

PROTECTION OF PAY AND CONDITIONS OF SERVICE**POLICY NO 10****Introduction**

1. The Oxford Radcliffe Hospitals Trust believes that it is essential to the success of the Trust to be able to identify the need for change and to manage that change, taking into account organisational objectives as well as the aspirations and wellbeing of its staff. It is, therefore, the intention of the Trust to provide arrangements for safeguarding the pay and conditions of service of staff adversely affected by organisational change as an alternative to redundancy and early retirement.

Scope

2. The terms of this agreement apply to all employees of the Oxford Radcliffe Hospitals NHS Trust who, as a consequence of organisational change are:-
 - a. Downgraded, or
 - b. Required to move to a post with a lower remuneration package, or
 - c. Required to move to a new post where full-time hours have been affected by Agenda for Change (ref Agenda for Change Handbook - paragraph 46.31), or
 - d. Required to move to a new post whilst on Agenda for Change protection.
3. It provides for:-
 - a. Long-term protection of basic wage or salary where downgrading is involved
 - b. Protection of certain other conditions of service, eg annual leave, sick leave, maternity leave.
 - c. Short-term protection of contractual and regular payments and allowances, whether or not downgrading is involved. eg, rostered overtime, unsocial hours, stand-by, on-call duty, recruitment and retention premia.
 - d. Where the employee works fewer hours in the new post short-term protection of pay and allowances will be based on the hours worked in the new post plus up to 10% of the hours worked on the old post.
4. Special protection arrangements are in place for Agenda for Change assimilation (ref Agenda for Change Handbook, paragraph 46.27)

Monitoring Period

5. This agreement shall be effective from 20 August 2009 and will be reviewed every three years.

Definitions of Terms used in the Agreement

6. *Organisational Change* - means any structural or managerial change in the Oxford Radcliffe Hospitals NHS Trust.
7. *New Post* - as defined in the circumstances described in paragraph 2.

8. *Protectable earnings, basic wage or salary* - the weekly or monthly sum due in respect of basic hours worked by the individual concerned, within the standard working week, reckoned on the day immediately preceding the first day of employment in the new post plus additional contracted allowances. This is based on an average calculated over a four month period immediately preceding the first day of appointment in the new post. *Allowances include contracted overtime and contracted on call payments.*
9. *Earnings in the new post* -the sum of the basic wage or salary in the new post plus additional regular allowances as specified:
 - a. Contracted overtime
 - b. Contracted on call and standby
 - c. Contracted unsocial hours
 - d. Recruitment and Retention premium
10. *Downgrading* - occurs when the post, irrespective of its job title, is a lower band than the previous post.
11. *A more senior post* - is a post which is of a higher band than the previous post.
12. *Suitable Alternative Employment* - is alternative employment which is sought and/or offered to a post holder as a result of organisational change. The alternative post is considered suitable if it is similar compared against existing terms and conditions of employment, eg type of contract, hours, and the requirements of the new role, eg qualifications and training, and is the same or normally not more than one band higher or lower than the existing post.
13. If suitable alternative employment is rejected by an employee, redundancy is not payable should the employment contract be subsequently terminated.
14. *Reckonable service* - is total aggregated service within the NHS. This includes employment break schemes, eg career breaks, but excludes service which has been the subject of a redundancy payment, or any other compensatory or terminal payment (ref AfC T&C paragraph 16.3 and 16.4)
15. *Marking time* - an employee will remain on their current salary and receive the annual cost of living rise, but will not receive any incremental rise for:
 - a. the duration of the period of protection, or
 - b. until the total level of pay in the new post exceeds the value of the protected pay, or
 - c. until the employee changes job voluntarily (whichever is the sooner) at which point the new salary and terms will apply.

Protection of Earnings

Short-term Protection

16. Short-term protection relates to payments which form a regular or contractual part of the job (see paras 3 and 9). They will be eligible for protection on a mark time basis, as in Table A.
17. Short term protection of earnings is triggered when the total pay and allowances of the new post are less than the earnings in the old post based on a four month average.
18. In calculating earnings in the new post, the rates used for calculating payments in respect of contracted and other additional duties shall be those applicable to the new post.
19. Pay, in any pay period, will be the higher of the pay in the new post or the protected pay.

Long-term Protection

20. Long-term protection of basic wage or salary is used where downgrading is involved. It is triggered when the banding of the new post is lower than the post occupied by the individual before the organisational change.
21. Basic pay in the former post is protected for a period of time in accordance with Table A.
22. Staff are entitled to protection of basic wage or salary, with the benefit of any subsequent improvements, including annual cost of living and incremental rises, until:
 - a. the period specified for protection expires, or
 - b. the individual is appointed to a post where the basic wage or salary is equal to or exceeds the protected basic wage or salary, or
 - c. the individual moves to a lower paid post of his/her own volition.
23. If the period of protection expires before b) or c) above, the protection will continue on a mark-time basis, ie the employee will remain on the same incremental point and will receive the annual cost of living increase.
24. Long-term protection of basic wage or salary where downgrading is involved is conditional on the individual undertaking to accept a subsequent offer of suitable alternative employment at the equivalent of the protected band or a higher graded post, within the Trust, should one become available.
25. The salary would be at the individual's original pay point before the downgrading.

26. If an employee unreasonably refuses to apply for or to accept a more suitable senior post, s/he will forfeit their right to protection.

Reckonable Service	Short Term Protection Period	Long Term Protection Period
0 to less than 4 months	Notice Period *	0
4 to less than 12 months	"	0
1 to less than 2 years	"	3 months
2 to less than 3 years	"	6 months
3 to less than 4 years	"	9 months
4 to less than 5 years	"	12 months
5 or more years	"	24 months

Table A

**Contractual or statutory, whichever is the greater. Statutory is 1 week per complete year of service up to 12 years.*

Arrangements under Agenda for Change (AfC)

27. If, as a result of organisational change, a member of staff is downgraded and is already in receipt of AfC protection, the AfC protection remains in place. The AfC protection applies until 2011.

Interaction between short-term and long-term protection

28. An employee with a right to long-term protection will also have a concurrent right to short-term protection. The employee shall be paid on the basis of whichever conditions are the more favourable to the employee.

Period of Notice

29. Staff required to move to a new post are entitled to retain the period of notice appropriate to the former post during the protection period.

Hours

30. Staff will work the hours appropriate to the new post. If hours are protected under the short term AfC assimilation arrangements, staff retain the right to continue with their AfC protected hours until the AfC expiry date is reached. (Ref Agenda for Change handbook paragraph 46.31)

Pension

31. In order to ensure receipt of the maximum possible pension, an employee whose earnings are reduced as a result of organisational change must request that their membership of the pension scheme at the higher rate of pay be treated as preserved membership (see appendix 1 attached). This may occur at the end of a protection period. Staff are advised to seek advice from the Pensions Officer at University Hospitals Birmingham NHS Foundation Trust (UHB), 0121 627 2787, immediately, or contact orh.payroll@uhb.nhs.uk.

32. The request must be in writing to the Pensions Officer, copied to the HR Department WITHIN ONE MONTH of pay going down. For those who are in protection under Agenda for Change, preserved membership is automatic.

33. If subsequently the employee is promoted, the preserved membership will automatically be converted to service at the higher rate of pay.

Appeals

34. Any appeal arising out of the application of this agreement shall be heard under the Trust's Grievance Procedure.

Appendix 1 - Template letter requesting preserved membership

20 August 2009

APPENDIX 1
Template Letter

Pensions Dept
2nd Floor Office
Norton Court
Birmingham Women’s Hospital
Metchley Park Road
Edgbaston
Birmingham
B14 2TG

Date:

Dear Pensions Officer

Re: REQUEST FOR PRESERVED MEMBERSHIP

Under the Protection of Pay and Conditions of Service Policy (No 10) I write to request preserved membership of the pension scheme.

As a result of organisational change, my earnings are reduced and I request membership at the higher rate of pay.

My pay before organisational change was £.....at band.....
My current pay is £.....at band.....
The change took effect on.....

Yours sincerely

NAME IN CAPS
PAYROLL NUMBER
Oxford Radcliffe Hospitals NHS Trust

Copy to the HR Advisor, HR Department, Oxford Radcliffe Hospitals NHS Trust,
Carillion Building, John Radcliffe Hospital, Headley Way, Oxford , OX3 9DU

For ORH HR Office use:
Date received and filed.....