

PROTECTION OF PAY AND CONDITIONS OF SERVICE POLICY

		POLICY	
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Approving Body	JSPF		
Date Approved	2 August 2022		
For publication to external SFH website	Positive confirmation received from the approving body that the content does not risk the safety of patients or the public:		
	YES	NO	N/A
	X		
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Date of Completion of Equality Impact Assessment	July 2022		
Date of Environmental Impact Assessment (if applicable)	N/A		
Legal and/or Accreditation Implications	Employment Rights Act 1996		
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Sponsor (Position)	Director of People		
Author (Position & Name)	Associate Director of People (Operations)		
Lead Division/ Directorate	Corporate		
Lead Specialty/ Service/ Department	Human Resources		
Position of Person able to provide Further Guidance/Information	Associate Director of People (Operations)		
Associated Documents/ Information		Date Associated Documents/ Information was reviewed	
Change Policy		July 2021	
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APPENDICIES

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1.0 INTRODUCTION

The purpose of protection is to provide support upon organisational change to enable an employee to adjust to a lower level of earnings over a transitional period and to enable the Trust to retain key skills and experience.

This agreement will also apply to an employee, who by mutual agreement with management, is required to move to an alternative post as the result of industrial injury / disease which has been sustained / incurred during their employment at Sherwood Forest Hospitals NHS Foundation Trust.

This policy does not apply to colleagues, who due to a temporary organisational response to a major incident or a pandemic, are requested to work in a down-banded role.

2.0 POLICY STATEMENT

In accordance with the aims and values of the Trust, this Policy seeks to ensure that any organisational change takes into account the well-being of our current employees. Pay protection is one way of ensuring this occurs.

3.0 DEFINITIONS/ ABBREVIATIONS

THE TRUST

Means Sherwood Forest Hospitals NHS Foundation Trust

ORGANISATIONAL CHANGE

Means any structural or managerial change in the organisation of health service provision.

BASIC WAGE OR SALARY

Basic wage or salary is exclusively the weekly or monthly sum due in respect of basic hours worked by the individual concerned, within the standard working week as defined in the Agenda for Change conditions of service plus any responsibility or qualification allowance, or distinction award, reckoned on the day immediately preceding the first day of employment in the new post.

EARNINGS IN THE NEW POST

Means the sum of the basic wage or salary in the new post and of any remuneration in respect of overtime, shift work and other additional duties.

DOWNGRADING

Occurs when the new post, irrespective of its grade title, carries an hourly rate lower than that for the previous post or a salary scale with a maximum point lower than the maximum point for the previous post, or lower than that of the grade held in the previous post.

ADDITIONAL PROTECTABLE EARNINGS

Additional protectable earnings shall be calculated by reference to the weekly or monthly average remuneration over 16 weeks preceding the first day of employment in the new post, or the implementation of the organisational change, including regular contracted overtime, bonus payments, special duty payments, and shift duty allowances and on call payments.

Where the level of such additional earnings have been substantially affected by sickness, or other authorised absences, a shorter period shall be used to assess the average, where this is agreed as being more representative.

4.0 ROLES AND RESPONSIBILITIES

The Human Resources Directorate is responsible for advising on the application of this Policy.

5.0 APPROVAL

Joint Staff Partnership Forum

6.0 DOCUMENT REQUIREMENTS

PROTECTED PERIOD

The protection period will be based on length of continuous service with Sherwood Forest Hospitals NHS Foundation Trust and its predecessor employer authorities / organisations (calculated in accordance with the terms and conditions of the Employment Rights Act 1996).

Eligibility for protection and the duration of the protection period shall be based on the employee's length of service at the date on which the organisational change occurs.

All employees with more than 4 months service shall be entitled to minimum protection, as detailed above, in the event of organisational changes as detailed in section 2 of this agreement.

The minimum protection period will include basic wage or salary protection (including where a reduction in hours has occurred) and including pay awards but not incremental rises) and additional protectable earnings as defined in Table 1.

Table 1

Where an employee's basic wage has occurred, the following protection will apply;

Continuous years of SFH service or its predecessor organisations as follows	Minimum Protection Period (months)
4 months to 1 year	1
1 to 2 years	2
2 to 3 years	3
3 to 4 years	4
4 to 5 years	5

5 plus years	6
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In the event where an employee is required to move to a post where downgrading is involved and the employee will be in receipt of a Minimum Protection Period in accordance with Table 2. Any payment for additional hours or overtime will be calculated at the appropriate rate for the new post.

Table 2

Where an employee is required to move to a post where downgrading is involved the following protection will apply;

Continuous years of SFH service or its predecessor organisations as follows	Minimum Protection Period (months)
4 months to 1 year	1
1 to 2 years	2
2 to 3 years	3
3 to 4 years	4
4 to 5 years	5
5 to 6 years	6
6 to 7 years	7
7 to 8 years	8
8 to 9 years	9
9 to 10 years	10
10 to 15 years	12
15 to 20 years	18
20 years +	24

If at any time during the protection period basic pay and earnings in the new post exceed protectable earnings, protection will be extinguished and basic pay and earnings for the new post will be paid.

Protection shall continue until either:-

- (i) The protection period expires or
- (ii) Basic pay and earnings the new post permanently exceed that of the old post or
- (iii) The individual moves on their own application to a new post.

Except as provided for above, at the end of the protection period, the employee will revert to the pay and conditions of the new post.

The Trust will endeavour to assist an employee to regain their former grading. However, should an employee initially or subsequently unreasonably refuse to apply for or to accept a post commensurate with their former grading, they shall forfeit rights to protection.

Employees will be required to sign an undertaking to this effect prior to the commencement of the protection period. Should a suitable vacancy arise during the period of protection, the employee will be informed of this and reminded that a failure to apply for or to accept the post would affect their right to further protection.

Employees required to move to a new post will acquire the conditions and terms of the new post.

Employees required to move to a new post are entitled to protection of the period of notice appropriate to the former post if this is in excess of the statutory minimum. This protection will be retained until they move to a new post, which attracts a notice period equal to or in excess of the notice period in the former post.

APPEALS

Appeals against protection arrangements will be dealt with through the Trust's Disputes and Grievance Procedure.

PENSION ARRANGEMENTS

NHS Pension Scheme members may apply to have their period of membership of the higher rate of pay treated as preserved membership, if this is more beneficial. The divisional People Partner will ensure the employee receives advice regarding the potential effects of protection on their NHS Pension Scheme benefits. Applications for preserved membership must be made in writing to the Pay Services Manager not later than one month after the protection arrangements end.

PREVIOUS PROTECTION ARRANGEMENTS AND SUBSEQUENT CHANGES OF POST

Employees already receiving protection under earlier provisions shall continue to be protected under those previous until the protection expires. However, each subsequent change of post due to an organisational change covered by this agreement shall attract protection in its own right.

7.0 MONITORING COMPLIANCE AND EFFECTIVENESS

Minimum Requirement to be Monitored (WHAT – element of compliance or effectiveness within the document will be monitored)	Responsible Individual (WHO – is going to monitor this element)	Process for Monitoring e.g. Audit (HOW – will this element be monitored (method used))	Frequency of Monitoring (WHEN – will this element be monitored (frequency/ how often))	Responsible Individual or Committee/ Group for Review of Results (WHERE – Which individual/ committee or group will this be reported to, in what format (eg verbal, formal report etc) and by who)
There is an annual Payroll/HR audit undertaken by internal audit into payment made, including protection. There is also an annual HR Audit undertaken by the NHS Counter Fraud Service	Internal Audit	Audit	Annual	JSPF

8.0 TRAINING AND IMPLEMENTATION

Training has been provided to Managers on the application of this Policy and an update bulletin will be circulated to Managers and Union Representatives on the change made in this version to that of the previous one.

9.0 IMPACT ASSESSMENTS

- This document has been subject to an Equality Impact Assessment, see completed form at Appendix 1
- This document is not subject to an Environmental Impact Assessment

10.0 EVIDENCE BASE (Relevant Legislation/ National Guidance) AND RELATED SFHFT DOCUMENTS

Evidence Base:

- Employment Rights Act 1996

Related SFHFT Documents:

- Change Policy

11.0 KEYWORDS

Pay protection
Workforce transformation
Workforce Change

12.0 APPENDICES

- Equality Impact Assessment

APPENDIX 1 - EQUALITY IMPACT ASSESSMENT FORM (EQIA)

Name of service/policy/procedure being reviewed: PROTECTION OF PAY AND CONDITIONS OF SERVICE POLICY			
New or existing service/policy/procedure: Existing			
Date of Assessment: July 2022			
For the service/policy/procedure and its implementation answer the questions a – c below against each characteristic (if relevant consider breaking the policy or implementation down into areas)			
Protected Characteristic	a) Using data and supporting information, what issues, needs or barriers could the protected characteristic groups' experience? For example, are there any known health inequality or access issues to consider?	b) What is already in place in the policy or its implementation to address any inequalities or barriers to access including under representation at clinics, screening?	c) Please state any barriers that still need to be addressed and any proposed actions to eliminate inequality
The area of policy or its implementation being assessed:			
Race and Ethnicity	None	N/A	N/A
Gender	None	N/A	N/A
Age			
Religion	None	N/A	N/A
Disability	None	N/A	N/A
Sexuality	None	N/A	N/A
Pregnancy and Maternity	None	N/A	N/A
Gender Reassignment	None	N/A	N/A
Marriage and Civil Partnership	None	N/A	N/A
Socio-Economic Factors	None	N/A	N/A

(i.e. living in a poorer neighbourhood / social deprivation)			
What consultation with protected characteristic groups including patient groups have you carried out? No external consultation has occurred in respect of this assessment. However, the policy author has consulted internally, primarily via the Joint Staff Partnership Forum, its Policy Sub group and Human Resources in respect of this Policy			
What data or information did you use in support of this EqIA? N/A			
As far as you are aware are there any Human Rights issues be taken into account such as arising from surveys, questionnaires, comments, concerns, complaints or compliments? No.			
Level of impact From the information provided above and following EQIA guidance document Guidance on how to complete an EIA (click here), please indicate the perceived level of impact: Low Level of Impact For high or medium levels of impact, please forward a copy of this form to the HR Secretaries for inclusion at the next Diversity and Inclusivity meeting.			
Name of Responsible Person undertaking this assessment:			
Signature: DA Kearsley			
Date: 2 August 2022			