



**SECTION: 10 – HUMAN RESOURCES**

**POLICY /PROCEDURE: 10.23**

**NATURE AND SCOPE: POLICY AND PROCEDURE - TRUST WIDE**

**SUBJECT (Title): PROTECTION OF PAY**

**This policy details Nottinghamshire Healthcare Foundation Trust’s arrangements for protecting the pay of employees adversely affected by organisational change as an alternative to redundancy and early retirement.**

**The following section to be completed after the document has been ratified by relevant group**

**DATE OF LATEST RATIFICATION:**

**RATIFIED BY: Management Side of Core Group**

**IMPLEMENTATION DATE: 1<sup>st</sup> FEBRUARY 2017**

**ASSOCIATED TRUST POLICIES  
AND PROCEDURES:**

Management of Organisational Change Policy  
Management of Organisational Change Implementation Manual

**NOTTINGHAMSHIRE HEALTHCARE NHS FOUNDATION TRUST**

**PROTECTION OF PAY POLICY**

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**NOTTINGHAMSHIRE HEALTHCARE NHS FOUNDATION TRUST**  
**PROTECTION OF PAY POLICY**

**1.0 INTRODUCTION**

This document sets out the Nottinghamshire Healthcare NHS Foundation Trust's (the Trust) current policy on pay protection.

**2.0 SCOPE**

2.1 This policy applies to all employees of the Trust. The policy does not form part of the contract of employment.

2.2 Employees benefitting from protected pay and conditions under an agreement in place before 1<sup>st</sup> February 2017 will continue with those protection arrangements.

**3.0 POLICY PRINCIPLES**

3.1 The ever-changing healthcare environment poses a number of challenges for the Trust, including the need to improve standards of care, integrating care pathways, responding to financial changes and meeting increasing customer need and expectation. We therefore need to respond accordingly, and this sometimes necessitates organisational change in order to meet such challenges.

3.2 This policy will apply to all employees of the Trust :

3.2.1 Who have at least one years' continuous service (as defined below) with the NHS

And

3.2.2 Who move to a post on a lower band or grade, as a result of organisational change

Or

3.2.3 Who are required to move to a new post on the same band as a result of organisational change or change in working practices

Which in either case

3.2.4 Results in the employees total earnings in the new post being less due to a reduction in basic salary and/or reduction/cessation of enhancements or supplements to basic pay i.e. loss of unsocial hours or allowances.

The pay protection period provides time during which affected employees can prepare for the change in their earnings.

3.3 Pay protection under this policy will not apply if an employee:

- is redeployed due to performance issues following formal performance management under the Trust's Capability Procedure;
- is redeployed having received a formal sanction as a result of a conduct hearing;
- voluntarily applies and accepts a lower banded/paid role or a position that does not attract enhancements currently being received;
- returns to a role where temporary upgrading ceases;

- returns to a role following the ending of a secondment, where this had attracted a higher salary;
- is redeployed to a lower banded post and there is no reduction in salary or loss of earnings;

#### **4.0 DEFINITIONS**

- 4.1 Continuous service (for the purpose of pay protection): is the continuous length of time an employee has been employed in the NHS without a break in service, but excluding any service for which a redundancy payment or any other compensatory or termination payment has been made and previous service from which the employee has retired and for which pension benefits have been paid. This should also take into account any service transferred to the Trust in accordance with the Transfer of Undertakings Regulations (TUPE).
- 4.2 Break in service: is as defined in the NHS National Terms & Conditions of Service
- 4.3 Organisational change: means the same as in the Management of Organisational Change Policy.
- 4.4 Protected pay: is the value of the average basic pay and enhancements / allowances received by the employee in the twelve week period directly preceding that in which the period of protection commences. For clarity this does not include overtime payments or any travel expense payments.

#### **5.0 DUTIES**

- 5.1 Managers are responsible for ensuring the appropriate application of this policy and will be supported and advised by the HR Department.
- 5.2 Employees who are subject to the application of this policy are required to comply with the provisions contained within the Management of Organisational Change Policy and Implementation manual.

#### **6.0 ENTITLEMENTS WITHIN THIS POLICY**

- 6.1 Eligibility for protection and the duration of the protection period shall be calculated in accordance with paragraph 3.2

##### **Length of Protection**

- 6.2 In circumstances where an employee's pay is less as a consequence of organisational change the previous level of earnings in the old post will be protected for a period of time in accordance with the table below.
- 6.3 Protection will only apply if there is a reduction in pay, calculated as average earnings over the previous 12 week period before protection commences. For employees on maternity leave and long term sickness, the 12 week period will be the period directly preceding the current episode of absence.

Table 1: Length of Protection

<b>Length of Continuous Service</b>	<b>Length of Protection</b>
Less than 1 year	Nil protection
1-2 years	6 months
2-3 years	12 months
3-5 years	18 months
5 years +	24 months

- 6.4 The protection period will include payment of any pay awards and any further increments during the period of protection.
- 6.5 In circumstances where the Trust is forced to make organisational change before periods of contractual notice have been completed, the commencement of the period of protection will be delayed until the notice period has expired.
- 6.6 It is recognized that, although unusual, some staff may be affected by workforce change more than once in a short period of time. If a staff member is affected by workforce change and requires pay protection within 12 months of the start of a previous protection period, the previously protected salary will be used for the basis of protection.

#### **Circumstances under which protection of earnings will cease**

- 6.7 Payment of protectable earnings will cease:
- If the pay of the new post exceeds the protected pay; or
  - If the employee is appointed to a different post where the pay equals or exceeds the protected pay; or
  - If the employee is offered another suitable post with higher pay, or where the pay equals or exceeds the protected pay and unreasonably refuses to accept it; or
  - If the employee chooses, following an application, to move to another post with pay lower than the downgraded post; or
  - If the employee leaves the employment of the Trust.
- 6.8 Earnings in the new post will be offset against protectable earnings. If, for any particular pay period (typically classed as one month), the total earnings in the new post exceed the protectable earnings, protection of earnings will cease for that period.
- 6.9 Protection of pensionable payments will continue under this arrangement for affected individuals who are members of the NHS Pension Scheme. Contributions will continue to the NHS Pension Scheme at the protected amount during the defined protection period. Members can apply to have their period of membership at the higher rate of pay treated as preserved membership, if this is more beneficial. Applications for preserved membership should be made in writing to the NHS Pensions Agency within three months of the end of the protection period. Individuals wishing to preserve their membership should request this to the Trust's Pensions Advisor within one month of the pay protection period ceasing so that this can be actioned in good time of the Pensions Agency's deadline.

#### **7.0 PAYMENT OF PROTECTION**

- 7.1 Payment of protected earnings will be calculated and paid on a monthly basis in accordance with Table 1 – Length of Protection.

#### **8.0 IMPLEMENTATION**

- 8.1 As this policy has already been previously implemented, no implementation plan is required for this reviewed policy.

#### **9.0 TARGET AUDIENCE**

- 9.1 The target audience for this policy will be any employee whose earnings are directly affected as a result of organisational change.

**10.0 REVIEW DATE**

10.1 This policy will be reviewed in 2 years, or in light of organisational or legislative changes.

**11.0 CONSULTATION**

11.1 Groups consulted in the course of the review of this Policy include:

Executive Leadership Team  
Core Group  
Leadership Council

**12.0 RELEVANT TRUST POLICIES**

12.1 Relevant Trust Policies/Procedures referred to in the document are:

Management of Organisational Change Policy and Implementation Manual.

**13.0 MONITORING COMPLIANCE**

13.1 The Trust's Core Group will assess the effectiveness of this policy on an on-going basis and will review as necessary.

The Human Resource function will oversee the application of this Policy.

**14.0 EQUALITY IMPACT ASSESSMENT**

14.1 An Equality Impact Assessment Screening Exercise has been completed prior to progressing the Policy for ratification, which concluded that a full EIA is not necessary. Although this policy applies to all Trust employees it aims to ensure that the distinct needs of staff with the relevant protected characteristics are appropriately and adequately considered, as governed by Employment/ UK legislation. Positive impact of the application of this policy has been specifically identified in relation to Gender, Disability, Age and Social Inclusion as the policy highlights the arrangements for protecting the pay of employees adversely affected by organisational change as an alternative to redundancy and early retirement.

**15.0 LEGISLATION COMPLIANCE**

15.1 Legislation applicable to this Policy:

Employment Rights Act 1996

**16.0 CHAMPION AND EXPERT WRITER**

16.1 The champion of this policy is the Director of Human Resources. The expert writers are senior members of the HR function.

**17.0 REFERENCES /SOURCE DOCUMENTS**

17.1 Other documents which have been used and taken into account when drafting this policy:

Management of Organisational Change Policy  
Management of Organisational Change Implementation Manual

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**APPENDIX 1****Policy/Procedure for: Protection of Pay****Issue: 5****Status:****Author Name and Title: Karen Waters, Deputy Director of HR****Issue Date: February 2017****Review Date: February 2019****Approved by: Management Side of Core Group****Distribution/Access: Normal****RECORD OF CHANGES**

<b>DATE</b>	<b>AUTHOR</b>	<b>POLICY/ PROCEDURE</b>	<b>DETAILS OF CHANGE</b>
November 2016	K Waters/C Whyman	Protection of Pay	Complete review and re-write of policy

APPENDIX 2

**EQUALITY IMPACT ASSESSMENT (EIA) SCREENING TOOL**

<b>Name of policy/procedure/strategy/plan/function etc. being assessed:</b>	Protection of Pay Policy (10.23)
<b>Brief description of policy/procedure/strategy/plan/function etc. and reason for EIA:</b>	Review of Policy. Policy to support any circumstances which fall under the scope of the policy and where pay of employees are adversely affected by organisational change as an alternative to redundancy and early retirement.
<b>Names and designations of EIA group members:</b>	Senior HR Leads, HR practitioners and staff side representatives
<b>List of key groups/organisations consulted</b>	Core Group / Leadership Council
<b>Data, Intelligence and Evidence used to conduct the screening exercise</b>	Previous policy; Management of Organisational Change Policy and Implementation Manual; HR and staffside experiences of the organisational change process.



Equality Strand	Does the proposed policy/procedure/ strategy/ plan/ function etc. have a positive or negative (adverse) impact on people from these key equality groups? Please describe	Are there any changes which could be made to the proposals which would minimise any adverse impact identified? What changes can be made to the proposals to ensure that a positive impact is achieved? Please describe	Have any mitigating circumstances been identified? Please describe	Areas for Review/Actions Taken (with timescales and name of responsible officer)
<b>Race</b>	No positive or negative impact identified. This policy applies to all Trust employees, yet aims to ensure that the distinct needs of staff with the relevant protected characteristics are appropriately and adequately considered as governed by Employment/ UK legislation.	No. The ever-changing healthcare environment poses a number of challenges for the Trust, including the need to improve standards of care, integrating care pathways, responding to financial changes and meeting increasing customer need and expectation. We therefore need to respond accordingly, and this sometimes necessitates organisational change in order to meet such challenges.	N/A	Review November 2018, or in light of organisational or legislative changes- K Waters, Deputy Director of HR
<b>Gender</b> Inclu. Transgender	Positive impact identified. The policy clearly identifies the application of protection for employees in receipt of maternity pay entitlements during the period in which pay protection is calculated.	As Above	N/A	As Above
<b>Disability</b> Inclu. Mental Health and LD	Positive impact identified. The policy clearly identifies the application of protection for employees on long term	As Above	N/A	As Above

	sickness absence during the period in which pay protection is calculated, some of whom may have a disability.			
<b>Religion/Belief</b>	As Race	As Above	N/A	As Above
<b>Sexual Orientation</b>	As Race	As Above	N/A	As Above
<b>Age</b>	Positive impact identified. This policy specifically details arrangements for protecting the pay of employees adversely affected by organisational change as an alternative to redundancy and early retirement, which may have a bigger impact on staff from some age groups.	As Above	N/A	As Race
<b>Social Inclusion*1</b>	As Age. It is acknowledged that worklessness/unemployment often has a bigger impact on staff from some age groups more than others, including individuals with dependants. This policy specifically details arrangements for protecting the pay of employees adversely affected by organisational change as an alternative to redundancy and early retirement.	As Above	N/A	As Race
<b>Community Cohesion*2</b>	N/A	N/A	N/A	N/A
<b>Human Rights *3</b>	As Race	N/A	N/A	As Race

\*1 for **Social Inclusion** please consider any issues which contribute to or act as barriers, resulting in people being excluded from society e.g. homelessness, unemployment, poor educational outcomes, health inequalities, poverty etc.

\*2 **Community Cohesion** essentially means ensuring that people from different groups and communities interact with each other and do not exclusively live parallel lives. Actions which you may consider, where appropriate, could include ensuring that people with disabilities and non-disabled people interact, or that people from different areas of the City or County have the chance to meet, discuss issues and are given the opportunity to learn from and understand each other.

\*3 **The Human Rights Act 1998** prevents discrimination in the enjoyment of a set of fundamental human rights including: The right to a fair trial, Freedom of thought, conscience and Religion, Freedom of expression, Freedom of assembly and association and The right to education

<p><b>Conclusions and Further Action (including whether a full EIA is deemed necessary and agreed date for completion)</b></p>	<p>Following the EIA Screening Exercise it has been concluded that a full EIA is not necessary. Although this policy applies to all Trust employees it aims to ensure that the distinct needs of staff with the relevant protected characteristics are appropriately and adequately considered, as governed by Employment/ UK legislation. Positive impact of the application of this policy has been specifically identified in relation to Gender, Disability, Age and Social Inclusion as the policy highlights the arrangements for protecting the pay of employees adversely affected by organisational change as an alternative to redundancy and early retirement.</p>
<p><b>Screening Tool Consultation End Date</b></p>	<p>tbc</p>
<p><b>Name of Equality and Diversity (E&amp;D) Group Approving EIA (i.e. Directorate E&amp;D Group, Divisional E&amp;D Forum or Trustwide E&amp;D Steering Group)</b></p>	<p>Core Group</p>
<p><b>Name of Responsible Officer Name and Contact Details (tel. e-mail, postal)</b></p>	<p>K Waters, Deputy Director of HR. (0115) 9691300</p>