

Organisational Change Policy (Mid and South Essex CCGs)

Contents

Change History:	4
Implementation Plan:	4
1.0 Introduction	6
2.0 Scope.....	6
3.0 Definitions	6
3.1. Competitive slot in.....	6
3.2. Continuous service.....	6
3.3. Major organisational change.....	6
3.4. Minor change	7
3.5. Reckonable service	7
3.6. Redeployment.....	7
3.7. Redundancy	7
3.8. Ring-fencing.....	8
3.9 Slotting In	8
3.10. Staff at risk.....	8
3.11. Suitable alternative employment	8
3.12. TUPE.....	8
3.13 COSOP.....	9
4.0 Policy Statement.....	9
5.0 Responsibilities.....	9
5.1 Managers.....	9
5.2 Employees.....	10
5.3 HR Team	10
5.4 Accountable Officer / Executive Team	11
6.0 Procedure	11
6.1 Planning for Organisational Change	11

6.2	Consultation Procedure	11
6.3	Meaningful consultation.....	13
6.4	Time periods for consultation.....	13
6.5	Consultation with trade unions/staff representatives	14
6.6	Consultation with individual employees	14
6.7	Individual meetings	15
6.8	Additional communication	15
6.9	End of consultation	15
6.10	Selection for redundancy	15
6.11	Voluntary Redundancy	17
6.12	Staff at Risk of Redundancy.....	17
6.13	Suitable alternative employment.....	18
6.14	Trial periods and training	19
6.15	Absent employees	19
6.16	Redundancy arrangements	20
6.17	TUPE.....	22
6.18	Pay protection	24
6.19	Change of location.....	24
6.20	Temporary / urgent redeployment of resource to meet a business need	24
6.21	Personal and professional support.....	25
6.22	Appeals, complaints and joint agreements.....	25
Appendix 1	REDEPLOYMENT OF STAFF IN THE MIDLANDS & EAST OF ENGLAND MEMORANDUM OF UNDERSTANDING	26
Appendix 2	EIA.....	29

Change History:

Version	Date	Reviewer(s)	Revision Description
V1.0	September 2019	Julie Burton (Head of HR & Workforce Development, NHS Mid Essex CCG)	Adapted the Herts & West Essex adapted version of the 'London Change Policy'

Implementation Plan:

Development and Consultation	<p>Adapted from the Herts & West Essex CCGs Organisational Change policy (which in turn was based on the 'London Change Policy').</p> <p>Reviewed by senior HR leads representing all CCG's proposed to be covered by this policy.</p> <p>Consultation and agreement with CCG union and staff reps.</p>
Dissemination	This will be communicated electronically to all staff and will be published on the CCG's intranet.
Training	There are no specific training requirements in order to implement this policy. However, managers will be able to access advice from the HR Department on the implementation and interpretation of this policy.
Monitoring	Periodic quality audits of agency/interim use to ensure compliance with this policy. The data identified from monitoring will be used to update the policy and ensure best practice as necessary.
Review	Every 2 years
Equality and Diversity	TBC - Equality Impact Assessment

Associated Documents	<ul style="list-style-type: none"> • Agenda for Change Handbook
References	<ul style="list-style-type: none"> • The Trade Union and Labour Relations (Consolidation) Act 1992 • The Collective Redundancies and Transfer of Undertakings (Protection of Employment) Regulations 1995 (SI 1995/2587) • The Employment Rights Act 1996 • The Collective Redundancies and the Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999 (SI 1999/1925) • The Collective Redundancies (Amendment) Regulations 2006 (SI 2006/2387) • The Agency Workers Regulations 2010 (SI 2010/93) • The Unfair Dismissal and Statement of Reasons for Dismissal (Variation of Qualifying Period) Order 2012 (SI 2012/989) • The Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment) Order 2013 which comes into force on 6 April 2013. • Trade Union and Labour Relations (Consolidation) Act 1992 (as amended)

1.0 Introduction

- 1.1 NHS Basildon & Brentwood CCG; NHS Castle Point & Rochford CCG; NHS Mid Essex CCG; NHS Southend CCG and NHS Thurrock CCG (respectively referred to as “the CCGs”) collectively have sought to adopt one universal Organisational Change policy which is consistent in principle and application across the CCGs (or any successor organisation).
- 1.2 The CCGs actively manage their services so as to ensure maximum performance within their resources. They recognise that as a result, changes may need to be made to the CCG’s organisational structures, which may affect staffing needs.
- 1.3 The basis for this document is the organisational change management policy document that has been developed in partnership with a number of NHS organisations and staff side representatives that make up the Social Partnership Forum (The ‘London Change Policy’), in order to ensure consistency on the issue of major organisational change by NHS organisations. The policy has been adapted for use in the CCGs and will apply in the event of major organisational change.

2.0 Scope

- 2.1 This policy applies to all CCG employees, whether permanent or employed on fixed term contracts. It does not apply to agency staff, bank staff, Independent Contractors or Office Holders or staff on employment breaks of over 12 months in duration.

3.0 Definitions

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

- 3.1. **Competitive slot in**
When slotting in applies to more than one individual and there are insufficient posts for each individual to slot into e.g. when ten people meet the slotting in criteria but there are only eight roles available. In this scenario, a fair selection process will take place to determine the outcome. It should be noted that in a competitive slot-in process the posts must be appointed to from the pool of at risk employees.
- 3.2. **Continuous service**
Means full or part time employment with the CCG or any previous NHS employer provided there has not been a break of more than one week (Sunday to Saturday) between employment periods. This definition is in accordance with NHS Terms and Conditions section 16.4 and in-line with the Employment Rights Act 1996
- 3.3. **Major organisational change**
This will include the reorganisation, relocation, merger, expansion or closure of a

service/department, competitive tendering or outsourcing, or a major change in working practice. Changes that impact on terms and conditions and pay will usually be deemed as major organisational change. All such changes 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 staff representatives.

3.4. **Minor change**

Defined as change that has no impact on the contractual relationship, for example, change of line management. In order to meet changing business needs more effectively, there may be occasions when managers need to implement relatively minor changes. 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 informal consultation with employees affected.

3.5. **Reckonable service**

(for the purposes of calculating redundancy pay entitlement and which is calculated on the basis of the service up to the date of termination of the contract) means Continuous Service plus any service with a previous NHS employer where there has been a break of 12 months or less. Any breaks of 12 months or less will be added to the start date to obtain a period of continuous employment without breaks for calculation purposes. Employees dismissed by reason of redundancy must, at the date of their termination, have at least 104 weeks' (2 years') continuous NHS service with one or more NHS employers, with a break of no more than 7 days (Sunday to Saturday). Where there has been a break of more than 7 days, there will be no entitlement to a redundancy payment until 104 weeks' (2 years) service has been achieved, at which time any previous continuous NHS service (with a break of 12 months or less) will be applicable)

The following employment will not count as reckonable service:

- employment that has been taken into account for the purposes of a previous redundancy, or loss of office payment by an NHS employer;
- where the employee has previously been given pension benefits, any employment that has been taken into account for the purposes of those pension benefits.
- Employment with a non-NHS Employer

3.6. **Redeployment**

This means the transferring or recruitment of staff at risk of redundancy into a suitable alternative post. See definition of suitable alternative employment at 3.11 below.

3.7. **Redundancy**

In situations where an employee is dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to the fact that:

- the employer ceases to carry on the business in which the employee was

- employed;
- the employer ceases to carry on that business in the place where the employee was employed;
- the needs of the business for employees to carry out work of a particular kind cease or diminish; or
- the needs of the business for employees to carry out work of a particular kind in the place where the employee was employed cease or diminish.

3.8. **Ring-fencing**

This means the process by which a post or posts in a new structure are made available only for an identified specific group of staff affected by the changes. The post or posts will not meet the definition for slotting in, but may be potentially suitable for the staff at risk, as the requirements of the post are similar to their current post. A ring fenced post may be one band higher, the same band as the employee's substantive post, or one band lower and in the case of Very Senior Managers (VSMs) does not exceed a 15% decrease in total salary. Appointment to the post(s) will be made using a fair selection process, in line with the CCGs Recruitment and Selection Policy. Where an employee is considered for a post one band higher than their existing band they will need to demonstrate they meet the essential criteria of the person specification through an appropriate selection process. Only once staff identified as being within a ring fence have had the opportunity to apply for the post, will the post then be opened up for recruitment from a wider pool.

3.9 **Slotting In**

Means the process by which staff 'At Risk' are confirmed into a post in a new staffing or management structure which is similar to their current post and where that individual is the only contender for that post (or there are the same number of posts as people). Slotting in will usually occur where a post is in the same band as the individual's current post or where it remains substantially the same (usually defined as 75% the same) with regard to job content, responsibility, grade, status and requirements for skills, knowledge and experience.

3.10. **Staff at risk**

This means employees whose posts may potentially be redundant as a result of organisational change if suitable alternative employment cannot be found.

3.11. **Suitable alternative employment**

Work within the NHS that is on broadly similar terms, of similar seniority/ scope of responsibility 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 NHS subject to travel considerations. Suitable Alternative Employment may be one band higher, the same band or one band lower.

3.12. **TUPE**

Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the "Collective redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) regulations 2014 ("TUPE").

3.13 **COSOP**

Means the Cabinet Office Statement of Practice. National guidance should be referred to if it is believed that COSOP should apply.

4.0 **Policy Statement**

- 4.1. Organisational change is driven by the business needs of the CCG or the wider NHS. Change can be triggered either by the external environment or by an internal review of service requirements.
- 4.2. 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 CCG will provide such information about the proposed organisational change as it can, in accordance with good employee relations practice;
 - employees will receive notice of any organisational change which may affect their futures at the earliest opportunity;
 - employees will be treated as individuals with due regard to their personal circumstances at all stages of the change management procedure. This will take into consideration any reasonable adjustments required in line with the Equality Act 2010;
 - employees will have the right to be accompanied by an accredited trade union representative or workplace colleague at formal meetings to discuss the major organisational change that affects their employment;
 - the CCG will consider all reasonably practicable steps to avoid compulsory redundancies (where possible);
 - employees will receive training and development, as appropriate/ reasonable to meet new skill requirements (where possible);
 - employees will have access to the CCG's employee assistance programme (EAP) / Occupational Health support as necessary.

5.0 **Responsibilities**

5.1 **Managers**

Managers are responsible for:

- a) Ensuring they are familiar with this policy and that they take advice at an early

stage from HR before initiating or proposing organisational change.

- b) Engaging with employees and staff representatives as early as possible, once change is a potential outcome (and in all circumstances before any changes are made).
- c) Developing and implementing appropriate consultation and communication plans.
- d) Articulating the case for change ahead of consultation, preparing a business case if appropriate and ensuring appropriate authority is received through the appropriate governance structures in the CCG before proposing and initiating organisational change.
- e) Identifying opportunities for redeployment or retraining for affected employees and freezing vacancies within their area (and other areas as appropriate) of responsibility that may constitute suitable alternative employment for affected employees.
- f) Ensuring the change processes are in line with organisational goals and consideration of how best to reduce the impact on the workforce as a result of change.
- g) Managing /leading meetings / forums as required with individuals / groups where appropriate as part of the outlined processes in this policy.

5.2 **Employees**

Employees are responsible for:

- a) Responding and contributing to organisational change, including, where appropriate, making suggestions for alternative ways to meet the CCG's business requirements.
- b) Actively seeking and taking up suitable alternative employment opportunities both within and outside the CCG.
- c) Being open to retraining opportunities in order to maximise options for suitable alternative employment.

5.3 **HR Team**

The **HR Team** are responsible for:

- d) Overseeing the implementation of this policy, ensuring legal and procedural updates are incorporated in a timely manner.
- e) Supporting employees and managers to understand this policy and receive training as required.

- f) Working with managers to workforce plan, designing a change process that is fair and in line with organisational goals, whilst having the least negative impact on the workforce.
- g) Having informal and formal conversations with staff representatives in order to facilitate the process.
- h) Providing advice, guidance and support to managers and employees throughout the change process, including identifying redeployment or retraining options.
- i) ensuring best practice is adhered to, advising on relevant HR policies and procedures and facilitating outcomes which are in the best interests of the Organisation and individual, wherever possible
- j) Notifying the relevant Department (currently the Department for Business, Innovation and Skills (BIS)) in writing if the CCG proposes to make 20 or more employees redundant, within the terms of the legislation in force at the time. Advance notification to the relevant Department does not bind the CCG to make the employees redundant.

5.4 **Accountable Officer / Executive Team**

The **Accountable Officer/Chief Executive and Executive Team** – has ultimate responsibility for ensuring that mechanisms are in place for the overall implementation, monitoring and revision of this policy.

6.0 **Procedure**

6.1 **Planning for Organisational Change**

Before undertaking any change process, managers must ensure that there is a clear rationale for change. Where appropriate, this should be underpinned by data collection and analysis of information relevant to the business need triggering proposed change. Before commencing any major change process, a business case should be written by the manager and submitted to the relevant committee/meeting for approval. HR advice should be sought in advance of this stage to ensure that the business case comprehensively covers all workforce implications and that the proposals have been shaped in line with best practice, legal and other national requirements.

6.2 **Consultation Procedure**

Having been granted authority to proceed from the relevant committee/meeting, managers shall prepare and discuss with HR a consultation document which will form the basis for discussion with staff and their representatives.

Discussion with trade union and staff side representatives should take place to

inform them that consultation will be commencing.

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

- current situation analysis including staffing structure;
- 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;
- impact on the wider health and social care economy;
- impact on support services;
- consideration of any relevant health and safety assessment;
- an equality impact assessment which must be completed and appended;
- proposed timescale for consultation;
- proposed methods of selection for redundancy;
- proposed implementation of the proposed change and timescales;
- description of the consultation process, including planned meetings, timetable, how employees and their representatives can respond and the deadline.

In a redundancy scenario the document must also include:

- the reason for the potential redundancy dismissals;
- the number of proposed redundancies, their job types and bands;
- the total number of employees affected by the change;
- the proposed method of selecting employees who may be dismissed due to redundancy (including the criteria being used for the selection of employees to be made redundant or the way in which employees will be selected for posts within the new structure);
- the procedure to be followed in dealing with the redundancies;

- the measures to be taken to avoid compulsory redundancies which may include natural wastage, redeployment with retraining, inviting applications for voluntary redundancy.

6.3 **Meaningful consultation**

In accordance with legislation and the partnership working principles of the NHS, the CCG commits itself to meaningful and appropriate consultation with staff representatives and employees affected by organisational change, with a view to reaching agreement on the way forward. It is acknowledged, however, that there will be times when organisational change will need to proceed without a consensus being reached on all issues.

The purpose of the consultation and consultation meetings with employees and staff representatives 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 practicable make available) before determining any final decision to proceed;
- to clarify any change processes and timeframes specific to the proposed organisational change exercise under discussion.

6.4 **Time periods for consultation**

In all cases, the CCG will allow sufficient time for meaningful consultation with staff and their representatives. In exceptional circumstances where changes need to be made very quickly, staff representatives will be briefed as soon as is practicable.

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.

Staff representatives 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.

In the event of large scale change requiring a 45 day consultation process, the CCG and staff 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.

6.5 **Consultation with trade unions/staff representatives**

Early informal consultation with staff representatives and trade unions should occur. 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.

Formal consultation with staff representatives and trade unions will commence once the consultation document has been finalised. This will take the form of:

- written information provided in the form of the consultation paper;
- ongoing discussions with local accredited representatives;
- trade unions representing employees affected by the change should be invited to the first meeting with all affected employees and given reasonable notice to attend.

During a period of change, management will ensure that trade unions/staff representatives are kept informed of developments and will meet with them as appropriate.

6.6 **Consultation with individual employees**

Each employee affected by the organisational change will be provided with a copy of the consultation document.

A group meeting will be held with all employees affected by the organisational change to announce the proposed change and explain the consultation process which will follow.

Employees will be invited to comment and feedback on the proposals, including how they may impact on their personal circumstances, and will be invited to put forward alternative proposals. It is recognised that employees may require time to respond

and may not be able to do so at the group meeting. All employees will have the opportunity of an individual meeting with their manager if requested.

In a redundancy scenario, the manager may invite applications for voluntary redundancy at this stage and employees will be invited to put forward ideas on avoiding compulsory redundancies.

Further group meetings may be held and dates should be set out in the consultation document.

6.7 **Individual meetings**

Each employee 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 trade union representative or workplace colleague.

A written note of the main points discussed in the individual meetings should be kept and shared with both parties.

6.8 **Additional communication**

In addition to the individual consultation meetings, employees can be kept informed through team meetings, email and other written communication, for example, frequently asked questions may be circulated to employees during/after the formal consultation period. Throughout this period employees should be encouraged to discuss any concerns and queries with their line manager and trade union.

6.9 **End of consultation**

At the end of the consultation period the manager will ensure that they give full consideration to all feedback received from employees and their representatives, to inform their decision on the way forward. The manager will liaise with HR and produce a written report to the employees and staff representatives, covering the decision made, the change process to be followed and the timeframe. Where alternative proposals and ideas have been rejected in whole or in part, the rationale for this should be provided.

If the parties agree that consultation has concluded, there is no need for collective consultation to continue for a full 30 or 45 day period. However, where consultation has not resulted in agreement with trade union and employee representatives or has not reached its conclusion, it should continue until the expiry of the statutory timescale.

6.10 **Selection for redundancy**

Whilst every effort will be made by the CCG to identify alternative options to compulsory redundancy, there may nevertheless be occasions when the need to make compulsory redundancies is unavoidable.

Where there is a proposal to reduce the number of jobs in an area of work where

employees share identical or similar job descriptions (i.e. the need for employees to undertake work of a particular kind has diminished), all relevant post holders will form the pool from which individuals will be selected for redundancy. The decision on the pool will be made by the relevant director(s) or nominated line manager(s) in consultation with HR, and will be subject to consultation with staff representatives/trade unions.

The CCG undertakes to act reasonably and ensure the selection of employees for redundancy is fairly carried out and in accordance with objective criteria. The methods managers can consider are as follows:

The method of selection to available positions will be objective, non-discriminatory and fair. The method may consist of any one or a combination of the following:-

- A paper based application;
- A selection interview;
- A review of performance records;
- An assessment centre for tests and or exercises;
- A matrix based approach, for example, considering qualifications and/or experience, skills, attendance, performance and conduct record, with appropriate scoring and weighting assigned.

These methods may also be applied in stages. For example, there may be a ring-fencing stage one to maximise opportunities for affected employees, followed by a slotting in stage.

Where employment records are used, care should be taken to ensure that these are complete and accurate. The employee may be asked to verify the information and they may be asked to complete a questionnaire or attend an interview to supplement personal records where it is felt this would assist the selection process.

Once the detail of the selection process has been determined employees must be informed of:

- a) The criteria for selection including the weightings to be used and the information which will be taken into account (e.g. qualifications, experience etc.);
- b) The selection process to be followed;
- c) The time scales.

Care will be taken to ensure that the selection is based on a fair mix of objective and subjective criteria that are reasonably applied. In applying the criteria, relevant factors relating to the employee must be considered in order to avoid any unlawful discrimination, i.e. on grounds of sex, race, religion and belief, sexual orientation, gender reassignment, marriage and civil partnership, pregnancy and maternity, part time status, fixed term status, age or disability. In addition, there are requirements in respect of employees who meet the disability provision of the Equality Act 2010 to consider the impact of the selection criteria on that individual prior to their application

and to make reasonable adjustments.

6.11 **Voluntary Redundancy**

In order to reduce the need for compulsory redundancies, the option of voluntary redundancy may be considered where it is clear that the number of current employees is greater than the number of jobs available in the new structure

In such circumstances, no schemes will be introduced without full consultation with staff side representatives and the business case for such a scheme would firstly be required to satisfy robust scrutiny and strict criteria agreed regarding eligibility. In particular, decisions would need to take into account the practical and financial viability and the importance of retaining key knowledge, skills and experience.

Where such a scheme is available, details will be set out and employees given the opportunity to indicate that they wish to take voluntary redundancy. Staff would be advised of their entitlements in order that they can make an informed decision.

The CCG may target or restrict the application of voluntary redundancy opportunities, depending on the organisational change agenda at any point in time and taking into account the make-up of the workforce and other local circumstances. The decision to accept an application for voluntary redundancy from an individual remains with the CCG and the rationale for any decisions reached will be communicated to the individual employee(s).

6.12 **Staff at Risk of Redundancy**

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 that may become redundant as a result of the proposed changes.

As part of the consultation process, any employee at potential risk of redundancy will have the opportunity to request an individual meeting with their manager and trade union representative or work colleague to:

- discuss how the proposed changes affect the individual;
- explain why the individual may become at risk of redundancy;
- discuss ideas for avoiding redundancy dismissals and mitigating the consequences of any redundancy dismissals;
- explore the process for redeployment;
- explain the arrangements for protection of pay and terms and conditions where applicable;
- discuss available support and assistance.

Staff that are not selected for a post in the new structure will be given notice of redundancy and will normally be placed on the CCG's redeployment register at this point. Staff on the Redeployment Register will be given priority consideration for all posts that are or become vacant in the CCG whilst they are at risk and up until the last day of their notice. Staff on the Redeployment Register will be required to register with NHS Jobs and apply for posts via that medium. In addition, the HR team will notify staff of potential opportunities and posts which are considered to be suitable alternative employment.

There is currently in place a memorandum of understanding between all NHS employers in the Midlands and East of England on the redeployment of staff at risk of redundancy. The details and process for this are set out in Appendix 1.

Managers may decide, in consultation with staff and their representatives, to place staff on the redeployment register at an earlier stage in the process. For example, where there are very few posts available in the new structure and in order to maximise opportunities for redeployment.

6.13 **Suitable alternative employment**

Suitable alternative employment is work within the CCG or the wider NHS that is on broadly similar terms, at a similar level of seniority/responsibility 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 CCG or another NHS organisation, subject to travel considerations. Staff at risk will be given priority consideration for suitable posts in line with their skills, experience and capabilities and where appropriate will receive protection of pay in line with the CCG's protection of earnings arrangements.

A post may be considered as suitable alternative employment if it is banded on the same band as the staff member's current substantive post, one band lower or one band higher. Bands 8a, 8b, 8c and 8d are classed as four separate bands.

In exceptional situations, if an employee and the CCG both agree that a post which is two bands lower than the employee's substantive post meets all other criteria as to make it 'suitable' for them, redeployment into that post may be agreed. In this instance, pay protection would be limited to the top of the band below the employee's current substantive role (i.e. if an employee were redeployed from a band 6 to a band 4 post, pay protection would be applied at the top of the band 5 salary scale if their band 6 salary currently exceeded this level). A full discussion with HR and management should take place in this situation.

Following identification of potentially suitable posts, individual staff will be offered the opportunity to apply for the role and be given a copy of the job description/person specification and a reasonable deadline within which to express an interest in the post. In some circumstances e.g. annual leave and other types of leave, this period may be extended. During this period the individual may meet with the appropriate manager informally to discuss their interest.

If the individual is offered the post following the application process, this will be treated as an offer of suitable alternative employment and a trial period will apply.

A member of staff who unreasonably refuses to apply for or accept an offer of suitable alternative employment will lose their right to a redundancy payment.

6.14 **Trial periods and training**

A trial period will apply where a formal offer of suitable alternative employment has been made. The purpose of a trial period is for both the manager and the individual to assess the suitability of the post as alternative employment.

Where a member of staff has the potential ability but not the immediate experience to undertake the full duties of the role, there may be circumstances where they could be provided with appropriate development/training opportunities. 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 appropriate timeframe.

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 or where reasonable adjustments are required, in line with the Equality Act 2010.

If the trial period is unsuccessful, other than for a reason of misconduct on the part of staff member, redundancy arrangements will apply as from the date when the original contract of employment will terminate. Until the end of their notice period staff will be considered for other suitable alternative employment if available which will be subject to the same arrangements including a trial period.

In circumstances where a trial period fails due to misconduct on the part of the staff member the situation will be managed in line with the CCG's Disciplinary Policy. Where the result of the disciplinary action is dismissal a redundancy payment will not apply.

6.15 **Absent employees**

With the exception of staff on employment breaks for more than 12 months, all staff absent from work for any reason should be included in the consultation process and any subsequent selection process in the same way as other affected staff.

Staff on employment breaks of more than 12 months will not be included and alternative employment will be sought on their return from the employment break in line with the CCG's Employment Break Policy/ Agenda for Change Handbook.

Where a redundancy situation arises whilst an employee is on a period of maternity, adoption or shared parental leave, the employee must be treated in the same way as they would have been had they not been on such leave. Therefore they must be consulted with and receive information and have access to the support given to other

employees identified as being affected by change or at risk of redundancy. Managers are advised to contact any individuals on maternity, adoption and shared parental leave by phone and at the start of any formal consultation process to agree what type of contact will be least intrusive and stressful for the employee.

If an employee on maternity leave, adoption leave or shared parental leave is prevented from returning to their original job due to reason of redundancy or if an employee is selected for redundancy whilst on maternity leave, adoption leave or shared parental leave, they are entitled to be offered any existing suitable alternative employment that exists. This means work that is suitable and appropriate for them, on terms that are not substantially less favourable than their existing terms. This is a complex legal area and managers must consult the HR team on how to eliminate any disadvantage caused due to maternity leave, adoption leave or shared parental leave during consultation and selection processes.

Where a redundancy would take effect during maternity leave, adoption leave or shared parental leave, the employee will retain their right to return to work on the notified date of return. The employee is entitled to be offered any existing suitable alternative employment up to and at this point (and such opportunities should be given to these staff ahead of staff that are not on maternity, adoption or shared parental leave). Where no suitable vacancy exists, the date of termination of employment will be the notified date of return unless mutual agreement is reached on an earlier date of termination. The relevant notice period should be on full pay.

Rights to statutory maternity pay are determined at the 15th week before the expected week of childbirth. An employee who is made redundant after this time will normally retain her entitlement to statutory maternity pay. Employees are advised to seek advice from their HR and/or trade union representative on their individual entitlements.

Consideration should be given for reasonable adjustments to be made for staff on long term sick leave; and those on long term sick leave who are impacted by any change proposals should be communicated with and kept informed throughout the process.

6.16 **Redundancy arrangements**

The terms under which a redundancy payment is payable are set out in the Agenda for Change: NHS Terms and Conditions of Service Handbook, Section 16, and are summarised below:

- to qualify for a redundancy payment 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). The payment may be capped at a specified level in accordance with national rules in operation at the time;
- Direct NHS service or continuous service as a result of a TUPE transfer to a direct NHS body will count as continuous and reckonable service for the purposes of redundancy pay calculations (service with non-NHS employers following TUPE transfer will not apply for continuous service/ redundancy purposes);
- Subject to conditions, members of the NHS Pension scheme who meet the minimum age of retirement, may choose to take early retirement on the grounds of redundancy.

Staff will not be entitled to redundancy payments 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 CCG or other NHS employer;
- unreasonably refuse to accept suitable alternative employment with the CCG 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 CCG.

Staff whose employment is subject to TUPE transfer will not be redundant and therefore will not be entitled to redundancy payments.

For further details on the calculation of redundancy payments, eligibility and exclusions, please refer to Part 3, Section 16, of *Agenda for Change: NHS Terms and Conditions of Service Handbook* or seek further advice from the HR team

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, to the individual and their representative the following details:

- the number of weeks' notice;
- the effective date of the redundancy, which will also be the last day of service;

- the number of days' outstanding annual leave, to be taken or exceptionally, to be paid in lieu;
- the estimated amount of redundancy payment that will be paid, where applicable;
- the options available to the employee where they are eligible to take early retirement on the grounds of redundancy;
- 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. Where the individual asks for early release during the notice period, pay in lieu of notice will not be payable as the early release date will be the mutually agreed date of leaving;
- the right of appeal against selection for redundancy or the terms of the redundancy;
- the date on which redundancy payment will be made which will be no less than 4 weeks' after the last day of employment (termination date) and on receipt of a signed declaration from the staff member that no work has been entered into with an alternative NHS employer within this timeframe.

6.17 **TUPE**

Where a service transfers to a new organisation, or into the organisation, staff employed in that service will transfer to the new organisation under a transfer order or the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended).

These regulations protect the existing terms and conditions of employment for staff

and ensure that continuity of service is protected.

Some examples of a transfer are as follows:

- Where all or part of a service is commissioned from an alternative provider (Service re-provision);
- Where the organisation, or part of it, is bought or acquired by another organisation;
- Where the organisation ceases to exist and/ or combines with another organisation.
- In-sourcing of a function/work
- Out-sourcing of a function/work

Under the TUPE regulations there are obligations to inform and consult staff regarding the transfer.

Under TUPE regulations the existing employer is responsible for:

- Working in partnership with the new employer to ensure staff are consulted with during the change and informed about the fact of the transfer, the reason for the transfer, when it is due to take place, the implications for employees and the measures that the CCG and new employer expects to take in relation to employees;
- Providing the new employer with relevant staff information (known as 'due diligence' information).

Under TUPE regulations the new employer is responsible as follows:

- For working in partnership with the existing employer to ensure staff are consulted with during the change and informed about the fact of the transfer, the reason for the transfer, when it is due to take place, the implications for employees and the measures that the new employer expects to take in relation to employees;
- For informing the existing employer of any the legal, economic and social implications of the transfer for the affected employees and whether any measures (such as reorganisation) will be taken and how the staff are likely to be affected by any such measures. This information will be shared with affected staff as part of consultation;
- For the terms and conditions of the employees transferring;
- For all rights and obligations arising from staff in terms of their contract of employment, except criminal liabilities and some benefits under an occupational pension scheme;
- For all collective agreements made on behalf of the employees and in force immediately before the transfer;
- Providing a pension scheme, this must be certified by the Government Actuary as being overall materially at least as good as the NHS pension scheme. Any transferred staff should be given the option to transfer the accrued rights from

their past service in the NHS pension scheme to the new employer's pension scheme without suffering the normal disadvantages which apply to early leavers of defined benefit pension schemes.

The new employer will not be able to:

- Fairly dismiss an employee because of the transfer or a reason connected with it, unless the reason for the dismissal is an economic, technical or organisational reason entailing changes in the workforce;
- Change the terms and conditions of the transferring employee because of the transfer or a reason connected with it, unless the reason for the change is an economic, technical or organisational reason entailing changes in the workforce. Should this apply, full consultation should take place with employees affected.

Consultation over 'measures' should take place within a reasonable timeframe but the timeframes are not required to mirror statutory consultation timescales which apply in a redundancy situation (unless a measure includes the proposed redundancy of any posts in the transferring service area).

6.18 **Pay protection**

The CCGs' pay protection policy may apply in an organisational change situation. The policy is 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.

6.19 **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 CCG and this results in increased travel costs to and from work, staff may be reimbursed their extra daily travelling expenses in accordance with the Agenda for Change Handbook provisions.

6.20 **Temporary / urgent redeployment of resource to meet a business need**

In exceptional circumstances, there may be a requirement to temporarily redeploy / second staff to suitable alternative roles in order to meet an immediate need. This could be in relation to a shortfall in capacity within the organisation, for example, or if a specific urgent task or project required delivery at short notice. In any such cases, the affected employee would not suffer any financial detriment as a result of the temporary redeployment/secondment and their substantive role would be held open for their return at the end of the placement (subject to any organisational change processes that occurs during that period). The terms of the redeployment / secondment would be confirmed to the employee in writing at the outset and would be facilitated with their agreement.

By agreeing to such a temporary change, the staff member would not affect their substantive position or their entitlement to a redundancy payment in the future..

6.21 **Personal and professional support**

All staff affected by the organisational change will be encouraged to seek the advice and support of their trade union.

Relevant support will be provided by the CCG 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, through the EAP service;
- 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 paid or unpaid time off to seek other employment or undertake training.

Even after the change has taken place, the CCG acknowledges 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.

6.22 **Appeals, complaints and joint agreements**

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 final stage of the CCG's Grievance Procedure. The decision of the appeal panel will be final and there will be no further opportunity for recourse to the Grievance Procedure.

In the event of a complaint about misapplication of the principles and procedures set out in this policy, this will be dealt with in accordance with the CCG's Grievance Procedure at either the informal stage or first formal stage.



REDEPLOYMENT OF STAFF IN THE MIDLANDS & EAST OF ENGLAND MEMORANDUM OF UNDERSTANDING

February 2017

Purpose

The purpose of this Memorandum of Understanding is to set out principles across Midlands & East NHS employers for redeployment of staff at risk of redundancy.

Context

Strategic service reconfigurations, financial challenges, changing population health needs and technology all impact on the NHS workforce and organisational change is likely to be a feature within the NHS over forthcoming years.

In order to ensure that the NHS remains an attractive employer it is critical to develop a system to enable the redeployment of staff to:

- Retain talent and minimise the loss of valuable skills and expertise from the NHS across the geographies and therefore, maintain service levels for patients
- Support staff in finding alternative jobs
- Avoid compulsory redundancies as a health community wherever possible
- Protect the public purse

Scope

This Memorandum of Understanding covers all NHS organisations in the Midlands & East of England. The principles underpinning redeployment will be applied to the individual geographical areas of West Midlands, East Midlands, and East of England. However, where staff wish to relocate beyond their local geography, employers will seek to support redeployment across a wider geography.

Memorandum of Understanding Principles

Agreement has been reached on the following principles which will be upheld to support redeployment of staff:

- The MOU applies to employees at risk of redundancy only – i.e. not due to ill health or performance
- Any employee designated at risk, who chooses to apply and meets the essential shortlisting criteria for a vacancy in a CCG under this agreement, will be offered an interview.
- Individual employers retain responsibility for the employee until the redeployment takes place
- Individual employers will, firstly, seek to redeploy their own at risk employees internally before committing to redeployment of external employees

- Individual employers agree to implement the operational redeployment framework and processes, attached as Appendix A.
- Responsibility for applying for jobs remains with the member of staff at risk, supported by their local HR team.
- This MOU will not be operationalised in such a way that it delays recruitment processes internally.

Appendix A: Operating Framework and Redeployment Processes Section 16 of Agenda for Change

Employers will apply the Redundancy arrangements within Section 16 of Agenda for Change. The following points reflect the way in which the redeployment process will be supported across the Midlands & East.

Registration in the Restricted Area of NHS Jobs

At the start of consultation, individuals whose posts are identified as potentially at risk should be set up, by their employer, with a 'restricted' account on NHS Jobs which will highlight them as a priority when applying for NHS positions. Employers will be responsible for ensuring that staff records on the restricted area of NHS Jobs are kept up to date.

To add or manage affected by change accounts select the 'Affected by change accounts' option in the Admin section of the left navigation menu. Before 'affected by change accounts' can be added, the restricted accounts function needs to be switched on. To create an 'affected by change account' you enter the employee's name, their chosen email address and job title as a minimum. However, it is also beneficial for reporting reasons to complete as many of the given fields as possible, including E&D data. Staff with an affected by change account will be identified by recruiting employers in the applications list for any vacancy they apply to via a grey 'A' icon.

Guaranteed Interviews

Staff designated 'at risk' will, where they meet a vacant job's essential criteria, will be guaranteed an interview for the job. Where job applications per vacancy are of a high number, employers will prioritise interviews for those designated at risk over external candidates.

Where an individual applies for a job in lower pay band, employers should discuss the potential for the individual's current organisation to fund pay protection as an alternative to redundancy.

Employee's responsibilities

It is the responsibility of staff registered as affected by change to ensure that they

regularly check NHS Jobs for suitable roles within their organisation or wider health economy if they are able to relocate – ideally every day. Local Organisations may appoint protected time within work hours for registered employees to search for jobs.

Employees should also maintain regular contact with their Local HR Leads, and be available to them in order to keep updated about potential opportunities.

Record Keeping

Employers should keep records of the movements and status of their employees. Once 'at risk' status is registered, details of applicants 'at risk' should be retained by the individual employer, which will include: Date of formal notification 'at risk'; Registration date for NHS Jobs Restricted Area & approval for redeployment; and records of any refusals of suitable alternative employment options and reasons given.

Appendix 2 - EIA