

Protection of Earnings

Date	Version	
March 2014	6.1	
Purpose		
This document outlines the arrangements for protection of pay and conditions of service for employees who are adversely affected by organisational change		
Who should read this document?		
This policy applies to all employees within the Trust. Medical and Dental staff have separate terms and conditions of employment with other pay protection arrangements that apply in certain circumstances.		
Key messages		
This policy intends to provide a fair and consistent process for the management of protection of earnings as a result of organisational change.		
This policy will assist managers to identify when pay protection will be applicable and is consistently applied where appropriate.		
Accountabilities		
Production	HR & OD Directorate	
Review and approval	JSNC and HR&OD Committee	
Ratification	Director of HR & OD	
Dissemination	Deputy Director of HR	
Compliance	Director of HR &OD	
Links to other policies and procedures		
Organisational Change Policy Agenda for Change Terms and Conditions Redeployment Policy		
Version History		
1	April 2009	Staff Side/JSC
2	December 2008	Removed out of date references to Whitley Council
3	September 2010	Consultation with JSNC Policy Sub Group
4	March 2014	Incorporated changes recommended by Staff Side
4.1	April 2015	Extended by Director of HR & OD to April 2016
5	January 2019	Extended to April 2019
6	August 2019	Extended to February 2020 by Richard Maguire & Lisa White
6.1	June 2020	Extended to May 2021 by Lisa White
Last Approval		Due for Review
March 2014		Extended to May 2021

The Trust is committed to creating a fully inclusive and accessible service. By making equality and diversity an integral part of the business, it will enable us to enhance the services we deliver and better meet the needs of patients and staff. We will treat people with dignity and respect, promote equality and diversity and eliminate all forms of discrimination, regardless of (but not limited to) age, disability, gender

reassignment, race, religion or belief, sex, sexual orientation, marriage/civil partnership and pregnancy/maternity.

An electronic version of this document is available on the Trust Documents Network Share Folder (G:\TrustDocuments). Larger text, Braille and Audio versions can be made available upon request.

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1 Introduction

- 1.1 The Trust recognises that in order to develop and improve its services to patients, it must be able to adapt to changes as these become necessary. The Trust is committed to ensuring that individuals who are adversely affected by such changes, receive protection of pay and conditions of service in line with this policy.

2 Purpose, including legal or regulatory background

- 2.1 This policy outlines arrangements for protecting pay and other terms and conditions for employees of Plymouth Hospitals NHS Trust who are adversely affected by organisational change.
- 2.2 The aim of this policy is to provide a fair and consistent procedure for dealing with the issues of pay protection.

3 Definitions

- 3.1 The following expressions in this policy have meanings ascribed to them as below:-

Organisational Change

Any structural or managerial change in the organisation.

Service

Continuous service with Plymouth Hospitals NHS Trust. Service with other NHS organisations will not be included except in circumstances where a TUPE transfer applies.

Down-banding

Occurs when the new post, irrespective of its job title, carries a salary maximum lower than that applying to the current post.

Mark-Time

Remain on the same level of actual earnings (without the benefit of incremental, cost of living or other pay awards) until the criteria for discontinuing the arrangement are met.

Long-term protection – protection of basic pay on a mark time basis.

Short-term protection – protection of actual earnings on a mark time basis.

Basic salary - the spine point on the pay band or the annual salary for basic hours (non Agenda for Change) as at the day prior to the date the protection commences (pro rata for part time employees) and will include any long-term recruitment and retention premia already being paid.

Actual earnings – actual pay including enhancements calculated by an average of the previous three complete months prior to the date of the notification relating to the post.

Enhancements – payments received in addition to basic pay.

Excess mileage – difference in mileage from home to base when the base location has changed and exceeds current mileage.

4 Scope

4.1 These arrangements apply to all individuals employed by PHNT with the following exclusions:

- Employees on fixed term or temporary contracts beyond the life of the contract.
- Employees who are required to change roles due to ill-health, conduct or capability reasons (taking account of the Equality Act 2010 requirements where appropriate) and staff down-banded as 'Action short of dismissal'.
- Where an employee requests to move to a lower graded job.
- Where an employee applies for and accepts a lower graded job.
- Redeployment following a bullying and harassment claim that was not upheld.
- Changes made as a result of normal job rotations, training programmes, changes in staffing levels, secondments, or similar normal business variations.
- Changes made to on call commitments including removal from the rota and removal of the rota.
- Where changes occur to unsocial hours payments/on call through normal variances in working patterns, regular review or employee request.
- Reduction in the need for on call, standby, out of hours unsocial hours payment including sessions payments.
- Where a voluntary severance payment is made.
- Where a temporary upgrade ceases.
- Where an employee returns to their substantive post following a secondment, which has ended.
- Where assimilated to a lower banded post but on an equivalent salary short term protection may apply, however, long-term protection will not apply.
- Medical and Dental Staff have separate terms and conditions of employment with different pay protection arrangements that apply in certain scenarios.
- This list is not exhaustive.

5 Duties

5.1 Role of Human Resources

- Ensuring that this policy is maintained and updated in accordance with best practice.
- Ensuring that this policy is implemented consistently and fairly.

5.2 Role of Line Managers

- Ensuring that the payroll department are notified of any changes to the individual's terms and conditions of employment.

5.3 Payroll Department

- Ensuring protection of pay ceases at the end of the protection period or if the salary for the new position exceeds the protected salary, whichever is the lesser.
- Calculation of pay protection entitlement

6 Principles

6.1 Protection arrangements are designed to enable individuals to adjust to a lower salary on a staged basis.

6.2 The banding of roles will be confirmed by the agreed Agenda for Change job evaluation scheme.

6.4 Individuals are expected to make a commitment to work flexibly within the requirements of their new banding, and to develop and apply their knowledge and skills to meet the demands of their post. Where appropriate the Trust will support individuals who are redeployed to a lower banded post to have access to development opportunities appropriate to their previous band. This is in order to support the maintenance of skills and experience, so that they are competent and confident to apply for posts in the previous (or higher) band.

6.5 Earnings in the new post will be offset against protected earnings. If for any particular pay period the earnings in the new post exceeds the protected earnings, then protection will be overridden for that pay period.

6.6 At the end of the period of protection, pay and other conditions will be based on the agreed terms of the new post.

6.7 Long term protection of basic salary is conditional on individuals giving an undertaking to move to a more senior post within the Trust, or to another NHS Trust that is deemed reasonable in relation to the individual's circumstances. If an employee fails to co-operate with a selection process for a more senior post, the Protection discontinues with immediate effect.

6.8 Pay protection will cease when:

- The period of protection expires, as detailed below.

- The salary for a new job exceeds total protected pay.
 - An employee voluntarily applies for and is appointed to another post in which the normal basic salary is equal to, less than or exceeds the total protected pay.
 - An employee leaves their post or retires (including early/flexible retirement).
- 6.9 This agreement may be superseded by any similar national agreement that may be published.
- 6.10 Protection of earnings will not have payment added for annual pay uplifts or increments they would have attracted in their former post.
- 6.11 Pay protection periods are calculated on length of service with the Trust and recognises experience and loyalty of longer serving employees.
- 6.12 Where the hours of work in the new lower banded role are increased, pay protection will only apply if when the actual earnings in a pay period are lower than in the previous role.
- 6.13 In situations where short-term and long-term arrangements are applicable the periods of protection will run concurrently.
- 6.14 Incremental dates are set as the anniversary of the date of downgrading.
- 6.15 NHS pension scheme members may, within three months of the end of the protection period, apply to the Pensions Agency to have their higher rate of pay preserved for the purposes of their future pension calculations. The Trust will normally support such an application, but the final decision will rest with the Pensions Agency.

7 Short Term Pay Protection

- 7.1 These arrangements apply to an employee who, as a consequence of organisational change is:
- subject to a permanent change of shift pattern; or
 - suffers a permanent reduction in basic hours worked within the standard working week.
- 7.2 An employee to whom this applies is entitled to have protection of those earnings additional to basic pay as listed below. This list is exhaustive and it should be noted that this does not include excess hours, temporary additional hours worked by part-time staff, or overtime unless specifically rostered (i.e. an integral part of the rota):
1. Basic contract hours.
 2. Special duty payments.
 3. Shift Duty.
 4. Un-social hours.

5. Stand-by and On-call.
 6. Enhanced payments for weekend/night duty.
 7. Rostered overtime when a built in feature of the rota.
- 7.3 Earnings will be calculated on the basis of the monthly average earnings in the former post during the 3 month period prior to the date of change.
- 7.4 Protection will be on a mark-time basis in line with the entitlements below:

Continuous PHNT service	Protection Period
0 - 2 years service	No protection
2 – 5 years service	4 months protection
5 – 10 years service	6 months protection
10 years plus service	12 months protection

- 7.5 Short term protection of earnings is conditional on the employee undertaking any reasonable overtime, shift work or other additional duties which may be required up to the level at which earnings in the new post equal the protected earnings.
- 7.6 Short term protection of earnings is also conditional on the employee accepting any subsequent offer of another suitable post within the Trust, which attracts a basic salary in excess of the basic wage or salary applying to the new post.

8 Long Term Pay Protection

- 8.1 Pay protection will be considered suitable where a role is one pay band below the post holder's current band. In exceptional circumstances, and where approved by the Director of HR&OD, it may be agreed that pay protection is offered to more than one band below the post holder's current band.
- 8.2 Where an employee is down banded as a result of organisational change, the Trust will protect basic salary on a 'mark time' basis for the periods specified below:

Years Continuous PHNT service	Protection Period
1	No protection
2	No protection
3	6 months protection
4	8 months protection
5	10 months protection
6	12 months protection
7	14 months protection
8	16 months protection
9	18 months protection
10	20 months protection
11	22 months protection
12	24 months protection

9 Protection of Other Terms and Condition

- 9.1 Notice periods – If an employee is redeployed to a new post, the notice period applicable to this will apply regardless of the notice they were entitled to in their former post. For example, this may change from 8 weeks to 4 weeks or vice versa.
- 9.2 Hours of work – employees required to move to another post will acquire the hours appropriate to the new post.
- 9.3 Annual Leave - entitlement to annual leave based on service as determined in Agenda for Change terms and conditions of employment will not be affected by the organisational change.
- 9.4 Employees may be eligible for excess mileage in accordance with national terms and conditions, where the suitable alternative post is located at a different work base to their current post. Excess mileage is paid at the public transport rate.

- 9.5 Occupational Sick Pay will be based on service as determined in Agenda for Change terms and conditions of employment and will not be affected by organisational change.

10 Appeal

- 10.1 Any employee who is dissatisfied with the way this policy is applied will be able to use the Appeals Procedure.

11 Overall Responsibility for the Document

- 11.1 The Director of HR and OD in conjunction with the HR&OD Committee is responsible for ratifying this document. The Director of HR and OD has overall responsibility for the dissemination, implementation and review of this policy.

12 Consultation and Ratification

- 12.1 The design and process of review and revision of this policy will comply with the Development and Management of Trust Wide Documents.
- 12.2 The review period for this document is set as default of five years from the date it was last ratified, or earlier if developments within or external to the Trust indicate the need for a significant revision to the procedures described.
- 12.3 Non-significant amendments to this document may be made, under delegated authority from the Executive Director, by the nominated author. These must be ratified by the Executive Director and should be reported, retrospectively, to the approving group or committee.
- 12.4 Significant reviews and revisions to this document will include a consultation with named groups, or grades across the Trust. For non-significant amendments, informal consultation will be restricted to named groups, or grades who are directly affected by the proposed changes.

13 Dissemination and Implementation

- 13.1 Following approval and ratification, this policy will be published in the Trust's formal documents library and all staff will be notified through the Trust's normal notification process, currently the 'Vital Signs' electronic newsletter.
- 13.2 Document control arrangements will be in accordance with The Development and Management of Trust Wide Documents.
- 13.3 The document author(s) will be responsible for agreeing the training requirements associated with the newly ratified document with the named Executive Director and for working with the Trust's training function, if required, to arrange for the required training to be delivered

14 Monitoring Compliance and Effectiveness

- 14.1 Monitoring of this policy and its processes will be undertaken through the HR Business Partners, in the day to day operation of the policy, to ensure compliance, with any concerns escalated to the Director of HR&OD. This

policy will be reviewed every five years or sooner where employment law or practice requires it, by the HR and Organisational Development Directorate.

- 14.2 The standards and Key Performance Indicators identified with the implementation of this policy are the NHSLA, Standards as determined by the Care Quality Commission.

15 | References and Associated Documentation

- Agenda for Change Terms and Conditions
- Medical and Dental Terms and Conditions
- Chartered Institute of personnel and development www.cipd.co.uk
- ACAS www.acas.co.uk
- NHS Employers www.nhsemployers.co.uk.
- Other NHS organisations Pay Protection Policies

Core Information				
Document Title	Protection of Earnings			
Date Finalised	1 April 2014			
Dissemination Lead	Deputy Director of HR			
Previous Documents				
Previous document in use?	Yes			
Action to retrieve old copies.	Remove from Trust documents and replace			
Dissemination Plan				
Recipient(s)	When	How	Responsibility	Progress update
All Trust staff		Vital Signs	HR&OD Directorate	

Review		
Title	Is the title clear and unambiguous?	Y
	Is it clear whether the document is a policy, procedure, protocol, framework, APN or SOP?	Y
	Does the style & format comply?	Y
Rationale	Are reasons for development of the document stated?	Y
Development Process	Is the method described in brief?	Y
	Are people involved in the development identified?	Y
	Has a reasonable attempt has been made to ensure relevant expertise has been used?	Y
	Is there evidence of consultation with stakeholders and users?	Y
Content	Is the objective of the document clear?	Y
	Is the target population clear and unambiguous?	Y
	Are the intended outcomes described?	Y
	Are the statements clear and unambiguous?	Y
Evidence Base	Is the type of evidence to support the document identified explicitly?	Y
	Are key references cited and in full?	Y
	Are supporting documents referenced?	Y
Approval	Does the document identify which committee/group will review it?	Y
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	Y
	Does the document identify which Executive Director will ratify it?	Y
Dissemination & Implementation	Is there an outline/plan to identify how this will be done?	Y
	Does the plan include the necessary training/support to ensure compliance?	Y
Document Control	Does the document identify where it will be held?	Y
	Have archiving arrangements for superseded documents been addressed?	Y
Monitoring Compliance & Effectiveness	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	Y
	Is there a plan to review or audit compliance with the document?	Y
Review Date	Is the review date identified?	Y
	Is the frequency of review identified? If so is it acceptable?	Y
Overall Responsibility	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?	Y

Core Information

Manager	Jenny Birchall, HR Business Partner
Directorate	HR and OD
Date	October 2013
Title	Pay Protection Policy
What are the aims, objectives & projected outcomes?	The purpose of this policy is to provide a fair and consistent process for dealing with pay protection

Scope of the assessment

All protected characteristics have been considered when developing this policy.

Consultation undertaken with:

HR Business Partners
JSNC

Collecting data

Race	<p>There could potentially be an impact on staff whose first language is not English. Special attention must be paid to ensuring that employees for whom English is not their first language are supported through the process.</p> <p>In the previous 12 months, 144 individuals have received a form of pay protection as detailed below. This information is broadly similar to the Trust wide statistics. There is no evidence to suggest that any particular group has been disproportionately affected through the application pay protection.</p>																																		
	<table border="1"> <tr> <td>Ethnic Origin</td> <td>A White - British</td> <td>B White - Irish</td> <td>C White - Any other White background</td> <td>C3 White Unspecified</td> <td>CA White English</td> <td>D Mixed - White & Black Caribbean</td> <td>H Asian or Asian British - Indian</td> <td>J Asian or Asian British - Pakistani</td> <td>M Black or Black British - Caribbean</td> <td>#N/A</td> <td>Grand Total</td> </tr> <tr> <td>Total</td> <td>123</td> <td>1</td> <td>1</td> <td>8</td> <td>2</td> <td>1</td> <td>2</td> <td>1</td> <td>2</td> <td>3</td> <td>144</td> </tr> </table>											Ethnic Origin	A White - British	B White - Irish	C White - Any other White background	C3 White Unspecified	CA White English	D Mixed - White & Black Caribbean	H Asian or Asian British - Indian	J Asian or Asian British - Pakistani	M Black or Black British - Caribbean	#N/A	Grand Total	Total	123	1	1	8	2	1	2	1	2	3	144
Ethnic Origin	A White - British	B White - Irish	C White - Any other White background	C3 White Unspecified	CA White English	D Mixed - White & Black Caribbean	H Asian or Asian British - Indian	J Asian or Asian British - Pakistani	M Black or Black British - Caribbean	#N/A	Grand Total																								
Total	123	1	1	8	2	1	2	1	2	3	144																								
	<p>This area will be monitored through workforce data reporting and analysis.</p>																																		

Religion	<p>Of the 144 individuals who have received pay protection in the previous 12 months, there is no information to indicate that there has been a disproportionate impact on a particular group in relation to religion/belief. The statistics remain broadly similar to the remainder of the organisation. However data will be monitored through workforce data reporting and analysis.</p> <table border="1" data-bbox="459 291 1225 645"> <thead> <tr> <th>Religious Belief</th> <th>Atheism</th> <th>Buddhism</th> <th>Christianity</th> <th>Hinduism</th> <th>Do not wish to disclose</th> <th>Islam</th> <th>Other</th> <th>Sikhism</th> <th>#N/A</th> <th>Grand Total</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>4</td> <td>1</td> <td>78</td> <td>1</td> <td>46</td> <td>1</td> <td>9</td> <td>1</td> <td>3</td> <td>144</td> </tr> </tbody> </table>	Religious Belief	Atheism	Buddhism	Christianity	Hinduism	Do not wish to disclose	Islam	Other	Sikhism	#N/A	Grand Total	Total	4	1	78	1	46	1	9	1	3	144
Religious Belief	Atheism	Buddhism	Christianity	Hinduism	Do not wish to disclose	Islam	Other	Sikhism	#N/A	Grand Total													
Total	4	1	78	1	46	1	9	1	3	144													
Disability	<p>Of the 144 individuals who have received pay protection in the previous 12 months, 8 have declared a disability. This is approximately 4% of the individuals affected. Compared with 3.1% of individuals declaring a disability across the Trust, this is not indicated a significant variance. However, this is an area that will be monitored through workforce data reporting and any feedback from line managers/trade</p> <p>In the application of this policy those who are disabled in any way should be supported through the process and reasonable adjustments should be put in place where appropriate.</p> <table border="1" data-bbox="459 999 898 1261"> <thead> <tr> <th>Disability</th> <th>No</th> <th>Not Declared</th> <th>Yes</th> <th>#N/A</th> <th>Grand Total</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>107</td> <td>28</td> <td>6</td> <td>3</td> <td>144</td> </tr> </tbody> </table>	Disability	No	Not Declared	Yes	#N/A	Grand Total	Total	107	28	6	3	144										
Disability	No	Not Declared	Yes	#N/A	Grand Total																		
Total	107	28	6	3	144																		
Sex	<p>Of the 144 individuals who have received pay protection in the previous 12 months the majority (79%) are female. This is slightly higher than the overall Trust statistics at 73% female. The individuals who have been subject to pay protection have, in the main, been in administrative roles and there are higher levels of females within these roles. In addition the majority of changes processes which may have resulted in changes to roles and working hours have been predominately in non-frontline areas which also has higher levels of females. Data will be monitored through workforce data reporting and analysis</p> <table border="1" data-bbox="459 1556 831 1780"> <thead> <tr> <th>Gender</th> <th>Female</th> <th>Male</th> <th>Unknown</th> <th>Grand Total</th> </tr> </thead> <tbody> <tr> <td>Total</td> <td>114</td> <td>27</td> <td>3</td> <td>144</td> </tr> </tbody> </table>	Gender	Female	Male	Unknown	Grand Total	Total	114	27	3	144												
Gender	Female	Male	Unknown	Grand Total																			
Total	114	27	3	144																			
Gender Identity	<p>There is currently no data collected to show whether there will be an impact in this area. However data will be monitored through workforce data reporting and analysis.</p>																						

Sexual Orientation	<p>Of the individuals who have received pay protection in the previous 12 months 67% are heterosexual and the remainder have chosen not to declare or is unknown. The Trust wide statistics indicate that 69.5% of the workforce area heterosexual a similar percentage have chosen not to declare. Data will be monitored through workforce data reporting and analysis</p> <table border="1" data-bbox="459 288 825 645"> <tr> <td style="background-color: yellow;">Sexual Orientation</td> <td>Heterosexual</td> <td>Do not wish to disclose</td> <td>#N/A</td> <td>Grand Total</td> </tr> <tr> <td>Total</td> <td>97</td> <td>44</td> <td>3</td> <td>144</td> </tr> </table>	Sexual Orientation	Heterosexual	Do not wish to disclose	#N/A	Grand Total	Total	97	44	3	144																
Sexual Orientation	Heterosexual	Do not wish to disclose	#N/A	Grand Total																							
Total	97	44	3	144																							
Age	<p>There may be a disproportionate impact on age. A higher percentage of individuals between the age of 45 and 59 have been provided with pay protection. This is an area that will need to be monitored through workforce data reporting an analysis.</p> <table border="1" data-bbox="459 822 1415 1025"> <tr> <td style="background-color: yellow;">Age Band</td> <td>20 - 24</td> <td>25 - 29</td> <td>30 - 34</td> <td>35 - 39</td> <td>40 - 44</td> <td>45 - 49</td> <td>50 - 54</td> <td>55 - 59</td> <td>60 - 64</td> <td>65 and over</td> <td>#N/A</td> <td>Grand Total</td> </tr> <tr> <td>Total</td> <td>1</td> <td>3</td> <td>10</td> <td>10</td> <td>14</td> <td>22</td> <td>32</td> <td>31</td> <td>15</td> <td>3</td> <td>3</td> <td>144</td> </tr> </table>	Age Band	20 - 24	25 - 29	30 - 34	35 - 39	40 - 44	45 - 49	50 - 54	55 - 59	60 - 64	65 and over	#N/A	Grand Total	Total	1	3	10	10	14	22	32	31	15	3	3	144
Age Band	20 - 24	25 - 29	30 - 34	35 - 39	40 - 44	45 - 49	50 - 54	55 - 59	60 - 64	65 and over	#N/A	Grand Total															
Total	1	3	10	10	14	22	32	31	15	3	3	144															
Socio-Economic	<p>There may be an impact on social-economic factors. Pay protection will provide a staged approach to the reduction of pay. The majority of individuals who have been provided with pay protection are within pay bands 5 and 6. A slightly smaller number appear within pay bands 2 and 3. Whilst the pay protection policy provides for a staged approach to the reduction of pay actual pay lost may be greater in individuals in lower banded roles.</p> <p>Data will be monitored through the workforce data reporting an analysis</p>																										
Human Rights	<p>Staff have the right to representation within this process. At no point during the application of this policy will any individuals suffer a detriment to their human rights.</p>																										
What are the overall trends/patterns in the above data?	<p>The application of pay protection is designed to stage the reduction of pay to support individuals affected by organisational change. This is a positive approach to support the workforce whilst meeting the changing needs of the service. The application of pay protection is provided through a structure and non-discriminatory process relating to the role and not individual characteristics.</p> <p>There is information has highlighted that a greater number of individuals between the age of 45 and 59 have been provided with pay protection. This is likely to reflect the fact that the majority of organisational change projects resulting in changes in pay for individuals has been within the administrative function. These areas are likely to have higher levels of females and individuals within this age bracket. However, workforce data will be monitored and any trends or patterns will be identified and appropriate actions will be put in place.</p>																										

Specific issues and data gaps that may need to be addressed through consultation or further research	There is currently no data to monitor the impact on gender identity, socio-economic and human rights.			
Involving and consulting stakeholders				
Internal involvement and consultation	HR Business Partners, Trust Senior Management Team, JSNC			
External involvement and consultation				
Impact Assessment				
Overall assessment and analysis of the evidence	<p>There may be an impact on individuals who are aged 45 and over, however, this will be determined by the changing needs of the service. This information needs to be monitored in conjunction with the Organisational Change Policy.</p> <p>There could potentially be an impact on staff whose first language isn't English. Special attention must be paid to ensuring that employees for whom English is not their first language are supported through the process.</p>			
Action Plan				
Action	Owner	Risks	Completion Date	Progress update
Monitoring of workforce data	HR Business Partners		On-going	