

**BRANCH NEGOTIATING GUIDE:
INCREMENTAL PAY
PROGRESSION
ARRANGEMENTS**

for staff on Agenda for Change terms and conditions

(England Only)

May 2013



Contents

Introduction.....	3
Background and context.....	5
Timeline.....	6
Principles.....	7
Setting Objectives.....	9
KSF and appraisals.....	11
Pay Progression.....	16
Appeal Process.....	23
Equality.....	25
Recruitment and Organising.....	28
Resources.....	29
FAQs / Troubleshooting.....	30
Checklist.....	32

INTRODUCTION

Introduction to the guidance

Recent changes to the NHS Agenda for Change Handbook in England were consulted upon with branches and members and agreed for implementation from 1 April 2013. These changes include a change to the way annual incremental pay progression is dealt with.

The previous agreement allowed employers to defer progression through two gateways in the pay spine (the foundation and second gateway) if the member of staff was not applying the full range of knowledge and skills for the post.

The new Annex W on pay progression sets out that incremental pay progression on all points (in the pay spine) will be conditional upon individuals demonstrating that they have the requisite knowledge and skills/competencies for the role and that they have demonstrated the required level of performance and delivery.

Whilst the individual has to demonstrate the application of knowledge, skills and competence in their role there is also a requirement that the employer will have an agreed and fair appraisal system in place to assess whether they are meeting the level appropriate to their role. Individual rights are outlined in the Agenda for Change agreement, NHS constitution as well as local policies and procedures.

These changes are not designed to be a tool for organisations to cut pay in response to financial pressures; instead they should be used to enhance performance of staff through properly structured appraisals leading to improved productivity of the workforce.

This guidance is designed to help branch negotiators get the best from the new proposals and develop policies to deal with incremental pay progression to enhance performance avoiding attempts to manage behaviour through incremental pay freezes.

There is scope for organisations to use this agreement as a way to review their appraisal systems, increase employee buy in for objectives and ultimately create a system where staff work hard because they feel they can influence patient care in a positive way, no matter what role they perform.

It should be noted that there is no requirement for employers to implement a pay progression scheme but, if they do, they will need to ensure it is based on a fair and consistent appraisal system. Any new pay progression scheme should be developed in partnership. Where there is no appraisal system they will not be able to stop staff progressing through the pay spine. In order to implement a local Incremental Pay Progression policy organisations need to work in partnership to agree the scheme and how it will operate and it must be consistent with the principles contained in Annex W of Agenda for Change.

The objectives of this guide are to help local negotiators establish core principles and arguments in order to agree a fair and transparent appraisal system.

Overall objectives of implementing a scheme should include:

- Making the case for Knowledge and Skills Framework (KSF) to be used as the principle appraisal system, or the basis for other appraisal systems where KSF is not in place
- Ensure all schemes are fair and transparent
- Ensure appraisal systems are developed in partnership and applied to all roles and grades equally
- It is likely that incremental pay progression will be discussed alongside the other Agenda for Change amendments and it should be used to strengthen the NHS Job Evaluation Scheme wherever possible
- Avoid discrimination and mitigate equal pay risks

BACKGROUND AND CONTEXT

The changes to Agenda for Change came about in the context of increased threats to the national agreement. Some Trusts were looking to move away from Agenda for Change by introducing local pay and terms and conditions for their staff. In order to prevent an increasing number of employers from breaking away from Agenda for Change the NHS trade unions, including UNISON, engaged in formal talks on a package of proposals to agree amendments to the national agreement as an alternative to increased local attacks on terms and conditions.

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 successfully argued against these proposals and rejected a specific proposal to freeze increments for two years. The final proposals negotiated by the NHS trade unions combined some positive changes, such as policies to limit downbanding, and some less positive changes, such as changes to unsocial hours sickness payments. A full briefing on how far UNISON managed to shift the employers from their original proposals is outlined on the next page.

Following consultation with members UNISON agreed the changes to the Agenda for Change Agreement in England.

TIMELINE

Agenda for Change – Negotiations Timetable

2009 FTN red lines list

- Reform to the need to seek Treasury approval for voluntary redundancy
- Negotiate redundancy payments in 12ths
- Reduce the number of pay points on AfC Bands
- Change Schedule K so that staff are not able to opt back in to AfC if accepted local pay
- Freeze increments on incremental pay progression for 2/3 years. Then change increments to two points – one for learners one for experienced staff .
- Plain rates are paid for sick pay .
- Either abolish or extend the time (7am to 10pm) for plain rate payment on basis that many staff chose to work nights.
- End permanent injury allowance and potentially temporary injury allowance.
- Stop clinical excellence awards.
- New consultants – reduce SPAs for newly appointed consultants .
- Stop recruitment & retention premium for all staff

2010/11 NHS Employers proposals

- freeze on incremental progression for staff in all bands for 2 years.
- commitment to limit redundancies for staff in Bands 1-6.

2011/12 NHS Employers 'long list'

- Annual leave – including harmonisation of allowance; reduction to 25 + 8 days; new allowance for new starters.
- Unsocial Hours – including changes to hours when USH would be paid; reduction in rates; raising overtime threshold.
- 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.
- 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.
Additional benefits
- 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).
Additional benefits
- 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*

PRINCIPLES

What the principles say

The following list of principles is included in the new Annex W and should be the starting point for discussions with employers on the process of reaching agreement.

The following principles will inform the development of local incremental progression policies:

- i) local appraisal, performance and development reviews will need to be consistent with the employer's local objectives and the NHS Constitution;*
- (ii) local performance and pay progression policies should be developed in partnership;*
- (iii) regular appraisal, performance and/or development reviews will continue to be the basis for determining whether an individual has met the standards required of them locally for pay progression, as set out in their local policies;*
- (iv) all those staff demonstrating and applying the required levels of performance and delivery consistently during the performance review period will benefit from incremental pay progression;*
- (v) in assessing an individual's performance, an organisation may consider not just whether the objectives have been achieved (or not) but also how they are achieved;*
- (vi) local systems must be consistent with the criteria set out in paragraphs 3 and 4;*
- (vii) progression into the annually earned pay points, the last two pay points in pay bands 8C, 8D and 9, will be available to all members of staff in these bands subject to the criteria set out in this Annex;*
- (viii) individuals will have the right to seek a review of any decision where the required level of performance is deemed not to have been met;*
- (ix) local systems must be equality assessed before implementation;*
- (x) should apply equally to all staff covered by this agreement; and*
- (xi) every line manager undertaking appraisal should have access to appropriate training and development in relation to undertaking*

What the implementation annex says

Annex A2(a) (England): Guidance on frequently asked questions (FAQs)

- 1. The Agenda for Change partners will make every effort to continue to support, encourage and promote a partnership approach to the operation of the pay system at local level.*
- 2. The agreement to work in partnership to deliver an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff should, therefore, be replicated at local level.*
- 3. This guidance has been jointly agreed in partnership by the NHS Staff Council Executive and is intended to help in situations where, locally, the joint partners have not so far been able to agree a suitable way forward. These answers reflect the final Agenda for Change agreement. They were previously published on the Agenda for Change website.*
- 4. Questions relating to the NHS job evaluation scheme are in the NHS Job Evaluation Handbook.*

Issues for consideration

These principles will be expanded on in this guide and the importance of partnership working and agreement should be recognised from the start. Incremental Pay Progression Policies should be developed in partnership and not imposed on staff.

Without partnership working Trusts will not be able to deliver appraisal systems which are designed to be fair and consistent. The risk of equal pay claims and reputational damage increases for Trusts that fail to take a partnership view.

Equally there is a risk that badly designed systems, with no employee buy in, could create a poor organisational culture where staff do not feel able to discuss their, or their colleagues', performance in case this affects pay. The link between performance and pay needs to be carefully designed and implemented in an open spirit of partnership so that staff feel the system is fair and consistent regardless of role or grade.

The Knowledge and Skills Framework (KSF) is the preferred appraisal system as it has been jointly developed and in many Trusts is still the appraisal system of choice. It has clear competencies and is objectively measurable so it can ensure the risks of unfairness are minimised. Your organisation should review training in KSF, including the simplified KSF, and joint training should be encouraged.

SETTING OBJECTIVES

Employers are expected to work in partnership with trade unions in setting the local objectives which staff will be expected to work towards. It is important that a process for setting these objectives is agreed and that they are fair and achievable. It is likely that there will be organisation wide objectives as well as individual objectives.

What the principles say

- i) *local appraisal, performance and development reviews will need to be consistent with the employer's local objectives and the NHS Constitution;*
- v) *in assessing an individual's performance, an organisation may consider not just whether the objectives have been achieved (or not) but also how they are achieved;*

What the implementation annex says

*Implementation annexes: Annex W (England): Pay progression
Paragraph 3(iii)*

Footnote number 7

Will organisation-wide objectives be used to block progression?

While appraisal/performance systems may include team performance as one aspect of the annual review process, the assessment of performance for the purpose of incremental progression will continue to be on an individual basis.

Issues for consideration

As a rule, you should not have more than five or six personal objectives. These should be clearly linked to the organisation's objectives and should be Specific, Measurable, Achievable, Realistic and Timely (SMART). They should be set in consultation with the individual concerned. The [Staff Council guide](#) gives some guidance on personal objective setting.

- The organisation needs clear corporate objectives, produced in consultation with staff
- Objectives should cover 'soft skills' as well as measurable outputs
- Personal objectives for staff need to be agreed in discussion with individuals
- There needs to be clear delineation between identifying development needs to achieve enhanced performance in the future and appraising current performance

Hints and tips

Staff side involvement is essential in setting objectives for an organisation. Use the partnership mechanisms to approach your employer and get involved when the organisation sets its objectives.

Use communication links with members to see what objectives would motivate and encourage performance. Linking clinical objectives to patient care in a way that the people delivering care can relate to will help them achieve the objectives and feel a positive sense of improving patient care.

Section 4a of the [NHS Constitution](#) contains rights and pledges on development and working practices which can be persuasive as an argument to encourage employers.

The NHS commits:

- *To engage staff in decisions that affect them and the services they provide, individually, through representative organisations and through local partnership working arrangements. All staff will be empowered to put forward ways to deliver better and safer services for patients and their families (pledge)*

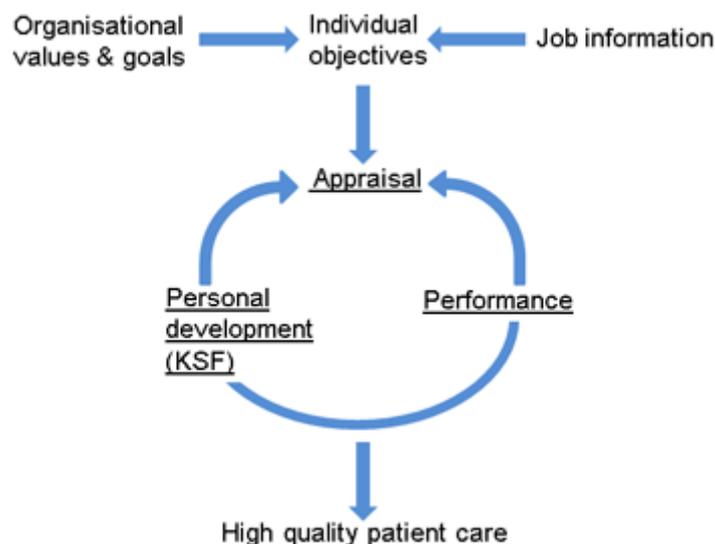
It should be noted that employers have the flexibility to implement a system for deferring incremental progression but are not required to do so. However, if they do implement this scheme they should ensure that it is clear, consistent and agreed in partnership.

KSF AND APPRAISALS

The Knowledge and Skills Framework (KSF) is integral to the Agenda for Change agreement and forms the basis of appraising staff against agreed criteria essential for the post holder to demonstrate they are applying the necessary knowledge, skills and competencies for their role. It ensures that staff are clear about their role, what is expected of them and, through an appraisal system, can access training and development to help them meet the requirements of the role.

Following a review of KSF in 2010 the Staff Council produced a “[Simplified KSF](#)” process to help employers more closely link appraisals to the framework and reduce the administrative processes. The simplified guidance makes it easier for staff to identify the core skills that they need to do their job and their development needs.

It sets out the criteria for each post and allows the individual to provide evidence to demonstrate that they are meeting the criteria and, when used with effective appraisals, ensure good employment practice, leading to improved staff performance, higher staff satisfaction and better patient outcomes.



The [NHS Constitution](#) also commits NHS organisations to providing staff with 'clear roles and responsibilities', 'personal development' and 'line management support to succeed'.

Organisations need to have a fully implemented appraisal system in place before they can introduce a system to defer incremental progression. A proper appraisal system is needed to mitigate the risks of legal challenges from potential discrimination and unfairness. Potential legal challenges are outlined later in this document.

It is explicit within the new agreement that appraisals need to be clear and transparent with the right to appeal against decisions. This means that a robust appraisal scheme is essential so that staff know the expectations on them and have the ability to demonstrate the knowledge, skills and competency to progress through the incremental points in the pay spine.

It is important to acknowledge the recent report to the Francis enquiry into the Mid Staffs failings and recognise the importance of staff highlighting concerns as part of an open, honest and transparent appraisal without the fear of suffering a detriment in pay progression. The Mid Staffs report highlights the importance of raising concerns free from fear or favour and Francis states sharing these concerns is paramount as part of 'openness, transparency and Duty of Candour which are necessary attributes of organisations providing healthcare services to the public'. It is essential that objectives do not work against these aims.

What the principles say

Criteria for local schemes

3. *Organisations will need to operate an effective process for objective, evidence based performance appraisal, development and review, recognising team work wherever this is appropriate. Individual performance will need to be monitored throughout the year so that under performance is identified by all concerned and addressed appropriately as soon as possible. Local schemes for pay progression will take account of the following:*
 - (i) *the KSF/other relevant competency frameworks will continue to be the basis for the annual systems of review and development for staff;*
 - (ii) *information on performance throughout the year will need to be taken into account in the performance appraisal and development review process, so that undue influence of experiences close to the review are avoided. Timely recognition of accomplishment (or feedback about poor performance) is more effective/motivational. Managers and staff will need to build a picture of performance during the course of the review period;*
 - (iii) *in assessing an individual's performance, line managers should be mindful of factors that have been outside the control of individual staff;*
 - (iv) *some organisations may wish to adopt team performance measures for some staff groups which could be linked to team indicators of quality of patient care. If this is part of the local solution those involved should consider whether these measures will need to be combined with individual performance assessment;*

(v) *local arrangements for determining pay progression, including through the last two annually earned incremental points in pay bands 8C, 8D and 9, will need to be jointly discussed, based on this guidance, and adequately communicated to all staff so that they fully understand the operation of the process and the role everyone plays in it.*

4. *In addition local schemes will need to:*

- (i) *minimise the administrative burden on all staff;*
- (ii) *be as simple as possible and focused on organisational values and objectives linked to patient care;*
- (iii) *be jointly monitored and reviewed regularly;*
- (iv) *provide appropriate training and support for staff who fail to meet performance requirements.*

5. *The views of patients and colleagues may be used to inform performance reviews e.g. 360-degree tools and survey results may be helpful. Views of other managers and other staff can broaden, inform and validate line manager and staff experiences.*

What the implementation annex says

Implementation annexes: Annex W (England): Pay progression

Paragraph 2(v)

Footnote number 4

What is considered when assessing performance at work?

In assessing an individual's performance, an organisation may consider not just whether the objectives have been achieved (or not) but also how they are achieved. This should be undertaken in a transparent manner with a right to appeal a decision that results in a pay increment being withheld or removed. Annex W, paragraph 1 is clear, that expectations around standards and performance, and how these will be measured, should be made clear.

Issues for consideration

The following safeguards should be considered when considering appraisal systems:

- there will be a normal expectation of progression and no national or local quotas will apply. All staff must have an equal opportunity to demonstrate the required standard of knowledge and skills to progress through the pay points
- employers must ensure there is a robust, jointly agreed process for checking managers' decisions and reviewing disagreements, with an agreed timescale for re-review
- pay progression cannot be deferred unless there has been prior discussion between the individual and the person undertaking their review (which should be recorded) about the knowledge and skills that the individual needs to develop and apply and the member of staff has been given the opportunity to achieve the necessary development
- employers and staff representatives acting in partnership, will monitor decisions on pay progression to ensure that there is no discrimination or bias in relation to race or ethnicity, gender, disability, sexual orientation, religion or belief, age or trade union membership, or pattern of employment e.g. part-time, flexible and night workers.
- The appraisal scheme should be an integral part of the organisation's workforce development planning
- All staff should receive training about the appraisal process; managers should receive training on how to do effective appraisals
- The same appraisal system should be applied across the organisation consistently to all staff covered in this scheme
- Appraisals should be evidence based and not based on personalities or subjective views
- The outcomes of appraisals should be recorded and monitored for equality purposes
- Incremental progression should be based on individual performance and not on the organisation's financial status
- There should be regular review meetings during the year to identify any concerns as early as possible There should be no surprises in the final appraisal meeting
- The appraisal scheme should include an appeal process
- The outcomes of appraisals should be recorded and monitored for equality purposes.

The frequency and timing of appraisals is important. Under the KSF guidance there are 2 possibilities to setting the frequency of the annual appraisal.

Option 1: To hold appraisals no later than 3 months prior to the employee's incremental date. This can encourage a link between performance and incremental pay progression and give the employee enough notice

Option 2: Some organisations may want to have their appraisals at other times of the year so that it can be linked to the corporate/divisional objective setting process. However, it remains important that it is clear that there is a link between performance and incremental pay progression. It should be clear that incremental progression is agreed on their incremental date, subject to continuing to meet the performance standards. In these circumstances another date should be set, at no later than 3 months prior to the incremental date for the reasons outlined above.

There is an expectation that staff will automatically progress through their pay bands providing they meet the performance standards of the employer. The appraisal process should ensure there are "no surprises" at the meeting. Issues of poor performance should have been brought to the attention of the staff and they should have been given the chance to improve. Schemes should not be designed only to allow the top performers to progress through the pay spine, there should be an expectation that staff will progress in cases other than failure to meet the required standard which, despite help and support, has not been achieved.

It is also worth looking at your organisation's annual staff survey results which reports the number of staff appraisals in the last 12 months and the quality of that appraisal. This also links to the NHS Constitution and staff pledge; to provide all staff with personal development, access to appropriate training.

The following questions are asked and can be reviewed as part of the annual partnership process to ensure the appraisal system is effective:

KF6. % receiving job-relevant training, learning or development in last 12 months

KF7. % appraised in last 12 months

KF8. % having well structured appraisals in last 12 months

KF9. Support from immediate managers

Staff survey results can be found at <http://www.nhsstaffsurveys.com/cms/>

PAY PROGRESSION

What the principles say

Agenda for change Section 1 states the following on Pay Progression:

1.8 *Incremental pay progression for all pay points, within each pay band, 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 level of performance and delivery during the review period, as determined locally in line with Annex W (England).*

The principle of pay progression is that staff will automatically progress through the pay bands and is outlined further in Section 1:

1.10 *Ordinarily, pay progression should not be deferred on performance grounds unless there has been a prior documented discussion between the individual and the person undertaking their review, regarding failure to meet the required level of performance, and the employee has been given a reasonable opportunity to demonstrate the required improvement before the decision on pay progression is taken. This prior discussion would need to identify areas for improvement and any reasonable developmental support the individual may require to operate at the required local level of performance.*

Organisations will need to negotiate and agree an incremental pay progression policy to outline the process for deferral of incremental progression in situations where this standard is not being met. You may be able to negotiate with your employer that the period of deferral should only be the length it takes for the employee to improve and meet the standard.

Section 6(a) England: Agenda for Change further outlines the responsibilities of the organisation to ensure the member of staff has enough support to complete development training.

6.12 Managers and staff will work together to fulfil agreed development plans. Employers will encourage staff members to progress and develop and, where training and/or development needs have been identified and agreed, employers will ensure sufficient financial support is provided. Where appropriate, employers should ensure that staff have appropriate time to fulfil training and/or development needs related to their current job and appropriate financial and other support. If an employer fails to do this, they cannot defer pay progression. Wherever possible, employers will also provide similar encouragement and support for elements of the personal development plan which reflect personal interests or help staff prepare for a more senior role or transfer to a different area of work within the NHS.

6.13 Staff members will contribute to undertaking the agreed personal development plan through their personal effort. They may individually choose, where appropriate, to commit personal time and resources, especially in those areas relating to longer-term career development. It is the employer's responsibility to support individuals and their personal efforts appropriately. Where development needs essential to the post are agreed with the employer, there will not normally be any requirement for the employee to use his or her unpaid personal time.

Bands 8c, 8d and 9

For staff in bands 8c, 8d, and 9, pay progression to the last two incremental points will have to be earned annually, and only retained where the agreed level of performance is attained. Those already on one of the top two increments at 31 March 2013 have full protection.

Progress on the annually earned increments should be subject to the same criteria as progress up other increments, i.e. Individual performance – not linked to team or organisation's performance. Where someone has achieved the top increment, then gets a 'not satisfactory' appraisal, they should only slip one increment, not two at once.

Further guidance is being developed on how this scheme will work through the Staff Council. [Managers in Partnership](#) (MiP) have released their own information on this element of the scheme and can be found on their website or through an MiP link member.

Cuts vs. Productivity

As already outlined in this guide there is a need to ensure these proposals are not simply used to cover financial savings and implemented with a view to withholding a quota of increment awards. The importance of linking to objectives which staff can evidence compliance will be important to ensure all staff have the ability to get their

annual incremental progression award. UNISON has also produced a [fighting cuts resource](#) to assist branches in campaigning against cuts.

Policy points

Incremental pay progression can only be withheld over issues of knowledge, skills and performance. Behavioural issues at work do not represent a competent means to withhold pay progression. It is important that local appraisal systems take this into account keeping disciplinary, grievance and sickness policies separate from the performance and appraisal development review policies.

UNISON advice is to have a separate policy on incremental pay progression and not to include the deferral of progression as an outcome of a disciplinary, sickness and capability policy.

KSF guidance on how to implement and operate performance and development reviews successfully reflects this.

“For staff, the key to the PADR is to ensure that they get personal benefit from the review in terms of their own recognition and development; and also that what they do as individuals is aligned to the objectives and direction of travel of the organisation, so that they feel valued as an important part of what the organisation is trying to achieve for patients. It should be something they willingly engage in and contribute to as much as they can, rather than a process that is done by managers to them. For those with less experience of the process, they may also need to be reassured that the PADR is not a disciplinary or grievance process”

(Appraisals and KSF made simple – a practical guide 2010 p.22)

Sickness

In the case of Bent & Ors v Central Manchester University Hospitals NHS Foundation Trust the court found that linking sickness record to incremental progression is unlawful.

Tribunal summary

The Trust introduced a pay progression policy that withheld progression when a staff member triggered the local sickness absence policy. The sickness absence policy would be triggered by either four occasions of sickness absence in a 12 month rolling period or 18 days absence in a 12 month rolling period. The tribunal found that Agenda for Change, read in conjunction with the NHS Knowledge and Skills Framework, requires that employees' performance be "satisfactory" and that they "demonstrate the agreed knowledge and skills" for their pay to progress.

Tribunal summary cont.

The only ground for the deferral of pay progression is that there are "significant weaknesses in performance" that "prevent a staff member from continuing to apply consistently, across a recognised normal workload, the knowledge and skills...without continued supervision and support inappropriate to the post". The tribunal highlighted that this definition does not allow for reliance on extraneous factors such as sickness absence to defer pay progression.

Based on this test case staff sides can argue that any pay progression policy that has explicit links to sickness absence triggers can be deemed as unlawful.

Rather than saving the trust money, this approach would result in staff side and the management being engaged in preparation of legal claims. As a result this would incur additional and unnecessary costs, erode the working relationship between staff side and management and cause reputational damage.

It should also be considered that as the implementation of this policy would result in legal proceedings, it would be likely to increase the formal financial risk and be of concern to the board and non-executive directors in particular.

Disciplinary

Matters of behaviour should be dealt with through the local disciplinary procedures. The aim of a disciplinary procedure is to modify behaviour or deal with unacceptable conduct. Linking behaviour to performance is an unfair way to deal with behavioural issues as misconduct does not necessarily impact on a person's ability to fulfil their role in a competent manner. If behavioural issues are impacting on performance they should be dealt with through the disciplinary process in the first instance.

Staff sides should request the rationale for linking pay progression to the disciplinary procedure. If management side claim that it is a cost saving measure, staff sides should argue that the deferral of pay progression in the context of behaviour is not included in the updated Agenda for Change handbook and is therefore outside the Agenda for Change agreement.

If management side put forward arguments that relate to human resources issues, staff sides should argue that disciplinary matters should be dealt with through the existing Trust procedures. Staff sides should offer to work in partnership to make the disciplinary system fit for purpose and investigate the root cause of any issues with particular departments that the employer feels would make this process fairer and more effective.

Using financial incentives to discipline staff goes against established good practice. Staff side should raise concerns over the employer implementing a policy that contributes to a culture of fear and reprisal among staff and potentially risk exposing the trust to massive risks in terms of patient safety; this was a contributory factor at Mid-Staffordshire NHS Foundation Trust.

Capability

Although the updated Agenda for Change agreement allows the employer to defer incremental progression where performance does not meet key KSF criteria. The employer must have reasonable arrangements in place to fully implement the gateway system.

Employers can only withhold incremental pay progression where they have put in place reasonable arrangements to ensure that staff have access to development reviews, personal development plans and appropriate support for training and development to meet the applied knowledge and skills required at the gateway concerned.

It is important that staff are able to comply with the required levels of performance and are able to meet the set targets. Staff sides should argue against measurements which are outside of the individual to control. Such issues may be the ability of staff to ensure compliance with targets due to acute staffing levels, bed waits at times of high demand, not meeting screening targets due to equipment failure or readmission rates where they are not directly responsible or have direct control over these targets.

What the implementation annex says

Part 2: Section 1(a) (England): Pay Structure

Paragraph 9

Footnote number 5

Can incremental progression be withheld in organisations where there is no system in place for development review/appraisal?

No; appraisal/performance review arrangements would need to be in place.

Implementation annexes: Annex W (England): Pay progression

Paragraph 1

Footnote number 3

Will quotas apply to incremental progression?

No; the expectation would be that staff progress through their pay band if they meet their performance standards set out by their employer.

Implementation annexes: Annex W (England): Pay progression

Secondary heading: Criteria for local schemes

Footnote number 6

How will pay progression under Annex W (England) work?

Once a trust has updated their current appraisal and pay progression processes, in line with Annex W (England), individuals will progress on the basis of demonstrating and applying the required levels of performance and delivery consistently during the performance review period and they will benefit from incremental pay progression. Where an individual has not met their performance criteria then they will not be entitled to progress up the pay band for that given year.

Part 2: Section 1(a) (England): Pay Structure

Paragraph 12

Footnote number 6

How do the annually earned incremental points work?

This will affect staff approaching the top points of pay bands 8c, 8d and 9 who will have to annually earn the top two increments, meaning that an increment could be removed if they do not pass their appraisal. The pay points which will be annually earned in this way will be spine points: 45 and 46, 49 and 50 and 53 and 54.

Part 2: Section 1(a) (England): Pay Structure

Paragraph 12

Footnote number 7

What about staff already on the top points of 8c, 8d and 9?

These staff will not drop below their current pay point. Staff already (as at 31 March 2013) on pay points 45 and 46, 49 and 50, 53 and 54, will be protected.

Issues for consideration

Accelerated pay progression which was linked to Preceptorship has been removed from the Handbook, however Preceptorship has two elements. Accelerated pay progression has now been removed but the post-training support should still be provided to staff in line with organisational policies.

Part 2: Section 1(a) (England): Pay Structure

Paragraph 9

Footnote number 5

What happens to preceptorship as a concept? Is it still in place?

Preceptorship remains in place but the provision for accelerated pay progression, two increments in year one, is removed.

Part 2: Section 1(a) (England): Pay Structure

Paragraph 9

Footnote number 5

What happens if I start a programme of preceptorship before 31 March 2013 and this programme continues after 31 March 2013?

The link between preceptorship and an additional incremental pay point, upon the successful completion of a preceptorship programme, is removed from amendment number 28 of the NHS terms and conditions of service handbook (from the 31 March 2013). For those staff who started their preceptorship programme under amendment number 27 of the handbook (prior to the 31 March 2013), the expectation is that upon successful completion they will be awarded an additional incremental pay point. This means that these staff will pass through pay spine points 16 and 17 in their preceptorship year.

APPEAL PROCESS

The principles outlined in Annex W make it explicit that staff should be able to seek a review of any decision where the required level of performance is deemed not to have been met.

It is important that an appeal process is agreed with any incremental pay progression policy to allow staff to challenge decisions which they do not agree with or where they have not been given sufficient time and assistance to improve.

The previous section outlines the rights of staff to be given training and support in their role which is further enhanced by the **NHS Constitution**:

- *To provide all staff with personal development and training for their jobs, and line management support to enable them to fulfil their potential (pledge)*

An appeal policy should make clear who will review any decisions made and should be agreed through the JNCC. It is up to local staff sides to decide whether they wish to be a part of this process as a joint appeal panel. The process should make it clear whether this is separate to the grievance policy which could be used to raise concern with the application of a process, rather than the decision itself.

The appeal process should include the timescales on submitting an appeal, getting a panel decision and right to follow a grievance if concerned about the process. Whatever appeal process is used it should be independent and unbiased to give assurance to staff.

What the Principles say

In addition to the right of appeal, Annex W also states that:

4. *In addition local schemes will need to:*
 - (i) *minimise the administrative burden on all staff;*
 - (ii) *be as simple as possible and focused on organisational values and objectives linked to patient care;*
 - (iii) *be jointly monitored and reviewed regularly;*
 - (iv) *provide appropriate training and support for staff who fail to meet performance requirements*

Therefore it is important to build the review and monitoring requirement into any policy along with the appeals procedure. A high level of appeals against decisions could indicate a problem with fair and equal application.

What the implementation annex says

Implementation annexes: Annex W (England): Pay progression

Paragraph 2(viii)

Footnote number 5

Would I be able to challenge a decision that I had not met the required standard of performance?

Yes, your employer would have to tell you in plenty of time that you had not met the required performance standard and as a result that you were likely to have your incremental progression withheld. The employer would give you the chance to appeal this decision. If the appeal is in an individual's favour, then you should not suffer any detriment as a result of the initial decision.

Implementation annexes: Annex W (England): Pay progression

Paragraph 2(viii)

Footnote number 5

What happens if I do not accept that my performance is unsatisfactory?

Your local policy will set out how the appeal system will work.

Issues for consideration

Fair and consistent application of appraisal systems should mitigate the risk of legal challenges against an organisation. Where this is not achieved the risk will increase for claims which could arise such as breach of contract; unlawful deduction of wages; potentially constructive dismissal and potentially discrimination e.g. direct and indirect sex discrimination if there was a disproportionate effect on one group e.g. women over men.

The equality aspects are explored in more detail in the next section.

EQUALITY

As with any local agreements on policy and procedures, there is a need to ensure that an Equality Impact Assessment (EIA) is undertaken to establish any undesirable consequences from the implementation of the new arrangements.

This should not be considered as a paper exercise only and instead needs to be a detailed analysis of the effects on equality within the organisation.

An EIA was completed as part of the national process of negotiations. UNISON took expert advice and commissioned a review of this EIA as there were concerns about the overall quality of the finished document. The review of the national EIA which can be viewed on the [NHS Employers website](#) should be used to inform the local review and assessment which the employer has a duty to complete under the public sector equality duty set out in the Equality Act 2010.

It was widely recognised that the local implementation and monitoring of pay progression arrangements is absolutely necessary to prevent inequalities and discriminatory outcomes.

What the principles say

The following principles will inform the development of local incremental progression policies:

(ix) local systems must be equality assessed before implementation;

4. In addition local schemes will need to:

(iii) be jointly monitored and reviewed regularly;

What the implementation annex says

Implementation annexes: Annex W (England): Pay progression

Paragraph 4 (iii)

Footnote number 8

What do employers have to do to assess the equality impact of their changes?

Employers should review the national equality assessment (available on the NHS

Employers web site) and undertake their own assessments in line with the public sector equality duty, in partnership with trades unions, before implementing changes to pay and conditions. Employers will need to identify the data that needs to be collected going forward in order to monitor the equality impact and take any remedial action as may be necessary.

Issues for consideration

The national EIA highlighted points for consideration around missing data on protected characteristic information - gender, age, ethnicity, religious belief, sexual orientation, gender reassignment, marriage and civil partnership, disability status, and pregnancy and maternity.

This data can be, and should be, sought locally during reviews of the implementation and operation of a local scheme to ensure no group is disadvantaged. Post-implementation monitoring will be necessary for individual NHS organisations to identify and regularly monitor those who are adversely affected by the change, grouped by protected characteristics.

One justification for the scheme is that historically the long AfC pay bands have rewarded long service rather than the demonstration of increasing skills and competence. However it is important that employers locally should ensure that they have sufficient monitoring in place to be able to assess the impact of their pay progression in line with their equality duties.

Equality analysis of the pay progression changes will require data relating to:

- AfC pay point – to determine which individuals might be affected by this policy and how.
- Protected characteristic information - Gender, age, ethnicity, religious belief, sexual orientation, Gender reassignment, Marriage and civil partnership, disability status, and Pregnancy and maternity.

High level data summaries in each area may not identify overlaps in the data items. Cross-checking of the separate data sources at an individual member of staff level in these three areas may be necessary.

As the numbers of staff with some protected characteristics in each employing organisation may be small (there may only one employee with a given protected characteristic), care should be taken to ensure that any conclusions drawn are statistically reliable and provide an adequate basis for action/investigation.

It is unlikely that data analysis alone is sufficient to confirm a disparate impact between groups of staff. Analysis is intended to identify potential areas of concern which require further investigation, rather than being an end in itself.

The analysis should take place after there has been sufficient time for the changes to 'bed-in' and there is a sufficient time-series of data to describe the medium to long term impact of the changes. The analysis should be repeated at regular intervals to ensure the application of the policy continues to comply with equality legislation.

Further useful information

To assist NHS organisations to meet their legal duties under the Equality Act 2010, the NHS Staff Council Equality and Diversity Group has been working with the NHS Information Centre and the Equality and Human Rights Commission to produce an Equal Pay Audit toolkit and guidance.

Standard *iView* reports included in the equal pay audit toolkit are available for use by authorised *iView* users in each NHS organisation, and audits should be undertaken in partnership in line with the terms of use set out by the Health and Social Care Information Centre.

The tables within *iView* are a starting point for investigation. Additional exploration is possible within *iView* but *iView* will only provide the questions, not the answers. To find out more about what information you need to produce and publish, see the [Equal Pay Audit toolkit](#).

Conclusion

It seems reasonable to work on the premise that if Trusts use the Knowledge and Skills Framework (KSF) for assessing performance annually, they will be using a fair and non-discriminatory system, as long as they implement it fairly. If Trusts wish to use an alternative appraisal system, they should first ensure that the proposed system complies with recommended good practice in this area, as recommended in Annex W, preferably using the checklist from the [EHRC Equal Pay Audit Tool](#).

Whatever system is used, good equality practice requires that outcomes be monitored regularly, at least annually, by gender and other protected characteristics, notably ethnicity, as there is some evidence in the UK of discrimination in performance pay systems on grounds of ethnic background.

An equality impact assessment in relation to pay involves:

- Comparing pay data from the old and proposed new pay structures in order to determine the impact of the proposals in relation to gender, race, or disability.
- Reviewing proposed changes to grading and pay structures and changes to other terms and conditions to identify any gender, ethnicity, disability related differences arising from the proposals.
- Deciding whether any disparate impact is justified,
- And, if not, amending the proposals.
- Agreeing an action plan to eliminate any outstanding gender or other diversity-related pay differences.”

RECRUITMENT AND ORGANISING

These proposals have the potential to impact on members' pay and therefore an organising strategy is needed to ensure they are kept informed and engaged so can influence the policy and direction of the organisation. This provides branches with the opportunity to recruit and organise, especially around ensuring equality is achieved in application of appraisals and any pay progression policy.

Hard to reach groups of staff should be encouraged to engage with the branch and employer in setting the objectives and how they will be assessed. This can be especially true of occupational groups as one set of objectives will not cover a diverse workforce.

These schemes should cover everyone on Agenda for Change so a senior ward manager, Occupational Therapist, radiographer or HR manager will need a very different set of objectives from a care assistant, catering assistant, cleaner or a porter. Clinical objectives will help staff to relate what they do as improving patient care, will ensure "workforce buy in" for any scheme.

UNISON has occupational groups that can be contacted for advice on professional issues if the knowledge is not held within the branch. If you need this help and support please contact the health group h.group@unison.co.uk

Recruitment initiatives should encourage potential new members to see the benefit of having union membership to help them understand the policy and process involved. Initiatives can be run to encourage staff to see the benefits of the appraisal system and how to get the best out of it. Non-members can be encouraged to join and get advice on their appraisal including what representation they may need during appeals in cases where their pay progression has been deferred.

UNISON also offers courses on KSF and appraisals in the NHS and organising member training can be a good way to encourage participation. Ideally training should be provided by the employer and joint training with managers will lead to a smoother implementation and greater shared understanding.

Many Trusts has KSF leads who will still have information on the system and can be a valuable source of information. If your branch does not have any KSF leads then why not contact your Regional Education Co-Ordinator for more information.

Resources

Agenda for Change

http://www.nhsemployers.org/SiteCollectionDocuments/afc_tc_of_service_handbook_fb.pdf

(AfC Section 6(a), AfC Annex W, AfC Annex A2(a))

Website Links

KSF Made Simple

<http://www.nhsemployers.org/Aboutus/Publications/Pages/AppraisalsAndKSFMadeSimple-APracticalGuide.aspx>

NHS Constitution

http://www.nhsemployers.org/EmploymentPolicyAndPractice/staff-engagement/NHS_Values/Pages/The-NHS-Constitution.aspx

NHS Staff Surveys

<http://www.nhsstaffsurveys.com/cms/>

Managers in Partnership

<http://www.miphealth.org.uk/>

UNISON Cuts Campaigning

<http://www.unison.org.uk/acrobat/CampaigningAgainstHealthCuts.pdf>

NHS Employers EIA

<http://www.nhsemployers.org/SiteCollectionDocuments/Equality%20Impact%20Assessment%20-%20Pay%20Progression%20proposals.pdf>

NHS Employers Equal Pay Toolkit

<http://www.nhsemployers.org/EmploymentPolicyAndPractice/EqualityAndDiversity/EqualityAct/NHSEqualPayToolkit/Pages/TheNHSEqualPayToolkit.aspx>

Office of National Statistics

<http://www.ons.gov.uk/ons/guide-method/measuring-equality/equality/measuring-equality--a-guide/ethnic-group-statistics--a-guide-for-the-collection-and-classification-of-ethnicity-data.pdf>

Equality and Human Rights Commission (EHRC)

Performance related pay

http://www.equalityhumanrights.com/advice-and-guidance/tools-equal-pay/step-4-additional-information/#4_6_Checklist_2_Performance_related_pay

Equality Impact Assessments

<http://www.equalityhumanrights.com/advice-and-guidance/tools-equal-pay/equality-impact-assessments/why-carry-out-an-equality-impact-assessment/>

FAQs / TROUBLESHOOTING

Q. My employer is trying to withhold increments without having a robust appraisal system in place

A. Annex A2(a) states that an appraisal / performance review arrangements need to be in place for pay progression to be withheld.

Q. My employer is trying to implement a policy which has not been agreed through the JNCC

A. Annex W clearly sets out the requirement that local performance and pay progression policies should be developed in partnership.

Q. My employer has refused to complete an Equality Impact Assessment or is refusing to involve the union

A. Public sector employers have a duty to complete an Equality Impact Assessment under the public sector equality duties set out in the Equality Act 2010. Section 30 of Agenda for Change sets out the requirements for partnership working when setting out equal opportunities policies.

Q. My employer has implemented its own appraisal system / has implemented one from industry

A. KSF should be the appraisal system for staff in the NHS however, there is no absolute requirement for employers to use KSF as their appraisal system. UNISON believes that KSF delivers many benefits to employers. The simplified guidance has been developed to make it easier to implement and less bureaucratic. If an employer implements its own appraisal system it must be consistent with the principles of KSF as outlined in Section 6(a) 6.1.

Q. My employer is applying quotas to incremental progression and is only allowing those that score excellent or outstanding through their incremental pay point

A. Annex A2(a) specifically states that no quotas will apply to incremental progression. The expectation is that staff will progress through their pay band if they meet the required performance standards set by the employer. Foundation Trust employers who feel compelled to reward outstanding performance can implement incentive schemes which deliver above Agenda for Change, as long as these are fair and consistent with equality legislation. More information can be found on the freedoms in Annex K of Agenda for Change.

Q. My employer is using disciplinary, sickness and capability warnings to restrict pay progression

A. UNISON advice is to keep behaviour policies separate from incremental pay progression policies to avoid automatic deferral of pay progression. The justification for deferral must be linked to the member of staff's ability to demonstrate the required level of knowledge, skill and competencies. The Central Manchester Employment Tribunal sets out the risk of linking pay progression to sickness absence triggers and should be referred to in negotiations.

Q. My employer is not bringing in this scheme

A. There is no requirement for employers to implement a pay progression scheme but, if they do, they will need to ensure it is based on a fair and consistent appraisal system. If employers do not implement a pay progression scheme they will be unable to prevent staff from progressing through the pay spine. In order to implement a local incremental pay progression policy organisations need to work in partnership to agree the scheme, how it will operate and it must be consistent with Annex W of Agenda for Change.

Q. What happens with staff who are on maternity/paternity/adoption leave?

A. It would be discriminatory to have a scheme which deferred progression for staff on these types of leave.

Q. What happens with staff on long term sickness?

A. As described above attaching pay progression to sickness absence triggers was found to be unlawful in the Central Manchester Tribunal. It would also be unreasonable to withhold an increment in the case where someone has not been at work to have their appraisal. Employers can only defer progression in cases where the staff member is not meeting the required standards of knowledge, skills and competencies. Staff who are on long term sickness may fall under the legal definition of a disability as described in the Equality Act and organisations must ensure they do not discriminate on grounds of disability.

Q. What about staff that are redeployed through industrial injury?

A. Staff who are redeployed into another role as a result of an industrial injury have a reasonable expectation that they will progress through the pay point as it would not be possible to appraise them against their previous (substantive) post.

Q. Can employers change pay progression dates if satisfactory performance is not met?

A. Pay progression should be an automatic process unless there has been documented discussion with the employee and they have failed to meet the required level of performance. You may be able to negotiate with your employer that the period of deferral should only be the length it takes for the employee to improve and meet the standard.

Q. What is the difference between quotas and thresholds in policies?

A. A quota would be used to only allow a fixed percentage of the organisation through their incremental pay point and is outside of the Agenda for Change agreement. Thresholds can be used to assess levels of performance to agreed standards of competence however staff sides need to be vigilant that these are not used perversely as a way of ensuring quotas.

Q. What about staff who are acting up or on secondment?

A. You can only be appraised against your substantive role. As long as the staff member is meeting the requirements for this role they should automatically progress through the pay points.

Q. I would like technical advice about our Trust's incremental pay progression policy? A. Send policies to h.group@unison.co.uk for advice.

CHECKLIST

- The employer is engaged with staff side over development of incremental pay progression policy
- Pay progression is automatic until a system is developed in partnership and is fully embedded
- An appraisal system is in place and is effective, KSF is the preferred appraisal system but others can be used where principles are the same
- Staff and managers are / will be receiving training on the appraisal system. Ideally this training should be done in partnership
- Levels of expected performance, skills and competencies for the post are objective, fair and agreed with the post holders, wherever possible
- The appraisal system does not act as a barrier to staff who wish to raise concerns at work
- The incremental pay progression policy does not work on the basis of quotas i.e. only letting the top 10% progress
- The incremental pay progression policy does not automatically defer pay progression following disciplinary, sickness or capability warnings
- There is a fair and transparent appeals procedure that makes clear who will deal with the appeal and the timescales involved
- In cases where pay is deferred, the incremental pay progression policy makes the length of deferral clear
- The employer has worked in partnership to undertake an equality impact assessment using sufficient data and analysis
- UNISON members are aware of the consultation on the incremental pay progression policy and non-members are encouraged to join
- Branch training can be organised on appraisals through regional education co-ordinators
- Draft policies can be sent to UNISON's health group for advice by emailing them to h.group@unison.co.uk