



Pay protection policy

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Type of document	Policy
Target audience	All CWP staff
Document purpose	This policy applies to any employee who, as a consequence of organisational change, is required by management to move to a new post of a lower banding or reduce the number of hours they work in a standard working week. It sets out the level of pay protection which will apply in all such circumstances.

Document consultation		
AMH – Wirral	Yes	Occupational Therapist, Clinical Leader, Mental Health Practitioner, Shared Care and Recovery Team, Service Manager
AMH – West	Yes	Ward Clerk Bowmere, Health Facilitator Mental Health West, Lead Occupational Therapist
AMH – East	Yes	Recovery College Coordinator / Specialist OT, Recovery College Coordinator
D&A services	Yes	Business Support Manager (BSM)
CAMHS	Yes	Ward Manager - YPC
LD services	Yes	Clinical Psychologist - East, Occupational Therapist
CCWC services	Yes	Business Support Manager (BSM)
Corporate services	Yes	Communications team, Pharmacy Support Team, Senior Clinical Pharmacist, Lead Clinical Pharmacist
Staff side	Yes	Outreach Nurse - East
Other	Yes	Involvement Co-ordinator, Receptionist,
Involvement taskforce	Yes	Patient And Public Engagement Manager

Approving meeting	Workforce and OD Sub Committee	2-Sep-13
Original issue date	Mar-03	
Implementation date	Sep-13	

CWP documents to be read in conjunction with	HR6 HR3.10	Mandatory Employee Learning (MEL) policy Management of change policy and procedure (incorporating procedures for redeployment and selection for redundancy)
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Training requirements	No - Training requirements for this policy are in accordance with the CWP Training Needs Analysis (TNA)
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Financial resource implications	Yes - Pay protection has a financial implication
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Equality Impact Assessment (EIA)

Initial assessment	Yes/No	Comments
Does this document affect one group less or more favourably than another on the basis of:		
• Race	No	
• Ethnic origins (including gypsies and travellers)	No	
• Nationality	No	
• Gender	No	
• Culture	No	
• Religion or belief	No	
• Sexual orientation including lesbian, gay and bisexual people	No	
• Age	No	
• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
Is there any evidence that some groups are affected differently?	No	
If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable? No		
Is the impact of the document likely to be negative?	No	
• If so can the impact be avoided?	N/A	
• What alternatives are there to achieving the document without the impact?	N/A	
• Can we reduce the impact by taking different action?	N/A	
Where an adverse or negative impact on equality group(s) has been identified during the initial screening process a full EIA assessment should be conducted.		

If you have identified a potential discriminatory impact of this procedural document, please refer it to the human resource department together with any suggestions as to the action required to avoid / reduce this impact.

For advice in respect of answering the above questions, please contact the human resource department.

Was a full impact assessment required?	No	
What is the level of impact?	Low	

Monitoring compliance with the processes outlined within this document

Please state how this document will be monitored. If the document is linked to the NHSLA accreditation process, please complete the monitoring section below.	This process will be monitored by WODSC
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Document change history

Changes made with rationale and impact on practice
1. Up dated to include active management of staff on pay protection with the view to securing them a post at substantive band. Also facility to end pay protection after 2 years if staff unreasonably turn down suitable alternative employment.

External references

References
1.

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1. Introduction

The content of this policy applies generally to all CWP employees. However some provisions do not apply to employees who have transferred from other organisations under TUPE and where, as part of those transfers, it has been agreed that the existing pay protection of those transferring employees should be protected – for example, staff who transferred from Western Cheshire PCT with effect from 31st March 2011 under TUPE as part of the national ‘transforming community services’ programme have separate protection arrangements. Those exceptions are made clear within the policy.

The policy applies to staff who as a consequence of organisational change are required by management to move to a new post or change working arrangements, resulting in a reduction in earnings. It also applies in cases where a post is re-banded to a lower job banding following a job grading review process.

This agreement does **not** cover situations where an employee is downgraded as a result of any of the following:

- Capability (which includes ill health and performance issues); or
- A voluntary move (i.e. as a result of an employee’s request, they are redeployed to a lower banded post); or
- The period of an agreed temporary upgrade / arrangement coming to an end.

In addition the policy does not apply where:

- Changes occur to on-call / unsocial hours payments through normal variances in working patterns, regular review or as a result of an individual employee request.

With the exception of the situations outlined above, the policy provides for:

- a) **Short term protection of earnings**, whether or not downgrading is involved, for a maximum period of 12 months (as set out in [section 3](#)).
- b) **Long term protection of basic salary** where downgrading is involved (as set out in [section 4](#)).

2. Guiding principles

Consultation with directly affected staff and their staff side representatives will take place whenever organisational change is being proposed, in accordance with the Trust’s agreed [management of change policy and procedure](#).

All personal pay protection arrangements will be established by reference to an employee’s own length of continuous NHS service (including service with any non NHS predecessor organisation in the case of employees having become Trust employees as a result of a TUPE transfer), but will exclude service which has previously been subject of a redundancy payment.

3. Short term protection of earnings

When an employee is required by management to move to a new post or change working arrangements where that results in a reduction of earnings (owing to a reduction in hours, reduction or cessation of enhancements or supplements to basic pay), earnings will be protected for a period of time relating to reckonable service. The period of pay protection will be effective from the date of the change being made.

The payments which are protected are those which are a regular contractual requirement of the job. This means that the following enhancements or supplements to basic pay will attract short term protection:

- Unsocial hours enhancements;
- Contractual overtime payments;
- Regular on call payments;
- Specified other allowances e.g. secure unit.

The amount of protected earnings will be calculated by taking into account the basic pay and the actual regular additional earnings paid over the 12 weeks period immediately prior to the change in job role or banding taking effect. The level of protected earnings will remain fixed for the specified period.

Where a down banding is involved, the employee will be moved onto the new pay band and appropriate incremental point and any additional earnings applicable in the new post will be offset against the level of protected earnings. If, for any pay period, the total earnings exceed the protected level of earnings, the protection of earnings is extinguished and the earnings in the new post are paid in full for that period.

Annual pay awards and any increments due will be applied to the new post – not to the protected earnings.

Payment of short term protection is conditional on the employee continuing to undertake, if required, night duty, unsocial hours etc, up to the level undertaken before the change. It follows that short term protection will not be paid where the employee unreasonably refuses to undertake those specified duties.

Protection of earnings (including basic salary) is conditional on the employee not unreasonably refusing the offer of another suitable post within the Trust which would attract earnings in excess of those applicable to the new post.

The length of protection will be as per the following scales:

a) Applicable to all staff who joined the Trust effective from December 2011 and those staff who TUPE transferred from Western Cheshire PCT with effect from 31st March 2011:

Completed Years Reckonable Service	Pay protection period (months)
0	3
1	3
2	6
3	6
4	6
5	12
6	12
7	12
8	12
9	12
10 +	12

b) Applicable to all CWP staff in post prior to December 2011

NB (This does not apply to those who have transferred from other organisations under TUPE where it has been agreed that pay protection arrangements then applying should be protected).

Completed Years Reckonable Service	Pay protection period (months)
0	0
1	2
2	3
3	4
4	5
5	6
6	7
7	8
8	9
9	10
10	12

4. Long term protection of basic salary

When an employee is required to move to a new post, and the new post is at a lower band and attracts a lower basic annual salary, protection will be of the basic pay or salary relating to the current post, without the benefit of any annual pay awards or increments.

The employee will be moved onto the new pay band at the appropriate incremental point based on length of service in the equivalent or higher band and will receive annual pay awards and any increments due relating to this pay band – but not to protected earnings. In other words, a protected employee will 'mark time' until either the salary level in their new role catches up with their protected salary level or the protection period expires, whichever is the earlier.

The length of protection of basic salary or wage will be determined according to the following scales:

a) Applicable to staff who joined the Trust after 1st December 2011 and those staff who transferred from Western Cheshire PCT with effect from 31st March 2011:

Completed Years Reckonable Service	Pay protection period
0	6 months
1	9 months
2	9 months
3	1 year
4	1 year
5 +	2 years

At management discretion - and with the agreement of the Associate Director of Workforce & OD - the period of protection may be extended beyond 2 years. Since this is discretionary, there is no right of appeal against a decision not to extend the protection.*

*The former Western Cheshire PCT Pay Protection policy provided for extended pay protection relating to staff over 50 and nearing contractual retirement age. Due to changes in the law the default retirement age has been removed and as such the policy has been changed to comply with the law.

b) Applicable to all CWP staff in post prior to 1st December, 2011

NB (This does not apply to those who have transferred from other organisations under TUPE where it has been agreed that pay protection arrangements should be protected)

Completed years reckonable service	Pay protection period
Under 2 years	3 months
More than 2 years, but under 3 years	1 year
More than 3 years, but under 5 years	18 months
More than 5 years, but under 7 years	2 years
More than 7 years, but under 8 years	3 years
More than 8 years, but under 10 years	4 years
More than 10 years, but under 15 years	5 years
More than 15 years, but under 20 years	7 years
Over 20 years	10 years

Pay protection will cease to apply where:

- The period of service related personal pay protection specified in this section expires; or
- The employee is redeployed into a post which provides a basic salary equal to or in excess of the protected salary; or
- By their own application, the employee is successful in gaining another job – whether with CWP or with another employer.

In addition, pay protection will cease either:

- In the event of the employee declining 3 offers of suitable alternative employment; or
- After a maximum of 2 years if, during that 2 years period, the employee has either:
 - Unreasonably declined an offer of suitable alternative employment within CWP to a role at the same salary banding which the employee is substantively contracted to: or
 - Demonstrably failed to actively engage in the spirit of the trust's pay protection/redeployment policies – for example, by not actively seeking suitable alternative employment.

In the event of there being disagreement as to the appropriateness of a decision to terminate at 2 years personal pay protection which would otherwise have lasted longer, the facts of the matter will be referred to the Associate Director (Workforce & Organisational Development) for final adjudication. In reaching a conclusion on individual cases referred, the Associate Director (W&OD) will include the Staff Side Chair amongst the key players consulted about the merits of each case.

5. Interaction between short term and long term protection

An employee with the right to basic salary protection will also initially have a concurrent right to mark time protection of short term protection of earnings (if applicable) as set out in [section 3](#). Until [section 3](#) protection expires, the employee shall be protected on whatever basis is more favourable to the employee.

6. Pensions

Staff who are members of the NHS Pension Scheme may have the right to have their accrued benefits protected on the higher rate of pay (i.e. before protection takes effect). Such staff must write to the Pensions Officer within one month of the reduction to establish and ask for any preservation of benefits to which they are entitled.

7. Notification to employee

An employee to whom this agreement will apply must receive written notification in advance of the change, including:

- The type of protection which will apply i.e. short and / or long term;
- The protection period;
- A copy of this policy, so that they are aware of all the terms and conditions applying to the protection;
- Informing them of their right to have their accrued benefits protected.

8. Protection of conditions of service

Following transfer to a new post, in general, all non pay terms and conditions of service will be unchanged. However, in specific cases, some non pay related adjustments may need to be made:

8.1 Hours

An employee required to move to a new post will generally be expected to take the hours established for that post. However, if those established hours are greater than those contracted by the employee at the time of the change and the employee indicates that, for reasons of work life balance, they are unable to work the full established hours of the new role, the needs of both the employee and the service will be considered by management in determining the actual hours to be worked / pattern of working.

8.2 Lease car

When an employee is required to move to a new post with significantly reduced travelling requirements and they currently have a lease car, they will receive protection of the Trust's contribution to the lease car for the remaining term of the existing lease only. Decisions about subsequent leasing arrangements will be made in accordance with the needs of the employee's new role.

9. General provisions

Any subsequent change in post due to an organisational change covered by this agreement will attract protection in its own right.

10. Duties and responsibilities

10.1 All employees

Are expected to familiarise themselves with the provisions set out in this policy when they are subject to a management of change process which may impact on earnings or salary.

10.2 Staff Side Representatives

Staff side representatives have an important role to play generally in providing advice, support and, if required, representation to individual employees. They also work in partnership with managers and Human Resources in looking to ensure that the trust's pay protection policy is always applied reasonably and fairly.

Staff side representatives are also to be consulted during the course of any review of this policy and its impact and accorded the opportunity to comment on such reviews. .

10.3 Line Managers

Line Managers are responsible for:

- Ensuring that employees who are subject to management of change and to whom this policy may apply are made aware of the policy and have access to a copy;
- Ensuring that employees are aware of their rights to seek support at meetings to discuss the application of this policy;
- Ensuring that the employee is written to with the details of the protection arrangements and that the necessary HR forms have been completed.

10.4 Human Resources

Human Resources staff are responsible for:

- Providing advice and support in relation to the application of this policy;
- Ensuring that the policy and associated procedures are applied fairly and reasonably;
- Providing management information as necessary in connection with the policy;
- Working closely with employee representatives and line managers in overseeing implementation / monitoring the effectiveness of the policy and providing feedback to support the policy review process;

10.5 Senior Managers

Senior Managers are responsible for ensuring that the policy and associated procedures are applied fairly and reasonably.