



SWAG Extraordinary Secretariat

Tuesday 01 October 2024

14.00 – 16.00

MS Teams

Attendees:

Name	Organisation
Norman Provan (Chair)	Royal College of Nursing
Anna Gilbert	Scottish Government
Jane Hamilton	Scottish Government
Anne Armstrong	Scottish Government
Mary Morgan	NHS National Services Scotland
Christina Bichan	NHS Education for Scotland
Pamela Jamieson	NHS Dumfries and Galloway
Linda Walker	NHS Education for Scotland
Jacqui Jones	NHS National Services Scotland
Robin McNaught	The State Hospital
Steven Lindsay	Unite
Susan Robertson	Unite
Gordon McKay	Unison
Kathryn McDermott	Unison
Simon Fevre	British Dietetic Association
Scott Anderson	British Medical Association
Matt Tucker	Chartered Society of Physiotherapy
Sam Mullin	GMB

Additional attendees:

Name	Organisation
Catriona Hetherington	Scottish Government
Zachary Deponio (Secretariat)	Scottish Government
Lynn Rance (Secretariat)	Scottish Government
Magdalena Henderson	NHS National Services Scotland
Noreen Clancy	NHS Lothian

Apologies:

Name	Organisation
Fiona Hogg	Scottish Government
Lorraine Cowie	NHS Highland
Jennifer Wilson	NHS Ayrshire and Arran
Claire Ronald	Chartered Society of Physiotherapy
Ian Cant	Unison
Paul Bachoo	NHS Grampian -

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Agenda item 1: Welcome, Introductions and Apologies

- Norman Provan (NP) welcomed everyone to the SWAG Extraordinary meeting to discuss the OfS Workforce Policies Programme.
- Apologies were noted.
- Zachary Deponio (Secretariat) confirmed the meeting was quorate.
- Permission was agreed to record the meeting in accordance with Scottish Government data protection guidelines.

Agenda Item 2: 'Once for Scotland' Phase 2.2 Policies

- NP introduced Noreen Clancy (NC), chair of the Policy Development Group (PDG) and the Head of Employee relations for NHS Lothian, to talk through the policies that have been refreshed in phase 2.2 of the NHSScotland Once for Scotland workforce policies programme.
- NC provided a recap of the policies programme from earlier phases of the project to date as a helpful background to new members joining the group.
- The policies of Phase 2.2 being presented for discussion are batched under three different areas: two new categories of Equalities, and Employment contract, and the existing category of Foundation.
 - Equality, Diversity and Inclusion Policy, and Gender-based Violence Policy are under **Equalities**.
 - Facilities arrangements for trade unions and professional organisations policy is under **Foundation** as it underpins all the policies and the advocated approach.
 - Personal Development Planning and Performance Review Policy, Employment Checks Policy, Secondment Policy, Fixed-term contract Policy, and Redeployment Policy are under **Employment-contract**.
- All the policies were posted on the Scottish Government Consultation Hub from February to March 2024 and 53 responses were received. This included 45 from organisations such as Health Boards, Trade Unions, Royal Colleges and the Third Sector, which provided helpful responses relating to Race equality and Sex equality. 8 individuals also gave feedback.
- NC confirmed that additional manager and employee guides have been developed to support the policies, and some also have flow charts. However, flowcharts have not been provided for policies which do not include a functional process, such as Equality, Diversity and Inclusion Policy.
- NC also highlighted that Employment Checks only has 1 guide, rather than an Employee and Manager Guide, as the guide provides details on what the checks are and therefore did not make a difference depending on the audience.

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- NC confirmed, that in response to consultation feedback, further guides were developed to support some policies given their sensitivity. These guides are as follows:
 - Reasonable Adjustments Guide
 - Racism Guide
 - Sexual Harassment Guide
 - Transitioning Guide
- NC highlighted that in relation to the Gender Based Violence Policy, it was clear from feedback that a guide was needed on Sexual Harassment. This guide has links to the Bullying and Harassment Policy, and the Equality Diversity and Inclusion Policy, therefore broadening the range of support available.
- To conclude the recap introduction, NC provided a reminder that the programme documentation provides all the logs of the feedback through the consultation process, highlighting which were adopted and if not, the reasons why.
- NC proceeded to provide rationale for each policy in turn and answered questions and comments for the following:

Employment Checks Policy

- Employment checks following a break in service have been considered. The Programme Board agreed with the Policy Development Group's proposal that where an individual leaves the organisation, a break of one week or more will mean that the full suite of employment checks are required. This was agreed from Programme Board, on the basis that it is the same break in service as for redundancy requirements. This supports a consistent approach.

Comments were raised and feedback from staff were shared that checks can take some time and impact on the time for individuals to be reemployed, querying why it couldn't be a longer break in service before employment checks were needed.

- NC highlighted that the statutory position had moved on, our needs to ensure we are employing the person we think we are has increased, and this was based on work done with Counter Fraud services, who shared results of more people falsifying records to gain employment.
- National guidance from UK government are more stringent on identity checks, PVG risks for registered staff are also required for periods when staff have a break in employment.

Equality, Diversity and Inclusion Policy (EDI)

- The previous PIN policy referred to discrimination previously in relation to protected characteristics but CLO Section 19A of the Equality Act allows a

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claimant to bring a claim of indirect discrimination even where they themselves do not have the protected characteristic which experiences the required group disadvantage. An individual can bring a claim for indirect discrimination so long as they can show that their circumstances are such that they are personally disadvantaged for a reason that would amount to a group disadvantage to others because of their protected legal advice has indicated this. The indirect discrimination descriptor has therefore been included.

- A scenario being the fire service's expectation that staff had to be able to carry a certain weight, and more often women were indirectly discriminated against as deemed less likely to be able to carry that weight than a man. However, a man could take an indirect discrimination claim here if he is a man who can't carry a heavyweight either.
- The definition that we had used in the early drafts of the EDI policy was from wording in the extant Bullying and Harassment Policy. This reflects that whilst harassment is targeting somebody for a specific characteristic, it is recognised that other factors i.e. social status and weight may be a reason. The whole focus of the EDI policy is about protected characteristics and the definition in this policy needs to reflect that. The definition in the EDI policy therefore refers to protected characteristics.
- Emerging case law, particularly around gender reassignment, means we will be revisiting the definition of harassment in the NHSScotland Bullying and Harassment Policy in view of personal characteristics.
- A definition of victimisation has also been added to this policy, again relating to a protected characteristic.

Pamela Jamieson (PJ) referred to links with this new policy and commented about her recent experience of application of the extant arrangements for dealing with racial discrimination through the Grievance Policy. She referred to the information sharing protocols regarding redacted access to reports and individuals raising a claim of race discrimination as a grievance not being confident that a robust investigation had been undertaken. The individuals feel that the policy does not support them or their rights under the Equality Act.

- NC advised that points about the perceived unfairness of going through bullying and harassment procedures were raised with legal office when developing the policy. It was acknowledged the area is complex, but had approval from a legal standpoint. A suggestion was made to provide an anonymised case study which could be helpful in the future.
- NP commented that these are nationally developed policies agreed and applied equally in all of the health boards in Scotland. They've been through a consultation process where individuals as well as organisations, trade unions have been able to input. Following these nationally agreed policies is the appropriate position. He recognised that if the policy was tested in some way in law e.g. if somebody for example was to go to an employment tribunal and say



that they've failed, the policy was fundamentally unfair, then that might be an outcome of an employment tribunal that we would have to then respond to.

- The Chair advised that a hypothetical case study can be taken to the Programme Board to decide the best way forward but also reminded the group of the process already in place through the PDG, made-up of employers, staff side and Scottish Government officials. It was reiterated that a process of escalation is in place for resolution before it comes to a full SWAG meeting.

Action: [01102024(1)] Agreed to present a case study to the Programme Board- [Action Jacqui Jones]

Racism Guide

- A range of guidance had been developed following information, experiences and feedback from the consultation, some examples of racism being not getting promoted or regarding feedback from interviews etc. The Central Legal Office added that this was in comparison to interview feedback given to a person who was not from an ethnic minority background.
- NC confirmed that the guide had been developed in a consistent format to the others, such as the sexual harassment guide in terms of readability.
- NC highlighted that this guide is intended as a complimentary educative document that is complementary to existing policies and guides.

Reasonable adjustments Guide

- The Attendance Policy produced a lot of feedback in 2020 requesting more details on reasonable adjustments. PDG considered Reasonable Adjustments to sit under EDI, however it was an opportune time to revisit as the Central Legal Office indicated that in terms of protected characteristics, if somebody has a severe disfigurement that would be a disability, so this was duly added into the descriptors.

Sexual harassment Guide

- NC acknowledged the clinical leadership fellows and medical staff who were working with the Scottish Government on work that's been coming out recently, particularly in regard to surgery about the impact of sexual harassment on largely female staff.
- A piece of work and research had produced a guide and the PDG worked with them to bring it more into the Once for Scotland style which had been signed off by the Central Legal Office.

Transitioning Guide

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- NC highlighted the challenge that Boards experience in relation to the sensitive nature around transitioning including the issues relating to single sex space toilets, changing rooms and what kind of guidance can be given. Particularly, whether having a Gender Recognition Certificate (GRC) will make the difference as to which facilities an individual can use.
- That is not the kind of approach to take and as the need is to be inclusive, as far as possible, whilst recognising that there are competing rights here and a very difficult area to balance. So, this approach has been taken, and Central Legal Office has approved.
- The PDG and Programme Board will be updated on a very regular basis about ongoing case law and any changes considering this. For now, we don't advocate asking people if they have a GRC.

NP invited comments from the group in relation to the 4 additional guides. The following was raised for Reasonable adjustments guides:

- It was felt that neurodiversity issues, i.e. dyslexia should be highlighted more within the policy.
- Suggested amendments to wording of the guide, to highlight employer's liability- replace the words 'could be liable' to "would be liable" when discussing employer responsibilities.

Action: [01102024(2)] NC to take both suggestions back to PDG to consider and reinforce points.

Facilities arrangements for trade unions and professional organisations Policy

- NC confirmed that this refreshed policy has been expanded on the current PIN policy but intended to be clearer about the legislation on having to report on time off for trade union and professional organisations duties and activities.
- In NHSScotland, we have a different Employee relations model so we wanted to be clear that participating in partnership as it is not the same as trade union activities.
- The data protection legislation has also moved on, and potential challenges could have resulted from staff under GDPR legislation regarding information sharing with trade unions.
- It was agreed that further clarifications would be included within the induction process where we advocate for employees being in Trade Unions. There will also be explicit guidance on health, safety and wellbeing included in the next phase of the programme, which focusses on 'Managing Health and Work'.
- Toby Rockledge suggested including further detail about the role of a Health and Safety Rep. and how that impacts their facility time.
- Seven Lindsay re-iterated the house style of the NHSScotland policies and the need to keep these succinct and also referred to the Managing Health at Work policies that will be considered in the next phase of the programme.

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Fixed-Term Contracts Policy

- Clarity was required on two different types of fixed term contracts for when they come to an end i.e. Redundancy or non-redundancy where the job/post is continuing e.g. employee on maternity leave then returning. Or employment coming to end due to fixed term of post disappearing.
- Three letters have been developed to support this policy including the loss of a permanent contract letter. A typo in one of the letters was highlighted.
- It was highlighted that aspects of the Fixed term contract, Secondment, and Redeployment are closely aligned. Hyperlinking these documents and also maternity policies is helpful.

Action: [01102024(3)] A typo in one of the fixed term contract letters will be amended.

Gender-Based Violence Policy

- NC provided some background and context advising that that the PDG worked very closely with subject matter experts in these areas of equality and diversity.
- The programme board considered all of the “ Equally safe at work “ guidance and included the lines “these policies are inclusive” to ensure that not just for females but any male or someone in a same sex relationship, can come forward if they are being subjected to violence in this way. This is to ensure the policy was consistent with the ‘Once for Scotland’ style.

Comments were received regarding including more detail around stalking in the GBV policy but it was offered that this is covered within the extant Bullying and Harassment policy.

Secondment Policy

- A definition on the difference between a service level agreement and a secondment was given and the PDG are now comfortable with the incorporated wording around secondment.

Comments were received regarding the length of time that someone can spend on secondment and whether people could be treated differently than a fixed-term contract for the same time period. NP advised that cases of this nature are currently with Fiona Hogg, Chief People Officer, in the Scottish Government and will be reported on in due course.

Redeployment Policy

- A key change in the redeployment policy can be described as the pecking order for getting posts. Employment and case law has changed again over time, so the

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priority is staff who are pregnant/going on maternity leave or where jobs disappear as a part of organisational change and people with disabilities.

Comments were received regarding page 7 of the document specifically to ask what would the number be defined as in relation to the word declining “several “job opportunities being made available and would there also be a requirement to have a statement around grade protection when deployed at a lower banding.

- NP proposed that although it has been previously discussed with the Programme Board it will be taken back to them as well as the other questions or points arising from the last 3 policies.

Summary

- NP summarised that there were no fundamental changes to the policies in terms of their intention and only the small changes suggested.
- It was agreed that any of the suggestions discussed will be communicated to the programme board and SWAG members will be informed of changes.
- The escalation process will deal with any resulting objections, if necessary, and then formally asked SWAG members to approve Phase 2.2 of the policies and accept the product that was commissioned.

Members agreed to accept the national suite of policies which would now proceed into the soft launch period in October.

Agenda Item 3 AOB

- Linda Walker (LW) advised of an error and that the attendance list show that she represents GMB, which was duly noted.
- The timeline for the next phase of ‘Once for Scotland’ workforce policies programme is expected to be completed by the end of 2025 but there are resourcing issues that need to be addressed.
- The ‘Once for Scotland’ programme has delivered very strong products over the last few years and a special mention was made to Noreen who is due to retire.
- NP closed the meeting by acknowledging the contribution that Noreen has made to the whole process of all the policies throughout the last four years.
- Comments from the group highlighted a fantastic servant and excellent colleague to work with over many years, both in the day job in Lothian and HR but also in her national work which has been exceptional.

Noreen thanked the group for the kind words and expressed her gratitude to the team around who have helped make it easy to do.

The meeting was then ended.

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