

**Policy Title: Change Management Policy: Principles and Procedure**

**Policy Number: HR001**

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### **Controlled Document**

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<b>Target Audience</b>	All staff working for, or on behalf of the SWL CCGs
<b>Brief Description</b>	This policy sets out our approach to the management of organisational change. All such change will be conducted in accordance with this document which incorporates best practice and legal requirements and aims to provide a framework for common understanding for managers, staff and Trades Unions.
<b>Action Required</b>	Ensure that the contents of this Policy are shared at all relevant meetings.

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## 1. Introduction

- 1.1 The 6 South West London CCGs, NHS Croydon CCG, NHS Kingston CCG, NHS Merton CCG, NHS Richmond CCG, NHS Sutton CCG and NHS Wandsworth CCG (the SWL CCGs), are committed to actively managing their services so as to commission the most effective health care for patients and service users within their resources. It recognises that as a result, changes may need to be made to their organisational requirements which may affect staffing needs.

This policy sets out our approach to the management of organisational change. All such change will be conducted in accordance with this document which incorporates best practice and legal requirements and aims to provide a framework for common understanding for managers, staff and Trades Unions.

## 2. Purpose

- 2.1 The purpose of this document is to set out the SWL CCGs' approach to the management of organisational change and the procedures that should be followed by managers, staff and Trades Unions when proposing and implementing change.
- 2.2 The principles and procedures support the aim of managing strategic and operational change in a way that is both supportive to staff and enhances the provision of the highest quality patient care.

## 3. Scope

This policy applies to all NHS staff substantively employed by the SWL CCGs and will be applied consistently and equitably to all staff.

## 4. Definitions

For the purpose of applying the provisions contained in this document, the following definitions shall have the following meanings:

**Continuous Service** means full or part time employment with the SWL CCGs or any previous NHS employer provided there has not been a break of more than one week (Sunday to Saturday) between employments. This reflects the provisions of the Employment Rights Act 1996 and Agenda for Change handbook (where applicable) on continuous employment.

**Reckonable Service** means Continuous Service plus any service with a previous NHS employer where there has been a break of 12 months or less. At the employer's discretion any period of employment outside the NHS which is relevant to NHS employment may be counted as Reckonable Service.

**Redeployment** means the transferring or recruitment of Staff at Risk into a suitable alternative post.

**Ring-fencing** means the process by which Staff At Risk will be considered for a post in a new staffing or management structure which is at the same grade and is substantially the same (at least 70%) in content as their current post and where there is more than one contender for that post.

**Slotting In** means the process by which Staff at Risk are confirmed into a post in a new staffing or management structure where that individual is the only contender for that post. Slotting in may occur where a post is at the same grade as the individual's current post and is substantially the same (at least 70%) in terms of job content, responsibility, skills, knowledge and experience requirements.

**Suitable Alternative Employment** means a role in the new structure at the same grade or one grade lower than the previous role, which is less than 70% the same as the previous role but for which an employee might have the requisite skills.

**Staff at Risk** means staff whose posts may potentially be redundant as a result of organisational change if suitable alternative employment cannot be found.

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

**COSOP** means the Cabinet Office Statement of Practice. NHS guidance should be referred to if COSOP applies.

**TULRCA** means the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended).

## **CHANGE MANAGEMENT**

### **5. Statement and principles**

- 5.1 Organisational change is driven by the business needs of the SWL CCGs. Change can be triggered either by the external environment or by an internal review of service requirements. Examples of significant organisational change include the reorganisation, relocation, merger, expansion or closure of service, competitive tendering or outsourcing, or a major change in working practice.
- 5.2 In order to meet changing business needs more effectively, there may be occasions when managers need to implement relatively minor changes. Reasonable minor changes and adjustments to duties and working practices may be implemented without recourse to the formal procedures in this document but will require reasonable consultation with the staff affected. Any situation which may lead to redundancy will not be deemed to be a minor change.
- 5.3 The SWL CCGs is responsible for deciding the size and most efficient use of the workforce but in doing so is committed to the following principles for managing organisational change:

- the SWL CCGs are committed to communicating and consulting with staff and Trades Unions as openly and effectively as possible, utilising existing mechanisms and providing information in a timely way;
- staff will receive notice of any organisational change which may affect their futures at the earliest opportunity;
- staff will be treated as individuals with due regard to their personal and employment circumstances and their career aspirations at all stages of the change management process;
- staff will have the right to be accompanied by a Trade Union representative or workplace colleague at meetings to discuss the organisational change;
- the SWL CCGs will consider all reasonably practicable steps to avoid compulsory redundancies;
- staff will receive training and development, as appropriate, to support them in meeting new skill requirements in relation to suitable alternative employment opportunities;
- staff will have access to the SWL CCGs' Employee Assistance Programme and career support will be available as appropriate.

## 6. Duties and responsibilities

- 6.1 Staff are central to the achievement and success of organisational change. The SWL CCGs acknowledge that change can cause concern and uncertainty and should therefore be managed fairly and consistently in accordance with established good practice.
- 6.2 The SWL CCGs recognise the need, wherever possible, to engage staff in any change management procedure. Staff also have a role to play in this procedure.
- **Managers** are critical to the change management process and shall therefore be regularly briefed so that they are in a position to respond to the concerns of staff in their teams. In turn managers should provide information to staff and Trades Unions so that they are able to make meaningful contributions to the consultation process. Managers must ensure that no member of staff is discriminated against on the grounds of ethnic origin, nationality, race, disability, gender, marital or partnership status, age, religion or belief, sexual orientation or transgender status, when applying this policy. Managers should liaise with HR to ensure the SWL CCGs are not open to claims of discrimination as a result of a change management process.
    - **Staff** are expected to play an active role during the pre- consultation and consultation stages, and in the further processes of implementation and in identifying new career opportunities.

- **Trades Unions** play a vital role in advising and representing staff affected by organisational change and in working with managers to ensure that organisational change is managed with the least disruption to services to patients and in accordance with the principle of avoiding compulsory redundancies wherever possible. The SWL CCGs will formally notify the Trades Unions of any proposed organisational changes and will undertake consultation with them in line with legal requirements.
- The SWL CCGs will agree reasonable additional facilities time for accredited staff representatives to ensure the staff side is able to fully participate in the process, which may require frequent meetings with management and in particular with affected staff.

## CONSULTATION

### 7. Purpose and meaning of consultation

- 7.1 In accordance with legislation, ACAS guidance and the partnership working principles of the NHS, the SWL CCGs commit themselves to meaningful and appropriate consultation with Trades Unions and staff affected by organisational change with a view to reaching agreement on the way forward, although there will be times when organisational change will need to proceed without a consensus being reached on all issues. The timing and extent of consultation will be proportionate to the degree of proposed change, the number of staff affected and the impact on individuals.
- 7.2 Consultation involves taking account of as well as listening to the views of employees and must therefore take place before final decisions are made.
- 7.3 Consultation does not mean that employees' views can or will always be acted upon since there may be legitimate practical or financial reasons for not doing so. However, whenever employees' views are rejected the reasons for doing so should be clearly explained. Equally, where the views and ideas of employees help to improve a decision due credit and recognition should be given.
- 7.4 The purpose of consultation meetings and communication with Trades Unions and staff will be:
- to receive and where possible address any questions on the proposals for change (as set out in a formal consultation document once formal consultation has commenced );
  - to consider any comments or views on the proposals for change including any alternative proposals and costings (which the SWL CCGs shall as far as practicable make available) before making any final decision to proceed;

- to clarify any change processes and timeframes specific to the proposed organisational change exercise under discussion.

## **8. Informal Consultation with staff and Trades Unions**

- 8.1 Early informal consultation with the Trades Unions and staff will be used to ensure that views and suggestions are taken into account at the formative, engagement and design stage. This is also known as pre-consultation. Meaningful pre-consultation often leads to an agreed shorter formal consultation time and greater staff satisfaction with the process.
- 8.2 Formal consultation with the Trades Unions can commence in accordance with locally agreed procedures once any informal comments have been considered and a formal consultation document has been finalised. This will take the form of ongoing discussions with the local accredited representatives.
- 8.3 Trades Unions representing staff affected by the change should be invited to the first meeting with all affected staff and given reasonable notice to attend.
- 8.4 In a redundancy scenario, the following information must be provided in writing to the Trades Unions as soon as is reasonably possible:
- the reasons for the proposals;
  - the numbers and descriptions of employees whom it is proposed to dismiss as redundant;
  - the total number of employees of any such description employed by the SWL CCGs at the establishment(s) in question;
  - the proposed method of selecting employees who may be dismissed;
  - the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are to take effect;
  - the proposed method of calculating the amount of any redundancy payments to be made (over and above the statutory redundancy payment) to employees who may be dismissed;
  - the number of agency workers working temporarily for and under the supervision of the SWL CCGs;
  - the parts of the SWL CCGs in which those agency workers are working;
  - the type of work those agency workers are carrying out.
- 8.5 During a period of change, management will ensure that Trades Unions are kept informed of developments and will meet with the Trades Union representatives as appropriate.

8.6 In certain circumstances, a receiving organisation may elect to carry out pre-transfer consultation in respect of proposed post-transfer redundancies. In those circumstances, the best practice principles of this policy, as well as statutory requirements (as set out in s198A TULRCA), shall apply. Legal advice will always be sought when pre-transfer consultation is proposed.

## **9 Formal consultation**

9.1 Managers shall prepare a consultation document on the proposed organisational change having gathered information to support the need for change and consulted with HR as appropriate and completed any informal pre consultation.

9.2 The consultation document may include details of the following, as appropriate:

- current situation analysis including staffing structure;
- an equality impact assessment which must be completed and appended;
- impact on patient care;
- impact on supplementary and ancillary services;
- consideration of any relevant health and safety assessment;
- the need for change and the rationale behind the change;
- the options that have been considered;
- the proposals for change including the proposed staffing structure(s) and any location change;
- the financial, staffing and workload implications of the proposals;
- the number and grades of staff who may be at risk of redundancy as a result of the proposal;
- proposed timescale for consultation and implementation of the proposed change;
- the way in which staff will be selected for posts within the new structure or transferred;
- if necessary, the selection criteria for redundancy;
- the measures to be taken to avoid compulsory redundancies which may include natural wastage, redeployment with retraining, or voluntary early retirement or voluntary redundancy;

- details of any suitable alternative employment which may exist;
- details of how this information will be disseminated to staff;
- description of the consultation process, including planned meetings, timetable, how staff and representatives can respond and the deadline.

## **10. Time periods for consultation**

10.1 In all cases the SWL CCGs will allow sufficient time for meaningful consultation with staff and their representatives. In exceptional circumstances where changes need to be made very quickly, the Trades Unions will be briefed immediately and the verbal briefing will be followed by a written brief.

10.2 In a collective redundancy scenario, consultation will continue for a period of no less than the statutory time scales:

- where 20-99 redundancies are proposed consultation should commence at least 30 days before the first redundancy takes place;
- where 100 or more redundancies are proposed then consultation should commence at least 45 days before the first redundancy takes place.

10.3 Trades Unions and staff may request additional information or an extension of time if this is necessary to enable them to understand and contribute to an informed discussion on the merits of the proposal. Such requests will not unreasonably be refused, and where they cannot be accommodated a reason will be given.

10.4 In practice most consultation exercises will require a 30 day consultation period. However, in the event of large scale change requiring a 45 day consultation process, the SWL CCGs and the Trades Union representatives should consider the pros and cons of extending the consultation. Factors to be considered will be as follows:

- Reasons put forward by either party for an extension beyond 45 days, particularly in relation to the extent to which original proposals have been revised as a result of the 45 day consultation – for example, changes from the original proposals may require a further short period of consultation;
- The impact of delaying the process on the staff affected and the likelihood of further redundancies being required due to a reduction in predicted savings arising from the proposed changes;
- Any extension to the 45 days consultation period must be agreed by both parties (i.e. staff side and management).

## **11. Formal Consultation with individual staff**

- 11.1 A meeting will be held with all staff affected by the organisational change to announce the proposed change and explain the consultation process which will follow.
- 11.2 Each member of staff affected by the organisational change will be provided with a copy of the consultation document. Staff who are absent from work for any reason including career breaks will be sent a copy of the consultation document to their home address/other suitable address so that they can participate in the consultation process.
- 11.3 Each member of staff will be offered the opportunity of at least one individual meeting with their manager at which they have the right to be accompanied by a Trades Union representative or workplace colleague. In a redundancy scenario, the meeting will be to discuss the issues set out at paragraph 15.3.
- 11.4 At the meeting, each member of staff will be invited to comment and respond to the proposals, including how they may impact on their personal circumstances. It is recognised that staff may require time to respond and may not be able to do so at the initial meeting.
- 11.5 A written record of the individual meetings will be kept and provided to the employee and their Trades Union representative where applicable. The record will be a note of the main points discussed at the meeting, not verbatim notes.
- 11.6 Regular updates and frequently asked questions may be circulated to staff throughout the formal consultation period. Throughout this period staff should be encouraged to discuss their concerns and queries with their line manager and Trades Union representative.
- 11.7 In addition to the individual consultation meetings, staff can be kept informed by management, team meetings, trade union meetings, email and other written communication and information supplied by the Trades Unions.

## **12. End of consultation**

- 12.1 At the end of the consultation period the manager will give full consideration to all comments received from staff and the Trades Unions and will make a decision on the way forward. A written report will be provided to the staff and Trades Unions covering the change process to be followed and the timeframe. The report should include:
- the reasons for the decision;
  - equality impact assessment;
  - any relevant health and safety assessments;
  - an explanation where the management decision is in conflict with the

views of the Trades Union representatives and staff or where the proposal has changed as a result of consultation;

- identification of posts which are the same or substantially the same in the old and new structures;
- arrangements for filling posts via Slotting-in or Ring-fencing;
- selection arrangements for posts within the new structure;
- measures that will be taken to avoid compulsory redundancies;
- arrangements for seeking suitable alternative employment;
- reference to the SWL CCGs' protection arrangements and how these will apply;
- support for staff who are affected by the change, including career counselling and reasonable time off to seek other employment or undertake training;
- proposed timescales for each stage of the change process.

12.2 Where redundancies are inevitable the SWL CCGs will set selection criteria for inclusion in the consultation outcome. These criteria should be objective, clearly defined, measurable and non-discriminatory. Managers should seek advice from HR on the selection criteria to be used to ensure the SWL CCGs are not open to legal challenge. Selection criteria will be discussed, and where possible agreed, with Trades Unions.

12.3 In considering any measures to avoid compulsory redundancies, including requests for voluntary redundancy or early retirement, operational efficiency and service needs must be taken into consideration. If a member of staff volunteers for redundancy/early retirement, approval of the request will be subject to the needs of the service and the cost implications. Care must be taken to ensure that decisions are based on sound organisational reasons and do not breach equality legislation.

### **13. Support for staff**

13.1 All staff affected by the organisational change will be encouraged to seek the advice and support of their Trades Union. Relevant support will be provided by the SWL CCGs and may include:

- help with the production of CVs/application forms (including assistance with NHS Jobs);
- help with preparation for interviews;
- careers advice;

- support in developing coping strategies and stress management, with support of the counselling service;
  - time to meet with recognised Trades Union representatives to discuss the change;
  - further assistance to staff who are at risk of redundancy will include reasonable time off to seek other employment or undertake training;
  - Priority consideration for suitable alternative roles in any of the SWL CCGs.
- 13.2 Even after the change has taken place, the SWL CCGs acknowledge that staff may take some time to adjust. Managers should remain available to staff to manage any issues that arise and support staff through the transition.

#### 14. The process for filling posts in the new structure

14.1 There will be three stages in the process for filling posts in a new structure:

- **Stage One** involves the staff affected by the change. Posts in the new structure are filled either by 'Slotting In' or by 'Ring-fenced' interviews.
- **Stage Two** is where any posts that remain vacant in the new structure following Slotting In or Ring-fencing are opened up to any Staff at Risk for whom the post is considered potentially suitable alternative employment and for whom pay protection may apply.
- **Stage Three** is where any posts that remain vacant in the new structure are opened up to wider competition, first to internal recruitment and thereafter to external recruitment.

All stages may run in parallel but all reasonably practicable steps will be taken to avoid compulsory redundancies.

14.2 Job descriptions and person specifications will be produced for new posts. Jobs will be matched or evaluated in accordance with local procedure and the provisions set out in National Terms and Conditions of Service.

14.3 Selection criteria for all posts in the new structure (whether or not there is competition) must be non-discriminatory, fair, objective, clearly defined and based on the skills and competency requirements of the post. The selection criteria must be made available with the consultation document.

14.4 Staff who are offered posts during Stage One will be deemed to have been offered a suitable alternative role. This will be confirmed in writing by the manager. [This

is on the basis that if staff are Slotted In or offered Ring-fenced posts they will be moving to a role that is substantially the same as their previous role.]

14.5 Any member of staff who is not appointed to a post in the new structure will be offered post-interview feedback, coaching or training where appropriate and will have the right to appeal – see Appendix 2.

## **15. Staff at Risk**

15.1 When changes in staffing levels or skill mix are proposed which will lead to a reduction in the numbers of staff employed in particular grades, occupational groups or specialties, management will identify the positions, individual staff or pool of staff who are at risk of redundancy as a result of the changes.

15.2 The identification of being at risk of redundancy is not a notice of redundancy.

15.3 Staff at Risk will be invited to a meeting(s) with their manager and Trades Union representative or work colleague to:

- discuss how the proposed changes affect the individual;
- explain why the individual is at risk of redundancy;
- discuss ideas for avoiding redundancy dismissals, reducing the number of Staff At Risk who are made redundant and mitigating the consequences of any redundancy dismissals;
- explore the possibility of Redeployment;
- explain the process for Redeployment;
- explain the arrangements for protection of pay and terms and conditions where applicable;
- offer support and assistance;
- discuss any other relevant issues and processes which may include providing a redundancy payment estimate if requested.

15.4 Following the meeting, Staff At Risk will be given a letter within five working days to confirm their at risk status and the key points discussed at the meeting including answers, wherever possible, to questions raised at the meeting for which there were no immediate answers available at the time.

15.5 Staff at Risk will be given prior consideration for posts within the new structure, where they meet the selection criteria, under Stage Two of the process. Where they are selected for a new post they will normally be given the offer in writing within seven working days of the interview. Any training required will be discussed with the member of staff as part of the offer process. The appointment will be subject to a trial period.

- 15.6 In the case of significant change which spans a number of organisations, the SWL CCGs will endeavour to reach an agreement with those organisations regarding the establishment of job redeployment opportunities. The agreement will contain a commitment to equality of opportunity for all staff who will then have the same access to opportunities and vacant posts with any of the organisations.
- 15.7 Staff who are not selected for a post in the new structure will be formally declared at risk of redundancy and given notice of redundancy in accordance with their contract of employment. They will continue to be given priority consideration for suitable alternative roles that may arise across the SWL CCGs.
- 15.8 There may be situations where it is necessary to give notice of redundancy in accordance with the contract of employment at the end of the consultation process.
- 15.9 Staff at Risk will be required to register with NHS Jobs and apply for any potentially suitable alternative roles.
- 15.10 Staff at Risk will be given prior consideration for other posts that are or become vacant during a specific organisational change and, subject to the arrangements regarding suitable alternative employment and trial periods, they will remain on the redeployment register until their last day of service.

## **REDUNDANCY**

### **16 Definition of redundancy**

- 16.1 A member of staff may become redundant if they are dismissed and the reason for the dismissal is wholly or mainly due to:
- the fact that the employer has ceased, or intends to cease, to carry on the activity for the purposes of which the individual was employed, or has ceased, or intends to cease, to carry out the activity in the place where the individual was employed **OR**;
  - the fact that the requirements of the employer for staff to carry out work of a particular kind in the place where they were so employed, have ceased or diminished or are expected to cease or diminish.
- 16.2 The place of work referred to above should not be confused with the specific site or unit in which an individual works.
- 16.3 The HR Department is responsible for notifying the relevant Department (currently the Redundancy Payments Service (RPS)) in writing if any of the SWL CCGs propose to make 20 or more staff redundant, within the terms of the legislation in force at the time. A copy of the notification form will be sent to the Trades Union representatives concerned. Advance notification to the relevant Department does not bind the SWL CCGs to make the employees redundant.

## **17. Suitable alternative employment**

- 17.1 Suitable alternative employment is work within the SWL CCGs that is on broadly similar terms and within the same range of skills required as the current employment where the individual meets the essential criteria of the person specification. It may be on any site operated by the SWL CCGs subject to travel considerations. Staff at Risk will be given prior consideration for suitable posts in line with their skills, experience and capabilities and where appropriate will receive protection of pay.
- 17.2 A post may be considered as suitable alternative employment if it is graded at the same level as the staff member's current post, or the next grade lower.
- 17.3 Following identification of suitable posts at Stage Two, individual Staff at Risk will be invited to apply for the position. They will be given a copy of the job description/person specification and a deadline of at least five working days within which to apply. In some circumstances e.g. annual leave and other types of leave, this period may be appropriately extended. During this period the individual may meet with the appropriate manager informally to discuss their interest.
- 17.4 If, following interview for a role on priority interview terms, the individual is offered the post, this will be treated as an offer of suitable alternative employment and a trial period will apply.
- 17.5 Staff who unreasonably refuse an offer of suitable alternative employment may lose their right to a contractual redundancy payment.

## **18. Trial periods and training**

- 18.1 A trial period will apply to Staff at Risk and where a formal offer of suitable alternative employment has been made.
- 18.2 The purpose of a trial period is for both the manager and the individual to assess the suitability of the post as alternative employment.
- 18.3 Where staff have the potential ability but not the immediate experience to undertake full duties of the role, they will be provided with appropriate and jointly agreed skills development/training. This will be provided when it is reasonable, practical and cost effective and where the member of staff demonstrates a willingness to learn and can apply the new skills within an agreed timeframe.
- 18.4 The trial period will normally last four weeks but may be extended by mutual agreement depending upon the seniority of the post or where a member of staff requires additional training and development. See trial period guidance at **Appendix 4**.
- 18.5 If the trial period is deemed unsuccessful, the redundancy notice period will commence from the end date of the original contract of employment. Until the

end of their notice period Staff at Risk will continue to be considered for other suitable alternative employment which may become available and which will be subject to the same arrangements including a trial period.

## **19. Change of location**

If, as a result of organisational change, there is a requirement to move staff from their normal place of work to another location within the SWL CCGs and this results in increased travel costs to and from work, staff may be reimbursed their extra daily travelling expenses in accordance with the provisions set out in Section 17 and associated annexes of the National Terms and Conditions handbook.

## **20. Redundancy arrangements**

20.1 A member of staff will have their contract of employment terminated on the grounds of redundancy if no suitable alternative employment can be found or if a trial period is unsuccessful.

20.2 The terms under which a redundancy payment and/or early retirement benefit are payable are summarised below:

To qualify for a redundancy payment/early retirement benefit the individual must have a contract of employment with one of the SWL CCGs and;

- at least 2 years' (104 weeks) Continuous Service within the NHS. A redundancy payment takes the form of a lump sum, dependent on the employee's Reckonable Service at the date of termination of employment;
- the lump sum is calculated on the basis of one month's pay for each complete year of Reckonable Service, subject to a minimum of 2 years' Continuous Service and a maximum of 24 years Reckonable Service<sup>1</sup> (i.e. the maximum payable is 24 months);

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<sup>1</sup> This reflects the redundancy payment entitlement as set out currently in the NHS National Terms and Conditions of Service Handbook In addition:

- For those earning less than £23,000 per year (full time equivalent), the redundancy payment will be calculated using notional full-time annual earnings of £23,000, pro-rated for employees working less than full time.
- For those earning over £80,000 per year (full time equivalent) the redundancy payment will be calculated using notional full-time annual earnings of £80,000, pro-rated for employees working less than full time. No redundancy payment will exceed £160,000 (pro-rata).

Any future changes in legislation or future agreements reached in the NHS Staff Council will be reflected in the NHS National Terms and Conditions of Service Handbook and in this policy.

Early retirement on the grounds of redundancy is available, subject to the employee:

- being a member of the NHS Pension Scheme;
- having at least 2 years' Continuous Service and 2 years' pensionable membership and;
- having reached the minimum pension age in accordance with the relevant NHS Pension Scheme arrangements.

Some staff may be subject to locally-agreed contractual arrangements in respect of redundancy which will need to be honoured.

20.3 Staff will not be entitled to redundancy payments/early retirement on the grounds of redundancy if they:

- are dismissed for reasons of misconduct;
- at the date of the termination of the contract have obtained without a break, or with a break not exceeding four weeks, suitable alternative employment with the SWL CCGs or other NHS employer;
- unreasonably refuse to accept suitable alternative employment within the SWL CCGs or another NHS employer
- leave their employment before expiry of notice, except if they are being released early;
- are offered a renewal of contract with the substitution of a new employer.

Staff whose employment is subject to TUPE will not be redundant and therefore will not be entitled to redundancy payments/early retirement on the grounds of redundancy.

20.4 The manager will liaise with HR in order to obtain details of redundancy entitlements and other aspects of the redundancy process. The manager will provide, in writing, the individual and their Trades Union representative with the following details:

- the number of weeks' notice, in accordance with the contractual notice period;
- the effective date of the redundancy, which will also be the last day of service;
- the number of days' outstanding annual leave, where applicable, to be paid in lieu;

- the amount of redundancy payment/enhanced pension benefits that will be paid, where applicable;
- what efforts will be made to assist the individual in seeking suitable alternative employment during the notice period;
- what support is offered during the notice period e.g. help with job search, CV and interview preparation;
- what work the individual will be expected to undertake during their notice period;
- that reasonable time off with pay will be given to seek and prepare for alternative work;
- that early release will normally be given, unless there are compelling service reasons to the contrary, if the individual is successful in obtaining other employment outside the NHS and wishes to take this up during the notice period; the date of early release will then become the revised date of redundancy for the purpose of calculating any entitlement to a redundancy payment;
- the right of appeal against selection for redundancy or the terms of the redundancy.

## 21. Protection arrangements

21.1 The protection of pay and conditions arrangements are in place in order to support staff who, as a result of organisational change, are required to move to a new post which would entail a reduction of earnings and certain terms and conditions of employment.

21.2 These arrangements provide for:

- **short term protection** of certain conditions of employment where they have been a regular requirement of the previous post, e.g. overtime, shift work, hours of work, annual leave;
- **long term protection** of basic pay, including high cost area supplement.

21.3 Pay protection will apply for the agreed periods as set out in **Appendix 2** or until the member of staff moves voluntarily to a new post within the organisation.

## TUPE

### 22. Transfers of services and staff

- 22.1 Where there is a proposal to transfer services and staff to a different employer, there will be consultation with the Trades Unions at the earliest opportunity. This will be a minimum of 30 days (unless otherwise jointly agreed) and where 100 or more staff are affected this will be 90 days (unless otherwise jointly agreed).
- 22.2 When services are transferred from one organisation to another in line with TUPE or by virtue of a Transfer Order under the relevant NHS legislation, which mirrors TUPE, the employment of staff who are assigned to the services which are being transferred will transfer to the new organisation. TUPE applies in contracting out scenarios, retendering, where services are brought back into the NHS, and in relation to any transfer of undertakings.
- 22.3 All the terms and conditions within the transferring employee's contract of employment (including contractual policies and procedures) will transfer with them and should not be changed as a consequence of the transfer.
- 22.4 Where staff have responsibilities spanning more than one NHS organisation or more than one service, discussions will take place with the individual, their Trade Union representative and the organisations concerned to determine how best their continuing employment should be managed. The options in this situation might be that the individual will transfer to one organisation with an agreement to provide services to the other(s), or have more than one contract of employment, or, in exceptional circumstances, be declared at risk.
- 22.5 In all of these circumstances, for the purposes of the consultation that will be carried out, the manager will identify the services, posts and individual staff that will transfer or be affected in accordance with the obligations of TUPE and shall write to the staff affected and the Trades Unions informing them of the intention that staff will transfer, the implications of the transfer and any measures which will be taken in connection with the transfer.
- 22.6 The manager will then hold one-to-one meetings with individual staff and their Trade Union representative to discuss the implications of the transfer, measures to be taken in connection with the transfer, answer any concerns or queries, discuss possible options if appropriate and consider personal circumstances. These discussions will be documented and confirmed in writing. Every possible support will be given to staff to understand the reasons for and implications of the transfer and to ensure they have the necessary information with which to prepare themselves.
- 22.7 Formal notice of a transfer will be issued as long before the date of the transfer as possible in order to comply with the obligations of TUPE and this policy. The SWL CCGs will make every effort to give up to 3 months' notice of a transfer, where possible. Where 3 months' notice is not possible because, for example, of the timing of external announcements or decisions of approval, a shorter notice period will be provided after consultation with the Trades Unions.

## **23. Appeals, complaints and joint agreements**

- 23.1 Appeals against the selection criteria for redundancy or the decision to dismiss an employee by reason of redundancy will be heard in accordance with the *Appeals Procedure set out at Appendix 2*. The decision of the Appeal panel will be final and there will be no further opportunity for recourse to the Grievance Procedure.
- 23.2 In the event of a complaint about misapplication of the *Change Management Policy*, which is not covered in Appendix 2, this will be dealt with in accordance with the Grievance Policy and Procedure.

## **24. Equality Impact Assessment**

An Equality Impact Assessment has been completed for this Policy (Appendix 1), and no negative impact upon persons with protected characteristics has been identified.

## Appendix 1 - Equality Impact Assessment

	Mandatory Questions	Yes/No/NA	Comments
1.	Does the Policy affect any group less or more favourably than another on the basis of:		
	Age?	No	
	Disability?	No	
	Gender?	No	
	Gender identity?	No	
	Marriage or civil partnership?	No	
	Pregnancy and maternity or paternity?	No	
	Race?	No	
	Religion or belief?	No	
	Sexual orientation?	No	
2.	Is there any evidence that any groups are affected differently by the Policy and if so, what is the evidence?	No	
3.	Is any impact of the Policy likely to be negative?	No	
4.	If any impact of the Policy is likely to be negative, can the impact be avoided and if so, how?	NA	
5.	If a negative impact can't be avoided, what, if any, are the reasons the Policy should continue in its current form?	NA	
6.	Where relevant, does the Policy support the FREDA principles: Fairness, Respect, Equality, Dignity and Autonomy?	Yes	

## Appendix 2 - PAY PROTECTION

### 1. INTRODUCTION

The SWL CCGs recognise the importance of having in place arrangements for safeguarding the pay and conditions of service of individual staff to enable the NHS to retain their skills and experience as an alternative to redundancy/ early retirement.

### 2. SCOPE

These arrangements apply to all eligible employees of the SWL CCGs who are adversely affected by organisational change resulting in a loss of earnings. Changes other than organisational change i.e. those brought about by individual lack of capability within a particular job, or because of personal circumstances are not covered by these arrangements.

It should be noted that this policy does not provide for an automatic entitlement to a lower graded job with protection as an alternative to redundancy. Protection of salary will cease where:

- the level of the protected salary reaches or exceeds the salary for the new post;
- the employee moves voluntarily to a new post within the SWL CCGs;
- the end of the pay protection period is reached.

Where a member of staff is receiving pay protection from a previous change process and as a result of further organisational change their post is downgraded again they will have the opportunity to either retain their existing pay protection arrangements until their expiry date or begin a new period of protection effective from the new date of change for the full period of the new pay protection, should this be the more favourable option for the individual.

### 3. DEFINITIONS

**Organisational Change** means any structural, management or service change in the SWL CCGs.

**Basic salary or wage** is the monthly sum due in respect of basic contracted hours worked by the individual concerned within the standard working week as defined in the individual's contract of employment, including the high cost area supplement. This will be calculated on the day immediately preceding the first day of employment in the new post. It does not include any payment made in respect of acting up, on call or any other payments listed as additional earnings in Paragraph 5 below.

**Earnings in the new post** means the sum of basic wage or salary in the new post as defined above and any remuneration in respect of overtime, shift work and other additional duties.

**Downgrading** occurs where the new post, irrespective of its grade and title, has a salary scale with a maximum point lower than the maximum point for the previous post or is paid on a lower rate of pay. It should be noted that there is no automatic entitlement to a lower graded post with protection as an alternative to redundancy.

#### 4. PROTECTION OF BASIC SALARY WHERE DOWNGRADING IS INVOLVED

Where a member of staff is downgraded as a result of Organisational Change the SWL CCGs will protect their basic salary, including increments and cost of living increases as follows:

Length of Continuous NHS service	Pay Protection Period
Less than 2 years	Nil
2 – 5 years	2 years
Over 5 years	3 years plus one year mark time

**Continuous Service** means full or part time employment with one of the SWL CCGs or any previous NHS employer provided there has not been a break of more than one week (Sunday to Saturday) between employments. This reflects the provisions of the Employment Rights Act 1996 and Agenda for Change terms and conditions of service handbook (where applicable) on continuous employment.

#### 5. PROTECTION OF ADDITIONAL EARNINGS

Protection, whether or not downgrading is involved, will be provided for additional earnings as listed below:

- Overtime
- Special duty payments
- Excess hours payments
- Stand by and on call duty

Additional earnings will be calculated as an average over the four month period prior to the employment in the new post and will only be included if they are a regular requirement of the job.

Additional earnings and allowances, as listed above, will be protected as follows:

Length of Continuous NHS service	Protection Period
Less than 2 years	Nil
2– 5 years	6 months
Over 5 years	12 months

\*\*Additional earnings and allowances do not include bank hours.

## 6. PROTECTION OF OTHER TERMS AND CONDITIONS OF SERVICE

**Notice Period** – Employees required to move to a new post will have their contractual notice period protected (this includes their accrued statutory notice entitlement).

## 7. ARRANGEMENTS DURING THE PROTECTION PERIOD

The purpose of protection is to ensure that pay and conditions of service for an individual are safeguarded for a specified period of time.

Where this involves a downgrading, the period is intended to enable the employee to try to seek an alternative post at a similar level to that enjoyed before downgrading. Staff, line managers and the human resources team will have important roles during the pay protection period.

**Managers** will meet with the employee as soon as the period of protection begins and thereafter every 6 months to agree and review on an ongoing basis a personal development plan. This will help to identify any areas of development that could assist the individual in securing alternative employment at a higher band. The Manager will also explore any suitable job opportunities and offer other support as appropriate.

**Staff** are expected to seek out opportunities for a role at the appropriate grade/level of salary and take responsibility for their continuous development to ensure they are able to regain a position as soon as possible.

**The human resources team** will inform the Manager of the review process to be put in place and ensure that the individual has access to the necessary support, including being able to access job vacancies as they arise.

## 9. CONDITIONS OF PROTECTION

Protection of basic salary is conditional on the employee giving the undertaking to move, where required to a more senior post within the SWL CCGs, or where this would be reasonable with another NHS employer, should this become available during the pay protection period.

Protection of additional earnings is conditional on the employee accepting any subsequent offer of another suitable post which attracts a basic salary in excess of the basic wage or salary applying to the new post.

Protection of additional earnings is also conditional on the employee undertaking any additional duties which may be required up to the level at which earnings in the new post equal the protected earnings.

Employees with an entitlement to protection in accordance with the paragraphs above may at any time opt for the complete package or remuneration and

conditions of service applicable to the new (or any subsequent) post. This option, once exercised, cannot be cancelled.

## **10. PRESERVATION OF PENSION BENEFITS**

An NHS Pension Scheme member who has at least two years' qualifying NHS pension scheme service is eligible to apply to protect their NHS pay, (NHS pension benefits), when they have suffered a reduction in earnings 'through no fault of their own' i.e. through organisational change.

The Pensions manager is able to advise on the process for submitting an application. The application request from the member must be made within 3 months of the member going on to reduced pay.

## **Appendix 3 - APPEALS PROCEDURE**

### **1. LODGING AN APPEAL**

The appellant must provide a detailed written statement of the grounds on which they are appealing. Appeals must be lodged in writing to the Accountable Officer within 10 working days' of receiving the letter confirming the outcome of a slotting-in, competitive slotting-in interview, a short-listing decision, the outcome of an interview or a decision to dismiss by reason of redundancy. It is the responsibility of the appellant to ensure that the appeal has been lodged and received within the time period specified.

No additional grounds for appeal or further exchange of documents can be submitted either during the appeal hearing or in advance of the hearing or on the day of the hearing itself.

This timescale will enable the manager concerned to consider the details of the appeal and prepare a response. The manager will provide a statement of case addressing the specific points of concern raised in the appellant's written grounds and the rationale for their decision. The statement will also provide sufficient background information to enable the manager hearing the appeal to understand the reason for the action and appreciate the circumstances of the case. These statements together with copies of any relevant correspondence will be sent to all parties to the appeal at least five working days before the date of the hearing.

### **2. PROCEDURE AT THE HEARING**

The Chair of the Hearing will be accompanied by a Human Resources representative, who has not previously been involved in the case, to advise on procedural matters.

The appellant has the right to be accompanied by a Trade Union/Professional Association representative or work colleague. The CCG will not reimburse any costs incurred by the appellant's representative. It will remain the responsibility of the appellant to arrange representation for the dates given.

The Chair has the right to rule on the admissibility of any questions asked or evidence presented at the hearing. He/she also has the discretion to seek clarification or amplification of evidence and to adjourn the hearing for any reason, such as to allow further evidence to be produced or to clarify procedural matters, at any stage in the proceedings.

Appeals relating to organisational change against decisions short of dismissal on the grounds of redundancy will be heard by a level of management above that involved in taking the decision.

Appeals against dismissal on the grounds of redundancy will be heard by the Accountable Officer or a Governing Body Executive Member nominated by the Accountable Officer.

Failure of the appellant to attend the hearing without providing an adequate reason will result in the SWL CCGs assuming that the appeal has been withdrawn.

The procedure at the appeal hearing will be as follows:

- Introductions by Chair;
- Appellant will present evidence to support their case that the procedure was not carried out fairly or was flawed;
- The Chair and line manager who made the original decision will have the opportunity to ask questions of the appellant/representative. If the appellant calls any witnesses then the Chair and the manager who made the original decision will have the opportunity to ask questions of the witnesses;
- The manager who made the original decision will present their case in support of the action taken, in response to the appellant's grounds for appeal;
- The Chair and appellant will have an opportunity to ask questions of the manager;
- If the manager calls any witnesses then the Chair and the appellant will have the opportunity to ask questions of the witnesses;
- The Chair will invite the manager who made the original decision and the appellant/representative to sum up their evidence in turn. The appellant will have the right to sum up last. In summing up neither party may introduce any new information;
- After the summing up, both sides will withdraw to allow the Chair to deliberate in private. The HR representative will remain with the Chair to provide procedural and technical advice;
- If necessary, the Chair may recall both parties to clarify points of uncertainty;
- The decision will normally be given to all parties verbally on the day of the hearing, provided time constraints allow;
- The outcome of the appeal will be communicated in writing to the appellant within 10 working days of the hearing taking place;

Please note: the term "Chair" refers to the manager hearing the appeal.

## **Appendix 4 –Trial Periods and Training**

### **Suitable Alternative Employment checklist**

In considering whether a post constitutes suitable alternative employment, the following criteria should be considered:

- Salary
- Job content
- Responsibility
- Status
- Skills requirement
- Professional development
- Working Location and working pattern

The trial period should commence only after the manager and staff member have considered these factors and agreed that the role constitutes a potentially suitable alternative role.

During a trial period the new manager is responsible for;

### **Induction**

It is important that redeployed staff are given an induction to the team and the role before they commence the trial period.

### **Review of Performance**

Managers have a responsibility to review and assess the performance of staff throughout the trial period. Any concerns must be raised with the member of staff as soon as possible and a jointly agreed plan to address the concerns must be put in place. This might involve an extension of the trial period. It is not necessary to wait until the final week of the trial period to agree an extension.

### **Review**

During the final week of the trial period a formal meeting should be held to agree whether the new role constitutes suitable alternative employment. The reasons should be documented and signed by both parties.