

## **PAY PROTECTION POLICY**

**July 2017**

HR Policy:	
Date Issued:	
Date to be reviewed:	3 years or if statutory changes are required

<b>Policy Title:</b>	<b>Pay Protection Policy</b>	
<b>Supersedes:</b>	NHS Hull Organisational Change Policy v2, Appendix A – Protection Arrangements and NHS Commissioning Support Unit, Pay Protection Policy, V 1, dated 1.12.13	
<b>Description of Amendment(s):</b>	New Policy for CCG employees	
<b>This policy will impact on:</b>	All staff	
<b>Financial Implications:</b>	No change	
<b>Policy Area:</b>	HR	
<b>Version No:</b>	1	
<b>Issued By:</b>		
<b>Author:</b>	HR team on behalf of Hull CCG	
<b>Document Reference:</b>		
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<b>Review Date:</b>	3 years	
<b>Impact Assessment Date:</b>		
<b>APPROVAL RECORD</b>	Social Partnership Forum (SPF) sub group	
	SPF	
	Governing Body	
	Governing Body – GDPR Amendments	23 March 2018
<b>Consultation:</b>	SLT CCG employees via the website SPF Sub group SPF	

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## 1 INTRODUCTION

- 1.1 This policy provides a Pay Protection framework for NHS Hull Clinical Commissioning Group, hereafter referred to as the 'CCG'.
- 1.2 The purpose of pay protection is to provide the employee with a period of time to prepare for a reduction of earnings or secure an alternative role at the previous salary during the protected pay period due to organisational change.
- 1.3 The CCG is committed to ensuring that all personal information is managed in accordance with current data protection legislation, professional codes of practice and records management and confidentiality guidance. More detailed information can be found in the CCGs Data Protection and Confidentiality and related policies and procedures.

## 2 PRINCIPLES

- 2.1 The aim of this policy is to ensure that the arrangements for pay protection are clear and applied appropriately and fairly to staff who may require protection of their pay at some point during their employment with the CCG due to organisational change.
- 2.2 The policy applies to any member of staff who as a consequence of organisational change (as per the policy) is required to move to a lower graded post (downgrading) or suffers a reduction in basic hours worked within the standard working week.
- 2.3 This policy also provides a short-term protection provision, whereby staff experience a reduction in their total income, as a result of loss or reduction in additional earnings.
- 2.4 These arrangements apply to staff who hold permanent or fixed term contracts 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 reasons or due to health.
- 2.5 Pay Protection shall only be applied to an employee's substantive post.
- 2.6 The CCG will endeavour at all times to redeploy staff 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 new roles, although it is recognised that this may not always prove possible.
- 2.7 Whilst in receipt of Pay Protection the CCG will continue to seek redeployment for the member of staff into a post at the same banding as the original post. Protection of pay will cease if a member of staff unreasonably refuses any subsequent offer of another suitable alternative post within the organisation, which attracts a basic salary or wage the same or in excess of that applying to the old post. Skills, qualifications and experience will be taken into account when making offers of suitable alternative posts. 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 10 if they do not think the offer of an alternative post was reasonable.

### 3 IMPACT ANALYSES

#### 3.1 Equality

In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation.

In developing this policy, an Equality Impact Analysis has been undertaken and is attached at Appendix 1. As a result of performing the analysis, the policy may have adverse effects on people who share *Protected Characteristics* however this policy will help to ensure that the pay protection provisions are applied consistently across the organisation

The application of this policy will be monitored alongside ESR data to ensure fair application.

#### 3.2 Bribery Act 2010

The Bribery Act 2010 makes it a criminal offence to bribe or be bribed by another person by offering or requesting a financial or other advantage as a reward or incentive to perform a relevant function or activity improperly performed. The penalties for any breaches of the Act are potentially severe. There is no upper limit on the level of fines that can be imposed and an individual convicted of an offence can face a prison sentence of up to 10 years.

The Bribery Act applies to this policy.

### 4 SCOPE

4.1 This policy will apply to employees with Agenda for Change terms and conditions of employment.

4.2 For existing staff who transferred to the CCG under COSOP / Staff Transfer Order on 01.04.2013, whose sender PCT had a written Pay Protection Policy offering more beneficial terms, those staff will be able to opt for those arrangements to be used for any Pay Protection agreements entered into before or on 31.03.15 as this is the end

of the Memorandum of Understanding (MoU) period. For existing staff not eligible for those pay protection terms then this policy shall apply.

## **5 DEFINITIONS**

### **5.1 AfC**

Agenda for Change Terms and Conditions of Employment

### **5.2 Basic Salary or Wage**

This is the weekly or monthly sum due in respect of basic contractual 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.

### **5.3 The Cabinet Office Statement of Practice (COSOP) is a code of practice, developed by Cabinet Office to support employees when work is being transferred between departments within the Civil Service or across the wider Public Sector.**

### **5.4 Downgrading**

Where a new post, irrespective of its banding, carries an hourly rate lower than that for 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 grade held in the previous post.

### **5.5 Marked Time**

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

### **5.6 MOU Period**

Memorandum of Understanding agreed nationally between NHS employers and Staff Side representatives regarding the major NHS reorganisation implemented on 01 April 2013. This document protects terms and conditions of service between 01 April 2013 to 31 March 2015.

### **5.7 Organisational Change**

Any NHS or management initiated change in the organisation of the healthcare

provision or commissioning arrangements, including both structural and managerial alterations.

## **6 ROLES / RESPONSIBILITIES / DUTIES**

6.1 Employees are responsible for the following:

- Initiating and completing where appropriate any paperwork in relation to protecting pension entitlements;
- Accurate completion of paperwork in relation to this policy;
- Checking their pay and reporting any apparent inaccuracies.

6.2 Line Managers are responsible for the following:

- Applying this policy in a fair and consistent manner;
- Accurate completion of paperwork in relation to this policy;
- Seeking advice, where necessary, from the HR team on the application of this policy.

6.3 The Senior Management Team are responsible for the following:

- Ensuring this policy is applied in a fair and consistent manner;
- Monitoring the application of this policy in conjunction with the HR Team;
- Reviewing the continuous application of this policy and redeploying staff in receipt of protection where opportunities arise.

## **7 IMPLEMENTATION**

7.1 This policy will be communicated to staff via team meetings/team brief and approved policies will be published on the CCG's website.

7.2 Breaches of this policy may be investigated and may result in the matter being treated as a disciplinary offence under the CCG's disciplinary procedure.

## **8 TRAINING & AWARENESS**

8.1 A copy of the policy will be available on the CCG's website

8.2 Support and guidance on the application of this policy is available from the HR team.

## **9. MONITORING & REVIEW**

- 9.1 The policy and procedure will be reviewed and audited periodically by the HR team and reported to the senior leadership team. Where review is necessary due to legislative change, this will happen immediately.
- 9.2 The Pay Protection Policy shall be applied in a fair and consistent manner. The implementation of this policy will be audited on an annual basis by the CCG and reported to CCG Governing Body.

## **10 POLICY REVIEW**

- 10.1 The policy and procedure will be reviewed after 3 years for the CCG Governing Body in conjunction with Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.

## **11 ASSOCIATED DOCUMENTATION**

- 11.1 Change Management Policy  
Redeployment Policy  
Agenda for Change Terms and Conditions of Service handbook.  
Grievance Policy.  
Objective Setting and Review Policy and Procedure

## **12 APPENDICES**

- Appendix 1 Protection of Pensionable Pay for Member of the NHS  
Pension Scheme  
Appendix 2 Equality Impact Assessment

## PART 2 PROCEDURE

### 13 PROVISIONS

#### 13.1 Protection Provisions

Where an employee is downgraded as a result of Organisational Change they may be eligible for Short Term Protection and/ or Long term Protection of their earnings.

In order to receive either category of Pay Protection the employee must have been employed continuously by the organisation, or its predecessors, for 12 months.

The period of pay protection will take effect from the date the change takes place.

- 13.1.1 Short Term Protection provides 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. Short term pay protection does not include pay relating to additional hours, additional responsibilities, voluntary overtime.

A member of staff whom this agreement applies to 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 3 years	6 months
More than 3 years	12 months

Please note that travel and subsistence expenses are not included in the calculation of earnings for this purpose.

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.

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, Pay Protection will not apply for that pay period only and earnings in the new post are paid in full for that particular pay period. The period of the Pay Protection will not be extended.

- 13.1.2 Long Term Pay Protection provides protection of basic salary on a marked time basis. 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. The employee will be entitled to Long Term Protection for 18 months or until one of

the following occurs;

- The employee accepts a suitable alternative 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; or
- They unreasonably refuse the offer of a suitable alternative post (ref. para 2.7); or
- The basic salary for the job is above their protected pay.

The salary that will be protected will be the basic salary the employee was receiving immediately prior to the Organisational Change for all staff except those in receipt of annually earned increments as defined in Agenda For Change Terms and Conditions of Employment and the CCG's Objective Setting and Review/Pay Progression Policy and Procedure. For staff in receipt of annually earned increments the level of protection applied will be the highest increment in their existing pay band that is not classed as 'annually earned'.

13.1.3 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.

13.1.4 Upon the expiry of the time-scales outlined above, the salary/earnings of the member of staff concerned will revert to that of the new post.

13.1.5 Where an employee has accepted a post as suitable alternative employment which does not attract the AfC Recruitment & Retention premia 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.

13.1.6 A Variation form should be completed and submitted to payroll to notify payroll that Pay Protection should be applied.

## 13.2 Pension arrangements

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 they 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 directly or the Pension's Officer within the Payroll Team.

All such applications must be made within three months of the member going on to reduced pay for which the pensionable salary is to be reduced. Please see Appendix 1 or access the following link for additional information:

[http://www.nhsbsa.nhs.uk/Documents/Pensions/SM\\_R9\\_App\\_members\\_\(V1\)\\_11.2011.pdf](http://www.nhsbsa.nhs.uk/Documents/Pensions/SM_R9_App_members_(V1)_11.2011.pdf)

It is advised that all CCG staff to whom this may apply take their own advice on how their pension may be affected and seek clarity from the NHS Pensions Agency on the protection available to them, and any potential limits to this.

#### **14 APPEAL PROCESS**

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

## **Appendix 1 Protection of Pensionable Pay for Member of the NHS Pension Scheme**

There are two provisions under which a member can protect their pensionable pay;

Protection of pay through no fault of the member (both Sections of the Scheme).

Voluntary Protection of Pay (1995 Section only).

Further information, including the process and relevant time limits is available from [NHSBSA - Pay Protection](#)

## Equality Impact Assessment:

Equality Impact Analysis:	
<b>Policy / Project / Function:</b>	Pay Protection Policy
<b>Date of Analysis:</b>	30/07/16
<b>This Equality Impact Analysis was completed by: (Name and Department)</b>	HR Team
<b>What are the aims and intended effects of this policy, project or function ?</b>	This policy provides a Pay Protection framework for the CCG.
<b>Please list any other policies that are related to or referred to as part of this analysis</b>	<ul style="list-style-type: none"> <li>• Agenda for Change Terms and Conditions of Service handbook</li> <li>• Grievance Policy</li> <li>• Change Management Policy.</li> <li>• Redeployment Policy</li> <li>• Objective Setting and Review Policy and Procedure / Pay Progression</li> </ul>
<b>Who does the policy, project or function affect ?</b>  Please Tick ✓	Employees ✓ Service Users Members of the Public Other (List Below)

### Equality Impact Analysis:

**Local Profile/Demography of the Groups affected (population figures) Relevant data can be found in the attached Knowledge Management Toolkit (Employee data as at January 2016)**

<b>General</b>	Total number of employees in the CCG is 78
<b>Age</b>	73.07% of staff are aged 30-55 20.51% of staff are over 55 6.41% of staff employed are aged 30 or under
<b>Race</b>	94.87% of staff employed in the CCG declared themselves White 3.85% of staff are not stated/undefined 1.27% of staff declared themselves Asian
<b>Sex</b>	70.51% of staff employed are female 29.49% of staff employed are male
<b>Gender reassignment</b>	No information
<b>Disability</b>	57.69% of staff employed declared themselves as having no disability 38.46% of staff did not declare /undefined 3.85% of staff declared a disability
<b>Sexual Orientation</b>	56.41% of staff described themselves as heterosexual 43.59% did not wish to respond /undefined No staff described themselves as gay, lesbian or bisexual
<b>Religion, faith and belief</b>	47.44% were undefined or did not wish to declare – the largest group 35.90 of staff declared themselves Christian 11.54% declared themselves Atheist 5.13% of staff declared their faith as 'other' Zero staff declared as Islam, Buddhism, Hindu, Judaism or Sikhism
<b>Marriage and civil partnership</b>	64.10% of employees are married. 25.64% are single 7.69% are divorced/legally separated 2.56% are undefined 0% of employees are in a civil partnership

**Pregnancy and  
maternity**

No information yet as the CCG has not been established long enough to build meaningful data

## Equality Impact Analysis:

**Is any Equality Data available relating to the use or implementation of this policy, project or function ?**

Equality data is internal or external information that may indicate how the activity being analysed can affect different groups of people who share the nine *Protected Characteristics* – referred to hereafter as ‘*Equality Groups*’.

Examples of *Equality Data* include: (this list is not definitive)

1: Application success rates

*Equality Groups*

2: Complaints by *Equality Groups*

3: Service usage and withdrawal of services by *Equality Groups*

4: Grievances or decisions upheld and dismissed by *Equality Groups*

Yes employee data has been used to support the monitoring of the impact of this policy in the future

No

Where you have answered yes, please incorporate this data when performing the *Equality Impact Assessment Test* (the next section of this document).

**List any Consultation e.g. with employees, service users, Unions or members of the public that has taken place in the development or implementation of this policy, project or function**

Consultation has taken place both locally and nationally with Trade Unions and staff

- SLT
- CCG Employees
- SPF Sub group
- SPF
- Governing Body (approval)

**Promoting Inclusivity**

How does the project, service or function contribute towards our aims of eliminating discrimination and promoting equality and diversity within our organisation

This Policy does not directly promote inclusivity, but the advantage of a written policy is that it will help to ensure that the pay protection provisions are applied consistently across the organisation which helps towards promoting equality and diversity.

**Equality Impact Assessment Test:**

**What impact will the implementation of this policy, project or function have on employees, service users or other people who share characteristics protected by *The Equality Act 2010* ?**

Protected Characteristic:	No Impact:	Positive Impact:	Negative Impact:	Evidence of impact and if applicable, justification where a <i>Genuine Determining Reason</i> exists
<b>Gender</b> (Men and Women)	✓			This has been considered and has a neutral impact. The policy applies equally to all staff regardless of gender.
<b>Race</b> (All Racial Groups)			✓	As the policy is written in English there is a potential impact on employees whose first language is not English and therefore my struggle reading the policy. However this potential impact is minimised due to the available 'portal' facilities.
<b>Disability</b> (Mental and Physical)	✓			This has been considered and has a neutral impact. The policy applies equally to all staff regardless of disability.
<b>Religion or Belief</b>	✓			This has been considered and has a neutral impact. The policy applies equally to all staff regardless of religion or belief.
<b>Sexual Orientation</b> (Heterosexual, Homosexual and Bisexual)	✓			This has been considered and has a neutral impact. The policy applies equally to all staff regardless of sexual orientation.

<b>Pregnancy and Maternity</b>	✓			This has been considered and has a neutral impact. The policy applies equally to all staff.
<b>Transgender</b>	✓			This has been considered and has a neutral impact. The policy applies equally to all staff.
<b>Marital Status</b>	✓			This has been considered and has a neutral impact. The policy applies equally to all staff regardless of marital status.
<b>Age</b>	✓			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. It could also be argued that someone could join the NHS at any age, so the length of service could affect anyone of any age.

**Action Planning:**

**As a result of performing this analysis, what actions are proposed to remove or reduce any risks of adverse outcomes identified on employees, service users or other people who share characteristics protected by *The Equality Act 2010* ?**

Identified Risk:	Recommended Actions:	Responsible Lead:	Completion Date:	Review Date:
Impacts related to age- specifically in reference to pensions	Information is provided to mitigate any negative impacts and the policy specifies it is the employee's responsibility to complete required actions. This is due to Pension Agency requirements	employees	n/a	Next policy review
As the policy is written in English there is a potential impact on employees whose first language is not English and therefore may struggle reading the policy.	The CCG's Communication Team has developed the 'portal' to signpost individuals to alternative formats.	CCG Communications	End 2014	End 2014

## Equality Impact Findings:

<b>Analysis Rating:</b>	Green
<b>Red – Stop and remove the policy</b>	<b>Red:</b> As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share <i>Protected Characteristics</i> . It is recommended that the use of the policy be suspended until further work or analysis is performed.
<b>Red Amber – Continue the policy</b>	As a result of performing the analysis, it is evident that a risk of discrimination exists (direct, indirect, unintentional or otherwise) to one or more of the nine groups of people who share <i>Protected Characteristics</i> . However, a genuine determining reason may exist that could legitimise or justify the use of this policy and further professional advice should be taken.
<b>Amber – Adjust the Policy</b>	As a result of performing the analysis, it is evident that a risk of discrimination (as described above) exists and this risk may be removed or reduced by implementing the actions detailed within the <i>Action Planning</i> section of this document.
<b>Green – No major change</b>	As a result of performing the analysis, the policy, project or function does not appear to have any adverse effects on people who share <i>Protected Characteristics</i> and no further actions are recommended at this stage.

<p><b>Brief Summary/Further comments</b></p>	<p>As a result of performing the analysis, the policy, project or function may have adverse effects on people who share <i>Protected Characteristics</i>. The advantage of a written policy is that it will help to ensure that the pay protection provisions are applied consistently across the organisation. It is important, however, that the application of the policies that could lead to the need to apply pay protection are applied so as not to deliberately or inadvertently cause a detrimental impact to any of the target groups.</p>
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<p style="text-align: center;"><b>Signatures</b></p>	
<p>Other Comments</p>	
<p>Confirmed by Manager (Name and Job Title)</p>	
<p>Date</p>	