

## Management of Change Policy

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### **REVIEW DATES AND DETAILS OF CHANGES MADE DURING THE REVIEW**

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April 2024 Amendment to the Management of Change Policy to include legislative update to cover Protection from Redundancy (Pregnancy and Family Leave) Act 2023 - 6 April 2024

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### **KEY WORDS**

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Organisational change, Change management, Consultation, 'At risk', Redundancy, 'Ring fencing', Suitable alternative employment, Pay protection.

## **1 INTRODUCTION AND OVERVIEW**

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- 1.1** This document sets out the University Hospitals of Leicester (UHL) NHS Trust's Policies and Procedures for the management of changes which affect staff and their existing contracts of employment.
- 1.2** In four appendices it describes the procedures to be followed and the provisions applicable in relation to:
- (a) Consultation Procedure;
  - (b) Protection of Pay and Conditions of Service;
  - (c) Redundancy and Redeployment;
  - (d) Staff Selection Procedures Where Staffing Requirements Change as a Consequence of Organisation Change.

## **2 POLICY SCOPE**

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Who does this policy apply to?

- 21** These policies must be followed in all instances where organisational or service changes have implications for staff and their existing contracts of employment.
- 22** The provisions of these policies apply to all UHL employees but not to workers or self-employed/contractors working for the Trust.

## **3 DEFINITIONS AND ABBREVIATIONS**

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### **3.1 Re. Policy for the Management of Change**

3.1.1 “Feasibility in outline has been established” means when a proposed change is deemed possible and practical, but not necessarily inevitable, and is consistent with informing staff ‘at the earliest practicable opportunity’ but ‘before decisions are taken’.

### **3.2 Re. Appendix A, ‘Consultation Procedure’**

3.2.1 “Listening into Action” (LiA) is the Trust’s standard methodology for engaging and empowering staff in the process of change, using structured forums to enable the staff affected to be able to comment on and influence proposed changes.

### **3.3 Re. Appendix B, Protection of Pay and Conditions of Service**

- 3.3.1 "Basic wage or salary" is the weekly or monthly sum due in respect of basic hours worked in accordance with an individual's contract of employment together with any fixed payments or allowances that are regarded as part of the normal basic weekly/monthly pay.
- 3.3.2 "Average pay" is the average of all earnings (basic wage or salary, plus any of the Allowances listed in Appendix B.1) received during the three months immediately preceding the first day of employment in the new post.
- 3.3.3 "Protected Earnings" (for short-term protection) is the basic wage or salary plus:-
- i) any payment or allowance which would be part of the normal contracted pay averaged over a normal roster period or
  - ii) the weekly or monthly average earnings calculated over 3 months. Appendix B.1 sets out the payments and allowances which may be protected, when they have also been paid within the reference period in respect of duties which were a regular requirement of the post
- 3.3.4 "Reckonable Service" is total continuous service with the Trust or elsewhere in the NHS, unless this service has already been counted towards a redundancy payment, or other compensatory payment.

A break in service of less than 12 months will not be regarded as a break in service. A career break (taken in accordance with the provisions of the Trust's "Career Break Scheme") will not count as a break in service, but the time spent on the break will not count as reckonable service.

- 3.3.5 "Earnings in the new post" means the total wage or salary of the new post and including any other remuneration, e.g. overtime, shift work, and other additional duties. – See Appendix B.1.
- 3.3.6 "Downgrading" occurs when the new post, irrespective of its band title, carries an hourly rate, or a salary scale with a maximum point, lower than that applying to the post held previously, or lower than that of the personal band held in the previous post.
- 3.3.7 "A more senior post" is a post which carries an hourly rate, or a salary scale with a maximum point, higher than that applying to the new post or any subsequent post to which an employee may have moved.
- 3.3.8 "Suitable alternative employment" A post which may not be in the same band or attract the same rate of pay as the individual's previous appointment. The employee's qualifications, experience and skills should, however, match the person specification for the new post. In addition, the new place of work should be within reasonable travelling distance of the former location.
- 3.3.9 "'Mark time' basis" means that the equivalent of the basic wage or salary paid in the post which is being relinquished will continue to be paid in the new post, but will not attract any general pay awards/increases which become payable during the protection period.

## **3.4 Re. Appendix C, Redundancy and Redeployment**

3.4.1 **“At Risk”** - an “at risk” employee is any employee whose current post may change significantly or disappear as a result of workforce changes resulting from the organisational change, i.e. the post is at risk of redundancy.

## **4 ROLES – WHO DOES WHAT**

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### **4.1 Chief People Officer**

Is the Executive Lead for this policy and ensuring the development and implementation of appropriate guidance in order to enable the effective management of change, including helping to mitigate the impact on the staff affected.

### **4.2 People Partners/HR Advisors/People Services Department**

To assist line managers to conduct ‘local’ consultations and negotiations in the spirit of the Agreement, in order to promote partnership working.

### **4.3 Line Managers**

To lead the consultation process about proposed changes and be receptive to any alternatives which may be suggested.

To support staff through consultation and change processes, and especially staff who are declared “At Risk”; generally, to seek to mitigate the impact of any changes on staff.

### **4.4 Employees**

To engage in consultations about any proposed changes.

To co-operate with changes which are being managed in accordance with these policies.

### **4.5 Trades Unions and Professional Organisations**

To help ensure that this policy (and associated provisions and procedures) is followed as necessary, as appropriate.

To advise their members of their rights/entitlements and obligations under this policy (and associated provisions and procedures).

### **4.6 Occupational Health and AMICA Services**

To provide additional support to staff, as requested by employees (and/ or manager’s in the case of Occupational Health services) to support the health and wellbeing of employees and managers affected by workforce change, as required.

## **5. POLICY IMPLEMENTATION AND ASSOCIATED DOCUMENTS**

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5.1 This policies has two main aims:

- to help ensure that the Trust undertakes the management of change in a manner which is compliant with its statutory and contractual obligations;
- to provide transparency in relation to the processes for managing change to help ensure that the staff affected are dealt with equally and fairly.

- 5.2 The Trust will pursue any changes to its organisation and practices as are necessary to develop and improve services to patients and the public and make the most efficient use of available resources.
- 5.3 The Trust recognises that any changes required will be achieved most effectively with the understanding and co-operation of its staff and that this will be most likely forthcoming if staff are informed and involved in proposals for change at the earliest practicable opportunity. This will generally be regarded as the point at which *feasibility in outline* has been established.
- 5.4 The Trust will enter into consultation with recognised staff professional organisations and trades unions before decisions are taken with a view, wherever practicable, to arriving at a joint agreement.
- 5.5 The Trust will seek to introduce and effect change by agreement, but also to establish a climate within the organisation which actively encourages staff at all levels to participate in and to support change.
- 5.6 The Trust also accepts that it has a responsibility to maximise the employment security of its staff, as far as this is possible and consistent with operational efficiency. There can be no guarantees, however, that organisational or service changes will not result in changed staffing requirements. The following provisions and procedures are intended to minimise the effects of such changes:
- (a) Consultation Procedure
  - (b) Staff Selection Procedures Where Staffing Requirements Change as a Consequence of Organisation Change
  - (c) Redundancy and Redeployment
  - (d) Protection of Pay and Conditions of Service

## **Associated Documents – Trust Resolution Policy and Procedure (B39/2020)**

### **6 EDUCATION AND TRAINING REQUIREMENTS**

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The policy will be implemented via the HR Generalist Team and support will be provided to managers as required. Specific training in this policy and procedure is not necessary. The policy is available on INsite.

### **7 PROCESS FOR MONITORING COMPLIANCE**

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- 7.1 To ensure consistency and sustainability of the management of change policy, workforce change must be recorded.
- 7.2 Template documentation is available for managers to use to ensure consistency of approach. Spot check audits may be undertaken at the request of People Services or the CMG Management Team.

7.3 Where monitoring has identified deficiencies, there must be evidence that recommendations and appropriate action plans have been developed and put in place for future use. This will be undertaken by the Line Manager with the support of the HR Generalist Team changes implemented accordingly.

#### **POLICY MONITORING TABLE**

<b>What key element(s) need(s) monitoring as per local approved policy or guidance?</b>	<b>Who will lead on this aspect of monitoring? Name the lead and what is the role of other professional groups</b>	<b>What tool will be used to monitor/check/observe/asses/inspect Authenticate that everything is working according to this key element from the approved policy?</b>	<b>How often is the need to monitor each element? How often is the need complete a report ? How often is the need to share the report?</b>	<b>How will each report be interrogated to identify the required actions and how thoroughly should this be documented in e.g. meeting minutes.</b>
<b>Timely and effective consultation.</b>	People Partner Lead/Lead Line Manager	Monitoring progress against MOC project plan	On-going	CMG Boards. Possibly (by escalation) through the Joint Staff Consultation and Negotiation Committee (JSCNC).
<b>Mitigation of potential redundancies.</b>	People Partner Lead/Lead Line Manager	Monitoring against redundancy 'pre-approvals'	On-going	CMG Boards. Possibly (by escalation) through the JSCNC
<b>'Pay protection' calculations.</b>	Payroll	'Pay protection' calculations.	Calculations for each occurrence. May be subject to Payroll Audit	ESR Team (via Payroll Services contract)
<b>'Pay protection' duration.</b>	Workforce Information/ People Partner Lead	Monthly report about staff in receipt	Monthly reports reviewed and progressed by People Partner Leads	People Partner Leads
<b>Redundancy payment calculations.</b>	Payroll	Redundancy payment calculations.	Calculations for each occurrence. May be subject to Payroll Audit	ESR Team (via Payroll Services contract)
<b>Grievances raised by staff affected.</b>	People Partner Lead/ Lead Line Manager	Grievances lodged	Progressed through Grievance escalation process	CMG Boards. Possibly (by escalation) through the JSCNC

## **8 EQUALITY IMPACT ASSESSMENT**

- 8.1 The Trust recognises the diversity of the local community it serves. Our aim therefore is to provide a safe environment free from discrimination and treat all individuals fairly with dignity and appropriately according to their needs.
- 8.2 As part of its development, this policy and its impact on equality have been reviewed and no detriment was identified.

## **9 SUPPORTING REFERENCES, EVIDENCE BASE AND RELATED POLICIES**

Trade Union and Labour Relations (Consolidation) Act 1992, Part IV Industrial Relations, Chapter 2 Procedure For Handling Redundancies

Employment Rights Act 1996, Part XI, Chapter II Right on dismissal by reason of redundancy

The Trust's 'Facilities And Time Off For Accredited Representatives And Members Of Trade Unions And Professional Organisations Agreement' (*ref. B20/2014*)

The Trust's 'Trade Union and Professional Organisation Recognition Agreement' (*ref. B24/2011*)

NHS Terms And Conditions Of Service Handbook ('Agenda for Change'), Section 16(a) (England): Redundancy pay

NHS Terms And Conditions Of Service Handbook ('Agenda for Change'), Section 12: Contractual continuity of service

## **10 PROCESS FOR VERSION CONTROL, DOCUMENT ARCHIVING AND REVIEW**

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This policy and procedure supersedes the UHL Management of Change Policy December 2015. The policy will be reviewed by People Services in March 2025 or sooner should significant changes be required.

The updated version of the Policy will then be uploaded and available through INsite Documents and the Trust's externally-accessible Freedom of Information publication scheme. It will be archived through the Trust's PAGL system.



## **APPENDIX A**

### **CONSULTATION PROCEDURE**

#### **1. SCOPE AND CONTEXT**

- 1.1 The consultation procedures in this document should be read in conjunction with the 'Management of Change' policy (*ref. A1/2009*), and also the UHL Trade Union and Professional Organisation Recognition Agreement (*ref. B24/2011*). The Recognition Agreement specifically states that the UHL Staff Side should be consulted about "strategic planning decisions, including the allocation of resources".
- 1.2 Legislation provides specific consultation arrangements where proposed changes indicate potential collective redundancies. Additional Trust arrangements for consultation in these circumstances are outlined in the Redundancy and Redeployment document. This document will guide the principles of consultation arrangements undertaken by UHL.
- 1.3 The degree, timescales, complexity and impact of proposed changes will vary widely. The principle is that consultation should begin at the stage where the Trust is formally addressing an issue and identifying options rather than later at the implementation stage. It is acknowledged that there are circumstances where the timescales are extremely short and therefore situations where the degree of consultation, in addition to any statutory timescales, may be limited. The consultation procedure should be used in the context of the change being discussed.
- 1.4 Where changes are proposed which affect staff and trigger the Trust's obligation to consult, Management will normally provide accredited representatives with information in advance of a general release of information to the staff affected. It benefits all sides for representatives to be briefed confidentially in such situations, and representatives will respect the confidentiality of such communication.
- 1.5 The Trust recognises the key role that Trade Unions and Professional Organisations play in regard to meaningful consultation. The Trust's "Time off and Facilities Agreement" (*ref. B20/2014*) outlines the basic principles of allowed time off, but in Management of Change situations it will be necessary for local managers and local staff representatives to agree the details of how much time is required to ensure that the staff side representatives are able to fully engage with the consultation process to the benefit of the UHL and affected employees.

#### **2. PURPOSE**

- 2.1 The provisions for the Management of Change exist so that good working relationships can be maintained between UHL and all employees, even in times of rapid or significant change. The greater the level of consultation with staff about changes in demand, workload, organisational methods and other factors which may potentially affect their jobs, the higher morale will be amongst the workforce.
- 2.2 Consultation means that staff in departments experiencing change in demand, workload, techniques or other issues liable to lead to changes in organisation or staffing arrangements should be consulted about the problems, not just the

solutions, devising solutions, testing and selection of possible solutions, decision making and then implementation of the solutions. Consultation is only meaningful if the views submitted during consultation are seen to be considered and responded to.

- 2.3 Early, thorough and meaningful consultation makes it likely that the best solutions to organisational problems will be found, often by the affected staff themselves, and that staff will respond more positively to whatever solution is eventually chosen.

### **3. PHASES AND METHODS OF CONSULTATION**

- 3.1 As stated in 1.2 above, the scope and method of consultation will depend on the issue and proposed change. However, the principle is that the Trust will enter into discussions with affected groups of staff, through their recognised Trade Unions and Professional Organisations, where it is formally addressing issues with a view to change. The manager leading the proposed change should discuss with a view to agreeing the consultation process to be followed. The reasons for considering organisational change should be given to the Staff Side representatives of the affected staff. Time will be allowed for the Staff Side representatives to consult with their members who are directly affected by the change, in order to bring back to the Trust a response to the issues raised bearing in mind the context and in relation to section 1.3.
- 3.2 Where practicable, employees will be involved in discussing organisational problems within their areas in order to gain assistance in finding a solution(s). As part of this there will also be discussion with recognised Trade Unions and Professional Organisations.
- 3.3 If the proposed change impacts on 20 or more staff a 'Listening into Action' (LiA) Engagement event will be held, which the staff affected will be encouraged to attend (subject to service needs). The exceptions to this will be (a) if the change relates to a ward/service movement with no fundamental change to the service provided to patients or service users; or (b) if holding the event would lead to a significant delay in the implementation of the change impacting on Trust performance and finances. The decision to not hold a LiA Engagement event will be taken by the CMG Lead or corporate equivalent, supported by the People Partner or Head of People Services.
- 3.4 Once a decision has been made, the reasons for that decision will be communicated to staff and a process of an agreed period of consultation, where appropriate, will then commence. This formal consultation period will then allow staff to indicate any difficulties they may have in complying with the proposed change by one to one interviews and allow managers to accommodate those or modify the proposal.
- 3.5 Where potential change issues affect numbers of staff, across disparate sites or organisational/management units, it may be more appropriate for the consultation to take place at a corporate level, with the UHL Staff Side formally involved. This will be the case if either the relevant managers or the Staff Side representatives involved feel it would be more appropriate to manage the process corporately.

## **APPENDIX B**

## **PROTECTION OF PAY AND CONDITIONS OF SERVICE**

### **1. Introduction**

- 1.1 The purpose of having a “pay protection” facility is to facilitate the introduction of organisational change by mitigating any immediate financial consequences of the change for the staff affected.
- 1.2 The Pay Protection provisions provides for the Trust to protect earnings for employees who will have a reduction in earnings if redeployed for organisational change reasons to a different post. Protection will apply where the Trust defines the position as suitable alternative employment in terms of the costs involved. In determining this, the Trust will consider the actual amount of protection involved, including amount and length of protection and will consider whether this is reasonable in relation to the alternative cost of severance payment.

### **2. Application**

These provisions apply to any employee (as defined within the scope of the Management of Change Policy) who, as a consequence of organisational or service changes, is required by management to move to a new post or who suffers a reduction in earnings within his or her contracted working week. It provides for:

- a) short-term protection of overall earnings whether or not down-grading is involved
- b) long-term protection of the basic wage or salary where down-grading is involved

### **3. Short Term Protection of Earnings**

- 3.1 The employee’s earnings are protected at the monthly average pay level based on the three months immediately preceding the first day of employment in the new post or the effective date of change. Short-term protection will be recalculated in the event of a retroactive pay award.

<u>Reckonable Service</u>	<u>Protection Period</u>
2+ years	6 months

- 3.2. If for any pay period (weekly or monthly) the earnings in the new post exceed the protected earnings, then the employee will receive the earnings in the new post for that period.
- 3.3 When calculating earnings in the new post, the rates used for calculating payments in respect of overtime, shift work and other additional duties shall be those applicable to the new post.

### **4. Conditions**

- 4.1 Short-term protection of earnings is conditional on the employee undertaking any reasonable overtime, shift work, or other additional duties which may be required up to the level at which earnings in the new post equal the protected earnings.
- 4.2 Short-term protection of earnings is also conditional on the employee accepting any subsequent offer of another suitable employment post with the Trust which attracts a basic wage or salary greater than the basic wage or salary applying to the new post. Where the basic wage or salary (and any additional earnings) in the new post falls below the protected level of previous average earnings, short-term protection will continue to apply up to the time-limit specified.

## **5. Long Term Protection of Basic Wage or Salary**

- 5.1 An employee who is moved from one post to another and is down-graded as a result of the move will be entitled to protection of basic wage or salary on a "mark time" basis, specified as follows:

<u>Reckonable Service</u>	<u>Protection Period</u>
2+ years	1 year

- 5.2 When an employee is moved to a new post at a lower band and the hours in the new post are the same or fewer than before, long-term protection entitlement is assessed on the basis of actual hours worked in the new post paid at the hourly rate applicable to the previous post (i.e. it is the basic rate of pay in the old post that is protected, not the number of hours)

- 5.3 If the hours in the new post exceed hours worked previously, long-term protection entitlement is based on:

(hours worked previously) x (rate applicable previously)

- with the additional hours in the new post paid at the rate applicable to the new post.

- 5.4 Any other additional earnings derived from work in the new post will be paid at the rate appropriate to the new post.

- 5.5 All other conditions of employment will be those applying to the new post, not the protected post.

- 5.6 Protection will cease when:

- a) The employee is appointed to a new post at his/her own volition, including a post of a lower band;
- b) the employee leaves the employment of the Trust on his/her own application;
- c) the employee is appointed to a post in which the normal basic wage/salary is equal to or exceeds the protected basic wage or salary.

- 5.7 Pay protection will apply when the existing band and incremental point is higher than the maximum incremental point of the band immediately below to which the staff member has been redeployed.
- 5.8 In the event of a suitable alternative position being identified which is banded at more than one band lower than the existing post, then pay protection will apply for the one band differential (as applicable as per 5.7 above) and the new salary point will be the top of the new pay band to which the employee has been redeployed. This could result in a reduction of overall basic pay for the individual and must therefore be mutually agreed.

## **6. Conditions**

- 6.1 Long-term protection of the basic wage or salary where downgrading is involved is conditional on the employee accepting suitable alternative employment that is offered, should a post become available. If any employee unreasonably refuses to accept a post for which he or she can reasonably be considered to be suitable, entitlement to pay protection will cease forthwith. As part of the communication the employee will be encouraged to be represented by a Trade Union Representative or work colleague.
- 6.2 Where, as a result of organisation change, an employee is required to transfer to a lower banded post or to reduce their contractual hours, then pay protection will apply. Employees are not eligible for pay protection, however, where the change is of their choice or where they are downgraded for other reasons (for example, as the result of disciplinary action).

## **7. Interaction between Short- and Long-term Protection**

An employee to whom both short-term and long-term protection is applicable shall for the duration of the short-term protection be paid on the basis of whichever protection is more favourable. Thereafter payment will be made on the basis of the continuing entitlement to long-term protection.

## **8. Protection of Pension Benefits**

Under existing NHS Superannuation provisions (which are not part of this policy) 1995 Section-only members who suffer a reduction in earnings through no fault of their own, e.g. at the end of a period of pay protection, can apply to have their pension benefits protected at the higher earning level. Such requests must be made within three months of the pay reducing.

**ADDITIONAL EARNINGS ELIGIBLE FOR PROTECTION**

Regular or contracted overtime

Incentive bonus payments or allowances

Special duty payments

Excess hours payments

Radiological Officers' safety allowances

G.U.M. Payments\_

Allowances for:

Night duty

Shift duty

Split duty

Unsocial hours

Stand-by/on-call duty

## **APPENDIX C**

### **REDUNDANCY AND REDEPLOYMENT**

#### **1. Introduction**

- 1.1 The Trust wishes to act fairly in situations where organisational change may result in a reduction in the number of posts required. This procedure aims, wherever possible, to avoid redundancies or, if these are unavoidable, to deal with them in a fair, consistent and sympathetic manner with regard to the individuals concerned.
- 1.2 Where organisational or service changes could result in altered staffing levels/"skill mix"/duties and a possible redundancy situation, the Chief People Officer should be notified.
- 1.3 Trust Management will inform the Staff Side Chair and the staff concerned as soon as possible of the department(s), job numbers and bands of staff who are potentially affected.

#### **2. Consultation with Staff Organisations**

- 2.1 Where proposed changes in staff requirements indicate potential redundancies, the Trust will consult with and inform the staff affected (i.e. the staff "At Risk") and also inform and consult with recognised staff organisations, in accordance with its statutory obligations and the principles and process set out in the Consultation Procedure.
- 2.2 The Trust is legally obliged to commence consultations with recognised trade unions and professional organisations:
  - at least 30 days before the first dismissal takes effect if 20 to 99 employees are to be made redundant at one establishment over a period of 90 days or less; and at least
  - 45 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.

While there is no minimum period of consultation required in law for less than 20 employees, in such cases it is the Trust's policy to consult for 30 days before the first dismissal takes effect.

As each consultation varies a shorter timeframe can be adhered to, if agreed by management and relevant trade union representatives supporting the staff affected.

- 2.3 Information provided by the Trust will include as a minimum:
  - a) The reasons for the proposed redundancies
  - b) The numbers and descriptions of employees whom it is proposed to dismiss as redundant
  - (c) The total number of employees of any such description employed at the Trust
  - (d) Information about the number of locum/agency workers working in the same staff groups in the areas affected

- (e) The proposed method of carrying out the dismissals with regard to this policy including the period over which the redundancies will take place.
- (f) The proposed method of calculating any redundancy payments, other than those required by statute, that the employer proposes to make.

2.4 The consultation will include discussion about ways of:

- avoiding redundancies;
- reducing the number of employees to be made redundant;
- minimising the consequences of the redundancies;

2.5 This will include consideration of:

- a) Natural wastage
- b) Restrictions on external recruitment or the application of vacancy controls other than where essential to service provision
- c) Reduction in overtime where this is practicable
- d) Redeployment and/or retraining for different work where there is a requirement
- e) Reviewing the use of temporary, fixed term, bank or agency staff
- f) Voluntary reductions in hours of work and /or job share opportunities
- g) Consideration of requests for voluntary redundancy and/or premature retirement where this is considered to be appropriate.

The Trust will consider any representations made by staff professional organisations /trades unions and will reply to those representations; reasons will be given if any representations are rejected.

### 3. **“At Risk” Definition**

An “at risk” employee is any employee whose current post may change significantly or disappear as a result of workforce changes resulting from the organisational change, i.e. the post is at risk of redundancy.

### 4. **Consultation and Support of Staff ‘At Risk’**

4.1 All staff who are ‘At Risk’ will have individual consultation meetings with the appropriate line manager and accompanied by a member of the People Services Department. Staff will be encouraged to be accompanied by an accredited Staff Side representative or by a fellow employee at this meeting, the purpose of which will be to:

- explain the changes in prospect, their origins, and the projected timetable for the anticipated changes in staff requirements
- explain this policy and procedure and how it will be implemented
- ascertain the individual's views in relation to the proposals, future employment, redeployment and re-training and, where appropriate, premature retirement, and to give advice as required in respect of all of these areas
- assist the employee in obtaining specialist advice as required, or to give advice as to where it can be obtained
- advise the individual of internal and external support mechanisms



4.2 The Trust is committed to doing all it can to support staff during the stressful time involved in organisational change. This will include:

- Offering them help and support with completing job application forms or producing a Curriculum Vitae (CV) and providing them with interview practice if they require it
- Ensuring that managers and members of the People Services Department are available throughout the change process, so that staff can discuss any concerns or confusion they may have about the options available to them
- Providing access to AMICA, confidential counselling service, so that staff can discuss their personal concerns with an independent counsellor
- Providing access to the Occupational Health Service to support staff with any personal health and wellbeing factors.

## 5. **Selection for Redundancy**

*Note: The following sections should be read in conjunction with the Trust's policy "Staff Selection Procedures Where Staffing Requirements Change as a Consequence of Organisational Change" ('Management of Change' policy, ref. A1/2009, Appendix D).*

5.1 The Employment Rights Act 1996 (section 139) defines redundancy as:

*'an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to:*

*(a) the fact that his employer has ceased, or intends to cease:*

- (i) to carry on the business for the purposes of which the employee was employed by him, or*
- (ii) to carry on that business in the place where the employee was so employed,*  
*or*

*(b) the fact that the requirements of that business:*

- (i) for employees to carry out work of a particular kind, or*
- (ii) for employees to carry out work of a particular kind in the place where the employee was employed by the employer have ceased or diminished or are expected to cease or diminish.'*

5.2 The Trust is committed to ensuring fair treatment in the selection for redeployment or redundancy, along with its overriding need to ensure the maintenance of operational efficiency.

5.3 In selecting employees for redundancy, the following criteria (not necessarily in this order of priority, see 5.4, below) will be applied within the department or group of departments affected.

- i) Qualifications - Employees not having the necessary statutory qualification for redefined roles and where obtaining the necessary qualification is not possible or cannot be achieved within a reasonable timescale.

- ii) Volunteers for Redundancy - Employees from the identified work area who wish to volunteer for redundancy. Each request will be considered on its individual merits and financial viability and will be strictly at the discretion of the Trust.
  - iii) Skill, Competence and Experience - Employees least able to satisfy the skills, competency and/or experience required for available posts.
  - iv) Performance and Conduct Record - Employees whose work/personal records contain current written warnings (as defined within the Trust's Disciplinary (*ref. A6/2004*) and Improving Performance (Capability) (*ref. B12/2014*) policies and procedures, relating to conduct, capability or performance.
  - v) Attendance - Employees whose personal records contain formal warnings related to sickness absence (i.e. any stage beyond counselling and formal review) as defined in the Trust's Sickness Absence Policy (*ref. B29/2006*)
  - vi) Other Criteria - To be decided in accordance with the particular circumstances.
- 5.4 Management will consult with staff and recognised staff organisations with regard to the actual criteria, and specific measures to be employed, which will then be applied consistently to all of the staff affected.
- 5.5 Accredited Staff side representatives of trades unions or professional organisations directly affected by the redeployment/redundancy exercise will be dealt with in the same way as other staff. Where, however a Staff side representative is selected for redundancy, the date of termination may be deferred where it is agreed that it would be helpful for the representative to continue to represent other members similarly affected.

## **6. Notice of Redundancy**

Those selected for redundancy will be given written notice of their dismissal due to redundancy. The period of notice shall be, as a minimum, that to which they are statutorily entitled.

## **7. Redundancy Payments**

- 7.1 Eligibility for and calculation of redundancy payments will be made in accordance with the individual's contracted entitlements.
- 7.2 Redundancy payments for employees on Agenda for Change Terms and Conditions will be paid in accordance with the arrangements laid out in Section 16 of the Agenda for Change Terms and Conditions Handbook.
- 7.3 Staff must have at least 104 weeks of continuous full-time or part-time service to qualify for a redundancy payment.
- 7.4 In addition, if an individual obtains another post in the National Health Service within four weeks of being made redundant, or refuses to apply for or accept a reasonable offer of suitable alternative employment, then they will cease to be eligible for a redundancy payment.

## **8. Suitable Alternative Employment**

- 8.1 The Trust will do all that is reasonably practicable to redeploy staff “At Risk” into suitable alternative employment. (See 12, below).
- 8.2 At this stage any suitable alternative posts will be identified and “ring-fenced” accordingly. Where posts have been “ring fenced”, applications will only be accepted from those individuals whose posts have been declared “At Risk”. Management will ensure that discussion takes place with regard to how organisational change is to be managed at the earliest opportunity.
- 8.3 Special provisions exist in law for those employees who are pregnant and new mothers on maternity leave when their role is disappearing in its current form. In these circumstances, where there is a suitable vacancy, the employee is entitled to be offered suitable alternative employment before the end of her existing contract. This is applicable from the point that an employee informs their employer that they are pregnant (whether this is done orally or in writing). The duty to offer a suitable vacancy in these circumstances is absolute and means that if suitable alternative employment is available, it must be offered to that woman in preference to any other employee who is similarly affected by the redundancy situation but who is not on maternity leave. The legislation change has extended the redundancy protection period until 18 months after the birth of the child (or adoption placement) for employees returning from maternity leave, adoption leave or shared parental leave.
- 8.4 “Suitable alternative employment” refers to the capacity in which the employee would be employed. Suitable alternative employment may not necessarily be in the same band, same pay or same site. The employment should be judged in the light of the employee’s qualifications, ability to perform the duties, status, working environment and hours of work. Where redeployment results in a loss of earnings, the Trust’s “Protection of Pay” provisions will apply.
- 8.5 As stated in Section 16 of the Agenda for Change Handbook, any suitable alternative employment must be brought to the employee’s notice in writing or by electronic means agreed with the employee before the date of termination of contract and with reasonable time for the employee to consider it. The employment should be available not later than four weeks from that date. Where this is done, but the employee fails to make any necessary application, the employee shall be deemed to have refused suitable alternative employment. Where an employee accepts suitable alternative employment, the “trial period” provisions in Section 138 (3) of the Employment Rights Act 1996 will apply.
- 8.6 Where suitable alternative employment is mutually agreed on reduced hours, pay protection would not apply for the reduced/remaining hours but if the banding is lower, pay protection would apply pro rata for the pay rate in line with the Trust’s pay protection provisions.

## **9. Trial Periods**

- 9.1 Where an offer of suitable alternative employment has been accepted, the employee is entitled to a statutory trial period of a minimum of four weeks. Trial periods should always be agreed in writing, specifying the employee’s terms and conditions and the date on which the trial period ends.

9.2 The manager must ensure that there is ongoing supervision and support for the employee during the trial period, and a thorough review of the success of the trial

period will be undertaken in consultation with the employee concerned and his/her staff representative towards the end of the trial period.

Where the employee requires training for the new post, the trial period may be extended up to twelve weeks by agreement. In addition to the “ongoing supervision and support” mentioned above, the employee’s progress will be continuously assessed against a pre-set training plan and/or objectives. If during this period it is clear that the employee is not going to meet the standards required, the trial period may be terminated early (but not before the statutory minimum period has been completed).

- 9.3 Trial periods will not affect any subsequent claim for redundancy unless the new post is unreasonably refused.

## **10. Time off to seek Alternative Employment**

An employee who is under notice of redundancy is allowed reasonable time off with pay during the notice period to look for alternative employment or to undertake training.

## **11. Early Release of Redundant Employees**

Employees under notice of redundancy and for whom no suitable alternative employment in the NHS is available who, during their period of notice, obtain other employment with an employer outside the NHS, may wish to be released prior to the expiry of notice to take up the new employment. The Trust will release such employees early, unless there are compelling reasons to prevent this, on a mutually agreed date. The date however, will become the revised date of redundancy for the purposes of calculating any entitlement to a redundancy payment and for establishing the employees effective date of termination.

## **12. Redeployment**

- 12.1 The People Services Department will keep all staff “At Risk” informed about any vacancies which might arise.
- 12.2 “At Risk” staff will be given preferential consideration in respect of any suitable vacancies within the Trust, at an equivalent or lower band than their current post. All who apply from the “At Risk” group will be given an interview (providing the essential criteria, in the person specification, for the post are met or can be achieved within a reasonable timescale), and an appointment made from amongst them, unless there are substantial reasons for not doing so, (i.e., they are not capable of satisfactory performance in the job).
- 12.3 Where the vacancies within the Trust are at a higher band than the current bands of the staff “At Risk”, recruitment to those vacancies will be by open competition, including the staff “At Risk”, except that staff ‘At Risk’ will be guaranteed an interview if they meet the essential criteria in the person specification for the post in question.
- 12.4 Staff seeking to apply for existing or new posts within their “ring fenced” areas which are at a higher level than their present post may make application for the post, but only after “at risk” applicants already at that level have been interviewed.

12.5 If redeployment results in a loss of earnings, protection of pay in accordance with the Trust's "Protection of Pay" provisions will apply.

**13. Appeals against redundancy**

If an employee feels the selection criteria and level of redundancy payment have been unfairly applied to them, they may appeal under the Trust's Resolution Policy & Procedure (B39/2020). Appeals related to the fact of a redundancy situation, selection for redundancy and or application of the criteria will be heard at the Final formal stage of the Grievance Procedure.

The redundancy notice will not be suspended while these procedures are being followed, but will be revoked or amended if the appellant is successful.

## **APPENDIX D**

### **STAFF SELECTION PROCEDURES WHERE STAFFING REQUIREMENTS CHANGE AS A CONSEQUENCE OF ORGANISATIONAL CHANGE**

#### **1. POLICY STATEMENT**

- 1.1 The Trust management has an obligation to treat with fairness and dignity all staff who are affected by changes in staffing requirements.
- 1.2 It is acknowledged that the existing staff within a given service area will usually possess particular knowledge and skills such that, wherever possible, they should receive preferential consideration for posts within that area following any reorganisation.

#### **2. STAFF SELECTION PROCEDURES**

##### **21 “Ring Fencing”**

- 2.1.1 Competition for posts within a given service area undergoing re-organisation (including: changes to working practices, new roles and/or staffing structures) will initially be limited to existing staff employed on permanent contracts within that area. This includes internal staff in acting positions of in excess of nine months’ duration and staff in open ended secondments from other areas within the Trust where that secondment has already been of nine months duration.
- 2.1.2 Definition of the service area and of the staff within that area will be the responsibility of the departmental management team, in consultation with relevant accredited staff representatives and staff of the People Services Department.
- 2.1.3 In situations where the reorganisation draws on or affects staff from more than one service area, the departmental management teams will agree which of their number has responsibility for managing the staff selection process, again in consultation with staff of the People Services Department.
- 2.1.4 In situations where an individual member of staff, or group of staff, believe they have been wrongly excluded from (or included in) the “ring fence”, the position will be re-examined by the CMG/Corporate Management Team in conjunction with the People Services Department. This process will require meeting with the nominated staff representative(s) to fully discuss the issue. Such a meeting must, unless mutually agreed to the contrary, take place within one working week of the issue being raised. The decision of the meeting will be final.

##### **22 Competition**

- 2.2.1 All posts within the “ring fenced” area will be the subject of limited competition in that they will at the first round be available only to staff employed within the “ring fenced” area, in accordance with the selection procedure described below, unless otherwise agreed in consultation with staff-side representatives.
- 2.2.2 Only where the first round fails to identify suitable staff for particular posts will competition be opened beyond the “ring fence”. In such an event, the second

round of competition will be limited to other staff within the Trust, unless otherwise agreed in consultation with staff-side representatives.

- 2.2.3 Each stage of this process will be undertaken following consultation between CMG /Corporate management, staff-side representatives, and staff of the People Services Department.

## **2.3 Applications**

- 2.3.1 Applications from staff within the “ring fenced” area will normally require the completion of the standard E-Recruitment application forms. With prior agreement, on occasions, there may be provisions for staff to state in writing the role for which they wish to be considered, or an agreed format of expression of interest as an alternative to completion of the E-Recruitment form.
- 2.3.2 It will not normally be necessary to take up references for staff within internal department “ring fences”, but they may be required in competitive interview situations.
- 2.3.3 Where it becomes necessary to seek applicants from elsewhere in the Trust, or by external advertisement, the normal procedures for recruitment will apply.
- 2.3.4 E-Recruitment application forms will always be required for promotion opportunities or situations where, although of the same level, the role applied for is significantly different from that which the employee currently holds.

## **2.4 Selection**

- 2.4.1 The method of selection of staff for posts within a reorganised area will vary dependent upon the prevailing circumstances and may or may not involve formal interviews (see 2.4.2 below). The method to be used will be agreed by management, staff and their representatives.
- 2.4.2 In circumstances considered appropriate by management in consultation with staff and their representatives, staff may be slotted into posts within a reorganised area. This may be appropriate where the number of current staff within the “ring-fenced” area is equal to or less than the number of posts available. In these situations an interview will not be necessary.
- 2.4.3 Staff seeking to be appointed to posts at a level commensurate with their existing grading will automatically be considered for the posts for which they apply (providing the essential criteria, in the person specification, for the post are met or can be achieved within a reasonable timescale). In situations where the number of people automatically to be considered exceeds the number of posts available, the Redundancy and Redeployment section should be followed.
- 2.4.4 A member of staff not appointed to a position commensurate with their existing band may apply for a position within the “ring fenced” area at a lower level along with others already at that level. In such a situation the provisions of the Redundancy and Redeployment section will apply except that:
- a) With regard to paragraph 8.5 of that section, it is acknowledged that refusal to accept a lower position in the same area, even with protection of earnings, will not



necessarily mean that the employee forfeits entitlement to a redundancy payment. Such cases will be compassionately considered and the employee is entitled to be represented by a Trade Union Representative, or work colleague.

b) With regard to paragraph 12.2 of that section, staff in these situations will be given equal but not preferential consideration over other “At Risk” staff from within the “ring-fenced” area.

2.4.5 Staff seeking to apply for existing or new posts within their “ring fenced” area which are at a higher level than their present post may make application for the post, but only after “At Risk” applicants already at that level have been interviewed or otherwise selected. There may be occasions where, through consultation with staffside, provisions are made for “at risk” applicants to be considered in an original ring fence which may lead to a promotion.

2.4.6 Wherever possible and practical the appointing manager(s) will seek to provide training for individuals they consider not immediately suitable. Opportunities for training to equip a member of staff to take on a new role will be provided in accordance with the provisions in section 8 of the “Redundancy and Redeployment” section.

2.4.7 In situations where re-training is not appropriate, where an individual is not considered suitable, or where a post within the reorganised area is not available, every effort will be made to redeploy the member of staff to a suitable post elsewhere within the Trust.

## **25 Unsuccessful Applications**

2.5.1 Where a member of staff is deemed not to be suitable for a post applied for which is commensurate with their present role, he/she must receive verbal feedback and, if the employee requests it, a written statement from those responsible for making the selection decision giving their specific reasons for the decision, to be provided within 7 days of receipt of the request. All recruitment decisions should be documented with reasons on the interview selection form(s).

2.5.2 The next stages following unsuccessful applications should include:

- Invitation to a meeting with the manager, People Partner representative and be provided with the right to be represented
- At the meeting, appropriate notice should be issued and the support to identify suitable alternative employment agreed.
- All offers must be made in writing or by electronic means and responses within an agreed timeframe usually of no more than three working days by the employee
- Correspondence should confirm that: employees shall not be entitled to redundancy payments or early retirement on grounds of redundancy if:
  - at the date of the termination of the contract they: have obtained without a break, or with a break not exceeding four weeks, suitable alternative employment with the same or another NHS employer or
  - they unreasonably refuse to accept or apply for suitable alternative employment with the same or another NHS employer
  - they leave their employment before expiry of notice, except if in exceptional circumstances they are being released early or

- they have been offered a renewal of contract (with substitution of the new employer for the previous NHS one) or
  - where their employment is transferred to another public service employer who is not an NHS employer
- The employee should be advised in writing of their right of appeal against proposed dismissal.