

Minutes

Meeting: NHSScotland 'Once for Scotland' Workforce Policies Programme Board
Date: Tuesday 07 February 2023
Location: MS Teams

Attendees:

Present:

- (AG) Anna Gilbert, Head of Workforce Practice, Scottish Government (Chair)
- (JB) Janis Butler, HR Director, NHS Lothian
- (NC) Noreen Clancy, Head of Employee Relations, NHS Lothian
- (CH) Catriona Hetherington, Head of Staff Governance, Scottish Government
- (JJ) Jacqui Jones, HR Director, NHS National Services Scotland (NSS)
- (SL) Steven Lindsay, Employee Director, NHS Grampian
- (GM) Gordon McKay, UNISON Health Committee
- (CM) Cat McMeeken, Deputy Director of Leadership, Culture & Wellbeing, Scottish Government
- (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: (JA) Jeff Ace, Chief Executive, NHS Dumfries & Galloway

1. Welcome and apologies

Anna Gilbert (AG) welcomed members to the meeting. Apologies were noted from Jeff Ace. Janis Butler (JB) advised that she would be present for the first hour only. Quorum requirements for the Programme Board are 2/3 of the representative group. Employer members had agreed that Jacqui Jones (JJ) would represent Employers collectively for the second part of the meeting.

AG outlined arrangements for the Workforce Practice Unit, and advised that Cat McMeeken, Deputy Director of Leadership, Culture & Wellbeing would join the meeting.

2. Minute from previous meeting and review of actions

Members approved the minute of the meeting held on 8 December 2022. AG advised that there were no outstanding actions for review. Members were content with the updates provided in the Action Log.

3. Supporting the Work Life Balance Consultation

3.1. Key issues arising from the consultation for Programme Board review

A total of 50 responses were received to the consultation on the refreshed Supporting the Work-Life Balance policies, which ran from 26 October to 25 November 2022. The Policy Development Group (PDG) has analysed responses and made recommendations for change. Direction is requested from the Programme Board on key questions to support the PDG finalise the draft policies and develop the supporting documents for Programme Board review.

Flexible Work Pattern Policy

1. The Programme Board agreed that the Flexible Work Pattern Policy should align with the UK Government intention as published in the response to the consultation on updating flexible working laws. That is, that employees are entitled to make two requests (previously one request) within a 12-month period.
2. The Programme Board noted the outstanding terms and conditions questions in relation to Flexible Work Location and Flexible Work Pattern. JB advised that a subgroup had been set up to look at the issues, however the intention is that this will now go back to STAC Secretariat. JJ agreed to take this back to HR Directors to develop thinking and position. NP / JO'C agreed to engage with the trade unions also with a view to informing the discussion at STAC Secretariat.

ACTION 01: JJ to engage with HRDs and NP/ JO'C with trade unions on terms and conditions issues raised initially as part of the Flexible Work Location Policy. Specifically, a decision on the review (Section 33 of the Agenda for Change Handbook) and process to make changes to a permanently agreed arrangement. The outcome of discussions will be fed back to STAC Secretariat to inform their review.

Retirement Policy

1. The Programme Board agreed that when annual leave is taken during phased retirement, an employee working on 3-day per week phased retirement would take 3 days annual leave for that week.

Career Break Policy

1. The Programme Board debated the position on no guarantee of redeployment on return from a career break, which reflects PIN. It was noted that this matter had previously been discussed by the Programme Board and for the purposes of the consultation, the draft policy stated: on return from a career break the following apply: • if the employee returns to work within one year, the same job will be available, as far as is reasonably practicable • if the break is longer than one year, every effort will be made to place the employee in a post of a similar grade and responsibility to that held prior to the career break.

It was agreed that cross reference should be made to local Redeployment policy. PIN had a substantial section on redundancy and clarity is sought on when this would apply. The PDG was asked to consider and submit revised wording the Programme Board. As a starting position, an addition to the current paragraph to state if no suitable employment can be found then refer to the Redeployment policy.

ACTION 02: PDG to consider and draft further wording in the Career Break Policy to clarify when redundancy would apply and make reference to the Redeployment Policy in the event that no suitable employment is found.

2. The Programme Board agreed that in respect of the 5 year total period of absence for career break(s) that it is reasonable that this total is across NHS employers.

Special Leave Policy

1. The Programme Board agreed a policy amendment to reference entitlements within the Special Leave Policy under types of leave, and clear instruction that this must be read in conjunction with the Manager Guide and Employee Guide to apply entitlement. JO'C further noted that the policy and guides cannot cover every eventuality and need to allow a level of flexibility.

2. The Programme Board discussed IVF treatment as an example of a specialist clinical appointment for which special leave could be requested. There was agreement that the right to time off for specialist clinical appointments would cover examples such as IVF, as opposed to an entitlement because an employee is undergoing IVF.

Discussion followed on special leave for both prospective parents or just the person having the IVF procedure. It was agreed that whilst there is not an absolute right for family members to attend specialist clinical appointments, a compassionate and person-centred approach should be taken by managers relative to the circumstances. This should be covered in the Manager Guide for the Special Leave Policy.

Maternity Policy

1. The Programme Board debated the position of whether an employee can undertake bank shifts whilst on maternity leave and in receipt of occupational maternity pay (OMP). Some members felt it was counterintuitive to undertake bank shifts whilst on maternity leave with other options to come back early or reduce hours. Noting the potential impact on statutory maternity pay (SMP). Other members cited circumstances where it may be beneficial for the employee and the service. The Programme Board asked the PDG to undertake further work to advise the Board on the legal position, impact on pay and different contracts.

ACTION 03: PDG to undertake further work to advise the Programme Board on the legal position, impact on pay and different contracts in respect of whether an employee can undertake bank shifts whilst on maternity leave and in receipt of occupational maternity pay (OMP).

2. The Programme Board agreed that the policy will reflect NHS Terms and Conditions in defining the dates when a pregnancy loss is considered a miscarriage or a still birth. It was noted that the date for defining a still birth in the NHS Terms and Conditions in relation to maternity leave and pay is the end of the 24th week and for Bereavement Leave from the 24th week. The Maternity Policy and the Special Leave Policy will reflect Terms and Conditions.
3. In relation to evidence, the Programme Board agreed that where time off is related to a specialist appointment that it would be reasonable for the manager to request, and for the employee to share, evidence. The employee may choose to redact any sensitive information. Noting feedback in the consultation that written appointments may not always be given, it was suggested wording be amended to: "Employees and eligible agency workers who need time off for antenatal care must provide a certificate from their doctor, registered midwife, or registered health visitor. Except for the first appointment, they should also produce evidence of the appointment, where available." The MAT B1 form (Maternity Certificate) will cover this requirement.

New Parent Support Policy

1. The Programme Board noted the position in the Terms and Conditions that a pregnant employee's partner will be entitled to unpaid leave to attend two antenatal appointments. Unpaid leave, up to a maximum of six and a half hours per appointment can be accessed. It was agreed the policy will reflect terms and conditions. It was also noted that there is flexibility for employers to use their discretion dependent on the circumstances. In practice, paid time off to allow the pregnant employee's partner to attend antenatal appointments can be made under the Special Leave Policy.

2. The Programme Board considered the consultation feedback on the limit to two antenatal appointments and flexibility on up to six and a half hours per appointment. The Programme Board again advised that the policy will mirror the terms and conditions. However, managers are encouraged to be compassionate and person-centred, to have a conversation with their employee and be flexible based on the individual circumstances. It was agreed that examples should be added to the Guides.
3. As discussed and agreed earlier in the meeting, where time off is related to a specialist appointment, that it would be reasonable for the manager to request, and for the employee to share, evidence. The employee may choose to redact any sensitive information.
4. The Programme Board noted that the draft policy has been updated in line with legislation to include antenatal support for intended parents through surrogacy.

Shared Maternity and Shared Adoption Policy

1. The Programme Board noted that the Maternity Policy and Adoption, Fostering and Kinship Policy will be updated in line with the NHS Terms and Conditions and Shared Maternity and Shared Adoption Policy to reflect employer discretion to waive the rights to recovery in cases where this would cause undue hardship or distress.

Parental Leave Policy

1. The Programme Board debated the position on the potential extension of paid parental leave to include step-parents. No majority view was evident from the consultation. Qualitative consultation feedback focused on parental responsibility, legal foundation and evidence.

There was not sufficient time in the meeting to fully consider this issue and the remaining items on the agenda. It was agreed that a further meeting of the Programme Board be scheduled to discuss the rest of the agenda.

ACTION 04: Programme Team to schedule a further meeting of the Programme Board to complete the agenda set for 7 February meeting.

ACTION 05: Programme Team to update the draft policies and supporting documents following the confirmed position of the Programme Board on issues escalated.

4. Date of Next Meeting

Tuesday 28 February 2023 from 15:00-16:30 [updated post-meeting]