



Lewisham
Clinical Commissioning Group

NHS Lewisham CCG

Organisational Change Policy

Organisational Change Policy

CCG Policy Reference:

This policy replaces or supersedes Policy Ref:

Target Audience	Governing Body members, committee members and all staff working for, or on behalf of, the CCG
Brief Description (max 50 words)	This policy sets out the principles by which the CCG will manage strategic and operational change impacting on staffing arrangements and structures
Action Required	Communication to CCG employees The Governance Officer will establish and maintain a corporate register of all policies and their status, and will ensure that these are appropriately reflected on the website.

Approved: CCG Management Team
Review date: 2017

Document Information:

Title /Version Number/(Date)	Organisational Change Policy
Document Status (for information/ action etc.) and timescale	For implementation (20/4/2015)
Accountable Executive	Chief Officer
Responsible Post holder/Policy Owner	Deputy Director (Strategy & OD)
Date Approved	14/4/2015
Approved By	CCG Governing Body
Publication Date	(20/4/2015)
Review Date	4/2017
Author	Gail Tarburn, Head of HR, South London Commissioning Support Unit
Stakeholders engaged in development or review	Staff Engagement Group CCG Management Team
Equality Analysis	<p>Equality Analysis</p> <p>This Policy is applicable to the Governing Body, every member of staff within the CCG and those who work on behalf of the CCG. This document has been assessed for equality impact on the protected groups, as set out in the Equality Act 2010. This document demonstrates NHS Lewisham CCG's commitment to create a positive culture of respect for all individuals, including staff, patients, their families and carers as well as community partners.</p> <p>The intention is, as required by the Equality Act 2010, to identify, remove or minimise discriminatory practice in the nine named protected characteristics of age, disability, sex, gender reassignment, pregnancy and maternity, race, sexual orientation, religion or belief, and marriage and civil partnership. It is also intended to use the Human Rights Act 1998 and to promote positive practice and value the diversity of all individuals and communities.</p>
Contact details for further information	

Glossary

Term	Definition
Accountable Executive	CCG Executive accountable for development, implementation and review of the policy
Policy Owner	Post holder responsible for the development, implementation and review of the policy
Document definitions	These are provided in Section 1

Contents

Section 1: Introduction.....	5
Section 2: Definitions.....	6
Section 3: Change Management.....	7
Section 4: The Process for Filling Posts in the New Structure.....	14
Section 5: Redundancy Arrangements.....	18
Appendix 1	23
Appendix 2:	28
Appendix 3	33

Section 1: INTRODUCTION

1. INTRODUCTION

NHS Lewisham CCG is committed to actively managing its services to commission the most effective health care for the Lewisham population within its resources. We recognise that as a result, changes may need to be made to our organisational requirements which may affect staffing arrangements.

This policy sets out our approach to the management of organisational change and reflects legislative requirements and aims to provide a framework for common understanding for managers, staff and trade unions. This policy will be revised in light of any additional national HR guidance that is published or legislative changes.

2. PURPOSE

- 2.1 The purpose of this document is to set out the approach of NHS Lewisham CCG to the management of organisational change and the procedures that should be followed by managers, staff and trade 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 service.

3. SCOPE

This policy applies to all NHS staff directly employed by NHS Lewisham CCG, whether on a permanent contract, fixed term contract or those seconded to another organisation, and will be applied consistently and equitably to all staff.

It does not apply to staff employed by another organisation and seconded to NHS Lewisham CCG (those staff are the responsibility of their substantive employer) or to agency/interim staff.

Section 2: DEFINITIONS

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

Continuous service means full or part time employment within NHS Lewisham CCG 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 the *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 CCG's discretion any period of employment outside the NHS which is deemed to be relevant to NHS employment may be counted as reckonable service.

Staff affected by change means staff who may be affected by change e.g. change of line manager or changes to responsibilities, but are not 'at risk' of redundancy

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

Slotting in means the process by which staff who are deemed to be 'at risk' are confirmed into a post in a new staffing structure which is the same or broadly similar (at least 70%) to their current post and where that individual is the only contender for that post. Slotting in may occur where a post is the same band as the individual's current post and where it remains substantially the same with regard to, for example, job content, responsibilities, status and requirements for skills knowledge and experience.

The purpose of using a slotting in process is to ensure that the maximum numbers of staff are swiftly transferred to posts within a new structure thus reducing uncertainty for staff as soon as possible. Determination of posts for slotting in should be discussed with staff-side representatives in advance of the commencement of an organisational change consultation process.

Ring fencing is the grouping of employees who have been automatically matched to a new post, to available vacancies within the new structure. Consideration will be given to comparing the job duties and band of the new/vacant posts with the job currently undertaken by the employee/s.

When ring-fencing occurs an objective selection process will be undertaken and employees will be assessed against the criteria outlined in the person specification. Scenarios where ring-fencing would apply include:

- When the number of displaced employees who are eligible for new posts under the 70% rule (as above) is greater than the number of new post posts available.
- Where there are significant commonalities but the new role represents a change of band.

Redeployment means the transferring or appointment of staff 'at risk' into a suitable alternative post within the organisation, which may be at a lower band or with alternative duties, but where the employee meets all the essential criteria on the person specification, or could do so within a short period of time with appropriate support

TUPE means the Transfer of Undertaking (Protection of Employment) Regulations 2006 amended 2014, concerning the protection of an employee's terms and conditions when transferring his/her employer as a result of a service transfer.

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

Section 3: CHANGE MANAGEMENT

Statement and Principles

- 3.1 Organisational change is driven by the business needs of the organisation and/or policy change. 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 a service or contract, competitive tendering or outsourcing, or a major change in working practice.
- 3.2 In order to meet changing business needs more effectively, there may be occasions when managers need to implement relatively minor changes. For example, a change in role or duties, or reporting line can be agreed locally between staff and their manager. 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 about the proposal with staff affected. **Any situation which may lead to redundancy will not be deemed to be a minor change.**
- 3.3 The CCG 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 organisation is committed to communicating and consulting with staff and trade unions as openly and effectively as possible, utilising existing mechanisms and providing information in a timely way.
- Staff will receive notice of any proposed 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.
- Staff will have the right to be accompanied by a trade union representative or workplace colleague at meetings to discuss the organisational change being proposed.
- The CCG will consider and take all reasonably practicable measures /steps to avoid compulsory redundancies.
- Requests by an employee for additional support at any individual meeting should be considered e.g. where disability is involved, and familiarity with the member of staff or specialist input would be beneficial.
- 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 receive appropriate support to enable them to identify, explore and apply for suitable alternative employment opportunities, and where appropriate to identify potential new career opportunities.
- Staff will have access to the CCGs' Employee Assistance Programme, pensions advice and additional support, where appropriate

Staff will be considered against their substantive post and contractual arrangements.

Duties and Responsibilities

3.4 Staff are central to the achievement and success of organisational change. We acknowledge that change can cause concern and uncertainty and it should therefore be managed fairly and consistently in accordance with established good practice.

3.5 The CCG will consult with staff and staff side representatives on any change management process. We recognise the important roles that staff, line managers and trade unions have in the effective management of a change process.

- **Managers** are critical to the change management process and shall therefore be regularly briefed so that they are in a position to update and respond to the concerns of staff in their teams. In turn managers should provide information to staff 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 contractual status, caring responsibilities, and any protected characteristic as defined by the Equality Act, i.e. ethnic

origin, nationality, race, disability, gender, marital or partnership status, age, religion or belief, sexual orientation or transgender status, when applying this policy.

Managers are required to notify HR of any proposed organisational changes in the first instance.

- **Staff** are expected to play an active role during the pre-consultation and consultation stages and in the further processes of implementation.

Staff who are identified as 'at risk' are required to make every effort to apply for suitable posts as they are advertised. Staff should give serious consideration to all opportunities for suitable alternative employment. This reflects the provisions of the *Agenda for Change* Handbook section 16.19 which states that employees will be expected to show some flexibility.

- **Trade 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 and in accordance with the principle of avoiding compulsory redundancies.

The CCG will formally notify Trade unions of any proposed organisational changes and will undertake consultation with them in line with legal requirements.

Consultation

Purpose of consultation

- 3.6 In accordance with legislation and the partnership working principles of the NHS, the CCG is committed to meaningful and appropriate consultation with staff and trade unions affected by organisational change, with a view to reaching agreement on the way forward; however there may be occasions 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.
- 3.7 The purpose of the consultation meetings with staff and trade unions will be:
- to receive and, where possible, address any questions on the consultation document
 - to consider any comments or views on the consultation document including any alternative proposals and costings (which the CCG shall as far as is practicable make available) before determining any final decision to proceed

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

The consultation process

- 3.8 Prior to the launch of any formal consultation a consultation document will be produced and an equality analysis will be carried out.
- 3.9 The consultation document will include details of the following, as appropriate:
- current situation analysis including staffing structure
 - impact on service/business/patients
 - impact on other areas / 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/bands 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, and how staff and representatives can respond and the deadline for this

The Consultation Period

- 3.10 The CCG is committed to allowing sufficient time for meaningful consultation with staff and their representatives. In exceptional circumstances, where changes need to be made very quickly, trade unions will be briefed immediately and the verbal briefing will be followed by a written brief.
- 3.11 In a collective redundancy scenario, consultation will commence for a period of no less than the following statutory timescales:
- where 20-99 redundancies are proposed, then 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.

- 3.12 Trade 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 be unreasonably refused, and where they cannot be accommodated an explanation will be given.

Consultation with trade unions

- 3.13 The CCG is committed to commencing informal consultation with our recognised trade unions as early as possible; this is also known as pre-consultation. Meaningful pre-consultation often leads to an agreed shorter formal consultation period and greater staff satisfaction with the process.
- 3.14 Formal consultation with recognised trade unions will commence within the minimum timescales set out above and once the consultation document has been finalised. The consultation document will be shared with staff-side colleagues, prior to its launch. This will take the form of:
- ongoing discussions with local accredited representatives
 - trade unions representing staff affected by the change should be invited to the first meeting with staff affected by the change and given reasonable notice to attend
- 3.15 In a redundancy scenario, the information provided in writing to the trade unions shall include the following:
- the numbers and staff groups of employees whom it is proposed to dismiss by reason of redundancy
 - the total number of employees of any such staff group employed by the organisation
 - the proposed method of selecting employees who may be dismissed by reason of redundancy, as determined by this policy
 - the proposed method of carrying out the dismissals, with due regard to any agreed procedure, including the period over which the dismissals are due to take effect
 - the proposed method of calculating the amount of any redundancy payments to be made to employees who may be dismissed. This is set out in the *Agenda for Change* Terms and Conditions of Service Handbook.
- 3.16 During a period of change, senior management will ensure that trade unions are kept informed of developments and will meet with them as appropriate.

Consultation with individual staff

- 3.17 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 maternity/paternity/adoption leave, sickness absence or 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.

- 3.18 Each member of staff affected by the change will be offered the opportunity to have at least one individual meeting with their manager at which they have the right to be accompanied by a trade union representative or workplace colleague.
- 3.19 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 that initial meeting.
- 3.20 A written record of the individual meetings will be kept and a copy provided to the employee and their trade union representative, where applicable. The record will be a note of the main points discussed at the meeting, not verbatim notes.
- 3.21 Regular updates and frequently asked questions should 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/or trade union representative.
- 3.22 In addition to the individual consultation meetings, staff will be kept informed through 1:1 meetings, team meetings, staff partnership forums and encouraged to read any regular updates circulated by the Communications Team.

End of consultation

- 3.23 At the end of the consultation period full consideration will be given to all comments received from staff and trade unions. Management will then make a decision on the way forward. A written response to the feedback received during the consultation process will be provided to staff and trade unions outlining:
- an update on the number of responses received and a summary of feedback/comments. Respondents will not normally receive individual replies
 - an explanation of where the proposal has changed as a result of consultation including revised structure charts, if appropriate
 - an explanation of where management decision may be in conflict with the views of the trade unions representatives and staff
 - confirmation of arrangements for filling posts via slotting in or ring fenced competition
 - confirmation of selection arrangements for posts within the new structure
 - measures that will be taken to avoid compulsory redundancies
 - arrangements for seeking suitable alternative employment

- reminder of support available for staff who are affected by the change
- proposed timescales for each stage of the change process

3.24 Where redundancies are unavoidable, the CCG will set selection criteria for inclusion in the response to consultation. 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 CCG is not open to legal challenge. Selection criteria will be discussed and agreed with Trade Unions.

Under normal circumstances, staff will be selected on the basis of their relevant skills, experience and qualifications to undertake the remaining jobs, as assessed through formal interviews held in accordance with CCG selection procedures. However there may be occasions where additional selection criteria are agreed with the trade unions during the consultation process, such as,

- Conduct and performance (as evidenced through the disciplinary and performance review records)
- Attendance records (due regard will be taken as to the causes of absence and the equality impact of use of this criteria)

3.25 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. Staff considering the option of early retirement should seek further advice from the pensions department. A voluntary redundancy scheme may be introduced to avoid compulsory redundancies. 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.

Support for staff

3.26 All staff affected by the organisational change will be encouraged to seek the advice and support of their line manager and trade union. We are committed to supporting staff through change processes and this may include:

- support with the production of supporting statements/application forms/CVs (including assistance with NHS Jobs)
- preparation for interview
- support in developing strategies to cope with organisational change
- time to meet with recognised trade 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
- placement on the organisation's 'at risk' register and access to any restricted vacancy arrangements in place

- advice to staff on pension entitlements
- relevant support from Job Centre Plus

3.27 Following any period of organisational change, we acknowledge that staff may take some time to adjust to the change itself. Managers should remain available to staff to manage any issues that arise and support staff through the transition.

Section 4: THE PROCESS FOR FILLING POSTS IN THE NEW STRUCTURE

4.1 As part of any consultation document/response to consultation the two key stages for filling posts in a new structure are:

- **Stage One** - this is where posts in the new structure are filled by either slotting in or by ring fenced competition.
- **Stage Two** - this is where wider competition will take place for any posts that remain vacant in the new structures. These posts will be opened up for application from any staff 'at risk' for whom the post is considered suitable alternative employment and where pay protection may then apply.
- **Stage Three** - this is where vacancies are advertised internally and externally in line with the normal recruitment procedure.

The three stages may run in parallel but all reasonably practicable steps will be taken to avoid compulsory redundancies. Priority will be given to "at risk" staff.

4.2 Job descriptions and person specifications will be produced for any new posts created and will be evaluated in accordance with applicable NHS systems for job evaluation for example, *Agenda for Change*, VSM.

4.3 Staff who are offered posts during stages one or two will be deemed to have been offered suitable alternative employment and this will be confirmed in writing. Staff should seek advice before refusing any such offer as this may impact on redundancy entitlement. For details of appealing against slotting in or ring fencing processes, refer to Appendix 3.

Staff 'at risk'

4.4 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 or occupational groups, management will identify the positions, individual staff or pools of staff who are 'at risk' of redundancy as a result of the changes.

4.5 The identification of being 'at risk' of redundancy is not the same as being

issued with formal notice of redundancy.

- 4.6 Staff identified as 'at risk' will be invited to a meeting(s) with their manager and trade 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 redundancies, reducing the number of staff at risk who are made redundant and mitigating the consequences of any redundancies
 - explore the possibility of redeployment and explain the process
 - 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 will include providing a redundancy payment and/or pension entitlement estimate where appropriate
- 4.7 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 to questions raised at the meeting wherever possible.
- 4.8 Staff 'at risk' will be given prior consideration for posts within the new structure where they meet the selection criteria, under stages one and 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 date 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 four week trial period, which may be extended by mutual agreement.
- 4.9 Staff who are not selected for a post in the new structure will be formally issued notice of redundancy in accordance with their contract of employment. They will continue to be included on the CCG's 'at risk' register.
- 4.10 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, prior to stage one or two of the process for filling posts in the new structure being completed.
- 4.11 Staff confirmed as 'at risk' will be required to register with NHS Jobs and apply for posts via this system. The CCG will work with them to identify any suitable posts.
- 4.12 Staff 'at risk' will be given prior consideration for other posts that are or become vacant in the CCG during a specific organisational change and subject to the arrangements regarding suitable alternative employment and trial periods, they will remain on the register until their last day of service.

Redundancy

4.13 The formal definition of redundancy

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 organisation 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 organisation 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.

4.14 The place of work referred to above is the individual employer and should not be confused with the specific site or unit in which an individual works.

4.15 The HR Team is responsible for notifying the relevant Department (currently the Department for Business, Innovation and Skills - BIS) in writing if the CCG proposes 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 trade union representatives concerned. Advance notification to the relevant Department does not bind the CCG to make the employees redundant.

Suitable Alternative Employment

4.16 Suitable alternative employment is work that is on broadly similar terms i.e. the same or similar 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 organisation subject to travel and time considerations. Staff confirmed as 'at risk' will be given prior consideration for other posts that are in line with their skills, experience and capabilities and where appropriate will receive protection of pay in accordance with this policy.

4.17 A post may be considered as suitable alternative employment if it is banded on the same band as the staff member's current post, or one band higher or lower.

4.18 Following identification of potentially suitable posts at either stage one or stage two, individual staff at risk will be offered the position in writing and 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.

- 4.19 If the individual is offered the post, this will be treated as an offer of suitable alternative employment and a trial period will apply.
- 4.20 Staff who unreasonably refuse an offer of suitable alternative employment may lose their right to a redundancy payment.

Trial Periods and Training

- 4.21 A trial period will only apply to staff 'at risk' and where a formal offer of suitable alternative employment has been made.
- 4.22 The purpose of a trial period is for both the manager and the individual to assess the suitability of the post as alternative employment.
- 4.23 During a trial period managers are responsible for:

Induction training – it is important that redeployed staff are given an induction to the team and role

Review of performance – managers have a responsibility to review and assess performance of staff throughout the trial period. Any concerns should be raised with the staff concerned as soon as possible to allow them time to make improvements and further develop into the role.

Review – during the fourth week of the trial period a formal meeting should be held with the staff member and their manager to agree whether the employment is suitable. The process for this review meeting is set out at Appendix 1.

- 4.24 Where staff have the potential ability but not the immediate experience to undertake the full duties of the role, they will be provided with appropriate 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.
- 4.25 The trial period will normally last for four weeks but may be extended by mutual agreement where a member of staff requires additional training and development.
- 4.26 If the trial period is unsuccessful, as determined by the individual and/or the manager concerned, redundancy arrangements may apply as from the date when the original contract of employment will terminate. Until the end of their notice period staff at risk will be considered for other suitable alternative employment if available which will be subject to the same arrangements including a trial period.

- 4.27 If an employee is offered suitable alternative employment towards the end of their notice period, in some cases the trial period may run until after the date on which their notice period is due to end. If, following the trial period, the post is not deemed to be suitable alternative employment then due to the fact that the notice period has ended, the contract of employment will terminate at the end of that trial period and redundancy arrangements will then apply.

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 and this results in increased travel costs to and from work, staff may be reimbursed their extra daily travelling expenses in accordance with the excess travel policy.

Section 5: REDUNDANCY ARRANGEMENTS

- 5.1 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.
- 5.2 The terms under which a redundancy payment and/or early retirement benefit are payable are summarised below in accordance with section 16 of the Agenda for Change terms and conditions of service (found at <http://www.nhsemployers.org/your-workforce/pay-and-reward/nhs-terms-and-conditions/nhs-terms-and-conditions-of-service-handbook>):
- To qualify for a redundancy payment/early retirement benefit the individual must have:
 - a contract of employment with the CCG; 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 (i.e. the maximum payable is 24 months)
 - 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, prorated 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, prorated for employees working less than full time.
 - No redundancy payment will exceed £160,000 (pro-rata).

- 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.

5.3 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 organisation or another NHS employer
- unreasonably refuse to accept suitable alternative employment with the organisation 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 for the organisation.

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.

5.4 The manager will liaise with HR in order to obtain details of redundancy entitlements and other aspects of the redundancy process. The manager, with support from HR, will provide in writing, to the individual and their trade union representative 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, which may 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.

Protection Arrangements

5.5 Protection 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/or certain terms and conditions of employment.

5.6 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 allowance

5.7 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.

Transfer of Undertaking (Protection of Employment) Regulations (TUPE)

Transfers of services and staff

5.8 Where there is a proposal to transfer services and staff to a different employer either within or outside the NHS, there will be consultation with the trade unions at the earliest opportunity. This will be for a minimum of 30 days (unless otherwise jointly agreed) and where 100 or more staff are affected will be 90 days (unless otherwise jointly agreed).

5.9 When services are transferred from one organisation to another in line with TUPE or by virtue of a Transfer Order under the National Health Service Act 1977, 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 and where services are brought back into the NHS.

5.10 All the terms and conditions within the transferring employee's contract of employment (including contractual policies and procedures) will transfer with them.

- 5.11 Where staff have responsibilities working within a function 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 if their employment should transfer. 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, to be declared at risk.
- 5.12 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 trade 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.
- 5.13 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.
- 5.14 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 CCG 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, service needs or decisions of approval, a shorter notice period will be provided following consultation with Trade Unions.

Appeals, Complaints and Joint Agreements

- 5.15 Any member of staff whose contract of employment is terminated by reason of redundancy will have the right of appeal against their selection for redundancy in line with the appeals procedure set out at Appendix 3. The decision of the Appeal panel will be final and there will be no further opportunity for recourse to the CCG's Grievance Procedure.
- 5.16 In the event of a complaint about misapplication of this policy this will be dealt with in accordance with the CCGs Grievance Procedure.

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TRIAL PERIOD

Checklist for review meeting

Checklist for review meeting to be held with staff at the end of the four week trial period in the post considered to be suitable alternative employment.

- Where staff have been appointed to posts through either slotting in or ring fenced competition, the manager and staff member are encouraged to complete the proforma at Attachment 1 in preparation for the review meeting at the end of the trial period.
- Where staff have not been appointed to a post following the end of the appointments process every effort will be made to secure suitable alternative employment for them. Where a potential post is identified the line manager will carry out an assessment of the suitability of the post using the proforma at Attachment 1.
- Managers should take a copy of this assessment form with them to the review meeting at the end of the trial period. The manager should have reviewed this prior to the meeting to confirm that they are in agreement with the original assessment made. If there is anything that the manager wishes to add, following the trial period, this should be done on a separate suitable alternative employment assessment proforma.
- If the staff member does not bring a representative or work colleague to the meeting, the manager should ask them if they are happy to proceed. If they are not happy to proceed, the manager should offer them the opportunity to rearrange the meeting.
- The manager should ensure a short record of the discussion is kept using Attachment 2. The manager should explain that the purpose of the meeting is to give both parties the opportunity to discuss the suitability of the post, in light of the trial period, with a view to finalising the job offer.
- The discussion should be based on the criteria for suitable alternative employment set out below:
 - **Location** - All journeys within a 60-minute commute from home will be considered suitable (individual circumstances will be considered and a *reasonable* decision taken on an individual basis)
 - **Salary** - the new post should be graded at the same band as the existing post or one band higher or lower
 - **Job Content** – what the post holder does on a day to day basis, their key tasks and type of work

- **Responsibility** – management of staff (numbers and grades)
management of budgets including size of budget
 - **Status** – reporting lines (the hierarchy and level of autonomy in the current organisation)
 - **Skills required** – are they roughly the same/new skills needed/lower level of skill required
 - **Professional development** – what affect if any does the change have on the longer-term career plan of the individual
 - **Working hours and working pattern** – what affect if any does the change have on the work-life balance of the individual.
- The manager should give their view on the post as suitable alternative employment.
 - The manager should invite comments from the staff member about the post.
 - If both parties are in agreement that the post is suitable alternative employment the manager should then confirm that:
 - the staff member continues in the post and will receive a formal offer letter
 - the formal start date will be the first day of the trial period
 - any further induction and/or training arrangements will be agreed
 - If the staff member does not agree that the post is suitable alternative employment the manager should ask them to provide a written explanation of their reasons for this, against the suitable alternative employment criteria, within 5 working days.
 - The manager should also provide a written explanation of why they consider the post to be suitable alternative employment, using the agreed criteria.
 - An appropriate Director will then review all relevant paperwork and confirm whether they consider the post to be suitable alternative employment.
 - Where the Director confirms that a post is considered to be suitable alternative employment this should be confirmed in writing to the staff member .
 - The manager should advise the staff member that if they choose not to accept the post as suitable alternative employment, they may forfeit their right to a redundancy payment where the CCG has confirmed a formal offer of suitable alternative employment, which they choose not to accept.
 - Where the Director confirms that a post is not suitable alternative employment this will be confirmed to the staff member, in writing, and the CCG will continue to seek opportunities for suitable alternative employment for the staff member until the end of their notice period.

Subsidisation of additional travel costs

If as a result of organisational change there is a requirement to move staff from their normal place of work to another location, and this results in increased travel costs to and from work, staff may be reimbursed their extra daily travelling expenses for a period of up to 4 years from the date of transfer, in accordance with *Agenda for Change* Terms and Conditions section 17.29

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SUITABLE ALTERNATIVE EMPLOYMENT JOB PROFORMA

(Line manager to complete this assessment form comparing current post against proposed post deemed to be suitable alternative employment)

CRITERIA	ASSESSMENT
Location Journeys within 60 minutes commute will be considered suitable	
Salary New post salary should be no less than 10% or one grade higher or lower than existing basic pay	
Job content What the post holder does on a day to day basis, key tasks and type of work	
Responsibility Management of staff (numbers and grade) management and size of budget	
Status Reporting lines (hierarchy and level of autonomy in current organisation)	
Skills required Are they roughly the same/new skills needed/lower level of skill	
Professional Development What effect on the longer term career plan of the individual	
Working hours/working pattern What effect if any, does the change have on the work life balance of the individual	

Member of staff.....

Line manager.....

Date..... Date discussed with post holder.....

Outcome.....

Attachment 2

Record of meeting with staff at the end of the four-week trial period

Date of meeting:	
Name of Staff Member	
Others present	
Outcome of meeting	
Other issues discussed	

Signed (staff member):

Date:

Signed (manager):

Date:

Appendix 2:

PROTECTION ARRANGEMENTS

1. INTRODUCTION

The NHS recognises the importance of introducing arrangements for safeguarding the pay and conditions of service of individual staff of service enables the NHS to retain the skills and experience of its staff, as an alternative to redundancy/ early retirement, hence contributing to the stability of employment.

2. SCOPE

These arrangements apply to all eligible employees of NHS Lewisham CCG who are adversely affected by organisational change resulting in a loss of earnings. This will include being required to:

- move to a new post as suitable alternative employment and being downgraded as a result of the move
- reduce their substantive working hours within the standard week

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 on his/her application to a post within the NHS where the basic salary is either lower, higher or equal to the protected salary
- the end of the pay protection period is reached

Where staff are receiving pay protection from the previous change process and as a result of further organisational change their post is downgraded again then they would have the opportunity to either retain their existing pay protection arrangements until their expiry date or alternatively they can begin a new period of protection on the basis set out in this policy 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 NHS Lewisham CCG

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 allowance. 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 of appendix 2.

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, NHS Lewisham CCG will protect their basic salary, including increments and any cost of living increases awarded, as defined above, in accordance with the following:

Length of Continuous NHS service	Pay Protection Period
Less than 1 year	Nil
1-5 years	2 years
Over 5 years	3 years plus 1 year mark time

Continuous Service means full or part time employment within NHS Lewisham CCG 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.

Mark Time Protection occurs when the financial sum of the basic salary is preserved, but increments and cost of living increases are excluded. The effect of mark time is to allow a period of 'waiting' for the new salary/allowance to catch up with old pay rate.

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

- Psychiatric and geriatric lead
- Domiciliary income

Allowances for:

- Shift duty
- Night duty
- Split duty
- Unsocial hours
- 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 on a short-term basis in accordance with the following:

Length of Continuous NHS service	Protection Period
Less than 1 year	Nil
1 – 5 years' service	6 months
Over 5 years' service	12 months

Please note that additional earnings and allowances do not include bank hours.

6. PROTECTION OF OTHER TERMS AND CONDITIONS OF SERVICE

Hours of work – where there is an organisational change that impacts on an individual's hours of work and there is a reduction in hours short term pay protection will be made for the difference.

Annual Leave – annual leave entitlement will be calculated based on the hours of work in the new post. Where there is an organisational change that impacts on an individual's hours of work and therefore reduces their annual leave entitlement short term protection will apply.

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 downgraded as a result of organisational change are safeguarded for a

specified period of time and 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 Band/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

8. CONDITIONS OF PROTECTION

Protection of basic salary is conditional on the employee giving the undertaking to move, where required to by NHS Lewisham CCG to a more senior post within NHS Lewisham CCG, or where this would be reasonable with another employing authority, 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 within NHS Lewisham CCG 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 overtime, shift work or other additional duties which may be required up to the level at which earnings in the new post equals 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.

9. 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 human resources team must inform staff whom this will affect at the time their protection commences and again once it ceases. The application request from the member must be made within 3 months of the member going on reduced pay.

How does a member apply?

- (I) The member must apply by completing application form 'SMR9 App' available on the intranet, under Human Resources, and send this to their HR Business Partner (HRBP). This should be done as soon as possible and must be submitted to the HRBP within 4 weeks of the end of the pay protection period.
- (II) Upon receipt of a completed application form 'SM R9 App', from the member the HR Business Partner will need to complete form SM R9 EA, ensuring that all relevant information is provided.
- (III) Both forms should then be sent to the pensions team for processing and then for forwarding to NHS Pensions Agency (NHSPA).
- (IV) NHSPA will then consider the application and write to the employer to confirm the outcome of the application. The employer will advise the member of staff of the outcome of their application.
- (V) If a member's application is accepted their NHS pension will be calculated thus,
 - (a) When they retire, if they have one period of protection, two pensions will be calculated, i.e.
A pension based on the protected rate of pay* plus inflation increases for membership up to the date the pay protection ended and a second pension for membership after that date will be calculated using pay* at retirement.
 - (b) If by retirement the protected pay plus inflation increases is not more beneficial, then the whole of the pension benefits will be calculated using pay* at retirement.

*1995 Section - The best of the last three years pensionable pay.

*2008 Section - The reckonable pay, which is an average of the best three consecutive years pensionable pay in the last ten years.

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 Head of Human Resources 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 Chief Officer or a Governing Body Member nominated by the Chief Officer.

Failure of the appellant to attend the hearing without providing an adequate reason will result in NHS Lewisham CCG 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
- 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 matter.
- 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.