

**TRUST CORPORATE POLICY
PAY PROTECTION**

APPROVAL	TPC Chair's Action	Date approved:	27/09/13, 29/04/14
EFFECTIVE FROM	Date of approval		
DISTRIBUTION	All Wards and Departments via Trust Bulletin		
RELATED DOCUMENTS	Management of Change (COR/POL/012/2012-001) Agenda for Change Terms and Conditions of Service Handbook		
OWNER	(Designate) Director of HR and (Designate) CEO		
AUTHOR/FURTHER INFORMATION	HR Policy Development Workforce Specialist		
EXTERNAL REFERENCES	-		
SUPERSEDED DOCUMENTS	Protection Policy (CHS); Policy on the Protection of Pay and Conditions of Employment Following Organisational Change (Newham University Hospital NHS Trust). Relevant sections within: Managing and Supporting Staff Through Change Trust Core Policy (Barts and The London NHS Trust); Policy and Procedure for Staff Affected By Change (Whipps Cross University Hospital NHS Trust).		
REVIEW DUE	5 years from the date of approval shown or earlier subject to legislative or national policy changes or organisational need.		
KEYWORDS	Policy, pay, protection, short-term, long-term, change, salary, suitable alternative employment, redeployment		
INTRANET LOCATION(S)	http://bartshealthintranet/Policies/Policies.aspx		

CONSULTATION	<i>Barts Health Working Groups</i>	Policy Development Working Group Merger Governance Lead
	External Partners	Capital Hospitals Ltd
SCOPE	<i>For the groups listed below, failure to comply with this policy may result in investigation and management action; this may include formal action in line with the Trust's disciplinary or capability procedures for Trust employees; and other action in relation to organisations contracted to the Trust, which may result in the termination of a contract, assignment, placement, secondment or honorary arrangement.</i>	
	All individuals working in the Trust, in whatever capacity, including those employed by the Trust's private sector partners providing Facilities Management services and including those who have been seconded to work for its private sector partners under Retention of Employment (RoE) arrangements. CHL and its Service Providers are therefore expected to comply with this policy	
	Exclusions: e.g. students, agency workers, Bank (only) staff, honorary contracts, junior doctors on training, Medical and Dental staff and contractors working within the Trust	

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Please note that where words/phrases are inside square brackets [], this indicates that you can click on the word/phrase when and it will send you to the relevant area of the policy or (if you are using a Trust PC) the relevant supporting document/template.

This Policy is available in Braille, large print, Easy-Read and alternative languages by request. It is a manager's responsibility to ensure employees are aware of these options.

PAY PROTECTION

1 INTRODUCTION AND AIMS OF POLICY

- 1.1 The purpose of this policy is to facilitate organisational change and minimise the need for redundancy by supporting staff who have been downbanded by one band to seek redeployment back into higher banded employment and by providing a level of financial cushioning whilst they do so. It is also designed to enable a smooth transition into new posts and reduce the costs of protection for managers.
- 1.2 The Trust is committed to supporting its employees whilst also ensuring that it delivers and maintains an efficient and consistently high standard of care to its patients and service users.
- 1.3 In order to achieve this, the Trust recognises that organisational changes will need to take place and in order to minimise redundancies or (if chosen) early retirement as a result of redundancy ([s.16.10 AfC]), employees will need to be redeployed to suitable alternative employment.
- 1.4 The Trust needs to support staff who have been downbanded by one band to seek redeployment back into a higher banded employment.
- 1.5 The Trust believes it is good management practice to have arrangements in place to provide a level of financial cushioning whilst the employee is seeking redeployment at their higher band by protecting the pay for employees who are adversely affected by organisational change.
- 1.6 The aim of this policy is:
- to ensure that there is an agreed approach across the Trust to the protection of employee pay
 - to ensure this approach is fair and consistent and without discrimination in relation to any of the [protected characteristics](#)
 - to ensure employees are aware of the protection available to them
 - to ensure that protection is applied in line with the Equality Act 2010
 - to ensure efficient and high quality care for our patients
 - Is monitored to ensure effectiveness of implementation

2 DEFINITIONS

- 2.1 The following definitions are used in this policy:

Short-term protection	Paid for 'recognised enhanced activities' that the employee has consistently received for a period of time but that will cease as a result of organisational change in line with section 4 .
Recognised Enhanced Activities	<ul style="list-style-type: none"> • Unsocial hours payments • Rostered contractual overtime • On Call and standby payments
Long-term protection	<p>Employees' Basic earnings will be protected in line with section 5 when an organisational change results in a reduction of the employee's Basic earnings in the following circumstance:</p> <ul style="list-style-type: none"> • where the employee has been displaced from their current post and • has not been offered 'suitable alternative employment' at their own Band and

	<ul style="list-style-type: none"> has accepted a post at the Band lower as suitable alternative employment <p>This includes where their own post has been downbanded as a result of organisational change.</p> <p>Pay will be protected on a mark time basis</p>
Mark Time	Pay will remain at the level it was on the date the protection started. It will not be subject to incremental increases.
Basic earnings	Basic earnings, unsocial hours payment plus High Cost Area Supplement (HCAS) only in the 12 weeks immediately prior to the effective date of the change.
Organisational Change	Any structural or managerial change in the organisation of the Trust (see also [Management of Change Policy]).
Continuous Service	<p>Full or part time employment with the Trust or any previous NHS employer. If there is more than one NHS employer, there must not have been a break of more than one week (Sunday to Saturday) between employments or a redundancy payment taken from previous NHS employment.</p> <p>This reflects the provisions of the Employment Rights Act 1996 and Agenda for Change handbook (where applicable) on continuous employment.</p>
Reckonable Service	<p>Continuous Service (as above) plus:</p> <ul style="list-style-type: none"> any service with a previous NHS employer where there has been a break of 12 months or less periods of employment as a trainee with a general medical practitioner at the Trust's discretion, any period of employment outside the NHS which is relevant to NHS employment may be counted as Reckonable Service.
Suitable Alternative Employment (SAE)	<p>Work within the Trust that is on broadly similar terms and within the same range of skills required as the current employment where the individual meets the essential criteria of the person specification. It may be on any site operated by the Trust subject to consideration of the individual's travel or mutually agreed flexible working arrangements that are in place or that could facilitate SAE.</p> <p>A post may be considered as suitable alternative employment if it is banded/graded on the same band/grade as the staff member's current post, or the next lower band/grade (see also [Management of Change Policy]).</p> <p>Posts on reduced hours are not normally considered SAE, except where this is acceptable to the employee. Where this is the case, it should be confirmed in writing/electronically by the employee.</p> <p>Where an employee is able to be offered their 'old'/original post in the new structure after being declared 'at risk' (see [Management of Change Policy]), this will be considered an offer of suitable alternative employment and therefore redundancy would not be applicable.</p> <p>This does not stop employees applying for jobs at other bands by the normal means. In which case, pay protection would not apply.</p> <p>If, as a result of organisational change, there is a requirement to move employees from their normal place of work to another location within the Trust and this results in increased travel costs to and from work, employees may be reimbursed their extra daily travelling expenses for a fixed period of time in accordance with the Trust's Expenses Policy (see Appendix 2)</p> <p>See [Management of Change policy]</p>
Exclusions	<ul style="list-style-type: none"> Contracted hours of work Acting-up allowance

3 DUTIES AND RESPONSIBILITIES

Employee	<ul style="list-style-type: none"> Continue to actively look and apply for suitable alternative employment at their previous (protected) Band.
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	<ul style="list-style-type: none"> • Failure to accept suitable alternative employment at the previous (protected) Band may result in the pay protection being removed. • Contact Pensions Office for queries relating to protecting their NHS Pension (see section 7)
Manager	<ul style="list-style-type: none"> • Ensure employees are aware of and understand the policy and their responsibilities (this may include supporting employees by providing reasonable adjustment e.g. providing the Policy in Braille/large print/Easy-Read or in a language other than English, or reading it to them) • Be sensitive to individual employee needs and discreet and consistent in their approach • Support employees to continue to find suitable alternative employment at their previous (protected) Band. • Make staff aware of suitable alternative posts in writing/electronically and liaise with HR where none is available • Direct employees to Pensions Office for queries relating to protecting their NHS Pension (see section 7) • Notify employees of when their protection is due to end • Respect confidentiality at each stage of the process
Human Resources	<ul style="list-style-type: none"> • Provide advice and support to managers about the application of this policy • Highlight posts at previous (protected) Band to the employee and their manager

4 SHORT TERM PROTECTION

4.1 Short term protection will be paid at the rates below from the effective date of this policy:

Continuously working and receiving payment for a recognised enhanced activity	Period of Protection
>6 < 12 months	1 month
>1<2 years	3 months
2+ years	6 months

5 LONG-TERM PROTECTION

5.1 Long term protection will be paid at the rates below from the effective date of this policy:

Reckonable NHS Service	Period of Protection (Mark Time)
Less than 1 year	0 months
More than 1 year but less than 2 years	3 months
More than 2 years but less than 3 years	6 months
More than 3 years but less than 4 years	9 months
More than 4 years but less than 5 years	12 months
5+ years	18 months

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6 TERMS OF PROTECTION

- 6.1 An employee of the trust who accepts and appointment to a post which attracts a lower basic salary which is one band below their current band as a result of organisational change will be entitled to pay protection on a mark time basis from the date of redeployment into the new post for the period specified.
- 6.2 Protection will cease when one of the following conditions is met:
- Total pay for the new post exceeds the level of total protected pay, even if this happens before the scheduled end of the protection.
 - If, during a specified period, the employee's earnings exceed the protected amount (e.g. due to recognised enhanced activities), the protection will stop for that period.
 - The employee finds suitable alternative employment at their previous Band.
 - The employee voluntarily moves to another post or leaves the Trust.
 - The employee is offered suitable alternative employment at their previous Band and unreasonably refuses it.
 - The period of protection ends.

7 COSTS

- 7.1 The costs of the pay protection will be borne by the CAG which effected the organisational change which caused the downgrading of the post.

8 COMPLAINTS

- 8.1 Complaints arising from the application of this policy are dealt with under the grievance procedure.

9 PROTECTION OF PENSION

- 9.1 Members of the NHS Pension Scheme should be informed of their right to preserve their benefits earned on the higher pay if they suffer reduction in pay through no fault of their own. This includes members who are made redundant and they should contact the Pensions Department for advice. The NHS Pension Scheme requires at least two years in the Scheme to qualify. Members of the Scheme who wish to preserve benefits at the higher rate should write to the Trust's Pensions Department within one month of the reduction asking for benefits to be preserved.

For further information on how the proposed changes may affect your pension, please contact the Pensions Office on Ext 17-5300 or Tel 0208 591 4700.

10 IMPACT AND EQUALITIES ASSESSMENTS

- 10.1 An Equality Analysis has been carried out for this policy and has concluded that there are no detrimental effects and some positive effects of this policy. The analysis has been included here:

11 MONITORING THE EFFECTIVENESS OF THIS POLICY

Issue being	Monitoring method	Responsibility	Frequency	Reviewed and
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monitored				followed up by
Compliance with duties within Equality Act	Demographics of employees receiving pay protection	Human Resources	Bi-Annual (every 6 months)	Trust Management Executive

END

APPENDIX 1: GLOSSARY OF TERMS

<p>Equality Act 2010</p>	<p>Replaces previous discrimination law (e.g. Disability Discrimination Act 1995) and includes the following:</p> <ul style="list-style-type: none"> • Extends the groups protected (protected characteristics) • Removal of health questionnaires • Bans discrimination by association • Bans direct and indirect discrimination • Bans harassment, victimisation and failure to make reasonable adjustments • Replaces all previous discrimination law • Introduces harassment by third parties • Also relates to provision of services to patients, not just employment
<p>Protected Characteristics (part of the Equality Act 2010)</p>	<ul style="list-style-type: none"> • Age • Disability • Gender Reassignment • Marriage and Civil Partnership • Race • Religion or Belief • Sex • Sexual Orientation • (Pregnancy and Maternity – only some elements apply)
<p>Reasonable Adjustments (part of the Equality Act 2010)</p>	<p>An 'adjustment' is a change. This can be a physical change or a change in the way something is done.</p> <p>'Reasonable' will depend on a number of circumstances but the tests include:</p> <ul style="list-style-type: none"> • How much will a reasonable adjustment reduce the disadvantage? • The practicality of the change. • The financial and other costs and the extent of any disruption caused. • The extent of the Trust's financial & other resources. <p>Although the Trust must consider reasonable adjustments for employees who have a disability or are pregnant, it is best practice for them to be considered for all employees to facilitate attendance and implemented where service delivery allows.</p>

APPENDIX 2: OTHER LINKED TRUST POLICIES AND GUIDELINES

	Title differences where policies have not been amalgamated		
	Barts and The London (& CHS)	Newham University	Whipps Cross University
Management of Change	n/a	n/a	n/a
Stress Management	Managing Work Related Stress Policy and Guidance (CHS equivalent)	Policy for the Prevention and Management of Stress at Work	Stress Management Policy
Expenses Policy	Relocation of Normal Work Base: Excess Travel Arrangements		