



ST. MARY'S
ACADEMY TRUST

St Mary's Academy Trust

Pay Protection (Support Staff) Policy

Date agreed by Board: February 2021

Date to be reviewed: February 2023

1.0 **INTRODUCTION**

- 1.1 This Policy applies to all Trust employees whose protection of earnings commences on, or after 1 January 2019, with the exception of those on teacher's terms and conditions as separate safeguarding has been agreed nationally for this group of employees.
- 1.2 A Safeguard Payment is a payment made for a time limited period to employees whose contractual earnings are reduced, through no fault of their own following a restructure or redeployment. Examples include:
- Where an employee has a loss of hours e.g. from 37 to 30.
 - Where an employees' substantive post has been re-evaluated e.g. from Grade 7 to 6
 - Where an employee has a combination of hours loss and a lower grade.
 - Where an employee is redeployed to a position on a lower grade e.g. due to ill-health or as an alternative to redundancy.
- 1.3 A Safeguard Payment will not apply to employees who are redeployed as a result of a disciplinary sanction.
- 1.4 Where it is considered necessary to vary contractual conditions or change working practices protection will **NOT** apply either where the employee(s) agree to the change or where the Trust gives notice to terminate the contract and offers a new contract with revised terms and conditions.
- 1.5 Under the amended 2013 Collective Agreement with the Trade Unions, the right to a protection of earning, accordance with this policy, is accepted to be a contractual entitlement of every employee and in the event that an employee's employment should transfer to another employer under the Transfer of Undertakings (Protection of Employment) Regulations the transferee will be advised of the contractual effect of the policy.

2.0 **SAFEGUARDING PAY SCHEME**

- 2.1 Ordinarily, protection of earnings is not applicable to employees who have voluntarily applied for a post on less earnings, however, where the employee's manager confirms that this is an alternative to a potential redundancy and there is an overall cost benefit to the service then a protection of pay will apply.
- 2.2 Where it is determined that a protection of earnings payment is applicable it will be paid to the employee for a period of 24 months.
- 2.3 The calculation to determine the amount of the payment will be the whole difference between the employee's current contractual earnings and the new contractual earnings unless the figure is more than the employee's redundancy entitlement. If this is the case then the protection of earnings payment will be capped at the employee's redundancy figure.
- 2.4 The Chief Executive, Human Resources Manager and the Trade Union will jointly resolve any disputes as to whether remuneration is contractual. In the event that agreement is not reached, the Trust's legal advisors will determine the matter.

2.5 Example of protection of earnings calculation – loss of grade

The difference between your current contractual earnings Grade 7 (£29,033) on 37 hours		£29,033
and the contractual earnings of the new post – Grade 5 (£22,434) on 37 hours	-	£22,434
Annual protection of earnings payment - paid for 24 months	=	£ 6,599

2.6 Example of protection of earnings calculation – loss of hours

The difference between your current contractual earnings Grade 7 on 37 hours		£29,033
and the contractual earnings of the new post Grade 7 on 30 hours	-	£23,540
Annual protection of earnings payment - paid for 24 months	=	£ 5,493

2.7 Example of protection of earnings calculation – capped protection

The difference between your current contractual earnings Grade 7 on 37 hours		£29,033
and the contractual earnings of the new post Grade 5 on 37 hours	-	£22,434
Loss of Earnings	=	£6,599
Redundancy Entitlement	=	£4,735
As loss of earnings is greater than the redundancy entitlement the amount of protection of earnings payable will be capped. The protection of earnings payment paid for 24 months.	@	£4,735

2.8 Employees in receipt of a protection of earnings payment will be required to undertake additional hours or duties commensurate with their protected earnings/hours for no additional payment, where service need dictates and where the request is reasonable to the employee e.g. this does not conflict with any other employment.

2.9 Employees in receipt of a protection of earnings payment retain category 3 at-risk status for the duration of their protection of earnings payment. Where a reasonable opportunity to obtain alternative employment to return to the pre-protection of earnings pay earnings presented an employee must apply for the position. Should the employee choose not to apply for the reasonable alternative employment then the protection of earnings payment may be withdrawn.

3.0 **REDUNDANCY**

3.1 Should an employee in receipt of a protection of earnings payment find themselves redundant then providing they have at least 2 years' service they will still have the entitlement to receive their redundancy payment based on their protected earnings regardless of whether this is on a voluntary or compulsory basis.



4.0 **TRIAL PERIODS**

- 4.1 Protection of earnings payments will start at the commencement of the trial period, if applicable. Should the first trial subsequently fail, the protected period will be suspended and recommence at the commencement of another trial period.
- 4.2 If a second trial period is necessary then protection of earnings payments will be paid for the remainder of the protected period minus any period of protection already paid during the first trial.

5.0 **PAY AWARDS**

- 5.1 Although employees in receipt of protection of earnings will receive any nationally negotiated pay awards, which will effectively increase their basic salary, their protection of earnings payment will decrease by the equivalent amount so that their level of earnings remain the same.

Example

$\pounds 25,694$ (Grade 6) - $\pounds 19,939$ (Grade 4) = $\pounds 5,755$ protection of earnings payment Earnings = $\pounds 19,939$ salary + $\pounds 5,755$ safeguard payment = $\pounds 25,694$
$\pounds 19,939 \times 1\%$ pay award = $\pounds 199$ New salary with pay award = $\pounds 19,939 + \pounds 199 = \pounds 20,138$
$\pounds 25,694$ (Grade 6) - $\pounds 20,138$ (new Grade 4) = $\pounds 5,556$ revised protection of earnings payment Earnings = $\pounds 20,138$ salary + $\pounds 5,556$ protection of earnings payment = $\pounds 25,694$

6.0 **OVERTIME PAYMENTS**

- 6.1 Where an employee is in receipt of a protection of earnings payment and works overtime in the role of the new grade, this is paid at the rate for the job and not at the protected level.

7.0 **PENSIONS**

- 7.1 Under the Local Government Pension Scheme Regulations there is a provision which protects employee's contributions where they suffer a loss in contractual earnings.
- 7.2 For any further advice employees must contact South Yorkshire Pensions Authority.

8.0 **TEMPORARY SECONDMENTS**

- 8.1 As the purpose of protected pay is to ensure that employees suffer no detriment in terms of contractual pay, if during the period of protection the individual secures a temporary secondment into a post on a salary equivalent to their previous position or higher, the protection of earnings payment will cease during the secondment (which is a maximum of 2 years) however the protected period will continue after the secondment has ended.
- 8.2 If the contractual earnings in the seconded position are lower than the employee's original contractual earnings but higher than the contractual earnings in their redeployed position then protection of earnings payments will be adjusted to top up the revised earnings.
- 8.3 At the end of the secondment if the employee returns to their redeployed position, if protection has been paid for less than the agreed 24 months, then the protection of earnings payments will be revised again and continue for the remainder of the protection period.

9.0 **MATERNITY LEAVE**

- 9.1 Where an employee is in receipt of a protection of earnings payment and commences maternity leave their protected period will be suspended on commencement of their maternity leave and will recommence when the employee returns to work. If the employee chooses not to return to work following maternity leave they will not receive the remainder of their protection of earnings payment.

10.0 **DATA IMPACT ASSESSMENT**

- 10.1 At all stages of this procedure data obtained will be used only for the purpose for which it is intended which is to calculate protection of earnings payments, and will be stored securely with restricted access limited to the Chief Executive, Manager, HR and Payroll. Following the process data will be stored on the electronic personal file for the duration of the employee's employment with the Trust and for 6 years thereafter. The data will be destroyed at this time using a confidential shredding service.

11.0 **EQUALITY AND DIVERSITY**

- 11.1 This policy has been impact assessed by the HR Committee, if on reading this policy you feel there are any equality and diversity issues, please contact HR who will if necessary ensure the policy is reviewed.

12.0 **INCOME TAX AND NATIONAL INSURANCE CONTRIBUTIONS**

- 12.1 Protection of earnings payments made by the Trust to its employees in respect of protection of earnings are subject to income tax and national insurance contributions in the normal manner, having regard to tax and national insurance levels and rates at the time the payment is made.

