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Minutes

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

Date: Friday 31 May 2024

Location: MS Teams

Attendees:

(FH) Fiona Hogg, Chief People Officer, Scottish Government (Chair)
(NC) Noreen Clancy, Head of Employee Relations, NHS Lothian (PDG Chair)
(CH) Catriona Hetherington, Programme Lead, Scottish Government
(JJ) Jacqui Jones, HR Director, NHS Lanarkshire
(SL) Steven Lindsay, Employee Director, NHS Grampian (PDG Vice-Chair)
(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)
(SN) Sasha Neradna, Project Manager, NHS National Services Scotland

Apologies:

(JB) Janis Butler, HR Director, NHS Lothian
(AG) Anna Gilbert, Head of Workforce Practice, Scottish Government

1. Welcome and apologies

Fiona Hogg (FH) welcomed members to the meeting.

2. Minute from previous meeting

FH advised members that the action log would be reviewed at the end of the meeting, as some actions may be resolved during the session.

Gordon McKay (GM) raised an issue with item 3 of the Miscarriage Paper, specifically the third paragraph, second line regarding the "implementation of a person-centred approach" GM highlighted this may have a negative connotation.

FH confirmed changes to reflect GM points would be considered.

Action 01 Catriona Hetherington (CH) to revisit and clarify the proposed provisions and bring to the next meeting.

The minutes from 24 April 2024 were otherwise agreed.

3. Phase 1 – Policy amendment discussion regarding Public Dental Services employees

FH welcomed David Paul (DP) to the meeting.

DP approached the group and highlighted concerns on behalf of the BDA, specifically the changes made to Conduct and Capability policies.

DP expressed concerns that these policies were amended to include Public Dental Services (PDS) dentists, who are direct employees of health boards. He recognised that the Programme Board are empowered to make such decisions and understood the practical limitations to being able to consult every group of employees but feels that BDA should have been consulted, as these changes affect PDS dentists.

DP indicated that the BDA had become aware of the decision in question by chance, due to work on a case involving a joint member and clinical and behaviour concerns. BDA feel they should have been consulted and are therefore requesting the decision to be reversed.

DP clarified the latest update in the ongoing negotiations regarding the review of the Addressing Professional Concerns policy between the Scottish Government and Doctors and Dentists, indicating that there has been recent progress with some smaller groups taking work forward. There is an expectation to achieve a final draft by the end of the year. He noted that the main issue around non-clinical matters of external assessors appear to be resolved.

To finalise, DP left the meeting with a commitment from the group to get back to DP in writing once the Programme Board have considered the request.

Noreen Clancy (NC) provided an update to the group of when herself and Steven Lindsay (SL) met with DP and the full-time officer of BDA for Scotland. The aim of that discussion was to agree some wording change to satisfy BDA. NC highlighted the main issue in the view of BDA was the way the change was done and will need to be considered in the future. In terms of the ask, NC doesn't think it's clear exactly what was wrong in the amendments.

NC recognises the previous policy wording that excluded PDS dentists was not correct, and didn't reflect their current terms and conditions, as they said local terms and conditions apply. For all other dentists and medics, when it comes to professional misconduct and competence, they are not covered by the standard NHS workforce policies, there is another route that needs to be covered. The PDS T&Cs state that the local policies apply, and now the NHSScotland workforce policies replaces these local policies. The proposal to amend policy to reflect T&Cs was agreed by the members of the programme board, which does not specifically include the BDA.

SL acknowledged and agreed with the points made by NC. He highlighted that the PDG also discussed the issue, that the original wording in phase 1 policies were not explicit enough about PDS dentists employed directly by the health board. When NC and SL met with BDA no rationale was offered in support of their request for a reversal of the policy amendment.

NP recognised that it was unfortunate not to consult BDA and proposed that Programme Board papers to be shared in future, so any concerns can be raised by wider staff side representatives. He confirmed that the element that PSD dentists should be treated the same as other dentists is being negotiated as part of the wider consultation that the BDA is involved in on the Raising Professional Concerns policy, which is the right way to clarify this. But it is not the role of the Programme Board to question the current terms and conditions,

which are clear that at this moment local policies apply, which in this case is the OFS policy and so the policy has to be clear.

He proposed that the PB write back to BDA highlighting that the Programme Board cannot diverge from the agreed and current terms and conditions for the PDS. It is merely applying these clearly to the OFS policy, to avoid errors in previous policy statements being continued. If the PDS dentists are added to the Doctors and Dentists arrangements, then we will be instructed to remove them from the NHS arrangements and will make the necessary changes. The OFS programme board has no locus in making decisions on Doctors and Dentists policy.

FH agreed this isn't a OfS issue, it's the position within other policies that needs to be changed. FH suggested that the letter responding to BDA is sighted by everyone before submitting.

Decision 01: The Programme Board agreed that there should be no change to the policy.

Action 02: NC and SL to draft a letter on behalf of the PB in response to the BDA request to omit 'some dentists' from the scope of the NHSScotland Conduct and Capability Policies. The draft will be shared with the PB ahead of the next meeting before issuing to the BDA.

4. Miscarriage Leave

CH presented to the group the proposed changes of the Miscarriage leave and Maternity policy in view of NHS England's announcement of non-mandatory provision.

CH recommended that a definition for neonatal loss is added into the Maternity policy and associated guides. For clarity neonatal loss should also be included within the provisions for employees to access their full maternity leave and pay entitlements in the case of stillbirth. This reflects the statutory position. CH confirmed that this will be reflected in the New parent support policy and the Special leave manager guide.

CH highlighted the Neonatal Care (Leave and Pay) Act 2023 will be live in April 2025 and suggested that changes for this act are made nearer to this date given that the pay element that mirrors maternity entitlements and will not be available yet.

Decision 02: It was agreed that a definition for neonatal loss is added into the Maternity policy and guides.

Decision 03: It was agreed that the Neonatal Care (Leave and Pay) Act 2023 will be live in April 25 and therefore changes will be reflected in policies nearer this date.

Regarding miscarriage leave arrangements, the Maternity and Special leave policies and guides have been reviewed in view of concerns raised by GM at the last meeting. The Policy Development Group are content that there are sufficient provisions but proposing reiterating, what is already available in the Attendance policy around triggers. This is that absences from miscarriage won't be counted towards triggers. CH welcomed any feedback.

Jacqui Jones (JJ) advised that she was not content with sickness absence, as a result of miscarriage not triggering a trigger point, and that care needs to be taken with the policy wording. CH confirmed that the intention was to mirror the wording in the extant Attendance policy.

GM confirmed he was content with the initial proposal of sickness not counting towards triggers. GM questioned the time off being facilitated through sickness absence. Not content

to support the position that time off is through manager discretion, and if the group cannot agree on a mandatory position to grant leave, then policy wording should suggest recommending leave should be given for miscarriage.

Normal Provan (NP) agreed in principle about miscarriage sickness not counting towards triggers but highlighted the potential impact of someone having repeating absences, for example on the anniversary of a death of a child.

FH suggested PDG has another look at the suggested change.

NC confirmed the reference to “facilitate leave” was signed off previously but recognised that perhaps the wording “facilitate” was not the most appropriate for all circumstances.

NP suggested that we take time to think about what we would consider to be pregnancy related recognising the link between miscarriage loss, and potential mental health absences in the years to come.

James O’Connell (JO’C) agreed that circumstances will affect everyone differently, so recognising that and being specific within the policy may be challenging.

GM emphasised that leave should go on GP’s word, not employers’ word on what that the sickness is related to, regardless of how long after the event is.

FH confirmed that the PDG would revisit the wording regarding triggers and any available case law.

Action 03: PDG to reconsider the suggested wording regarding absence management triggers in miscarriage reflecting the Attendance Policy wording and any available case law.

5. Key Issues arising from the consultation for review – PDPPR and GBV policies

NC presented the themes from the analysis of the PDPPR and GBV policy consultation responses. She confirmed that there are no specific questions for the Programme Board in relation to the GBV policy.

NC recognised the interest and investment from people who have commented on the GBV policy, given the sensitivity of the policy. These included responses from subject matter experts about definitions and the impact on other groups.

NP highlighted, that in terms of GBV policy, the OfS wording references that any member of staff may be a victim but should still reflect that it is generally more girls and women that experience GBV.

In terms of PDPPR, the debate on resolution of disagreements will be presented at the next meeting in July, when the proposed changes to the policy and guides are brought to the group.

NP continued regarding PDPPR, and that changes will come about from the non-pay elements of the pay deal are currently being worked through, so this may require further amendments.

Action 04: NC to consider potential changes to PDPPR following non-pay elements of the Agenda for Change pay negotiations. An update will be offered at the next Programme Board in July.

6. Updated policies and manager guide's overview:

NC confirmed that updates from the consultation exercise have been made to the Facilities, Fixed-term contract and Redeployment policies, with a first draft produced of each Manager guide to support these policies. The content from the Manager guide will be reflected mirrored in the Employee guides.

NC confirmed that 5 policies and guides will be presented at the next meeting on 18 July 2024.

Facilities Policy

Highlighted from April meeting, areas discussed at Programme Board included factoring in issues to consider when approving a request. The policy has included that a manager should discuss regularly with the representative on requirements and highlight any service impacts which may hinder any requests.

In terms of access to individual employment records for new starts and those changing jobs, NC highlighted some outstanding issues and that the group are working with the legal office, but proposing that when clarification has received, the policy will be amended if required, and brought for sign off at the July Programme Board meeting.

The 'resolution of disagreement' section has been added with a focus on early resolution and seek advice on resolving the matter from more senior HR and TU reps to support an early resolution where possible.

JO'C raised that if there was a situation that results in a disagreement, that the representative would have the full weight of the union behind them.

NC added in the reference to 'senior HR and TU reps', instead of standard HR and TU reps, to support an early resolution and avoid this situation in the event of a disagreement.

JO'C consider wording to include senior lay officers or senior members to emphasise how the policy would address potential disagreements.

NP Suggested that the wording should be 'seek support' rather than 'seek advice'.

JJ and GM both agreed with JO'C and NP view, and supports solution suggested from the group.

Action 05: PDG to amend the wording 'seek advice' to 'seek support' in the Facilities policy.

Fixed Term Contract Policy (FTC)

NC reminded the group of the debate at the last Programme Board meeting, regarding the PIN position that the employee on a FTC should be given the full period of redeployment, but the absolute should be for their contractual notice period. She highlighted that this has been covered in the managers guide, specifically that managers should meet with employees in sufficient time for access and to consider redeployment, clarifying it should be up to 3 months, but no less than contractual period, which mirrors the PIN policy wording.

There was discussion at last the Programme Board meeting about what service would count for the provision in PIN where the employee has more than 2 years continuous service and

meets the required criteria for permanency. The statutory provision around permanency after 4 years if criteria are met, includes continuous service with the same employer. It was therefore Board agreed that it was the same board with the 2 years.

Given the complexities around Fixed Term Contracts, an extensive section has been included in the guide on redundancy situation and what is a non-redundancy situation, and the importance of the due to payment protection. This was evidently an issue through consultation, with responses asking why there would be a redundancy payment when the NHS operates a no statutory redundancy position.

In this complexity, the PDG propose providing a template letter for FTC termination and a template letter for when a permanent employee moves to a FTC. This is intended to make sure that employees are clear of the rights that they are giving up and permanent contractual status.

JJ suggested that relating to that decision, wording could be added to inform line managers of the potential redundancy payment, as there may be a risk with someone who has long permanent service receiving a large sum.

NC confirmed this has been covered in the non-redundancy section of the guide, as the PIN actually enables recruiting managers not to employ people with a large length of service.

GM reflected on the proposed minimum period for entering redeployment and the position that there may be a potential for extra costs to employers as the average appointment time is 12-13 weeks, therefore Unison would not support position of less than 3 months.

NC confirmed that as well as cost implications, an extension to ensure 3 months on redeployment may mean the employee is entitled to a redundancy payment. This was previously agreed through PIN position, so the policy is replicating what has already been agreed.

Redeployment Policy

NC reminded the group of the discussion at the last meeting, specifically there was an ask for some agreement on how far into the recruitment process, redeployees would still be considered. Essentially, it should be up to the form of formal offer, that candidates who are not redeployees therefore a paragraph has been included to confirm this.

The group were content with NC proposals.

7. Programme Highlight Report

Sasha Neradna (SN) provided an update on Programme progress. The consultation period has been completed.

3 draft policies completed, the remaining 5 will be shared at the next programme board, and there is scope to start planning phase 2.3.

A Sexual harassment guide is currently being drafted. The PDG will review in June with subject matter experts with a view to finalising for the Programme Board 18 July meeting.

The PDG will commence work with other SMEs to draft other outstanding guides. There is ongoing work with NES digital team to start planning for soft launch and other support from a testing perspective.

PDG members will be meeting to discuss any risks and reviewing project documentation in relation to phase 2.3 planning.

SN confirmed a newsletter will be circulated in due course, to share for review and proposal before publishing to update users on progress.

Milestones

The plan is for all policies to be submitted for approval to the Programme Board in August, ahead of the SWAG meeting. The SWAG meeting date has not been set yet, but SN advised that she is looking to confirm this shortly.

The group are content with SN's update.

8. Risks & Issues

FH confirmed an update to the wider reform agenda risk, that was due to the way it was written, which is recognising that this is about an impact on us due to other work in the system, which is out with our control, so actions are incorporated to reflect that any impacts are raised early and discussed.

Group are content with FH update and current position.

SN confirmed that a risk workshop from PDG is planned for mid-June to review the risks in relation to delivery. Once completed, it will be shared with the group for meeting in July.

9. Programme Board Membership

FH reflecting on the PB vacancy after Jeff Ace, one of the employer reps, has retired from position in the PB.

Action 06: JJ and Janice Butler (JB) will pick up offline on potential replacement from DHR / HRD cohort with the aim of that person to join meeting in July.

10. Review of actions

The group agreed on mechanism of Action Log, specifically those for the PDG and not for PB, to be picked up separately.

AP4 (24/4/2024) Facilities policy

NC confirmed that the group involved are still seeking legal advice, AP to remain open.

AP10 (24/4/2024) Programme Plan

Revised due date based on risk work planned.

AP11 (24/4/2024) Risk around the wider programme.

The group are content that this is closed, as it will be managed through the register.

AP12 (24/4/2024) Programme Board Employer representative.

Revised due date for 18 July once a new member is in place.

AP13 (24/4/2024) Requested policy change from BDA.

FH confirmed to close this action and open a new action from this meeting to collaborate with the group and respond to the BDA.

AP1 Policy implementation issue.

JO'C updated the PB that he and JJ had met with the board HRD. They are content that the issue is being addressed.

NP suggested to consider feedback and encourage parties to meet together and resolve issues. Issue that a number of people within the Board were not following OfS policies and therefore he would welcome correspondence to remind Boards of the process and avoid Boards adding small changes to policies.

Decision 04: It was agreed that JO'C would now formally feedback to the union representative who raised the concern suggesting that they meet with the HRD to discuss.

Action 07: CH to draft a note on behalf of the Programme Board to remind Boards about the requirement for consistent application of national workforce policy.

11. AOB

FH referred to correspondence from a Board about bullying and harassment concerns.

FH explained that the Scottish Workforce and Staff Governance committee (SWAG) HAD received letter from a board outlining policy concerns. She suggested that PDG consider the specific questions and report back to the programme board.

The group agree with approach proposed by FH, with it being an opportunity for transparent review, and thoughtful response with findings.

NC indicated potential discussions with legal office, as issues with discrimination within the law is to do with harassment. NC to ensure that this is covered with legal office before coming back to the programme board.

JO'C informed the group of an email sighted which is seeking nominations to populate a group to undertake a test of change re the Fit Note process. He has advised that any implications for workforce policy should be highlighted to the programme board.

JJ queried whether this was about the Workforce policy or about the production of fit notes, as an operational / clinical process, and FH agreed, it would be important to ensure we understand the nature of work.

JO'C has said any questions to go to the Programme Board to be further considered.

Date of next meeting:

Thursday 18 July 10:00 – 12:00