DEFENDING AGENDA FOR CHANGE
GUIDANCE FOR RCM WORKPLACE REPRESENTATIVES
OCTOBER 2015
CONTENTS
Introduction 3
Threats to Agenda for Change 4
The RCM’s View 5
What Employers Can Do 6
Campaigning to Defend Agenda for Change 7
More Information 9
Agenda for Change is once again facing attack from employers. From 2010–2012 we faced numerous attacks from local employers culminating in the formation of a regional attack in the South West. None of the attacks were successful, the RCM and other NHS trade unions managed to fight and win in every case. There were no attempts to move away from the national terms and conditions following the national negotiations on Agenda for Change in 2013. However, we have recently seen a local organisation attempting to increase the working week by 2.25 hours so we have to defend Agenda for Change once again.

The RCM believes that national pay bargaining is the best system for the NHS and the best system for midwives and maternity support workers. Nationally negotiated pay ensures a fair and transparent system and Agenda for Change is underpinned by a job evaluation system that is based on equal pay for work of equal value. If we moved to locally or regionally negotiated pay it would significantly reduce pay levels, it would weaken our bargaining position, and could lead to a fragmented system that is not transparent, fair or based on equal pay for work of equal value. This is fundamentally important when over 99% of midwives are female and nearly 60% of midwives work part time. Therefore, local staff sides must not agree to any changes that move away from the national agreement.

However, we must be realistic, as we saw from 2010-2012, employers may attempt to move away from national agreements to deal with their funding problems. We obviously do not want to see any further reduction in RCM members’ pay, terms and conditions, however, we need to make sure Agenda for Change stays in place as the national agreement as it is the most fair, transparent and equitable system for the NHS.

As part of the settlement of 2014’s pay dispute in England included an agreement to hold talks on the balance between pay structure, progression and the annual pay uplift. The NHS Staff Council has agreed that these talks will be a broad ‘refresh’ of Agenda for Change and will be held on a without prejudice basis, with acknowledgement that any potential changes would be subject to wide consultation and democratic agreement within each of the trade unions. There is a ‘watching brief’ for Scotland, Cymru/Wales and Northern Ireland with a view to those countries making decisions at a later stage about whether or not they wish to implement any changes which may arise.

Holding these discussions at a time when the Chancellor is planning to restrain NHS pay is certainly challenging and it may well be the case that no changes to structure are possible until members’ pay recovers from years of real-terms cuts. However, all the trade unions see the talks as an opportunity to address historic problems with the pay structure and explore whether there are changes we could make to the structure that would benefit both members and the NHS. The NHS Staff Council will be responsible for this work, which started in May 2015 and is continuing.

This guidance will help you understand what you can do if you face an attempted attack on Agenda for Change locally and how you can defend Agenda for Change.
Agenda for Change is once again facing attack from employers. From 2010–2012 we faced numerous attacks from local employers culminating in the formation of a regional attack in the South West. None of the attacks were successful, the RCM and other NHS trade unions managed to fight and win in every case. There were no attempts to move away from the national terms and conditions following the national negotiations on Agenda for Change in 2013. However, we have recently seen a local organisation attempting to increase the working week by 2.25 hours so we have to defend Agenda for Change once again.

We have seen cases, like in Royal Surrey, in which the employer wanted to make substantial changes to Agenda for Change and the local staff side were successful in engaging with members, campaigning and using employment relations skills to stop the employer from creating their own terms and conditions.

Alternatively, we have seen cases like in Central Manchester in which the employer attacked Agenda for Change, not by forming their own terms and conditions but by misinterpreting the handbook and linking incremental progression to sickness. The trade unions, including the RCM, had to take the case to an Employment Tribunal who ruled that the trust has unlawfully deducted wages.

In 2012 we saw an attack in the South West of England when twenty trusts joined together to attempt to move away from the national agreement and form their own terms and conditions. This was the first time that we saw a group of organisations working collectively to move away from Agenda for Change.

We have successfully fought every challenge to Agenda for Change. Many challenges have been successfully fought at a local level through engaging and organising members and campaigning to stop the employer; some have been stopped through legal challenge; and the regional attack in the South West was stopped by running a strong campaign at local level and negotiating and accepting some national changes to terms and conditions at the national level. The changes agreed to Agenda for Change in April 2013 successfully prevented any trust from attempting to move away from Agenda for Change until September 2015 when we saw a fresh threat in Luton and Dunstable.

It is very important that we know about organisations that attempt to move away from Agenda for Change. We need you to make sure you attend your local JNCC meeting so you are aware of any attacks on Agenda for Change. If your trust attempts to move away from Agenda for Change please make sure you inform your Regional/National Officer immediately and send them any documentation about the proposals. The sooner we know about the threat and the more information we know, the easier it is to fight and defend Agenda for Change.

You will find out more about what you should do if your employer attacks Agenda for Change in the section ‘Campaigning to Defend Agenda for Change’.
The RCM believes that national pay bargaining is the best system for the NHS and the best system for midwives and maternity support workers. Nationally negotiated pay ensures a fair and transparent system and since the job evaluation system in the Agenda for Change framework is based on equal pay for work of equal value. If we moved to locally or regionally negotiated pay it would significantly reduce pay levels, it would weaken our bargaining position, and could lead to a fragmented system that is not transparent, fair or based on equal pay for equal work. This is fundamentally important when over 99% of midwives are female and nearly 60% of midwives work part time.

Therefore, local staff sides must not agree to any changes that move away from the national agreement.

However, we must be realistic, as we saw from 2010–2012, employers may attempt to move away from national agreements to deal with their funding problems. We obviously do not want to see any further reduction in RCM members’ pay, terms and conditions, however, we need to make sure Agenda for Change stays in place as the national agreement as it is the most fair, transparent and equitable system for the NHS.

As part of the settlement of 2014’s pay dispute in England included an agreement to hold talks on the balance between pay structure, progression and the annual pay uplift. The NHS Staff Council has agreed that these talks will be a broad ‘refresh’ of Agenda for Change and will be held on a without prejudice basis, with acknowledgement that any potential changes would be subject to wide consultation and democratic agreement within each of the trade unions. There is a ‘watching brief’ for Scotland, Cymru/Wales and Northern Ireland with a view to those countries making decisions at a later stage about whether or not they wish to implement any changes which may arise. The first topic for talks will be about the architecture of the pay bands and will give staff side the opportunity to pursue long-standing issues such as reducing the length of time to reach the full ‘rate for the job’; creating better links between pay bands and the job evaluation scheme; and removing pay ‘overlaps’.

Holding these discussions at a time when the Chancellor is planning to restrain NHS pay is certainly challenging and it may well be the case that no changes to structure are possible until members’ pay recovers from years of real-terms cuts. However, all the trade unions see the talks as an opportunity to address historic problems with the pay structure and explore whether there are changes we could make to the structure that would benefit both members and the NHS. The NHS Staff Council will be responsible for this work, which started in May 2015 and is continuing.

The RCM is committed to defending Agenda for Change and keeping nationally negotiated terms and conditions.
Foundation Trusts have the power to opt out of Agenda for Change and form their own terms and conditions.

In Annex K of the *NHS Terms and Conditions of Service Handbook* it states:

**The pay system set out will be implemented in all NHS Organisations, giving extra local freedoms within the new system, compared to current national agreements. But where NHS organisations acquire earned autonomy or Foundation Trust status in England, they will have greater autonomy in relation to the specified local freedoms in this agreement.**

The specified local freedoms are:

(a) the ability to offer alternative packages of benefits of equivalent value to the standard benefits set out in this agreement, among which the employee can make a personal choice

(b) The ability to renegotiate local arrangements for compensatory benefits such as expenses and subsistence

The simplest way an employer can make a change to a contract is to gain agreement from the employee or the trade union. This is why Workplace Reps must not agree to any changes and must make members aware that they should not agree to any changes.

The only other way an employer can change terms and conditions is to terminate the existing contract and rehire staff on new terms and conditions. However, this is legally complex as could amount to unfair dismissal.

The RCM, and other NHS trade unions, have made it clear that we would legally challenge any employer who attempts to go down this route. However, whether the dismissal is fair will depend on whether the employer has a good business reason for introducing the change and acted reasonably in all the circumstances. Therefore, it is important that reps engage with the employer but only to register their opposition.

This would be an extreme circumstance and would most definitely be the employer’s last resort as this is fraught with legal difficulties. Therefore employers will most likely attempt to get agreement to changes. RCM Workplace Representatives must not agree to any changes that move away from the national terms and conditions.
CAMPAIGNING TO DEFEND AGENDA FOR CHANGE

It is very important that we know about organisations that attempt to move away from Agenda for Change. We need you to make sure you attend your local JNCC meeting so you are aware of any attacks on Agenda for Change. If your organisation attempts to move away from Agenda for Change please make sure you inform your Regional/National Officer immediately and send them any documentation about the proposals. The sooner we know about a threat the easier it is to fight and defend Agenda for Change.

GATHER INFORMATION
You need to gather as much information as possible about the threat and the employers proposals. Ask for documents such as the Statement of Accounts and make sure you send copies to your Regional/National Officer.

CHALLENGE AT EVERY STEP
You need to make sure you challenge the employer at every step. For example, you should ask questions such as:
- Have they considered alternatives?
- Have they exhausted all non-pay savings?
- Is there money in reserves?
- Are they using all the flexibilities already in Agenda for Change?
- Have they done an equalities impact assessment?
- Are they aware of the level of goodwill that staff already give?

Local staff sides should not agree to any moves away from national terms and conditions. However, you need to be cautious that you are not seen to be ignoring the employers as this may be interpreted as acceptance.

In the case of Royal Surrey’s attack on Agenda for Change, the employer sent all employees a survey in which they were asked to rank changes in order of preference. Local staff sides made sure that employees didn’t just ignore the survey as this may have been seen that the employers had acted reasonably in trying to engage with staff but the staff implicitly accepted the change by not registering that they opposed the change. Royal Surrey staff did complete the survey but answered that they did not accept any move away from the national agreement.

Therefore, in responding to the threat you should make sure you are attending the meetings in order to register your opposition.

WORK WITH OTHERS
You need to make sure that your Regional/National Officer is aware that your organisation is attempting to move away from Agenda for Change.

It is very important that you work with other trade unions and keep in contact with other representatives. You should share information and resources so there is not duplication of work.

You should not meet with the employer on your own and you should make your staff side colleagues aware if the employer has approached you to do this.

Make sure you meet regularly! In the case of the South West Pay Cartel attack on Agenda for Change the local staff sides held meetings involving all twenty trusts as a regional group.

All NHS Trade Unions oppose moving away from a nationally negotiated structure.
COMMUNICATE AND ENGAGE WITH MEMBERS
As soon as you learn about the attack on Agenda for Change you should tell your members and engage with them on this issue.

As stated previously, in the case of Royal Surrey the employer sent a survey to all staff members to seek their agreement to the changes. Therefore, it is extremely important that you make staff aware of the attack and that they should not agree to any changes to terms and conditions.

Once you are aware of an attack on Agenda for Change you need to make members aware that they must not accept the change. You need to inform your Regional/National Officer immediately and once we are made aware of the threat we will send communications to the employer on behalf of RCM members and send communications to the members. The sooner we know about a threat the easier it is to fight.

We will use our social media channels, email newsletters and website to communicate with members. At a local level, you should organise a branch meeting to discuss the attack with members. You can invite your Regional/National Officer and/or your Organiser too. You should also try to talk to members who aren’t able to attend formal meetings and encourage other members to spread the word!

RECRUIT NEW MEMBERS TO THE RCM
When faced with a threat it is vitally important that you engage with non-members and recruit them to join the RCM. If your workplace has a high density of members you are better able to defend Agenda for Change as you are much stronger. You can make a stronger case to your employer when they know you are representing the views of all midwives and maternity support workers.

Your Branch Secretary is able to obtain a list of all the current members for your workplace. You should approach the non members and ask them to join—they need us now more than ever.

You should also encourage existing members to check their membership details and ensure their name, address and workplace are correct.

CAMPAIGN AND INVOLVE THE PUBLIC
It is important to campaign on this issue to the employer knows the strength of feeling in the workplace. You need to do everything you can to ensure the employer knows you oppose moving away from Agenda for Change.

You should engage NHS staff in the campaign but also members of the public who depend on the NHS; local campaigners; and local councillors and MPs.

There are many things you can to campaign, for example, you can set up a petition that voices your opposition to the move away from national agreements. You can use the 38 Degrees website or Change.org website to set up a petition easily and use social media to engage with NHS staff and the public to sign it. Many campaigning activities, like a petition, are best done with all the trade unions working together so make sure you are working with the other NHS trade unions.

You should try to lobby your MP by writing to them and asking for a meeting. You should
encourage RCM members, other NHS staff and the public to also write to the local MP to explain why this important, how it will detrimentally affect the local area and that you need their help and would like to meet them to discuss it further. You can find your local MP here: http://findyourmp.parliament.uk/

MORE INFORMATION

You should always try to attend your Workplace Representatives Study Day as this will give you up to date information about what is happening in your area and allow you to network with your Regional or National Officer and other Workplace Representatives.

You can download the current NHS Terms and Conditions of Service Handbook by visiting the NHS Employers website here: www.nhsemployers.org/PayAndContracts/AgendaForChange/Pages/Afc-Homepage.aspx

You can access up to date employment law information on the Labour Research Department’s website here: www.lrd.org.uk/

Keeping members informed is a must - you can order materials for members to campaign with here: www.rcm.org.uk/college/support-at-work/workplace-reps/workplace-reps-marketing/

Most importantly... Keep your Regional or National Officer informed about what is happening in your trust and if you have any questions make sure you ask!