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 (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.

If a member retains a final salary link and their pay reduces, they can request protection of pay or voluntary protection of pay, subject to meeting the eligibility criteria.

Protection of Pay and Voluntary Protection of Pay are not relevant in circumstances where a member leaves the scheme and pension benefits become deferred as a result. 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, you will need to consider if that member has a final salary link to any 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
- apply for Protection of Pay within three months of going onto reduced pay or marking time
- 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 re-organisation

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 (VPP) 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 you 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 you and the member, and you will have to provide us 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
- 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)
- have had their pensionable pay 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)
- have not had their pensionable pay be subject to any other reductions in the 12 month period before they stepped down, as verified by the employer(s)
- have made an application after 12 months, but within 15 months, of the pensionable pay being reduced
- have attained their minimum pension age in the 1995 Section (further information about minimum pension age can be found in the Member Guide)
- have attained at least two years of qualifying membership within the NHS Pension Scheme at the time of the step down
- not have previously protected their pensionable pay under Voluntary Protection of 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 the member).

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 the member) 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 the request to protect pensionable pay form (SM R9 App) from our website and send it to you (not to us). You can make a request for Protection of Pay on behalf of the member, but we must have a signed member application for Voluntary Protection of Pay 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/Voluntary Protection of Pay applies.

On receipt of a completed request to protect pensionable pay form (SM R9 App) from a member, you should complete the request to protect pensionable pay form (SM R9 EA), ensuring that all relevant information is provided. You should send both forms to us.

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

All applications must be made within the respective time limits. In exceptional circumstances it may be possible to extend the time limits. Such extensions can only be considered on an individual basis. In addition, such requests must also be supported by a valid and relevant reason which should be evidenced by supporting documentation wherever possible. If such information is not provided, the Application will be declined.

**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 pay 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.

We check which calculation is the most beneficial to the member at retirement but it is not possible to include this check in their annual benefit statement through the Total Reward Statement portal.

*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.
Historic 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, and instead they could submit in bulk using a dedicated spreadsheet.

As the demand for bulk protection of pay requests have now diminished, the process has been removed. All protection of pay requests should now be made on an individual basis using the SM R9 EA form.

Previously provided bulk Protection of Pay guidance relating to the national changes that occurred between 2010 and 2012 is detailed below. Although this information is now largely historic, it may remain useful for rare individual cases.

On call payments

Commitment or availability payment
Regular payments made in recognition of being available for on call work where there is a specific rota commitment are pensionable for both whole time and part time members. It is recognised that there must be some degree of flexibility within an on call rota, but in order to pension this payment a member must have a definite commitment to the rota for which they are paid on a regular basis, i.e. weekly, monthly or annually.

Payments for work done
For whole time members payments for work done whilst on call are non-pensionable as they are classed as overtime. For part time members payments for work done whilst on call are pensionable at plain time rates, up to the whole time weekly hours. Hours up to whole time should be credited for pension purposes.

Sleeping in
The availability payment is pensionable. The payment for work done is pensionable up to the whole time weekly hours only. When a member already works whole time the hours worked during a sleep in would be classed as overtime and non-pensionable. Where an individual undertakes no other work for the Trust other than performing the sleep in, the payment made for sleeping in is non pensionable. No actual work is performed so the payment cannot be attached to hours worked.

Previous arrangements
NHS Pensions is aware that some employers operating combined on call payment arrangements (commitment/availability and payments for work done) may have incorrectly pensioned the whole amount for both part time and whole time staff under previous arrangements.

Where employers had previously pensioned the whole amount of the payment under this type of arrangement it has been exceptionally agreed, in consultation with the Department of Health and NHS Employers, that pensions may be protected up to 31 March 2011.
From 1 April 2011 employers must pension on call correctly as described above and no further Protection of Pay will be granted for any non-pensionable on call (work done) payments.

Protection of Pay will continue to apply after 31 March 2011 where employers review their on call arrangements, resulting in a reduction in pensionable pay due to the reduction or removal of the commitment/availability payment.

**Important note:**
If you submit a request for Protection of Pay due to on call with a date after 31 March 2011, you must provide clear confirmation that only the pensionable elements detailed above have been included. In summary this would be the commitment/availability and or payments for work done only if paid at plain rate and relating to total worked hours not exceeding whole time.

**Out Of Hours (OOH) and Premium time**
(Speciality and Associate Specialists (SAS) doctors and Consultants)
It was previously agreed that the enhancement paid to SAS doctors and Consultants working four hours or more during an Out of Hours/Premium time Programmed Activity (PA) is non pensionable. The guidance provided at the time also confirmed that where the enhancement had previously been pensioned it had been exceptionally agreed, in conjunction with the Department of Health and NHS Employers, that pay could be protected up to 31 March 2011 only. No date of protection after 31 March 2011 will be accepted in these cases.

**Unsocial hours payments**
Certain grades of staff had their enhancement for unsocial hours reduced. This was phased in from 1 April 2008. From 1 April 2011 the enhancement should be the same as for other staff. Arrangements agreed at the time confirmed that Protection of Pay could apply up to 31 March 2011.

Where these members were already marking time from 1 April 2006 as a result of being assimilated to AfC pay grades with pay reducing from 1 April 2011, notification should have been provided via POL.

If you submit a request for Protection of Pay due to the cessation of unsocial hours payments with a date after 31 March 2011, please provide full details on the SM R9 EA form of the reason for the revised date.

**Long term National Recruitment and Retention Premia (NRRP)**
Under AfC, Recruitment and Retention Premia could be awarded nationally or locally and be either long term or short term premia.

**Short term premia** are not pensionable and do not count for purposes of overtime, unsocial hours’ payments or any other payments linked to basic pay and so Protection of Pay would not be relevant.

**Long term premia** are pensionable and do count for the purposes of any payments linked to the basic pay and therefore Protection of Pay could be possible.
A review of all existing National Recruitment and Retention Premia (NRRP) found that all existing NRRP should cease after 31 March 2011 or be converted to a local RRP where appropriate. Annex R of the AfC terms and conditions of service handbook refers.

Transitional arrangements were historically agreed so that NRRP currently in payment are protected for a transitional period of two years as follows:

- Year one: 100% of the payment at current value.
- Year two: 50% of the payment at current value.

All payments ceased on 1 April 2013, subject to the outcome of a Staff Council review demonstrating evidence to support continuation of NRRP.

Where pensionable pay reduces as a result of the cessation of NRRP Protection of Pay can apply up to 31 March 2013 for these members.

As pension benefits, including benefits preserved on a higher rate of pensionable pay, are based on the best of the last three years’ pensionable pay in the 1995 Section and the reckonable pay, the annual average of the best three in 10 in the 2008 Section, protection was not required until 31 March 2013.

The best of the last three years’ pensionable pay up to 31 March 2013 in the 1995 Section would therefore have been quoted when providing pensionable pay details.

NHS Pensions would have checked the reckonable pay figure for 2008 Section members.

Requests for pension protection due to withdrawal of NRRP should not have been received until after 31 March 2013 and should now have all been received.

If you have implemented different protection arrangements to those described above regarding NRRP, please provide a full explanation for the difference in dates on the SM R9 EA form.

**Clinical excellence and distinction awards**

Until 30 September 2014 there was a system of salary protection for Distinction Awards (DA) and Clinical Excellence Awards (CEA) that were not renewed or were allowed to expire. The financial value of the former award is frozen until basic pay catches up with mark time earnings.

From 1 October 2014 salary protection is no longer applicable to any award that is, or has previously been, withdrawn or not successfully renewed. Consultants who were due to submit a renewal application in the 2014 round will not continue to receive the financial value of the award if it is not renewed, or if a renewal application is not submitted.

Where pensionable pay reduced from 1 October 2014 because mark time pay in respect of a former award ceased pensions can be protected.

National CEAs and DAs are also currently subject to application for renewal every five years. Where a current consultant’s award is not renewed following their reapplication, or because a consultant’s award is due for renewal but they choose not to apply for continuation/improvement, it has also been agreed that Protection of Pay can also be considered.