



Policy:

HR 011 - Protection of Pay and Conditions of Service

Executive Director Lead	Executive Director of People
Policy Owner	HR Directorate Partner
Policy Author	HR Adviser
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Summary of policy

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.

Target audience	All SHSC Staff
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Keywords	Pay protection, change, redeployment, earnings
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Storage & Version Control

Version 4 of this policy is stored and available through the SHSC intranet/internet. This version of the policy supersedes the previous version (3.1 December 2017). Any copies of the previous policy held separately should be destroyed and replaced with this version.

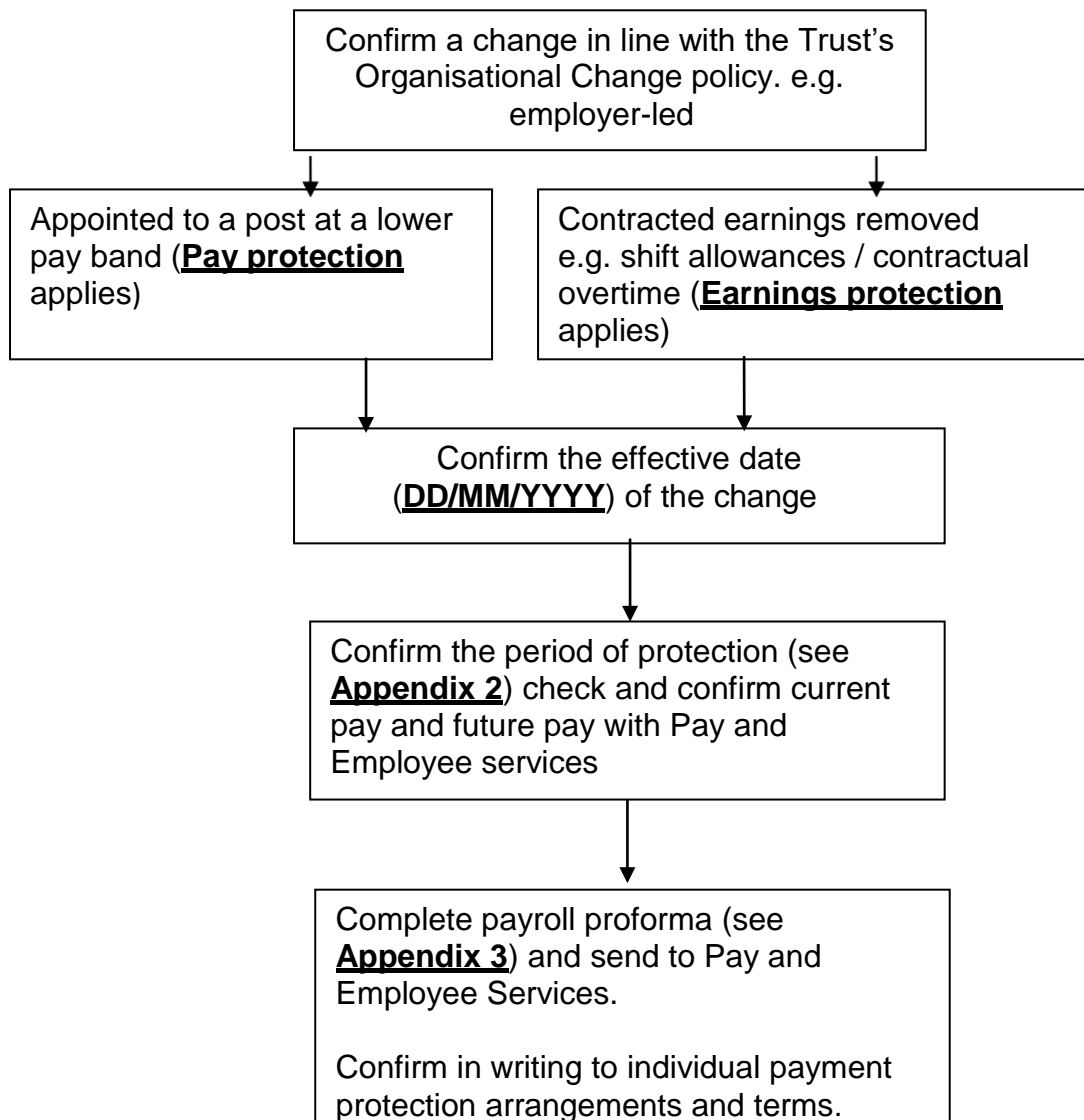
Version Control and Amendment Log

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
3.1	Review date extended	November 2020	Review date extended by Policy Governance Group/People Committee
	Review date extended	March 2021	Review date extended by Policy Governance Group/People Committee
4	Review of policy following extension	Feb 2021	<p>Full review completed as per schedule</p> <ul style="list-style-type: none"> • HR colleagues reviewed on 10 February 2021 • Sent via email to Staff Side on 10 February 2021. • Verified by the Joint Policy Group (Staff Side consultation) on 22 February 2021. • The status of the policy received by and noted in the minutes of the Joint Consultative Forum on 22 February 2021 • Policy to be reviewed by PGG on 8 March 2021

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Flowchart



1 Introduction

Sheffield Health and Social Care NHS Foundation 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

2 Scope

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 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 managers 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 wellbeing of its employees.

4 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 employee's 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: 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.

5 Detail of the policy

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.

6 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 will:

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

Managers will:

- 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 the line management as appropriate.
- Seek advice from Human Resources as appropriate.

Human Resources will:

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

7 Procedure

7.1 Application of Protection

- 7.1.1 Protection does not apply where temporary situations come to an end unless specified otherwise under this policy. (See 7 below regarding acting-up and secondments).
- 7.1.1 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 7.7 below for further clarification).
- 7.1.2 Protection will not operate to changes in location except as set out in the Location Flexibility Allowance Agreement.
- 7.1.3 Protection will not operate where a new role or working arrangement is taken up as a result of a disciplinary or capability issue.
- 7.1.4 Protection will apply from the first day of appointment to a suitable alternative post.
- 7.1.5 Pay protection will not apply to ad hoc 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.

7.2 Amount of Protection

- 7.2.1 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 2.
- 7.2.2 **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.

7.2.3 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.

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

7.2.5 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.

7.3 Conditions for Protection Continuing

7.3.1 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 improvement notifications provided under the Promoting Attendance and Managing Sickness Absence Policy nor will it apply where the disciplinary warning has been issued prior to the commencement of the protection.

7.3.2 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).

7.3.3 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.

7.4 Cessation of Protection

7.4.1 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 contractual 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.

7.4.2 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

7.5 Other Terms

7.5.1 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.

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

7.6 Acting-up and Secondments

7.6.1 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.

7.6.2 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.

7.6.3 Where an individual acts-up in accordance with 7.3.2 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).

7.7 Shifts or other Working Patterns

7.7.1 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 7.4.1).

7.7.2 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.

7.7.3 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.

7.7.4 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 an employee's normal working patterns as required by the needs of the service from time to time then protection will not apply.

7.7.5 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.

8 Development, Consultation and Approval

Version 4: This is a Policy review as per the schedule, updated with minor typographical amends, and transfer to new policy format.

See version control and amendment log for full details of consultation, review and approval dates.

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	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
Policy content including duties and process	Review of Policy	HR Directorate Partner	3 yearly or more to meet statutory or regulatory requirements	Joint Consultative Forum and HR Policy Group	HR Directorate Partner	Joint Consultative Forum and HR Policy Group

Policy review date 31 March 2024.

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 Dissemination, Storage and Archiving (Control)

Version	Date added to intranet	Date added to internet	Date of inclusion in Connect	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
4	March 2021	March 2021	March 2021	Cascade through HRBA/HRA

12 Training and Other Resource Implications

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

13 Links to Other Policies, Standards (Associated Documents)

Organisational Change Policy

Redeployment Policy

Equal Opportunities & Dignity Policy

Location Flexibility Allowance Agreement – available on the HR widget

NHS Terms and conditions of Service Handbook

14 Contact Details

<i>Title</i>	<i>Name</i>	<i>Phone</i>	<i>Email</i>
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HR Directorate Business Partners	Emily Seville	2263301	Emily.seville@shsc.nhs.uk
HR Advisers	N/A	2263301	HRAdvisors@shsc.nhs.uk

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 sickness absence, average earnings will be calculated by taking account of the working patterns prior to the start of maternity or sickness absence.
- 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. This also applies to staff who have retired and returned (continuous service would have been broken but reckonable service retained for the purposes of pay protection).

Appendix 3

Pay protection Arrangements – Pro-forma for Pay and Employee Services

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 2)				
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 Pay and Employee Services.

Appendix 4

Equality Impact Assessment Process and Record for Written Policies

Stage 1 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? This should be considered as part of the Case of Need for new policies.

YES

Stage 2 Policy Screening and Drafting Policy - 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 and Flow Chart.

Stage 3 – Policy Revision - Make amendments to the policy or identify any remedial action required and record any action planned in the policy implementation plan section

SCREENING RECORD	Does any aspect of this policy 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
Marriage or Civil Partnership	No		

Policy placed on new template / no changes made (see Implementation Plan)

Impact Assessment Completed by:
Kerry Scott, HR Adviser March 2021

Appendix 5

Review/New Policy Checklist

This checklist to be used as part of the development or review of a policy and presented to the Policy Governance Group (PGG) with the revised policy.

		Tick to confirm
Engagement		
1.	Is the Executive Lead sighted on the development/review of the policy?	✓
2.	Is the local Policy Champion member sighted on the development/review of the policy?	✓
Development and Consultation		
3.	If the policy is a new policy, has the development of the policy been approved through the Case for Need approval process?	N/a
4.	Is there evidence of consultation with all relevant services, partners and other relevant bodies?	✓
5.	Has the policy been discussed and agreed by the local governance groups?	✓
6.	Have any relevant recommendations from Internal Audit or other relevant bodies been taken into account in preparing the policy?	✓
Template Compliance		
7.	Has the version control/storage section been updated?	✓
8.	Is the policy title clear and unambiguous?	✓
9.	Is the policy in Arial font 12?	✓
10.	Have page numbers been inserted?	✓
11.	Has the policy been quality checked for spelling errors, links, accuracy?	✓
Policy Content		
12.	Is the purpose of the policy clear?	✓
13.	Does the policy comply with requirements of the CQC or other relevant bodies? (where appropriate)	✓
14.	Does the policy reflect changes as a result of lessons identified from incidents, complaints, near misses, etc.?	N/A
15.	Where appropriate, does the policy contain a list of definitions of terms used?	N/A

16.	Does the policy include any references to other associated policies and key documents?	✓
17.	Has the EIA Form been completed (Appendix 1)?	✓
Dissemination, Implementation, Review and Audit Compliance		
18.	Does the dissemination plan identify how the policy will be implemented?	✓
19.	Does the dissemination plan include the necessary training/support to ensure compliance?	
20.	Is there a plan to i. review ii. audit compliance with the document?	✓
21.	Is the review date identified, and is it appropriate and justifiable?	✓