Pay protection is a way of safeguarding the pay and conditions of service of employees whose pay is adversely affected by organisational change. It is meant to allow the individual to find another post at their original pay band or to adjust to the lower salary within the protection period.

It benefits the employer because it enables organisational change to be developed/delivered in a more open way. Employee may be more open and willing to change if they can see that their pay will be protected for a period after the new change. Protection can facilitate change.

In general, pay protection provisions apply to an employee who, as a consequence of organisational or service changes, is required by management to move to a new post or who suffers a reduction in earnings within his or her contracted working week. They usually provide for:

a) short-term protection of earnings (for example unsocial hours payments) whether or not downbanding is involved eg when a service no longer functions at weekends and staff have their unsocial hours payments protected for a short time.

b) long-term protection of the basic wage or salary where downbanding is involved eg an organisational restructure where posts are made redundant and employees are redeployed into suitable alternative posts at a lower band.

Annex O of the Agenda for Change terms and conditions of service handbook states that the particular terms of pay protection are down to local agreement. Therefore, policies will vary from one organisation to another.

It is the role of the trade unions to maintain pay protection for as long as possible in all agreements. The majority of employers will do all that they can to bring protection arrangements down to the shortest possible time.

Pay protection policies usually apply on a ‘mark time’ basis for employees who hold permanent or fixed term positions and will exempt staff on temporary contracts; staff who have been redeployed as a result of disciplinary action, for capability reasons or as a result of sickness absence management; staff on bank contracts or where other policies are in place for affected staff who have transferred into the trust under a TUPE (Transfer of Undertakings (Protection of Employment) regulations) transfer.

‘Mark time’ or ‘marked time’ protection means that the rate of the earnings is preserved without the benefit of any subsequent increments or pay awards, until the new earnings reach the level of the previous earnings or until such time as otherwise agreed.

NHS organisations may look to review their pay protection policies, they may seek to change the length of time employees receive protected pay for (eg up to 3 years to maximum of 1 year). They may also seek to change the
terms of the policy for example by changing the period of protection, and may wish to change it from the length of time an employee has been in their current post - instead of length of NHS service.

**Checklist**

- If your trust is reviewing its pay protection policies – **discuss your next steps with your Officer first**.
- If it looks like staff may be detrimentally affected by service organisations or changes – check if there is a pay protection policy in place. **If not, make sure one is put in place before changes are implemented.**
- Check that the policy complies with equalities and **equal pay legislation and that equality analysis is conducted throughout any discussions to change the protection period offered.**
- If staff are downbanded, **they should be given reasonable opportunities to retain and/or develop the skills and knowledge to apply for posts at their former level, when they become available.**
- If the employer does intend to downband staff, then a mechanism must be agreed by which these staff are kept informed of all suitable vacancies at their former banding and are enabled to seek preferential interviews for such costs if they meet the essential criteria.
- If you are involved in writing or reviewing a pay protection policy, try to ensure that there is a clause in it which refers to preservation of NHS Pension benefits when someone is downbanded (see below).

**Preservation of NHS pension benefits**

Under the provisions of the NHS pension scheme, an employee subject to downbanding due to organisational change may apply to preserve their pension benefits, based on the previous level of pay.

Applications must be made within three months of the date from which pensionable salary is to be reduced eg the end of the pay protection period.

Staff who wish to consider this option should contact the pensions officer for advice, preferably before transfer to the new post. The HR department will be responsible for including written confirmation of this right at an early stage in the process, including how the employee can access advice.

More information is available from the **NHS Business Services Authority Protection of pay member factsheet**
There is an exception to this, covered in Section 22 of Agenda for Change on Injury Benefit

“22.14 Eligible employees who have to change jobs permanently to a position on lower pay due to a work related injury, illness and/or other health condition, will receive a period of protected pay that is the same as local provision for pay protection during organisational change.”