NHS Pensions - Individual / Bulk Protection of Pay and Voluntary Protection of Pay

Introduction

There are two provisions under which a member can protect their pensionable pay:

- Protection of Pay through no fault of the member (1995/2008 Scheme membership only).
- Voluntary Protection of Pay (1995 Section membership only).

Protection of Pay and Voluntary Protection of Pay are only relevant to benefits earned in the 1995/2008 Scheme, which are based upon the member’s final salary. These protections are not relevant to benefits earned in the 2015 Scheme, because it is a Career Average Revalued Earnings (CARE) Scheme where the benefits earned are based on pensionable earnings across the member’s career.

If a member has benefits in the 1995/2008 Scheme and moves to the 2015 Scheme, they may retain a ‘final salary link’ for the calculation of their 1995/2008 Scheme benefits, providing that they do not have a break in membership of five years or more after their membership of the 1995/2008 Scheme ceased.

The final salary link enables the 1995/2008 Scheme benefits to be based upon a member’s final pensionable salary up to their retirement date, provided the link continues to apply. If the final salary link is lost before retirement, the 1995/2008 Scheme benefits will be based upon the pensionable salary earned up to the date the link ceased to apply.

However, should a member’s pay reduce and mean the salary link is not more beneficial, they will be able to request voluntary or involuntary protection of pensionable pay subject to the eligibility criteria.

Protection of Pay and Voluntary Protection of Pay are not relevant once pension benefits have become deferred. Deferment occurs automatically to protected 1995/2008 Scheme members after a break in pensionable membership of 12 months, or after a period of five years where a salary link exists between the 2015 Scheme and 1995/2008 Scheme membership.

Important note:

Although protection of pay is not relevant to a 2015 Scheme member, an employer will need to consider if that member has a final salary link to 1995/2008 Scheme membership if pay is being reduced.
Protection of Pay (due to a reduction in pay through no fault of the member)

Eligibility criteria

- A member must have at least two years qualifying membership,
- have suffered a reduction in pensionable pay through no fault of their own,
- they must apply for protection of pay within three months of going onto reduced pay or marking time, and
- they must be a protected member of the 1995 or 2008 Section or have a salary link to 1995/2008 Scheme preserved rights where they have moved over to the 2015 Scheme.

Examples of accepted reasons for Protection of Pay are:

- a change in the nature of the duties performed, for example, due to ill health.
- a move to a lower paid post because of pending or actual redundancy.
- being transferred to other employment due to reorganisation.

Where pay is to ‘mark time’ for a specified period protection can be requested at the beginning and at the end of the mark time period.

There is no age restriction or minimum level of pay reduction requirement and there is no limit to the number of requests a member can make if pensionable pay reduces on more than one occasion.

For protected 1995/2008 Scheme members who are made redundant, we can consider protecting pension benefits when a member returns to a lower rate of pensionable pay within 12 months of redundancy.

As pension benefits are automatically deferred after a break of 12 months in the 1995/2008 Scheme, a member would not need to apply for protection of pay if returning to NHS pensionable employment 12 months or more after being made redundant.

If a member has moved over to the 2015 Scheme with a final salary link to 1995/2008 Scheme pension benefits and is then made redundant, we can consider protecting the pension benefits if the member returns to NHS employment on a lower rate of pensionable pay within five years.

As pension benefits are automatically deferred after a break of five years where the salary link would be broken, a member would not need to apply for protection.

Voluntary Protection of Pay (VPP)

If a member has reached minimum pension age and chooses to step down to a role where their new or remaining duties are less demanding and carry less responsibility than their previous duties, they may be able to apply for Voluntary Protection of Pay if their pay reduces by 10% or more.
VPP was introduced from 1 April 2008 to provide more flexibility in the 1995 Section of the 1995/2008 Scheme. The provision supports the Improving Working Lives initiatives which exist in the NHS and recognises that in the run up to retirement a member may prefer, if possible, to remain in NHS employment, perhaps in a lesser capacity, while protecting their pension benefits.

This provision also allows an employer to maintain the valuable knowledge and skills of a member who may otherwise have left the NHS. Any ‘step down’ will therefore be agreed between the employer and the member, and the employer will have to provide NHS Pensions with information which confirms that the step down arrangement has been agreed. The provision is also intended for lasting, rather than trivial or short term reductions in pay.

It would normally be expected that the step down would occur with the same employer. However if a suitable role to step down to cannot be provided by one employer, but can be arranged with another, this would be acceptable. In this case both employers will have to provide information that a step down has been agreed. The provision is not intended for situations where a member leaves one employer and joins another on a reduced rate of pay without an agreement between employers.

Eligibility criteria:

- a member must be in the 1995 Section or have a final salary link to 1995 Section pension benefits
- a member must have stepped down to a role where the new or remaining duties are less demanding and carry less responsibility than the previous duties. This must be confirmed by the employer(s)
- a member’s pensionable pay has reduced by at least 10% for a period of at least one year, beginning with the first pay day on which the reduced pensionable pay was paid, as verified by the employer(s)
- the member’s pensionable pay has not been subject to any other reductions in the 12 month period before they stepped down, as verified by the employer(s)
- an application has been made by the member after 12 months, but within 15 months, of the pensionable pay being reduced
- the member has attained their minimum pension age in the 1995 Section (further information about minimum pension age can be found in the Member Guide)
- the member has attained at least two years of qualifying membership within the NHS Pension Scheme at the time of the step down
- the member has not previously protected their pensionable pay under Voluntarily Protected Pay arrangements.

A member does not need to apply for Voluntary Protection of Pay where a change in duties following a period of ill health results in a reduction of pay; instead they should apply for Protection of Pay (reduction in pay through no fault of your own).

As noted above, a member can only ever have one accepted request for Voluntary Protection of Pay but this provision is still available when Protection of Pay (through no fault of your own) has already been accepted for an earlier period of membership.
General information relevant to both Protection of Pay and Voluntary Protection of Pay

How to make an application

The member should complete form SM R9 App from our website and send to the employer (not to NHS Pensions). Employers can make a request for protection of pay on behalf of the member but we must have a signed member application for VPP requests.

Where a member has either suffered a reduction in pay between employers due to redundancy or where they have voluntarily stepped down between employers, they are asked to send the application to the earlier employer. Once the employer has passed this on to NHS Pensions, we will contact the current employer to verify that protection of pay applies.

On receipt of a completed ‘SM R9 App’ from a member, the employer should complete the SM R9 EA form, ensuring that all relevant information is provided. The employer should send both forms to NHS Pensions.

NHS Pensions will provide a decision in a letter to the member sent via an employer notification.

An application is not required if:

- the member is only reducing their hours and not the hourly rate of pay. This is because we always use the notional whole time equivalent pay when calculating retirement benefits for the 1995/2008 Scheme
- the member is a Practitioner. Protection of pay is not relevant for 1995/2008 Scheme practitioner employment as pension benefits are based on their revalued earnings throughout their career. This is known as a Career Average Revalued Earnings (CARE) pension which has similarities to the 2015 Scheme.

How pension benefits are calculated if an application to protect pay is accepted

If a member has one period of protection when they retire, two pensions will be calculated. A pension based on the protected rate of pay* plus cost of living increases for membership up to the date of protection, and a second pension for membership after that date which will be calculated on their pay* at retirement.

If by retirement, the protected pay plus cost of living increases is not more beneficial, then the whole of their 1995/2008 Scheme pension benefits will be calculated using pay* at retirement.

*1995 Section membership - The best of the last three years of pensionable pay.
*2008 Section membership - The reckonable pay, which is an average of the best three consecutive years' pensionable pay in the last 10 years.

Bulk Protection of Pay requests

Historically the provision of bulk protection of pay was put in place to reduce the administration process for both employer and NHS Pensions where Agenda for Change (AfC) had resulted in several national pay reductions occurring to different departments. It was agreed that employers
would not need to send individual requests where a number of staff had been affected. Instead, spreadsheets were provided to enable employers to submit protection of pay in bulk with draft member reply letters made available on the website.

A universal Bulk Protection of Pay spreadsheet and member reply letter is now available on the website for all current and future bulk requests.

**Important note 2:**

- Combined on call payments must be pensioned correctly from 1 April 2011. Spreadsheets submitted after this date for a reduction relating to ‘on call’ payments must clearly state that only the availability payment is being reduced or removed, otherwise the spreadsheet will be returned.

- Speciality and Associate Specialists (SAS) doctors and Consultants working four hours or more during an Out of Hours/Premium Time Programmed Activity (PA) are not pensionable. Where the enhancement had previously been pensioned prior to 31 March 2011, it had been exceptionally agreed that pensions could be protected. No date of protection after 31 March 2011 will be accepted in these cases and spreadsheets would be returned for pension records to be corrected.

**How to make a bulk request**

If an employer has implemented other pay arrangements affecting pensionable pay for a number of members we can still consider accepting a bulk request. Refer to the guidance detailed above.

The three month application time limit may be extended where a bulk application is required although it is recommended that employers contact NHS Pensions in advance of a bulk application, if delays are anticipated.

- Complete the universal spreadsheet.
- Account for any disallowed days and ensure the member has at least two years qualifying membership in the 1995/2008 Scheme.
- Complete all relevant fields in the spreadsheet with a clear description of the reason for the request.
- Use the separate tabs provided on the spreadsheet for any 1995 or 2008 Section members.
- Use a separate spreadsheet if you have more than one type of pay reduction being implemented.
- for members of the 1995 Section you should provide the best of the last three years pensionable pay up to the day before the reduction. For members of the 2008 Section you should provide the pensionable pay from 1 April in the year of the reduction up to the day before the reduction.

The spreadsheet will need to be saved on your local drive and password protected.

Please ensure that you choose a strong password that has the following characteristics:

- contains both upper and lower case characters
- has digits and punctuation characters as well as letters
- is at least eight alphanumeric characters long
- is not words in any language, slang, dialect or jargon etc.
- is not based on personal information, names of family etc.

If in any doubt, please refer to your own policy guidelines on protection of data.

Completed spreadsheets should be sent to nhsbsa.protectionofpay@nhs.net

Do not inform the members affected until approval has been given by NHS Pensions.

NHS Pensions will send you a notification when the spreadsheet has been actioned. At this point you can issue the ‘SM R9 Bulk EA Reply’ letter to the members concerned.