

Redundancy Policy

W39

Additionally refer to:

- Redeployment Policy**
- Management of Change Policy**
- Fixed Term Contracts Policy**
- Pay Protection Policy**
- Agenda for Change Terms and Conditions Handbook**
- Medical and Dental Whitley Handbook and the relevant Terms and Conditions of Service for Consultants, Associate Specialists and Specialty Doctor**
- Retirement Policy**

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| Version: | V1 | |
| V1 issued | 1 st June 2019 | |
| V1 approved by | JNCC | PAG |
| V1 date approved | 16-4-19 | 16 th May 2019 |
| V1 Ratified by: | Workforce Committee | |
| V1 Date ratified: | 20 th May 2019 | |
| Document Lead | Juliette Eveson and Caroline Callister | |
| Lead Director | Workforce Director | |
| Date issued: | 1 st June 2019 | |
| Review date: | 31 st May 2024 | |
| Target audience: | All Trust procedural document leads | |

Document Control Sheet

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| Version | 1 |
| Status | Final |
| Date Equality Impact Assessment completed | 1 st May 2019 |
| Issue Date | 1 st June 2019 |
| Review Date | 31 st May 2024 |
| Distribution | Please refer to the intranet version for the latest version of this policy. Any printed copies may not necessarily be the most up to date |
| Key Words – including abbreviations if these would be reasonably expected to be used as search terms | |
| Dissemination plan | This document will be disseminated via HR Pages on Intranet. |

Version history

| Version | Date | Author | Status | Comment – include reference to Committee presentations and dates |
|---------|---------------|-----------------|--------|---|
| 1 | February 2019 | Juliette Eveson | Draft | New Policy – incorporates elements from old Management of Change Policy. Discussion at working group |
| 1 | May 2019 | Juliette Eveson | Final | Agreed at JNCC, PAG and WFC |

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Policy on a Page – key points

This Policy applies to all employees employed by the Trust , including those employed on a fixed term contract, where the justification for ending, non-renewal or non-extension of the fixed term contract is that of 'redundancy' rather than that of 'some other substantial reason'. Medical, Dental Staff, Executive Directors, Non-Executive Directors and Very Senior Managers will need to refer to their terms and conditions of employment and sections specific to redundancy which will take precedent over this policy where there is a conflict, otherwise the principles of this policy will apply.

The Trust's aim is to avoid redundancies and therefore will exhaust all potential suitable alternative employment options before any post is made redundant.

In the event of redundancies being necessary, the principle aim of this Policy is to ensure that such redundancies are handled in a fair, consistent and sympathetic manner, without any form of discrimination.

The Trust recognises the importance of consultation with all employees who are potentially affected and not just those who are at direct risk of redundancy.

Redundancy payments will be paid in accordance with Section 16 of the Agenda for Change Terms and Conditions of Service Handbook. Dentists, Consultants, Doctors, Specialty Doctors and Associate Specialty Doctors redundancy payments will be made in line with the relevant schedule in their Terms and Conditions of employment.

Whenever an employee is identified at risk, a number of measures can be implemented to assist the individual, according to their needs, to make the transition.

1 Document Statement

- 1.1 The Trust recognises that its employees are its single most important asset and therefore is committed to protecting the security of employment through effective workforce planning. However, there may be some occasions such as changes to funding provision, the demand for services or the way they are delivered and/or a change in the demand at a national or local level which require changes to staffing within the Trust. Where a change in circumstances meets the definition below, a redundancy exercise will be carried out.
- 1.2 If it is identified that redundancies may be necessary, approval must be obtained from the Workforce Director as soon as possible. There is a duty to inform the Secretary of State for Business, innovation and Skills about proposed redundancies via a HR1.
- 1.3 This Policy should be read in conjunction with the Management of Organisational Change Policy and the Alternative Employment Guidance.

2 Overview

- 2.1 This Policy provides a clear process to follow in potential redundancy situations taking into account legislative obligations.
- 2.2 This Policy applies to all employees employed by the Trust, including those employed on a fixed term contract, where the justification for ending, non-renewal or non-extension of the fixed term contract is that of 'redundancy' rather than that of 'some other substantial reason'. See paragraph 5.1 below for further details. Medical, Dental Staff, Executive Directors, Non-Executive Directors and Very Senior Managers will need to refer to their terms and conditions of employment and sections specific to redundancy which will take precedent over this policy where there is a conflict, otherwise the principles of this policy will apply.
- 2.3 In situations where it is established that TUPE Regulations apply and individuals choose to object to the transfer, there will be no right to redundancy.
- 2.4 In the event of redundancies being necessary, the principle aim of this Policy is to ensure that such redundancies are handled in a fair, consistent and sympathetic manner, without any form of discrimination. Wherever possible, employees and trade union and professional organisation (TUPO) representatives will be engaged prior to any public announcement being made.

3 Definitions

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|-------------------------------|---|
| Employees At Risk | Employees whose posts may potentially be redundant as a result of organisational change if suitable alternative employment cannot be found. |
| JNCC | Joint Negotiating and Consultative Committee. |
| LNC | Local Negotiating Committee |
| Organisational changes | Includes but not limited to the reorganisation, relocation, merger, expansion or closure of a service, redundancy, competitive tendering or outsourcing, or a major change in working practice. |
| Redeployment | The process of supporting employees to find suitable alternative roles within the Trust when their own role is At Risk. (Please see below Suitable Alternative Employment and appropriate Trust Guidance). |
| Redundancy | Redundancy is defined by the Employment Rights Act 1996 as "an employee who is dismissed for redundancy if the dismissal is attributable wholly or mainly to the fact that: <ul style="list-style-type: none">• The employer has ceased, or intends to cease – (I) to |

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|--|--|
| | <p>carry on the business for the purposes of which the employee was employed by him/her, or (ii) to carry on the business in the place where the employee was so employed</p> <p>or</p> <ul style="list-style-type: none"> The requirements of that business – (I) for employees to carry out work of a particular kind, or (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish” |
| Redundancy Leave | Period of time that staff will remain employees of the Trust but at the Trust discretion, are not required to be available for duty. |
| Suitable Alternative Employment | The employee will be given preferential consideration for vacancies seen by the Trust as suitable alternative employment at, or in some circumstances one band below their substantive band (pay protection to the individuals pay apply). The employee may choose to be redeployed to a post that is more than one band below their permanent post or to a post one band below their permanent post as opposed to the suitable alternative employment identified by the Trust. Please be aware that in these circumstances pay protection will not apply. |
| Trial Period | A period of 4 weeks when the employee undertakes the new role enabling both the manager and employee to assess the suitability of the post as alternative employment. In exceptional circumstances this could be shorter or longer with appropriate agreement from both parties. |
| TUPE | Transfer of Undertaking (Protection of Employment) Regulations 2006. |

4 Roles and Responsibilities

Trust Board

- 4.1 Trust Board has responsibility to oversee this policy and ensure that appropriate processes and actions are in place and to avoid any unnecessary redundancies.

Directors / Associate Directors / Heads of Service

- 4.2 Directors / Associate Directors / Heads of Service are responsible for ensuring their service undertakes effective workforce planning, whilst considering financial implications. This will determine existing and future staffing needs and skill mix for their service, leading to the efficient use of the workforce, minimising the risk of job losses and providing greater job security. It is for the Directorate Management Team to agree the need and identify any organisational change requirements.

Human Resources

- 4.3 Human Resources are responsible for providing advice, support and guidance throughout the whole process. To provide support where necessary at group consultation meetings and individual one to ones. They will maintain the re-deployment register and work with line managers to ensure employees are made aware of suitable alternative posts. In the event of redundancy they will provide all necessary paperwork in a timely manner and notify relevant government departments and other statutory bodies as necessary.

Line Managers

- 4.4 Line managers will work with the Human Resources team to ensure effective engagement and communication with employees around vacancies and ensure any offer of suitable alternative employment is provided in writing. Line managers will also be responsible for ensuring that all affected staff are communicated with regularly and that all documentation associated with redundancy, is completed within a timely manner and shared with all affected staff.

Staff Side

- 4.5 Trade unions play a vital role in advising and representing staff undergoing redundancy. The Trust will formally notify the trade unions of any proposed redundancies and will undertake consultation with them in line with legal requirements. They will be required to provide support to their members, where requested, throughout the redundancy process. Line Managers, Human Resources and Staff Side will liaise; ensure that meetings are held in a timely manner, avoiding delays which may result in increased anxiety for the staff affected.

Employees

- 4.6 All staff have responsibility for engaging with the process to ensure effective communication. They need to respond in a timely manner to communications from their Line Manager and/or the Human Resources team to undertake trial periods and give proper consideration to offers of suitable alternative employment. For further information on suitable alternative employment please refer to the Alternative Employment Guidance.
- 4.7 Staff At Risk, along with support from their Line Manager and Human Resources, must register with NHS jobs and take responsibility for seeking employment as part of the process.

5 Fixed Term Contracts

- 5.1 When a fixed-term contract comes to an end and is not renewed or extended, this constitutes a dismissal under English Law. The reason for the dismissal will vary from case to case; however, the two main reasons for a dismissal of this sort will be 'redundancy', or 'some other substantial reason'. The expiry of a fixed-term contract will normally be considered to be a redundancy if the work for which the employee was employed has diminished, or ceases to exist. This would cover projects, which have run their course, or where specifically funded work has come to an end due to an exhaustion of or non-recurring of funding. In these cases, the employee may be entitled to a redundancy payment provided that they have a minimum of 104 weeks continuous service with the Trust or any previous NHS employer at the date their employment ends.
- 5.2 Employees who are employed to cover another employee's absence, and whose contract expires on the return of that employee would be deemed to have been dismissed for 'some other substantial reason' and consequently this would not constitute a redundancy. In such cases the termination of a Fixed-Term Contract process should be followed in accordance with the Fixed Term Contract & Temporary Workers Policy.

6 Alternative Options

- 6.1 The Trust will make every effort to avoid compulsory redundancy and/or limit the number of redundancies required through:
- Placing restrictions on further recruitment of new employees (in similar areas)
 - Non replacement of leavers where there is no clinical risk identified through a risk assessment
 - Re-training and redeployment for affected employees where appropriate to fill essential vacancies
 - Restriction in overtime working and/or additional hours worked

- Reduced usage of subcontracted labour, agency, bank and locum staff in circumstances where there is no clinical risk identified or where their usage is necessary prior to a closure situation or for special projects where specific skills or continuity are required
- Consideration of flexible working arrangements
- Voluntary reduction in contractual hours
- Voluntary retirement
- Redeployment

7 Consultation

7.1 The Trust recognises the importance of consultation with all employees who are potentially affected and not just those who are at direct risk of redundancy.

7.2 As required by Law:

- where there are between 20 and 99 proposed redundancies at one establishment within a period of 90 days or less there is a minimum consultation period of 30 days, or
- where there are 100 or more proposed redundancies at one establishment within a period of 90 days or less there is a minimum consultation period of 45 days

7.3 Where there are more than 20 employees to be made redundant the Trust will undertake a formal consultation through Joint Negotiating Consultation Committee (JNCC) and if applicable, the Local Negotiating Committee (LNC) in accordance with the statutory requirement for disclosure of information and notification to representatives. Written notification will provide details of:

- the reasons for the proposed redundancies,
- the numbers and descriptions of the staff that are at risk of redundancy,
- the numbers and descriptions of the total number of such staff employed by the Trust at the site affected by the change,
- the proposed method of selection for redundancy,
- the method of carrying out dismissals and their timings, and
- the proposed method of calculating any redundancy payments to be made.

7.4 Where an organisational change may result in redundancies, the Trust will undertake a formal consultation through JNCC in accordance with the statutory requirements for disclosure of information and notification to representatives.

7.5 Notes from any consultation meetings will be confirmed in writing to members of the JNCC/LNC and made available to the employees concerned. Individual consultation will also take place as appropriate.

7.6 The main purpose of the consultation meetings will be to discuss with employees the situation and the reasons for the potential redundancy, the criteria and method of application to be used, and to consider any suggestions for avoiding compulsory redundancies.

7.7 During 1:1 consultation employees will be given the opportunity to explain and discuss any areas of concern surrounding the selection criteria. Individual consultation may include looking at the options available to the employee, such as applying for redeployment, and considering any training or development that may be appropriate. The Trust's aim is to avoid redundancies by offering alternative employment where possible and wherever practicable.

7.8 The date on which this formal redundancy consultation is deemed to have started is the date on which formal written notification is given to the JNCC/LNC representatives.

8 Right to Representation

- 8.1 At any formal meetings the employee has the right to be accompanied by an accredited representative of the Trusts recognised trade union or professional organisation (for avoidance of doubt not a legal representative) or by a colleague employed by the Trust. Family members or partners who are also employed by the Trust are not able to accompany an individual unless they are required to assist with disabilities or language difficulties or any other extenuating circumstances.

9 Selection for Redundancy

- 9.1 In situations where it becomes necessary to select individuals for redundancy advice will be taken from Human Resources and will consider the following:
- Where a single job ceases to exist, the job holder will normally be the redundant employee
 - Where a number of posts are redundant or where it is proposed to reduce the number of posts required, employees will be identified from the selection process, based on specified criteria (HR advice should be sought around the selection process).
 - The redundancy exercise must be screened to ensure there is no bias in the selection criteria. It must not disproportionately affect employees with a protected characteristic.
 - The selection criteria will be discussed with trade union representatives
 - Consideration of the most appropriate parties to be involved in the selection process will be appropriate to each situation

10 At Risk of Redundancy

- 10.1 Where staff are at risk of redundancy they will be informed by letter. However before any post is made redundant the Trust must exhaust all potential suitable alternative employment options.

11 Suitable Alternative Employment

- 11.1 A suitable alternative post will, in the first instance be at the same or one band lower than the employee's substantive post. However, the following points would be taken into consideration:
- Any potential loss of status/profession
 - Location and cost of travel
 - Working environment
 - Current hours of work
 - The individuals personal circumstances
 - Skills, knowledge, experience and scope to retrain
 - Cost of pay protection against any other costs
 - Needs of service / skill mix

The employee may choose to be redeployed to a post that is more than one band below their permanent post or to a post one band below their permanent post as opposed to the suitable alternative employment identified by the Trust. Please be aware that in these circumstances pay protection will not apply.

- 11.2 Redundant employees who accept suitable alternative employment with the Trust will be entitled to a trial period. Where the post is broadly similar to the employee's current post in terms of pay, banding, levels of responsibility, skill etc. the post will likely be considered as a 'suitable' alternative. If the employee subsequently does not accept this offer of a suitable alternative post then they may lose their entitlement to redundancy payment. Where an 'alternative' post is offered to an employee, they may undertake their trial period without affecting any entitlement they may have to redundancy compensation.

- 11.3 The Alternative Employment Guidance outlines the process to be undertaken to try to secure suitable alternative employment and ensure that the legal requirements under this are met; this policy should be referred to as part of this process.

12 Notice

- 12.1 Where selection has been confirmed, those selected for redundancy will be given written notice of termination in accordance with contractual entitlements. Staff will normally be expected to work their notice period although the Workforce Director may use their discretion to authorise 'redundancy leave'. In exceptional cases an individual under notice may request, in writing, to waive their entitlement to notice and leave on a mutually agreed earlier date with redundancy pay calculated up to the revised date of termination. All such requests should be referred to the Human Resources Team.
- 12.2 Staff under formal notice of termination are required to apply for suitable posts with other NHS employers. Staff who unreasonably refuse to apply for or accept suitable alternative employment within the Trust or with another NHS employer will normally forfeit their right to redundancy pay.

13 Redundancy Payment

- 13.1 Redundancy payments will be paid in accordance with Section 16 of the Agenda for Change Terms and Conditions of Service Handbook or in accordance with Terms and Conditions of employment for Medical and Dental Staff. The redundancy payment will take the form of a lump sum, dependent on the employee's reckonable service at the date of termination of employment. Any payment due will be made following termination of employment. Anyone who feels that their payment is incorrect must write to the Workforce Director within 21 calendar days of the date of payment.
- 13.2 If, before the date of termination, an employee is offered suitable alternative employment with their own employer or with another NHS employer and that employment starts within 4 weeks of the termination date, they will not be entitled to a redundancy payment. Before payment is made the employee will certify that they have not obtained, been offered or unreasonably refused to apply for or accept, suitable alternative health service employment within four weeks of the termination date and they understand that payment is made only on this condition and undertake to refund it if this condition is not satisfied.
- 13.3 Employees meeting the NHS Pension criteria for early payment of their pension on being made redundant will have a choice of options. If an employee wishes to take their pension when made redundant the employee is advised to contact the Pensions Department and review the Retirement Policy.
- 13.4 Please note any redundancy payment amounts will need to be referred to the Remuneration Committee to be reviewed and approved.

14 Support for Staff

- 14.1 Whenever an employee is identified at risk, a number of measures can be implemented to assist the individual, according to their needs, to make the transition. Advice and support may include (but is not limited to) one or more of the following:
- Reasonable paid time off to complete applications and to attend interviews
 - Reasonable time off to make arrangements for training for future employment
 - Counselling
 - Occupational Health and Wellbeing
 - Help with CV's + Interview skills

- 14.2 Subject to the Trusts operational requirements affected employees will also be entitled to take reasonable time off work during their notice period to look for work or seek retraining opportunities. Requests for time off in the first instance should be made to their direct line manager.

15 Right of Appeal

- 15.1 An employee who is given notice of dismissal due to redundancy has a right of appeal if:
- they feel that they have been unfairly selected for redundancy, or
 - they feel that they have not been properly considered for a post within the Trust where they have been in competition with another employee, or
 - they have been offered a post deemed by management as suitable alternative employment, which they do not consider to be suitable.
- 15.2 Any individual wishing to lodge an appeal must do so in writing to the Workforce Director no later than 14 calendar days of the act complained of.
- 15.3 The appeal should set out in detail the grounds for the appeal. An employee has the right to be represented, if they wish, at any formal stage of the process by either a recognised TUPO or a Trust employed work colleague. Family members or partners who are also employed by the Trust are not able to accompany an individual unless they are required to assist with disabilities or language difficulties or any other extenuating circumstances.
- 15.4 Wherever possible, appeals will be heard within 14 calendar days of the appeal being lodged. The appeal will be heard by the line Trust Board Director or nominee, who will be advised by a member of the HR Department. No panel member will have previously been involved in the decision complained of. Where the appeal is made by an individual in pay band 8 or 9 or by a doctor or dentist the Appeals Panel will include at least one Trust Board Director. The employee will be notified by letter of their right to be accompanied at the hearing by their accredited staff representative or by a colleague from within the Trust.
- 15.5 The decision of the Trusts Appeals Panel is final.

16 Reviewing Arrangements

- 16.1 Line managers will be responsible for communicating the policy to their staff.
- 16.2 This document will be reviewed in 5 years of approval date, or sooner if legislative change dictates otherwise. In addition it will be reviewed in light of feedback and learning. In order that this document remains current, any of the appendices to the policy can be amended and approved during the lifetime of the policy without the document having to return to the ratifying committee.

17 Equality Impact Assessment (EQIA)

An Equality Impact Assessment has been completed and no concerns have been identified to require a Stage 2 Full Assessment being necessary.

18 References

ACAS - <https://beta.acas.org.uk/redundancy>

Gov.UK - <https://www.gov.uk/redundant-your-rights>

NHS Terms and Conditions of Service Handbook - http://www.nhsemployers.org/employershandbook/afc_tc_of_service_handbook_fb.pdf

Trust Policies - All available on the intranet

- Alternative Employment Guidance
- Management of Change Policy
- Fixed Term Contracts Policy
- Pay Protection Policy
- Medical and Dental Whitley Handbook and the relevant Terms and Conditions of Service for Consultants, Associate Specialists and Specialty Doctor Retirement Policy

Equality Impact Assessment Form

Stage 1 – Initial Assessment

| | | | |
|---|---|---|---|
| Managers Name | Juliette Eveson | Division | Workforce - Human Resources |
| Function, Policy, Practices, Service | Redundancy Policy | Purpose and Outcomes – intended and differential | Guidance for managers on redundancy process taking into account legislative obligation. |
| Implementation Date | | Who does it affect? | All Agenda for Change staff |
| Consultation Process | HR, JNCC Policy Group, JNCC, PAG, Trust Board | Communication and awareness | Intranet, one minute brief, global email. |

For completion of the following table please see point 7 in the guidance notes.

| Equality Target Group | (a) Positive Impact | (b) Negative Impact | Reason/Comment |
|--------------------------------|----------------------------|----------------------------|--|
| Men | None | None | Policy applied consistently regardless of gender. To be reviewed as part of monitoring compliance in section 16 of the policy. |
| Women | None | None | As above. |
| Black/Black British | None | None | Policy applied consistently regardless of race. To be reviewed as part of monitoring compliance in section 16 of the policy. |
| Asian/Asian British | None | None | As above. |
| Chinese | None | None | As above. |
| White (including Irish) | None | None | As above. |

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| Other racial/ethnic group (please specify) | None | None | As above. |
| Mixed race | None | None | As above. |
| Disabled | None | None | Policy applied consistently regardless of ability/disability. |
| Gay/Lesbian/Bi-sexual | None | None | Policy applied consistently regardless of sexual preference. |
| Transgender | None | None | Policy applied consistently regardless of gender. To be reviewed as part of monitoring compliance in section 16 of the policy. |
| Younger People (17-25) and children | None | None | Policy applied consistently regardless of age. To be reviewed as part of monitoring compliance in section 16 of the policy. |
| Older People (50+) | None | None | As above |
| Faith groups (please specify) | None | None | Policy applied consistently regardless of faith group. |

Following completion of the Stage 1 assessment, is Stage 2 (Full Assessment) necessary? **No**

Date Completed: **26/11/18**

Manager completing the assessment: **Juliette Eveson – Senior HR Advisor**