

**Policy for Cumbria Partnership NHS Foundation Trust & North Cumbria
University Hospital NHS Trust**

Policy Title: Organisational Change Policy (Joint)

Reference	POLWOR/003
Version	4.0
Date Ratified	04/04/2018
Next Review Date	30/04/2020
Date Published	12/07/2019
Accountable Director	System Executive Director of People & Digital
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Policy On A Page

SUMMARY & AIM

There will be occasions when the Trusts' services need to be reorganised or redesigned which may result in changes to staffing requirements. When such occasions arise this policy will come into effect and there will be clear and equitable arrangements for managing the changes and handling the redeployment and transfer of staff.

TARGET AUDIENCE:

- All Trusts employees
- The policy applies to all permanent members of staff, those on a fixed term contract and temporary staff (including those staff employed by the Trust but with secondment arrangements with other organisations excluding CPFT and NCUH). It does not apply to staff employed by other organisations and seconded into the Trust (those staff are the responsibility of their substantive employer) or to bank or agency staff.

TRAINING/SUPPORT:

Training and coaching will be provided by Human Resources as appropriate for Managers involved in the change process.

KEY REQUIREMENTS

1. The changing health and social care environment poses a number of challenges to the Trusts, for example, the need to improve standards of care, to achieve integrated care pathways, to respond to financial challenges or to respond to a change in patient/service requirements. As a result, organisational change will sometimes be necessary in order to meet these challenges.
2. The Trusts recognise that employees are the most valuable of its' resources, and aims, as far as possible, to achieve necessary changes in the workforce by turnover, redeployment, absorption, retraining, early retirement and voluntary redundancy - avoiding compulsory redundancy wherever possible.
3. The Trusts are committed to having full and early consultation with employees and recognised Trade Unions/Professional Associations about any changes and will do so in accordance with the principles outlined in its partnership working agreement.
4. The Trusts recognise that change must be managed in a fair consistent manner to ensure that employees do not feel disadvantaged. Managers, working in partnership with staff side representatives will play a key role and will ensure that the timing and criteria of key decisions on for example, staffing arrangements are communicated.
5. The Trusts recognise that all change management must be carried out in an open and honest way. To ensure that this occurs the Trusts will involve staff in order to ensure that staff are fully briefed and updated throughout any change process that affects them.

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1. INTRODUCTION

- 1.1 The changing health and social care environment poses a number of challenges to the Trusts; for example, the need to improve standards of care, to achieve integrated care pathways, to respond to financial challenges or to respond to a change in patient/service requirements. As a result, organisational change will sometimes be necessary in order to meet these challenges.
- 1.2 The Trust recognises and values its employees, and aims as far as possible, to achieve necessary changes in the workforce by turnover, redeployment, absorption, retraining, early retirement and voluntary redundancy - avoiding compulsory redundancy wherever possible. The Trusts are committed to having full and early consultation with employees and recognised Trade Unions/Professional Associations about any changes and will do so in accordance with the principles outlined in its partnership working agreement.
- 1.3 Communication is key to the management of change and therefore, open, honest, consistent, two way communications will take place with the Partnership Forum, recognised staff representatives, and the affected. Staff affected by any proposed change, will be informed via their manager of its implications and potential benefits. Staff will also be encouraged to contribute their own ideas and suggestions and to voice any concerns with their manager. At all stages of the process, members of staff will be encouraged to seek the advice and support of their professional organisational or trade union representatives.
- 1.4 As part of its development, this policy and its impact on equality have been reviewed in consultation with trade unions and other employee representatives in line with the Trusts' Equality Delivery System and Equality, Diversity and Human Rights Policy. The purpose of the assessment is to minimise, and if possible remove, any disproportionate impact on employees on the grounds of race, sex, gender reassignment, marital status, pregnancy, disability, age, sexual orientation or religious belief.

2. PURPOSE

- 2.1 The purpose of this document is to provide clear guidance to managers and staff to enable the effective implementation of organisational change, which is driven by the business needs of the Trusts. Change can be triggered either by the external environment or by an internal review of service requirements. This will include the reorganisation, relocation, merger, expansion or closure of a service, competitive tendering or outsourcing, or a major change in working practice.
- 2.2 This policy applies to all staff employed by the Trusts and will be applied consistently and equitably to all staff.

PRINCIPLES

The Trusts recognise the importance of acting fairly and reasonably where change affects staff and is committed to the following principles for managing change

- To review an individual's performance and capability, and maintain existing skills, knowledge and talent within the Trusts. The Trusts will provide development opportunities for staff affected by any change with a Personal Development Plan, to agreed timescales, to acquire new skills and competencies required for a new role.
- To manage the process of organisational change with sensitivity and due regard to the personal needs of individuals.
- To retain engagement and commitment of staff during a period of organisational change.
- To work in partnership with trade unions and staff side representatives to effectively manage change.
- Costs will be reviewed and taken into consideration as part of change review processes and in line with the service need.
- To recognise that some changes need to happen with speed to react to the particular challenges faced, but recognises the need to follow a fair and reasonable process.
- To recognise the requirement for full, open two way communication throughout the period of organisational change.
- To ensure staff receive reasonable notice of any organisational change which may affect their working futures.
- To ensure when the outcome of change is of financial detriment to an employee, protection of pay and terms and conditions shall apply in line with the individual Trusts Pay Protection Policy.

3. POLICY DETAILS

3.1 Policy Statement

In accordance with legislation and partnership working principles, the Trusts commit to meaningful and appropriate consultation with recognised Trade Unions and staff affected by the organisational change, with a view to reaching agreement on the way forward. There may be exceptional occasions when organisational change will need to proceed without a consensus being reached on all issues.

3.2 Process

- Managers will prepare a business case document in order to attain approval from senior managers/Management Boards for organisational change.

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- Discussions will take place between Managers and Trade Union representatives to define minor or substantial organisational change.

- **Minor Change**

In order to adapt to changing requirements it is likely the Trusts will need to make periodic changes to roles, responsibilities and / or working practices. Staff are expected to make reasonable changes appropriate to the level of their post.

Examples of minor changes are:

- Minor changes to Job Descriptions to refocus a role;
- A reasonable change to location where the duties remain primarily the same;
- Reasonable changes to core hours and shift patterns to ensure service provision is maintained, that do not result in a fundamental change to terms and conditions of employment;
- Changes to systems and processes to modernise the service.

Where such changes are required, notification, communication and consultation will take place. As a general rule, implementation will take place within 30 days.

- **Substantial Change**

Substantial change is defined as having a significant impact on the organisation, provision of a service or existing roles.

Examples of substantial changes are:

- Significant changes to core hours and shift patterns that result in a fundamental change to terms and conditions of employment;
 - Organisational restructuring or mergers. The reorganisation, restructure or merging of services;
 - Reductions in or discontinuations of specific areas of work;
 - Change arising from competitive tendering;

 - Major changes to working practices or contractual terms.
- In cases of substantial change, a start of consultation document (“Change Management Document”, see [Appendix 1](#)) will be prepared by Managers on the proposed organisational change, having gathered information to support the need for change and consulted with Human Resources as appropriate. This will include any new or amended job descriptions, which will have been matched or evaluated in accordance with national or local job evaluation systems, and an Equality Impact Assessment undertaken.

 - The Change Management Document will be approved at Operational Meetings and presented at the Partnership Forum/Joint Local Negotiating Committee meeting, or with union colleagues prior to the launch of the
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consultation.

- The Trusts will write to the recognised Trade Unions and, if appropriate, the Department of Business Innovation & Skills in relation to the potential redundancies.

3.3 Consultation

- The Trust recognises that open and effective communication and consultation is key to successful organisational change; employees and their representatives need to fully understand and engage in the change process as early as practicable.
- Consultation will be offered to individuals who may be affected by the organisational change and will take place with recognised trade union or professional organisation representatives.
- Consultation will provide an opportunity for employees and their representatives to express their views and suggest possible alternatives within the proposed change, which will be taken into consideration and, if possible, incorporated when making final decisions.
- An integral part of the consultation process will be to identify target timescales. It is recognised that these timescales will vary dependent on the specific circumstances surrounding any particular change.
- While it is important to note that consultation is not required to result in full agreement between the Trust, employees and their representatives when the final decision is made; every effort for transparent and meaningful consultation will take place.
- In accordance with legislation, consultation periods will be 45 days before the first dismissal where 100 or more staff are affected or 30 days before the first dismissal where 20 – 99 staff are affected. It should be noted these are minimum consultation periods.
- There is no minimum consultation period where less than 20 staff are affected. However, the Trusts will consult where there are less than 20 employees affected. The timescale for consultation will be reasonable but less than 30 days. For example in some instances this could be 3-5 days, where changes need to be implemented quickly. This may be where notice has been given on premises, there are Health & Safety issues, or where the changes affect small numbers of individuals. Due to the shorter timescales this information will be shared with Trade Unions immediately, followed by a written brief.
- The consultation period may be extended by agreement with Management and Trade Unions, allowing sufficient time for meaningful consultation. The date of commencement is the date that the letter is sent to the recognised Trade Unions. Collective Consultation and individual consultation will take

place during this period.

- When full consideration to all the comments received from staff and Trade Unions has been undertaken, the manager(s) will communicate with Trade Unions where the proposal has changed as a result. The manager(s) will then issue the end of consultation Change Management Document and share this with staff and Trade Unions having taken into account the consultation process and any changes/decisions as a result of it.
- There will be no requirement to re-commence consultation should the document be changed as a result of the consultation process.
- Following the period of consultation, should the change management process result in proposed redundancies, employees will be notified of the impact of consultation on their posts.

3.4 Consultation with Trade Unions

- Consultation will be initiated in partnership with the appropriate recognised Union(s) and staff organisations. Consultation will be undertaken at the earliest opportunity, either at the point that serious consideration is given to change affect employees or once specific proposals for change affecting employees have been formulated. It is important to note consultation must occur even if the employees affected are not members of a union or professional organisation.
- The proposals for change will be discussed at the Partnership Forum/JLNC. A formal document setting out the proposals for change will be issued to members of Partnership Forum.
- Professional and Trade Union representatives will be given the opportunity to put forward the views of their members and to discuss possible alternatives within the proposals with management.
- During a period of change, the manager leading the change will meet regularly with professional or trade union representatives and will ensure they are kept informed of any developments.
- The Trusts and the Managers responsible for proposing and implementing the change will ensure that recognised Trade Unions are kept informed of developments and staff are communicated with in accordance with the Change Management Document.
- The purpose of the consultation meetings with the Trade Unions will be:
 - To aim towards mitigating, avoiding or reducing redundancies;
 - To receive and where possible address any questions on the consultation document;
 - To consider any comments or views on the consultation document

including any alternative proposals and costings (which the Trusts as far as practicable make available) before determining any final decision to proceed;

- To clarify any change processes and timeframes specific to the organisational change under discussion;
- Trade Unions will be provided with the statutory information required when proposing redundancies (see [Appendix 5](#)),

3.5 Consultation with staff

- A meeting will be held with all staff affected by the organisational change to announce the proposed change and explain the consultation process which will follow. It is recognised that staff may require time to reflect and respond and may not wish to contribute their concerns at an open meeting.
- Individual employees will be given the opportunity to meet with the manager leading the change as early as practicable, and have the right to be accompanied by their trade union or professional organisation representative or a work colleague as source of support.
- The purpose of the meeting will be to discuss the individual employee's circumstances and how the proposed change may affect them. A written record of the main points of the meeting will be kept and provided to the individual and their representative.
- The manager leading the change should continue to meet with individual employees throughout the consultation period. This should be in the form of 1 to 1s and drop in sessions. The period for individual consultation with employees, will be determined at the outset of the consultation process, and may be more or less than 30 days, as long as the timeframe agreed enables meaningful consultation to take place.
- Employees should be encouraged to discuss their views and thoughts on the proposals with line management. In addition, employees should be encouraged to gather information on the change through a range of media such as team briefings, regular staff meetings, supplementary open meetings, newsletters and email communication.
- The manager leading the change should collate the feedback from all sources and respond as appropriate in a timely manner. This should take the form of a final feedback paper on the consultation process.
- Each member of staff affected by the organisational change will be provided with a copy of the consultation document; this document will not include any personal identifiable information. Staff who are absent from work for any reason including maternity leave, sickness absence, secondment to another organisation or on a career break will be sent a copy of the consultation document to their home address following a telephone call from their

manager so that they have an opportunity to participate in the consultation process.

3.6 Consideration of Consultation

- At the end of the consultation period, the Trust will consider the views of employees and representatives in a 'reflection period' usually of up to 5 working days, before making a final decision on any proposed change.
- The final decision will be communicated to the Partnership Forum/JLNC and staff affected by the change.
- Where the decision of management is different to the views of trade union/professional representatives and/or staff, management will provide a written explanation of the reasons for the final decision.

3.7 Potential Outcomes for Staff Affected by Change

Staff may be affected in a number of ways by organisational change. The manager leading the change will categorise posts into the following categories:

No significant change – the individual's post remains substantially unaffected, although they may experience minor changes.

Post is significantly changed – the individual's post has substantially changed, the ratio would normally be 70:30 with 30% of the role remaining unaffected. Changes to the role would fall within the individual's scope of experience and/or capabilities.

Risk of redundancy – Identifying staff at risk of redundancy will depend on the purpose of the proposed change. Where a change affecting staff involves a reduction in the number of staff or a change to the skill mix, those staff affected may be declared "at risk" of redundancy – this will be a result of it becoming clear that s/he could potentially be placed in a redundancy situation in the future.

Please refer to [appendix 6](#) for a full definition.

3.8 Process for filling posts in new structure

When the change involves a new structure staff affected will be categorised as follows:

Category 1 No Significant Change

Category 2 Automatic Slotting In

Category 3 Restricted Competition

Category 4 Ring Fenced Competition

Posts that remain unfilled will then be open for wider internal and external competition.

Please refer to [appendix 6](#) for a full definition.

Category 1 – No Significant Change

Where there is no significant change to an individual post, for example, limited job content change, change of base, or a line management change, the individual will be unaffected.

Category 2- Automatic Slotting In

An individual may slot in automatically without competition to a role identified as suitable alternative employment (meets the 70% criteria), although this may be subject to a selection process.

Category 3 – Restricted Competition

In some cases, where, for example, there are a number of suitable alternative posts which are the same or substantially the same (meets the 70% criteria), but there are fewer posts in the new structure, the new posts will be restricted to a limited pool of staff affected by the change and will be subject to an assessment process.

Category 4 – Ring Fenced Competition

Where there are suitable alternative posts available within the new structure and more than one individual who may be appropriate to fill this, the posts will be ring fenced and the limited pool of potentially suitable individuals will be subject to an assessment process. At risk staff would be placed in category 3 when the job is not deemed to be 70% the same but is in the same broad area and same band. Posts will not be made more widely available until this process has been completed. Applications from staff within the “ring fenced” area will be simplified to a written “Expression of Interest” outlining their application for the role for which they wish to be considered.

Staff who will be invited to take part in a competitive selection process may be offered support to complete applications and prepare for interviews, if appropriate.

There will be two stages to filling posts in the new structure. The two stages may run in parallel but all reasonable practicable steps will be taken to avoid compulsory redundancies.

A schedule summarising any slotting in and/or pooling decisions will be provided to staff prior to any posts being confirmed.

Stage 1

- Where individuals are affected by the proposed changes, posts in the new structure will first be filled by a slotting in, restricted competition, or ring-fence process. Where individual staff are not working in their substantive post (which is affected, e.g. seconded, career break) this process will be based on their substantive posts
 - Where a post in the new organisational structure is substantially the same as a post in the previous structure, and where the number of posts available is equal to the number of existing post holders, then the postholder(s) will be slotted into the post(s) in the new structure.
 - In considering whether a post is substantially the same, rather than a new or substantially changed post, the following factors will be examined:
 - i. The post is on the same salary band/grade (i.e. there should be no financial loss or gain);
 - ii. The post is at a similar level in relation to professional accountability of the organisation or can be considered to have a similar status;
 - iii. The roles and responsibilities are substantially the same;
 - iv. The skills, knowledge and experience required for the post are substantially the same;
 - v. The scale and scope of the post is at the same level;
 - vi. The employee meets the essential criteria of the person specification.
 - Restricted competition will occur when more than one employee has a claim on a post;
 - Ring-fenced competition will occur when there is a new post and where there are fewer available posts than staff or where there are similarities between old and new posts but there are also significant differences that do not make them suitable for slotting in.

Following discussion with Trade Unions eligible staff will be pooled on the basis of:

 - vii. their substantive post;
 - viii. job descriptions and;
 - ix. the employee must meet the essential criteria of the person specification.
 - Interview panels for ring-fenced interviews must include an HR representative.
 - Where there are existing posts which remain unchanged but where there are more postholders than posts available, then the selection criteria as outlined in [Appendix 4](#) will apply.
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Stage 2

- Where any posts remain vacant in the new structure following slotting in or ring-fencing processes, the post can then be opened up to access by any staff 'at risk' within the Trusts for whom the post is considered as suitable alternative employment.
- Where there are no 'at risk' individuals within the Trusts, or where the System Redeployment Register identifies no individuals 'at risk', this may then be opened to competition internally and/or externally in line with the normal recruitment processes.

Appointment

- Staff who are offered posts during Stage One will be deemed to have been offered suitable alternative employment by the Trusts. This will be confirmed in writing by the Manager. The letter will include the consequences of refusing to accept the post which in effect will mean the individual has resigned from the Trusts and therefore will lose their entitlement to redundancy payment. Where staff disagree with the suitable alternative they have the right to appeal.
- Staff are required to accept or reject the offer in writing 5 working days after receipt of the letter from the Manager. In some circumstances (e.g. annual/other leave) this period may be appropriately extended. The Manager should then complete a change form, which forms the new contractual status for the individual. A new contract of employment will be issued if appropriate.
- Individuals should only be turned down for posts where they fail to meet all the essential criteria, or where others in the 'at risk' pool are considered to better meet the requirements.
- Any individual who is not appointed to a post in the new structure during a competitive interview process will be offered post-interview feedback, coaching or training where appropriate and has the right to raise concerns via the Trusts' grievance procedure.

3.9 Time Off

- Staff who are affected by organisational change will be given reasonable time off, with pay, to consult with their staff representatives, to visit new locations where they may be seeking alternative employment and to attend interviews. Time off for training will also be allowed where such training will enhance the individual's opportunity for redeployment. Time off must be pre-agreed with the line manager and may not be granted retrospectively.

3.10 Trial Periods

- Staff 'at risk' will be given a preferential interview for posts where they meet all the essential criteria, or could be given a job trial for a four week period. Where the new post is substantially different from the old post, the employee is entitled to a statutory four-week trial period. In exceptional circumstances the trial period can be extended but only where the purpose of the trial period is re-training and where the extension is agreed at the outset of the trial period. The purpose of the trial period is for the employee and the employer to assess the suitability of the post. If the post is similar to the old post there is no statutory requirement for a trial period to be undertaken.
- If an individual undertakes a job trial the manager and the individual will use the job trial plan ([Appendix 3](#)). This is to provide a fair, objective outcome focused plan that allows the individual and manager to trial the job in order to mutually assess the post as suitable alternative employment.
- Due to the redundancy time frames it is expected that only one or two job trials may be offered during the 'at risk' period. If the individual and/or manager, based on the outcomes of the job trial plan decide that the post/individual is not suitable alternative employment, then the position reverts back to that of redundancy. The date for termination on the grounds of redundancy for the purposes of calculating redundancy pay in these circumstances is the date on which the original post ended, not the end of the trial period. In exceptional circumstances where a trial period takes the individual past their notice of termination date, this date will be extended to the end of the trial period.
- Staff will be released from their current post in which they are 'at risk' to undertake the job trial, or for example be able to visit/shadow in order to gain an understanding of the role being offered as suitable alternative employment.

3.11 Redundancy and Redeployment Process

- Employees, who have not been successful in finding an alternative role, will be informed of redundancy in line with their individual contract and issued their notice. During this period the Trusts will continue in the effort to secure suitable alternative employment.
- Consideration of redeployment for employees at risk of redundancy will be an important part of a fair and reasonable redundancy procedure.
- Employees at risk of redundancy will be registered with the System Redeployment Register.
- Suitable alternative posts and posts suitable for redeployment will be considered at the same band or where applicable, at one band lower.

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- If a post is obtained at a lower band and there is no other post available and suitable for redeployment, then payment protection will apply in accordance with the Trust policy in place at the employee's substantive employer/Trust.
 - The senior manager and HR support staff shall assess the suitability of potential internal candidates and decide which of the following options is the best way to proceed:
 - advertise the post internally to any at risk employee;
 - advertise the post internally to all employees on the basis that as a result another post will become available which may be suitable for an at risk employee; or
 - where there is agreement that there is no suitable candidate for a post this can be advertised externally.
 - Whichever option is chosen, selection shall be made on the basis of competitive interviews in accordance with normal recruitment procedures.
 - Where required, training will be considered to assist redeployment. The length of time needed to train someone and the cost effectiveness of this may need to be taken into account.
 - If an employee refuses to accept or apply for suitable alternative employment they shall be advised that they may not be entitled to a redundancy payment.
 - Preferential Consideration means that anyone identified at risk of redundancy who applies for a post, must be considered before any other applicants. If they meet the minimum criteria of the person specification or would be able to meet this with reasonable training and support, then they must be offered an interview. Where a vacant post which is relevant to "at risk" applicants is at higher grade, the selection will be through normal selection processes and not by preferential consideration.

3.12 Redundancy Arrangements

- The Trusts will, as far as possible, seek to minimise the need to make staff redundant. However, there may be situations in which redundancy cannot be avoided. In these circumstances, the Trusts will ensure a fair and consistent process in line with all relevant statutory legislation and NHS National Terms and Conditions.
- The general principle underlying the selection process will be to balance the interests of the individual and the needs of the organisation.
- In certain cases of redundancy, selection will not be relevant, as in such circumstances where either one employee only or an entire group of employees are identified as redundant. In these circumstances,

redeployment will be sought as per the Trusts' Redeployment procedure prior to redundancy.

- When considering potential redundancies, the Trusts are keen to ensure that its selection should achieve the required aims in a structured, objective way, thus ensuring the Trusts retain an appropriately skilled workforce for the future service(s) and that they manage resources in the most efficient way taking into account the costs of achieving change. The criteria for selection will be shared with the appropriate Trade Unions partners.
- Volunteers for redeployment or voluntary redundancy may be sought first from amongst the group of employees identified as at risk of redundancy.
- The Trusts reserve the right to refuse a request by any employee for voluntary redundancy. Such a request will not, however, be unreasonably refused, and refusal will normally be for reasons related to the needs of the service. Where more than the required numbers of volunteers emerge, a selection process will be necessary.
- Examples of criteria for not agreeing requests for voluntary redundancy on an individual basis may including the following:
 - the individual member of staff has specialist skills which are difficult to recruit to both in a national or local labour market;
 - the cost to the Trusts would be prohibitive.
- A decision to grant such a request will not set a precedent for any other person in the organisation, no matter whether they hold a similar or the same role. In stating that, the Trusts will be mindful of the duty to ensure equal treatment in taking such decisions.
- Following detailed consideration of requests, individual members of staff shall be advised (and the decision confirmed in writing) whether their request for voluntary redundancy has been approved or not. The final decision rests with management. Reasons for not approving will be given.

3.13 Redundancy Payments Eligibility

- The Trusts' employees will be eligible for redundancy payments in accordance with their terms and conditions of employment. To be eligible for a redundancy payment, employees must have two years or more continuous service with the NHS in their current Trust. The amount of redundancy payment an employee is entitled to depends on length of service and salary at the date of ceasing to be employed and the details set out in the relevant NHS National Terms and Conditions handbooks.
 - Employees shall not be entitled to a redundancy payment if they:-
 - Are dismissed for reasons of misconduct, with or without notice;
 - Have, at the date of termination of the contract, obtained without

- a break, or a break not exceeding 4 weeks, suitable alternative employment with the Trust or another NHS organisation;
- Unreasonably refuse to accept, or apply for, suitable alternative employment with the Trusts or another local NHS organisation;
- Leave their employment before expiry of notice, except where the Trusts have agreed early release;
- Have had employment that has been taken into account for the purposes of a previous redundancy, or loss of office payment by an NHS employer.
- As a public sector organisation the NHS has a responsibility to ensure that public monies are accounted for and therefore redundancy payments will be subject to approval from the Trusts Remuneration Committee and/or the Treasury. If redundancy is not approved then the employee cannot be made redundant.
- Staff whose employment is subject to Transfer of Undertakings Protection Employment (TUPE) will not be redundant and therefore will not be entitled to a redundancy payment.

3.14 Appeals

- Any individual issued with a notice of dismissal on the grounds of redundancy, will have the right of appeal against the dismissal. The Trust's procedure for handling appeals against dismissal will apply.
- When considering an appeal against redundancy dismissal, the Trust will consider:
 - Whether there was a genuine redundancy situation;
 - Whether a proper and meaningful consultation had taken place;
 - Whether the procedures were correctly and fairly implemented;
 - Whether the dismissal was reasonable, in all the circumstances.

3.15 TUPE

- Where there is a proposal to transfer services and staff to an external employer, there will be consultation with the Trade Unions and staff at the earliest opportunity.
- When services are transferred from one organisation to another in line with TUPE or by virtue of a Transfer Order under the National Health Service Act 1977, which mirrors TUPE, the employment of staff who are assigned to the services which are being transferred will transfer to the new organisation. TUPE applies in contracting out scenarios, retendering and where the services are brought back into the NHS.

- All the terms and conditions within the transferring employee's contract of employment (including relevant policies and procedures) will transfer with them.
- Managers will write to individuals to advise them of the TUPE transfer.
- In all of these circumstances the manager will abide by this policy and procedure in relation to consultation, information and support to all affected individuals.
- Where staff have responsibilities spanning more than one NHS Organisation or more than one service, discussions will take place with the individual, their trade union representative and the organisations concerned to determine if their employment should transfer. The options in this situation might be that the individual will transfer to one organisation with an agreement to provide services to the other(s), or have more than one contract of employment, or, in exceptional circumstances, to be declared at risk.

4. TRAINING AND SUPPORT

Training and coaching will be provided by Human Resources as appropriate for Managers involved in the change process.

5. PROCESS FOR MONITORING COMPLIANCE

The process for monitoring compliance with the effectiveness of this policy is as follows:

Aspect being monitored	Monitoring Methodology	Reporting		
		Presented by	Committee	Frequency
HR Senior Management Team	HR keep complete records of outcomes to ensure consistency and management compliance	Principal HR Business Partners	HR Senior Management Team	Quarterly
Workforce Group	Where HR Senior Management Team identify concerns, these are shared at Workforce Group	Principal HR Business Partners	Workforce Group	Bi-monthly

Wherever the above monitoring has identified deficiencies, the following must be in place:

- Action plan
- Progress of action plan monitored by the Senior Management Team minutes
- Risks will be considered for inclusion in the appropriate risk registers

6. REFERENCES:

NHS Terms and Conditions of Service

7. ASSOCIATED DOCUMENTATION:

Relevant Pay Protection Policy for CPFT/NCUH
Probationary Period Policy and Procedure (Non-Medical Staff)

8. DUTIES (ROLES & RESPONSIBILITIES):**8.1 Joint Chief Executive Officer / Trust Board Responsibilities:**

The Joint Chief Executive and Trust Board jointly have overall responsibility for the strategic and operational management of the Trusts, including ensuring that Trusts' policies comply with all legal, statutory and good practice requirements.

8.2 Joint Director of Human Resources & Organisational Development Responsibilities:

The Joint Director of HR & OD as responsibility for this policy and procedure and will delegate the day to day implementation to Trust Managers.

8.3 Managers Responsibilities:

8.3.1 Managers should not underestimate the effects that potential organisational change may have on staff health, morale, motivation and behaviour. Managers are responsible for providing information about the potential for organisational change in a timely, open, honest and understandable way.

8.3.2 By observing the requirements of this procedure, Managers should plan ahead as far as possible.

8.3.3 Managers are required to advise Human Resources (HR) at the earliest opportunity of any potential changes affecting the workforce and work with HR through the Organisational Change process. Managers should share the rationale for change in advance with Trade Unions at the earliest opportunity.

8.3.4 As communication is paramount during any organisational change, it is the responsibility of managers to ensure all affected staff are offered one to one support as appropriate to assist them in considering their options. This must include staff currently on leave (e.g. long-term sickness absence, maternity or adoption leave, career breaks or internal and external secondments).

8.3.5 In recognition of the support to be provided to staff from Trade Union representatives and to ensure that they are fully able to participate in the process, managers will be expected to agree paid time off for agreed members of Trade Unions that may be over and above existing arrangements.

8.4 Human Resources Responsibilities:

8.4.1 Human Resources (HR) will support and advise managers who are responsible for managing matters of organisational change. They will ensure fairness in the application of this policy and will also ensure that the requirements of employment legislation are applied.

8.5 Staff Responsibilities:

8.5.1 Employees are responsible at all stages for:

- Engaging with opportunities for communication offered to them.
- Being proactive for their own future career direction.
- Engaging in all efforts to secure a post.
- Taking a flexible approach to the employment options considered.

8.6 Trade Union Responsibilities

8.6.1 Trade Union Representatives will engage with managers and HR in the change management process, and advise and support their members.

8.7 Joint Trust Partnership Forum Responsibilities;

8.7.1 Approving Committees will receive organisational change documents and consider recommended action, providing approval as appropriate.

The Chair of the approving committee will ensure the policy approval is documented in the final section of the Checklist for Policy Changes. The committee will agree the approval of the final draft of the policy.

9. ABBREVIATIONS / DEFINITION OF TERMS USED

ABBREVIATION	DEFINITION
JLNC	Joint Local Negotiation Committee
HR	Human Resources
OD	Organisational Development
TUPE	Transfer of Undertakings Protection Employment

APPENDIX 1 – TEMPLATE FOR PROPOSAL OF ORGANISATIONAL CHANGE DOCUMENT**CHANGE MANAGEMENT CONSULTATION DOCUMENT****Introduction**

(to include current situation analysis, the need for change and the rationale behind the change)

Proposal for change

(The proposed changes, including the options that have been considered)

Impact of the change

(to include the impact on service/business, impact on other services including supplementary and ancillary services, the financial, staffing, work load, workforce, risks and benefits associated with the proposed change)

Information

(the document should include)

- details regarding implementation of the proposed change including time-scales,
- proposed staffing structure(s) and any location changes
- details of the number and grades/bands of staff who may be at risk of redundancy as a result of the proposed change
- identification of posts which are the same or similar and arrangements for slotting in or ring-fencing for the new structure
- selection arrangements for new posts in the structure (append banded job descriptions)
- the way in which staff will be selected or transferred within the new structure
- if necessary, the selection criteria for redundancy which needs to be fair, measurable and objective and based on the needs to meet the future requirements of the service. These need to be agreed with Trade Unions. Selection criteria can include, for example: skills and experience, qualifications, attendance, conduct and performance records
- the measures taken to avoid compulsory redundancies which may include natural turnover, redeployment, re-training, voluntary early retirement or voluntary redundancy
- health and safety/risk assessment (as an appendix)
- equality impact assessment (as an appendix)
- the way in which the change will be communicated with staff

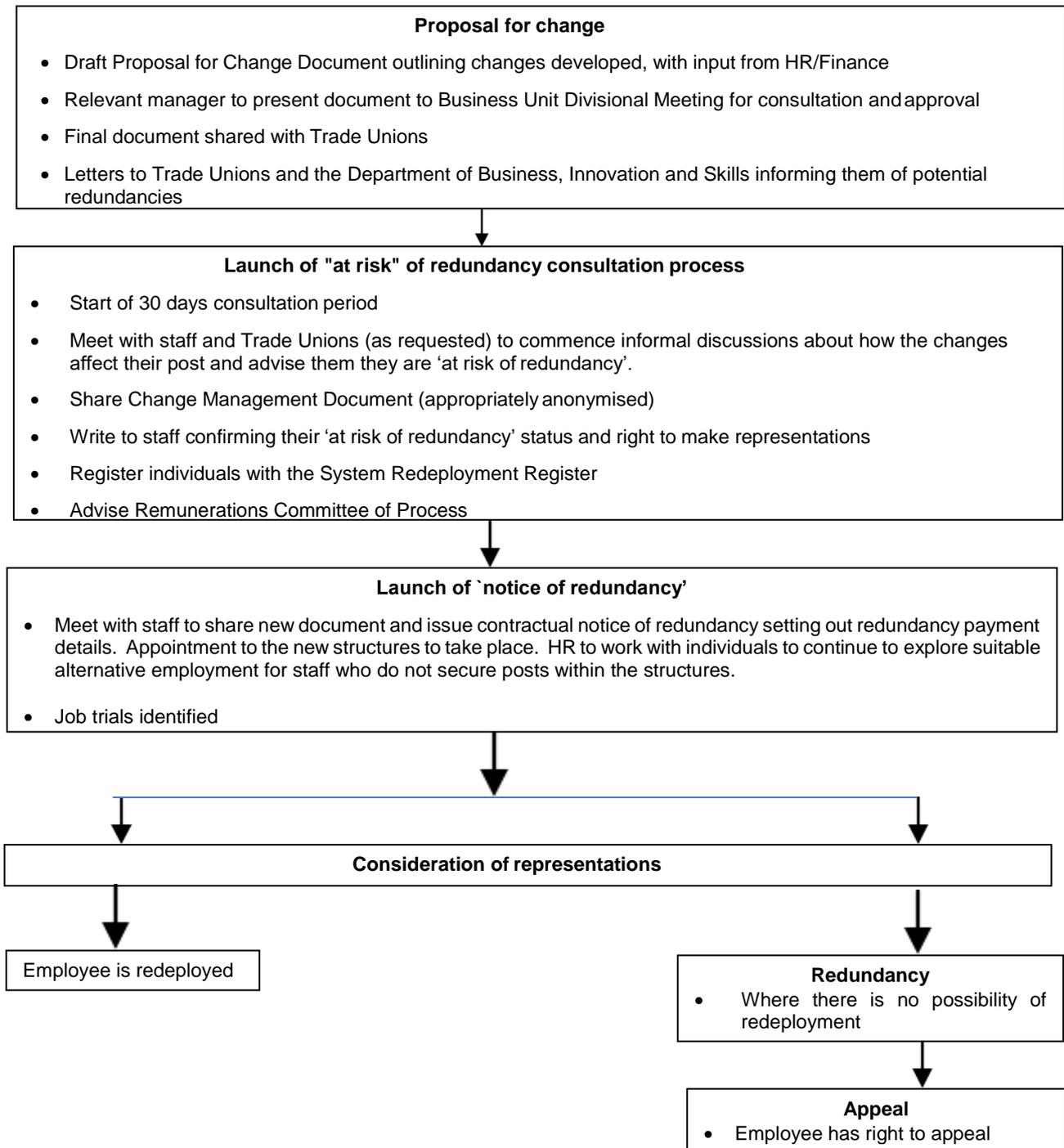
Consultation Process

(description of the consultation process, including planned meetings, timetable of events and how staff and representatives can respond to the proposed change within the timescales and feedback mechanisms)

Relevant appendices

(Organisational chart(s) of proposed new structure, job descriptions)

APPENDIX 2 – FLOW CHART OF PROCEDURE WHERE TRUSTS ARE PROPOSING TO DISMISS 20 OR MORE EMPLOYEES WITHIN A PERIOD OF 30 DAYS



APPENDIX 3 – JOB TRIAL PLAN

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Job Trial Plan

Name	
Post	
Band	
Manager	
Location of post	

Roles and responsibilities:

The responsible manager is:

Name:

Job Title:

The professional supervisor (where applicable) is:

Name:

Job Title:

Human Resources representative:

Name:

Job Title:

Progress review

At the 3 week stage there will be a review of the Job Trial by the responsible manager, supervisor and HR representative.

Agreement

All parties agree to the outcomes set out in the plan and will take forward the Job Trial as set out in the plan, adhering to the accompanying notes. If further outcomes need to be added to the plan these may be added following agreement of all parties.

	Name	Signature	Date
Staff member			
Responsible manager			
Supervisor			
HR Manager/Advisor			

(to be copied for each outcome – usually no more than 6 outcomes)

Action Plan – Outcomes

Outcome 1

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Specific outcome:

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How will this outcome be achieved?

How	
Where	
Supervised/supported by	
Resources required (including funding)	
Timescale	
Supportive evidence	
Individual responsible for monitoring/sign off	

Outcome completion

OUTCOME 1	
Review Date:	

Staff comments	
	Signed: _____ Date: _____
Supervisor comments	
	Signed: _____ Date: _____
Manager comments	
	Signed: _____ Date: _____

APPENDIX 4 – SELECTION CRITERIA

Criteria for selection	Notes	Score (Performance) 0 Low/10 High
<p>Disciplinary/capability record.</p> <p>Unspent disciplinary records are easy to measure and are clearly objective. Points can be awarded/deducted for the different levels of disciplinary sanction.</p> <p>Must be careful of warnings for timekeeping Sickness attendance or poor performance (if conduct related) where these have already to be taken into account where other selection criteria have been used. Generally sickness absence would not be used as a criteria.</p>	<p><i>Weighting = High</i></p>	<p>0 points for Final Warning 3 points for 2nd Written Warning 6 points for 1st Written Warning 9 points for No Warnings</p>
<p>Relevant skills, qualifications and competencies</p> <p>Qualifications can be used for selection purposes if they are of value to the organisation and are necessary for the function of the role.</p> <p>Qualifications for a post are easily identifiable via person specifications and application forms, but may disadvantage those who do not hold formal qualifications but have attained the relevant skills and competencies for the role via experience. Experience from Agenda for Change suggests that a large number of staff will fall into this latter category.</p>	<p><i>Weighting = High</i></p>	<p>1 point Poor 3 points Average 6 points Good 9 points Outstanding</p>
<p>Ability to undertake the duties and responsibilities of the posts which are retained</p> <p>The approach is to identify the competencies required of the post as measured by the person specification and score the individuals against them giving credit for an individual’s proven ability to achieve competence following appropriate training. Evidence here may be gained from appraisal.</p> <p>Also, subject to acting reasonably in the circumstances, the employer is entitled to retain those employees that are considered to be most likely to contribute to the working of the organisation.</p> <p>To ensure objectivity, a panel of managers and supervisors, with knowledge of the employees, will rate employees to make these assessments.</p>	<p><i>Weighting = High</i></p>	<p>1 Point Below average 3 Points Average 6 Points Above average 9 Points Outstanding</p>

Weighting:

- High - score to be multiplied by a factor of three
- Medium - score to be multiplied by a factor of two
- Low - no multiplication

APPENDIX 5 – STATUTORY INFORMATION TO TRADE UNIONS

The Trusts will provide the recognised trade unions and/or elected employee representatives with the following information:-

- the reasons for the redundancy proposals;
- the number and description of employees whom it is proposed to dismiss as redundant;
- the total number of employees of any such description employed by the employer at the establishment(s);
- details of the proposed timescale;
- the proposed method of selecting the employees who may be dismissed;
- the proposed method of carrying out the dismissals, taking account of any agreed procedure, including the period over which the dismissals are to take effect ;
- the proposed method of calculating the amount of any redundancy payments due

Where a transfer of staff under TUPE (Transfer of Undertakings (Protection of Employment) Regulations 1981) is anticipated, there is a statutory requirement for the employer of employees affected by the transfer to provide information to, and consult with, recognised trade unions. In particular, there is a duty to give reasonable notice of the following to employees and their trade union representatives (where reasonable is defined as a period long enough before the transfer to enable consultation to take place):

- The fact a relevant transfer is to take place
- When it is to take place
- The reasons for it
- The legal, economic, and social implications of the transfer for affected employees
- The measures, if any, which are planned in relation to affected employees
- The measures, if any, which the purchaser or transferee plans to take in relation to transferring employees

APPENDIX 6 – ABBREVIATIONS/DEFINITION OF TERMS USED

- Continuous Service – means full or part time employment with the Trusts or any previous NHS employer, providing there has not been a break of more than one week (Sunday to Saturday) between employments. This reflects the provisions of the Employment Rights Act 1996 and Agenda for Change handbook (where applicable) on continuous employment. This does not apply to Doctors, Dentists and staff on Very Senior Manager (VSM) contracts.
- Organisational Change – A formal announcement will be made to individuals who are subject to organisational change. Those individual's will be identified as 'at risk of organisational change'.
- Redeployment – means the transferring or recruitment of staff at risk into a suitable alternative post. In some situations TUPE may apply.
- Redundancy – Redundancies are a form of dismissal, and can happen when an employee's job no longer exists. This may be due to the Trusts needing to reduce their workforce, or certain work is no longer needed.
- Organisational change - May involve placing affected staff formally at risk, even if redundancy is an unlikely outcome. This declaration is not a notice of redundancy, but in some circumstances this declaration may be issued concurrently with the formal notice of redundancy.
- Redundancy – Voluntary – If the Trusts deem this to be a suitable option, expressions of interest will be sought for voluntary redundancy/early retirement, if there are insufficient volunteers from the designated at risk groups then the Trusts can decide to widen the expressions of interest in similar posts across the Trusts.
- Redundancy – Compulsory – Where the Trusts have exhausted all reasonable steps for redeployment, staff who have not been successful in gaining suitable alternative accepted or accepted voluntary redundancy will be declared compulsorily redundant.
- Slotting in - slotting in without the need to go through a recruitment process shall apply where there has been no significant change in the duties and responsibilities of a post following restructuring and where the number of posts available is equal to or in excess of the number of existing post holders in the new structure. To qualify for this treatment a post must be of the same grade before and after restructuring, while no other member of staff should have a comparable claim on the post. In some situations TUPE may apply.
- Restricted competition – restricted competition will occur when more than one employee has a claim on a post.

-
- Ring-fencing - Ring-fencing of applications for posts in the new structure will apply where the former structure contained posts that carried substantially the same duties and responsibilities but the number of staff exceeds the number of posts available in the new structure, or where there are similarities between old and new posts but there are also significant differences that do not make them suitable for slotting in.
 - Staff at risk of redundancy – means staff whose posts may potentially be redundant as a result of organisational change if suitable alternative employment cannot be found.
 - Suitable Alternative Employment - is a role within the Trusts that is on broadly similar terms such as salary, hours of work, job content and within the same range of skills required as the current employment where the individual meets all the essential criteria of the person specification. Suitable Alternative Employment relates to roles on the same band as the redundant role. However, should an employee specifically request to apply for a post which is one band below, it should be noted that pay protection would not apply. In some situations TUPE may apply.
 - Staff under Agenda for Change terms and conditions who unreasonably refuse a suitable alternative employment offered by the Trusts, or another NHS employer, will mean that they in effect resign their current post and will not be entitled to a redundancy payment.
 - TUPE – means the Transfer of Undertaking (Protection of Employment) Regulations 2006.
 - Trial Period - Where the new post is different from the old post, the employee is entitled to a statutory four-week trial period. The purpose of the trial period is for the employee and the employer to assess the suitability of the post.

DOCUMENT CONTROL

Equality Impact Assessment Date	03/04/2018
Sub-Committee & Approval Date	Trust Partnership Forum 4.4.18

History of previous published versions of this document:

Version	Ratified Date	Review Date	Date Published	Disposal Date
NCUH policy HR27 v4.0	16/04/2013	31/01/2014	22/04/2013	
CPFT policy POL/004/009/001			31/03/2016	

Statement of changes made from previous version – New Joint Policy

Version	Date	Section & Description of change
1.0	April 2018	<ul style="list-style-type: none"> Rewritten document from separate Trust policies
2.0	25/09/2018	<ul style="list-style-type: none"> Policy reference number aligned across both organisations Version 1.0 policy content copied into current Trust policy template
3.0	20/06/2019	<ul style="list-style-type: none"> Section 3.8 updated to include “A schedule summarising any slotting in and/or pooling decisions will be provided to staff prior to any posts being confirmed.”
3.1	10/07/2019	<ul style="list-style-type: none"> Formatting to link to correct appendices

List of Stakeholders who have reviewed the document

Name	Job Title	Date
Stephen Eames	Chief Executive Officer, NCUH and CPFT	4.4.18
Neil Anderson	NCUH Staff Chair	4.4.18
Dave Waddington	CPFT Staff Chair	4.4.18
Andrea McLaughlin	UNISON Vice Chair, NCUH	4.4.18
Sharon Harper	Assistant Director of Workforce, CPFT	4.4.18
Maria Stevens	HR Business Partner, CPFT	4.4.18
Helen Lloyd	RCN Learning	4.4.18
Laura Proudlock	RCN Steward	4.4.18
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Kathryn Martindale	UNISON	4.4.18
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Tim Evans	CPFT	4.4.18
Ellie Clark	Senior Network Manager, CPFT	4.4.18
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Shirley Dowsett	UNISON	4.4.18
Liz Walsh	UNISON Convenor, Vice Chair CPFT	4.4.18
Russell Law	UNISON	4.4.18
Suzanne Hamilton	Deputy Director of Workforce & OD, CPFT	4.4.18
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Michelle Dodd	UNISON	4.4.18
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Beverly Griffiths	UNISON, CPFT	4.4.18