



Defending Agenda for Change

December 2012

UNISON Briefing

Proposed changes to Agenda for Change in England

Staff in the NHS are covered by a national agreement (Agenda for Change) on pay and other terms like holidays, sick pay and allowances. This national agreement was negotiated by employers and trade unions and we believe it works well for the NHS and is good for staff, patients and communities.

However, this national agreement is under threat, with some Trusts looking to move away from Agenda for Change by introducing local pay and terms for their staff. We do not think postcode pay is in the best interests of staff, or the people who rely on the NHS. UNISON has responded robustly to these threats but – in order to prevent an increasing number of employers from going down this route – has engaged in formal talks on a package of proposals to agree national amendments to Agenda for Change as an alternative to increased local attacks on terms and conditions.

The NHS trade unions have negotiated a package which balances some changes we don't like (including changes to sick pay) with some we need (like policies to limit downbanding). This briefing explains the background and context to the negotiations and gives you a detailed commentary on the proposals in order that you can help members identify the impact on them and explain what the alternatives would be.

Other materials, including FAQs are available from:

unison.org.uk/healthcare/a4c/consultation.asp

Contents

Background

UNISON's objectives

The current proposals – What would they mean if implemented?

UNISON's decision making

Appendices

The proposals

Timeline and content of negotiations

Background

Over two years ago the Foundation Trust Network and NHS Employers produced a list of Agenda for Change (AfC) terms and conditions that they wanted to amend. This included cutting annual leave, maternity rights, unsocial hours and other premia payments, drastically cutting sickness absence pay, and changing or freezing incremental progression.

UNISON has successfully argued against these proposals and rejected a specific proposal to freeze increments for two years. However the NHS employers and in particular foundation trusts have continued to push for significant amendments to the AfC agreement.

These discussions began over one year ago but were prolonged due to the negotiations on the governments changes to the NHS pension scheme. This set of proposals from the employers have focussed primarily on changing incremental progression, particularly for staff in bands 8c, 8d and 9 and removing enhanced payments during sickness absence.

The employers' proposals come about against a backdrop of increasing financial pressure on the NHS and on staff, and increasing threats from individual and groups of trusts to change AfC terms and conditions at local level.

The Westminster government has taken a neutral position on the national agreement, arguing that it supports the use of Agenda for Change if employers continue to see it as 'fit for purpose'.

A timeline for the discussions is attached at Annex B.

UNISON objectives

UNISON's key objectives have been to protect members' terms and conditions, neutralise the employers' proposals, and defend and maintain the AfC agreement as a national UK agreement.

At the UNISON Health Service Group Conference in April 2012, delegates were briefed on the employers' proposals, as they were at that time. Annex A outlines the timeline for the proposals from employers. Ongoing negotiations

resulted in a set of outline proposals from employers in June 2012. The joint NHS unions agreed to consult with local lay committees over summer 2012. This consultation was to determine which elements were most and least objectionable, what were the existing threats at local level and what were the views on the negotiations.

Key findings from that survey were

40% said there had been local threats to AfC in their workplaces;
63% reported incidences of or proposals on down banding;
67% wanted the negotiations to continue;
88% supported getting a re-commitment to the principles of job evaluation;
80% supported national principles to protect against downbanding.

Trusts threatening to break away from AfC

It is clear that a number of local trusts in England are planning to change elements of the AfC agreement. In the South West of England 20 Trusts have formed a consortium and produced 28 proposals to change significantly the terms and conditions of staff. A trust in the Northern Region has become the first trust which has issued notices to dismiss and re-engage over 5,500 staff on worse terms and conditions. In addition there are a number of other trusts giving serious consideration to moving away from the AfC agreement.

UNISON has mounted major campaigns against these specific proposals under our 'Postcode Pay – No Way' banner in the South West - and is preparing for industrial and legal challenges to the imposition of new contracts in the trust in the Northern Region. Many trusts, particularly those in lower density workplaces, are increasingly looking to side-step the trade unions to consult staff directly about the type of changes they would be willing to make at local level.

While there is no guarantee that agreeing to these proposals will hold 100% of trusts in England to AfC, the Health SGE believes these would hold the majority and will be consulting branches to get better information on this.

What is very clear is that if the unions do not agree to the current national proposals, the number of trusts breaking away and/or proceeding with local amendments either to terms for existing staff or by placing new starters on local – non AfC – contracts, will increase significantly.

The Health SGE believes that if we can hold most trusts in England to AfC conditions by agreeing to these changes then we can focus our efforts in defending members in those trusts which may still try to break away.

The current proposals – what would they mean if implemented?

The following section offers a detailed commentary on the Staff Council proposals and numbers refer to the paragraphs in the proposal document, attached here as Annex A.

Introduction 1 – 3

This outlines the process and coverage of these proposals. In particular this affects NHS AfC staff in England only. Each union will consider their own method for consultation. Our aim would be to ensure that the AfC agreement remains intact as a UK wide agreement albeit with specific amendments for England reflecting these changes.

Background 4 – 6

This contains important commitments from the employers and unions to ensure the AfC agreement remains sustainable and crucially continues **“to be used by NHS organisations.”**

Incremental progression 7 – 10

Para 7: Under the existing provisions in AfC there are two gateways in each pay band and in addition, paragraph 1.8 states that staff will progress through their pay bands or range on an annual basis *“provided their performance is satisfactory and they demonstrate the agreed knowledge and skills appropriate to that part of the pay band or range”*. These proposals allow for explicit use of this provision – effectively opening a gateway at each pay point.

The proposals also allow for locally agreed objectives/criteria to be applied in addition to KSF. In order to maintain transparency and objectivity, a new annex of the handbook would set out the principles which these criteria would need to fit – this would include agreement with the local trade unions and the right of appeal for any individual deemed not to meet the criteria.

Although, the existing section 6 provisions in the AfC handbook will be amended to reflect these proposals, the key features of this section will also continue to apply, in particular, that this can only work where trusts have effective staff appraisal systems in place. If staff do not get appraisals as outlined in the guidance, then increments cannot be withheld. UNISON has consistently argued for effective appraisals and support systems for all NHS staff.

Para 8: Originally the employers had wanted all pay points to contain a bar below the penultimate incremental point, beyond which progression for all staff would be “earned annually” i.e. staff can go up and down the pay points. Following negotiations this was limited to staff in bands 8c, 8d and 9 will be

able to progress to the 4th pay point in their band as per paragraph 7, but the top two points in each of these bands will be “earned annually”.

This means they will have to meet additional criteria to continue to receive these increments. If they do not they may lose the increment and can drop to the next lowest i.e. point 4 or 5 of their pay band. This will affect staff earning over £61,167. However, staff in 8c, 8d or 9 who have already reached the top of their pay band will not be affected by these proposals. Staff who have reached the penultimate pay point will not drop below this but achieving and maintaining the top point would be conditional on these proposals.

There would be joint Staff Council guidance on developing the criteria - to ensure these are fair, transparent, achievable and equality proofed.

Flexibility on senior posts

Para 9: At present, staff with a job evaluation score of over 720 points (band 9) can be put onto local, senior staff pay arrangements. The Staff Council proposals extend this to allow staff with a job evaluation score of over 630 points (band 8c and above) to go onto such local arrangements. However any local senior managers pay arrangements will also need to be equal pay proofed. There will need to be additional advice on principles for these pay arrangements to ensure they are fair, transparent and equality proofed.

Accelerated pay progression for new entrants to Pay Band 5

Para 10: The Staff Council Proposals would remove the arrangement whereby new starters to band 5 receive two increments in their first year. This proposal identifies that preceptorship itself remains an important element of the agreement.

Management of Sickness Absence 11-13

Para 11: The staff council has recently agreed new guidance on managing sickness absence and this confirms our commitment to work jointly with employers on this issue.

Paras 12 – 13: The employers’ original proposals were to remove unsocial hours payments during sickness absence for all staff. The staff side negotiated protection for some staff. In particular, these proposals will not affect staff on pay points 1 – 8. This includes staff in bands 1 and 2 and up to point 3 of band 3, i.e. staff earning up to £17,253 on the current pay spine. There is also a commitment to exclude staff who are injured or contract a disease as a result of their work. The wording on this will be cross referenced to the wording used in determining access to Injury Benefit and to defining what counts towards individuals’ sickness records.

Guidance on workforce re-profiling

Para 14: Reflecting the importance and emphasis given by the local staff sides on wanting a national agreement to protect against downbanding, the trade unions have negotiated a set of national principles to be followed at local level where workforce re-profiling is being proposed. These principles emphasise the importance of local engagement, and – crucially - the need to follow the principles and procedures set out in the Job Evaluation handbook to ensure that staff are not being asked to take lower graded jobs but, in effect, carry on doing the same job.

There were serious discussion among the unions about whether or not to argue for a minimum level of pay protection but the evidence showed that there was significant variation across trusts. It was felt that going for a minimum level could result in the unintended consequence of pushing down local pay protection arrangements. The existing wording means that local organisational change pay protection policies would be used to protect earnings where staff were 'downbanded' to lower banded posts.

Ongoing review of AfC

Para 15: This confirms that the AfC agreement remains an ongoing agreement and unions and employers will continue to negotiate through the NHS Staff Council.

Amendments to the AfC Handbook

Para 16: this section explains the process for amending the AfC handbook while recognising the different elements that can apply in the different UK countries. It also identifies the aim of continuing to maintain one handbook covering all AfC terms.

UNISON's decision-making

These proposals have been negotiated as a package which may provide a better alternative to defending AfC at local level – but we need input from members to form the final UNISON view.

At the Health Service Group Executive (HSGE) on 21 November 2013 the committee agreed a motion and a set of questions to consult members on the proposed changes to AfC.

The motion reads as follows:

The SGE is looking to make an agreement to defend Agenda for Change and considers that these proposals are the best way to protect and maintain our national agreement for the future through negotiations and represents a better alternative than increased local and regional 'breakaways'.

Before making a final decision on these proposals, the SGE is asking you to consult on:

- Will members accept the proposals rather than the likely alternatives?
- Has your employer already given a commitment to maintain AfC?
- If not, will they give a commitment based on these proposals?
- If rejected, what action members would be willing to take to defend local attacks on terms and conditions?

Regions and branches will be consulting members on the proposals between now and the end of January. Contact your region/branch to find out how you will have your say.

This briefing, along with a range of publications, is available on UNISON's Agenda for Change website pages

unison.org.uk/healthcare/a4c/consultation.asp

Appendix A

Proposals on changes to the Agenda for Change agreement

November 2012

Introduction

1. This document sets out the proposed changes to the NHS Terms and Conditions of Service Handbook. This is a joint set of proposals on changes to the NHS Terms and Conditions of Service Handbook in England only which covers staff on Agenda for Change contracts.
2. Subject to the agreement to consult on these proposals by staff side at the NHS Staff Council meeting on the 9 November 2012, and the subsequent respective trade union processes endorsing this agreement, the new arrangements will come into effect from 1 April 2013.
3. There are no proposals by the Scottish Government, Welsh Government, and the DHSSPS Northern Ireland for these changes to take effect for staff covered by these administrations.

Background

4. Employers and trades unions recognise the benefits of maintaining a national handbook of terms and conditions that are modern and responsive to the needs of both local employers and their staff.
5. Employers and trades unions understand the unprecedented challenges faced by the NHS. We will work together in partnership to ensure that the NHS terms and conditions of service handbook is kept under review to ensure that it remains supportive of quality patient care and maximises job security for staff.
6. The proposed changes will contribute to ensuring the national NHS terms and conditions of service handbook will remain sustainable for the future, fit for purpose, fair to staff and continue to be used by NHS organisations.

The proposed changes

Incremental pay progression

7. To introduce a clause stating that progression through all pay points ("gateways"), in all pay bands, will be conditional upon individuals demonstrating that they have the requisite knowledge and skills/competencies for their role and that they have demonstrated the required standards of performance and delivery, as determined locally in line with a new Annex A4 addition to the handbook setting out previously discussed national principles on pay progression.
8. For the most senior staff in pay bands 8C, 8D and 9, pay progression into the last 2 points in a band will become annually earned and once awarded will be dependent upon meeting the appropriate local level of performance in a given year as to whether these points are retained. Annually earned pay will not be subject to pay protection. However, those already on an annually earned point at the time of

implementation will not lose that point in future years but will have to earn any subsequent progression as per the agreement.

Flexibility on senior posts

9. It is proposed to extend the flexibility to apply alternative pay arrangements to posts with a job evaluation score over 720, to posts with a job evaluation score over 630 points. Equal pay principles should still apply to all posts affected.

Accelerated pay progression for new entrants to Pay Band 5

10. It is proposed to remove accelerated pay progression as currently set out in 1.8 of the handbook with effect from 1 April 2013. Preceptorship is a key stage in a newly qualified entrant's career into the NHS and we recognise the important role that it plays in supporting the career development of professional staff.

Management of sickness absence

11. Employers and trades unions remain committed to working together at national and local level to support more effective management of sickness absences which is both fair to individuals and takes account of service delivery requirements. The NHS Staff Council parties endorse the new "Guidelines on Prevention and Management of Sickness Absence" which has been developed in partnership. All employers should be taking proactive measures to support health and wellbeing at work and to reduce sickness absence.

12. It is proposed that pay during sickness absence will be paid at basic salary level (that is the appropriate pay point in the relevant pay circular) inclusive of any high cost area supplement. It will not include any other allowances or payments linked to working patterns or additional work commitments, e.g. unsocial hours payments.

13. No changes will be made to the current calculation of pay during sickness absence for:-

- The lowest paid staff on spine points 1 – 8 of Agenda for Change pay structure
- Those absent due to a work related injury or disease in the actual discharge of their duties (Section 14.6, NHS terms and conditions of service handbook). This is subject to the Injury Benefit discussions and any changes that may occur to 14.6 of the handbook.

Guidance on workforce re-profiling

14. Guidance setting out the principles to be followed, in relation to undertaking workforce re-profiling, will be included as a new Annex A5 in the NHS terms and conditions of service handbook for England. It is proposed that this will include:-

- The importance of local engagement with trades unions and staff at an early stage;
- the need to follow the processes set out in the NHS Job Evaluation Handbook;
- Where staff face redeployment into a lower grade post due to organisational restructuring, local organisational change policies should protect staff.

Ongoing review of Agenda for Change

15. The NHS Staff Council has a responsibility to ensure that terms and conditions continue to be responsive to the needs of the service. The aim will be to have timely discussions that lead to the maintenance of a sustainable national pay and conditions agreement that is used across the NHS.

Amendments to the NHS terms and conditions of service handbook

16. To enact these proposals, we will agree amendments to the NHS Terms and Conditions of Service Handbook as set out above. We will retain one handbook with clarity around which sections apply to England, Scotland, Wales or Northern Ireland. The changes in this document do not apply in Scotland, Wales, or Northern Ireland.

November 2012

Contact us

www.nhsemployers.org

enquiries@nhsemployers.org

NHS Employers 2 Brewery Wharf

4th Floor, 50 Broadway Kendell Street

London SW1H 0DB Leeds LS10 1JR

Published November 2012. ©

NHS Employers 2012. This document may not be reproduced in whole or in part without permission.

The NHS Confederation (Employers) Company Ltd Registered in England. Company limited by guarantee: number 5252407

Ref: EGUI21501

Appendix B - 2012 Proposals to amend AfC for NHS Staff in England – overview of areas for discussion

Note - text in **yellow** represents items proposed by the NHS Trade Unions

2010/11 NHS Employers proposals

- freeze on incremental progression for staff in all bands
- commitment to limit redundancies for staff in Bands 1-6

2011/12 NHS Employers 'long list'

- 1) Annual leave – including harmonisation of allowance; reduction to 25 + 8 days; new allowance for new starters
- 2) Unsocial Hours – including changes to hours when USH would be paid; reduction in rates; raising overtime threshold
- 3) Incremental progression – including scope to link local performance criteria within a national framework with pay progression; 'non-consolidation' of points at the top of each band (i.e. drop-back 'bar' in operation on each point); changes to points in Bands 8 and 9; flexibility to remove staff from AfC (currently only those above 720 points); removal of accelerated progression for band 5 new starters
- 4) Sickness – including reducing the gap between AfC sick pay (6 months full, 6 months half pay) and statutory sick pay; removing unsocial hours payments for all staff on sick leave

2012 Staff Council draft proposals

- Incremental progression - operation of gateway at each point on **agreement of local scheme**; 'non-consolidation' of points at the top of each band (i.e. drop-back 'bar' in operation on each point); additional changes to points in Bands 8 and 9; staff above 630 JE points can be removed from AfC; removal of accelerated progression for band 5 new starters
- Sickness - removal of unsocial hours payments for all staff on sick leave
- **New annex to ensure that 're-profiling' is consistent with the principles and procedures of the NHS Job Evaluation Scheme**
- Commitment to better manage sickness absence in line with jointly agreed *Guidelines on prevention and management of sickness absence*

2012 Staff Council final proposals

- Incremental progression - operation of gateway at each point on **agreement of local scheme**; 'non-consolidation' of points at the top of bands 8c, 8d and 9 (i.e. drop-back 'bar' in operation on each point) **with protection for those already on the top points**; staff above 630 JE points can be removed from AfC; removal of accelerated progression for band 5 new starters
- Sickness - removal of unsocial hours payments for all staff on sick leave for staff **apart from those who are work-injured and those on the lowest 8 pay points (band 1, 2 and some points in band 3)**
- **New annex to ensure that 're-profiling' is consistent with the principles and procedures of the NHS Job Evaluation Scheme**
- Commitment to better manage sickness absence in line with jointly agreed *Guidelines on prevention and management of sickness absence*

Appendix B - Negotiations on the future of Agenda for Change - timeline

