

## **CHANGE MANAGEMENT POLICY**

## DOCUMENT CONTROL SHEET

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### Revision history

<b>Revision history Revision Date</b>	<b>Summary of changes</b>	<b>By</b>	<b>Version Number</b>
July 2023	All of policy reviewed to align to changes in company and government policy, legislation and NHS Terms & Conditions of Service	Tamara Skoulding HR Business Partner	3.1

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## Equality & Diversity Impact Assessment

In reviewing this policy, the HR Policy Group considered, as a minimum, the following questions:

- ☞ Are the aims of this policy clear?
- ☞ Are responsibilities clearly identified?
- ☞ Has the policy been reviewed to ascertain any potential discrimination?
- ☞ Are there any specific groups impacted upon?
- ☞ Is this impact positive or negative?
- ☞ Could any impact constitute unlawful discrimination?
- ☞ Are communication proposals adequate?
- ☞ Does training need to be given? If so is this planned?

Adverse impact has been considered for age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation.

Only when the HR Policy group have satisfied themselves that the policy is non-discriminatory will this policy be ratified by the JCNC.

## **CHANGE MANAGEMENT POLICY**

This policy does not form part of any employee's contract of employment and the terms may be amended by East Coast Community Healthcare CIC (ECCH for short) from time to time either upon expiry of the review date or in line with any new statutory provisions, subject to the provisions contained within Agenda for Change.

### **1. INTRODUCTION**

East Coast Community Healthcare CIC (ECCH) actively manages the services it provides to ensure the most effective health care for patients/service users within the resources it holds. ECCH recognises that as a result of managing these resources and service requirements, changes may need to be made to its organisational requirements which in turn may affect the workforce.

Changes to organisational requirements may include:

- remodelling of services
- relocation of services
- merging of services
- expansion of services
- decreasing services
- closure of services
- competitive tendering of services
- outsourcing of services
- changes in working practices

All organisational changes will be conducted in accordance with this policy which incorporates best practice and legal requirements and aims to provide a framework to assist managers, employees and trade unions/professional organisations.

### **2. PURPOSE**

The purpose of this policy is to set out ECCH's approach to the management of organisational change and the procedures which will be followed when implementing any significant changes.

The principles and procedures support the aim of managing strategic and operational change which is supportive to employees, maximises the security of employment and ensures the continued delivery of appropriate services.

### **3. SCOPE**

This policy applies to all individuals employed by ECCH, including any employees that are seconded out to other organisations and will be applied consistently and equitably to all.

This policy does not apply to employees seconded into ECCH (this is the responsibility of their substantive employer) or to agency staff, other than in relation to reference 4.6 and 5.3.2.

Where organisational change affects employees working in partnership with ECCH the relevant organisations will agree a joint approach to the change management process using each organisation's policies

### **4. RESPONSIBILITIES/ACCOUNTABILITIES AND DUTIES**

#### 4.1 Board of Directors and Leadership team

The Board of Directors and ECCH Leadership team will ensure that any organisational change is managed transparently, fairly and consistently by engaging with trade unions/professional organisations and employees at the earliest opportunity. The Board of Directors will also ensure that consultation is undertaken with employees and trade unions/professional organisations in line with appropriate legal requirements.

#### 4.2 Managers

Managers are critical to the change management process and will therefore be regularly briefed so that they are in a position to respond to the concerns of employees in their teams. In turn, managers will provide information to employees and trade unions/professional organisations so that they are able to make meaningful contributions to the consultation process. This includes ensuring that copies of any notes taken at both collective/group and individual meetings are provided to them and their representatives in a timely manner. Managers will also ensure that all affected employees are aware of this policy and how to access it.

#### 4.3 Human Resources

The Human Resources team will ensure that managers and employees are supported through any change management process and assist in the identification of possible redeployment opportunities.

Human Resources will monitor vacancies through the Establishment Control process (ECF forms) to identify possible posts which may be held for redeployment purposes.

#### 4.4 Trade Unions/Professional Organisations

Trade unions/professional organisations will be expected to advise and represent their members involved in any organisational change, and where possible, work towards achieving a satisfactory outcome for all parties.

#### 4.5 Employees

Employees will be expected to meaningfully engage in the change management process.

### **5. PROCEDURE/IMPLEMENTATION**

#### 5.1 Definitions

For the purpose of applying the provisions contained in this policy, the following definitions will apply:

##### 5.1.1 *Continuous NHS Service*

Continuous NHS Service means full or part time employment with ECCH or any previous NHS employer provided there has not been a break of more than one week (Sunday to Saturday) between periods of employment. This reflects the provisions of the Employment Rights Act 1996 and Agenda for Change handbook (where applicable) on continuous service.

##### 5.1.2 *Continuous ECCH Service*

Continuous ECCH Service means full or part time employment with East Coast Community Healthcare CIC or - for employees who transferred into the organisation in accordance with the Transfer of Undertakings (Protection of Employment) Regulations and/or under Section 6(1) of the NHS and Community Care Act 1990 - the date upon which their employment with the previous employer(s) began, subject to the definition of continuous employment contained in Section 210-219 of the Employment Rights Act 1996.

### 5.1.3 *Reckonable Service*

Reckonable service means continuous ECCH service plus any service with a previous NHS employer where there has been a break of 12 months or less. Any period of employment outside the NHS which is relevant to NHS employment may be counted as reckonable service at ECCH's discretion where the evidence provided is assessed to be relevant.

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 NHS pension benefits any employment that has been taken into account for the purposes of those pension benefits

### 5.1.4 *Employees at Risk*

Employees deemed at risk means those individuals who are at risk of loss of employment and whose posts are identified as potentially ceasing or duties associated with the post are diminishing or the requirement to carry out the work at a location have ceased or diminished, or are expected to cease or diminish as a result of any organisational change.

### 5.1.5 *Redeployment*

Redeployment means the process of finding suitable alternative employment (as defined by Sections 138 and 141 of the Employment Rights Act 1996) for employees deemed to be at risk.

### 5.1.6 *Slotting In*

Slotting in means the process by which employees at risk are placed into another post in a new staffing or management structure which is similar to their current post.

Slotting in may occur where there is a post at the same band/salary as the individual's current post (or possibly a lower band/grade, in which case pay protection may apply) or where it remains substantially the same with regard to job content, responsibility, grade, status, and requirements for skills, knowledge and experience.

As part of the planning phase, the organisation will identify any proposed 'slot-ins', i.e. individuals who meet all of the following criteria:

- The magnitude, breadth and responsibilities of the new job are substantially the same as the individual's substantive post.
- The individual meets the minimum essential criteria in the person specification for the new job
- There are no other 'at risk' individuals who would qualify for consideration by virtue of holding a similar role
- The individual is considered to have the overall capabilities to do the new job competently

- The location of the new job is reasonable in all circumstances taking account of the individuals role, contractual arrangements and personal circumstances

Slot-ins do not attract a trial period and no redundancy payment will be available to an individual who refuses to be slotted in when all the above criteria are met.

#### 5.1.7 *Ring-fencing*

Ring-fencing means the process by which employees deemed to be at risk and/or affected by change will be considered for a post in a new staffing or management structure. A post will be ring fenced where it is similar to the post being made redundant and where there is more than one person at risk/affected by change, or the new structure would result in someone being identified as at risk.

#### 5.1.7i *Limited Competition*

Limited competition shall normally apply where either:

- a) the post is clearly new in content and/or carries a substantially increased weight of responsibility, **and/or**
- b) more than one employee could be regarded as a suitable candidate for the one post who is available within the ring-fenced area agreed for competition, **and/or**
- c) the direct transfer of an individual employee would involve substantial promotion/demotion.

#### 5.1.7ii *Preferential Interview*

Employees who are identified at risk will be given a preferential interview for any suitable alternative employment where they meet the essential criteria and such posts will not be advertised externally unless the interview is unsuccessful.

#### 5.1.8 *TUPE*

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

### 5.2 Change Management Statement and Principles

Organisational change is driven by the business needs of ECCH. Change can be triggered either by the external environment or by an internal review of service requirements.

In order to meet changing business needs more effectively, there may be occasions when managers need to implement relatively minor changes.

Reasonable minor changes and adjustments to duties and working practices may be implemented without recourse to the formal procedures in this policy but will require discussions with the Human Resources Department and reasonable consultation with affected employees. In these situations, employees will be advised of this policy, their right to be consulted on the changes and their rights to representation. Notes from these meetings will be made and provided to employees.

Any situation which may lead to employees being declared at risk or a change in banding/grading will not be deemed to be a minor change.

ECCH 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.



- ECCH will provide information on proposed organisational change to trade unions/professional organisations representatives through ECCH Joint Consultation and Negotiating Committee (JCNC).
- employees will receive notice of any organisational change which may affect them at the earliest opportunity.
- employees will have the right to be accompanied by a recognised trade union/professional organisation representative or work colleague at meetings to discuss any organisational changes which may affect them.
- employees will be treated as individuals with regard to their personal and employment circumstances when discussing proposed changes.
- employees will be supported during any organisational changes including accessing appropriate training.

Where requested, recognised Trade Unions/Professional Organisation Representatives will be provided with a list of all employees potentially affected by the change.

### 5.3 Consultation

#### 5.3.1 *Purpose of Consultation*

In accordance with legislation and partnership working principles, ECCH will ensure that meaningful and appropriate consultation with trade unions/professional organisations and employees affected by the organisational change takes place. The consultation will be carried out within the terms of national and local agreements with the aim, wherever possible, of protecting existing terms and conditions and to avoid compulsory redundancies.

Consultation will take place with a view to reaching agreement on the way forward although there will be times when organisational change will need to proceed without a consensus being reached on all issues. The timing and extent of consultation will be proportionate to the degree of proposed change, the number of employees affected and the impact on individuals.

The purpose of consultation meetings with trade unions/professional organisations and employees will be:

- to receive and, where possible, address any questions on any consultation documentation
- to consider any comments or views on any consultation documentation including any alternative proposals and costings (which ECCH 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. A consultation flowchart is attached at Appendix A.

#### 5.3.2. *Consultation Procedure*

A consultation document will be prepared on the proposed organisational change explaining why the change is required and the impact of the changes. This document will be prepared by the Service/Area of work in conjunction with the Human Resources Department.

The consultation document will include, as appropriate:

- the current situation analysis including staffing structure

- the reason and rationale for any change
- all the options which have been considered
- the proposal including staffing structures (both numbers and descriptions) and any location changes
- the impact on the service including potential staff
- Wellbeing impact assessment
- the financial, staffing and workload implications of the proposal.
- impact on supplementary and ancillary services
- the number and bands/grades of employees who may be at risk as a result of the proposal, the total number of employees within that team/unit at the affected level and a description of their roles
- consideration of any health and safety issues
- proposed timescale for consultation and implementation of the proposed change
- the way in which employees will be selected for posts within the new structure
- any measures to be taken to avoid redundancies including natural wastage, redeployment or retraining.
- details of any suitable alternative employment which may exist.

A template for compiling a consultation document is available from your HR representative.

If redundancy has not been envisaged in the initial consultation document a further update must be provided to JCNC to cover the potential redundancy situation, the following elements are required in this case:

- if necessary, the selection criteria for redundancy
- If necessary how the dismissals are to be carried out and the period over which the dismissals are to take effect
- the method of calculating the amount of redundancy payments
- the number of agency workers, where they are working and the type of work which they are doing
- details of any alternative severance packages following consultation with Human Resources
- details of how this information will be disseminated to employees
- description of the consultation process, including planned meetings, timeframes, how employees and representatives can respond and the deadline.

### 5.3.3 *Time Periods for Consultation*

In all cases ECCH will provide sufficient time for meaningful consultation with employees and their representatives. In exceptional circumstances where changes need to be made very quickly, trade union/professional organisation representatives will be briefed through the JCNC Staffside Chair as soon as practicable and any verbal information will be followed by written information.

The period of formal consultation will not be deemed to have commenced until all affected employees and their recognised Trade Unions/Professional Organisations have been invited to the first consultation meeting. The consultation will commence on the date of the meeting and employees and trade unions/professional organisation representatives must be provided with reasonable notice of the meeting.

In a collective redundancy scenario, consultation will continue for a period of no less than the statutory time scales as detailed in the Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment) Order 2013:

- where 20-99 redundancies are proposed within a 90 day period, consultation will commence at least 30 days before the first redundancy dismissal takes effect.

- where 100 or more redundancies are proposed within a 90 day period, then consultation will commence at least 45 days before the first redundancy dismissal takes effect.

In an individual redundancy scenario, consultation will normally start at least 30 days before any individual notice of redundancy is given. However, consultation may be for a shorter period, if jointly agreed by both parties.

Trade unions/professional organisations and employees 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 be unreasonably refused and where they cannot be accommodated a reason will be given.

It is not necessary for the parties involved to reach agreement for the consultation to be complete. As long as there has been genuine consultation with a view to reaching agreement, then ECCH can end the consultation provided that the above timescales have been adhered to.

#### *5.3.4 Consultation with Trade Unions/Professional Organisations*

Formal consultation with trade union/professional organisation representatives will commence once the consultation documentation has been finalised, but early discussions with locally accredited representatives are encouraged prior to the finalisation of the consultation paper.

This will take the form of:

- notification to ECCH's Joint Consultation and Negotiation Committee (JCNC)
- ongoing discussions with local accredited representatives
- trade union/professional organisation representatives will be invited to a meeting with all affected employees and given reasonable notice to attend.

In a redundancy scenario, information will be provided in writing to both local and regional trade union/professional organisation representatives which will include:

- the numbers and description of employees who are at risk
- the proposed method of selecting employees

During any periods of organisational change, management will ensure that trade union/professional organisation representatives are kept up to date of any changes or developments and will meet with trade unions/professional organisations as appropriate.

#### *5.3.5 Consultation*

##### *Announcement Meeting*

A 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 who it is anticipated will be absent from work for a prolonged period of time e.g., sickness, maternity or parental leave during a period of organisational change will be involved in the consultation process in line with this policy and any legislation requirements.

##### *Group Consultation*

If appropriate (and in cases where 20 or more staff are affected by proposed change) the consultation process will be carried out in two phases. Where this applies, we will consult with you as a group first– this is the ‘group consultation’ phase. The group consultation phase will be carried out through Staff Side Representatives via the Joint Consultation and Negotiation Committee (“JCNC”).

ECCH will consult with the staff representatives and the staff representatives are responsible for ensuring that your representations, queries and/or concerns are captured and put forward to us as part of the staff consultation process.

As part of the group consultation process, group meetings will take place on a regular basis with management representatives and Staff Side Representatives to discuss the changes proposed in this consultation document.

During and at the conclusion of the group consultation phase, all findings and any representations made by staff will be reviewed, amendments to the proposal may be made where appropriate and the results will be shared with all affected staff members in a timely manner.

### Individual Consultation

Each employee will be offered the opportunity of at least one individual meeting with an appropriate manager at which they have the right to be accompanied by a trade union/professional organisation representative or work colleague.\* This would normally take place once the group phase of the consultation process is concluded where applicable (i, all staff will have the opportunity of individual consultation meetings). The meeting will be with an appropriate manager and an HR representative to discuss individual needs or concerns and to give further feedback about the proposals.

\*Where it is deemed necessary, following advice from HR, the organisation may at its discretion allow an employee to bring a companion who is not a colleague (for example a member of the employees family) if this will help overcome a disability or assist with the employee’s difficulty in understanding English.

At the meeting each employee will be invited to comment and respond to the proposals. It is recognised that employees may require time to respond and may not be able to do so at that particular meeting.

A written record of the individual meeting will be kept and provided to the employee and their trade union/professional organisation representative where applicable. The record will be a note of the main points discussed at the meeting.

Regular updates and frequently asked questions may be circulated to employees throughout the formal consultation period. Throughout this period the affected employees will be encouraged to discuss their concerns and queries with their line manager and trade union/professional organisation representative.

In addition to the individual consultation meetings, employees will be kept informed by management through team meetings, briefings, newsletters as appropriate.

All copies of relevant documentation will be available on ECCH’s intranet site during periods of organisational change.

### *5.3.6 End of Consultation*

At the end of the consultation period, full consideration will be given to all comments received from the affected employees and their trade unions/professional organisations. A decision will be communicated which will include:

- the reason for the decision
- an explanation where the management decision is in conflict with the views of the affected employees and/or trade unions/professional organisations or where the proposal has changed as a result of the consultation.
- identification of posts which are the same or substantially the same in the old and new structures
- arrangements for filling posts through slotting in or ring-fencing
- selection arrangements for posts within the new structure
- measures that will be taken to avoid redundancies
- arrangements for seeking suitable alternative employment
- reference to protection arrangements and how these will apply
- support mechanisms available for employees affected by the change including counselling and reasonable time off to seek other employment or undertake training
- proposed timescales for each stage of the change process

Where redundancies (voluntary or compulsory) are inevitable ECCH will set selection criteria for inclusion in the conclusions to consultation. These criteria will be objective, clearly defined, measurable and non-discriminatory. Advice will be sought from the Human Resources Department on the selection criteria to be used and where possible, agreed with trade unions/professional organisation representatives. ECCH reserves the right to withdraw offers of redundancy (voluntary or compulsory) anytime up to the nominated date of leaving, if suitable alternative employment is found for the affected employee.

Under normal circumstances, employees will be selected on the basis of their relevant skills, experience and qualifications to undertake the remaining jobs, as assessed through a formal assessment process. However, there may be occasions where alternative selection criteria are agreed with the trade unions/professional organisations during the consultation process, for example:

- conduct and performance (as evidenced through appropriate documentary information)
- attendance records (due regard will be given to the causes of absence and the equality impact of use of this criteria)

In considering any measures to avoid redundancies, operational efficiency and service needs must be taken into consideration. If an employee volunteers for redundancy/early retirement, approval of the request will be subject to the needs of the service.

#### *5.4 Support for Affected Employees*

All employees affected by the organisational change will be encouraged to seek the advice and support of their trade union/professional organisation. Support will be provided by ECCH and may include:

- time to meet with their trade union/professional organisation representative to discuss the change
- assistance with stress management and access to employee counselling services
- help with preparation for interviews
- reasonable time off to seek other employment or undertake training.

In a potential redundancy situation ECCH may make contact with Jobcentre Plus and their Rapid Response Service to provide further support and guidance to the affected employees.

After the change has taken place, ECCH acknowledges that employees may take time to adjust to the change itself. Management will remain available to employees to manage any issues which may arise and support them through the transition.

## 5.5 Process for Filling Posts in new/revised structures

### Appointment to Posts

Some staff who are affected by change will transfer to new departments with their role unchanged. However, for certain roles it may be necessary to use a selection process. In conjunction with the processes below, the Trust will use a combination of the following information to ensure a reasonable approach to selection:

1. job descriptions and person specifications for all posts in the new structure
2. slotting-into posts
3. restricted competition
4. protection of terms and conditions of employment

#### Step 1: Slotting-in.

This will apply where:

- the magnitude, breadth and terms and conditions of the new job is substantially the same as the individual's current substantive post and,
- the individual is considered by the appointing officer to be able or have the potential to do the new job competently
- no other member of staff qualifies for consideration because they also have a substantive post that is substantially the same as the new post.

On notification of which posts will be eligible for slotting-in, the employee will be given a period of no more than 2 weeks to make written representations to the HR department on the appropriateness of the post(s) identified.

For staff who are affected by change, but do not slot into new posts, there will usually be a three-step process (Steps 2-4) to the filling of posts in any new structure, as follows:

Note: In the event that there is more than one member of staff eligible for slotting into a post(s), these posts will be ring fenced for these staff. Selection would be via the normal interview arrangements.

#### Step 2: Prior Consideration

Applications will be restricted, in the first instance, to current members of staff who are affected by change and who hold a contract of employment with the Company (including temporary and fixed term staff) in order to give prior consideration. Staff who meet in full the essential requirements for the vacant post will be guaranteed an interview. NB: Those staff engaged on temporary/fixed term contracts for specific defined projects only will not normally be considered for prior consideration.

#### Step 3: Restricted Competition

This stage opens the appointment process to other people employed by the Company (staff unaffected by change).

#### Step 4: Open Competition

This stage opens the appointment process to local and/or national advertisement. It might be appropriate to merge steps 3 and 4.

Job descriptions and person specifications will be produced for any new posts. The new posts will be evaluated in accordance with Agenda for Change Job Evaluation Procedure.

Selection criteria for all posts in the new structure must be non-discriminatory, fair, objective, clearly defined and based on the skills and competency requirements of the post.

Employees who are offered posts will be deemed to have been offered suitable alternative employment by ECCH. This will be confirmed in writing. If employees are slotted in or offered a ring fenced post it will be considered by ECCH that the posts offered are suitable alternative employment and hence the consequences of refusing to accept these posts will be seen as refusing suitable alternative employment.

#### 5.6 Change of employee base location

If, as a result of accepting a post as an alternative to redundancy, or there is a requirement for an employee to change base as a result of organisational change, then the employee may be reimbursed their extra daily travelling expenses at the agreed excess travel rate outlined in the ECCH Travel and Expenses Policy (Excess Travel).

There is no facility for any paid travel **time** at the start and/or end of the working day.

#### 5.8 Employees at Risk

When changes in staffing levels or skill mix are proposed which will lead to a reduction in the numbers of employees in particular bands/grades or occupational groups, management will identify the positions, individuals or pool of employees who are at risk of redundancy.

Employees who are 'acting up' into another position will be placed in the pool relating to their substantive post.

The identification of being at risk of redundancy is **not** a notice of redundancy.

Employees who are deemed to be at risk will be invited to a meeting with their manager and trade union/professional organisation representative or work colleague to:

- discuss how the proposed changes affect the individual
- explain why the individual is at risk
- explore the possibility of redeployment
- explain the process of redeployment
- explain the arrangements for protection of pay and terms and conditions where applicable
- offer support and assistance

The meeting will also allow the employee and their representative to raise any concerns or issues relating to current or future requirements.

Employees who are notified that they are 'at risk' will be placed on a register held within the Human Resources Department. The Human Resources Department will ensure employees on the register have access to information regarding any potential vacancies. At risk employees will be notified of possible suitable alternative employment opportunities via ECCH's intranet.

Employees at risk will be given prior consideration for posts within the new structure where they meet the selection criteria.

Employees at risk will liaise with the Human Resources Department who will register them with NHS Jobs which will allow the employee to see any jobs which have been restricted to 'at risk' employees only, both within ECCH and nationally.

## 5.9 Redundancy

### 5.9.1 *Definition of Redundancy*

Under the Employment Rights Act 1996, redundancy arises when employees are dismissed because:

- the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was so employed; or
- the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed; or
- the requirement of the business for employees to carry out work of a particular kind has ceased or diminished or are expected to cease or diminish; or
- the requirements of the business for the employees to carry out work of a particular kind, in the place where they were so employed, has ceased or diminished or are expected to cease or diminish

The place of work referred to above should not be confused with the specific site or unit in which an individual works.

The Human Resources Department is responsible for notifying the relevant Department in writing via the HR1 – Advance Notification of Redundancies form if ECCH proposes to make 20 or more employees redundant within a 90 day period, within the terms of the legislation. A copy of the notification form will be sent to the trade union/professional organisation representatives concerned. Advance notification to the relevant Department does not bind ECCH to make the employees redundant.

### 5.9.2 *Suitable Alternative Employment*

Suitable alternative employment shall be determined by reference to sections 138 and 141 of the Employment Rights Act 1996. For a post to be "suitable", consideration should be given to the comparability of the current and the alternative post including the skills/qualifications, aptitude and experience required of the individual.

Suitable alternative employment is work within ECCH that is on broadly similar terms 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 ECCH subject to travel considerations. A post in a different band/specialty may be deemed as suitable alternative employment, following discussion with the individual employee and taking into account their particular circumstances. Employees who are deemed to be at risk will be given prior consideration for suitable posts in line with their skills, experience and capabilities and where appropriate will receive protection of pay.

Where there are insufficient numbers of vacant posts within ECCH, the Human Resources Department will endeavour to identify suitable redeployment opportunities within the wider NHS and draw these to the attention of the employees.

Employees are reminded that under Agenda for Change terms and conditions (Section 16) an unreasonable refusal to accept suitable alternative employment offered by ECCH; or failure to submit an application for a post identified as suitable alternative employment, could be deemed to be a refusal of suitable alternative employment. This means that the employee may not be entitled to a redundancy payment.



A post may be considered as suitable alternative employment if it is the same salary band as the employee's current post, or the next higher (subject to appropriate assessment) or a lower salary band (subject to pay protection arrangements). In addition, the employee must meet the essential criteria contained within the person specification for any suitable alternative post.

Where individuals deemed to be at risk have identified suitable alternative posts, they may obtain a copy of the job description/person specification from HR and be informed by the recruiting manager, a suitable deadline in which to register their interest. In some circumstances e.g., annual leave this period may be appropriately extended. During this period the individual may meet with the appropriate manager informally to discuss their interest.

If the individual is offered the position, this will be treated as an offer of suitable employment and a trial period will apply.

If an individual wishes to refuse an offer of suitable alternative employment, they should contact the Manager and HR Representative in writing, detailing their reasons for the refusal. The reasons will be considered by ECCH, and the individual will be informed whether their refusal has been accepted or not.

### *5.9.3 Trial Periods and Training*

Where an individual has been redeployed to a substantially different post, they will have the right to a trial period in that new post which will ordinarily be for the statutory period of four weeks, however in exceptional circumstances, this may be extended to six weeks. Should an individual not consider the new post to be a suitable alternative post they must object to this in writing within the first four weeks of the trial period. Please note that an object does not mean an individual will automatically move to a redundancy situation. Failure to do so can by law, be deemed to be an acceptance of the post and therefore give rise to the forfeiture of redundancy pay entitlement. Individuals who are slotted into a post do not have the right to a trial period.

At least one review will be undertaken, prior to the end of the trial period. This will allow both parties to discuss any issues at which the employee's trade union/professional representative may be present along with the HR representative.

If the trial period is unsuccessful, as determined by the individual and/or the manager concerned, redundancy arrangements will apply as from the date when the original contract of employment will terminate. Until the end of their notice period employees placed at risk will be considered for other suitable alternative employment if available which will be subject to the same arrangements including a trial period.

### *5.9.5 Right of Appeal*

The employee has a right of appeal against the outcome of a change management process. The appeal must be made to the Director of HR within 5 working days of receipt of the outcome communication. Appeals received after this time will only be accepted in exceptional circumstances and at the sole discretion of the Director of HR. The appeal must set out the grounds of appeal.

In the event of a complaint about misapplication of the Change Management Policy and Procedure in the way that the consultation or redeployment processes have been handled will be dealt with in accordance with ECCH's Grievance Procedure.

## 5.10 Transfer of Undertakings (Protection of Employment) Regulations (TUPE)

Where it has been agreed that a proposal to transfer services and employees to a different employer meets the requirements under the TUPE regulations, there will be consultation with the trade unions/professional organisations at the earliest opportunity. This should be a minimum of 30 days (unless otherwise agreed) and where 100 or more employees are affected, it should be 45 days where reasonably practicable.

When services are transferred from one organisation to another in line with TUPE, the employees who are assigned to the services which are being transferred will transfer to the new organisation.

The terms and conditions within the transferring employee's contract of employment (including relevant policies and procedures) will transfer with them and should not be changed as a consequence of the transfer.

Where employees have responsibilities spanning more than one NHS organisation or more than one service, discussions will take place with the individual, their trade union/professional organisation representative and the organisations concerned to determine if their employment should transfer. The options in this situation might be that the individual will transfer to one organisation with an agreement to provide services to the other, or have more than one contract of employment or, in exceptional circumstances, to be declared at risk.

In all of these circumstances, for the purposes of the consultation that will be carried out, the manager will identify the services, posts and individual employees that will transfer or be affected in accordance with the obligations of TUPE and shall write to the individuals affected and the trade unions/professional organisations informing them of the intention that employees will transfer, the implications of the transfer and any measures which will be taken in connection with the transfer.

The manager will then offer one-to-one meetings with individual employees and their trade union/professional organisation representative to discuss the implications of the transfer, measures to be taken in connection with the transfer, answer any concerns or queries. These discussions will be documented and confirmed in writing. Every possible support will be given to employees to understand the reasons for and implications of the transfer and to ensure they have the necessary information with which to prepare themselves.

Formal notice of transfer will be issued as long before the date of the transfer as possible in order to comply with the obligations of TUPE and this policy. ECCH will make every effort to give up to a minimum of 45 days' notice of a transfer, but will endeavour to provide more notice than this, e.g., 2/3 months' notice depending on the size and scale of the transfer where possible. Where it is not possible to provide 45 days' notice due to the timing of external announcements or decisions of approval, a shorter notice period will be provided after consultation with JCNC.

## **6. GRIEVANCE**

Any employee who feels aggrieved with the way they are treated, in line with the terms of this policy or the redeployment process can use ECCH's Grievance Procedure.

## **7. MONITORING AND REVIEW**

7.1 The Human Resources Department will be responsible for monitoring the overall effectiveness of the Change Management Policy and Redeployment Procedure and will keep the policy under review in consultation with the JCNC. This policy will be reviewed periodically and improved in the light of operational practice and experience.

7.2 Any new statutory provisions affecting this policy will automatically take precedence.

This will be communicated to all employees and the policy will be updated accordingly.

## **8. RELATED DOCUMENTS**

HR policies and procedures:

- Travel and Expenses Policy
- Redundancy Policy
- Learning and Development Policy
- Equality, Diversity and Human Rights Policy
- Grievance Procedure
- Redeployment Procedure
- Recruitment Policy
- NHS Terms and Conditions of Service handbook

## **REFERENCES**

Agenda for Change Handbook

Employment Rights Act 1996

Job Centre – Rapid Response Service - [rrs.enquiries@jobcentreplus.gsi.gov.uk](mailto:rrs.enquiries@jobcentreplus.gsi.gov.uk)

Trade Union and Labour Relations (Consolidation) Act 1992 (Amendment) Order 2013

Transfer of Undertakings (Protection of Employment) Regulations 2006

## **APPENDICES**

Appendix A – Formal Consultation Flowchart

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