

Pay Protection Policy			
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Contents

1. Introduction	3
2. Purpose	3
3. Scope	3
4. Definitions	3
5. Roles and responsibilities	4
5.1 Operational Managers	4
5.2 Managers.....	4
5.3 Director of Human Resources	4
5.4 Human Resources Staff	4
5.5 Payroll Staff	4
5.6 Employees	4
5.7 Trade Union Representatives	4
6. Key Principles	4
6.1 Short Term Protection.....	5
6.2 Long Term Protection.....	5
7. Job changes during a pay protection period	6
7.1 Voluntary Change of Job	6

Pay Protection Policy

7.2	Subsequent Redeployment	6
8.	Travel Protection	7
9.	General Arrangements and Conditions of Service	7
10.	Additional Protection Payments:	8
10.1	Pay Protection during pregnancy	8
10.2	Protection whilst suspended on full pay	8
10.3	Jury Service.....	8
10.4	Paternity Leave.....	8
11.	Cost of Protection.....	8
12.	Appeals	8
13.	Training.....	8
14.	Monitoring or audit	8
15.	References.....	9
15.1	Legislation	9
15.2	Associated Documentation	9

1. Introduction

Avon and Wiltshire Mental Health Partnership NHS Trust's (the Trust or AWP) recognises that as an organisation we will have to re-evaluate the service we provide to our communities as well as being required by commissioners to ensure that we are providing the best possible care to our service users.

As a result of re-evaluation the Trust may have to commence an organisational change process which can be unsettling for staff and therefore wants to lessen the effects of organisational change to staff. Therefore where staff would otherwise suffer a detriment as a result of the change the Trust will provide the following pay and travel protection to its staff

- Short term protection - provided where an employee accepts a reduction in hours worked or ceases to qualify for allowances
- Long term protection - of basic wage or salary where downgrading is involved
- Travel protection - where a change of base is required

This policy complements the Trust's Organisational Change Policy by specifying the salary protection arrangements that will be followed when the service AWP provides to its communities requires 'organisational change' that results in:

- Changes to posts (e.g. reduction in hours, change in base).
- Redeployment to alternative posts (usually when posts are declared redundant)

2. Purpose

The purpose of this policy is to define and outline the eligibility of pay and travel protection arrangements which will apply following organisational change. These provisions will also apply in cases of temporary redeployment as shown in relevant guidance issued by the HR Team. These arrangements are defined below.

3. Scope

This policy applies to all Trust employees or where other policies are in place for affected staff who have transferred into the Trust under a TUPE (Transfer of Undertakings Protection of Employee Regulations) agreement.

4. Definitions

Organisational Change: Any structural, service or managerial change.

Basic Wage or Salary: Basic wage or salary is the sum due in respect of basic hours worked in the post by the employee concerned within the standard working week in the substantive post.

Protectable earnings: Basic wage or salary as defined above.

Downgrading: Occurs when the new post, irrespective of the title, carries an hourly rate or a salary scale with a maximum point, lower than that applying in the previous post.

A More Senior Post: Is a post which carries an hourly rate, or a salary with a maximum point higher than that applying to the new post or any subsequent post to which an employee may have moved.

Reckonable Service for pay protection purposes is the total NHS service taking into account a previous period or periods of NHS service, only where there has been no break or breaks in service of more than 12 months.

TUPE: refers to the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of

Employment) (Amendment) Regulations 2014". The TUPE rules apply to organisations of all sizes and protect employees' rights when the organisation or service they work for transfers to a new employer.

5. Roles and responsibilities

5.1 Operational Managers

- Decide what is deemed to be suitable alternative employment with HR advice.

5.2 Managers

- Ensure that pay protection is only offered to employees in accordance with this policy
- Ensure that payroll is notified if there are any changes to the employee's role that effect their entitlement to pay protection.
- Ensure compliance with this policy.

5.3 Director of Human Resources

- Ensure compliance with this policy
- Ensure that payroll correctly administer the payment of pay protection.

5.4 Human Resources Staff

- ER specialists, ER Advisors and HR Business Partners will advise managers and staff on the entitlements set out in this policy.

5.5 Payroll Staff

- Payroll staff will correctly administer the payment of pay protection.

5.6 Employees

- Staff who are or have been members of the 1995 and/or 2008 NHS Pension Schemes must read the NHS Pension's Agency [guidance on Protection of Pay](#) as they may be eligible for protection of their pension. If eligible the staff member must complete the form within three months of their salary reduction so that their pension is preserved at the higher level whilst in receipt of pay protection.
- Staff who have only ever been a member of the 2015 pension schemes are not required to contact the NHS Pension's Agency as this is a Career Average Revalued Earnings (CARE) scheme.

5.7 Trade Union Representatives

- Will give advice to their members on the entitlements and application of this policy.

6. Key Principles

Pay protection will apply from the date of commencement of redeployment to an agreed alternative post and will be confirmed in writing to the employee with a confirmed end date of the pay protection.

Pay Protection Policy

Pay is protected to the amount of protectable earnings which could include shift enhancements which will be calculated individually. These could be for example; Saturday and Sunday nights, unsocial and Working Time Directive payments. The protection of earnings is calculated on the average of the previous three months payments to be eligible for this the staff member must have over 12 months NHS Service.

Long term protection is protection to an incremental point.

It is a shared responsibility of both the employee to apply for any suitable posts that arise mirroring more closely the terms and conditions of his/her previous post, and that of the manager to bring any suitable posts to the attention of the employee. Consideration of suitability will be based on the requirements of the person specification. Reasonable assistance will be given by the Trust to provide re-training where new skills are required. Failure on the part of the employee to apply for any alternative posts commensurate with the previous post may bring the protection arrangements to an end.

For those staff who have been employed on a fixed term contract for over two years short and long term protection will apply if appropriate.

The pay protection will cease on the agreed end date, subject to the provisions below or sooner if the employee's level of pay equals or exceeds the level set for pay protection.

6.1 Short Term Protection

Short Term Protection will apply where an employee accepts a reduction in hours worked or ceases to qualify for allowances as a result of organisational change. Provision depends on length of reckonable service.

No protection is made where an employee has less than 1 complete years' service in the NHS. The maximum provision (of 12 months short term protection) is made when an employee has 10 complete years of reckonable service.

Periods of protection periods are as follows:

Reckonable NHS Service	Pay Protection Period
Less than 1 year	none
More than 1 year but less than 2 years	1 month
More than 2 years but less than 3 years	2 months
More than 3 years but less than 4 years	4 months
More than 4 years but less than 5 years	6 months
More than 5 years but less than 7 years	7 months
More than 7 years but less than 10 years	9 months
More than 10 years	12 months

Short term protection is calculated on total earnings on contracted hours over the previous three months.

6.2 Long Term Protection

Long Term Protection will apply where an employee accepts redeployment as a result of organisational change to a lower band. Long term protection will be available for a maximum period of three years, depending on length of service.

Pay Protection Policy

No provision is made where an employee has less than one complete years' service. The maximum provision (of three years long term protection) is made when an employee has 10 complete years of reckonable service.

The protection period will be calculated as follows:

Reckonable NHS Service	Pay Protection Period
Less than 1 year	None
More than 1 year but less than 2 years	2 months
More than 2 years but less than 3 years	4 months
More than 3 years but less than 4 years	6 months
More than 4 years but less than 5 years	8 months
More than 5 years but less than 8 years	12 months
More than 8 years but less than 10 years	24 months
More than 10 years	36 months

During a period of long term protection, the employee's protected salary will be subject to annual NHS pay award. Where an employee is re-deployed to a new pay band but is not at the top of that pay band they will still be eligible for incremental pay rises. This incremental progression will only result in an increased level of gross pay if as a result the employee's gross pay for their new post exceeds the protected gross pay of the previous post. If this occurs before the end of the pay protection period, the protection will cease.

7. Job changes during a pay protection period.

7.1 Voluntary Change of Job

The Trust does not wish to discourage employees from developing either their skills or careers during periods of pay protection. Where an individual is in receipt of pay protection and they apply and are appointed to a different post:

- At the same band with reduced or are requested to reduce their hours, the pay protection will continue in the new post but on a pro rata basis to hours worked before pay protection was introduced.
- At a higher or lower band, pay protection will end and their new salary will be assessed on their basic pay in the previous post excluding any pay protection.

7.2 Subsequent Redeployment

The provision of Long Term 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. This may be a temporary assignment. If a suitable alternative post at the original higher pay band is offered but declined during this period, then pay protection may be withdrawn this will be the decision of the Managing Director for that service in discussion with an ER Specialist.

Where an individual is already in receipt of pay protection, and they are subsequently redeployed (as an alternative to redundancy or for medical reasons) into a different post at a

Pay Protection Policy

lower band or on reduced hours, pay protection will be in line with the pay protection policy applicable at the time and will supersede all pre-existing pay protection arrangements.

The Managing Director of the Local Delivery Unit (LDU) will decide what is deemed to be suitable alternative employment with HR advice. If suitable alternative employment is agreed to be outside of the original LDU the additional cost will be funded from the originating LDU's budget.

8. Travel Protection

As a principle the Trust is keen to raise awareness of the green agenda and to encourage staff to utilise more environmentally friendly forms of travel such as public transport, motorcycles and pedal cycles.

As a first step, any member of staff, who as a result of redeployment incurs increased mileage on their journeys between home and work base and becomes eligible for travel protection, will be incentivised to claim travel as follows:

- An individual member of staff who shares their car with another AWP employee for journeys between home and work base will be reimbursed for all their extra daily excess mileage for a period of 4 years from the date of transfer. The excess shall be calculated on the basis of the difference between previous home to base mileage (and return) and new home to base mileage (and return). Mileage will be reimbursed at the reserve rate. Staff claiming the full reimbursement will be required to name the car sharing colleague on their expenses claim form for each journey made.
- Redeployed staff that use a motorcycle or pedal cycle for journeys between home and work base will be reimbursed for their entire extra daily travelling expenses for a period of 4 years from the date of transfer. The excess shall be calculated on the basis of the difference between previous home to base mileage (and return) and new home to base mileage (and return). Mileage will be reimbursed at the appropriate rate for motorcycles and pedal cycles under Agenda for Change terms and conditions.
- Where public transport is used, the payment will be the difference between the old fare and the new fare.
- In all other cases where a member of staff is redeployed to a work base at a different location that is further from their home and uses their own car for this journey, they will be eligible for travel protection for 4 years on the following basis. Where the difference between previous home to base mileage (and return) and new home to base mileage (and return) is more than 6 miles, all mileage in excess of 6 miles (return) per working day will be reimbursed at reserve rate. Should the employee choose to move to another post within the Trust within the 4 year period, entitlement to travel protection will cease.

9. General Arrangements and Conditions of Service

Notice of the redeployment and protection arrangements will be given in writing to the employee. Unless agreed otherwise, the change to contract will be effective after the required notice period of their protected pay band.

Apart from salary, the following terms and conditions of service will apply:

- Notice Period: Where the new post has a reduced period of notice, the original period of notice will be protected.
- Hours of work: An employee required to move to a new post will be required to work the hours appropriate to that post.

10. Additional Protection Payments:

10.1 Pay Protection during pregnancy

If following a risk assessment an employee who normally works enhancements is no longer able to continue to work unsocial hours then short term pay protection will apply until the maternity leave starts. The protection of earnings is calculated on the average of the preceding three months.

10.2 Protection whilst suspended on full pay

During periods of suspension on full pay employees who normally work enhancements will be entitled to short term pay protection. The protection of earnings is calculated on the average of the preceding three months.

10.3 Jury Service

If you are called for jury service the Trust will continue to pay you during the first two weeks. If you work unsocial hours and are paid enhancements your line manager will need to contact payroll to advise of the period of jury service and to authorise the protection of enhancements for the duration.

If your jury service extends beyond two weeks then a reimbursement form will need to be obtained from the courts and sent to payroll for completion. You will continue to be paid as normal in the form of a loan which would need to be repaid to the Trust once you have received payment from the courts.

10.4 Paternity Leave

Partners (including same sex partners) of women giving birth, or in the case of adoption, partners of the main adopter, who normally work enhancements will be entitled to short term pay protection for the period of paid partner leave. The protection of earnings is calculated on the average of the preceding three months.

11. Cost of Protection

Where pay or travel protection applies, the additional cost will be funded from the originating area's budget.

12. Appeals

Appeals arising out of the application of this policy will be dealt with under the Trust's Grievance and Disputes Policy and Procedure.

13. Training

Advice and support on managing change in accordance with this policy will be available from HR representatives and where required, for example, for major change projects, training may be provided to managers as appropriate.

14. Monitoring or audit

Representatives from trades unions formally recognised by the Trust and management representatives have drawn up this policy. Management as part of the review will provide meaningful statistics.

Pay Protection Policy

This policy will be measured against the requirements of employment legislation and the best practice expected from a modern health organisation.

This policy will be reviewed three years or earlier at the request of either party.

15. References

15.1 Legislation

This policy has been drawn up with reference to current UK and European employment legislation and relevant national terms and conditions.

15.2 Associated Documentation

- [Organisational Change Policy](#)
- [Redeployment to Suitable Alternative Work Procedure](#)
- [NHS Pensions website](#)

Pay Protection Policy

Version History				
Version	Date	Revision description	Editor	Status
1.0	28 Mar 2007	Redraft by Deputy HR Director to accommodate age discrimination legislation. Approved by the Board 28 Mar 007	AM	Approved
1.1	05 May 2009	Integrated Governance extended until 31 Mar 2010	AM	Approved
1.2	01 Sept 2009	Approved by Q&HGC without change of review date.	AM	Approved
1.3	04 May 2010	Q&HGC Approved Change in Review Date	CS	Approved
2.0	18 Jan 2011	Approved by Quality & Healthcare Governance with minor amendments	TW	Approved
2.1	28 Jan 2011	Amendment made in respect of roles and responsibilities approved by GNG on 1 Feb 2011.	KW	Approved
2.2	02 Feb 2011	Administrative amendments approved by MWMG on 02 Feb 2011.	TW	Approved
3.0	25 Sept 2013	Amendments to policy following negotiations with staff side agreed via Remuneration Committee on 25 Sept 2013. Policy to be reviewed again 30 April 2014.	TW	Approved
3.1	17 Jan 2014	Admin amendments to correct errors. Approved by HR Manager	KE	Approved
4.0	17 November 2015	Amendments made in respect of associated protection payments	LE	Draft not approved
5.0	21 February 2017	Further amendments made in respect of length of short and long term protection payments	JT	Approved
6.0	15 June 2017	Minor amendments relating to Jury Service and link to NHS Pensions website updated Clarification of position for employees relating to pension protection	Interim Head of HR	Approved