



Policy:

HR011 Protection of Pay and Conditions of Service

Executive or Associate Director lead	Director of Human Resources
Policy author/ lead	HR Directorate Partner
Feedback on implementation to	HR Directorate Partner

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Policy Version and advice on document history, availability and storage

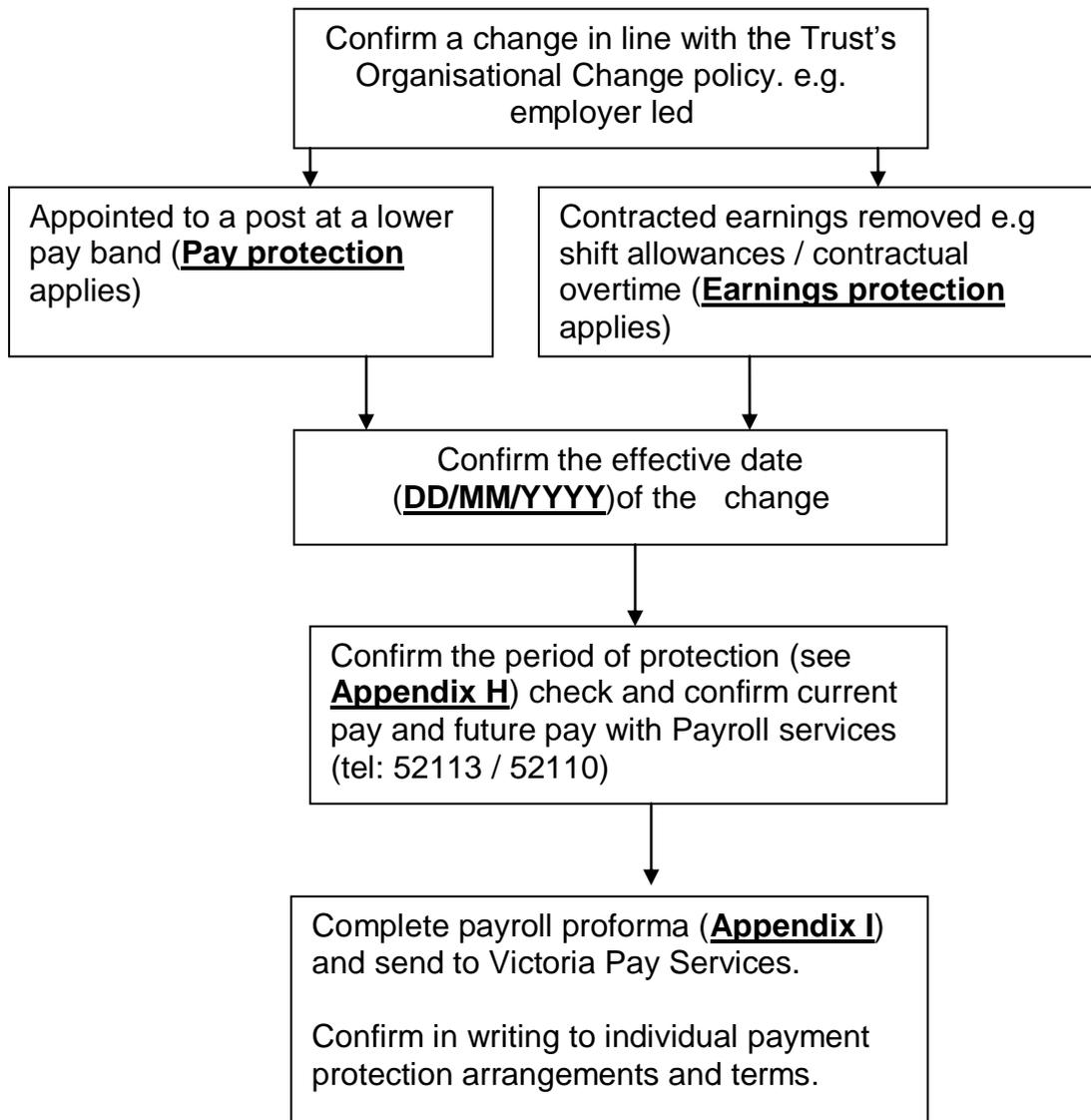
This is version 3 of this policy and replaces the previous version 2, issued in September 2016.

This policy will be available to all staff via the Sheffield Health & Social Care NHS Foundation Trust Intranet and on the Trust's website. The previous version will be removed from the Intranet and Trust website and archived. Any copies of the previous policy held separately should be destroyed and replaced with this version.

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Pay Protection flow chart



1. Introduction

Sheffield Health and Social Care Trust (The Trust) needs to retain flexibility in service delivery, within a changing healthcare environment where change occurs both locally and at a national level. In this context, the effective delivery and management of organisational change is vital to the organisation's success and continued ability to offer quality care, whilst maintaining financial sustainability.

The Trust has defined processes to manage organisational change, whenever and however it occurs. It should be noted that this policy links substantially with other Trust policies, and should be read in conjunction **with these policies** as appropriate:

- Organisational Change Policy
- Redeployment Register Policy
- Redundancy Policy
- Location Flexibility Agreement

This policy outlines the arrangements and eligibility for payments that protect earnings and provide support where additional costs are incurred as a result of organisational change.

2. Scope of this Policy

This policy applies to all Trust employees except for medical staff for whom separate arrangements apply (e.g. junior doctors).

In the case of employees of other organisations, who work within the Trust, it is the employing organisation's own policies on protection which apply.

Agency staff and others who work in the Trust, and are not employees (e.g. volunteers) are outside the scope of this policy.

3. Definitions

Basic wage or salary, the weekly or monthly sum due in respect of basic hours worked (i.e. the level of hours relating to the post at the time) by the employee within the standard working week.

Reckonable Service, previous service **at the band / grade** with the Trust and any predecessor organisation (Community Health Sheffield / Sheffield City Council) where TUPE has been applied.

Contracted Earnings, an employees basic wage or salary plus; contracted overtime, lead payments to nurses of psychiatric and geriatric patients, shift duty allowances, night duty allowances, split duty allowances, rota'd unsocial hours payments and sleep ins.

Organisational change, for the purposes of this policy, is defined as any revision to the way in which a service is provided, which has significant implications for staff.

Some examples are:

- Restructuring
- Merging services
- Provision of new service/s
- Expansion of existing service/s
- Changes to skill and grade mix

Directly affected employees: means employees whose roles will be impacted on by the proposed change. This includes employees who are on secondment from their substantive role, or otherwise temporarily placed away from it, where their substantive role is directly affected.

4. Purpose

The policy is designed to support employees who have been affected by organisational change, and who are required by the Trust to move to a new post resulting in a reduction in earnings and / or basic wage or salary.

It works within the context of effective change management, i.e. controlling vacancies, restricting recruitment, terminating temporary/fixed term contracts, with a view to minimising the need for redundancy. Early consultation with both the individual staff member and their representative is encouraged in order to secure suitable alternative employment and to minimise the need for redundancy.

The terms of the policy are to be applied by management as an alternative to redundancy, and are not a right or entitlement.

It provides employees, dependent upon length of service, with a period of time where earnings are maintained whether or not downgrading is involved, and basic wage or salary are maintained where downgrading is involved.

The policy is designed to support the Trust's Organisational Change Policy, by enabling the Trust to identify and implement changes necessary to improve the provision of health care and meet the needs of service users and other stakeholders, whilst taking account of the aspirations and well being of its employees.

5. Duties

The Board of Directors is accountable for:

- Commitment through endorsement of this policy
- Identification and allocation of any resources required by the policy

The Chief Executive is accountable for:

- Ensuring the proper allocation of the policy through management arrangements.

Lead managers shall:

- Seek advice from Human Resources.
- Seek to avoid redundancy wherever possible.

Managers shall:

- Manage their teams within the framework of this policy, and other related Trust policies, during organisational change.
- Actively seek further information, advice, support or learning from line management as appropriate.
- Seek Advice from Human Resources as appropriate.

Human Resources shall:

- Review and update this policy, as needed.
- Advise managers on workforce planning issues to support service restructure.
- Ensure that the policy is adhered to.

6. Process

6.1 Application of Protection

- 6.1.1 Protection does not apply where temporary situations come to an end unless specified otherwise under this policy. (See 6.6 below regarding acting-up and secondments).
- 6.1.2 Protection does not apply to changes in contracted earnings arising from changes in shift or other changes in working pattern not involving a change in contract, but a reasonable period of notice will be given. (See 6.7 below for further clarification).
- 6.1.3 Protection will not operate to changes in location except as set out in the Location Flexibility Allowance Agreement.
- 6.1.4 Protection will not operate where a new role or working arrangement is taken up as a result of a disciplinary or capability issue.
- 6.1.5 Protection will apply from the first day of appointment to a suitable alternative post.
- 6.1.6 Pay protection will not apply to adhoc arrangements or if the post is not banded. In these situations status quo will prevail and the employee would continue to be paid at their substantive pay.

6.2 Amount of Protection

- 6.2.1 The payments will, for a time-limited period, make up the difference in basic pay where there has been a reduction in banding/grade and/or the difference in contracted earnings in specified circumstances. The time-periods are set-out in Appendix H.
- 6.2.2 **Grade protection** - The amount of protection will be on a mark-time basis e.g. will not increase to reflect any national/local increases in pay and/or any

incremental increases. It will be an element of pay entered to the employees record to ensure the pay is topped up to the amount they were receiving.

6.2.3 Where an employee works additional hours or overtime above the protected substantive hours this will be paid at the rate of the post they are working in. i.e they will not be taken into account for protection.

6.2.4 **Earnings protection** - Where an employee is in receipt of earnings protection any additional hours or other earnings (eg shift allowance) will be offset against the protected amount.

6.2.5 Where work is undertaken on a bank contract all this work will be separate to any protection arrangements that are in place for the substantive contract and would be unaffected. i.e protection will not apply.

6.3 Conditions for Protection Continuing

6.3.1 Protection may be withdrawn in circumstances where the employee has committed misconduct during the period of protection. This will apply where the matter of misconduct has resulted in a disciplinary warning having been given at Stage 2 or 3 of the disciplinary procedure. This will not apply to warnings provided under the Managing Sickness Absence Policy nor will it apply where the disciplinary warning has been issued prior to the commencement of the protection.

6.3.2 Employees in receipt of protection have an obligation to undertake any work which may be required up to the level of the protection. For example, if there was a need to temporarily act-up to the level of the previous post then the employee would be required to do so. Similarly any reasonable overtime, shift work or other additional duties could be required (without additional payment) up to the level of any protectable earnings. If an employee refuses a reasonable request to undertake such work then they will have their protection ended from the date of refusal and the terms /conditions of the new post would be applied. (The individual would have a right of appeal against this decision to the next line of management. The protection payments would not apply during this period but would be re-instated if the appeal was successful).

6.3.3 Protection payments are conditional on the employee accepting any subsequent offer of another suitable post which attracts a basic wage or salary equal to or in excess of the protectable wage or salary. Similarly protection of contracted earnings is conditional upon the employee accepting a subsequent offer of another post which meets the condition set out above and also provides contracted earnings equal to or in excess of the protection for contracted earnings.

6.4 Cessation of Protection

6.4.1 Protection will cease to be applicable where:

- The employee moves of their own volition to a post on a lower salary and/or lower contractual earnings; This includes situations where, during a redeployment consideration, an employee expresses a first preference for a

post which they are aware will involve lower contractual earnings when another option exists which provides equivalent contracted earnings potential.

- The employee leaves the Trust (including retirements where the employee returns to work); the employee moves, for whatever reason, to a post which has an equivalent salary and / or earnings to the post relevant to the protection: or
- The basic pay and/or earnings of the new post reaches the level of the protectable basic pay/contractual earnings.

6.4.2 It is the responsibility of the employee to seek information from Superannuation Advisers before protection arrangements expire and to make any appropriate adjustments to their pension arrangements

6.5 Other Terms

6.5.1 Any non-pay terms and conditions which are superior to those applying to the new post will be retained for the period of protection and then change to those applying to the new post.

6.5.2 Lease cars can be retained until the end of the lease period if the new post is not eligible for a lease car.

6.6 Acting-up and Secondments

6.6.1 Acting-up will only normally be used for 6 months or by explicit agreement for 12 months. The period will be specified in writing at the time of appointment. In exceptional circumstances the period may be extended for a maximum of a further 3 months (for example someone due to return from maternity leave who is off sick at the date they are due to return). Where the acting-up exceeds 12 months then the individual will have the right to protection for a period of one month when the acting-up ceases.

6.6.2 Secondments will be for a specified length according to the particular requirements. They will generally be advertised unless there are exceptional circumstances (e.g. urgent requirement to transfer someone of an equivalent band / grade for cover for sickness absence). Any extension of the secondment would be by agreement with the individual and, if no agreement, then the post will be re-advertised.

6.6.3 Where an individual acts-up in accordance with 6.3.2 then when the acting-up ceases, the relevant protection would continue on the same terms as before. (The period of protection includes the period of acting-up).

6.7 Shifts or other Working Patterns

6.7.1 The contracted earnings protection arrangements will apply to situations where a redeployment situation occurs and the individual loses unsocial hours as a result of the redeployment (subject to 6.4.1).

6.7.2 Where someone has been appointed to permanent nights (or, in practice, has undertaken continually permanent nights for a period of over 5 years reckonable service) then the contracted earnings protection will apply should they be moved

as part of redeployment. Where this is not required by the rota, individual preferences for working permanent nights will be a matter for the individual to agree with the line manager and taking into account the particular circumstances.

- 6.7.3 Where staff are on nights and are required to attend for training during the day then the line manager will make every effort to minimise any disruption to the individual. In situations where the training is mandatory and the individual receives less than 8 weeks notice of the training then the individual's earning will be 'protected' for the period that they are on the training course.
- 6.7.4 The period of consultation will normally be 4 weeks and a minimum of 2 weeks. This period will also count as a period of notice. As it is part of the standard terms and conditions that the Trust may, after due consultation, alter your normal working patterns as required by the needs of the service from time to time then protection will not apply.
- 6.7.5 During the period of consultation, line managers will establish whether there are any special circumstances which require a modification to the proposed working patterns as a whole or for specific individuals and give full consideration to such issues. These issues should be about the impact of the new arrangements other than the financial impact.

7. Dissemination, storage and archiving

Human Resources policies and procedures are referred to in all employees' contracts of employment and statement of terms.

Policies are available through the Human Resources portal on the Trust intranet and, if necessary, a paper copy can be provided by the Human Resources Department.

Policies are agreed with the Staff Side in the first instance.

An email will be sent to all SHSC employees informing them of the revised Policy. The previous Policy will be removed from the intranet and replaced with the new version by HR.

Managers are also responsible for ensuring that hard copies of the previous version are removed from any policy/procedures manuals or files stored locally.

Archive policies are available in the Human Resources Department.

8. Training and other resource implications

There are no training or other resource implications associated with this policy.

9. Audit, monitoring and review

The implementation of this policy will be reviewed as a result of changes to legislation and audit recommendations. Human Resources policies are subject to joint monitoring and review between management and staff side in the Joint Consultative Forum.

Monitoring Compliance Template						
Minimum Requirement	Processes for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
Policy content, including duties and process.	Review of policy.	HR Directorate Partner	3 yearly, or before to meet regulatory or statutory requirements	Joint Consultative Forum / HR Policy Group	HR Directorate Partner	Joint Consultative Forum / HR Policy Group

10. Implementation plan

The HR processes in this policy have already been implemented.

Action / Task	Responsible Person	Deadline	Progress update
New policy to be uploaded onto the Intranet and Trust website.	Head of Communications	Within 5 working days of finalisation	
A communication will be issued to all staff via the Communication Digest immediately following publication.	Head of Communications	Within 5 working days of issue	
A communication will be sent to Education, Training and Development to review training provision.	HR Directorate Partner - Policy Author	Within 5 working days of issue	

11. Links to other policies

Organisational Change Policy
 Redeployment Register Policy
 Equal Opportunities & Dignity Policy
 Location flexibility Policy

12. Contact details

Human Resources Advisers – 0114 22 63972/3/4
 Human Resources Directorate Partners – 0114 2718767/2263371/2263973

13. References

NHS Terms and Conditions of Service handbook

Appendix A – Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
V2 D0.1	New draft policy created	September 2016	Minor typographical changes and amendments to reflect accurately Pay protection periods
2.0	Ratification and issue	Nov 2016	Ratification, finalisation and issue.
3.0	Revisions to policy	November 2017	Minor to promote greater clarity within the policy

Appendix B – Dissemination Record

Version	Date on website (intranet and internet)	Date of “all SHSC staff” email	Any other promotion/ dissemination (include dates)
2.0	Nov 2016	Nov 2016 via Communications Digest	
3.0	November 2017	December 2017 communications digest	Cascade through HRBP/HRA

Appendix C – Stage One Equality Impact Assessment Form

Equality Impact Assessment Process for Policies Developed Under the Policy on Policies

Stage 1 – Complete draft policy

Stage 2 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? If **NO** – No further action required – please sign and date the following statement. If **YES** – proceed to stage 3

Yes

This policy does not impact on staff, patients or the public (insert name and date)

Stage 3 – Policy Screening - Public authorities are legally required to have ‘due regard’ to eliminating discrimination , advancing equal opportunity and fostering good relations , in relation to people who share certain ‘protected characteristics’ and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don’t know and note reasons). Please see the SHSC Guidance on equality impact assessment for examples and detailed advice. This is available by logging-on to the Intranet first and then following this link https://www.xct.nhs.uk/widget.php?wdg=wdg_general_info&page=464

	Does any aspect of this policy actually or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
AGE	No	No	No
DISABILITY	No	No	No
GENDER REASSIGNMENT	No	No	NO
PREGNANCY AND MATERNITY	No	No	No
RACE	No	No	No
RELIGION OR BELIEF	No	No	No
SEX	No	No	No

SEXUAL ORIENTATION	No	NO	NO
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Stage 4 – Policy Revision - Make amendments to the policy or identify any remedial action required (action should be noted in the policy implementation plan section)

Please delete as appropriate: Policy Amended / Action Identified / no changes made.

Impact Assessment Completed

Sarah Bawden, HR Directorate Partner (18.10.2016)

Appendix D - Human Rights Act Assessment Form and Flowchart

You need to be confident that no aspect of this policy breaches a person's Human Rights. You can assume that if a policy is directly based on a law or national policy it will not therefore breach Human Rights.

If the policy or any procedures in the policy, are based on a local decision which impact on individuals, then you will need to make sure their human rights are not breached. To do this, you will need to refer to the more detailed guidance that is available on the SHSC web site <http://www.justice.gov.uk/downloads/human-rights/act-studyguide.pdf> (relevant sections numbers are referenced in grey boxes on diagram) and work through the flow chart on the next page.

1. Is your policy based on and in line with the current law (including case law) or policy?

Yes. No further action needed.

No. Work through the flow diagram over the page and then answer questions 2 and 3 below.

2. On completion of flow diagram – is further action needed?

No, no further action needed.

Yes, go to question 3

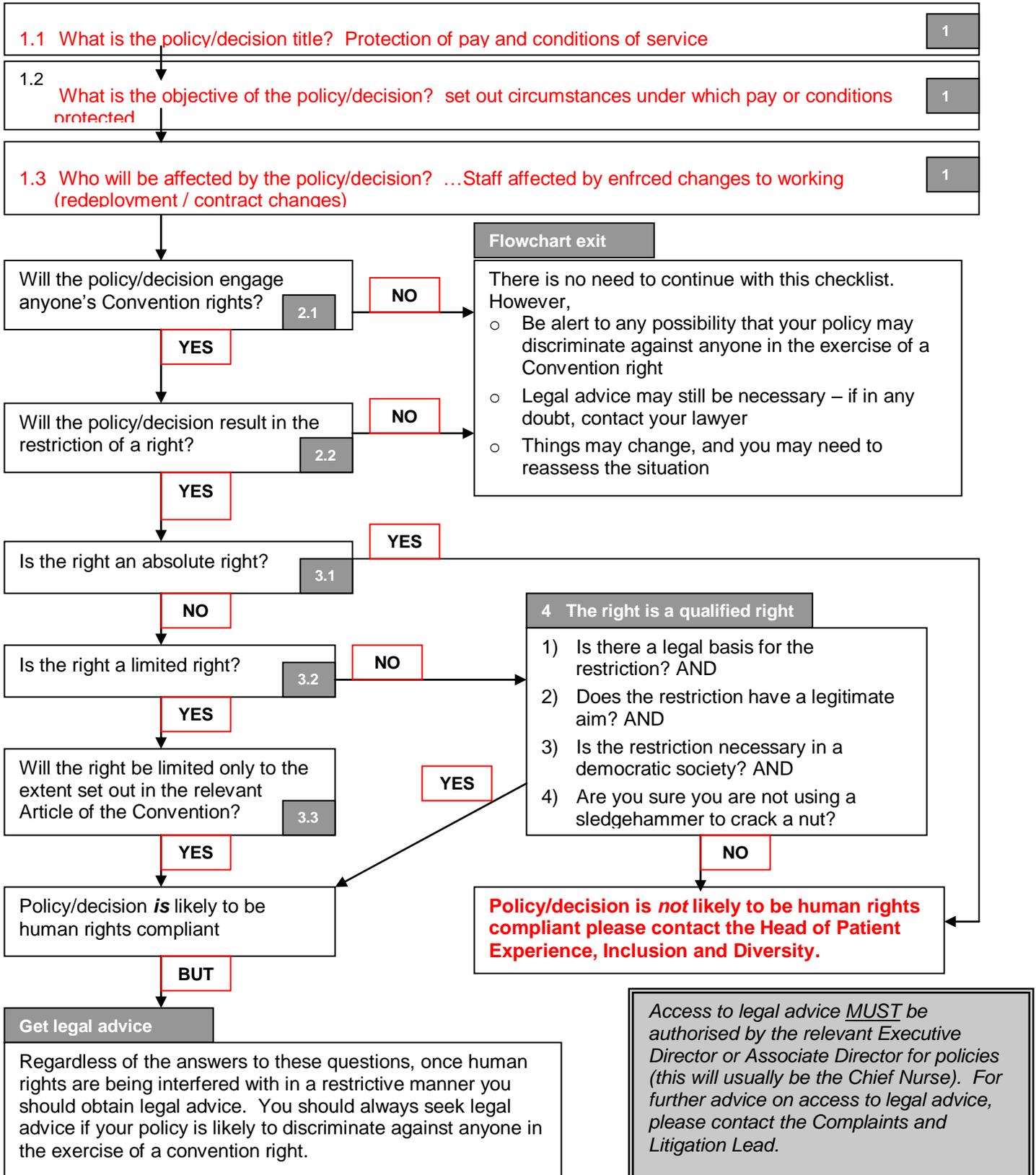
3. Complete the table below to provide details of the actions required

Action required	By what date	Responsible Person

Human Rights Assessment Flow Chart

Complete text answers in boxes 1.1 – 1.3 and highlight your path through the flowchart by filling the YES/NO boxes red (do this by clicking on the YES/NO text boxes and then from the Format menu on the toolbar, choose 'Format Text Box' and choose red from the Fill colour option).

Once the flowchart is completed, return to the previous page to complete the Human Rights Act Assessment Form.



Appendix E – Development, Consultation and Verification

Version 3: This is an updated policy with minor typographical amends, clarification of some terms and transfer to new policy format.

Staff-side consultation took place between May and August 2017, culminating in verification at the bargaining forum 6th September 2017.

Appendix F –Policies Checklist

Please use this as a checklist for policy completion. The style and format of policies should follow the Policy Document Template which can be downloaded on the intranet.

1. Cover sheet

All policies must have a cover sheet which includes:

- The Trust name and logo
- The title of the policy (in large font size as detailed in the template)
- Executive or Associate Director lead for the policy
- The policy author and lead
- The implementation lead (to receive feedback on the implementation)
- Date of initial draft policy
- Date of consultation
- Date of verification
- Date of ratification
- Date of issue
- Ratifying body
- Date for review
- Target audience
- Document type
- Document status
- Keywords
- Policy version and advice on availability and storage

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2. Contents page



3. Flowchart

N/A

4. Introduction



5. Scope



6. Definitions



7. Purpose



8. Duties



9. Process



10. Dissemination, storage and archiving (control)



11. Training and other resource implications



12. Audit, monitoring and review



This section should describe how the implementation and impact of the policy will be monitored and audited and when it will be reviewed. It should include timescales and frequency of audits. It must include the monitoring template as shown in the policy template (example below).

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
A) Describe which aspect this is monitoring?	e.g. Review, audit	e.g. Education & Training Steering Group	e.g. Annual	e.g. Quality Assurance Committee	e.g. Education & Training Steering Group	e.g. Quality Assurance Committee

13. Implementation plan



14. Links to other policies (associated documents)



15. Contact details



16. References



17. Version control and amendment log (Appendix A)



18. Dissemination Record (Appendix B)



19. Equality Impact Assessment Form (Appendix C)



20. Human Rights Act Assessment Checklist (Appendix D)



21. Policy development and consultation process (Appendix E)



22. Policy Checklist (Appendix F)



CALCULATION OF PROTECTABLE EARNINGS

- i. Protectable earnings will be calculated using the monthly average over the 6 months immediately preceding the day on which the new post is offered.
- ii. In the case of employees on maternity leave or sick leave average earnings will be calculated by taking account of the working patterns prior to the start of maternity or sick leave.
- iii. Protectable earnings will be recalculated automatically, if there are any backdated changes in rates of pay.
- iv. Earnings in the new post will be offset against protectable earnings, the calculation of earnings in the new post being on the basis of the rate for additional duties etc. of the new policy

Time-periods

Pay protection will be applied on the following basis:

Service	Basic Pay Protection	Contracted Earnings Protection
1 to 2 years reckonable service	3 months	1 month
2+ to 5 years reckonable service	6 months	3 months
5+ to 10 years reckonable service	9 months	4 months
10+ years reckonable service	2 years	6 months

Reckonable Service - previous service **at the band / grade** with the Trust and any predecessor organisation (Community Health Sheffield / Sheffield City Council) where TUPE has been applied.

Appendix I

Pay protection Arrangements – Pro-forma for Payroll

For completion by HR and the sending manager.

Name		
Employee number		
Substantive post (Grade / Payband to be protected)		
Date of appointment (date pay protection applies from)		
Type of protection	Grade	Earnings
Description of protection (for example protection of shift earnings or protection of pay)		
Period of protection(See Appendix H)		
Amount of protection Difference between substantive post and new post grade / earnings		

Authorised by:

Line Manager:

Copy for personal file

Copy to be submitted by email to Payroll. Victoria Pay Services