

NORTHUMBERLAND, TYNE AND WEAR NHS FOUNDATION TRUST

BOARD OF DIRECTORS' MEETING

Meeting Date: 25 November 2015

Title and Author of Paper: Terms and Conditions Update – Lynne Shaw, Deputy Director of Workforce and OD

Paper for Debate, Decision or Information: For Information

Key Points to Note:

This paper provides an update on key terms and conditions within the NHS.

It covers the following areas which form part of Agenda for Change terms and conditions of service:

- Pay arrangements for 2015/16
- Redundancy Provisions
- Agenda for Change Flexibilities 2013

It also highlights ongoing developments which are likely to have an impact on all staff across the Trust and not just those on Agenda for Change.

- Government's response to the Public Sector Exit Payments Provision
- Recovery of Exit payments
- ECJ Ruling on Travel to work

An update on the Junior Doctors contract will be provided within the Chief Executive's report.

Outcome required: For information.

Terms and Conditions Update

25 November 2015

Purpose

The purpose of this paper is to provide a reminder to the Board of Directors of the current pay and redundancy provisions agreed as part of the 2015/16 pay deal and also of the Agenda for Change pay flexibilities introduced in 2013. It also provides an update on some recent and ongoing developments to terms and conditions of service which are likely to have a wider impact on all staff across the Trust and not just those covered by Agenda for Change.

The paper is structured as follows:

Current pay/redundancy provisions
Ongoing terms and conditions developments

Current Pay/Redundancy Provisions

Pay Arrangements for 2015/16

Key points to note:

- Pay spine point 1 has been deleted and staff previously on pay spine 1 who moved onto point 2 received a 5.6% pay increase
- Pay spine point 2 received a 3.1% increase, consolidated
- Staff in pay points 3 to 8 (inclusive) received a 1% pay increase and an additional £200, consolidated
- Pay spine points 9 to 42 (top of Band 8b) received a 1% pay increase, consolidated
- Pay spine points 43 (Band 8c) to 54 (inclusive) were unchanged
- Incremental pay progression was applied, except for staff in England on spine points 34 (Band 8a) to 54 who were not eligible for pay progression from 1 April 2015 to 31 March 2016.

To date there has been no notification regarding discussions for pay increases/incremental progression for the year 2015/16.

Redundancy Provisions

New redundancy provisions for staff covered by the NHS terms and conditions of service handbook came into effect, in England only, from 1 April 2015.

Key points to note:

- For those earning less than £23,000 per year (full time equivalent), redundancy payments will be calculated using notional full-time annual earnings of £23,000 pro-rated for employees working less than full time.

- For those earning over £80,000 per year (full time equivalent salary) redundancy will be calculated using notional full-time annual earnings of £80,000 pro-rated for employees working less than full time.
- No redundancy payment will exceed £160,000 (pro-rata).

Agenda for Change Pay Flexibilities

In 2013, pay flexibilities for staff on Bands 8c, 8d and 9 were agreed by the NHS Staff Council. These flexibilities allowed Trusts to pay staff at these levels “spot” salaries which do not automatically attract a pay increase. Pay progression for these levels of posts are non-recurring and subject to any local policies.

Many Trusts have already implemented local pay arrangements in respect of Bands 8c-9 and to date NTW has not explored these flexibilities. However, this has now been discussed and agreed as part of the corporate services review and staff in Phase 1 of Corporate Services transformation appointed to posts at the equivalent level to Band 8c and above will be subject to local pay arrangements on the basis of a spot salary.

On-going Terms and Conditions Developments

Government’s Response to Public Sector Exit Payments Consultation

There has been a recent consultation on Public Sector Exit Payments and the Government published its response to the consultation on Friday 6 November 2015. This is in relation to the commitment to end “six-figure exit payments” for public sector workers.

Key points to note:

- It will apply across the public sector (including NHS Trusts and NHS Foundation Trusts)
- The cap will be £95,000 and will be applied to exit payments before tax. The level of the cap will be subject to review by government
- It will apply to nearly all payments related to exit including redundancy payments, ex gratia payments, PILON, special severance payments etc
- It will NOT include payments for accrued but untaken annual leave, payments made in respect of an employee’s death, serious injury attributable to employment, or ill-health retirement, nor to payments made following litigation for breach of contract or unfair dismissal
- It will be possible to get a waiver from the cap but approval from the relevant “minister or responsible authority” will be required.

There is now a little more detail on how the Government intends to do this but at this stage some of the detail will be left for the regulations which will be published in due course. Further updates will be provided once the regulations are published.

As of the date of this briefing it is not known when the cap will come into force as the draft regulations have not yet been published, however, there is a view that this will not come into effect until the middle of next year. These regulations will have a significant impact on the NHS and across the public sector more widely.

Recovery of Exit Payments

In the Queen's speech of 2014, the Government announced that it intends to introduce new legislation to mandate the recovery of compensation, including redundancy payments, across the public sector when an individual takes new employment in the same public sub-sector (e.g. NHS or local government) within 12 months of receiving a compensation payment. These proposals aim to introduce a common position on 'claw back' of compensation payments across the public sector.

During August and September 2014, the Government consulted on the details of how these proposals should be implemented.

The key points from the consultation paper were:

- Recovery of exit payments are aimed at high earners (£100K+ threshold)
- Secondary threshold at £80K where recovery of payments will be tapered
- The claw-back period will be for a period of 12 months after leaving the NHS for those that choose to return to the same sector or sub sector
- Individuals would have a legal requirement to notify previous employers if they return within the 12-month leaving window
- These would be minimum provisions and locally employers could go further.

As part of the Government's consultation NHS Employers submitted a collective response on behalf of NHS organisations in England. The Government is now in the process of laying regulations which will come into effect from 1 April 2016.

ECJ Ruling – Travel Time to Work

In September the European Court of Justice ruled that time spent travelling to and from first and last appointments by workers without a fixed office should be regarded as working time. This has a huge impact on thousands of employers who may now potentially be in breach of the working time regulation rules in the UK.

The ruling came about because of an ongoing legal case in Spain involving a company called Tyco, which installs security systems. The company shut its regional offices down in 2011, resulting in employees travelling varying distances before arriving at their first appointment. The court ruling said: "The fact that the workers begin and finish the journeys at their homes stems directly from the decision of their employer to abolish the regional offices and not from the desire of the workers themselves.

"Requiring them to bear the burden of their employer's choice would be contrary to the objective of protecting the safety and health of workers pursued by the directive, which includes the necessity of guaranteeing workers a minimum rest period."

NHS Employers are currently undertaking a survey across Trusts to see how much impact this may have for the NHS. This is currently being reviewed internally with the initial view that this will not have a significant impact for the Trust.

Conclusion

The Board of Directors is asked to note the content of this briefing.

Lynne Shaw
Deputy Director of Workforce and OD
6 November 2015