



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

Policy Title: Pay Protection Policy (Joint)

Reference	POL/WOR/003/018
Version	1.0
Date Ratified	6 March 2019
Next Review Date	31 March 2020
Accountable Director	Executive Director of HR/OD
Policy Author	HR Business Partners / HR Advisors

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Data Protection Legislation

The Trust(s) are committed fully to compliance with the requirements of the General Data Protection Regulations (GDPR) 2016 and the Data Protection Act (DPA) 2018. The GDPR and DPA legislation aims to balance the requirements of organisations to collect, store and manage various types of personal data in order to provide their services, with the privacy rights of the individual about whom the data is held.

The GDPR and DPA legislation covers both manual and computerised records in any format, where the record contains details that can identify, directly or indirectly data on a natural person or persons. The DPA sets out principles which must be followed by those who process data; it gives rights to those whose data is being processed.

Policy On A Page

SUMMARY & AIM

The policy summarises staff entitlements to protection of earnings in organisational change situations.

This policy is designed to ensure that Protection of Earnings payments are applied correctly and consistently to all eligible staff and provide compensation for the loss of salary or earnings in circumstances of organisational change.

KEY REQUIREMENTS

This policy applies when:

An employee suffers a reduction in pay, either as a result of a downgrading (one pay band) and/or as a result of a change of contracted hours or enhancements and/or allowances, due to organisational change.

Line Manager informs ESR Data Management of the change in the employee's post/pay band/contracted hours/changes to shift, by completing a post change form informing of their entitlement to long and/or short term pay protection.

ESR is updated to record the change and the entitlement is checked against the employee's length of service. ESR Data Management forwards the details to the Trust's payroll and pension provider to calculate payments due during the protected period(s).

Where the employee is a member of the NHS Pension Scheme (1995 and 2008 Section only), they are informed that they may be eligible for pensionable pay protection under the provisions of the Scheme and are provided with a factsheet and application form.

Once the pay protection period has ended under the provisions of this policy, the employee's entitlement to payment ceases.

TARGET AUDIENCE:

Human Resources, Managers and all employees of the Trust, ESR Data Management team the Trust's payroll and pension provider.

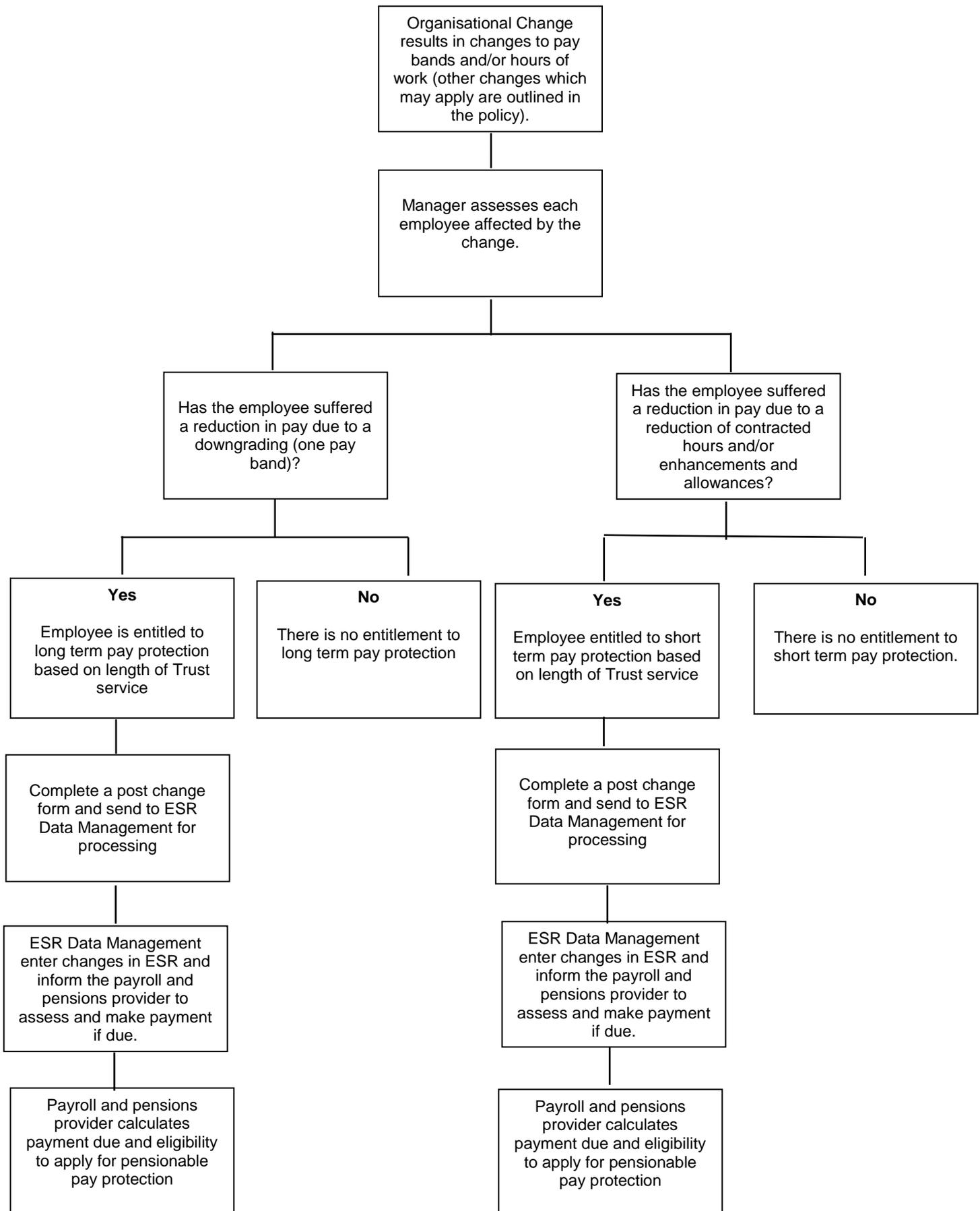
TRAINING:

Support and advice is available from Human Resources for managers implementing organisational change and to employees affected by the change.

TABLE OF CONTENTS

SUMMARY FLOWCHART: PROCESS TO APPLY FOR PAY PROTECTION	5
1. INTRODUCTION	6
2. PURPOSE	6
3. PROCESS	7
4. TRAINING AND SUPPORT	9
5. PROCESS FOR MONITORING COMPLIANCE	9
6. REFERENCES:	10
7. ASSOCIATED DOCUMENTATION:	10
8. DUTIES (ROLES & RESPONSIBILITIES):	10
8.1 Chief Executive / Trust Board Responsibilities:	10
8.2 Executive Director Responsibilities:	10
8.3 Managers Responsibilities:	10
8.4 Staff Responsibilities:	10
8.5 Payroll Department:	11
8.6 Human Resources Department Responsibilities:	11
8.7 Trade Union Representatives Responsibilities:	11
8.8 Approving Committee Responsibilities:	11
9. ABBREVIATIONS / DEFINITION OF TERMS USED	11
DOCUMENT CONTROL	13

SUMMARY FLOWCHART: PROCESS TO APPLY FOR PAY PROTECTION



1. INTRODUCTION

It is essential to promote good employee relations and equality of opportunity in order to utilise and retain to the full, the skills and talents of the entire workforce.

It is the Trust policy to apply the protection of earnings policy consistently and fairly.

The Trust has developed this policy for use in organisational change situations to afford staff, where eligible, protection of earnings. Managers are responsible for ensuring that all employees in their department are fully aware of and understand this policy.

2. PURPOSE

On occasions, the Trust may require change which impacts upon the duties, hours, pay and nature of employment for individuals and groups of staff. In such circumstances there is a commitment that managers will discuss the proposals and identify staffing issues fully with staff and their representatives at the earliest possible opportunity and endeavour to minimise the effects.

Each change to post due to an organisational change covered by this agreement shall attract protection in its own right.

Protection will not be applied where variations to contract are made at the request of an employee.

If at any time the earnings in the new post, excluding overtime and any other ad hoc payments, exceed the protectable earnings, protection will cease and earnings in the new post will be paid in full for that pay period.

Protection will cease when the member of staff is appointed to a post in which the earnings are equal to or exceed the protected earnings.

Protection will cease when the member of staff moves to another post of their own volition, for example the member of staff applies for and is successfully appointed to a new post.

Protection will cease if employment with the Trust ends.

Protection will cease when a member of staff opts to accept new conditions of service voluntarily, for example successfully applies for flexible retirement.

Protection will cease if the member of staff unreasonably refuses to apply for or to accept a post with higher earnings. In these circumstances protection will cease with immediate effect.

An employee downgraded for reasons of discipline in accordance with the Disciplinary Procedure or performance management in accordance with the Capability Policy, will be paid at the rate applicable to their new grade. As with any action of this kind, employees will have the right of appeal.

3. PROCESS

3.1 Compensation for Reduction in Basic Salary (Long Term Protection)

Entitlement to long term protection will be based on Trust service (including TUPE service from another employer) rather than NHS Service.

Following a process of organisational change, an employee who is appointed to a post with a lower basic salary, will continue to be paid at the point on the salary scale in payment at the date of transfer in accordance with the following schedule:

Length of service	Period of Pay Protection
Less than one year	nil
1 year less than 2 years	1 month
2 years less than 3 years	2 months
3 years less than 4 years	3 months
4 years less than 5 years	4 months
5 years less than 6 years	5 months
6 years less than 25 years	24 months
For each complete year after 25 years	1 additional month up to a maximum of 36 months in total

No incremental point increases will be applied to the protected salary during the period of protection.

No incremental point increases will be applied to the protected salary during the period of protection. Long Term Protection will be on a 'Mark Time' basis and be liable to reduce as national pay awards take place. Example:

Reduction from band 8a to band 7

Band 8a salary £49969 per annum
Band 7 salary £43041 per annum
Protection amount £6928 per annum

Band 7 annual pay increases to £43772 per annum. New protection amount:

Band 8a protected salary £49969 per annum
Increased band 7 salary £43772 per annum
New protected amount £6197 per annum

If, through cost of living rises, the new salary exceeds the protected point on the salary scale within the protection period, the protection will cease.

3.2. Compensation for Loss of Earnings (Short Term Protection)

Entitlement to short term protection will be based on Trust service (including TUPE service from another employer) rather than NHS Service.

Compensation for loss of earnings will be appropriate to a range of circumstances arising from proposals to reorganise the workplace. Earnings in respect of the following elements paid prior to the protection period will be averaged over a four month period. These will be included in the compensation only if they are a regular requirement of the job:

- Unsocial Hours

Staff may be required to work up to the level of the compensation paid in respect of unsocial hours. Should staff refuse a reasonable request, protection will be withdrawn.

- On Call and Standby

Staff may be required to work up to the level of the compensation paid in respect of on call and standby. Should staff refuse a reasonable request, protection will be withdrawn.

Compensation payments will be made to maintain the level of earnings to the extent payable at the date of transfer and in accordance with the following schedule:

Length of Service	Period of Pay Protection
Less than one year	nil
1 year less than 2 years	1 month
2 years less than 3 years	2 months
3 years less than 4 years	3 months
4 years less than 5 years	4 months
5 years less than 6 years	5 months
6 years and over	6 months

3.3. Entitlement to both Compensation for Reduction in Basic Salary and Compensation for Loss of Earnings (Long and Short Term Protection)

Where, following a process of organisational change, a member of staff is entitled to both types of protection detailed in sections 6.0 and 7.0 the period of protection in respect of compensation for reduction in basic salary and compensation for loss of earnings will run simultaneously.

This means that protected earnings will be treated separately for each of the elements of the protection i.e. Basic Salary, Unsocial Hours, On Call Standby Duty etc.

Protection is based on contracted hours only. Any additional hours worked would be payable at the lower banded rate and this cannot be used to offset the protection being paid.

Any time spent on a career break will not count as Trust service for the purpose of calculating entitlement to pay protection

3.4. Protection of Pension for Members of the NHS Pension Scheme

Any reduction in earnings will affect the benefits due from the NHS Pension Scheme which are usually based on the final year's earnings.

NHS Pension Scheme members who experience a reduction in Pensionable Pay through re-organisation may make an application to the NHS Pensions Agency to have their earned benefits preserved on their higher rate of pay provided they have been a scheme member for at least 2 years.

In order to arrange for earned benefits to be preserved the employee must apply in writing to the Pensions Team within Payroll 3 months before the end of the protection period.

If you choose to preserve your benefits at the end of the protection period any further pension benefits may be based on your new pay band.

If you choose not to preserve your benefits your pension may be based on the earnings on your new pay band. For further information, contact the Pensions Team in the Payroll Department.

4. TRAINING AND SUPPORT

Support and advice will be available from the Human Resources Department to those managers requiring assistance in the implementation of this policy.

5. PROCESS FOR MONITORING COMPLIANCE

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

The HR department will review the policy every three years or when legislation/regulations are updated to ensure that it meets statutory and contractual requirements.

Aspect being monitored	Monitoring Methodology	Reporting		
		Presented by	Committee	Frequency
Compliance with policy	Audit 20% of pay protection cases annually to determine adherence to policy.	Director of Workforce, OD and Engagement	HR Senior Management team	Annually

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

- Action plan
- Progress of action plan monitored by the *name of relevant committee* minutes
- Risks will be considered for inclusion in the appropriate risk registers

6. REFERENCES:

National Terms and Conditions of Employment.

7. ASSOCIATED DOCUMENTATION:

Organisational Change Policy POL/WOR/003 – on the trusts policy page..

8. DUTIES (ROLES & RESPONSIBILITIES):

8.1 Chief Executive / Trust Board Responsibilities:

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

8.2 Executive Director Responsibilities: Executive Director of HR/OD

All policies have a designated Executive Director and it is their responsibility to be involved in the development and sign off of the policies, this should ensure that Trust policies meet statutory legislation and guidance where appropriate. They must ensure the policies are kept up to date by the relevant author and approved at the appropriate committee.

8.3 Managers Responsibilities:

Managers will ensure those staff who are entitled to protection of earnings are notified of this entitlement and their length of protection based upon their NHS service.

8.4 Staff Responsibilities:

Employees must ensure they are familiar with the contents of this policy.

8.5 Payroll Department:

Payroll will calculate and pay staff the appropriate level of protection of earnings when notified by a line manager.

8.6 Human Resources Department Responsibilities:

The Human Resources Department will provide advice and support to managers and employees to ensure those entitled to protection of earnings are notified of this entitlement and their length of protection based upon their NHS service.

8.7 Trade Union Representatives Responsibilities:

Trade union Representatives will advise and support employees in the use of this policy and will work in partnership with managers to achieve swift resolution of concerns.

8.8 Approving Committee Responsibilities:

The Chair of the approving committee (Joint Partnership Forum) 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

TERM USED	DEFINITION
Basic Pay	The monthly sum due in respect of basic contract hours only worked by the individual concerned within the standard working week. This will be calculated on the day immediately prior to the first day of employment in the new post
Earnings in the new post	Excluding overtime and any other ad-hoc payments will be offset against protectable earnings
Organisational Change	Any change or alteration to the services provided by the Trust which has implications for staff employed by the Trust.
Protectable Earnings	The monthly average earnings, excluding overtime and any other ad-hoc payments over a four month period during which the employee has worked (i.e. excluding all authorised absences where reduction of total pay applies) immediately prior to the first day of employment in the new post.
Short term	Short term protection of earnings is assessed and applied where the employee's hours have been reduced

TERM USED	DEFINITION
	and/or enhancements/allowances have changed resulting in a reduction in pay.
Long term	Long term pay protection applies when an employee is required by management to move from one post to another and who is down-graded as a result of the move.

DOCUMENT CONTROL

Equality Impact Assessment Date	19 February 2019
Sub-Committee & Approval Date	7 March 2019

History of previous published versions of this document:

Version	Ratified Date	Review Date	Date Published	Disposal Date
CPFT Pay Protection Policy POL/004/009	03/04/18	01/04/2020	03/04/18	N/A
NCUH Protection of Earnings Policy HR29	29/09/10	31/08/19		N/A

Statement of changes made from previous versions

Version	Date	Section & Description of change
0.1	8/2/19	Long term and short term pay protection periods
0.2	21/2/19	Additional points of clarity in sections 3.1, 3.3 and 5. Summary flowchart amended

List of Stakeholders who have reviewed the document

Name	Job Title	Date
CPFT Children and Families Care Group	Governance and Network Management Teams	21/02/19
CPFT Mental Health Care Group	Senior Management Team	21/02/19
CPFT Community Care Group	Senior Management Team	21/02/19
CPFT Specialist Care Group	Senior Management Team	21/02/19
NCUH Medicine	Senior Management Team	21/02/19
NCUH Surgery	Senior Management Team	21/02/19
CPFT/NCUH Corporate Services & Estates and Facilities Management	Senior Management Team	21/02/19
Joint Partnership Forum	Union Representatives	06/03/19

