

Protection of Pay

Policy No: W25

Additionally refer to: Management of Organisational Change
Reimbursement of Travel, Accommodation and
Subsistence Expenses

| | |
|-------------------|--|
| Version: | V5.2 |
| V4 issued | February 2015 |
| V5 approved by | JNCC |
| V5 date approved | August 2020 |
| V5 Ratified by: | Senior Leadership Committee |
| V5 Date ratified: | October 2020 |
| Document Lead | Workforce Manager - Corporate |
| Lead Director | Workforce Director |
| Date issued: | October 2020 |
| Review date: | October 2023 (unless required earlier) |
| Target audience: | All staff |

C Version Control Sheet

| | |
|---|---|
| Document Lead/Contact: | Nick Dowd, Workforce Manager: Corporate |
| Document ID | W25 |
| Version | 5.2 |
| Status | Final |
| Date Equality Impact Assessment completed | August 2020 |
| Issue Date | October 2020 |
| Review Date | October 2023 |
| 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 | Protection of pay. |
| Dissemination | HR Quarterly newsletter; HR pages on Intranet |

Version history

| Version | Date | Author | Status | Comment |
|---------|----------|---------------|--------|---|
| V.4.1 | 27.11.13 | Liz Walton | DRAFT | Amendment to format to comply with NHSLA standards |
| V4.4 | 2.10.14 | Liz Walton | DRAFT | Amendments to entitlement. Clarification of definitions |
| V5.1 | 15.07.20 | Nick Dowd | Draft | Policy review. Updated policy number and corrected reference to other policies. Minor changes to wording. No changes to entitlements. |
| V5.2 | 04.08.20 | Nick Dowd | Final | Added policy on a page. |
| V5.2 | 03.08.21 | Erica Cobbold | FINAL | Minor amendment to paragraph 5.5.2. |
| | | | | |

Contents

| Paragraph | | Page |
|------------------|-----------------------------------|------|
| Policy on a Page | | 4 |
| 1 | Policy Statement | 5 |
| 2 | Overview | 5 |
| 3 | Definitions | 6 |
| 4 | Duties | 7 |
| 5 | Policy detail | 7 |
| 6 | Appeals | 10 |
| 7 | Training needs | 11 |
| 8 | Review process | 11 |
| 9 | Equality Impact Assessment | 11 |
| 10 | Process for monitoring compliance | 11 |
| 11 | References | 11 |
| 12 | Associated Documentation | 11 |

POLICY ON A PAGE

This policy describes the Trust's approach to protecting pay for staff who are financially affected by management of change processes.

There are 3 categories of protection:

- Basic Pay - the monthly sum due in respect of salary for the worked hours that are fixed by contract of employment. Entitlement is for 24 months.
- Other earnings - the average monthly earnings in the previous twelve months for Unsocial hours earnings, On call earnings, Contractual overtime, Recruitment and Retention Premia. Entitlement is for 6 months.
- Excess travel expenses – the daily additional travelling expenses incurred when an individual transfers to a new base as a result of management initiated organisational change. Entitlement is for 24 months.

Employees have the right of appeal if they believe that the conditions of this policy have not been applied correctly.

1. POLICY STATEMENT

- 1.1 The Trust places great importance on its ability to identify the need for change and to manage that change, taking into account the organisational objectives and the need to continuously improve services for patients as well as the aspirations and wellbeing of its employees.
- 1.2 This policy is intended to mitigate any adverse financial impact on individuals affected by organisational change by providing pay protection as an alternative to redundancy. The policy should be read in conjunction with the Management of Organisational Change policy.
- 1.3 There is no automatic right to protection of pay under this policy as an alternative to redundancy.
- 1.4 The policy applies to all relevant changes implemented on or after the date of ratification. Individuals affected by change management processes on which the formal consultation with JNCC began before this date will be eligible for protection under the policy in existence at that time.

2. OVERVIEW

- 2.1 This policy applies to all staff employed on Agenda for Change and Medical and Dental terms and conditions of service (except doctors in training) who have two years' continuous service with the Trust from the date of implementation of the change. The policy does not apply to Trust Board Directors, however the Remuneration Committee has discretion as to whether these or similar arrangements should apply to individual Trust Board Directors affected by organisational change.
- 2.2 The arrangements in this policy cover individuals who suffer a reduction in basic pay or other regular earnings or incur additional travel costs as a result of management initiated organisational change.
- 2.3 The arrangements apply to individuals who are affected by organisational change and therefore exclude:
 - changes requested by individuals or their representatives
 - changes made by mutual agreement between an individual and management
 - changes which result from normal job rotations, training programmes, changes in staffing levels (e.g on on-call rotas), secondments, acting up or similar normal business variations
 - changes made to Additional Programmed Activities for medical staff
 - changes which result from redeployment due to ill health or disability
 - changes which result from redeployment or downgrading agreed following disciplinary action
 - changes to national terms and conditions
 - changes made on redeployment at the end of a fixed term contract.
- 2.4 Each subsequent change of post due to an organisational change covered by this agreement will attract protection in its own right.
- 2.5 In implementing this policy, managers must ensure that all staff are treated fairly and within the provisions and spirit of the Trust's Equality & Diversity Policy. Special

attention should be paid to ensuring the policy is understood when using it for staff new to the NHS or Trust, by staff whose literacy or use of English is weak or for persons with little experience of working life.

3. DEFINITIONS

3.1 **Basic Pay** is exclusively the monthly sum due in respect of salary for the worked hours that are fixed by contract of employment to a maximum of 37.5 hours per week. For the avoidance of doubt, basic pay does not include unsocial hours payments, on-call earnings, stand-by payments, responsibility allowances, contractual or non-contracted overtime, payment for additional clinical activities, clinical excellence award payments, waiting list initiatives or earnings in a “bank” post.

3.2 **Other earnings** are exclusively the average monthly earnings in the twelve months immediately prior to the date of implementation of the change, due in respect of the sum of the following elements, providing they are a regular requirement of the job:

- Unsocial hours earnings
- On call earnings related to time worked or availability for work
- Contractual overtime (i.e. regularly rostered)
- Recruitment and Retention Premia

For the avoidance of doubt, other earnings do not include non-contracted overtime, payment for additional clinical activities, clinical excellence award payments, waiting list initiatives or earnings in a “bank” post.

3.3 **Excess travel expenses** are the actual daily additional travelling expenses incurred when an individual transfers to a new base as a result of management initiated organisational change.

3.4 **Protected Pay** is the total amount earned including basic pay and other earnings but excluding excess travel expenses.

3.5 The **Protection Period** is the length of service during which pay will be protected, beginning with the date of implementation of the change.

3.6 **Mark time** means that pay is not increased by general pay awards, incremental or other progression.

3.7 **Downgrading** occurs when the new post, irrespective of its job title, carries a salary maximum lower than that applying to the current post or lower than the individual’s personal salary point if on a personal grade.

3.8 **A more senior post** is one which carries a salary maximum higher than that applying to the current post or higher than the individual’s personal salary point if on a personal grade.

4. DUTIES

4.1 Executive Directors are responsible for:

- ensuring that they are familiar with this policy and their staff understand it;
- ensuring that organisational change supports the Trust's objectives;

4.2 Senior managers are responsible for:

- ensuring that they are familiar with this policy and their staff understand it;
- reviewing service needs and ensuring that organisational change supports the Trust's objectives;
- ensuring that this policy is applied fairly and consistently;

4.3 Managers are responsible for:

- ensuring that they are familiar with this policy and their staff understand it;
- ensuring that this policy is applied fairly and consistently;
- ensuring that individuals are informed in writing of their entitlement to Pay Protection and their right of appeal;
- providing Pay Services with appropriate information to ensure staff affected are paid correctly;
- ensuring that individuals who are in receipt of Pay Protection have access to information about posts at their protected pay level and encouraged to apply for them.

4.4 Employees are responsible for:

- ensuring that they have read and are familiar with this policy when they may be eligible for pay protection;
- applying for suitable posts at their protected pay level within the Trust.

5. POLICY DETAIL

5.1 General Principles

5.1.1 The Trust will consult with staff and their accredited representatives in advance of the implementation of any significant organisational change in accordance with the Trust's Management of Organisational Change Policy. Individuals will be entitled to representation by their Trade Union/Professional Organisation representative or accompanied by a colleague employed by the Trust at any meetings to discuss organisational change and/or pay protection arrangements.

5.1.2 Individuals have the right to refuse Pay Protection. In these circumstances Pay Protection will not be paid on any aspects of basic pay or other earnings and Pay Protection cannot be reinstated at a later date. Individuals wishing to exercise this right must do so in writing to their line manager before the pay protection arrangement commences.

5.1.3 Eligibility for pay protection will be lost if an individual rejects a reasonable offer of suitable alternative employment at any point during their period of pay protection.

5.1.4 Staff who are receiving pay protection are encouraged to apply for jobs within the Trust that attract a rate of pay equivalent to the protected level and the Trust reserves

the right to offer posts that are considered suitable by management. In such cases the individual may be in competition with other applicants. If an employee who is in receipt of pay protection unreasonably refuses to accept any offer of suitable alternative employment within the Trust, protection will cease with effect from the date the offer is refused.

- 5.1.5 In **all** cases, protection will be on a mark time basis.
- 5.1.6 During the period of protection, all terms and conditions other than those covered by pay protection will be those applicable in the new post with immediate effect from the date of transfer.
- 5.1.7 Continued payment during the period of protection is conditional on the employee participating in the reasonable allocation of overtime, shift working or additional duties which may be required, without additional payment until the level of pay protection has been reached on a month by month basis. Reasonable means in the context of both the new role and what other comparable members of the team are being required to work. If an employee repeatedly refuses such work, the manager will discuss their concerns with them to review the arrangements. A record of this discussion must be kept on the individual's personal file. If the employee is considered to have unreasonably refused such work, protection of pay may be stopped with immediate effect. The outcome of this discussion will be confirmed in writing to the employee. This matter must be discussed with a member of the Workforce team before payment is stopped.

5.2 Entitlement to Pay Protection

- 5.2.1 An individual who has been continuously employed by the Trust for two years prior to the date of implementation of the change will be entitled to protection of pay as follows:

| Length of continuous Trust service | Protection of Basic Pay | Protection of Other Earnings |
|---|--------------------------------|-------------------------------------|
| 2 years | 24 months | 6 months |

5.3 Calculation of Protected Pay

- 5.3.1 Protection of Basic Pay and Protection of Other Earnings will be combined to determine the overall level of Protected Pay on a monthly basis.
- 5.3.2 Total earnings in the changed arrangement including basic pay and the combined other earnings will be off-set against Protected Pay. If, for any pay period, total earnings in the new post exceed Protected Pay, protection will not be paid for that pay period.
- 5.3.3 Basic pay will be the rate of salary payable on the day before the effective date of the change.
- 5.3.4 Other earnings to be protected will be calculated based on the average combined monthly earnings from the relevant pay elements in the twelve month period ending the day before the effective date of the change. In the case of staff on

maternity/adoption leave, sickness absence or on an employment break, earnings will be based on the three month period immediately prior to the start of the absence.

5.4 Entitlement to Excess Travel Expenses

5.4.1 An individual who has been continuously employed by the Trust for two years prior to the effective date of the change will be entitled to Excess Travel Expenses where, as a result of a management initiated organisational change, they incur additional travel costs as a result of transferring their work base. The level of entitlement is as follows:

| Length of continuous Trust service | Excess Travel Entitlement |
|---|----------------------------------|
| 2 years | 24 months |

Excess Travel Expenses are calculated as the difference between the distance travelled from home to the work base before the change and the distance travelled from home to the new work base, usually determined with reference to Googlemaps. Expenses will be paid at the Reserve Rate in accordance with Agenda for Change Terms and Conditions

5.4.2 Excess travel expenses must be claimed through the Trust Travel Expenses Claim process on a monthly basis in respect of actual journeys undertaken. Excess travel expenses may not be claimed if the journey is not undertaken, for example during annual leave or if the individual travels with someone else.

5.4.3 There is no entitlement to additional or paid travelling time.

5.5 Payment of Pay Protection and Excess Travel Expenses

5.5.1 Where applicable, Pay Protection and payment of Excess Travel Expenses will begin from the date of transfer into the new role or working arrangements and will be confirmed in writing to the employee.

5.5.2 Pay Protection will cease and the employee will revert to the salary of the new arrangement:

- at the end of the Protection Period;
- if they are subsequently appointed to a post which attracts a basic salary that is higher than the basic pay in the original post;
- if, on a month by month basis, total earnings in the new arrangements exceed Protected Pay, pay protection will not be paid for that month;
- if their employment is terminated, (either by resignation, retire and return or a dismissal from the Trust);
- if they voluntarily change their job to one that attracts a lower salary than their original role.

5.5.3 If the individual is promoted to a more senior post but with pay still less than their existing protected pay level, the period of protection will continue according to the original agreement.

- 5.5.4 If, during a period of protection, the individual becomes adversely affected by a subsequent organisation change and is eligible for another period of protection, the two entitlements will run concurrently.
- 5.5.5 If, during the period of protection, an individual requests a reduction in contracted hours of work in accordance with the Trust's Flexible Working Policy, earnings will continue to be protected until the end of the existing period of protection but the protected amount will be reduced on a pro-rata basis.
- 5.5.6 If an employee requests an increase in contracted hours of work, protection will continue only if the total earnings remain lower than the protected amount. Where the increase in contracted hours results in an overall increase in total earnings above the value of Protected Pay, protection will cease from the date of the change.

5.7 Pensions

Under the provisions of the NHS Pension Scheme, staff may apply to preserve their pension benefits, based on the previous level of pay, where through no fault of their own they are downgraded. All such applications must be made within three months of the date from which pensionable salary is to be reduced eg the end of the pay protection period. Staff who wish to consider this option or would like further information on how the change may affect their pension, should liaise with Trust Pensions Department at the earliest opportunity.

6. APPEALS

- 6.1 Employees have a right of appeal if they believe that the conditions of this policy have not been applied correctly. Any individual wishing to exercise this right must write to the designated manager within 14 calendar days after receipt of the letter confirming their entitlement or not to Pay Protection.
- 6.2 Employees also have a right of appeal where any issues arise subsequently during the Pay Protection period. Any individual wishing to exercise this right must do so in writing to the designated manager.
- 6.3 The person to whom the appeal should be addressed will be as stated in the letter confirming their entitlement to Pay Protection, typically the next level of management.
- 6.4 The lodging of an appeal will not suspend any action taken to reduce an individual's pay in accordance with this policy. However, where the appeal is successful, any loss of earnings resulting from the action will be reimbursed.
- 6.5 The manager hearing the appeal will arrange a meeting, normally within 14 calendar days, at which the employee may be accompanied by an accredited representative of a Trade Union/Professional Organisation or colleague employed by the Trust.
- 6.6 Where an individual or their representative cannot attend a formal review meeting, it will be rescheduled to a mutually agreed date as quickly as possible and normally within 14 calendar days of the original date.

- 6.7 In the event that either the employee or their representative fails to attend the rescheduled meeting, the appeal hearing will proceed in their absence and a decision made based upon the evidence available.
- 6.8 The decision of the manager hearing the appeal is final.
- 6.9 The manager hearing the appeal will confirm the outcome in writing to the employee, with a copy to the employee’s representative, normally within seven calendar days of the hearing.

7. TRAINING NEEDS

Training requirements to fulfil this policy will be provided in accordance with the Trust’s Training Needs Analysis. Management and monitoring of training will be in accordance with the Trust’s Risk Management Training Policy. These can be accessed via the Learning Zone pages on the Trust’s intranet.

8. REVIEW PROCESS

The Trust will review this policy when there are changes to relevant legislation or good practice, or within the normal policy review cycle.

9. EQUALITY IMPACT ASSESSMENT (EQIA)

This policy applies to all employees equally and does not discriminate positively or negatively between protected characteristics.

10. PROCESS FOR MONITORING COMPLIANCE

| Aspect of compliance or effectiveness being monitored | Monitoring method | Responsibility for monitoring | Frequency of monitoring | Group or Committee that will review the findings and monitor completion of any resulting action plan |
|--|-------------------------------|--------------------------------------|--------------------------------|---|
| Policy statement | Review of policy when updated | Workforce Hub Lead | On policy review | JNCC |
| Duties | Review of policy when updated | Workforce Hub Lead | On policy review | JNCC |
| Effectiveness of procedure | Review of policy when updated | Workforce Hub Lead | On policy review | JNCC |

11. REFERENCES

12. ASSOCIATED DOCUMENTATION

Reimbursement of Travel, Accommodation and Subsistence Expenses
 Management of Organisational Change