

THE LEEDS TEACHING HOSPITALS NHS TRUST

PROTECTION OF PAY POLICY

1. INTRODUCTION

The Leeds Teaching Hospitals NHS Trust (LTHT) recognises that it depends on the skills, abilities and dedication of all staff to deliver its aims and objectives. LTHT recognise there are situations created as a result of organisational change when individuals may be entitled to protection of pay. This policy is effective from 1st October 2006.

2. BACKGROUND

The purpose of this policy is to set out the requirements and responsibilities of the Trust and its employees when dealing with instances of organisational change which may result in a member of staff suffering a reduction in earnings.

When, as a consequence of organisational change, a member of staff suffers a reduction in earnings he/she will receive:

- when downgrading is involved, full protection of basic salary/wage/hourly rate (see Appendix D);
- short-term protection of earnings (see Appendix E) whether or not downgrading is involved.

This policy should be read in conjunction with the Security of Employment Policy, Redeployment Policy and Effective Change Management Policy.

Where the organisational change involves a change of base this may be covered by the appropriate Agenda for Change provisions on excess travel, (Section 17, paragraph 17.27 of the Agenda for Change Terms and Conditions).

This policy does not cover circumstances where a member of staff moves post as a result of a capability situation. Such circumstances are covered by a separate policy.

3. POLICY STATEMENT

The aim of the policy is to make provisions to ensure when, as a consequence of organisational change, a member of staff suffers a reduction in earnings he/she will receive the appropriate protection of pay.

It aims to ensure that a consistent and fair approach is applied to all employees of the Trust.

4. POLICY EFFECT

RESPONSIBILITIES

MANAGER/S:

- Managers will ensure they are familiar with the appropriate policies (Effective Change Management, Security of Employment, Redeployment)
- Managers will ensure timely and correct information is communicated to their member/s of staff regarding any entitlement they may have to pay protection as set out in this policy.
- Managers will ensure any agreements regarding pay protection are followed up in writing to the individual/s concerned and a copy kept on the individual/s personal file.
- Managers will assist staff who are in a protection situation whether short-term or full, to find suitable posts with a salary/wage or earnings commensurate with those prior to protection.
- In the case of full protection, the manager will be expected to meet with the member of staff, the norm being annually, to identify support which can be given to the individual e.g. training, professional updating, secondment etc and to ensure the individual is able to apply for and secure posts at an appropriate level.
- Managers will hold a review meeting with their member of staff prior to the individual moving into a mark-time situation
- Managers will ensure Payroll are notified accordingly of any situations involving pay protection as detailed in this policy.

EMPLOYEE/S

- An employee who finds themselves in a pay protection situation will undertake any reasonable overtime, shift working or other additional

duties (e.g. on-call) which may be required up to the level at which earnings in the new post equal the protected earnings.

- An employee will apply for and accept any subsequent offer of another suitable post in the Trust which attracts a basic salary/wage/hourly rate in excess of the basic salary/wage/hourly rate applying to the new post.
- An employee will give an undertaking to apply for a more senior post in the Trust should one become available. This undertaking must be given within 4 weeks of the day on which the downgrading takes effect.
- An employee will participate in any development opportunities offered to them by their Manager/the Trust.
- An employee will not initially or subsequently unreasonably refuse to apply for or accept a more senior post, subject to it being suitable alternative employment. Suitable alternative employment will be defined in terms of pay, working hours, status, grade/band, duties and responsibilities, the way the work is carried out and location. It must also be suitable to the individual's circumstances, skills and experience.

If the conditions above are not met then protection may be withdrawn with immediate effect.

STAFF SIDE REPRESENTATIVES:

In advising and supporting members, staff representatives will:

- Ensure they have a full understanding of the situation and how this will be taken forward.
- Advise members of the requirements of the policy and the process to be followed.
- Provide advice regarding the member's responsibilities in securing suitable alternative employment.
- Provide advice regarding the member's responsibilities in undertaking any reasonable overtime, shift working or other additional duties (e.g. on-call) which may be required up to the level at which earnings in the new post equal the protected earnings.
- Provide advice regarding the member's responsibilities in actively seeking suitable alternative employment commensurate with the employee's previous grade/band and advise them of the requirement for participation in annual review meetings with their manager.

- Advise members of the consequences if the conditions above are not met.

Failure to follow this policy could result in the instigation of disciplinary procedures.

5. EQUALITY AND DIVERSITY STATEMENT

The Leeds Teaching Hospitals NHS Trust is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat our staff reflects their individual needs and does not discriminate against individuals or groups on any grounds.

6. REFERENCES

Effective Change Management Policy
Security of Employment Policy
Redeployment Policy

7. CONSULTATION

Through the management structure and staff side council.

8. DOCUMENTATION CONTROL

Policy Title	Protection of Pay Policy
Version Number	Version 2
Supersedes	Version 1
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Approving Body	TCNC
Review Date	March 2009
Supporting Procedure(s)	None
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Distribution	All staff groups

9. INDEX

Policy Title: Protection of Pay Policy

Section	Topic	Page
1.	Introduction	1
2.	Background	1
3.	Policy Statement	2
4.	Policy Effect	2
5.	Equality and Diversity Statement	4
6.	References	4
7.	Consultation Process	4
8.	Documentation Control Section	4
9.	Index	4

Appendices

Appendix	Topic	Page
A	Definition	6
B	Conditions relating to the application of the policy	7
C	Procedure	9
D	Basic salary/wage/hourly rate defined	13
E	Short-term protection of earnings/protectable earnings defined	14

Appendix A

1 DEFINITIONS

Organisational change

This means any structural, managerial or operational change in the organisation of services provided by the Trust. It does not include short-term initiatives/projects e.g. Waiting List Initiatives or acting-up arrangements.

Basic salary/wage/hourly rate

This is as defined in Appendix D.

Protectable Earnings

This is as defined in Appendix E.

Downgrading

This occurs when the new post, irrespective of its grade/band title, carries an hourly rate, or a salary scale with a maximum point, lower than the maximum point applying to a post held previously, or lower than that of the personal grade/band held in the previous post.

A More Senior Post

This is a post that carries an hourly rate, or a salary scale with a maximum point, higher than that applying to the new post or any subsequent posts to which the member of staff may move.

Mark time

This will occur when an individual:

- (a) is in receipt of short-term protection; or
- (b) has received full protection of basic salary/wage/hourly rate and the initial period of protection has ceased.

The individual will continue to receive the basic salary/wage/hourly rate he/she is receiving, without the benefit of any subsequent increases, until such time as the short-term protection period ceases, or, in the case of full protection, as he/she secures a post on the same or a higher grade/band, or the salary of the new post exceeds the pay received.

Appendix B

2 CONDITIONS RELATING TO THE APPLICATION OF THIS POLICY

2.1 This policy relates only to items of pay made to staff as defined in Appendix D or Appendix E.

2.2 Protection, whether full or short-term, will not apply

- if an individual member of staff chooses, of their own volition, to take a change in role or downgrading, which would result in a reduction of earnings;
- if an individual member of staff chooses, of their own volition, to remove themselves from a rota or other working pattern, which would result in a reduction of earnings; and/or
- if an individual is down graded as part of a disciplinary situation.

2.3 Short-term protection is subject to the following conditions:

- on the member of staff undertaking any reasonable overtime, shift working or other additional duties (e.g. on-call) which may be required up to the level at which earnings in the new post equal the protected earnings; and
- on the member of staff accepting any subsequent offer of another suitable post in the Trust which attracts a basic salary/wage/hourly rate in excess of the basic salary/wage/hourly rate applying to the new post.

2.4 Full protection is subject to the following conditions:

- the member of staff giving an undertaking to apply for a more senior post in the Trust. This undertaking must be given within 4 weeks of the day on which the downgrading takes effect;
- the member of staff must not initially or subsequently unreasonably refuse to apply for or accept a more senior post, subject to it being suitable alternative employment. Suitable alternative employment will be defined in terms of pay, working hours, status, grade/band, duties and responsibilities, the way the work is carried out and location. It must also be suitable to the individual's circumstances, skills and experience.

2.5 If the conditions in 2.3 or 2.4 are not met then protection may be withdrawn with immediate effect.

2.6 Managers will assist staff who are in a protection situation whether short-term or full, to find suitable posts with a salary/wage or earnings commensurate

with those prior to protection. In the case of full protection, as part of this process the manager and member of staff will be expected to meet, the norm being annually, to identify support which can be given to the individual e.g. training, professional updating, secondment etc and to ensure the individual is able to apply for and secure posts at an appropriate level. However, if the individual unreasonably refuses to participate in these reviews, take up suitable development opportunities or apply for suitable posts protection may be withdrawn with immediate effect.

Appendix C

Procedure

3 SHORT-TERM PROTECTION OF EARNINGS

3.1 Entitlement

Subject to the conditions given in Section 2 above, staff entitled to short-term protection of earnings will have total earnings under the old working arrangements (i.e. protectable earnings - see Appendix E) protected on a mark-time basis in accordance with the table below.

The member of staff must, in addition to the service requirements below, also have been undertaking the working arrangements and receiving the appropriate payment for at least 6 months. In addition, in no circumstances, would the pay protection period exceed the period during which the working arrangements had existed.

Period of unbroken service with the Trust	Maximum Protection Period
Less than 4 months service	No Protection
After completing 4 months service	3 months
After completing 12 months service	6 months
After completing 2 years service	9 months
After completing 3 years service	12 months

In no circumstances will the 12 months maximum protection period be extended.

3.2 Earnings in the New Working Arrangements

Earnings in the new working arrangements will be offset against protectable earnings. If for any particular pay period total earnings (including overtime, additional hours etc) in the new working arrangements exceed the protectable earnings, then protection of earnings will cease temporarily and earnings in the new working arrangements will be paid in full for that particular pay period.

When calculating earnings in the new working arrangements, the rates used for calculating payments in respect of overtime, shift work and other additional duties shall be those applicable to the new working arrangements.

4. FULL PROTECTION OF BASIC SALARY/WAGE/HOURLY RATE

4.1 Entitlement

Subject to the conditions given in Section 2 above, a member of staff who is moved from one post to another and downgraded as a result of the move will be entitled, regardless of his/her length of service with the NHS, to full protection of basic salary/wage/hourly rate (see Appendix D) calculated as an hourly rate in the old post applied to the contracted hours in the new post and with the benefit of any subsequent improvements (including pay awards) or increments applying to his/her grade/band/pay scale.

The period of protection for all members of staff will be four years.

Protection will cease when:

- (a) the protection period expires; or
- (b) the member of staff is appointed to another post within the Trust in which the normal basic salary/wage/hourly rate is equal to or exceeds protected basic salary/wage/hourly rate; or
- (c) the member of staff moves on his/her own application to another post in the Trust with a basic salary/wage/hourly rate which is lower than that of the existing post; or
- (d) the basic salary/wage/hourly rate of the new post is equal to or exceeds the protected basic salary/wage/hourly rate; or
- (e) the member of staff retires or leaves the employment of the Trust.

4.2 Mark-Time

If the protection period expires before any of the events specified in paragraph 4.1 (b) to (d) above and the individual remains in the employment of the Trust then protection will continue on a mark-time basis until 4.1 (b), (c) or (d) are met.

4.3 Review Meetings

The Trust aims to support staff, who find themselves to be in a full protection situation, to regain the level at which they had previously been working. As downgrading may reduce the scope for an individual to maintain their skills and knowledge at the level previously acquired it is important that the manager and individual meet, the norm being annually, to review and agree the development

requirements of the individual and the action he/she is taking to prepare and apply for posts commensurate with the level previously held.

A review meeting must be held prior to the individual moving into a mark-time situation.

Should an individual not participate in these review meetings consideration may be given to withdrawing the protection arrangements as per the conditions in section 2 above.

4.4 Additional Earnings

Any additional earnings derived from work in the new post will be remunerated at the rate appropriate to the new post. Should hours in the new post exceed contracted hours in the old post the additional hours will be paid at the rate applicable to the new post.

4.5 Period of Notice

The employee is entitled to the notice period of either the previous post or the new post, whichever is the most favourable to the individual. Statutory rights are not affected by any protection arrangements.

4.6 Hours and Annual Leave

Employees required to move to a new post will acquire the hours appropriate to the new post. Annual leave allowances will be protected with subsequent improvements. Pre-booked holidays and other leave commitments will be agreed at interview, prior to moving to a new post.

4.7 Other Terms and Conditions of Service

Other terms and conditions of service will be those applicable to the new post.

4.8 Entitlement to opt for the terms and conditions of the new (or any subsequent) post

Employees may at any time opt for the complete package of remuneration and conditions of service applicable to the new (or any subsequent) post. This option, once exercised, cannot be cancelled.

5 SUBSEQUENT ORGANISATIONAL CHANGE

In rare cases, further organisational change might occur during a period of protection. In such circumstances, subject to Section 2 above, the original protection package will continue for the agreed term. Any new protection entitlement would be calculated from the date of the subsequent change but would only give rise to a payment where the value of the new entitlement exceeds the value of the original entitlement.

6 INTERACTION BETWEEN SHORT-TERM AND FULL PROTECTION

A member of staff who is entitled to full protection may also have initially a concurrent entitlement to short-term protection of earnings. Until the short-term protection expires, the member of staff will be paid on the basis of whichever entitlement is the more favourable to him/her. Thereafter payment will be on the basis of the ongoing entitlement to full protection.

7 NHS PENSION

Where a member of staff suffers a permanent reduction in his/her pensionable remuneration which is not attributable to their own act or request he/she may elect, within one month of the reduction, to have his/her benefits preserved at the higher rate of remuneration for their service up to the date of the reduction. This application must be made in writing to the Pensions Officer who will forward the request to the NHS Pensions Agency based in Fleetwood.

8 APPEALS

Appeals arising out of the application of this agreement shall be dealt with in accordance with the Grievance Procedure.

Appendix D

Basic salary/wage/hourly rate is:

the individual's basic hourly rate in respect of his/her basic contracted hours; plus

- distinction/discretionary award/clinical excellence award
(NB the monetary value of these will be protected rather than the award itself)
as paid to Medical and Dental staff.

Basic salary/wage/hourly rate will be reckoned on the day immediately preceding the first day of employment in the new post.

Appendix E

Short-term protection of earnings/protectable earnings is defined as:

Basic salary/wage/hourly rate as defined in Appendix D, plus the monthly or weekly average additional earnings over the 3 months (monthly paid staff) or 12 weeks (weekly paid staff) immediately preceding the date of the organisational change of the following:

- **Overtime ***
- **Stand by ***
- **On call duty ***
- **Shift duty allowance ***
- **Night duty allowance ***
- **Unsocial hours allowance ***
- **Sessional payments ***

Note * these items MUST be

- (a) **a contractual feature of the individual's employment for the items to be included in protectable earnings; OR**
- (b) **a regular and formally rostered requirement. Under the terms of this agreement a regular and formally rostered requirement means that the Department requires this working arrangement to occur and that it is formally rostered into the individual's working pattern.**

No protection will be afforded to ad hoc payments of any description or those which do not meet the above.

Protectable earnings will be re-calculated, and any arrears due paid, whenever a retrospective pay award is agreed and the effective date of the pay award falls before or during the 3 month/12 week computation period.

Equalities Impact Assessment - Policies, Relevance and Impact

Policy Title: Protection of Pay

Section 1					
<p>Does this policy or procedure impact on staff patients or public?</p> <p>Staff</p>	<p>How relevant is it to achieving the duties under race legislation?</p> <p>2</p>	<p>Could some groups be disadvantaged due to race?</p> <p>N</p>	<p>How relevant is it to achieving the duties under disability legislation</p> <p>2</p>	<p>Could some groups be disadvantaged due to disability?</p> <p>N</p>	<p>Could men or women be disadvantaged by this policy?</p> <p>N</p>
<p>Could some groups be disadvantaged according to their religious belief or philosophy?</p> <p>N</p>	<p>Could some groups be disadvantaged according to their sexual orientation?</p> <p>N</p>	<p>Could some groups be disadvantaged according to their age?</p> <p>N</p>			

Section 2			
<p>Please note in this section:</p> <ul style="list-style-type: none"> any thing you have already included in the policy to meet the equality duties any changes you have made to the policy in order to eliminate any potential for disadvantage on the grounds of race disability or gender 	<p>Race:</p> <p>Included: Rules apply across the board and should not be affected by race.</p> <p>Recommended: On review monitoring should be put in place to ensure that this is the case.</p>	<p>Disability:</p> <p>Included: Rules apply across the board and should not be affected by disability.</p> <p>Recommended: On review monitoring should be put in place to ensure that this is the case.</p>	<p>Gender:</p> <p>Included: Rules apply across the board and should not be affected by gender.</p> <p>Recommended: On review monitoring should be put in place to ensure that this is the case.</p>
	<p>Religion/Belief:</p> <p>Included: Rules apply across the board and should not be affected by religion/belief.</p> <p>Recommended: On review monitoring should be put in place to ensure that this is the case.</p>	<p>Sexual Orientation:</p> <p>Included: Rules apply across the board and should not be affected by sexual orientation.</p> <p>Recommended: On review monitoring should be put in place to ensure that this is the case.</p>	<p>Age:</p> <p>Included: Rules apply across the board and should not be affected by age.</p> <p>Recommended: Monitoring should be put into place to ensure that pay protection decisions are not affected by age.</p>

NB: The duties under the legislation are to eliminate unlawful discrimination and promote equality

The content of this assessment has been formulated by Maxine Morris, Head of HR, Diversity. If you have any queries regarding the content of this assessment or the process, please contact Maxine Morris, Head of HR, Diversity by email at maxine.morris@leedsth.nhs.uk or by telephone on 0113 206 4146.

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