

Change Procedure

Guidance Document for Managers and Employees

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Introduction

The ever-changing health and social care environment poses a number of challenges to the Trust, for example, the need to improve standards of care, to achieve integrated care pathways, to respond to financial challenge or to respond to a change in patient service requirements. As a result, organisational change will sometimes be necessary in order to meet these challenges, which may result in a range of workforce changes.

The Trust recognises that its employees are the most valuable of its resources and aims, as far as possible, to achieve necessary changes in the workforce by turnover and natural wastage, redeployment, and retraining avoiding compulsory redundancy wherever possible.

This document outlines the procedure for managers to follow when leading a change project which affects staff.

Statement and Principles

Organisational change is driven by the business needs of the Trust and individual departments. Change can be triggered either by the external environment or by an internal review of organisational requirements. Examples of significant organisational change include the reorganisation, relocation, merger, expansion or closure of a service, competitive tendering or outsourcing, or a major change in working practice.

In order to meet changing business needs more effectively, there may be occasions when managers need to implement relatively minor changes. Minor changes and adjustments to duties and working practices may be implemented without recourse to the formal procedures in this procedure but will require informal engagement with staff affected, for example an individual job description or a change in line management. Any situation which may lead to redundancy or significant change to contracts of employment will not be deemed to be a minor change and will require formal consultation.

The Trust and individual departments are responsible for deciding the size and most efficient use of the workforce but in doing so is committed to the following principles for managing organisational change:

- the Trust will provide such information about the proposed organisational change in accordance with good employee relations practice to disclose to staff and the trade unions
- the Trust will work in partnership with the Trade Union and Staff Organisation representatives from the earliest stage possible
- staff will receive notice of any organisational change which may affect their futures at the earliest opportunity
- staff will be treated as individuals with due regard to their personal and employment circumstances and their career aspirations at all stages of the change management procedure

- staff will have the right to be accompanied by a trade union representative or current work place colleague not acting in a legal capacity at formal meetings to discuss the organisational change
- requests by the employee for additional support at any individual meetings should be considered e.g. where disability is involved and familiarity with the impairment or the individual or specialist input would be beneficial.
- the Trust will consider all reasonably practicable steps to avoid compulsory redundancies
- staff will be able to access training and development, as appropriate to meet new skill requirements and where appropriate to identify new career opportunities, with funding and time to attend training and development activities being considered
- career support is available from the HR and Training and Development departments. This may include access to support in seeking Suitable Alternative Employment e.g. interview skills

Staff will be considered against their substantive post and contractual arrangements throughout the process e.g., regarding their suitability for 'slotting in' and 'ring fencing' etc.

Procedure

INFORMAL ENGAGEMENT

Where there are proposed changes which are minor, i.e. there are no changes to employee's terms and conditions of employment; it is best practice to engage with affected staff. Engagement is not the same as consultation therefore there is no right to representation via Trade Unions, however it is best practice to engage with the Trade Unions to inform them of the minor changes and the engagement process. Engagement exercises will share information and also seek feedback to suggestions. As this is not formal there are no predisposed timescales but reasonable engagement is encouraged.

CONSULTATION PROCEDURE

Where there is a requirement to formally consult with staff, managers shall prepare a consultation document on the proposed organisational change having gathered information to support the need for change and consulted with HR as appropriate.

The consultation document will be presented to the Trade Unions at the Workforce Transformation Group. The group will advise if the document is robust to proceed to consultation with affected staff.

The consultation document will include details of the following, as appropriate:

- current situation analysis including staffing structure
- impact on service/business
- impact on other areas / services
- consideration of any relevant health and safety assessment
- completion of an equality impact assessment

- any relevant job descriptions and job matched reports
- the need for change and the rationale behind the change
- the options that have been considered
- the proposals for change including the proposed staffing structure(s) and any location change
- the financial, staffing and workload implications of the proposals
- the number and grades/bands of staff who may be at risk of redundancy as a result of the proposal
- proposed timescale for consultation and implementation of the proposed change
- the way in which staff will be selected for posts within the new structure or transferred
- if necessary, the selection criteria for redundancy
- the measures to be taken to avoid compulsory redundancies which may include natural wastage, redeployment with retraining, or voluntary early retirement or voluntary redundancy
- the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect (reference NHS Terms and Conditions Handbook: section 16)
- details of any suitable alternative employment which may exist
- details of how this information will be disseminated to staff
- description of the consultation process, including planned meetings, timetable, how staff and representatives can respond and the deadline.
- the proposed method of calculating the amount of any redundancy payments to be made (over and above the statutory redundancy payment) to employees who may be dismissed.

TIME PERIODS FOR CONSULTATION

In cases where there is a requirement for formal consultation the Trust will allow sufficient time for meaningful consultation with staff and their representatives. In exceptional circumstances where changes need to be made very quickly, the trade unions will be briefed immediately and the verbal briefing will be followed by a written brief.

In a collective redundancy scenario, consultation will commence for a period of no less than the statutory time scales:

- where 20 - 99 redundancies are proposed then consultation should commence at least 30 days before the first redundancy takes place
- where 100 or more redundancies are proposed then consultation should commence at least 45 days before the first redundancy takes place.

Trade unions and staff may request additional information or an extension of time if this is necessary to enable them to understand and contribute to an informed discussion on the

merits of the proposal. Such requests will not unreasonably be refused, however where they cannot be accommodated a reason will be given.

Where it is proposed where 20 or more redundancies/terminations may occur within a 90-days or less a HR1 form will be required to be completed and returned to The Insolvency Service.

CONSULTATION WITH TRADE UNIONS

Early informal engagement with the trade unions is encouraged and should occur where possible. This is also known as pre-consultation. Meaningful pre-consultation often leads to an agreed shorter formal consultation time and greater staff satisfaction with the process.

Formal consultation with the trade unions will commence within the minimum timescales above once any informal comments have been considered and the consultation document has been finalised and presented to the Workforce Transformation Group.

Each change project will have a trade union lead, working in partnership with managers and HR to ensure process is followed and ensuring meaningful consultation. If a trade union member is a staff member within a department affected by the change they cannot be identified as the trade union lead for the project.

CONSULTATION WITH INDIVIDUAL STAFF

Where there is a requirement for formal consultation a collective consultation meeting will be held with all staff affected by the organisational change to announce the proposed change and explain the consultation process which will follow. At this meeting it is important a register of attendees is recorded.

Each member of staff affected by the organisational change will be provided with a copy of the consultation document. Staff who are absent from work for any reason including maternity leave, sickness absence, secondment to another organisation, career breaks etc. will be sent a copy of the consultation document at their home address / other suitable address so that they can participate in the consultation process and should be offered the opportunity to discuss the documentation further.

Each member of staff, including those absent from work, will be offered the opportunity of at least one individual meeting with their manager at which they have the right to be accompanied by an accredited trade union representative or current workplace colleague not acting in a legal capacity. HR advisory support will also be offered to support the process including engaging with the manager, staff member and staff representatives.

At the meeting, each member of staff will be invited to comment and respond to the proposals, including how it may impact on their personal circumstances. It is recognised that staff may require time to respond and may not be able to do so at that particular meeting. Staff will therefore be made aware of their right to request further meetings with their manager during the consultation period.

A written record of the individual meetings will be kept and provided to the employee and their trade union representative where applicable. The record will be a note of the main points discussed at the meeting, not verbatim notes.

Regular updates and frequently asked questions may be circulated to staff throughout the formal consultation period. Throughout this period staff should be encouraged to discuss their concerns and queries with their line manager and trade union.

In addition to the individual consultation meetings, staff can be kept informed as appropriate by management, team meetings and briefings, newsletters, trade union meetings, email and other written communication and information supplied by the trade unions.

END OF CONSULTATION

At the end of the formal consultation period the manager will give full consideration to all comments received from staff and the trade unions and will make a decision on the way forward. The manager will update the consultation paper work and HR framework where applicable and re issue to the staff and trade unions covering the outcome of the consultation and any changes, the change process to be followed and the timeframe. This information will include:

- the reasons for the decision/s
- any relevant health and safety assessments
- an explanation where the management decision is in conflict with the views of the trade unions representatives/staff and any actions taken in an effort to resolve any areas of conflict; or where the proposal has changed as a result of consultation
- identification of posts which are the same or substantially the same in the old and new structures
- arrangements for filling posts via Slotting In or Ring fencing
- selection arrangements for posts within the new structure
- measures that will be taken to avoid compulsory redundancies
- arrangements for seeking suitable alternative employment
- reference to the Trust's protection arrangements and how these will apply
- support for staff who are affected by the change, including reasonable time off to seek other employment or undertake training
- proposed timescales for each stage of the change process.

Where redundancies are inevitable managers should seek advice from the HRBP on the selection criteria to be used to ensure the Trust is not open to legal challenge. Selection criteria will be discussed, and agreed, with trade unions.

Under normal circumstances, staff will be selected on the basis of their relevant skills, experience and qualifications to undertake the remaining jobs, as assessed through formal interviews and assessments held in accordance with Trusts recruitment and selection procedures. There may, however, be occasions where additional selection criteria are agreed with the trade unions during the consultation process, such as for example:

- Conduct and performance (as evidenced through the disciplinary and performance capability)

- Attendance records (with due regard to the causes of absence and the equality impact of use of this criterion).

In considering any measures to avoid compulsory redundancies, including requests for voluntary redundancy or early retirement, operational efficiency and service needs must be taken into consideration. If a member of staff volunteers for redundancy/early retirement, approval of the request will be subject to the needs of the service and the cost implications. Care must be taken to ensure that decisions are based on sound organisational reasons and do not breach equality legislation. All efforts will be made to mitigate redundancies (see section below).

SUPPORT FOR STAFF

All staff affected by the organisational change will be encouraged to seek the advice and support of their trade union. Relevant support will be available and may include:

- help with the production of CVs/application forms, including assistance with NHS Jobs and preparation for interviews from the HR and Training and Development Department
- support in developing coping strategies and stress management, with support of the counselling service, Occupational Health and the Employee Assistant Programme (EAP)
- reasonable time to meet with recognised trade union representatives to discuss the change
- further assistance to staff who are at risk of redundancy will include reasonable time off to seek other employment or undertake training
- placement on the Trust and East Midlands Suitable Alternative Employment Register via HR.

Even after the change has taken place, the Trust acknowledges that staff may take some time to adjust to the change itself. Managers should remain available to staff to manage any issues that arise and support staff through the transition.

THE PROCESS FOR FILLING POSTS IN THE NEW STRUCTURE

There will be three stages in the process for filling posts in a new structure:

- Stage One. For those staff that are affected by the change. Posts in the new structure are filled either by 'slotting in' or by 'ring-fencing'.
- Stage Two. Any posts that remain vacant in the new structure following Stage 1 will be opened up to access by any staff on the Trust at risk register for whom the post is considered suitable alternative employment and they meet the essential criteria, this could include 'ring fencing' to a specific department in the first instance. This may include posts a lower pay band, in which case pay protection will apply. Priority will be given to employees who are in a redundancy notice period over employees who are on the register for other reasons e.g. Health issues.
- Stage Three. Any posts that still remain vacant will be advertised in line with the normal recruitment process.

The three stages may run concurrently but priority will still be implemented in this order to ensure that all reasonably practicable steps will be taken to avoid compulsory redundancies. Priority will be given to employees that are affected by the change.

Job descriptions and person specifications will be produced for new posts. Jobs will be matched or evaluated in partnership in accordance with the national NHS job evaluation scheme and the Trust's Local Agreement.

Selection criteria for all posts in the new structure (whether or not there is competition) must be non-discriminatory, fair, objective, clearly defined and based on the skills and competency requirements of the post. The selection criteria can be shared with staff to ensure transparency.

Staff who are offered posts during Stage One will be deemed to have been offered suitable alternative employment by the Trust. This will be confirmed in writing by the manager. This is on the basis that if staff are Slotted In or offered Ring fenced posts it will be assumed that the posts offered are suitable alternative employment and hence the consequences of refusing to accept these posts will be as per refusing suitable alternative employment and therefore the individual will not be entitled/eligible for redundancy payment.

Employees should only be turned down for posts where they fail to meet the essential criteria or where others in the at risk pool are considered to meet the requirements better the fact that there may be better candidates in the external labour market is not a reason for non-selection. Any member of staff who is not appointed to a post in the new structure will be offered post-interview feedback and further support where appropriate, and has the right to appeal via local grievance procedures.

SLOT IN

Role which have been identified within the new structure where the duties and skill required are at least 70% of their existing jobs description.

If roles are potentially identified as slot in, they should to be assessed by independent Management and Staff Side representatives who are trained in job evaluation. This is to ensure there is transparency which is free from perceived favouritism or nepotism.

Slotting in does not require a competitive job selection process, nor are staff placed 'at risk'(unless there is a reduction of number of posts available).

STAFF AT RISK

When changes in staffing levels or skill mix are proposed which will lead to a reduction in the numbers of staff employed in particular grades, occupational groups or specialties, management will identify the positions, individual staff or pool of staff who are at risk of redundancy as a result of the changes in line with the agreed criteria and as outlined by the HR Framework. Staff who are acting up or on a secondment will be placed in the pool relating to their substantive post.

The identification of being at risk of redundancy is not a *notice* of redundancy.

Staff At Risk will be invited to an individual consultation meeting(s) with their manager and trade union representative or current work place colleague not acting in a professional capacity to:

- discuss how the proposed changes affect the individual
- explain why the individual is at risk of redundancy
- discuss ideas for avoiding redundancy dismissals, reducing the number of Staff At Risk who are made redundant and mitigating the consequences of any redundancy dismissals
- explore the possibility of Redeployment/Suitable Alternative employment.
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- explain the process for Redeployment including completing the Suitable Alternative Employment form
- explain the arrangements for protection of pay and terms and conditions where applicable
- offer support and assistance
- discuss any other relevant issues and processes which may include providing a redundancy payment estimate if requested.

Following the meeting, Staff At Risk will be given a letter within five working days to confirm their at risk status and the key points discussed at the meeting including answers, wherever possible, to questions raised at the meeting for which there were no immediate answers available at the time.

Staff At Risk will be given prior consideration for posts within the new structure where they meet the selection criteria, under Stage One of the process and as outlined in the HR Framework. Where they are selected for a new post they will normally be given the offer in writing within seven working days of the interview. Any training required will be discussed with the member of staff as part of the offer process; and they will have a right to a four week trial period to allow both sides to decide if the work provides a suitable alternative, whilst still protecting the individual's right to a redundancy payment (see section below).

Staff who are not selected for a post in the new structure will be formally issued with notice of redundancy in accordance with the contract of employment. They will continue to be listed on the Trust and East Midland's Suitable Alternative Employment register until their contract ceases or they are successfully redeployed.

There may be situations where it is necessary to give notice of redundancy in accordance with the contract of employment at the end of the consultation process.

Staff at Risk will be required to register with NHS Jobs/Trac and apply for suitable posts within the Local Health Community and Trust. The HR Recruitment Team will use the full functionality of NHS Jobs including "internal only" and "restricted vacancy" functionality to support redeployment of staff at risk.

Staff At Risk will be given prior consideration for other posts that are or become vacant in the Trust and, subject to the arrangements regarding suitable alternative employment and trial periods, they will remain on the register until their last day of service or until successful redeployment.

Special provision is made in law where an employee's job becomes redundant while he or she is absent on maternity, adoption, paternity, or parental leave; the employee is entitled to be offered any suitable alternative vacancy before the existing contract ends, in preference to employees who are not absent on such leave even if other employees are more suitable for the role.

REDUNDANCY

Definition of Redundancy

A member of staff may become redundant if they are dismissed and the reason for the dismissal is wholly or mainly due to:

- the fact that the Trust has ceased, or intends to cease, to carry on the activity for the purposes of which the individual was employed, or has ceased, or intends to cease, to carry out the activity in the place where the individual was employed OR
- the fact that the requirements of the Trust for staff to carry out work of a particular kind in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.

SUITABLE ALTERNATIVE EMPLOYMENT

Suitable alternative employment will be an equivalent post defined in terms of pay, working hours, status, grade, duties and responsibilities, location and location allowances. It must be suitable to the individual's personal circumstances, skills and experience. It may be on any site operated by the Trust subject to individual travel considerations. Staff at Risk will be given prior consideration for suitable posts in line with their skills, experience and capabilities and where appropriate will receive protection of pay.

Where there are insufficient numbers of vacant posts within the Trust, the Human Resources Team will endeavour to identify suitable redeployment opportunities within the wider local Health Community and draw these to the attention of the staff.

Staff are reminded that under Agenda for Change terms and conditions an unreasonable refusal to accept suitable alternative employment offered by the Trust, or another NHS employer, will mean that they are not entitled to a redundancy payment. (See AfC Section 16).

In considering suitable alternative employment priority will be given to staff with a Contract of Employment with the Trust.

If the individuals are offered suitable alternative employment, a trial period will apply.

Staff who unreasonably refuse an offer of suitable alternative employment may lose their right to a redundancy payment.

TRIAL PERIOD AND TRAINING

A trial period will only apply to Staff at Risk where a formal offer of suitable alternative employment has been made. This also includes those staff who have been offered SAE whilst absent on maternity, adoption, paternity, or parental leave.

The purpose of a trial period is for both the manager and the individual to assess the suitability of the post as alternative employment.

Where staff have the potential ability but not the immediate experience to undertake full duties of the role, they will be provided with appropriate skills development/training. This will be provided where it is reasonable, practical and cost effective and where the member of

staff demonstrates a willingness to learn and can apply the new skills within an agreed timeframe.

The trial period will normally last for 28 days but may be extended by mutual agreement in special circumstances, including where a member of staff requires additional training and development.

If the trial period is unsuccessful, as determined by the individual and/or the manager concerned, redundancy arrangements will apply as from the date when the original contract of employment will terminate. Until the end of their notice period Staff at Risk will be considered for other suitable alternative employment if available which will be subject to the same arrangements including a trial period.

If an individual works within a role for 28 days and the trial period has not been extended by mutual agreement and no concerns have been raised by the individual or manager, it will be deemed the individual has accepted the post as suitable alternative employment and hence the position becomes the individuals substantive role within the organisation.

CHANGE OF LOCATION

If, as a result of organisational change, there is a requirement to move staff from their normal place of work to another location within the Trust on a temporary or permanent basis and this results in increased travel costs to and from work, staff may be reimbursed their extra daily travelling expenses in line with the section 17 of Agenda for Change terms and conditions.

VARIATION TO CONTRACT

If, as a result of organisational change, there is a requirement to make changes to a member of staff contract of employment collective and individual consultation as outlined in this guidance will be implemented.

Where there are changes in shifts or rotas there may be a requirement to seek advice from Occupational Health, particularly regarding reasonable adjustments.

At the end of consultation staff will be requested to consensually agree to vary their contract of employment via issuing a Consensual Variation to Contract Letter.

If staff do not agree to consensually agree to vary their contract of employment, one option is to dismiss and re-engage staff on new terms and conditions of employment, by issuing a Termination and Re engagement letter.

If staff do not re-engage on new terms and conditions, appeals against the decision to dismiss will be heard in accordance with the Trusts Appeals Procedure. The decision of the Appeal Panel will be final.

REDUNDANCY ARRANGEMENTS

A member of staff will have their contract of employment terminated on the grounds of redundancy if no suitable alternative employment can be found or if a trial period is unsuccessful.

The terms under which a redundancy payment are payable are available in section 16 of the AfC handbook.

Individuals can source independent financial advice in relation to tax, pensions etc.

Staff will not be entitled to redundancy payments on the grounds of redundancy if they :

- are dismissed for reasons of misconduct
- at the date of the termination of the contract have obtained without a break, or with a break not exceeding four weeks, suitable alternative employment with the Trust or other NHS employer
- unreasonably refuse to accept or apply for suitable alternative employment with the Trust or another NHS employer
- leave their employment before expiry of notice, except if they are being released early
- are offered a renewal of contract with the substitution of a new employer for the Trust.

Staff whose employment is subject to TUPE transfer will not be redundant and therefore will not be entitled to redundancy payments/early retirement on the grounds of redundancy.

For further information please refer to Section 16, of Agenda for Change: NHS Terms and Conditions of Service Handbook and the NHS Pension Scheme early retirement booklet or seek further advice from the Trust HR department or trade union.

The manager will liaise with HR in order to obtain details of redundancy entitlements and other aspects of the redundancy process. The manager will provide, in writing, the individual and their trade union representative with the following details:

- the number of weeks' notice, in accordance with the contractual notice period
- the effective date of the redundancy, which will also be the last day of service
- the number of days' outstanding annual leave, where applicable, to be paid in lieu
- the amount of redundancy payment/enhanced pension benefits that will be paid, where applicable
- what efforts will be made to assist the individual in seeking suitable alternative employment during the notice period
- what support is offered during the notice period e.g. help with job search, CV and interview preparation
- what work the individual will be expected to undertake during their notice period
- that reasonable time off with pay will be given to seek and prepare for alternative work
- that early release will normally be given, unless there are compelling service reasons to the contrary, if the individual is successful in obtaining other employment outside the NHS and wishes to take this up during the notice period; the date of early release will then become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment
- the right of appeal against selection for redundancy or the terms of the redundancy.

PROTECTION ARRANGEMENTS

Protection of Pay Policy provisions will be put in place in order to support staff who, as a result of organisational change, are required to move to a new post or if there are changes which affect the salary which could entail a reduction of earnings and certain terms and conditions of employment.

Pay protection will apply for the agreed periods and provisions as set out in the Pay Protection Policy or until the member of staff moves voluntarily to a new post within the Trust.

TUPE

Where there is a proposal to transfer services and staff to a different employer, there will be consultation with the trade unions at the earliest opportunity.

When services are transferred from one organisation to another in line with TUPE or by virtue of a Transfer Order under the National Health Service Act 1977, which mirrors TUPE, the employment of staff who are assigned to the services which are being transferred will transfer to the new organisation. TUPE applies in contracting out scenarios, retendering and where the services are brought back into the NHS.

Where TUPE is applicable, all the terms and conditions within the transferring employee's contract of employment (including relevant policies and procedures) will transfer with them and should not be changed as a consequence of the transfer.

Where staff have responsibilities spanning more than one NHS organisation or more than one service, discussions will take place with the individual, their trade union representative and the organisations concerned to determine if their employment should transfer. The options in this situation might be that the individual will transfer to one organisation with an agreement to provide services to the other(s), or have more than one contract of employment, or, in exceptional circumstances, to be declared at risk. Legal advice via HR must be sought should this situation arise.

In all of these circumstances, for the purposes of the consultation that will be carried out, the manager will identify the functions, posts and individual staff that will transfer or be affected in accordance with the obligations of TUPE and shall write to the staff affected and the trade unions informing them of the intention that staff will transfer. They will also share information relating to the implications of the transfer and any measures which will be taken in connection with the transfer as declared by the receiving organisation.

The manager will then hold one-to-one meetings with individual staff and their trade union representative to discuss the implications of the transfer, measures to be taken in connection with the transfer, answer any concerns or queries, discuss possible options if appropriate and consider personal circumstances. These discussions will be documented and confirmed in writing. Every possible support will be given to staff to understand the reasons for and implications of the transfer and to ensure they have the necessary information with which to prepare themselves.

Formal notice of a transfer will be issued as long before the date of the transfer as possible in order to comply with the obligations of TUPE and this policy. The Trust will make every effort to give up to 12 weeks' notice of a transfer, where possible. Where three months' notice is not possible, for example where the timing of external announcements or decisions of approval, a shorter notice period will be provided after consultation with the Workforce Change Group.

See separate TUPE Guidance regarding the process.

APPEALS

If there is a disagreement about whether or not an offer of employment is suitable, there is a right of appeal under the Trust's Disputes and Grievance Procedure.

Individual and collective concerns about organisational change relating to staff displacements or potential redundancies must be dealt with under this policy and procedure, and not under the trust's Disputes and Grievance Procedure

Appeals against the decision to dismiss an employee by reason of redundancy or against the offer of a suitable alternative post will be heard in accordance with the Trusts Appeals Procedure. The decision of the Appeal Panel will be final.