

JM(SC) 17/2013

Annex E: discussions on implications of Staff Council agreement on changes to Agenda for Change (England only)

1. The Pay Circular (AforC) 2/2013, set out the detail of the new NHS Staff Council agreement which included changes to the calculation of pay during sickness absence, for those working in the English NHS. These new arrangements came into effect from 31 March 2013. This included an agreed holding statement.

"There is still further work to do to clarify what the sections of the Agreement relating to unsocial hours means for employers who operate the prospective arrangements for payment of unsocial hours as set out in Annex E. This will be dealt with as a matter of urgency."

2. This paper reports on the progress and conclusions reached in the subsequent national discussions and recommends that the NHS Staff Council agree to consult on the proposal outlined in this paper.

Background

3. In November 2012 the NHS Staff Council agreed a package of England-only changes which would be put out for consultation. The proposals included the following change to sick pay:

"pay during sickness absence will be paid at basic salary level....It will not include any other allowances or payments linked to working patterns or additional work commitments, e.g. unsocial hours payments."

This proposal was explicit that no changes would be made to current arrangements for the lowest paid staff (on pay spine points 1 to 8) or those with work related injuries.

4. Annex E provides for a prospective system of unsocial hours payments, which are mainly used in the ambulance sector, in England. Under this "prospective" system a percentage supplement is made to pay, reflecting the working pattern and the proportion of unsocial hours covered. This differs from the "retrospective" system that applies to most NHS staff that is set out in Section 2 of the Handbook, which applies an agreed "per hour" enhancement to plain time hourly rates.

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5. There have been subsequent national discussions about the implications of the agreement to amend the sick pay arrangements for Agenda for Change staff in England on Annex E arrangements. These have included employer and trades union representatives directly drawn from the Ambulance sector.
6. Throughout those discussions employer representatives have made clear their position that - on grounds of equity and fairness - the principle of the change to the national agreement must apply to the Annex E arrangements. They argue that the changes made to Section 2 and 14 of the Handbook automatically affect unsocial hours payments made under Annex E and that for Annex E to have been excluded from the provisions would have required explicit reference along with other categories of staff exempted (those on spine points 1-8 and those absent through work-related injury).
7. Staff Side representatives have been clear that their position is that Annex E arrangements form the basis of a regular supplement, rather than the hour by hour enhancement described in the retrospective scheme, and they believe that this should have required specific provision if it were to have been included in the NHS Staff Council agreement on sick pay. They do not accept that the changes made to the Handbook in version 28 have automatic implication for unsocial hours payments made under Annex E. Given that any application of such a change to Annex E would require significant further work, the staff side argue that this would have required clear identification in the agreement reached in February.
8. Due to the complex nature of these positions - and in an attempt to avoid a situation where these arguments are tested via imposition and challenge - a series of non-prejudicial discussions have taken place on the different ways in which the England-only changes to Agenda for Change could be applied to Annex E. In particular, the discussions have covered the need for a consistent and fair arrangement, in line with the fundamental ethos that all AforC agreements should affect all NHS staff. The approach to implementation of Staff Council agreements should be proportionate and methodical. This has led to the formal proposal outlined below being put forward by employers for consultation and consideration as an acceptable way forward.
9. At a meeting on 14 June the employer representatives believed that they responded to all the concerns raised. They made a national proposal based on a consensus among ambulance employers as to how they plan to implement the new sickness pay provisions for staff covered by Annex E.
10. The ambulance employers said that they had proposed a fair and consistent approach to the implementation of payments to staff on Annex E during

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periods of sickness absence, which was consistent with the principles in the national agreement.

11. Employers said that their preference was to implement a joint agreement, underpinned by the requisite changes to the Handbook, and they were planning for an implementation date of 1 July 2013. It was noted that the effective date for the changes to AforC, for all other NHS staff, was 31 March 2013.
12. The methodology for deducting USH allowances would be based on an hourly rate of pay - as presented in the table attached. The table shows the hourly rate of unsocial hours payment for each pay point, in each AforC pay band.
13. Staff who are absent due to sickness on hours that fall within the USH period, would only have the corresponding USH allowance for each hour lost deducted from their pay in the following month. No deduction of USH allowance would be made for hours lost due to sickness absence which fall outside of the USH period.
14. The attached document contains the table of hourly Annex E unsocial hours rates, along with some agreed FAQs to explain how the deductions would be applied.
15. The Staff Side has agreed to consult members on the proposed methodology and employers have accepted a revised implementation date of 1 September 2013, to enable this process to be undertaken.

Recommendation:

The NHS Staff Council is asked to note the outcome of these discussions and agree these proposals for formal consultation.