RCM Workplace Representatives Conference 2012

Masterclass: The Future of Agenda for Change
Introduction:

Agenda for Change is facing unprecedented attacks. Locally we have employers attempting to move away from Agenda for Change and form their own local terms and conditions; regionally, we have twenty trusts in the South West of England that have joined together to form a cartel to create their own terms and conditions; nationally NHS Employers want to negotiate with NHS Trade Unions to make changes to the current agreement; and politically George Osborne has asked the Pay Review Bodies to investigate moving away from national pay agreements to regional or local pay agreements.

Currently, the only employers who have attempted to move away from Agenda for Change are in England and the national negotiations around Agenda for Change only involve England. Scotland, Northern Ireland and Wales will keep the agreement they have.

RCM Workplace Reps need to be aware of all these threats and need to know how to respond. The Workplace Reps Conference 2012 has a dedicated masterclass to give you the skills and knowledge you need to defend Agenda for Change.

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What are the local and regional threats?

Locally, we have seen a number of different trusts attempt to form their own terms and conditions, so far not a single trust has been successful in moving away from Agenda for Change.

We have seen cases like Royal Surrey in which the employer wanted to make substantial changes to Agenda for Change including asking staff to work a day for free! 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.

On the other hand, in Central Manchester 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.

However, we are now seeing a different type of attack. In the South West of England twenty trusts have joined together to move away from the national agreement and form their own terms and conditions. This is an unprecedented attack on Agenda for Change, we have previously seen individual trusts attempt to move away from Agenda for Change by creating their own terms and conditions but this is the first time that we have seen a group of trusts working collectively to move away from Agenda for Change.

‘The South West Pay, Terms and Conditions Consortium’ or simply put the ‘Pay Cartel’ wants to reduce the pay bill substantially in the South West by moving away from the nationally agreed Agenda for Change and creating their own regional terms and conditions.

The South West Pay Cartel is attempting to form their own terms and conditions which include: a reduction in unsocial hours payments; performance related incremental progression; increasing working hours; reducing annual leave; reviewing pay levels; and removal of sickness absence enhancements

This could see pay for NHS workers in the South West decrease in value by 15% which will be on top of the pay freeze and the increase in pension contributions which has seen the value of pay for NHS workers decrease substantially over the past two years.

Worryingly, the Foundation Trust Network’s response to the NHS Pay Review Body in October 2012 said that 68% do not believe that there are sufficient local flexibilities in the current framework and 56% of their members said they had a strong interest in exploring a similar approach to the South West Pay Cartel in their organisation.

We know that other employers are looking at what happens in the South West with a view to implementing a similar cartel in their region if the South West is successful in moving away from Agenda for Change.

What is the national situation with the Government?

In November 2011 George Osborne announced in his Autumn Statement that he would ask the Pay Review Bodies to investigate moving public sector workers away from nationally determined pay structures to regional or local pay structures that take account of what private employers in the area pay. He made it clear that this is with the aim of lowering the pay bill.

The RCM responded to the Pay Review Body’s report stating that nationally determined pay is the correct system for the NHS, you can view our submission by visiting the RCM website and clicking on support at work/pay. All the other NHS Trade Unions submitted the same evidence, that regional pay is not right for the NHS. Interestingly, NHS Employers’ evidence also stated that they oppose moving away from nationally determined pay. The Pay Review Body presented their report to the Government in the summer, however the Government have not yet published the findings, given that both Trade Unions and Employers do not believe that regional or local pay will work in the NHS it is not hard to see why the Government has not published the report.
What is the national situation with NHS Employers?

Nationally, NHS Employers have made it clear that while they support the national structure they want to see more flexibilities within Agenda for Change. In NHS Employers evidence to the NHS Pay Review Body in October 2012 it says:

“Employers are increasingly asking for the pay arrangements to be better aligned to performance and productivity and to be more responsive to local needs. There is a desire for more flexibility around conditions of service, which can seem generous in some areas to other comparable employers. Most employers would like this to be delivered through changes to the national frameworks.”

NHS Employers have asked NHS Trade Unions to nationally renegotiate Agenda for Change. While NHS Trade Unions have been successful in the past at resisting negative changes, for example preventing employers from freezing incremental progression, it is increasingly likely that if we continue to resist change more employers will attempt to move away from Agenda for Change.

What is the RCM’s view?

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 equal work nationally negotiated pay ensures equality. 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.

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

However, we must be realistic, we do appreciate that employers have unprecedented levels of savings to make and it may be the case that Agenda for Change has to be amended. NHS Employers have said to NHS Trade Unions that they need to make savings and more and more employers will attempt to move away from the national agreements if the national agreements stay as they are.

RCM Workplace Reps based in England will remember that in the summer all the NHS Trade Unions consulted with our local staff sides about potentially making changes to Agenda for Change. The view back was very clear, while no one wants to see changes to terms and conditions which result in a decrease in the value of pay we should negotiate with the employers in order to ensure that Agenda for Change is sustainable and to ensure that we keep the national framework.

The RCM, and other NHS Trade Unions, have made it clear that the Pay Cartel in the South West and the other local employers that are currently attempting to move away from Agenda for Change will damage the possibility of national negotiations. We have said that we will only agree to changes if trusts agree to keep to the national terms and conditions.

Therefore the RCM’s view is clear, we do not want to see any further reduction in midwives and maternity support workers pay, terms and conditions, however, we may have to agree to some changes to make sure we keep Agenda for Change in place. We will only agree to national changes, we will not accept any employer moving away from the national agreement to form their own local or regional terms and conditions. National agreements are the most fair, transparent and equitable system for the NHS.

The RCM is committed to defending Agenda for Change and keeping nationally negotiated terms and conditions.
Are trusts allowed to move away from Agenda for Change?

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:

- 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
- The ability to renegotiate local arrangements for compensatory benefits such as expenses and subsistence

How can employers change terms and conditions?

To change terms and conditions the employer is attempting to make contractual changes. In the Labour Research Department’s publication *Law at Work 2012* it states:

Employers should never introduce contract changes without consulting either the union, other employee reps (if there is no recognised union) or the individual employee. Contracts may be changed lawfully:

- where the contract allows for a change
- If the parties agree to a change
- Through collective bargaining
- Terminating the existing contract and offering new terms (although this could amount to unfair dismissal)

If an employer insists on changing terms without agreement, this is a unilateral variation of contract and the employee may be able to pursue a claim for breach of contract.

However, if an employer terminates the existing contract and offers new terms, this is not a breach of contract, as long as the employer gives adequate notice. Employees in this situation can bring a claim for unfair dismissal as long as they have a sufficient period of service.

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.

When an employer terminates 20 or more employment contracts this will trigger the duty to engage in collective consultation.

Therefore, to make changes the employer must get agreement from the staff or the trade unions or they have to fire and rehire the staff on the new contracts. Since this is fraught with legal difficulties employers will attempt to get agreement to changes.

RCM Workplace Representatives **must not** agree to any changes that move away from the national terms and conditions.
What should I do if my employer attempts to attack Agenda for Change?

Respond to the threat

First and foremost, you should make sure that there is a RCM Workplace Rep in attendance at the JNCC meetings, you can only defend Agenda for Change if you know a threat is coming!

If you become aware that your trust is attempting to move away from Agenda for Change 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.

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 Labour Research Department’s publication *Law at Work 2012* it states:

**It is important that employees are made aware that failure to oppose a change could mean that they will be taken to have accepted it and may not be able to challenge it at a later date.**

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 or National Officer is aware that your trust 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.

If you send communications to members try to write joint communications which display all the union logos.

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 have 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.

For example in the South West the RCM arranged meetings across the South West trusts with a presentation from RCM staff with employment relations expertise. We have produced a newsletter that has gone out to all members in the South West and we have developed a public facing flyer for members to hand out on demonstrations and rallies.

We have dedicated a page on the website to the threat and talk about the South West on our Facebook page and Twitter feeds.

If you are faced with a threat you should:

- Organise a Branch Meeting—you should invite your Regional Officer to attend
- Email members to inform them what is going on
- Ask members to spread the word themselves
- Set up your own Facebook page—if you do this be careful that you (and other members) are compliant with your employers policies. It may be best if you ensure that privacy settings are on so you can approve who views the page

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.
Campaigning

It is important to campaign on this issue to the employer knows the strength of feeling in the workplace. For example in the South West the trade unions are staging demonstrations which are very well attended.

We also have members in the South West who are using Twitter as a way of communicating and campaigning against the Cartel (again make sure you comply with your trust’s policy on social networking).

You need to do everything you can to ensure the employer knows you oppose moving away from Agenda for Change.

Set up a petition

You can set up a petition for staff and members of the public to sign that voices your opposition to the move away from national agreements. This is something that is best done with all the trade unions working together.

The trade unions in the South West have set up a petition on the Government’s e-petition website called ‘No to Postcode Pay’ - which can be found by following the link: http://petitions.direct.gov.uk/petitions/36063 So far they have nearly 30,000 signatures.

You should ask your members to sign the South West’s petition in support of our members there.

Lobby your MP

You should write to your MP on this issue.

Below is a letter to MPs which you can adapt as appropriate:

Dear (INSERT MPs name)

I’m a (DELETE AS APPROPRIATE midwife/student midwife/maternity support worker) at (INSERT the name of your trust) and I’m writing to you to let you know about plans that I have heard regarding my employer moving away from the national Agenda for Change agreement in the NHS to local terms and conditions including: (INSERT proposals)

I am very concerned and upset about this. In our maternity unit we work long hours in a physically, mentally and emotionally demanding role. There is currently a shortage of nearly 5,000 midwives in England because of the baby boom. I am worried that moving away from national terms and conditions will have a negative effect on recruitment and retention of midwives which will result in a negative effect on patient care.

I understand that we are in troubling financial times, we have had our pay frozen in the NHS for the past two years and face a pay cap of 1% for the next two years. On top of that we have seen our pension contributions increase this year and face another two years of increases. To have our pay reduced further by moving away from the national agreement is a step too far.

I am particularly concerned about the plans because the nationally agreed Agenda for Change has been equality proofed and is based on the principle of equal pay for equal work. 99% of the midwifery workforce is female with nearly 60% working part time (mainly due to childcare) any moves to national agreements could disproportionately affect female workers and therefore maternity services.

As a constituent I would ask that you write to the Chief Executive of (INSERT the name of your trust) to state your opposition to move away from national terms and conditions.

Your sincerely

(INSERT your name and address)

You can find your local MP here: http://findyourmp.parliament.uk/

You should also encourage members to write letters.
What happens if all that doesn’t work?

As stated before, to change terms and conditions the employer is attempting to make contractual changes which can be extremely difficult.

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 employer is then left with their last resort. They will have to terminate the existing contract and rehire staff on new terms and conditions. However, this is legally complex as could amount to unfair dismissal.

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.

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.

This would be an extreme circumstance and would most definitely be the employer’s last resort. If they did attempt to use this last resort we must consider our last resort—industrial action.

The RCM has never balloted for industrial action in our entire history. We consider industrial action to be the very last resort when all else has failed. Therefore we would always want to find a negotiated solution to disputes using good employment relations practices and campaigning. We would also want to ensure that industrial action was going to achieve a solution. Moreover, in any attack on Agenda for Change we would only want to take action if other trade unions were also going to take the same form of action—we are stronger and more effective together.

Last year the Nursing and Midwifery Council put out statement about industrial action which they later had to retract. At the time Cathy Warwick, General Secretary of the RCM said:

“Midwives are highly trained health professionals and are acutely aware of their responsibilities. That is why for example that many of them work beyond their contracted hours, often without breaks, with no extra pay, to ensure women and their babies are safe and receiving high quality care. Midwives also have to abide by the NMC Code of Conduct and are obliged by this to provide a high standard of care.

The RCM is not balloting its members on industrial action, but if this was ever the case, they would of course ensure that no mothers or babies were put at risk by any action. Currently midwives are working under severe pressure, yet still managing to deliver high quality care. However, they cannot be expected to continue to do this in the face of threats to their pay and pensions and not take any action at all.”

Obviously, if we were ever to take such action we would have to make sure that emergency cover was provided as we will never put mothers and babies at risk.

But we are committed to protecting our members and this means defending 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 equal work nationally negotiated pay ensures equality. 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.
Where can I get more information?

‘Defending Agenda for Change Course’

The Defending Agenda for Change course is vital training for Stewards in the current climate. The course will be held twice during 2013: 25th-27th February at the National College for School Leadership in Nottingham and 21st-23rd October at Wortley Hall in Sheffield.

The course includes:

- A review of the key features of the pay system and conditions of service for NHS staff
- The legal rights in relation to redundancies and TUPE
- Confidence in terms of campaigning to protect members pay and conditions
- How to work together with other staff side trade unions

You can book a place on the course using the online system or contact Virginia Phillips on 020 7312 3515 or Virginia.Philips@rcm.org.uk

You should always try to attend your Regional Workplace reps 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.

Key Resources:

You can download the current NHS Terms and Conditions of Service Handbook by visiting the NHS Employers website here:

http://www.nhsemployers.org/PayAndContracts/AgendaForChange/Pages/Afc-Homepage.aspx

You can download the NHS Trade Unions joint briefing document ‘National Bargaining Advice for Staff Sides’ here:

http://www.rcm.org.uk/college/support-at-work/agenda-for-change/

You can access up to date employment law information on the Labour Research Department’s website here:

http://www.lrd.org.uk/

Marketing Materials from the RCM

Keeping members informed is a must - you can order materials for members to campaign with here:

http://www.rcm.org.uk/college/support-at-work/workplace-reps/workplace-reps-marketing/

Please make a note in the comment box that you would like pay campaigning material so the Marketing Advisor can include ‘No to Local Pay’ stickers and 2012/13 Pay Cards.

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!