1. Introduction
The current Protection of Pay and Conditions of Service arrangements were implemented in April 2014. At the time of agreement, staff side were notified that we would want to enter into further discussions within 12 months about making further reductions. This was reiterated at the March 2015 JSCNC – minute JSCNC/015/029 refers. A paper outlining proposed changes to the Policy was discussed at the JSCNC in July 2015 and a meeting was held on 7 January 2016 to discuss the proposals.

Present at the meeting were:

Kathryn Burt  Head of Operational HR
Alan Duffell  Director of HR and OD
Carolyn Jones  RCN representative (Staff side secretary)
Julie Williams  RCN Senior Officer
Kim Craig  Unison representative
Val Dawson  Unison representative (Staff side lead)
Jo Lane  Unite representative
Mark Pettifer  Unite regional officer
Barbara Evans  Unite representative

2. Revised Policy
The Trust’s pay protection arrangements are more favourable than those of many other NHS organisations who have made more significant reductions in their periods of pay protection. Trusts across the area continue to attempt to renegotiate their pay protection policies.

The original proposal from July 2015 was to reduce the period of long term pay protection to 1 year for any staff with 2 years’ reckonable service or more and to reduce the period of short term pay protection to 6 months for any staff with 2 years’ reckonable service, from a date to be agreed.

It was further proposed that excess mileage would be payable for a maximum of 1 year following a change of base – subject to a qualifying period of 2 years’ reckonable service.

Following discussion at the meeting, the revised proposal is that the period of long term pay protection is reduced to 2 years for staff with 5 years’ reckonable service or more and 1 year for staff with 2 – 5 years’ service. The period of short term pay protection will be reduced to 6 months for any staff with 2 years’ reckonable service, from a date to be agreed. (See Appendix 1).

The proposal in relation to the payment of excess mileage remains unchanged.

In terms of support for staff seeking a return to their protected band, the Trust will facilitate this by sending a vacancy list on a weekly basis and offering preferential consideration for posts (after management of change and ill-health redeployments). The vacancy list has been amended to make it more accessible for staff as requested by staff side. The onus must be on staff themselves to seek a return to their protected band and the Trust will take a ‘light touch’ to management of this process – undertaking audits to assess implementation and compliance.
3. Paying Protection and Excess Mileage
Careful consideration is always given to the downgrading of staff as part of the management of change process. It is not in the interests of the Trust or members of staff for skills to be under-utilised but there will be occasions where service need makes this unavoidable.

4. Timescales
Timescales for implementation have slipped considerably but it is proposed that revised policy will be introduced from 1 September 2016. Staff side are asked to confirm their agreement to the proposed changes by 31 May 2016.

Kathryn Burt
Head of Operational HR
5 May 2016
Appendix 1

Management of Organisational Change Policy

Protection of Pay and Conditions of Service – Updated May 2016

1. Introduction

The Trust aims to retain staff in employment wherever possible. However there will be occasions when, as a result of organisational change, staff may need to be redeployed. The pay protection provisions are in place to provide protection for employees whose earnings are reduced as a result of organisational change. This document outlines the protection arrangements for employees to whom this applies. These provisions apply to all Agenda for Change staff, Medical and Dental Staff and staff on Very Senior Manager contracts (VSM).

These provisions exclude staff in receipt of pay protection under previous protection arrangement as at the insert implementation date.

2. Application

2.1 These provisions apply to any employee who, as a consequence of organisational or service changes, is required by management to move to a new/alternative post at a lower band or at the same band resulting in a loss of earnings. It provides for:

a) Long-term protection of the basic wage or salary where down-grading is involved. This would normally apply to a post one band below (see Management of Organisational change policy for more information on suitable alternative employment).

b) Short-term protection of earnings whether or not down-grading is involved. This applies to any employee who is required to reduce their contractual working hours or change their existing working pattern whilst retaining the same contractual hours, but has a loss of additional earnings e.g. enhanced hours etc.

2.2 The pay protection provisions provide a mechanism for the Trust to protect earnings for employees who suffer a financial detriment following redeployment to an alternative post for organisational change reasons. Protection will apply where the Trust defines the position as suitable alternative employment. In determining suitable alternative employment, the Trust will consider the actual amount of protection involved (including amount and length of protection) and whether this amount is reasonable in relation to the alternative cost of a redundancy payment.

3. Exclusions

3.1 The following circumstances are specifically excluded from these provisions:
• Where an employee chooses to seek employment in a role involving a change of work pattern, a reduction in hours or a change to their work role which results in a reduction of pay.
• Where an employee chooses to accept a role as an alternative to redundancy that is not considered to be suitable alternative employment i.e. more than one band below
• Where an acting up or secondment arrangement comes to an end

3.2 In exceptional circumstances, where a formal bullying and/or harassment investigation has been undertaken and the recommendation is that an individual should be redeployed, in circumstances where there is no case to answer but the working relationship between individuals has broken down, pay protection will apply. Where it is recommended that an individual is redeployed due to subsequent disciplinary action, pay protection will not apply.

4. Long Term Protection Arrangements

4.1 An employee who is moved from one post to another and is down-graded as a result of the move will be entitled to protection of basic wage or salary on a "mark time" basis and will not be entitled to the benefit of increments or pay awards for the following periods;

<table>
<thead>
<tr>
<th>Reckonable Service</th>
<th>Protection Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 2 years</td>
<td>n/a</td>
</tr>
<tr>
<td>2 – 5 years</td>
<td>1 year</td>
</tr>
<tr>
<td>5+ years</td>
<td>2 years</td>
</tr>
</tbody>
</table>

NB: Under normal circumstances protection will only apply to one band below.

4.2 Any additional earnings derived from work in the new post will be paid at the rate appropriate to the new post e.g. additional hours if protected in a part time post

4.3 All other conditions of employment will be those applicable to the new post.

4.4 Protection will cease when:
• The period specified expires;
• The employee is appointed to a post at his/her own choice, in which the annual basic salary is equal to or higher than the protected basic salary;
• The employee moves to another post of their choosing;
• The employee leaves/retires from the Trust
• The employee unreasonably refuses subsequent offers of suitable alternative posts at their protected band

Long term Pay Protection Conditions

4.5 Long-term protection of earnings is conditional on the employee accepting any subsequent offer of suitable alternative post with the Trust which attracts a basic wage or salary equal to or greater than the basic wage or salary of the protected post.
4.6 If any employee unreasonably refuses to accept a post for which he or she can reasonably be considered to be suitable, entitlement to pay protection will not apply.

4.7 Where, as a result of organisational change, an employee is required to transfer to a lower banded post and reduce their contracted hours or change their working pattern, then short term pay protection will also apply in relation to their contracted hours, please refer to section 5.0 for details.

4.8 As a consequence of management of change and where the employee is in receipt of pay protection, although not ‘at risk’, staff will continue to be notified of vacancies at their protected band and will be required to apply for posts where they meet the essential criteria.

4.9 When an employee has been redeployed into a suitable alternative role, it is a shared responsibility of both the Trust and the employee to identify suitable posts that arise, which mirror more closely the terms and conditions of the employee on pay protection.

4.10 Employees in receipt of pay protection will be sent a list of all vacant posts available within the Trust on a weekly basis. It is the responsibility of employees to submit an application for any roles at their protected band for which they meet the essential criteria. If it is identified that an employee has not applied for a post that is suitable, they will be required to provide written reasons for this. Where necessary there will be discussion with the employee and their representative. If management/HR still believes the post to be suitable, pay protection will cease.

4.11 Employees will be given preferential consideration after staff who are ‘at risk’ or seeking redeployment for ill health reasons. Selection will be through redeployment interview and will in most circumstances include a trial period of 4 weeks.

4.12 The purpose of the trial period will be for the employee and line manager to assess the suitability of the post.

4.13 The details of the trial period should be confirmed in writing. In exceptional circumstances an extension to the trial period may be considered necessary, for example if further training is required. Any extension will be by agreement of both parties and be confirmed in writing.

4.14 During the trial period regular reviews should be held between the employee and the new line manager to assess how things are going. In addition, a final review of the trial period will be carried out by the new line manager, in conjunction with the employee and a decision will be made as to whether the job is suitable.

4.15 Where the employee is successful in the trial period, they will be moved into the role and their pay protection will cease.
4.16 When the trial period is unsuccessful for whatever reason, the employee will revert back to their substantive lower banded post and will continue to receive protection.

4.15 The employee’s pay protection under the protected post will continue until the final review meeting has taken place and a decision has been made.

4.16 Where there is any subsequent Management of Change process, employees on pay protection will be pooled at their substantive band and not at their protected band.

4.17 An employee in receipt of protection, who is subsequently placed back in their former higher band, will enter at the same incremental point as on the date they were downgraded. Their incremental date will be adjusted to ensure a full 12 months is completed at that incremental point before becoming eligible to progress to the next point on the pay spine.

4.18 An employee that is offered a secondment during their pay protection period will be offered the salary applicable to the seconded post for the duration of the secondment. The time spent in a secondment will not extend the previously agreed pay protection period. For example;

Employee A
- Length of pay protection agreed was 1st January 2015 to 31st December 2017.
- Employee starts their secondment on the 1st July 2015 to 31st December 2016 and receives salary for the post
- Employee A returns to their substantive post on the 1st January 2017 on their protected salary. The end date of the protection will be the 31st December 2017 as originally stipulated above.

4.19 Employees who are absent from work due to sickness will receive long term pay protection during the period of sickness absence.

4.20 The pay protection provisions outlined in this document, will take effect from the date to be determined. Staff in receipt of pay protection under previous protection arrangement will not be affected by these provisions.

5.0 Short Term Protection Arrangements

5.1 The employee’s additional earnings are protected at the monthly average pay for the three months worked prior to the effective date of commencement of pay protection.

5.2 Additional Earnings Eligible for Protection are:
- Regular or contracted overtime
- Regular or contracted excess hours payments
- Special duty payments (unsociable hours/shift duty/night duty etc.)
- Domiciliary fees
- On-call percentage (%)
5.3 Where an individual's earnings in the new post are higher or equal to their protected earnings, the higher earnings will be paid.

**Short term pay protection Conditions**

5.4 Short-term protection of earnings is conditional on the employee undertaking any additional duties including additional hours which may reasonably be required; up to the level at which earnings in the new post equal the protected earnings.

5.5 The Trust aims to return employees to their protected hours. Where as a result of organisational change, an employee is required to reduce their contracted hours, then short term pay protection will apply. The Trust considers that a reasonable reduction in hours should be no less than 90% of the employee's original hours. Should an employee agree to a reduction of up to 20%, protection will still be payable. Should the employee voluntarily accept an alternative post where the number of hours is below 80% of their original contracted hours, the number of protected hours will reduce proportionately in line with the reduction in hours worked below 80%.

For example:

Reduce to 30 hours from 37.5 hours = 80%
Reduce to 28 hours from 37.5 = 74.7%
Therefore protection will be to 35 hours (28=80% of 35)

5.6 Where the basic wage or salary (and any additional earnings) in the new post falls below the protected level of previous average earnings, short-term protection will continue to apply up to the time-limit specified.

5.7 Employees who are absence from work due to sickness are not entitled to receive short term pay protection during the period of sickness absence.

6.0 Interaction between Short- and Long-term Protection
In cases where an employee is eligible for both short and long term protection, these will run concurrently.

7.0 NHS Pension Scheme – 1995 Section and 2008 Section Members Only
For members of the 1995 Section and 2008 Section of the NHS Pension Scheme only - For pension purposes, where pay is reduced through no fault of their own, the pension member can apply for the higher rate of pay to be protected for pension purposes. This must be done within three months of the pay reducing. The pay does not have to be reduced more than 10% nor does the member need to be on or over their minimum retirement age and because it is through no fault of the member, then a protection of pay can be applied for more than once. Please refer to section 14.4 of Management of Organisational Change policy.
8.0 Other HR Policies

Where redeployment into a suitable alternative post is due to any of the following reasons, please refer to the appropriate Trust Policy for details on whether pay protection applies;

- Ill health (Managing Sickness Absence Policy and procedure)
- Disciplinary action (Disciplinary policy and procedure)
- Reimbursement of Staff Expenses policy (Agenda for Change)

9.0 Excess Mileage

9.1 Employees who are redeployed to a suitable alternative post that involves a change of base/work location may be eligible for reimbursement of excess travel costs with effect from the date that the redeployment takes effect for a period of 1 year subject to completion of 2 years’ reckonable service.

9.2 Employees who are subject to a compulsory change of base following a management of change process, whether permanent or temporary, may be eligible for reimbursement of excess travel costs with effect from the date of the base move for a period of no more than 1 year subject to completion of 2 years’ reckonable service.

9.3 Employees who believe they are eligible for excess mileage must complete an application form for Excess Daily Travel Allowance within 3 months of the redeployment/change of base. Following receipt of this form HR will confirm to the employee the amount of excess mileage which can be claimed and over what period.

9.4 Unless there are exceptional circumstances, claims for Excess Daily Travel received later than 3 months after the date of the change of base will not be accepted and the employee will not be able to claim any excess mileage related to that change of base. For further information on claiming excess miles please refer to the Reimbursement of Staff Expenses Policy (Agenda for Change). Will need to amend this if agreed.