

1	Policy Name	Protection of Earnings Policy			
2	Accountable Director	Director of Corporate Services			
3	Applies to:	All Employees			
4	Groups / individuals who have overseen the development of this policy	HR, Policy Harmonisation Working Group			
5	Groups which were consulted and have given approval	Joint Partnership Group-October 2019 Executive Management Team-January 2020			
6	Equality Impact Analysis	Policy Screened	Yes	Template Completed	Yes
7	Ratifying Committees & Date of final approval	Joint Partnership Group-October 2019 Executive Management Team-January 2020			
8	Version	1			
9	Available on	Intranet	Yes	Website	No
10	Related documents:	N/A			
11	Disseminated to:	All Employees			
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13	Date of next formal review	January 2023 or earlier should there be national NHS terms and condition/legislative changes			

Protection of Earnings Policy

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1. Introduction

The CCG recognises its responsibilities as a good employer and tries to avoid redundancies wherever possible.

Staff whose jobs are at risk are dealt with through the Change Management Policy and redeployment of staff to suitable alternative employment is always the preferred option to avoid potential redundancy situations. In addition, the CCG may redeploy staff to suitable alternative employment as an alternative to dismissal as a result of ill health, in accordance with the CCG's Managing Absence Policy.

2. Purpose

The purpose of this policy is to protect the salary of employees displaced from their current role by organisational change or ill health for a reasonable period in order to assist them in managing the financial implications, and to enable the organisation to retain their skills and experience in the new role.

3. Scope

This policy applies to all employees of the CCG.

The policy will apply to employees who have been redeployed in accordance with the Managing Change Policy or Managing Absence Policy to a role one Band lower than their current Agenda for Change Band. For the avoidance of doubt Bands 8a, 8b, 8c, and 8d are considered as four separate Bands.

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.

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 Agenda For Change Recruitment & Retention premia and 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. 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. Pay and pay related conditions are frozen and remain unchanged by inflationary pay awards, incremental or other progression.

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. Pension Arrangements

Under the provisions of the NHS Pensions Scheme, staff may apply to preserve their pension benefits, based on the previous level of pay, where, through no fault of their own are downgraded (subject to the relevant qualifying membership of the NHS Pensions Scheme). Should any individual require further Pensions Advice, please contact the NHS Pension Scheme Advisors direct.

All such applications must be made within three months of the member going on to reduced pay which the pensionable salary is to be reduced. Please see Appendix 1 or access the following link for additional information:

<https://www.nhsbsa.nhs.uk/member-hub>

6. Eligibility

Protection arrangements will apply to Agenda for Change banded employees in the CCG of whatever Agenda for Change Band, but exact entitlements will be subject to length of continuous service with the CCG.

Protection will aim to ensure that an individual's current basic pay or salary is protected for the set period of time on a "mark time" basis (i.e. their salary will stay the same) and not be reduced to the level appropriate to the Band of the new job. A member of staff receiving protection of their previous salary under this policy will not be entitled to Cost of Living increases.

All other terms and conditions of employment for the post into which an employee has been redeployed will be those applicable to the post. Reductions in hours and other changes in terms and conditions of employment will not be protected under this policy.

7. Long-Term Protection (Protection of Basic Pay)

The protection for employees' basic pay (excluding enhancements, allowances, supplements, recruitment & retention premia and additional earnings), based on length of service, is as set out in the table below:

Length of Service in the CCG	Years of Protection
Up to one year's service	Nil
Up to 2 years' service	1 year
Between 2 & 5 years' service	2 years
5 years' service & over	5 years

8. Incremental Dates and Pay Points

The employee concerned will be appointed to the new lower pay Band at the highest pay point applicable to the new Band. As such, the employee's incremental date becomes obsolete as they will have reached the maximum pay point for their Band.

9. Short-Term Protection (Protection of Additional Earnings)

Protection of additional earnings, shall be in accordance with the following service- based provisions:

Length of Service in the CCG	Months of Protection
4-12 months	2 months
1-2 years	4 months
2-3 years	6 months
3-4 years	8 months
4-5 years	10 months
5 years & over	12 months

Additional earnings for the purposes of this policy are limited to the following:

- on-call payments
- unsocial hours enhancements
- High Cost Area Supplements.

10. Additional Travel Costs

Staff required to take up a post at another site will be entitled to any payments due for excess travelling expenses providing appropriate supporting documentation is provided. Protection will be for a period of four years after the change takes effect. Please see the Change Management Policy for further information.

11. Salary Protection Arrangements Prior to Current Displacement

In the event that an employee is already on salary protection at the point that they are redeployed for to another role at a lower Band, they will continue to receive the original salary protection until the date it was due to expire. At the expiry of the original salary protection, they may be eligible for a further period of pay protection in accordance with the provisions set out in this policy. The period of protection commences on the date of appointment to the new role on the lower pay band and therefore the length of protection must be off-set by the length of time the original salary protection continued following this appointment. For example, if an employee with over five years' service was redeployed from Band 7 to Band 6 and their pay was protected for five years, but three years into that period of protection the individual was redeployed to a Band 5 post, they would continue to receive their existing Band 7 pay protection arrangements for the remaining two years and would then revert to the Band 6 pay protection for three years.

12. Voluntary Changes in Employment

Pay protection ceases to apply where staff voluntarily take up a different job.

13. Appeals

Appeals arising out of the application of this agreement shall be dealt with under the CCG's Grievance Procedure at formal stage one initially.

14. Equality Statement

In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

The Equality Impact Assessment for this policy has been carried out, and is available on request from HR.

15. Data Protection/GDPR

In applying this policy, the Organisation will have due regard for the Data Protection Act 2018 and the General Data Protection Regulation (GDPR). Personal Confidential Data of data subjects will be processed fairly and lawfully and in accordance with the six data protection principles. Data Subject's Rights and freedoms will be respected and measures will be in place to enable employees (data subjects) to exercise those rights. Appropriate technical and organisational measures will be designed and implemented to ensure an

appropriate level of security is applied to the processing of personal confidential data. Employees will have access to the CCG's Data Protection Officer for advice in relation to the processing of their personal confidential data and data protection issues.

Appendix 1

Protection of Pensionable Pay for member of the NHS Pension Scheme

There are two provisions under which a member can protect their pensionable pay.

- Protection of pay through no fault of the member (1995 and 2008 scheme only).
- Voluntary Protection of Pay (1995 Section only).

Protection of Pay (through no fault of the member)

If you have at least 2 years “qualifying service” and suffer a reduction in earnings through no fault of your own, you may apply to protect your pension benefits.

Examples of accepted reasons for protection of pay are:

- A change in the nature of the duties performed for example due to ill health.
- A move to a lower paid post because of pending or actual redundancy.
- Being transferred to other employment due to reorganisation.

We can consider protecting pension benefits when redundancy results in a member receiving a lower rate of pensionable pay within 12 months of redundancy. As pension benefits are automatically deferred after a break of 12 months, a member would not need to apply for protection if returning to NHS pensionable employment 12 months or more after being made redundant (1995/2008 scheme members).

Where pay is to “mark-time” for a specified period, pensions can be protected at the beginning and the end of the mark-time period.

If you have moved over to the 2015 Scheme with a final salary link to 1995/2008 Scheme pension benefits and are then made redundant, we can consider protecting the pension benefits if you return to a lower rate of pensionable pay within five years.

Voluntary Protection of Pay (VPP)

If you choose to step down to a less demanding role where your new or remaining duties are less demanding and carry less responsibility than your previous duties, you may be able to apply for voluntary pay protection if you have already reach minimum pension age.

VPP was introduced from 1 April 2008 to provide more flexibility in the 1995 Section of the Scheme. The provision supports the improving working lives (IWL) initiatives which exist in the NHS and recognises that in the run up to retirement a member may prefer, if possible, to remain in NHS employment, perhaps in a lesser capacity, whilst protecting their pension benefits.

This provision also allows an employer to maintain the valuable knowledge and skills of a member who may otherwise have left the NHS. Any “step down” will therefore be agreed between the employer and the member and the employer will have to provide NHS Pensions with information that the “step down” has been agreed. The provision is also intended for lasting, rather than trivial or short-term reductions in pay.

The provision is not intended for situations where a member leaves one employer and merely joins another on a reduced rate of pay.

The following criteria must be met:

- You are a member of the 1995 Section of the Scheme
- You have stepped down to a less demanding role where your new, or remaining duties are less demanding and carry less responsibility than your previous duties. This must be confirmed by your employer(s).
- Your pensionable pay has reduced by at least 10 per cent for a period of at least one year, beginning with the first pay day on which the reduced pensionable pay was paid, as verified by your employer(s).
- Your pensionable pay has not been subject to any other reductions in the 12 month period before you stepped down, as verified by your employer(s).
- You have applied after 12 months, but within 15 months, of your pensionable pay being reduced.
- You have attained your normal minimum pension age. (Further information about minimum pension age can be found in the Scheme Guide).
- You have attained at least 2 years qualifying membership within the NHS Pension Scheme at the time you step down.
- You have not previously protected your pensionable pay under the Voluntarily Protected Pay provision.

How do I apply for Protection of Pay or Voluntary Protection of Pay?

If you have any queries on whether protection would apply, please initially refer to the Q&A.

You should complete form SM R9 App and send it to your employer.

Your employer will forward all relevant information to NHS Pensions. If you have stepped down between employers, please send the form to the earlier employer. We will need to contact your current employer in order to verify that pay protection applies.

Your employer will communicate the decision to you. However it may take several weeks before you receive a response.

Time limits

Protection of Pay through no fault of the member – requests should be made within 3 months of going on to reduced pay.

Voluntary Protection of Pay – Requests should be made after 12 months, but within 15 months of the pensionable pay being reduced.

You do not need to apply if:

You are only reducing your hours and not your hourly rate of pay. This is because we always use the notional whole time equivalent pay when calculating retirement benefits for the 1995 and 2008 pension schemes. The reduced pay is due to Agenda for Change, as the employer will automatically request protection of pay for you.

If my application is accepted how will my pension be calculated?

If you have one period of protection when you retire, two pensions will be calculated. A pension based on your protected rate of pay* plus inflation increases for membership up to the date of protection and a second pension for membership after that date which will be calculated on your pay* at retirement.

If by retirement the protected pay plus inflation increases is not more beneficial to you, then the whole of your 1995/2008 scheme pension benefits will be calculated using your pay* at retirement.

*1995 Section - The best of the last three years of pensionable pay

*2008 Section - The reckonable pay, which is an average of the best three consecutive year's pensionable pay in the last ten years.

Remember: In the 2008 and 2015 section voluntary protection of pay does not apply.
SM R9 (V1) 11/2011
The Pensions Officer/Practice manager