**Protection of Pay and Conditions of Service Policy**

**Table of Contents:**

1. Quick Reference Guide
2. Scope
3. Voluntary Transfer and Promotions
4. Transfers of Post Following Organisational Change
	1. Protection of Banding
	2. Other Conditions of Service
5. Changes in Earnings
6. Other Circumstances
7. Preservation of NHS Pension Scheme
8. Definitions
9. Confidentiality
10. Equality Impact Assessment for Policies

|  |
| --- |
| **Version Data** |
| 1 | Deputy Director of OD and People | October 2000 | New Policy |
| 1.5 | Deputy Director of OD and People | January 2020 | General Policy refresh. No significant content change |
|  | Head of ER and Policy | July 2023 | Policy Reviewed for process and legal compliance. No changes. |

**1. Quick Reference Guide**

It is the aim of Salisbury NHS Foundation Trust to provide secure employment to all of its employees.  Compulsory redundancy is to be avoided where possible.

This policy aims to ensure that members of staff who experience changes to their employment as a result of organisational change are given adequate formal notice of the change proposed and alternatively compensated for any resultant loss of earnings, changes in basic pay and adverse changes in conditions of employment.

NB. This policy does not apply where the introduction of changes in national terms and conditions of employment have an adverse effect on an individual or group (e.g. the introduction of ‘Agenda for Change').

Organisational change for Agenda for Change staff, that includes re-profiling of a service, will be undertaken in accordance with the principles of Annex 24 of the national terms and conditions.

**2.  Scope**

This policy applies to Trust employees. This policy does not discriminate and applies to all protected characteristics under the Equality Act 2010.

**3. Voluntary Transfer and Promotions**

Normally, staff who voluntarily apply for and are appointed to posts within the Trust will transfer to those posts in accordance with the conditions of employment relevant to the post, including guidelines for setting starting salaries.

Where it is in the interest of the Trust to encourage a member of staff to take such a step, individual protection will be negotiated; (the individual may involve their Trade Union Representative within such a process if they wish).

**4. Transfers of Post Following Organisational Change**

Where changes in the organisation of a service result in an individual transferring to a post at a lower band, protection will be offered.  Protection will not apply where such a transfer is through individual choice in preference to accepting another post which is at the same band as the original post.

Where as a result of NHS re-organisation, staff transfer to another employer/s under the provisions of the Transfer of Undertakings (Protection of Employment) Act or a Transfer Order, their protection under this policy will continue.

The length of protection, the salary on transfer and any measures to protect particular conditions of employment will be determined by taking into account the circumstances of the move, and any differences in conditions of employment between the original post and new post.

Psychological and emotional support is available through the Occupational Health Department and staff will be signposted to this.

**4.1 Protection of Banding**

4.1.1 When salary scales in the old and new bands overlap, and the individual’s salary point is:

* The same as a point available in the new scale; the individual should be transferred to the new scale, retaining their existing incremental date.
* Between two points on the new scale - an off-scale payment will be made until the next incremental date is reached.

4.1.2 Where the current basic salary is above the top of scale in the new scale, the current basic salary will be frozen and protected on a 'mark time' basis until the top of the scale salary in the new post has caught up, subject to the following maximum periods of protection:

Service with the Trust at the original band, or a higher band, at the commencement of protection of band:

* Up to 1 year - 3 months protection
* Over 1 year up to 3 years - 6 months protection
* 3 years to 5 years - 1 year protection
* More than 5 years - 2 years protection

4.1.3 At the end of the period of protection, in cases where the salary has not caught up, the individual should be placed on the top point of the new salary scale.

**NB**. NHS service that has been counted for the purpose of the payment of redundancy pay cannot be counted towards protection under paragraphs 4.1 or 5.

**4.2 Other Conditions of Service**

Individuals will take up the conditions of service relevant to the new post at the time of transfer.  Where a change in post results in a move to a post of lower band in which the total package of conditions of employment (including holiday entitlement, basic working week etc.) is less favourable than that of the original post, consideration will be given to a level of temporary protection or compensation.

In no cases will the length or level of such protection exceed the terms detailed in Paragraph 4.1 above.

**5. Changes in Earnings**

Where changes are made to individual's post, which are beyond normal flexibility expected within existing contracts of employment and by doing so the earnings received by that individual reduce, the following protection will apply:

Service with the Trust at the commencement of pay protection

* Up to 1 year - no protection
* Over 1 year to 3 years - 3 months protection
* Over 3 years - 6 months protection

In such cases the protected earnings will be based on average earnings over the preceding 12 weeks. (NB. On occasions it will be more appropriate to base average earnings on a period other than 12 weeks in order to establish a true average, e.g. the period of a shift or on-call rota may be a more appropriate period.

Where this is believed to be the case, a different period will be determined following discussions involving the individual and/or their Trade Union Representative.

Individuals will be expected to undertake any overtime, shift work or additional duties at the appropriate rate, which may be available and reasonably required of them and which may boost earnings towards the level previously enjoyed.

It will be reasonable to expect an individual to undertake such duties where they formed part of the pattern of work of the post prior to the changes, or where they are part of the pattern of work of the new post. This will be dependent on the individual’s personal circumstances to undertake such duties

In some cases individuals will suffer both a reduction in earnings and a reduction in band.  In such cases shorter term protection (Paragraph 5) will be followed by any remaining period of longer-term protection (Paragraph 4.1)

Employees who previously worked for organisations other than the Trust but who transferred to Trust employment under the TUPE regulations or a Transfer Order will be able to count such previous employment as "Service with the Trust" for the purpose of this policy.

The period of protection will apply from the date of the change that is to occur to the employees post.

**6. Other Circumstances**

Individuals affected by Organisational Change must reasonably seek opportunities to apply for vacant posts within the Trust that are at a higher band than the new post and that they would be considered suitable applicants for.  In cases where their manager has brought such a post to the notice of an individual, and they have failed to make a serious application, or to accept the post if offered, the period of protection will be considered at an end.

The Trust recognises that circumstances may arise where it is necessary to determine specific arrangements to deal with specific circumstances.

The Trust retains the right to vary the provisions detailed above where this is not to the detriment of the individual(s) concerned, following consultation with Trade Union Representatives.

**7. Preservation of NHS Pension Scheme**

Members of the NHS Pension Scheme whose earnings are reduced by Organisational Change, and who have been in the Pension Scheme for at least two years have the choice to preserve benefits.  This choice must be exercised within three months of the change taking place, and therefore it is essential that they contact the Trust's Pension Officer promptly for advice.

**8. Definitions**

**Lower Band/Higher Band**

A post of lower band is one where the top of the salary scale is below the top of the salary scale of the original post at the time of the move.  A post of a higher band is one where the top of the salary scale is above the top of the salary scale of the original post at the time of the move.

**Basic Salary**

Basic salary is the monthly sum due in respect of basic hours worked by the individual concerned, within the standard working week for that staff group.

Excluded are any payments made in respect of acting up, standby and on-call duty, and payments listed for the purpose of protection of average earnings detailed below.

**Average Earnings**

Average earnings are the basic salary plus the weekly or monthly average over the 12 weeks immediately preceding the first day of employment in the new post, of additional earnings due to payment for the following:

* Overtime
* Recruitment or Retention Premia

Plus any allowances for

* Unsocial hours
* Stand-by and on-call duty

**Service with the Trust**

Service with the Trust means continuous service, without a break of greater than three calendar months, immediately prior to the date when the change occurs.

Employees who have been transferred to the employment of the Trust as a result of a Transfer of Undertakings or a Transfer Order will be able to count employment with their previous employer towards this total.

**9. Confidentiality**

Information relating to employees affected by organisational change will be handled in accordance with the Trust’s Information Governance and Data Protection Policies and Procedures.

Where staff are transferred to another NHS organisation, information released to the new employer will be appropriate to the transfer

Information retained by the Trust concerning employees will be collated and securely stored for the appropriate retention period and destroyed by confidential means in line with NHS guidance

**10. Equality Impact Assessment for Policies**

Salisbury NHS Foundation Trust aims to design and implement services and policies that meet the diverse needs of its services, population and workforce, ensuring that none are placed at a disadvantage over others

This document has been assessed against the Trust’s Equality Impact Assessment Tool which was presented to the ratifying committee.

|  |  |
| --- | --- |
| **Post Holder /Author Responsible for Policy:** | Head of ER & Policy |
| **Date Revised:** | July 2023 |
| **Approved By:** |  JCC July 2023 |
| **Ratified by:** |   |
| **Next Due for Review:** | October 2026 |