

Guidance to assist local staff sides facing proposals to change pay terms and conditions



Federation of
Clinical Scientists



Royal College
of Nursing



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Midwives



THE SOCIETY OF
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Guidance to assist local staff sides facing proposals to change AfC

Background:

The joint NHS trade unions originally issued bargaining advice to assist staff sides meet the challenges posed by the actions of some NHS employers to cut pay, terms and conditions in 2011. Some Foundation Trusts in England now appear to be gearing up for a more serious and co-ordinated attempt to make changes to Agenda for Change locally including threatening to dismiss and re-engage staff on new terms and conditions if the trade unions do not agree to negotiate. Although the recent success of the NHS trade unions in challenging Central Manchester Hospitals Foundation Trust may start to have an impact and limit the appetite for changes to terms and conditions, Trusts may reduce staff costs in other ways including re-profiling their workforces and implementing down-banding – i.e. re-grading jobs at a lower band (but still expecting staff to undertake the responsibilities of the former higher grade). In light of these developments, we are now issuing updated advice.

The advice also provides questions to assist trade union reps to interrogate financial plans in view of the impact of constrained budgets on the workforce through job cuts, redundancies, workforce re-profiling and down-banding.

Also included with this advice is a list of key questions for local union to ask in order to engage in meaningful local consultation over possible redundancies.

This advice has been agreed by all NHS trade unions nationally and is designed to help regional and local trade union reps deal with similar proposals by NHS employing organisations. It is written primarily for use in English NHS Trusts.

We are committed to national bargaining; it means fair and equal pay and provides openness, transparency and consistency. Local negotiations weaken our bargaining power, fragment the national collective agreement - Agenda for Change (AfC).

[www.nhsemployers.org/SiteCollectionDocuments/AfC tc of service handbook fb.pdf](http://www.nhsemployers.org/SiteCollectionDocuments/AfC_tc_of_service_handbook_fb.pdf)

and lead to worse pay, terms and conditions. Our overriding objective is to protect our members' jobs and their terms and conditions. Attacks on terms and conditions and lack of engagement by employers lead to poor staff morale and ultimately, this can impact on the quality of patient care.

All trade unions recognise that the NHS is going through an unprecedented period of change and austerity. While we continue to press for proper funding for the NHS and against cuts in jobs and health provision, we recognise that difficult choices have to be made in local NHS organisations. We recommend that local staff sides insist that management 'open the books' and share information on their financial position and forecasts. It is important that all employers' decisions and plans are subject to transparency and scrutiny.

Staff on Agenda for Change terms and conditions only make up part of the workforce. It is essential to ensure that they are not being treated less favourably than those on the medical and dental grades or senior managers.

Trade unions are prepared to work in partnership with employers to identify efficiencies and better ways to deliver healthcare but we do not agree that redundancies and/or cuts to pay terms and conditions are the way to meet local challenges.

We strongly recommend that trade unions work together locally through staff sides and resist proposals to cut pay, terms and conditions locally. Local staff sides need to organise themselves locally to be as united as possible and to try to avoid splits that tend to help employers divide and rule. Regional officers will be pleased to assist in the event of difficulties. Regional officers should be kept updated with developments and it is their role to keep the national staff side informed so that they can intervene if necessary.

The following checklist provides a step by step guide to resisting redundancies and/or cuts to local terms and conditions and suggests positive alternative actions. We also suggest questions to ask Finance Directors as employers implement their budget plans for the next financial year.

Trade Union Actions	Resources
<p>Step 1.</p> <ul style="list-style-type: none"> • Assess proposals. • Get a written copy of the proposals. • Seek clarification from employer where necessary. • Check systems exist to consult with members. • Consider whether and how unions can work together to create a united position. • Is the staff side involved? How? 	<p>Trade union membership records and structures, Local Staff Sides.</p>
<p>Step 2.</p> <ul style="list-style-type: none"> • Check whether the proposals involve terms covered by the national collective agreement AfC. • Consider whether the proposals provide worse terms & conditions than AfC. • If the proposals are about re-profiling the workforce, is this being done in accordance with the Job Evaluation Scheme (JE)? – see also step 10 • Is all or part of the national agreement incorporated into individual contracts? • Check if this is a proposal put by more than one employer. • Inform your Regional or National office as appropriate. 	<p>NHS Terms and Conditions Handbook Job Evaluation Handbook Effective presence & participation of staff side on local AfC JE procedures/processes as per national agreement</p>
<p>Step 3.</p> <ul style="list-style-type: none"> • If job losses are involved has the employer consulted with unions in line with legal duties and/or agreements? • Have they consulted with service users, stakeholders in line with duties? • Is the consultation meaningful? • Identify potential allies in defending jobs and services. 	<p>NHS Terms & Conditions Handbook, Section 1 Partnership arrangements. Section 16 Redundancy arrangements.</p>
<p>Step 4.</p> <ul style="list-style-type: none"> • Consider - are the proposed cuts necessary? What is the evidence? • How would the cuts impact on patients? 	<p>Monitor's Web Site – view forward (3 year) Financial Plans of all Foundation Trusts View Web Sites of NHS Trusts for Annual</p>

<ul style="list-style-type: none"> • Challenge the rationale. • What is the financial position of the employer? • Insist the employer 'opens the books'. • Has the employer considered alternatives sources of funding e.g. drawing on reserves, efficiency savings? • Can the proposed savings be made over a longer time frame i.e. not front loaded? • Has the employer exhausted non-pay savings? Have staff been engaged in suggesting non – pay savings/innovations? • Has the employer exhausted possibilities other than terms and conditions? • Has the employer asked staff about their ideas for alternatives? 	<p>Reports and Plans.</p> <p>Monitor Financial position of Trust through their monthly reports to public Board meetings</p>
<p>Step 5.</p> <ul style="list-style-type: none"> • Has the employer carried out an Equality Impact Assessment and is it adequate? 	<p>Trade Union or Equality and Human Rights Commission Guide on EIAs</p>
<p>Step 6.</p> <ul style="list-style-type: none"> • Consider - are there equal pay and equality consequences? For example in freezing/removing increments, adjustments to pay scales or terms and conditions - or proposals to put new starters on inferior T&Cs? • Are there potential equal pay/discrimination cases? 	<p>Trade Union/Legal Equal Pay Guidance</p>
<p>Step 7.</p> <ul style="list-style-type: none"> • Will the proposals affect one group of workers more than another - will these cause difficulties between unions/groups of staff? • It is important to support other union's members – we need to all work together. 	
<p>Step 8.</p> <ul style="list-style-type: none"> • Can savings be achieved by voluntary severance or early retirement? 	<p>NHS Terms & Conditions Handbook.</p>

<ul style="list-style-type: none"> • Will the employer seek to recoup costs of enhanced packages from the employee at a later stage if they are re-employed? <p>See also separate checklist on questions to ask in a redundancy consultation below.</p>	<p>Section 16 Redundancy, Section 20 Mutually Agreed Resignation Schemes (MARS)</p>
<p>Step 9.</p> <ul style="list-style-type: none"> • Consider - could there be temporary adjustments on a voluntary basis to working patterns. Care will need to be exercised in the nature of the 'temporary' adjustment and the effect on the contract of employment, e.g. working different shift patterns or reducing hours rather than posts. 	<p>NHS Job Evaluation Handbook</p>
<p>Step 10</p> <ul style="list-style-type: none"> • Where job grades are being reviewed, is this accompanied by an audit whether proposed alternative skill/grade mixes are effective? If senior grades are being removed is it clear how the clinical and managerial work done by these grades will be managed? <p>Where jobs are reviewed as part of a service reorganisation and different bands are assigned, this should be done in line with the AfC agreement and compliant with equal pay legislation not imposed. See also separate checklist for job evaluation of new and re-designed jobs below.</p>	<p>NHS Job Evaluation Handbook Equality and Human Rights Commission [EHRC] checklists on grading, job evaluation and equal pay, implementation of a job evaluation scheme. Checklist for job evaluation of new and redesigned jobs attached at the end of this guidance.</p>
<p>Step 11</p> <ul style="list-style-type: none"> • Has an risk assessment been carried out on the impact any change in working pattern will have on the remaining team (i.e. increased risk of work related stress) • Has an impact assessment been carried out on the impact on patients/the service 	
<p>Step 12.</p> <ul style="list-style-type: none"> • Consider putting alternatives - have alternative service delivery models been considered in partnership with local 	<p>NHS Social Partnership Forum Web Site</p>

<p>unions?</p>	
<p>Step 13.</p> <ul style="list-style-type: none"> • Can an HR Framework be created? e.g. job pools and ring fencing, retraining for alternative employment/new roles, entering into bilateral agreements with other employers across regions, agreeing a dowry for displaced staff to make them attractive to other employers? 	<p>NHS Regional (cluster) HR Frameworks (From SHA or Regional SPF - clusters)</p>
<p>Step 14.</p> <ul style="list-style-type: none"> • Compulsory Redundancies – has the employer complied with legislation and local or national agreements? • Are they seeking to impose by using section 188 notices? Are they meeting their legal duties? • Contact your regional/national officer 	<p>Trade Union Redundancy Guidelines Legal advice</p>
<p>Step 15.</p> <ul style="list-style-type: none"> • Lodge a dispute. • Take advice from regional/national office. 	<p>Local disputes procedures Joint working amongst local unions & reps</p>
<p>Step 16.</p> <ul style="list-style-type: none"> • Resistance - Publicly campaign against employers proposals. • Consider whether there would be support for industrial action. • Ballot members to take (industrial) action as appropriate. 	<p>Trade Union industrial action protocols</p>

Questions to ask NHS employers about their financial plans

Questions 1-4 relate to England. Remaining questions also apply to NHS employers in devolved countries.

These questions will help you get a basic picture of the organisation's financial situation and financial outlook. You don't need to be an accountant or finance expert, the questions are common sense and the Trust should provide you answers in an understandable format. The answers will help you understand what if any flexibility the organisation has to respond to increasing demand for services while at the same time coping with tighter finances. The answers will also help you ask more detailed and searching questions about financial strategy.

- 1.** Ask your Trust to give you a copy of the most recent Statement of Accounts. If they say no or are awkward look for a copy of the annual report on the Trust website – the Statement of Accounts should be in there. Also monitor the Financial position of Trust through their monthly reports to public Board meetings.
- 2.** Look at the accounts and identify what the “Retained Earnings” and “Donated Asset Reserve” figures are. These sums are the “spendable” reserves that have been put aside for a rainy day. It is quite clearly now a rainy day and we should be encouraging Trusts to use some of these reserves to prop up future budgets. They should not spend all of the reserves as that would be irresponsible (the recommended retention is 1%) but you should encourage them to look at spending some of them.
- 3.** As you look through the accounts you can use the linked “Guide to NHS Trust accounts” for non exec directors.
www.auditcommission.gov.uk/health/audit/financialmgmt/nhsaccountsguidesfornonexecutives/Pages/nhstrustaccountsaguidefornonexecutives.aspx
- 4.** Ask the Finance Director to arrange for a briefing on the Statement of Accounts and budget plans for 2012/13 for the Staff Side).

5. Ask the Finance Director/HR to share a copy of the Financial Plan for the organisation and to consult with you when it is revised.

6. If you are in a Foundation Trust these can be viewed on Monitor's web site

www.monitor-nhsft.gov.uk/home/about-nhs-foundation-trusts/nhs-foundationtrust-directory

Click on your trust then click on both tabs – annual accounts and forward planning.

7. Ask for copies of all of the finance related papers that go to the Board or finance sub-committee (if you have one). You may find papers on the Organisation's website.

8. Ask these specific questions:

- a) What savings will the pay freeze deliver on previous forecasts in 2011/12 and 2012/13 and what savings are anticipated from the Government's imposed 1% pay increase in 2013/14 and 2014/15?
- b) What is the forecast budget going forward (financial plans)? What level of efficiency savings is the organisation planning to make and from what expenditure?
- c) Ask for details of all the budget pressures/overspends in this financial year and anticipated pressures in the next financial year/s. Ask how these are calculated and how it was decided what assumptions to make? Likewise, are there any under-spends? Why?
- d) What were the reserves at the end of the last financial year?
- e) Ask for the break down the agency worker and management consultant costs?
- f) If the organisation is funding a PFI scheme, what consideration been given to renegotiating the financial terms? (The McKinsey Report estimated that Trusts in England could save a total of £200m pounds through re-negotiation)?
- g) What is the budget cycle (timetable) for the financial year, i.e. when will initial plans be considered? When will budgets be signed off and decisions made? When will the budgets be reviewed?

- h) What are the workforce predictions for the organisation? Current F.T.E. staff by staff group and future numbers? What are the supporting assumptions behind these numbers? Turnover? Skill mix? Redundancies? Vacancy rates? Temporary staffing and agency staff?
- i) Ask for regular reports on sickness rates and how the employer is planning to address any sickness absence if deemed too high.
- j) Are there any reorganisation plans, including mergers, outsourcing services, etc.

Key questions for reps to ask in redundancy consultations

The following is not exclusive but covers key questions for local union representatives to engage in meaningful local consultation over possible redundancies.

This is developed in a table format to act as an easy checklist.

A business plan from the employer, which outlines proposals for service delivery, income generation and cost savings should also be provided to support consultation.

Consultation should also occur on the proposed method for carrying out the dismissals and joint guidance should be developed for both trade union reps and managers.

Methods of calculating any redundancy payments are laid out in the AfC handbook Section 16, which you should have access to.

Questions 18 – 26 are also capable of being adapted for use in workforce re-profiling situations – adapted as appropriate.

Information to be provided by the employer

1.	Employer	
2.	Savings Required by	Date
3.	Level of Savings required	£0000.00
4.	Total number of staff employed by Trust	
5.	Total number of proposed redundancies across the Trust	

6. List of ward/Unit/function/department affected by the changes		
7. Total number of staff employed in the ward/Unit/function/department		
Total number of staff and proposed redundancies in each category	Total Employed	Proposed redundancies
<p>Generic titles are used for staffing categories below – please subdivide according to which groups are affected.</p> <p>Nursing AHPs Admin/Support services Healthcare Science Estates and Maintenance Medical Pharmacy Management Other</p>		
Total		
<p>8. Details of the reasons for the redundancies.</p> <p>This should include the business plan and details of the budgeting process; the service and workforce impact; projected activity and revenues for the period affected.</p>		
9. Details of any new organisational design, with Job descriptions, person specifications etc		
10. Which, if any, areas are to close?		
11. How did you identify the pool of staff for		

selection?	
12. What measures have been taken to avoid redundancies or to reduce the number to be dismissed?	
13. What measures are you taking to mitigate the consequences of the dismissals?	
14. Details of how you intend to try to reach agreement with trade union representatives including your consultation schedule.	
15. How do you intend to keep local union representatives abreast of developments during the consultation process?	
16. Have non-staffing efficiency savings been considered and if so what savings can be made through this route?	
17. Date for the start of redundancy consultation.	
18. Date for the conclusion of redundancy consultation.	
19. What outplacement support is being provided for those at risk of redundancy?	
20. Has a risk assessment been carried out on how the proposals impact on staff/the service/patients/clients?	
21. Has an equality impact been carried out on how the proposals impact on staff/the service/patients/clients?	

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TRADE UNION CHECKLIST FOR JOB EVALUATION OF NEW AND REDESIGNED JOBS

Is the organisation using the NHS Job Evaluation Scheme in line with the guidance?

The NHS Job Evaluation Handbookⁱ contains the NHS job evaluation scheme and jointly agreed national guidance for implementing the scheme.

The guidance given for the implementation of the scheme is binding on all NHS organisations. Using the process set out in the NHS JE Handbook has been identified as a significant defence against equal pay challenges¹.

Does the trust have a trade union/staff side JE lead and a management side JE lead?

The job evaluation leads within the organisation oversee the processes being used to band new and changed jobs arising from a service reviews. The staff side job evaluation lead can access higher level information about how jobs are being banded. They can raise with their management side JE lead and staff side any issues of poor practice, inconsistent application of the scheme or other anomalies. This helps ensure that the JE scheme is applied consistently across the organisation.

Are there clear processes on how new and changed jobs will be evaluated or matched?

How this should be done is set out in the NHS Job Evaluation Handbook [Chapter 3 Sections 4 and 5]. One of the key areas to gain agreement on is how to identify jobs that are 'new' and jobs that are 'changed' as a result of service re-organisations.

New and changed jobs will need to be given an AfC grade using the Job Evaluation Scheme in line with the processes outlined in the NHS Job Evaluation Handbook.

Are new and changed jobs evaluated or matched in partnership?

When jobs are redesigned or significantly altered [i.e. enough to potentially merit a change in band] then these jobs must be graded in a consistent and transparent way, following the

¹ Employment Tribunal Hartley & Others v Northumbria Healthcare NHS Trust

procedures laid out in the NHS JE Handbook. This means the new and changed jobs are banded using the partnership processes set out in the handbook.

What are the consequences of not using the processes set out in the NHS JE handbook?

One of the reasons the NHS JE scheme was introduced was to manage the risk of equal pay challenges in NHS organisations. The scheme was tested in the courts and the design of the scheme and accompanying nationally agreed guidance was found to meet equality legislative requirements. [Hartley v Northumbria Health Care].

Failure to implement the scheme in accordance with agreed procedures has been identified as a potential source of unfair implementation of the scheme and consequently raises the risk of equal pay challenges.

Examples of what changes to nationally agreed procedures can increase the equal pay risks are:

- Changing size and composition of evaluation or matching panels
- Insufficiently trained matching/evaluation panel members
- Identifying a national profile for matching on the basis of desired grade or salary rather than reviewing thoroughly what demands are made of a job.
- Writing job descriptions that reflect a particular profile rather than accurately describing the job and job demands.
- Poor or inadequate records/audit trails.
- Excluding jobs from being evaluated using the scheme.

Further details on equal pay risks and job evaluation schemes can be sourced from the Equality and Human Rights Commission [EHRC] equal pay model job evaluation checklist.

ⁱ <http://www.nhsemployers.org/Aboutus/Publications/Pages/NHSJobEvaluationHandbookThirdEdition.aspx>

Employment Tribunal Hartley & Others v Northumbria Healthcare NHS Trust. A full but understandable assessment of what the case means for the NHS is available on the NHS Litigation Authority Website
<http://www.nhsla.com/EqualPay/>
<http://www.equalityhumanrights.com/>