

# Minutes

**Meeting:** NHSScotland 'Once for Scotland' Workforce Policies Programme Board  
**Date:** Monday 01 August 2022  
**Location:** MS Teams

**Attendees:**

Present:

- (LZ) Laura Zeballos, Deputy Director Health Workforce Pay, Practice and Partnership (Chair)
- (JA) Jeff Ace, Chief Executive, NHS Dumfries & Galloway
- (JB) Janis Butler, HR Director, NHS Lothian
- (NC) Noreen Clancy, Head of Employee Relations, NHS Lothian
- (AG) Anna Gilbert, Head of Workforce Practice, Scottish Government
- (CH) Catriona Hetherington, Acting Head of Staff Governance, Scottish Government
- (JJ) Jacqui Jones, HR Director, NHS National Services Scotland (NSS)
- (SL) Steven Lindsay, Employee Director Elect & Full-time Partnership Representative, NHS Grampian
- (JO'C) James O'Connell, Regional Officer, Unite
- (NP) Norman Provan, Associate Director (Employment Relations), Royal College of Nursing (RCN)

In attendance: (LH) Lynn Hunter, Programme Manager, NHS NSS

Apologies: (DM) David Miller, Chief People Officer, Scottish Government

## 1. Welcome and apologies

Laura Zeballos (LZ) welcomed members to the meeting. Apologies were noted from David Miller, and members advised that Jacqui Jones will join later in the meeting.

## 2. Minute from previous meeting and review of actions

Members approved the minute of the meeting held on 26 May 2022. The Board reviewed priority actions:

Action 02 (26/05/22) - request for additional employer resource to participate in the Policy Development Group. Lynn Hunter (LH) advised that the resource previously identified was not available for the minimum 1 day per week required. Janis Butler (JB) noted that she has raised this with the HRD Secretariat. JB will issue a further email requesting employer resource to support this work and released as a minimum 1 day per week.

## 3. Draft Retirement Policy

### 3.1. Review Draft Retirement Policy

Noreen Clancy (NC) outlined the draft Retirement Policy to be consulted on as part of the Supporting the Work Life Balance suite of policies, and the draft NHSScotland Interim National Arrangement on Retire and Return for accelerated approval. The Programme Board considered the key issues submitted by the Policy Development Group.

Members supported the recommendation for the Retirement Policy to use the term “phased retirement” in place of “working hours reduction” referenced in the extant PIN.

Members supported the simplification of timescales in the policy for employees to notify their manager 6 months before their planned retirement date and remove reference to contact with the HR department 9 months before the proposed date of retiral. It was agreed that this was practical and reflected current practice.

Anna Gilbert (AG) asked at what point an application for retire and return could be made. NC confirmed that an application would be made as part of retirement planning with a request made alongside the submission of pension papers. If already retired, the individual would apply for a vacancy through normal routes. JB noted that how the service trails the interim national arrangement is important to promote the retire and return option.

AG further queried the terminology used in respect of “efficiency of the service”. It was agreed that a further qualification should be added to the policy to explain what is meant by this.

Noting flexibility in required periods of notice, LZ asked members if they were comfortable that the draft interim national arrangement on retire and return met the brief and the immediate needs of the service. There was broad support from members. NC noted the ways in which retirees may come back on a supported or accelerated basis, and the steps taken to make this a positive ask to allow employees to retire and return.

The paper (item 3.1) highlighted that in reviewing local NHS Board Retire and Return policies an exclusion has been built in that: the retire and return route is not available to staff who retire because of organisational change, ill health, or efficiency of the service. James O’Connell (JOC) asked how widespread this exclusion was in local policies and what this meant in practice. NC advised that the identification of other possible employment for staff in the categories of ill health or organisational change should be managed in line with the appropriate policy i.e. Attendance Policy or Organisational Change. The Board agreed that reference should be made in the text to reference other policies used.

**ACTION 01: NC to amend draft interim national arrangement on retire and return and draft retirement policy to (1) qualify what is meant by “efficiency of the service” and (2) clarify the identification of other possible employment for staff in the categories excluded from the retire and return route should be managed in line with the appropriate policy, and to reference the policies.**

Norman Provan (NP) highlighted a potential concern in ensuring that this is an equitable offer and that retire and return does not prevent opportunity for others to progress their careers. Members acknowledged this potential risk. JB noted the balance of risk given the current staffing difficulties. AFC Band 5 is a priority area for supporting retire and return. The approach to implementation is key, setting the tone with managers on the purpose and need for this approach. Implementation on an interim basis will also allow monitoring prior to the launch of the refreshed Retirement Policy.

On the issue of access to health checks and Occupational Health Service (OHS) advice on retirement, JO’C gave reservations on this being removed from the draft Retirement Policy regardless of whether these checks are taken up. The PDG had proposed that these would be considered as part of the Managing Health at Work suite of policies. Steven Lindsay (SL) reflected on the reality of the situation and the potential to contribute to delay due to the pressures on OHS. JB felt that this was a pragmatic proposal at this stage, and that the previous provision of OHS checks was not costed and therefore not implemented by Boards.

The Programme Board agreed to not include reference to health checks for retiring employees in the Retirement Policy. Instead the conversation on health checks will form part of the refresh of

the Managing Health at Work PIN, and set in the context of limited funds, capacity and OHS for current employees.

**DECISION 01: Conversation on health checks for employees (retiring and current) to form part of the refresh of the Managing Health at Work PIN.**

A question was asked on GP provision of health checks. Jeff Ace (JA) noted that the evidence base for universal health checks in the population is limited. Targeted health checks have been shown to be more effective and efficient.

The Board was supportive of the flexible position in the draft policy that employees are entitled to only one period of phased retirement, which can be taken either before they access their pension, or it can form part of their retirement and return agreement.

The Board was asked to further discuss equalities considerations. The following points were noted to add the Equalities Impact Assessment:

- the policy positively supports staff to return beyond retirement age
- recognise the need to ensure that this policy does not obstruct other staff in their career progression. Opportunity to monitor through the interim arrangements
- potential for this policy to slow progression to a more diverse workforce
- context of retire and return interim arrangements in response to unprecedented workforce challenges
- retire and return is not directed to higher level promoted posts. Particular need has been identified to support retire and return within Band 5 nursing staff
- the policy will provide flexibility and movement across the system

The Programme Board, subject to amendments noted, approved the draft Retire and Return Interim National Arrangement for consideration by the Scottish Workforce and Staff Governance (SWAG) Committee. The draft Retirement Policy was also approved, noting that this will be re-submitted to the Programme Board together with the full suite of draft policies for consultation.

### 3.2 Retire and return approach and next steps

The Programme Board re-confirmed that the terminology for the Retire and Return element of what will form part of the refreshed Retirement Policy is the Retire and Return Interim National Arrangement. This will have full operational status and authority on implementation.

Members further considered the website position, and reconfirmed that the Retire and Return Interim National Arrangement will be issued as a DL to the service, published on [SGHSC on SHOW](#) and uploaded to [Partnership Information Network — NHS Scotland Staff Governance](#) website. Interim national arrangements will not be available on the NHSScotland Workforce Policies website.

The Programme Board approved the timetable for Retire and Return, and requested a DL be drafted in preparation for implementation following approval by SWAG Committee. The Nursing and Midwifery Task and Finish Group will be advised on the outcome.

In advance of this, a stakeholder communication providing an update on the programme of work, including retire and return, will be issued following the Programme Board. JB also agreed to highlight the proposed timetable with Directors of HR.

**ACTION 02: CH to draft DL on Retire and Return in preparation for implementation.**

**ACTION 03: LH to draft Stakeholder Communication for issue following the August Programme Board.**

**ACTION 04: JB to highlight proposed timetable for governance approval and service implementation with Directors of HR.**

#### 4. Review Draft Maternity Policy

NC outlined the draft Maternity Policy and key considerations for the Programme Board. The Programme Board approved:

- title of the refreshed policy as the Maternity Policy
- question to Central Legal Office (CLO) to confirm scope of the policy to include agency staff
- 28 days' notice for and earlier return to work from maternity leave, which is consistent with the extant PIN and more favourable than legislation which state 56 days' notice
- draft policy reference only to Maternity Leave (as opposed to OML and AML). Within the NHS there is no difference between OML and AML as the job is protected by other policies and organisational change.
- adoption of the statutory position that it is only for a pregnancy related illness that the employee is required to start maternity leave

It was noted that Bank staff have no entitlement to Occupational Maternity Pay (OMP). Members discussed the ability of the employer to review entitlement of OMP for bank staff where the pattern of work undertaken is similar to that of a temporary staff member as opposed to ad hoc. The Board was supportive of adding a paragraph to provide some flexibility. NP suggested that it would be helpful to provide an example of the type of exceptional situation where the employer may review entitlement to OMP.

**ACTION 05: PDG to add a paragraph to the draft Maternity Policy providing employers with some flexibility to review bank staff entitlement to OMP in exceptional cases given the pattern of work undertaken. Additional sentence to be added to provide an example of the type of exceptional situation.**

NC noted that to qualify for Statutory Maternity Pay (SMP) an employee must have 26 weeks employment with their current employer. This is different from OMP where reckonable service with one or more NHS employers counts. This is a technical difference. Employers cannot claim back or give SMP to an employee who has not been with the employer for a minimum of 26 weeks.

**ACTION 06: PDG to revise section on qualification for SMP within the Maternity Policy. Noting that an employee must have 26 weeks or more service with their employer for SMP. This is different from OMP where reckonable service with one or more NHS employers counts.**

The Board was asked to further discuss equalities considerations. NC advised that the PDG with support from the digital content designer have worked to ensure inclusive language within the Maternity Policy.

The Programme Board, subject to the amendments noted, approved the draft Maternity Policy. Members noted that this will be re-submitted to the Programme Board together with the full suite of draft policies for consultation.

#### 5. Review Draft Flexible Work Pattern Policy

SL outlined the draft Flexible Work Pattern Policy and key considerations for the Programme Board. The Programme Board noted:

- following feedback from the engagement events, the Flexible Work Pattern Policy has been developed to cover 'model' policies for flexible working, job share, reduced working year and annualised hours
- the Flexible Work Pattern Policy and Flexible Work Location Policy will be reviewed following the outcome from the Scottish Terms and Conditions Committee (STAC). This is particularly relevant in respect of the review

Discussion followed on Section 33 - Balancing work and personal life, noting that this has not been updated in the Scottish Agenda for Change Handbook. The [DL\(2021\)29](#) references the right to request flexible working from day one in post. It does not reference the number of applications per year. The extant PIN and statutory position is one application per 52 weeks. JB agreed to clarify with STAC Secretariat whether the limit on applications remains.

**ACTION 07: JB to clarify with STAC Secretariat whether NHSScotland has updated its position on both requests from day one and number of applications per year in line with the provisions put in place in England (Section 33).**

LH advised the Programme Board that feedback had been received from Counter Fraud Services (CFS) that in addition to sickness absence fraud, there has been an increase in allegations of NHS staff abusing contracts. This will be considered when the programme refreshes the safer pre- and post-employment policy. However, CFS have noted that flexible working arrangements (pattern and location) have made this more challenging. The question was asked as to whether the policies and / or supporting documents could be strengthened in this respect.

NC highlighted some of the allegations made. NC suggested that this fits better with the safer pre- and post-employment policy, however there was the potential to add to the manager and employee guides for the flexible working policies. Jacqui Jones (JJ) supported reference to contracts in the guides to help address some of these challenges.

**ACTION 08: PDG to reference contract considerations within the guides for the flexible working policies and continue to link with Counter Fraud Services (CFS).**

The Programme Board, subject to clarifications noted, approved the draft Flexible Work Location Policy. Members noted that this will be re-submitted to the Programme Board together with the full suite of draft policies for consultation.

## 6. Flexible Work Location Position

The Programme Board discussed the position on the refreshed Flexible Work Location Policy, which was approved through the governance structure in autumn 2021. The policy was not implemented at this time due to concerns about capacity in the service and the absence of an agreed national position on the terms and conditions elements. Members agreed that the position had not changed. The policy cannot be implemented until there is an agreed position on related terms and conditions. Timescales for confirmation on terms and conditions are subject to UK Staff Council considerations. It is anticipated that a further 'soft launch' period will be required due to the time lapsed and potential changes as a result of the terms and conditions position.

## 7. Programme Planning

### 7.1 Supporting the Work Life Balance

LH provided an update on the work programme and proposed schedule to deliver the refresh of the Supporting the Work Life Balance PIN. The schedule works to draft a total of 10 policies for consultation in the autumn. A provisional date of 26 October was given to commence the one month public consultation. LH advised that this was ambitious within the current limited resources

of the Policy Development Group. However, the PDG recognise the importance of stakeholder consultation prior to winter. This will allow consultation analysis, policy redraft and the drafting of supporting documents over this period.

JO'C cautioned a need to recognise the pressure placed on members of the PDG. Members supported the timetable, with a requirement to keep under review. It was agreed to include provisional consultation dates in the stakeholder communication highlighting that this would be confirmed in due course.

## 7.2 Risks & Issues

The Programme Board reviewed the risks and issues:

- Risk that resources are not made available – this was discussed earlier in the meeting, and JB will issue a further email requesting employer resource to support this work and released as a minimum 1 day per week [Action 02 (26/05/22)].
- Risk that significant queries on interpretation of Phase 1 policies continues thereby diverting PDG resource from policy development – members recognised that some queries were valid and others should be dealt with at Board level or across peer networks. JJ and JB supported a key role for the Deputy HRD Group and into HRDs to work through individual Board queries.
- Issue - absence of an agreed national position on terms and conditions questions has delayed implementation of the flexible work location policy. This was discussed earlier in the meeting and the current position reconfirmed i.e. implementation is dependent on an agreed terms and conditions position.

## 8. Terms of Reference

Members approved the updated Terms of Reference for the Programme Board noting that the tracked changes reflected the discussion and amendments agreed at the previous meeting.

## 9. Communication of Key Messages

LH summarised the key points of the meeting for inclusion in the Stakeholder Communication:

- draft Retire and Return Interim National Arrangement will be considered by SWAG Committee on 24 August 2022. NHS Boards should prepare for immediate implementation
- good progress has been made on policy development for the refresh of the Supporting the Work Life Balance PIN. Provisional dates for one month consultation in the autumn
- position on Flexible Work Location Policy reviewed. Timescales for implementation are subject to an agreed terms and conditions position
- NHS Boards asked not to review policies which form part of the existing PIN policies during work of the Programme

## 10. Any Other Business

The Programme Board had been asked by email to consider a request by the PDG to amend the Formal Hearing Guide. Agreement had not yet been reached on this matter. LZ asked that the request be reissued to continue the discussion.

**ACTION 09:** LH to recirculate request from the PDG to the Programme Board to consider an amendment to the Formal Hearing Guide to clarify that attendance of Board members would only be for conduct hearings, which had been the original intent of the Guide.

#### **11. Date of Next Meeting**

Thursday 01 September 12:00 -14:00