

Minutes

Meeting: NHSScotland 'Once for Scotland' Workforce Policies Programme Board
Date: Tuesday 31 October 2023
Location: MS Teams

Attendees:

Present:

(FH) Fiona Hogg, Chief People Officer, Scottish Government (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, Head of Staff Governance, Scottish Government
(JJ) Jacqui Jones, HR Director, NHS Lanarkshire
(SL) Steven Lindsay, Employee Director, NHS Grampian
(GM) Gordon McKay, UNISON Health Committee
(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:

No apologies

1. Welcome and apologies

Fiona Hogg (FH) welcomed members to the meeting. The meeting was quorate.

2. Minute from previous meeting and review of actions

Members approved the minute of the meeting held on 11 September 2023. An update was provided on the 3 outstanding actions:

02 (11/09/23) – in respect of the application of the formal note of hearing, Jacqui Jones (JJ) advised that this was an area that NHS Lanarkshire was also working on to ensure compliance. JJ will share this work and pick up a discussion with other Boards in a similar position.

03 (11/09/23) – Programme Board to reach agreement on notice requirements of the date of change to an individual's work pattern or work location where the agreement is being ended following formal review. This will be addressed under agenda item 3.1.

04 (28/02/23) – no capacity to draft guide for managers on writing letters / template(s) to accompany suite of Supporting Work Life Balance policies. Revised due date December 2023.

3.1 Request for Change – Supporting Work Life Balance policies

A paper was submitted in advance outlining feedback received from NHS Boards during the ‘soft launch’ period. All feedback has been reviewed and recommendations for minor amendments made to the Programme Board. Members had identified in advance the proposed amendments requiring further debate.

Flexible Work Pattern Policy and Flexible Work Location Policy

A discrepancy was identified in the review section. The Flexible Work Pattern Policy stated that if the agreement is being ended following formal review that the employee should be given reasonable notice of the date of the change. Whereas the Flexible Work Location Policy stated that the employee should be given 3 months’ notice of the date of the change.

This point was discussed at the last meeting of the Programme Board and a decision deferred until the end of the ‘soft launch’ period. Feedback received from NHS Boards requested consistency across the two policies.

After considered debate, members agreed to 3 months’ notice of the date of change to an employee’s work location / work pattern, unless mutually agreed otherwise. This wording will apply to both the Flexible Work Location Policy and Flexible Work Pattern Policy.

ACTION 01: Programme Team to amend Flexible Work Location Policy and Flexible Work Pattern Policy review section to state 3 months’ notice of the date of change, unless mutually agreed otherwise.

Retirement Policy

The Programme Board discussed the proposed amendment to the definition of phased retirement in light of the extension of Partial Retirement to all schemes.

The Board agreed the proposed wording to reflect the need to leave employment to access phased retirement with the addition of the word “potentially” in respect of accessing a pension. The definition should read “Phased retirement is a planned, agreed reduction of working time in the period leading up to the date when an individual leaves to potentially access their pension.”

ACTION 02: Programme Team to amend Retirement Policy definition of Phased retirement to read “Phased retirement is a planned, agreed reduction of working time in the period leading up to the date when an individual leaves to potentially access their pension.”

Flexible Work Location Policy – working from home requests restricted to UK

Additional feedback had been received from the NHSScotland Information Governance Leads highlighting the range of considerations for working outside of the UK. The Programme Board discussed the position on a request for home working under the Flexible Work Location Policy being restricted to working within the UK. The reason for this position goes beyond information governance where, after a period of time, the

employment legal framework for that country would apply. This poses a risk to NHS Boards.

Members agreed to amend the Flexible Work Location Policy guide for managers and guide for employees to remove reference to "due to the need to comply with legislation and regulations regarding data protection." Both documents should simply state that requests to work from outside the UK will not be approved.

ACTION 03: Programme Team to amend Flexible Work Location Policy guide for managers and guide for employees in respect of requests to work from outside the UK will be not approved, to remove reference to "due to the need to comply with legislation and regulations regarding data protection."

The Programme Board approved the remaining proposed amendments as a result of 'soft launch' feedback as outlined in the paper (agenda item 3.1).

3.2 Request for Change – Attendance Policy

A request for clarity on the NHSScotland Attendance Policy in respect of industrial injury was received through the governance structure and remitted to the Policy Development Group to provide a recommendation to the Programme Board.

It was discussed that the original wording was intended to remind managers of the need to record industrial injury for pay purposes. The reason for the reference to payment was to confirm the importance of doing this for future sick pay. Sick pay due to an industrial injury reflects pay during sickness absence.

The Programme Board approved the revised wording:

"Where an employee's absence from work is due to an injury, disease, or other health condition which is wholly or mainly attributable to their NHS employment, the manager must make sure of the following:

- All appropriate documentation, including an incident report, is completed.
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) are complied with.

The manager must record that the absence relates to injury at work for payroll purposes. Absences related to an injury at work will not be counted towards calculating future sick pay entitlement. Sick pay due to an industrial injury reflects pay during sickness absence. Read the policy section on pay during sickness absence for further pay information [ANCHOR LINK TO SECTION]. The employee should also be advised of the potential entitlement to NHS Injury Allowance [HYPERLINK TO TERMS AND CONDITIONS].

The employee will be supported under this policy's return to work provisions. This includes the potential introduction of reasonable adjustments and consideration of any revisions to the absence triggers."

ACTION 04: FH to formally respond to correspondent detailing the decision of the Programme Board and agreed revision to the NHSScotland Attendance Policy.

4. Phase 2.2 Draft Policies

Noreen Clancy (NC) introduced the early policy drafts prepared by the PDG for review and steer on the points raised.

Employment Checks Policy

The Programme Board was content that the Employment Checks Policy focused on pre-employment checks, acknowledging ongoing checks elements. NHS Board local policies are in place for revalidation of professional registration.

Members agreed that in reference to any gaps in an applicant's employment or training history that this should be defined as 31 days. This is consistent with the National Protective Security Authority (NPSA) guidelines.

The Programme Board reviewed the draft section on additional employment. NC noted the focus on additional employment and a less prescriptive approach particularly in relation to voluntary and unpaid activities. Members reflected on the situations where a manager should consider and may explore this further with the employee. It was recognised that while the policy may contain an overarching statement, the guide for managers will be particularly important in terms of the approach and describing reasonable conversations.

Fixed Term Contracts Policy

The extant PIN currently has a needs assessment framework attached to the policy to determine if a post can be done on a fixed-term basis. The Programme Board agreed to remove the needs assessment framework as this is not used in practice.

In the section on ending fixed-term contracts, members supported the recommendation to remove reference to "with the authority to dismiss" on the basis that the contractual position has not changed and therefore there would be no expectation of longer employment. However, it was agreed that advice should be sought from Central Legal Office on this matter and the contractual notice period.

ACTION 05: Programme Team to seek CLO advice on removing reference to "with the authority to dismiss" and contractual notice period within the ending fixed-term contracts section of the Fixed Term Contracts Policy.

Secondment Policy

The Programme Board supported the removal of reference to a Secondment Coordinator, recognising that in practice local arrangements are in place for managing the secondment process. A statement to process in line with local procedure has been added to the releasing manager responsibilities.

Discussion followed on the practice where Boards are using secondment for longer than 2 years. Wording was included in the draft policy to allow extension or a longer term secondments in exceptional circumstances. Gordon Mackay (GM) noted caution in referencing exceptional circumstances and invited further discussion when reviewing the next draft of the policy.

Facilities Arrangements for Trade Unions and Professional Organisations Policy

NC advised that the PDG felt that in order to draft the procedure section of the policy, further information is required on how this operates in practice within Boards. In particular, in reference to full-time release arrangements and funding. Steven Lindsay (SL) noted that participants in this specific workshop at the engagement events was predominantly staff side. There is a need to understand current practice and the level of variation across Boards. Two questions have been drafted to understand 1. mechanism for release of accredited representatives and 2. Fund or budget for facility time and partnership working.

In relation to the issue of release arrangements, Norman Provan (NP) suggested that this question be expanded to facility time per se. Members agreed that this question should include part-time and full-time release. NP further noted more variation in this policy than any other PIN, and the refresh should seek to reduce that variation.

James O'Connell (JO'C) reflected on the difference between facility time and partnership working and what the programme is seeking to extract from this question. GM agreed that there was a need to differentiate between facility time and partnership working and that this should be described fully.

JJ suggested that the Programme Board should express what should be achieved through this policy. For example, good industrial relations, a position where trade union colleagues have time to represent members, participation in partnership working, and delivering a service.

The scope of the programme is for a refresh and not renegotiation of the PIN policies. However, NP proposed that this policy requires some renegotiation to remove ambiguity where application in practice is markedly different. Anna Gilbert (AG) noted the need for regular checks with the Scottish Workforce and Staff Governance (SWAG) Committee should this move into the space of renegotiation.

The Programme Board supported revised questions on release and on whether Board's have a specific fund or budget for facility time and / or partnership working to be asked of NHS Boards via the Employee Directors and HR Directors. It was requested that the information be collated and a summary report prepared for the Programme Board to review and provide a steer on the ask of the PDG to develop this draft policy. It was recognised that the outcome of this work may necessitate a longer timescale than the programme plan agreed for the set of policies in this phase.

ACTION 06: PDG to review questions on release arrangements and funding and issue request to NHS Board Employee Directors and HR Directors.

ACTION 07: PDG to prepare a summary report on facilities release arrangements and funding practice across NHSScotland for Programme Board review and steer on the parameters for policy development.

Gender-based Violence Policy

Members considered the current PIN ask for confidential contacts for GBV. Whilst the extant PIN refers to GBV Confidential Contacts where these exist, the PDG is not aware of Boards having this in place. It was agreed that due to the specialist nature that is unrealistic to have numbers trained to this level. The role of the employer is to support and signpost to specialist services.

Members discussed the need to emphasise that women are significantly more at risk of GBV. The Board also supported the importance placed on a trusted individual, recognising that, for this policy, the manager may not be the right person.

The gender based violence lead, where available, can provide specialist advice on GBV concerns. It was noted that this role is variable across Boards. Members recognised the importance of knowledge across the workforce policies for HR advisors and managers to know what supports can be made available where requested.

5. Programme Highlight Report

Lynn Hunter (LH) spoke to the Highlight Report for the period from September to October 2023. Following review of the queries submitted during the 'soft launch' and Programme Board approved amendments, LH confirmed that website updates will be complete for 'go live' with staff and managers on 1 November 2023.

LH asked members to confirm that they were content that a communication be issued after this meeting to HR Directors and Employee Directors detailing all agreed changes as a result of the 'soft launch' feedback. This would be followed by a reply to individual NHS Boards in response to their specific queries raised during the 'soft launch'. The Programme Board agreed to these communications.

ACTION 08: LH to issue communication detailing all agreed changes as a result of the 'soft launch' feedback to HR Directors and Employee Directors.

ACTION 09: LH to provide a reply to individual NHS Boards in response to their specific queries raised during the 'soft launch'.

7. Any other Business

None.

8. Date of next meeting

The next meeting of the Programme Board will be held on Thursday 7 December from 13:00-15:30.