

Minutes

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

Attendees:

Present:

- (VB) Victoria Bowman, 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
- (CH) Catriona Hetherington, Acting Head of Staff Governance, Scottish Government
- (NP) Norman Provan, Associate Director (Employment Relations), Royal College of Nursing (RCN)

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

Apologies:

- (AG) Anna Gilbert, Head of Workforce Practice, Scottish Government
- (JJ) Jacqui Jones, HR Director, NHS National Services Scotland (NSS)
- (SL) Steven Lindsay, Employee Director, NHS Grampian
- (DM) David Miller, Chief People Officer, Scottish Government
- (JO'C) James O'Connell, Regional Officer, Unite

1. Welcome and apologies

Victoria Bowman (VB) welcomed members to the meeting. Apologies were noted from Anna Gilbert, Jacqui Jones, Steven Lindsay, David Miller and James O'Connell.

Quorum requirements for the Programme Board are 2/3 of the representative group. National Staffside Programme Board members had agreed in advance of the meeting that Norman Provan (NP) would represent National Staffside collectively.

2. Minute from previous meeting and review of actions

Members approved the minute of the meeting held on 1 August 2022. The Board reviewed priority actions and updates added to the Action Log. Reference Action 04 (01/08/22) Janis Butler (JB) confirmed that service implementation preparations with Directors of HR were complete in advance of the publication of the DL on the Interim National Arrangement on Retire and Return. Reference Action 09 (01/08/22) on proposed amendment to formal hearing guide to be discussed under the next agenda item.

3. Formal Hearing Guide – Request for amendment

VB introduced the item previously circulated on a request from the Policy Development Group (PDG) to amend the Formal Hearing Guide to clarify that attendance of non-exec Board members would apply only to conduct hearings. JB advised that this was the original intent and reflected current practice.

The detail of the proposed amendment was not discussed due to reduced attendance at this meeting and the need for wider debate. It was agreed that a further request be issued to Programme Board members to consider. This should provide additional background information on the intention and current practice. If the Programme Board is unable to reach an agreed position, the matter will be escalated to SWAG in line with agreed governance.

ACTION 01: NC to provide additional background information on the intention behind the Formal Hearing Guide and current practice on attendance of Board members at hearings. This will be circulated to the Board with the change request to the Formal Hearing Guide for members to consider.

4. Review Draft Career Break Policy

NC outlined the draft Career Break Policy and key considerations for the Programme Board. The Programme Board discussed and approved the specific circumstances where the take up of alternative employment during a career break may be appropriate. JB requested redraft of the bullet on further education to reflect this was work while undertaking further education.

In relation to policy scope, members agreed that the policy should apply to employees with at least 12 month's service with one or more NHS employers provided this was continuous service and not reckonable service.

Members were supportive of the update to the period which a career break is allowed to reflect revised UK terms and conditions (Section 34). It was agreed to add "and mutual agreement" to the end of the sentence on extension of a career break.

Catriona Hetherington (CH) noted that the draft did not cover what happens if an employee wishes to return to work earlier from their agreed career break. The Programme Board agreed that wording should be drafted to cover this situation.

The Programme Board noted that the requirement to undertake Keeping in Touch (KIT) days has been removed from the refreshed draft policy reflecting that this is not always practical. The extant PIN is silent on the maximum number of KIT days. Members were in agreement that a maximum number of KIT days should be added to the policy.

Members noted that further advice will be sought from Central Legal Office (CLO) on the issue of sick pay. The extant PIN would indicate that sick pay applies when on a career break. The collective view was that this should not apply. Norman Provan raised the point that should sick pay apply then the Attendance Policy would also apply. This could then result in dismissal on the basis of capability when on a career break. It was agreed that this specific point should be highlighted when raising the issue with CLO.

The Programme Board also noted that further advice will be sought from CLO on redundancy procedures for employees on a career break.

Members agreed that as far as possible timescales within the process for acknowledgement of a request etc. should be consistent across the policies. This will also aid familiarity.

ACTION 02: Programme Team to make the following amendments to the draft Career Break Policy: (1) Redraft bullet on further education to make clear that this is undertaking work while or linked to further education. (2) Update policy scope to state 12 month's continuous service with one or more NHS employers. (3) Add "and mutual agreement" to the sentence on extension of a career break. (4) Add paragraph on what happens if an employee wants to end their career break and return to work earlier. (5) Add wording to state a maximum number of KIT days.

ACTION 03: Programme Team to submit the amended draft Career Break Policy to CLO with specific questions on: 1. Applicability of sick pay when on a career break, and therefore the Attendance Policy with potential for dismissal and 2. Redundancy procedures for employee on a career break.

The Programme Board, subject to the amendments noted, approved the draft Career Break Policy and consultation questions proposed. 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 Special Leave Policy

NC outlined the draft Special Leave Policy and key considerations for the Programme Board. NC noted that this was one of the most used workforce policies in NHSScotland. It is an important policy demonstrating NHSScotland as an exemplar employer.

Members noted that the scope of the policy will be clarified with Central Legal Office (CLO) to confirm applicability to bank, agency and sessional workers.

The Board discussed whether special leave provision should be added for elite athletes. JB suggested that these requests should be supported and accommodated on an adoc basis but not explicitly stated in the policy. Jeff Ace (JA) supported this position, adding that defining an elite athlete may make it harder for those competing in less mainstream activities. This should be managed with good relations at a local level. NP agreed to an extent that arrangements should be agreed locally. However, suggested that there as a need to set the expectation that Boards should be sympathetic to requests from employees who are representing their country. Members agreed not to specify elite athletes in the policy, but to reference exceptional situations when it may be reasonable to offer time off for other purposes.

The Board discussed the requirement for a carer's policy. Previously the Programme Board had agreed that the development of a wider carer's policy should be considered on the completion of Phase 2 of the programme. Members agreed with the PDG position that the requirement under the Revised Section 33 of NHS terms and conditions of service handbook for NHS employers to have a carer's policy to address the needs of people with caring responsibilities and to meet the requirements of the 'right to request' flexible working legislation for carers of children and dependant adults is covered under the refreshed policies and supporting documents for Flexible Work Location Policy, Flexible Work Pattern Policy and the Special Leave Policy. Members were supportive of considering the development of a Carer's Policy at the end of the Phase 2 refresh. JB supported greater visibility and transparency on arrangements for carers. JB suggested visibility through the website to highlight provision and support for carers through the relevant policies.

The Board discussed the section under employee responsibilities and the expectation that employees seek to share responsibility and find alternative arrangements where possible to minimise the amount of time off taken as special leave. NP raised the challenge with wording "where possible" as to how this is tested and how to ensure consistency of application. NC noted that consistency was the key challenge within this policy generally. In the past there had been a limit on use within a defined period, however this is now per occasion and does have an impact on the service. JB agreed that messaging is important and although there are challenges in application, there is a need to set a tone that employees share responsibility and seek alternative arrangements. NP suggested that this was also about the employer being more flexible about when the employee can work. For example, working hours or shift length to provide the necessary time off. It was agreed that a flexible approach should be built into the policy.

Members discussed the Armed Forces Covenant Employer Recognition Scheme and Gold Award criteria for reservists who volunteer to work with the cadets. The Board agreed that, similar to the situation for elite athletes, this should be considered on a case by case basis. There was a consensus that there are a wide range of voluntary organisations that employees volunteer with, and it would not be appropriate to reference a single organisation. As an employer, NHSScotland can take a corporate and social responsibility to enable volunteering through flexible working approaches without being prescriptive.

NC asked the Board to note that child bereavement leave is included in the Special Leave Policy alongside other compassionate leave, and hyperlinked to the Maternity Policy. Examples of situations where special leave may be granted and the amount of leave typically given will be detailed in the Employee and Manager Guides.

ACTION 04: Programme Team to make the following amendments to the draft Special Leave Policy: (1) Add reference to local arrangements and exceptional situations where it may be reasonable to offer time off for other purposes – individual merits balanced with fairness and consistency of application (2) Add bullet under manager and employee responsibilities to consider a flexible approach to working hours or shift length to provide the necessary time off.

ACTION 05: LH to raise with Digital Team development work to highlight provision and support for carers through the relevant policies – Flexible Work Location, Flexible Work Pattern and Special Leave – on the website.

6. Programme Highlight Report

Lynn Hunter (LH) advised that the programme RAG status was green. The programme is on track to consult on the full suite of Supporting the Work Life Balance policies at the end of October 2022. LH noted the key achievements in the last period and work planned in the coming weeks to deliver the draft policies and launch a formal consultation. Members were content with the progress made and milestones set out for the programme in 2022/23.

7. Programme Risks and Issues

The Programme Board reviewed the risks and issues:

- Risk that resources are not made available – members noted additional employer resource secured to support the work of the PDG. It was further noted that, in addition to the anticipated reduced staffside capacity due to strike ballot preparations, there will be an impact on resource across all areas.
- Risk that significant queries on interpretation of Phase 1 policies continues thereby diverting PDG resource from policy development – members noted reduced volume of queries from NHS Boards and ongoing monitoring.

JB asked for further clarity on the response to individual queries received through the website. LH advised that the contact form on the website should be used to navigate the site and find the right information. These types of queries can help us understand and improve user experience. Personal enquiries should be directed through employee support contacts in the individual Board. VB noted that Scottish Government have a responsibility to respond to each query and refer back to the teams in the Board as appropriate. CH agreed to review the queries received through the website over the last period and consider the approach to ensure direction to the appropriate contact. NP added that operational queries on practice should be managed by the leadership teams locally within the spirit of

the policy. Interpretation queries should be discussed at the Area Partnership Forum. If there is not joint agreement then the Board management team should write to the Programme Board. This submission can be joint or individual.

ACTION 06: CH to review the current approach to responding to queries received through the website to ensure direction to the appropriate contact.

8. Communication of Key Messages

The Board agreed that due to recent communications on the NHSScotland National Interim Arrangement on Retire and Return that the next stakeholder communication would follow the October Programme Board and confirm the consultation dates previously circulated.

9. Any Other Business

No other business was raised.

10. Date of Next Meeting

Tuesday 04 October 13:00 -15:00