

# Pay Protection Policy

<b>Reference Number:</b>	<i>This will be applied to all new ICB-wide policies by the Governance Team and will be retained throughout its life span.</i>
<b>Version:</b>	
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<b>Department:</b>	Human Resources

#### VERSION HISTORY

Date	Version	Changes made to previous version	Consulting and Endorsing Stakeholders, Committees / Meetings / Forums etc.
09.03.202	V 2.0	<p>Amendments made to short term and long term pay protection period:</p> <ul style="list-style-type: none"> <li>Long term protection amended from five years to two year protection (section 5.3)</li> <li>In the short term pay protection table (section 5.4), there has been a further breakdown to the length of time in receipt of the pay element</li> </ul>	<p>Staff Forum Social Partnership Forum Policy Advisory Group (PAG) REMCOM</p>

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## **1 POLICY STATEMENT**

- 1.1 The aim of this policy is to ensure that the arrangements for pay protection are clear and applied appropriately and fairly for ICB members of staff who may require protection of their pay at some point during their employment.
- 1.2 The purpose of pay protection is to provide the employee with a period of time to prepare for a reduction of earnings or secure an alternative role at the previous salary during the pay period.
- 1.3 The policy applies to all staff who, as a consequence of organisational change (as per the policy), are required to move to a lower graded post (downgrading) or suffers a reduction in basic hours worked within the standard working week.
- 1.4 This policy also provides a short-term protection provision, whereby staff experience a reduction in their total income, as a result of loss or reduction in additional earnings.
- 1.5 These arrangements apply to staff who hold a permanent or fixed term contract of employment. This policy does not apply to temporary positions; zero hours contracts or where staff are redeployed as a result of disciplinary action, for capability reasons or as a result of sickness absence management (with the exception of section 22 of Terms and Conditions handbook).
- 1.6 This policy shall be applied to all ICB Employees.

## **2 PRINCIPLES**

- 2.1 The Pay Protection policy will be applied to staff in accordance with the organisation's Equality and Diversity Policy. The fair and equitable implementation of this policy will be monitored locally by the ICB's Human Resources service.
- 2.2 This policy should be read in conjunction with the organisation's Management of Change and Redeployment policies.
- 2.3 Pay Protection shall only be applied to an employee's substantive post.
- 2.4 The duration of pay protection that staff will receive will be based on the time that they have held their substantive post. An employee who is seconded to another post will still retain their substantive post while their secondment is in place. The time an employee is seconded will therefore count towards pay protection but only for their substantive post.
- 2.5 The organisation will endeavour at all times to redeploy staff into new roles which match the levels of skills and responsibilities required in the previous pay band and to provide reasonable training to enable staff to fulfil new roles, although it is recognised that this may not always prove possible.
- 2.6 Only one grade below will be considered as "Suitable Alternative Employment" and attract full protection of earnings as described in Paragraph 5.3.
- 2.7 All staff are reminded that it is their responsibility to consider their own financial position when considering alternative posts. They may choose to speak directly with SBS, NHS Pensions, or seek their own financial advice from an independent financial adviser or their trade union.

- 2.8** Protection of pay may cease if a member of staff unreasonably refuses any subsequent offer of another suitable post within the organisation, (as defined in the Change Management Policy: para 10.3) which attracts a basic salary or wage the same or in excess of that applying to the old post. If a staff member unreasonably refuses to accept such an offer, protection will cease with immediate effect. The employee will have the right to appeal, in accordance with Section 6 of this policy.

### **3. DEFINITIONS**

#### **3.1 Organisational Change**

Any NHS or management initiated change in the organisation of the healthcare provision or commissioning arrangements, including both structural and managerial alterations.

#### **3.2 Marked Time**

Pay and pay related conditions are frozen and remain unchanged by inflationary pay awards, incremental or other progression for a specific period.

#### **3.3 Downgrading**

Where a new post, irrespective of its banding, carries an hourly rate lower than that for the previous post. Furthermore, a salary scale with a maximum point lower than the maximum point for the previous post, or lower than that of the grade held in the previous post.

#### **3.4 Short-Term Protection**

Protection of an employee's additional earnings (i.e. other than basic salary) where an 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.

Short term pay protection does not include pay relating to additional hours, additional responsibilities, voluntary overtime.

#### **3.5 Long-Term Protection**

Protection of basic salary on a marked time basis (refer to para 3.2) applies where a member of staff is downgraded as a result of organisational change and is implemented from the effective date of the change. In many cases this can 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.

#### **3.6 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. It excludes any payments made in respect of acting up (or additional responsibilities), overtime, working outside normal hours payments, Agenda for Change recruitment and retention premia, standby or on call duty.

### **4. PENSION ARRANGEMENTS**

- 4.1** In certain circumstances, members of the NHS Pension Scheme can apply to preserve their benefits where there is a reduction of earnings. Scheme members are advised to apply within one month of

a relevant change in earnings.

- 4.2 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 are downgraded (subject to the relevant qualifying membership of the NHS Pension Scheme). Should any individual require further Pensions Advice, please contact the NHS Pension Scheme Advisors direct.
- 4.3 All such applications must be made within three months of the member of the member going on to reduced pay with the pensionable salary is to be reduced. Please see Appendix 2 or access the following link for additional information: <https://www.nhsbsa.nhs.uk/member-hub>

## 5. PROTECTION PROVISIONS

- 5.1 During the period of protection, the rates used when calculating earnings in the new post will be those applicable to the new post, for example any unsociable hours worked as a requirement of the new role, shall be paid at the same rate as the new role.
- 5.2 The affected member of staff is entitled to protection of their earnings on a marked time basis (ref paras 3.2 and 3.5) for a maximum period as outlined below, or until the first of one of the following occurs;
- The employee accepts a suitable post in which the normal basic wage or salary is equal to or exceeds the protected wage or salary; or
  - The employee moves of his/her own accord to a position with a basic wage or salary which is equal to or lower than that of the existing post; or
  - The employee retires or otherwise leaves the organisation.
  - They unreasonable refuse the offer of a suitable alternative post (ref. para 2.6).
  - The basic salary for the suitable alternative job catches up with the protected pay level.

### 5.3 Long-Term Protection

A member of staff to whom this agreement applies who is moved from one post to another and who is downgraded as a result of the move is entitled to protection of basic wage or salary according to the table below;

Basic pay will be protected up to 2 years (see table below) from the date of the change; after which the terms and conditions of the new post will apply in full.

Less than 12 months service in the pay band at the date of change in role	No pay protection
Between 1 and 2 years service in the pay band at the date of change	1 year pay protection
More than 2 years service in the pay band at the date of change	2 years pay protection

### 5.4 Short-Term Protection

A member of staff to whom this agreement applies is entitled to have certain elements of their pay in

their former post protected in accordance with the following table;

Length of time in receipt of the pay element	Period of Pay Protection
Less than 1 month	None
1 month but less than 4 months	1 month
4 months but less than 8 months	3 months
8 months but less than 12 months	6 months
12 months but less than 24 months	8 months
24 months or more	12 months

- 5.5 Earnings in the new post will be offset against protected earnings. If for any particular pay period the earnings in the new post exceed the protected earnings, the protection of earnings will cease for that pay period only and earnings in the new post paid in full for that particular pay period.

Travel and subsistence expenses are not included in the calculation of earnings for this purpose.

When calculating earnings in the new post, the rates used for calculating payments in respect of overtime, work outside normal hours and other additional duties shall be those applicable to the new post. The reference and calculation period for salary will be; regular payments, either weekly or monthly, within the 3 months up to the date of change, will be used to calculate an average income figure for pay protection purposes.

- 5.6 Short Term Protection of earnings is conditional on the member of staff continuing to make themselves available during the protection period, as and when required, to undertake any regular overtime, shift work, hours or other additional duties that were in place prior to the protection where they are relevant to the grade of the post.
- 5.7 Where a staff member is already on previous protection and then is protected again under this policy their previous protected earnings will be used to calculate regular earnings.
- 5.8 An employee with a right to long-term protection as above may also initially have a concurrent right to short-term marked time pay protection. Until the short-term protection expires, the employee shall be paid on that basis. Thereafter, payment is on the basis of the ongoing entitlement to long-term protection.
- 5.9 Upon the expiry of the time-scales outlined above, the salary/wage of the member of staff concerned will revert to that of the new post.

## **6 TRAINING**

- 6.1 HR will provide training sessions on this policy upon implementation and wherever necessary.

## **7 APPEAL PROCESS**

- 7.1 Any grievances or appeals arising out of the operation of this policy may be raised in accordance with the ICB's Grievance Policy.

## **8 DATA PROTECTION**

- 8.1 In applying this policy, the Organisation will have due regard for the Data Protection Act 2018 and the requirement to process personal data fairly and lawfully and in accordance with the data protection

principles. Data Subject Rights and freedoms will be respected, and measures will be in place to enable employees 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 information. Employees will have access to a Data Protection Officer for advice in relation to the processing of their personal information and data protection issues.

## **9 STAFF COMPLIANCE STATEMENT**

All staff must comply with this ICB-wide policy and failure to do so may be considered a disciplinary matter leading to action being taken under the ICB's Disciplinary Policy. Actions which constitute breach of confidence, fraud, misuse of NHS resources or illegal activity will be treated as serious misconduct and may result in dismissal from employment and may in addition lead to other legal action against the individual/s concerned.

A copy of the ICB's Disciplinary Policy is available on the Intranet and ICB websites.

## **10 EQUALITY STATEMENT**

10.1 In applying this policy, the Organisation 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.

10.2 An Equality Analysis has been carried out on this policy – Appendix 2

## **11 ETHICAL CONSIDERATIONS**

The ICBs recognise their obligations to maintain high ethical standards across the organisations and seek to achieve this by raising awareness of potential or actual ethical issues through the Policy consultation and approval process.

## **12 MONITORING AND REVIEW**

12.1 This policy and procedure will be reviewed periodically by Human Resources in conjunction with operational managers and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.

## **13 ASSOCIATED DOCUMENTS**

- Change Management Policy
- Redeployment Policy
- Agenda for Change Terms and Conditions Handbook

## **14 DISSEMINATION AND IMPLEMENTATION**

14.1 All staff will be notified of the new policy in the staff newsletter. This policy will be available via the ICB website and directly from the HR department.



## Appendix 1 - Equality Impact Assessment

Department	Corporate Affairs	Name of person completing EIA	Sonia Kaur
Date of EIA	January 2023	Accountable ICB Lead	Theresa Nelson
		ICB Sign off and date	
Piece of work being assessed	Pay Protection Policy		
Aims of this piece of work	To deal with pay protection matters appropriately and effectively		
Other partners/stakeholders involved	None		
Who will be affected by this piece of work?	All employees		

Single Equality Scheme Strand	Baseline data and research on the population that this piece of work will affect. What is available? E.g. population data, service user data. What does it show? Are there any gaps? Use both quantitative data and qualitative data where possible. <b>Include consultation with service users wherever possible</b>	Is there likely to be a differential impact? Yes, no, unknown.
Gender	No anticipated detrimental impact on any equality group. The policy adheres to the NHS LA Standards, AFC terms and conditions, and makes all reasonable provision to ensure equity of access to all staff. It is acknowledged that the greater percentage of employees is female and therefore this staff group may inevitably be more impacted upon by the policy. However, there are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic.	No
Race	No anticipated detrimental impact on this equality group	No
Disability	No anticipated detrimental impact on this equality group	No
Religion/ belief	No anticipated detrimental impact on this equality group	No
Sexual orientation	No anticipated detrimental impact on this equality group	No
Age	No anticipated detrimental impact on this equality group	No
Social deprivation	No anticipated detrimental impact on this equality group	No
Carers	No anticipated detrimental impact on this equality group	No
Human rights	No anticipated detrimental impact on this equality group	No

## Appendix 2 – Protection of Pensionable Pay for the member of the NHS Pension Scheme

### 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 pay through no fault of the member (both Sections of the Scheme).

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 with an employer.

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.

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.

### 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.

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 percent 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).

### **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. 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 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 section voluntary protection of pay does not apply. SM R9 (V1) 11/2011 The Pensions Officer/Practice manager