

Pay Protection



Policy ref no:	HR
Responsible Executive Director:	Deputy Chief Executive & Chief Finance Officer
Author and Job Title:	Lara Reading - HR Manager
Date Approved:	October 2020
Approved by:	<i>Governing Body</i>
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Policy Review Checklist

	Yes/ No/NA	Supporting information
Has an Equality Impact Assessment Screening been completed?	Yes	
Has the review taken account of latest Guidance/Legislation?	Yes	
Has legal advice been sought?	N/A	
Has HR been consulted?	Yes	
Have training issues been addressed?	Yes	Line Managers to be coached as and when required
Are there other HR related issues that need to be considered?	No	
Has the policy been reviewed by SPF?	No	
Are there financial issues and have they been addressed?	Yes	
What engagement has there been with patients/members of the public in preparing this policy?	N/A	

	Yes/ No/NA	Supporting information
Are there linked policies and procedures?	Yes	Managing Sickness Absence Policy Appeals Policy Bullying and Harassment Organisational Change Policy Travel and Expenses Policy Managing Performance (Capability) Policy Grievance Policy Flexible Working Policy
Has the lead Executive Director approved the policy?	Yes	Reviewed by Deputy Chief Executive/Chief Finance Officer
Which Committees have assured the policy?	Yes	Corporate Policy Review Group Executive Team Staff Partnership Forum
Has an implementation plan been provided?		Yes
How will the policy be shared with staff?	Yes	Consult HR Portal The Hub
Will an audit trail demonstrating receipt of policy by staff be required; how will this be done?	No	



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Pay Protection

1 INTRODUCTION

Bristol, North Somerset and South Gloucestershire Clinical Commissioning Group (CCG) wishes to ensure that the arrangements for pay protection are clear and applied appropriately and fairly.

Pay protection means that should an employee suffer a loss of earnings they will continue to receive their former salary and benefits for a defined period of time to enable them to adjust to their new circumstances.

The purpose of pay protection is to provide the employee with a period of time to prepare for a reduction of earnings or secure an alternative role at the previous salary during the pay period.

The Policy supports BNSSG values

2 PURPOSE

The purpose of this policy is to outline the arrangements that will apply in the event of organisational change and where protection of pay and terms and conditions is appropriate.

The policy applies to all staff who as a consequence of organisational change (as per the Organisational Change policy) is required to move to a lower graded post (downgrading) or suffers a reduction in basic hours worked within the standard working week.

This policy also provides a short-term protection provision, whereby staff experience a reduction in their total income, as a result of loss or reduction in additional earnings.

These arrangements apply to all staff that hold a permanent or fixed term contract of employment. This policy does not apply to temporary positions including secondments and acting up arrangements; bank contracts or where staff are redeployed as a result of disciplinary action, for capability reasons or as a result of sickness absence management

3 PRINCIPLES

This policy should be read in conjunction with the CCG's Organisational Change policy.

Pay Protection shall only be applied to an employee's substantive post.

The CCG will endeavour at all times to redeploy staff into new roles which match the levels of skills and responsibilities required in the previous pay band and to provide reasonable training to enable staff to fulfil new roles, although it is recognised that this may not always prove possible.

Protection of pay may cease if a member of staff unreasonably refuses any subsequent offer of another suitable post within the organisation, which attracts a basic salary or wage the same or in excess of that applying to the old post. If a staff member unreasonably refuses to accept such an offer, protection will cease with immediate effect.

This policy provides:

- Protection of pay – actual amount of basic wage or salary (taken as a 3 month average earnings for the period immediately prior to the date of change)
- Protection of additional earnings and non pay items (other terms and conditions of employment) i.e. supplements, allowances, annual leave, hours of work, notice period and mileage payments.

4 DEFINITIONS

ORGANISATIONAL CHANGE

Any NHS or management initiated change in the organisation of the healthcare provision or commissioning arrangements, including both structural and managerial alterations.

MARKED TIME

Pay and pay related conditions are frozen and remain unchanged by inflationary pay awards, incremental or other progression.

DOWNGRADING

Where a new post, irrespective of its banding, carries an hourly rate lower than that for the previous post or annual salary with the maximum point of the salary scale lower than that for the previous post.

SHORT-TERM PROTECTION

Protection of an employee's additional earnings (i.e. other than basic salary) where employee's total income is reduced as a result of changes to their post, such as; hours, contractual overtime, additional duties that attract a payment, unsocial hours, on call, high cost area supplement etc.

Where an employee has accepted a post as suitable alternative employment which does not attract the AfC Recruitment & Retention premia their current post does, then Recruitment & Retention premia pay shall be protected to the last day of the 12 month period for which it was applied.

Short term pay protection does not include pay relating to additional hours, additional responsibilities, voluntary overtime.

LONG-TERM PROTECTION

Protection of basic salary on a marked time basis. This applies where a member of staff is downgraded as a result of organisational change and will be implemented from the effective date of the change. In many cases this could minimise the actual impact to the employee at the end of the pay protection period.

Please note: short and long term protection will run concurrently where applicable.

BASIC SALARY OR WAGE

This is the weekly or monthly sum due in respect of basic hours worked by the member of staff concerned within the standard working week. It excludes any payments made in respect of acting up (or additional responsibilities), overtime, working outside normal hours payments, AfC recruitment and retention premia, standby or on call duty.

5 REASONS WHEN PAY PROTECTION WILL APPLY:

- As a result of organisational change which can be defined as: amalgamation/merger of NHS employing organisations; local structural or management change, modernising working methods; re-organisation of the methods for the delivery and provision of services.

Examples are: restructuring of a department; a move to an alternative post which may mean downgrading to retain skills re-evaluation of the post the employee is in i.e. to a lower band resulting in downgrading.

- Being redeployed to a post at a lower grade or pay as suitable alternative employment to avoid a redundancy situation.

Staff retain the right to opt for the remuneration and conditions of service applicable to the new post. If staff do decide to take this option it cannot be reversed.

- Being a job sharer and the organisation is unable to find you a replacement job share partner or suitable alternative employment at the same grade.
- A victim of bullying and harassment whose complaints have been upheld and they are redeployed
- Redeployment due to ill health (pay protection is only applicable for up to one year in this case)

6 REASONS WHEN PAY PROTECTION WILL NOT APPLY:

- Redeployment due to lack of ability/competence to perform the duties of your existing band in line with the Managing Performance (Capability) Policy;
- Redeployment due to disciplinary action (this includes action in accordance with the Grievance Policy or Bullying and Harassment Policy, if the complaint is upheld against the harasser);
- Being an alleged victim of harassment and bullying whose complaint has not been upheld. In the rare case that they have to be redeployed, as opposed to the harasser, they would be protected with a view to moving to a post on their substantive band as soon as possible (Please refer to the CCG's Bullying and Harassment policy for dealing with staff affected by this);
- A redundancy payment is made;
- An employee voluntarily applies for and accepts a lower band post due to personal reasons and not because of any of the reasons outlined above where pay protection will apply;
- If a temporary upgrading or Acting up arrangement ceases either on the due date of cessation or earlier if required for operational reasons.
- When returning to a substantive post following a secondment, when the secondment has ended including early termination of such arrangements for operational reasons.

7 CONTINUOUS SERVICE

Pay Protection is based on the number of years' continuous service. Any reference to years of service is defined as total NHS continuous service, but excluding service, which has been the subject of a redundancy payment or any other compensatory or terminal payment (such as retirement and accessing NHS Pension).

8 PAY AND CONDITIONS

These are defined under pay and non-pay. Pay is basic salary, supplements and allowances. Non-pay is defined as hours of work, annual leave and mileage.

9 DOWNGRADING OF POSTS

Downgrading – when a new post, irrespective of its band title, carries an hourly rate lower than that from the previous post or annual salary with the maximum point of the salary scale lower than that for the previous post. ..

An employee to whom this applies, who is moved from one post to another post because of organisational change and is downgraded as a result of this move, will continue to receive the basic salary of their original post for the period specified in the ‘long term protection’ section of this policy (see Table 2 below).

10 PROTECTION PERIOD ARRANGEMENTS - PAY

Short term protection

Short term protection – when an employee’s total earnings (but not basic salary) are reduced as a direct result of organisational change. An example of this would be where an individual is moved to a role at the same payband but loses their entitlement to an on-call or unsocial hours payment.

Short-term protection of total earnings shall be provided to all employees as follows -

Years of Continuous Service	Period of Pay Protection
Less than 24 months’ service	1 month’s protection for every completed month of NHS service
24 months’ service or more	24 months’ protection

If protection applies and you are moved on a substantive basis to a new post where the basic annual salary is lower than that in the previous post, you will be entitled to receive protection of your former basic annual salary plus any increment and inflationary increases to that salary up to a maximum of 24 months as per the table above.

Long term protection (Mark Time)

Long-term protection (Mark Time) applies when an employee is downgraded as a result of organisational change. If this occurs and a suitable alternative post is

found then protection will be offered to the employee. Suitability will be agreed between the employee and their line manager. The employee may have to undertake an interview to assess suitability.

The employee remains on the same point of the pay band without receiving any pay step increases until the new salary catches up or the protection period expires, whichever is the earlier.

Long-term protection of total earnings shall be provided to all employees as follows-

Years of Continuous Service	Period of protection
Less than 24 months' service	1 month's protection for every completed month of NHS service
24 months' service or more	24 months' protection

At the end of the long term protection (Mark Time period) the employee receives the basic rate for the post into which they have been redeployed.

This protection is conditional on the employee agreeing to move to a post at the protected band if available and appropriate during the period of protection.

11 PROTECTION PERIOD ARRANGEMENTS – NON-PAY

Excess Travel Protection

Excess travel protection is an allowance paid if you have had your base changed as a result of organisational change and where the distance between home and your new base is greater than the distance between home and your old base. The amount payable is the difference.

Claims will be reimbursed only against the most economical approach available, i.e. annual not weekly season tickets for the means of travel both before and after the move. If you choose to purchase weekly or monthly tickets, reimbursement will be made on the annual calculation where this is at less cost.

Staff must complete with their line manager an Excess Travel Authorisation to Claim Form and send this to Consult HR prior to any such expenses being reclaimed. This form is available on the Consult HR Portal.

Travel by car



Excess mileage claims should normally be those arising from travelling the shortest practical route. Excess mileage will be paid at the reserve rate for journeys actually undertaken and will be claimed through the CCG's Expenses system as per the Travel and Expenses Policy.

Public transport

The calculation used to determine your entitlement involves looking at the costs you incurred after the move and then the deduction of any costs you had before the move. A valid receipt will be required to claim such costs through the CCG's Expenses system with the amount claimed adjusted to deduct the previous costs incurred prior to the move of base.

Period of Excess Travel Protection

Excess travel protection will be for a period of four years

Exclusions

The organisation aims to be as fair as possible when dealing with the allocation of this allowance, but only pays travel costs and not parking charges or additional travel time.

Notice period

If the employee is redeployed to a new post the notice period applicable to the new post will apply regardless of the notice they were entitled in their former post.

Hours of work

Every effort will be made to redeploy the employee to a post of equivalent hours to their former post. However if they move to a post with different hours they will be paid for the number of the hours contracted for that position.

12 ENDING PAY PROTECTION

The employee will continue to receive protection until:

- The period of protection expires, as detailed above. The pay for the new job overtakes protected pay.
- The employee is appointed to a post in which the normal basic wage/salary is equal to or exceeds the protected basic wage/salary.
- The employee moves at their own initiative to another post with a basic

- wage/salary which is higher or lower
- The employee leaves their post or they retire.

13 OTHER SUITABLE EMPLOYMENT

Where there is a reduction in salary, a pay protection period shall apply. Anyone on a protected salary will be expected to apply for any suitable posts, which arise, on the grade or salary protected during the period of protection, otherwise the right to protection may be forfeited. Each case shall be considered on its own merits.

The organisation aims to support staff who find themselves in a long-term protection situation to regain the level at which they had previously been working. As redeployment to a post at a lower band may reduce the scope for staff to maintain their skills and knowledge at the level previously acquired it is important that they and their manager meet regularly to review and agree the development requirements and the actions staff are taking to prepare and apply for posts commensurate with the level previously held.

In such cases reasonable opportunities will be given to provide relevant training in order to enable staff on pay protection to progress to a point where protection of pay is no longer required. If staff on pay protection do not participate in review meetings, nor make reasonable progress/development against the objectives and personal development plan for the post, consideration will be given to withdrawing the protection arrangements.

14 REDUCTION IN WORKING HOURS

Where an employee requests a reduction in their working hours, under the CCG's Flexible Working Policy, pay protection will only apply to the subsequent change i.e. a reduction from 37.5 to 30 hours per week will mean that pay protection will only apply to the 30 hours, and for the original pay protection period.

15 TEMPORARY TRANSFER

Employees who are required by their employer to carry out temporary duties at a place other than their permanent place of employment, and who travel daily to their temporary base whilst continuing to live near their permanent base, may be reimbursed their excess travelling expenses at public mileage rate for the duration of this temporary working arrangement.

16 EXCEPTIONAL CIRCUMSTANCES

The organisation is committed to safeguarding the pay and conditions of service of individual staff adversely affected by organisational change and avoid redundancies. There may however be exceptional circumstances whereby the arrangements within this policy cannot be implemented. Such decisions will not be taken lightly and will only be agreed at Executive Team level. In such situations discussions will take place with the Trade Unions represented on the Staff Partnership Forum.

17 PENSION ARRANGEMENTS

Pension scheme members may apply to have their period of membership at a higher rate of pay treated as preserved membership. Further information can be obtained from the NHS Pensions Agency. Contact must be within one month of pay being reduced to commence this process as this has to be actioned with the Pension Agency within three months of the change.

18 RIGHT TO APPEAL

Any appeals against downgrading or pay protection arrangements should be raised through the CCG Grievance Procedure.

19 TRAINING REQUIREMENTS

HR will provide support to all line managers in the implementation and application of this policy.

20 EQUALITY IMPACT ASSESSMENT

All relevant persons are required to comply with this document and must demonstrate sensitivity and competence in relation to the nine protected characteristics as defined by the Equality Act 2010.

The Act prohibits discrimination on the basis of age, disability, gender reassignment, marriage/civil partnership, pregnancy/maternity, race, religion/belief, sex or sexual orientation.

It also means that each manager or member of staff involved in implementing the policy must have due regard to the need to: eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity between those who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not. If you, or any other groups, believe you are disadvantaged by anything contained in this document please contact the Document Lead (author) who will then actively respond to the enquiry.

21 MONITORING COMPLIANCE AND EFFECTIVENESS

This policy will be reviewed every 3 years but can be reviewed at any time if the

CCG deems it necessary to do so or a review is requested by management or staff.

22 COUNTER FRAUD

The CCG is committed to the NHS Protect Counter Fraud Policy – to reduce fraud in the NHS to a minimum, keep it at that level and put funds stolen by fraud back into patient care. Therefore, consideration has been given to the inclusion of guidance with regard to the potential for fraud and corruption to occur and what action should be taken in such circumstances during the development of this procedural document.

23 REFERENCES, ACKNOWLEDGEMENTS AND ASSOCIATED DOCUMENTS

Appeals Policy
Flexible Working Policy
Managing Performance (Capability) Policy
Grievance Policy
Bullying and Harassment Policy
Organisational Change Policy
Travel and Expenses Policy

24 Appendices

24.1 Equality Impact Assessment

24.2 Implementation Plan

24.1 Equality Impact Assessment



Equality Impact Assessment Screening		
Query	Response	
What is the aim of the document?	To set out the CCG responsibilities in relation to the fair and consistent management of Pay Protection cases in the organisation and due regard for staff with protected characteristics in applying this policy	
Who is the target audience of the document (which staff groups)?	All staff	
Who is it likely to impact on and how?	Staff	Yes - All staff, irrespective of personal circumstances and protected characteristics will be governed by this policy in matters relating to pay protection. All Pay Protection processes will be handled and communicated in a fair and transparent way and to avoid any subjective bias. There is no anticipated detrimental impact on any equality group. The policy is legally compliant and takes account of best practice. Makes all reasonable provision to ensure equity of access to all staff. There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic. However, due regard will need to be given to individuals affected by decision relating to pay which require the use of this policy at the relevant stages in the process as there may be instances where due to personal circumstances an individual is more affected another by changes in terms of conditions.
	Patients	No
	Visitors	No
	Carers	No
	Visitors	No
	Other – governors, volunteers etc	No
Does the document affect one group more or less favourably than another based on the 'protected characteristics' in the Equality Act	Age (younger and older people)	No, the policy provides a fair and consistent approach to pay protection. However, individuals of all ages may be impacted differently by changes to their terms and conditions because of their personal

2010:		circumstances which require due consideration
	Disability (includes physical and sensory impairments, learning disabilities, mental health)	No, the policy provides a fair and consistent approach to pay protection. However, individuals with disabilities may be impacted differently by changes to their terms and conditions because of their personal circumstances which require due consideration
	Gender (men or women)	No, the policy provides a fair and consistent approach to pay protection. However, individuals of different gender may be impacted differently by changes to their terms and conditions because of their personal circumstances which require due consideration
	Pregnancy and maternity	Yes – staff on Maternity leave will be automatically slotted into roles during any organisational change process and less likely to require Pay Protection
	Race (includes ethnicity as well as gypsy travellers)	No, the policy provides a fair and consistent approach to pay protection. However, individuals of different race may be impacted differently by changes to their terms and conditions because of their personal circumstances which require due consideration
	Sexual Orientation (lesbian, gay and bisexual people)	No the policy provides a fair and consistent approach to pay protection.
	Transgender people	No the policy provides a fair and consistent approach to pay protection.
	Groups at risk of stigma or social exclusion (e.g. offenders, homeless people)	No the policy provides a fair and consistent approach to pay protection.
	Human Rights (particularly rights to privacy, dignity, liberty and non-	No the policy provides a fair and consistent approach to pay protection.

	degrading treatment)	
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24.2 Implementation Plan

Target Group	Implementation or Training objective	Method	Lead	Target start date	Target End date	Resources Required
Staff	Awareness of Policy	Launch of Policy shared at Stand Up	RH	7 Oct 20	31 Oct 20	Time on agenda
Staff	Access to policy	Upload on to Hub	RH	7 Oct 20	31 Oct 20	Comms support

