with the following table:

Length of time in receipt of the pay element	Period of Pay Protection
Less than 12 months	None
More than 1 year and less than 2 years	6 months
More than 2 years	12 months

6.5 Earnings in the new post will be offset against protected earnings. If for any particular pay period the earnings in the new post exceed the protected earnings, protection of earnings is ceased for that pay period only and earnings in the new post are paid in full for that particular pay period.

Travel and subsistence expenses are not included in the calculation of earnings for this purpose.

6.6 When calculating earnings in the new post, the rates used for calculating payments in respect of overtime, work outside normal hours and other additional duties shall be those applicable to the new post.

6.7 An employee with a right to long-term protection as above may also initially have a concurrent right to short-term marked time pay protection. Until the short-term protection expires, the employee shall be paid on that basis. Thereafter, payment is on the basis of the on-going entitlement to long-term protection.

6.8 Upon the expiry of the timescales outlined above, the salary/wage of the member of staff concerned will revert to that of the new post.

7. PENSION ARRANGEMENTS

7.1 Under the provisions of the NHS Pensions Scheme, staff may apply to preserve their pension benefits, based on the previous level of pay, where, through no fault of their own are downgraded (subject to the relevant qualifying membership of the NHS Pensions Scheme). Should any individual require further Pensions Advice, please contact the NHS Pension Scheme Advisors direct.

7.2 All such applications must be made within three months of the member going on to reduced pay i.e. the pensionable salary which is to be reduced. Please access the following link for additional information:

<https://www.nhsbsa.nhs.uk/member-hub/membership-nhs-pension-scheme>

8. APPEAL PROCESS

8.1 Any grievances or appeals arising out of the operation of this policy may be raised in accordance with the ICB's Grievance Policy.

9. EQUALITY STATEMENT

9.1 The ICB recognises its responsibility to ensure that no-one is discriminated against, disadvantaged or given preference, through membership of any particular group, particularly including people with disabilities, people from different ethnic backgrounds or religions, or on the grounds of their gender, age, or sexual orientation. In response to the public sector equality duty workforce monitoring reports are produced and published.

9.2 An Equality Analysis has been carried out on this policy.

10 MONITORING AND REVIEW

10.1 This policy will be reviewed periodically by Human Resources in conjunction with ICB operational managers and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.

11 ASSOCIATED DOCUMENTS

- Organisation Change Policy
- NHS Terms and Conditions Handbook
- Equality & Diversity Policy