

Pay Protection Policy

Please be aware that this printed version of the Policy may NOT be the latest version. Staff are reminded that they should always refer to the Intranet for the latest version.

Purpose of Agreement	This policy will explain to managers and staff the Trust position on pay protection following an organisational change.
Document Type	<input checked="" type="checkbox"/> Policy <input type="checkbox"/> SOP <input type="checkbox"/> Guideline
Reference Number	Solent NHST/Policy/HR04
Version	Version 2
Name of Approving Committees/Groups	Joint Negotiating Committee Policy Steering Group Assurance Committee
Operational Date	January 2017
Document Review Date	January 2020
Document Sponsor (Name & Job Title)	Chief People Officer
Document Manager (Name & Job Title)	Senior Pay and Remuneration Manager
Document developed in consultation with	Staff Side
Intranet Location	Business Zone / Policies, SOPs and Clinical Guidelines
Website Location	Publication Scheme / Policies and Procedures
Keywords (for website/intranet uploading)	Pay Protection, Protection, Organisational change.

Review Log

Include details of when the document was last reviewed.

Version Number	Review Date	Name of reviewer	Ratification Process	Reason for amendments
1	15/12/15	LB	Staff Side	Rewrite of policy
2	18/01/16	VB	Staff Side	Amendment to wording in 5.4.1 (remove reference to annual leave, paragraph 5.5, 5.8.1 insert words at the beginning, and 5.9.2 remove word increases. Insertion of paragraphs 5.9.3 and 5.9.4

Summary of Policy

This policy explains the Trust position on pay protection.

It outlines when pay protection will and will not be considered at paragraph 2.6 and 2.7.

The policy defines the different types of protection, namely enhancement protection and basic pay protection and explains how long it will be paid for at Section 5. The impact of salary sacrifice schemes on the calculation of pay protection is explained in paragraph 5.3

Section 4 defines the meaning of total earning and continuous service.

Travel protection is not covered by this policy (paragraph 5.5).

The Trust position in relation to specific circumstances, for example:

- banding changes of more than one band
- redeployment of another NHS Trust, and
- Trial periods,

are included in section 5.6.

Details about continuous professional development and preservation of NHS Pension benefits are included in paragraphs 5.7 and 5.8.

Paragraph 5.9 explains how changes to hours once pay protection has been agreed will be treated.

How to appeal against the process if contained in section 6.

Appendix 2 provides details of frequently asked questions on pay protection

Pay Protection Policy

Index

Section	Reason	Page
1	Overview	5
2.	Background	5
3.	Scope	6
4.	Definitions	6
5.	Pay protection scheme	6
6.	Appeal	9
7.	Training	9
8.	Equality Impact Assessment and Mental Capacity	9
9.	Success Criteria Monitoring Effectiveness	9
10.	Review	9
11.	Links to Policies	10
Appendix		
1	Equality Impact Assessment	11
2	Frequently Asked Questions	12

Pay Protection Policy

1 OVERVIEW

- 1.1 The purpose of this policy is to define the level of time scales for pay protection payments and the conditions for payment, following an organisational change. It outlines the types of protection and how it will be calculated and it covers other aspects of an employee's terms and conditions which may be affected following an organisational change.

2 BACKGROUND

- 2.1 Solent NHS Trust has operated two different legacy pay protection schemes. To remove inequalities for staff in respect of protection arrangements, the Trust has sought to harmonise the pay protection scheme under one policy and has worked, in partnership with staff representatives, to develop a new policy underpinned by principles of fairness, equality and flexibility to meet the needs of the Trust and its staff.
- 2.2 This policy is designed to support the retention of staff in suitable positions to facilitate redeployment as an alternative to redundancy. These arrangements apply to employees who, as a consequence of organisational change, are required to move to a new post involving a reduction in pay.
- 2.3 A reduction in pay may be the result of:
- A reduction in basic salary (i.e. a reduction in banding),
 - A reduction of total earnings (i.e. a reduction of enhancement payments for work outside normal hours).
- 2.4 The scheme provides:
- Enhancement protection of earnings, where there is a reduction in enhancement earnings, either temporarily or on a permanent basis.
 - Pay protection of basic salary where a change in banding is involved and the basic pay reduces.
 - Mileage protection where, as a result of organisational change, an employee is relocated.
- 2.5 The process for managing organisational change is outlined in the Organisational Change Policy. Pay protection is recognised as a financial safeguard to protect earnings whilst people are afforded time where possible to secure a role at their previous band through continued redeployment support.
- 2.6 The pay protection policy will also apply to eligible employees who have to change jobs permanently to a position on lower pay due to a work related injury, or work related illness or other work related health condition. For further details on work related injury and the provision of pay protection in these circumstances, please refer to Managing Sickness Absence Policy and Procedure toolkit for injury allowance and/or section 22 of the Agenda for Change Handbook.
- 2.7 Pay protection arrangements do not apply in the following circumstances:
- Redeployment or a change of working pattern agreed with the employee as a result of capability due to sickness
 - Redeployment as a result of action under the Trust's Disciplinary Policy & Procedure.
 - Redeployment as a result of action under the Managing Performance (Capability) Procedure

- Voluntary transfer – Employee’s moving to a post in a lower band at their own initiative shall enter the new band on the same pay point, if this is at a point where the pay bands overlap or at the maximum point of the band.
- The natural or early termination of a period of acting up or a return from secondment/Fixed term appointment.

3 SCOPE

- 3.1 This document applies to all directly employed staff within Solent NHS Trust and other persons working within the organisation in line with the Trust’s Dignity at Work Policy.

4 DEFINITIONS

- 4.1 **Mark time** – means that the rate of the earnings is preserved without the benefit of any subsequent increments or pay awards, on a mark time basis, until the new earnings reach the level of the previous earnings or until the protection ends whichever is sooner.
- 4.2 **Total earnings** - calculated based on an average of the 3 months’ pay prior to the date of change and includes regularly paid supplements (i.e. recruitment and retention premia, high cost area supplements, AfC Absence payments, payments for work outside normal hours, such as night, unsocial, Saturday and Sunday enhancements). The Trust may in exceptional circumstances use an alternative 3 month pay period where it is considered that the pay in the 3 months immediately prior to the change is unrepresentative of normal earnings (for example staff on unpaid leave, maternity leave, long term sick leave during part of the period). Irregular payments in respect of On-call, Overtime and additional hours will not be included in any calculations.
- 4.3 Continuous Service within this policy is calculated in the same way as used for redundancy calculations.

5 PAY PROTECTION SCHEME

5.1 **Enhancement Protection**

- 5.1.1 Enhancement protection applies when an employee is required to:
- move to a new post because of organisational change on the same band, and the total earnings in the new post are less, or
 - remain in the current post but the total earnings reduce for a temporary period due to an organisational change, or
 - they have changed bands through organisational change and the total amount paid for enhancements has reduced, or
 - they are on a trial period and their total earnings reduce due to the requirements of the new role. The formal pay protection period and timescales for same will though commence at the point at which the trial period has ended and the role becomes confirmed as permanent.
- 5.1.2 The employee is expected to continue to undertake where required, night duty, unsocial, Saturday and Sunday hours, etc. up to the level undertaken before the change in terms and conditions.
- 5.1.3 Once the level of enhancement protection is calculated it guarantees the minimum payment protection of enhancements each month. If an employee is paid unsocial enhancements and it is less than the guaranteed minimum payment, enhancement protection will be paid to top

up the level to the guaranteed minimum payment. If however the enhancements paid are greater than the guaranteed minimum payment no enhancement protection will be payable in that month.

5.1.4 After the end of the protection period any relevant enhancements, allowances or supplements to basic salary will be determined by reference to the new post, rather than being carried across from the previous post.

5.1.5 The protection period is based on continuous NHS Service (where there has been a TUPE transfer, the time served in the previous organisation will be treated as NHS service) as follows:

Continuous NHS Service	Protection period
Up to 6 months	No protection
6 to 12 months	2 months
More than 12 months but less than 5 years	4 months
5 years or more	6 months

5.2 **Basic Pay Protection**

5.2.1 When an employee is required to move to a new post because of organisational change that attracts a lower basic annual salary, protection will be afforded of the basic pay for the current pay band, on a mark time basis. The protection period is based on continuous NHS Service (where there has been a TUPE transfer, the time served in the previous Organisation will be treated as NHS service) as follows:

Continuous NHS Service	Protection period
Up to one year	3 months
1 year but less than 2 years	9 months
2 years but less than 5 years	18 months
5 years or more	36 months

5.2.2 Individuals who are receiving pay protection whilst working in a lower banded role are required to consider applying for a more suitable post more in keeping with their protected conditions as and when such a suitable post becomes available.

5.2.3 If a backdated pay award affects the pay protection calculation, the protected pay figures will be recalculated accordingly.

5.2.4 For avoidance of doubt as annual salaries increase, the pay protection will decrease by an equivalent amount, on a mark time basis, until the new earnings reach the level of the previous earnings or until the protection ends whichever is sooner.

5.2.5 At the conclusion of the pay protection period, the employee will receive the correct pay for the post into which they have been redeployed.

5.3 **Impact of salary sacrifice schemes on pay protection calculations**

5.3.1 When an employee agrees to a salary sacrifice they are agreeing to reduce their pay in order to obtain a non-cash benefit. Any pay protection is calculated on pay after the salary sacrifice has been deducted and basic pay will be reduced by the amount of the salary sacrificed before the calculation is made. At no point can salary being sacrificed, reduce an employee's pay below the NI payment threshold.

5.4 Other Conditions of Service

- 5.4.1 Following transfer to a new post all contractual terms and conditions of service, with the exception of the pay protection arrangements, will be those pertaining to the band of the new post and a new employment contract will be issued.

5.5 Travel Protection

- 5.5.1 When an individual is expected to change base as a result of an organisational change, the Travel and Subsistence Policy must be referred and adhered to.

5.6 Suitable Alternative Employment

Banding change – difference of more than one band

- 5.6.1 When an employee is placed at risk, it is reasonably expected that employees apply for posts at the same band or one band lower, where pay protection would then be awarded. If, however, a potential suitable alternative is identified that is two bands lower than the current post and the employee is in agreement, it may be prudent to consider pay protection. There may be circumstances where this additional flexibility is welcomed and agreed by the staff member (for example to support working longer/ step down etc.). Consideration must, however, be made by management in respect of the total cost of pay protection versus costs of redundancy alongside other relevant resourcing factors.

Redeployment to another NHS Trust

- 5.6.2 In certain circumstances the Trust will proactively support staff to look externally within surrounding NHS organisations for suitable alternative employment, especially where job opportunities may be greater externally than they are internally. Although pay protection normally only applies to changes within the Trust, if a suitable alternative post is not available within the Trust, it may be prudent to consider meeting pay protection costs in order to facilitate redeployment to a suitable alternative post in another NHS Trust. Consideration must however be made in respect of the total cost of pay protection versus the cost of redundancy, alongside other relevant resourcing factors.
- 5.6.3 At the conclusion of the pay protection period, the employee will receive the correct pay for the post into which they have been redeployed.

Trial Periods

- 5.6.4 The Trust recognises the importance of Trial periods, and whilst an employee is undertaking a Trial period their pay remains on their previous band (See Organisational Change Policy for further details on Trial Periods). Whilst it may be necessary to pay some enhancement protection during the Trial period, the protection period will not commence for the change of band or role until the Trial period has ended and the role becomes formalised.

5.7 Continuous Professional Development

- 5.7.1 It is appropriate for employees working under pay protection to ensure that their ongoing development is maintained in order that they will maximise opportunities for redeployment at their former substantive band either internal or external to the organisation.

5.8 **Provision of NHS Pension Benefits**

- 5.8.1 Under the provisions of the 1995 and 2008 Sections of the NHS pension scheme, an employee subject to down banding due to an organisational change may apply to preserve their pension benefits, based on the previous level of pay. Applications must be made within three months of the date from which pensionable salary is to be reduced e.g. **at the beginning and** end of the pay protection period.
- 5.8.2 Employees who wish to consider this option should contact SBS for advice, preferably before transfer to the new post as this needs to be actioned with the Pension Agency within three (3) months of the reduction in pensionable pay.

More information is available from the NHS Business Services Authority:

www.nhsbsa.nhs.uk/Pensions.aspx

Protection of pay member factsheet:

www.nhsbsa.nhs.uk/Documents/Pensions/Protection_of_pay_member_factsheet_V1_07.13.pdf

Application form SM R9 App:

[www.nhsbsa.nhs.uk/Documents/Pensions/Deferment-SM_R9_App_members-20150810-\(V4\).pdf](http://www.nhsbsa.nhs.uk/Documents/Pensions/Deferment-SM_R9_App_members-20150810-(V4).pdf)

5.9 **Subsequent Changes to Hours or Band following Change**

- 5.9.1 If pay protection is in payment and an employee moves on a voluntary basis to a different role which is not part of an organisational change, any pay protection will cease from the date of change.
- 5.9.2 If pay protection is in payment and an employee **reduces** their hours in their current role, their pay protection would be recalculated **accordingly**.
- 5.9.3 **If pay protection is in payment and an employee increases their hours in their current role, their existing pay protection calculated at the outset of their pay protection period will continue on the original hours protected and will continue to be paid for the duration of the pay protection period. The difference between the protected hours and the new contractual hours will be paid at the pay commensurate with their current role.**
- 5.9.4 **In this event and for the avoidance of doubt, as annual salaries increase, the pay protection will decrease by an equivalent amount, on a mark time basis, until the new earnings reach the level of the previous earnings or until the protection ends whichever is sooner.**

6 **APPEALS**

- 6.1 If an employee considers they have suffered a detriment as a result of this process they need to raise their complaint through the Trusts Grievance Procedure.

7 **TRAINING**

- 7.1 Whilst there is no specific training identified in relation to this policy, the Trust recognises the importance of appropriate training for staff. If any clarification in relation to this policy is required please contact the HR team.

8 EQUALITY IMPACT ASSESSMENT AND MENTAL CAPACITY

8.1 In line with Trust policy, an Equality Impact Assessment has been completed. It is understood that no employee will receive less favourable treatment on the grounds of disability, age, sex, race, religion or belief, gender reassignment, pregnancy or maternity, marriage or civil partnership, working patterns or Trade Union membership or non-membership in relation to the application of this policy. The Equality Impact Assessment is included in Appendix 1.

9 SUCCESS CRITERIA MONITORING EFFECTIVENESS

9.1 The success of this policy will be monitored by the HR team, reviewing the number of queries, and appeals received, any issues identified will be taken into account in the next version of this policy.

10 REVIEW

10.1 This document may be reviewed at any time at the request of either the staff side or management, but will automatically be reviewed on a three yearly basis from the date of initial approval unless organisational changes, legislation, guidance or non-compliance prompt an earlier review.

11 LINKS TO OTHER POLICIES AND ACKNOWLEDGEMENT

11.1 The following policies are linked to this policy:

- Organisational Change Policy
- Grievance Policy
- Sickness Absence Policy
- Disciplinary Policy
- Travel and Subsistence Policy

Equality Impact Assessment

Scope 1- Scoping: identify the policies aims	Answer		
1. What are the main aims and objectives of the document?	To detail Solent NHS Trust's approach to pay protection, following an organisational change		
2. Who will be affected by it?	Staff members, who are involved in an organisational change.		
3. What are the existing performance indicators/measures for this? What are the outcomes you want to achieve?	Pay protection is closely linked to the retention of individuals following an organisational change. Queries and appeals following an organisational change are closely monitored by the HR team and retention trends are monitored on a frequent basis.		
4. What information do you already have on the equality impact of this document?	Previous information gathered as a result of the existence of former policies within Solent's predecessor organisations.		
5. Are there demographic changes or trends locally to be considered?	No		
6. What other information do you need?	None		
Step 2- Assessing the Impact; consider the data and research	Yes	No	Answer (Evidence)
1. Could the policy discriminate unlawfully against any group?		x	This policy is designed to ensure equity of treatment and adherence to legal requirements.
2. Can any group benefit or be excluded?		x	All groups would be treated equally in accordance with the stipulations of the policy.
3. Can any group be denied fair & equal access to or treatment as a result of this document?		x	As above.
4. Can this actively promote good relations with and between different groups?	x		All groups are treated equally and in accordance with best practice guidelines.
5. Have you carried out any consultation internally/externally with relevant individual groups?	x		Policy is an update of two previous policies that had been consulted on via the staff side and managers.
6. Have you used a variety of different methods of consultation/involvement?	x		As above.
Mental Capacity Act Implications			
7. Will this document require a decision to be made by or about a service user? (Refer to the Mental Capacity Act document for further information)		x	No

If there is no negative impact – end the Impact Assessment here.

Pay Protection Frequently Asked Questions

1. What is pay protection?

Pay protection is a payment made to top up an employee's average earnings, in order to prevent them being disadvantaged if they have been displaced or relocated due to an organisational change.

2. When is pay protection payable?

Pay protection can be paid for the following reasons associated with an organisational change.

If an employee is displaced, and moves but remains in the same band working less unsocial hours, enhancement protection will be payable.

Alternatively if they move to a lower banded role, basic pay protection would be payable together with enhancement protection.

If an employee relocates, mileage protection would be paid

3. What is the difference between Basic Pay Protection and Enhancement protection?

Basic pay protection is payable when an employee has changed bands. Their average basic pay, and recruitment and retention pay is included in the calculation.

Enhancement protection is payable when an employee remains in the same band or changes band and less unsocial hours are required to be worked. Their average enhancements are included in the calculation.

4. How is basic pay protection calculated?

The basic pay and recruitment and retention pay, paid over the three months' prior to the change is averaged and compared to the new basic pay the employee will be receiving. The difference is then paid as Basic Pay protection. See later questions about changes in hours.

5. Does this mean that the hourly rate of pay prior to the change is protected?

No, it is the average pay that is protected.

6. If someone has a salary sacrifice how would this impact on the calculation?

When an employee agrees to a salary sacrifice they are agreeing to a reduction in their basic pay. The salary sacrifice is therefore taken into account before any pay protection is calculated.

7. How is enhancement pay protection calculated?

Any enhancements which are regularly worked and have been paid in the three months prior to the change are averaged.

8. What does "regularly worked" mean?

In the first instance the payslips would be checked. If someone works enhancements for one month only, this is not a regular payment. If however they have worked enhancements for the majority of the year and it is on-going this would be classed as regularly worked.

9. Are all enhancements included when calculating average enhancements?

Bank holiday enhancements and overtime are not included. Overtime is voluntary so it is not included when calculating average pay, and as there are only on average eight bank holidays in a year these cannot be considered a regular payment.

10. If the change is made part way through a month, how is the average basic pay calculated?

Average basic pay would be calculated by taking the basic pay shown on the three months' payslips prior to the change. Any arrears paid for the three months being used would also be taken into account but if the arrears were due for an earlier period they would be disregarded.

- 11. How long will pay protection be paid for?**
Pay protection will depend on the continuous length of service an employee has in the in the NHS, or previous organisation if TUPE applies immediately before the change.
- 12. What happens when a pay increase is received?**
For any employee receiving basic pay protection their pay protection decreases by the amount of the pay increase.
- 13. Are non-consolidated pay increases taken into account in the calculation, how will this affect pay protection?**
Non-consolidated pay increases are taken into account in the calculation of pay protection.
- 14. How will pay protection be shown on payslips?**
Basic pay protection will be shown as: Basic Pay protection
Enhancement protection will be shown as: Short Term Enh Prot
Mileage protection will be shown as: Res Mileage Rate NP
- 15. How does an employee know their pay protection calculation?**
An employee will receive a contractual change letter which will provide detail of the payment protection calculation and timescales for it.
- 16. If a role is at risk, and an employee is successful in applying for a role with another organisation, will pay protection be paid?**
Pay protection is organisation specific, so normally would not apply if an individual moves to another organisation. However in some limited circumstances where there are no suitable alternative roles within the Trust, and a possible suitable alternative has been identified in a surrounding NHS Trust, the Trust may consider paying pay protection . This would only be after a cost benefit analysis had been undertaken. At the conclusion of the pay protection period, the employee will receive the correct pay for the post into which they have been redeployed.
- 17. A role is at risk and the employee would be happy to apply for a role two bands below their current role, would they receive pay protection?**
It would depend if the organisation considered the role was a suitable alternative role. It is highly unlikely that a role two bands below an employee's current role would be considered a suitable alternative, and therefore pay protection would not be appropriate. However, consideration will be given in certain circumstances based on a cost benefit analysis.
- 18. If an employee wants to reduce their hours and this is agreed through the consultation process will the pay protection be calculated on the higher hours?**
If an employee has requested a reduction to their hours prior to, or during the organisational change process, pay protection will be calculated on the lower hours.
- 19. If an employee at risk successfully applies for a post with more hours than they are currently working how would pay protection be calculated?**
The pay protection would be calculated by using the current average basic pay and deducting the new basic pay.
- 20. If an employee reduces their hours after pay protection has been awarded how will this change impact on their pay protection?**
Pay protection would be recalculated on the basis of the new hours and it would reduce accordingly.

- 21. If an employee then increases their hours would their pay protection be increased to its old former rate?**
No, it would not increase, as this change would not be as a result of organisational change.
- 22. If an employee works excess hours or overtime how would their pay protection be affected?**
The payment of excess hours or overtime would reduce the amount of enhancement protection in payment during the month they were paid.
- 23. If an employee is working in a trial period would their pay be protected?**
When an employee is undertaking a trial period their pay remains on the same band as their previous role. If they normally work unsocial hours but are not working unsocial hours during the trial period they would receive enhancement protection for the period of the Trial.
- 24. When would the pay protection commence in these circumstances?**
The pay protection as a result of the organisation change would not commence until the end of the Trial period when the employee is formally appointed to the role. Enhancement protection would then be paid in line with the enhancement protection period, as though it had commenced on the day of formal appointment.
- 25. An employee on a fixed term contract, in receipt of pay protection applies for a permanent lower band role when his current fixed term contract role is not at risk; would pay protection continue on the new role?**
If an employee chooses to apply for a new role at a lower band and are successful pay protection would cease.
- 26. Pay protection is in payment for a fixed term contract and the employee has been placed at risk. If they apply for a lower graded role now would this be subject to pay protection?**
If the current role is at risk and the employee has been successful in an application for a lower banded role pay protection would apply .
- 27. Pay protection is in payment when an employee applies for a short term secondment; will pay protection continue during the secondment?**
No the employee has applied for the role on their own initiative, so whilst on secondment, pay protection would cease and pay relevant to the secondment would be paid.
- 28. Would pay protection be re-instated when the employee returns to their substantive role?**
If the secondment is for less than one year and the employee is still within the pay protection period at the end of the secondment it would be reinstated. If any pay awards have been made since pay protection was previously received the pay protection would be reduced by the amount of the pay award.
- 29. In these circumstances would pay protection be extended?**
No, pay protection would not be extended.
- 30. An employee was on maternity leave in the three months that their average pay was due to be calculated, would this period still be used to calculate the pay protection?**
In these circumstances average pay would be calculated using the enhancements the employee worked in the three months prior to the maternity leave. These would need to be adjusted to reflect the current rate of pay prior to the change.
- 31. An employee is due to commence maternity leave four months after their pay protection commences, will pay protection be taken into account when the Maternity pay is calculated?**
If pay protection is in payment when an employee's average earnings for maternity purposes is calculated, it would be taken into account. If it commences after the months used to calculate

maternity pay, it would not be taken into account because maternity pay would have already been calculated using the higher rate of pay.

32. An employee is still within their pay protection period when they are due to return to work from maternity leave; will the amount of pay protection be adjusted in any way?

When they return to work their pay protection would be reduced by the amount of any pay increase they have received.

33. Would the period of pay protection be extended by the period they have been away from work due to maternity leave?

No, the pay protection period would not be extended.

34. Does pay protection remain in payment during the period of any sickness?

Pay protection in respect of basic pay remains in payment. Pay protection in respect of enhancements does not. For employee's on points 1 to 8 (up to top of the Band 2) of the AfC scale, the enhancement protection would be taken into account when the AfC Average pay is calculated, but for employee's on point 9 (Fourth point of band 3) or above it would not.

35. If the sickness is due to an injury at work or work related illness does the same apply

In these circumstances enhancement protection would be taken into account when the AfC Average pay is calculated.

36. Can pay protection be extended because someone has been on a career break?

No, pay protection does not get extended in these circumstances.

37. Pay protection is in payment and the role is due to TUPE into another organisation will pay protection continue?

If the employee transfers from one employer to another as a result of a TUPE transfer, pay protection would remain in payment until the end of the pay protection period or salary increases removes the need for pay protection, whichever is the sooner date.