

Meeting Minutes

Meeting: NHSScotland 'Once for Scotland' Workforce Policies Programme Board

Date: Thursday 25 April 2024, 14:00 – 16:00

Location: MS Teams

Attendees:

Present at the time of writing:

(FH) Fiona Hogg, Chief People Officer, Scottish Government **(Chair)**

(JB) Janis Butler, HR Director, NHS Lothian

(NC) Noreen Clancy, Head of Employee Relations, NHS Lothian (PDG Chair)

(AG) Anna Gilbert, Head of Workforce Practice, Scottish Government

(CH) Catriona Hetherington, Programme Lead, Scottish Government

(JJ) Jacqui Jones, HR Director, NHS Lanarkshire

(GM) Gordon McKay, UNISON Health Committee

(NP) Norman Provan, Associate Director (Employment Relations), Royal College of Nursing (RCN)

(SN) Sasha Neradna, Project Manager, NHS National Services Scotland

Also in attendance:

(MK) Maruf Kadiir, Policy Support Officer, Scottish Government (Minute)

(AS) Aileen Stewart, Business and Development Support Officer, Scottish Government

Apologies:

(SL) Steven Lindsay, Employee Director, NHS Grampian (PDG Vice-Chair)

(JO'C) James O'Connell, Regional Officer, Unite

1. Welcome and apologies.

Fiona Hogg (FH) welcomed members to the programme board and welcomed Sasha Neradna (SN) to the group. FH also noted apology for the delay in distributing the papers. Apologies were noted from Steven Lindsay.

2. Minute from previous meeting and review of actions.

The minutes from the 21 of March 2024 meeting were agreed.

AP 01 (21/03/2024) – Jacqui Jones (JJ) provided an update on the action, stating that she had an informal conversation with the HRD of the Board. She has drafted an email from herself and James O'Connell to formally arrange a meeting (in progress).

AP 02 (21/03/2024) – FH confirmed that this action has not been started and confirmed it will be scheduled on the completion of the consultation analysis (not yet started).

AP 03 (21/03/2024) – agreed to close the action and noted that it will be updated for clarity (closed).

3. Miscarriage Leave paper

Catriona Hetherington (CH) relayed the key points from her paper that was circulated prior to the meeting. The NHS England National Pregnancy and baby loss people framework provisions are not mandatory and do not reflect their terms and conditions of employment handbook provisions that reflect those in NHSScotland. In view of this, the Policy Development Group (PDG) are content that in applying a person-centred approach, the NHSScotland policies reflect the NHS England provisions in terms of miscarriage leave and pay. The NHSScotland policies include more generous provisions for the partner to access more special leave than is offered in NHS England framework. It was noted that the NHSScotland workforce policies and terms and conditions do not specifically reference neonatal loss or maternity leave and pay for this situation. The PDG recommendation is that they review the NHSScotland provisions to consider continuation of maternity leave and pay where an employee experiences neonatal loss. CH invited comments and feedback.

Gordon McKay (GM) commented on the person-centred approach and flexibility, noting that there is ambiguity regarding such an approach in the event of baby loss. GM acknowledged that, according to the special leave and NHSScotland policy, more than two weeks of leave cannot be granted.

GM highlighted concerns about how managers will make decisions for individuals who have suffered the loss of a baby, questioning the implementation of a person-centred approach and the manner in which sensitive questions will be posed to the bereaved. GM further inquired about the criteria managers will rely on to determine entitlements.

GM acknowledged that in England, managers have a recommendation within the policy to guide their decision-making regarding the loss of a baby entitlement leave but noted that no such guidance exists for managers in Scotland within the policy. He also highlighted the need to question the implications of this disparity in England. Additionally, GM suggested a policy change to include recommendations and entitlement guidelines to assist managers in making informed decisions in Scotland.

Janis Butler (JB) highlighted the necessity of understanding different perspectives and experiences, with many of our managers being capable and confident in having sensitive discussions and exercising judgement. She noted that it would be helpful to consider if we could make the guidance a bit clearer, so a person centred approach can be sensible and achievable.

Noreen Clancy (NC) acknowledged that the policy is not absolute entitlement and suggested that absolute entitlements would be for the Scottish Terms and Conditions Committee (STACC) rather than for the programme group.

Norman Provan (NP) acknowledged the difficulty of having this conversation between the individual and the manager and noted that whilst there is a view that the provisions of the English framework are more generous than the NHSScotland policies, points in the paper indicate that they are not. He referred to proposal to review in terms of neonatal death and felt this would be reasonable.

GM confirmed that NHS England did not take this to the Staff Council for a handbook update.

NP suggested we look into this further.

JJ stated that the remit of the group is to review the PIN policy and not to introduce new policies and noted that she was supportive of the comments expressed by JB. She suggested that we have provisions in place to enable this, but it may be helpful to have further guidance around this.

GM advised that he would be looking to take a paper from Unison to the next SWAG meeting.

NP Suggested that given the SWAG meeting date, it may be helpful to first bring a further paper outlining the suggested changes to the next PB meeting.

Decision 01: It was agreed that the PDG would give further consideration to providing clarity about existing provisions, in view of the NHS England non-mandatory provisions.

Action 01: Develop proposals to be discussed at the next PB meeting. (Owner: PDG)

4. Programme Highlight Report – CH

CH provided an update on the program report, noting that the current RAG status is 'Amber'

The consultation analysis is underway and making steady progress. However, due to the volume of feedback received and the transition of the programme management arrangements that is underway, this may extend into early May.

Consultation analysis of feedback on the Equality diversity and inclusion policy, Employment checks policy, and Facilities policy have been completed. Work has already commenced in drafting the proposed changes to these policies and guides in response to feedback.

The consultation analysis of the Redeployment policy is almost complete and analysis of the feedback for the Gender-based violence and PDPPR policies are scheduled to commence shortly.

Work is ongoing to ensure that the Annual leave calculator reflects the circular that will soon be published. The calculator is currently in the user-testing stage.

The change requests pertaining to the New parent support policy and the Special leave policy have been implemented.

A newsletter will be issued to inform the service of the progress.

5. Key issues arising from the consultation for review – NC

Noreen Clancy (NC) provided an update on the key issues arising from the consultation for review, noting that most of the feedback has been reviewed.

Equality, Diversity and Inclusion Policy – NC stated that this policy has received the most extensive feedback and also noted that while no significant changes requiring approval from the program board have been identified, there is a focus on refining specific aspects of the policy. NC mentioned that a few responsibilities for employers have been added. Additionally, feedback reflected the challenges of separating discrimination from harassment and the situations when Grievance policy versus the Bullying and Harassment Policy should apply. This is being checked with Central Legal Office (CLO). There was considerable feedback regarding the inclusion of specific provisions about racism and racial equality. This is a generic policy that covers all protected characteristics. However, it may be useful to develop a guide covering race.

NC stated that there is feedback received asking why reference to Human rights has been excluded. NC Noted that previous feedback from SMEs indicated human rights was more applicable to patient related issues than staff management. Inclusion was therefore more appropriate for a workforce policy.

JB noted that there is an expectation that Boards are doing work on anti-racism plans and agreed a guide would be helpful.

Decision 02: A guide should be developed to support the EDI policy and assist Boards with the required anti-racism plans

Action 02: Develop a guide on race to support the EDI policy. (Owner PDG)

Gender-based Violence – NC noted that the Gender-based Violence policy consultation analysis has not yet started.

Facilities Arrangements for Trade Unions and Professional Organisations – NC noted that consultation feedback themes and recommendations for change. NC noted the feedback that there was no reference to what next steps should be taken, following a disagreement over a facility time request. The Programme Board were asked for a view whether a resolution of disagreement section should be added to the policy.

JB recognised the differences between boards and how this affects how decisions are made and suggested using the existing process which would be the Grievance policy.

GM relayed challenges of these decisions being made at first level line management and suggested that any grievance panel should be of senior staff rather than the normal grievance process.

NP suggested that when someone becomes a rep, it would be good practice for the Employee Director and HR Director to write to the manager to confirm that the individual will need time off. He suggested adding into the guidance for managers, factors to consider when deciding whether to approve a request.

NC referred to the wording in the extant PIN around making unions aware of or highlighting unions to new members of staff. GDPR aspects are being checked with CLO.

FH stated that generally there are already processes in place that could be used around this and they are an established route of escalation. FH noted that it does not feel a specific escalation process is needed, rather that they are directed to the grievance process, and the early resolution stage in the first instance.

Decision 03: Agreed that further guidance about what to consider when deciding whether to approve a request would be helpful.

Action 03: Add to the guides, factors to consider when deciding whether to approve a request. (Owner: PDG)

Decision 04: Seek legal advice on the legal permissibility of the existing PIN, which states, “Where practicable, provide organisational contact details of new employees

or those employees changing jobs, or alternatively provide such employees with contact details of recognised trade unions/professional organisations.”

Action 04: Provide an update on the legal permissibility of the existing PIN, which states, “Where practicable, provide organisational contact details of new employees or those employees changing jobs, or alternatively provide such employees with contact details of recognised trade unions/professional organisations.” (Owner: Noreen Clancy)

Personal Development Planning and Performance Review – NC also noted consultation analysis has not yet started on this policy.

Fixed-Term Contract – NC highlighted Consultation feedback themes and recommendations for change. The PB were invited to comment on question 1 about redeployment access periods for employees displaced due to non-renewal of fixed term contract; question 2 about potential for permanently appointing employees with more than 2 years’ service and the definition of continuous service in this situation; question 3 about the status of posts and contracts when the post is made permanent and whether further clarity is needed.

GM questioned why a three-month redeployment period cannot be granted when there would be no associated costs.

NC responded that there is potential cost relating to contract extension and redundancy rights.

NP Noted the challenges associated with an employee leaving a fixed term contract early to take on a new role. He stated that if it is known before the 3 months before the individual’s contract it is going to end the aim should be to give 3 months’ notice.

JJ agreed with the point raised by NP and stated that it is a very challenging to manage and suggested having flexibility which allows that movement would be good way forward.

FH summarised the comments, emphasising the need to review the wording to clarify the intention, and expressed belief that retaining the absolute minimum notice period as specified in the PIN is essential.

Decision 05: The redeployment access period for employees displaced due to non-renewal of fixed term contract should remain as up to three months but no less than their contractual notice period.

Action 05: Review guides to include clarify that whilst the redeployment access period for employees displaced due to non-renewal of fixed term contract is up to three months but no less than their contractual notice period, there should be flexibility but the intention is that three months will normally be given. (Owner: PDG).

Decision 06: In the case of permanently appointing employees with more than 2 years' service, it was agreed that continuous service was intended to mean the same employer for the purposes of permanent appointment. This mirrors the requirement for permanency after 4 years.

Action 06: Review guides to clarify that in the case of permanently appointing employees with more than 2 years' service, continuous service means the same employer for the purposes of permanent appointment. (Owner: PDG)

Decision 07: It was agreed that the current policy wording is correct and no change is required. It states that when the post is made permanent and the employee is on a fixed term contract they are required to apply for this post through normal process. Where the fixed term contract is nearing the end date, the employee should be considered for the permanent post through redeployment.

Secondment – NC also highlighted consultation feedback themes and asked the PB to note feedback received about individuals being seconded into the organisation who are bound by their substantive post organisation and are therefore not included in the current policy scope. The PB agreed that the NHSScotland workforce policies are for the employees of organisations within NHSScotland. FH suggested that a statement to that effect was added to the policy or guidance for clarity.

Decision 08: The PB agreed that the NHSScotland workforce policies are for the employees of organisations within NHSScotland and this should be clarified in the policy or guides.

Action 08: Add a section into the policy and/or guide to reflect the policy scope in terms of external secondees into the organisation. (Owner: PDG)

Redeployment – NC further highlighted consultation feedback themes regarding redeployment and asked the PB to consider whether individuals on redeployment who are new to the redeployment register or not formally matched to the vacancy prior to advertising, should still be considered before other candidates. The PB agreed that they should be considered up until the point of formal offer to candidates.

Decision 09: Agreed that individuals on redeployment who are new to the redeployment register or not formally matched to the vacancy prior to advertising, should still be considered before other candidates applying through the normal recruitment process up until the point of formal offer to candidates.

Action 09: Clarify in the guides that individuals on redeployment who are new to the redeployment register or not formally matched to the vacancy prior to advertising, should still be considered before other candidates up until the point of formal offer to candidates. (Owner: PDG)

6. Risks & Issues – CH and FH

FH provided all the programme risks for visibility and stated that the programme board was asked to review risks and mitigating actions and also identify and record new risks and issues.

FH stated that there are currently two significant risks: one being the risk that challenges in delivering financial balance might reduce the programme budget, which has been rated with a score of 8, and another being the risk that resources may not be made available to support the work of the PDG, which has been rated with a score of 12.

For the current phase Catriona Hetherington confirmed that the budget for digital initiatives in the 2024/2025 fiscal year has been secured and suggested scheduling a follow-up meeting in a couple of months to review progress and discuss further details.

FH suggested drafting a risk related to the potential challenges of change. Given another meeting scheduled soon after this one, she recommended drafting them in the appropriate format, and bringing them back to the next meeting for discussion. Specifically, the discussion should focus on the scores concerning the impact of changing resources and the continuity of resources.

NC expressed ongoing concerns on behalf of the PDG due to the current staffing configuration. She noted that although there are some resources available, including a part-time Project Manager and Catriona Hetherington taking on aspects of the programme manager role. Previously, the group had a full-time programme manager, a full-time project manager, and administrative assistant. NC shared her concern about the challenges Catriona faces in balancing these responsibilities with other responsibilities associated with the reactive nature of a Scottish Government role. She also noted that Janis, Jacqui and herself are having conversation going forward regarding employer representation with her intended retirement.

NP stated that the risk associated with resource allocation could be heightened due to individuals holding dual responsibilities and the potential departure of key personnel from the programme board due to retirement.

Sasha Neradna (SN) noted that they have now finalised the handover from Lynn between herself and Catriona.

Decision 10: It was agreed to adjust the risk associated with the budget to an 'Amber' status and to assign it a score of 12.

Action 10: Develop a comprehensive plan that outlines the roles and responsibilities necessary for advancing the program. This plan will include all changes, resource allocations, and details on the integration of new project support, thereby providing a clearer understanding of the associated risks. (Owner: Sasha Neradna, Catriona Hetherington and Fiona Hogg)

Decision 11: It was agreed that the potential new risk that the structures, experience and procedures established through the 'Once for Scotland' Workforce Policies Programme are not fully utilised for the wider reform agenda should be given consideration.

Action 11: Bring the new risk which is a risk that the structures, experience and procedures established through the 'Once for Scotland' Workforce Policies Programme are not fully utilised for the wider reform agenda to the 31 May 2024 group meeting as part of the wider profile. (Owner: Sasha Neradna, Catriona Hetherington and Fiona Hogg)

7. Programme Board membership – FH

FH noted that Programme Board member Jeff Ace has retired and mentioned that they have reached out to the Chief Executives for another nomination. The Chief Executives are currently reviewing their approach to nominating representatives on the group. They suggested are particularly interested in leveraging the inspiring Chief Executive cohort where appropriate. It was suggested that this might be an appropriate programme board for one of the inspiring Chief Executives to represent employers alongside other colleagues.

NP acknowledged that the decision to select representatives' rests with the employers, who are responsible for nominating individuals to represent them.

GM indicate that he was also content as long as the employers are happy with the one of the inspiring Chief Executive to represent them on the group.

Decision 12: Agreed that rather than a PB decision, employees should nominate individuals to represent employers on the PB.

Action 12: Conversation regarding memberships i.e. employer side representative on the group and feedback to the Chief Executive and have a solution in place for the next meeting. (Owner: Fiona Hogg and Janis Butler)

8. AOB

NP shared that he had received a request from the British Dental Association (BDA) for seats on both the Scottish Workforce and Governance Committee (SWAG) and The Scottish Partnership Forum (SPF). He explained that this was in relation to a previous PB decision to add salaried dentists to the scope of the NHSScotland Workforce Investigation Process without being involved in that decision. The BDA were looking to either submit their concern to the PB in writing or to attend a future meeting to present their concern.

JB stated that she prefers the BDA to put their issues in writing for the board to review and consider, rather than adding them as an agenda item for the next meeting.

GM stated that it is ultimately up to the Trade Unions to decide whether to grant them a seat on a partnership group. He also highlighted that if there is a specific issue affecting dentists on which a decision has been made, the appropriate steps would be: first, they should write to us, and second, if their request is reviewed, we should at least allow them to speak to the specific agenda item concerning their interests.

NC confirmed that this inclusion in scope was made as a change on advice from the Central Legal Office (CLO).

Decision 13: It was agreed that the PDG Chairs should discuss this directly with the BDA to obtain further details about their concerns. They will invite a paper from BDA for their review for consideration as to whether there is a need for BDA attendance at the next meeting.

Action 13: NC and SL to meet with the BDA to discuss the decision which have been made which in turn affected them and their concern. (Owner: Noreen Clancy and Steven Lindsay)

Date of next meeting:

Friday 31 May 2024, 09:30-12:00