People join a trade union to protect their terms and conditions at work. Unite will work nationally, regionally, and locally, to do all it can to safeguard your terms and conditions. As members of Unite, we need your help too.

This briefing sets out the terms and conditions that are currently under attack:

- National bargaining on Agenda for Change
- Pay progression
- Sickness
- Down banding
- Extending the working day
- Annual Leave
- Bank Holidays
- National Recruitment and Retention Premium
- On call
- Pay
- Pensions

Background

All NHS staff (except senior managers and those on medical and dental pay scales) are covered by the Agenda for Change terms and conditions of employment. These were introduced in 2004 as part of a job evaluated pay system to replace the Whitley Council bargaining arrangements and to address issues of equal pay for work of equal value. It is a UK-wide agreement.

Unite would argue that there is scope for improving Agenda for Change, however NHS employers, nationally, regionally and locally are looking to cut your terms and conditions of employment – Unite is strongly resisting this nationally, and will support you opposing this locally.
Why do management want to make changes?

NHS Employers have got to make £20bn savings across the NHS in England and comparable savings in the devolved administrations. Since pay constitutes around 70 per cent of the pay bill, they believe that hard working NHS staff should assist in helping them with making these cuts by reducing their terms and conditions.

However, the NHS Employers have switched their rationale for making these changes.

When they first argued that this was to assist with making their organisations financially viable, Unite argued that there was already gross inequality of pay, since those on medical and dental pay scales, and of course, senior managers, were on far higher salaries, even for identical posts (like the Public Health Consultant, where those who have come through the medical route can receive up to £40k more than those through the non-medical route on Agenda for Change). Senior managers are taking home six figure salaries, so it is wrong to expect those on lower wages to pay for those who receive high levels of remuneration in the NHS.

Unite has said that there is a case for addressing these huge inequalities in pay in the NHS. Until there is fairness across all NHS pay systems, we will resist any changes to Agenda for Change. Employers have also admitted that the changes that they are proposing to make will not provide sufficient saving to have any major impact on their £20bn cuts. It is our calculation, that it could cost them more to implement.

NHS Employers then went on to argue that local employers, and in particular those from Foundation Trusts, wanted a ‘modern’ agreement where there was lots of flexibility. The NHS unions have argued that there is a lot of flexibility in Agenda for Change, however the NHS employers do not necessarily use these flexibilities. We are now on version 24 of Agenda for Change, which demonstrates that it is ‘modern’.

NHS Employers then went on to argue that the Health and Social Care Act will increase competitiveness in the NHS, and therefore the NHS employers at a local level will need to be able to compete in the market for contracts. We are clear that the Health and Social Care Act, which will impact on NHS employers in England only, will destroy the NHS, however this is not a rationale to worsen the terms and conditions of staff. The private sector will undercut the NHS, as has happened in other sectors, so if the NHS cuts its terms and conditions, the private sector will still bid at a lower level. All this leads to is a race to the bottom.

Finally we have been told that through cutting your terms and conditions that it will improve morale and motivation and improve patient care. When we have asked for an evidence base we were told that they had a “feeling” that it would, but there was no evidence to their arguments.

It is simple: the NHS employers, nationally, regionally and locally want to cut your terms and conditions of employment. Unite will resist this, and we want to help you to protect your terms and conditions too.
Nationally or locally?
The NHS Employers have said that if we agree to making changes to the Agenda for Change agreement nationally, then local employers will not seek to make further changes to your terms and conditions. We have asked them for concrete guarantees about this, however the NHS Employers are unable to provide sufficient evidence that local employers won’t seek to drive further change through locally in Foundation Trusts.

Local employers are already putting the NHS Employers proposals on the bargaining agenda at a local level in Trusts in England.

We therefore have to resist change nationally and locally, using an evidence based and reasoned approach.

The devolved countries
There has been no indication from the devolved Health Ministers that they will be looking to cut the terms and conditions of staff in the NHS. The employers from these countries are engaged in UK-wide discussions, however they have no mandate to implement these, but it is wise to be prepared.

What do they want to do?
The NHS Employers have come up with a list of areas that they want to look at. We have been told that this is not an exhaustive list.

We also know that NHS Employers have already started cutting terms and conditions. Last year we saw the removal of the National Recruitment and Retention Premium, which will result in up to 16 per cent reduction in staff pay. We have also seen the introduction of new ways of working around on call which has resulted in around 25 per cent cut in pay for some of our members. This is on top of a two year pay freeze, and a further two years where pay will be capped at one per cent and regional pay introduced and pension proposals that will make all NHS employees pay more, work longer and get less in retirement. Last year, we saw some employers in England only, refuse to recognise the additional bank holiday. They have said that they will do the same this year.

PAY PROGRESSION
Agenda for Change was set up to enable pay to progress through incremental progression through a pay spine within a pay Band (of which there are 12 – Bands 1 – 7, 8a-d and Band 9). Progression was accompanied by the Knowledge and Skills Framework (KSF) and supported with an appraisal process.

**Agenda for change currently says:**

“Within each pay band there will be a number of pay points to allow pay progression in post. Staff will progress from point to point on an annual basis to the top point in their pay band or pay range, provided their performance is satisfactory and they demonstrate the agreed knowledge and skills appropriate to that part of the pay band or range. Staff joining pay band 5 as new entrants will have accelerated progression through the first two points in six monthly steps (that is, they will move up one pay point after six months and a further point after 12 months) providing those responsible for the relevant standards in the organisation are satisfied with their standard of practice. This 12 month period will be referred to as ‘Preceptorship’.”

Despite continual efforts, only two thirds of NHS staff have any form of appraisal. However, the NHS Employers are now wanting to introduce continuous appraisal for all, and only enable progression if set objectives are met.

This is known as **performance related pay**. It has been used in the private sector, although many companies have now stopped using these pay arrangements as they are known for being discriminatory, very time consuming, very expensive, and create low morale amongst the workforce as it is not a fair system of pay. It also exposes the employer to equal pay for work of equal value cases, which carry their own costs.

How performance is measured in the NHS will be incredibly difficult to determine due to the
autonomous professional practice of many, the range and complexity of jobs undertaken in the NHS, and what could be classified as a positive outcome. The NHS is a complex organisation, and therefore any performance related pay system would have to reflect its diversity.

It is expected that progression will be conditional upon performance standards being met. These will be determined locally and will look at skills, competency, achievement of objectives and performance delivery criteria. In some places it has been suggested that there should be behavioural considerations also.

The NHS Employers are also proposing that beyond the ‘gateway’ of each pay band that staff will be able to gain unconsolidated pay points, based on their exceptional performance, which means that they could easily lose them if they do not exceed expectations the following year. In the private sector, this has been shown to lower morale. With an estimated 30 per cent of NHS staff at the top of their pay band, the Employers have not said anything as to how their pay will be protected, but it can easily be concluded that they will receive a pay cut under this system.

Frequently the criteria to receive unconsolidated pay points are incredibly stringent, and even when people exceed expectations, they are still not rewarded as criteria and budgets can be capped in such a way that only a few staff achieve these pay points.

It is proposed that performance related pay is linked to every pay point of the pay spine.

It is important to remember that the top of each pay spine is the true rate of the job and reflects the value of the job. Therefore they would be penalising staff by preventing them reaching this. They have also said that they would want to remove preceptorship which was introduced to accelerate particular staff to reach the correct pay for their work.

For those on Bands 8a-d and Band 9, it is proposed that people will be taken off the Agenda for Change pay spine and put on ‘spot salaries’. This removes transparency in the pay system, is unfair, and again opens up the risk of pay discrimination. The employers are arguing that these people are on high salaries and should not have the opportunity to progress like others in the service. However they have not been able to answer why others doing work of equal value can be paid more on the senior managers and medical and dental salary scales.

The employers believe that performance objectives should be set individually and should closely follow the strategic and/or business objectives of the organisation. The arrangements for designing the link between objective setting, measurement and reward for delivery at these levels would need to be designed locally.

Employer believe that these changes will improve the setting of organisational and individual objectives, improve the monitoring of staff performance, place a greater emphasis on planning, improve line managerial evaluation skill with staff involvement, improve transparency, efficiency and effectiveness, encourage staff to pursue professional development opportunities and career progression, improve morale and reduce absenteeism, and assist in identifying poor performance. They have not been able to produce an evidence base for this.

SICKNESS

NHS Employers want to change your sickness entitlements.

Working in the NHS brings additional risk to staff due to the exposure of hospital acquired infections and manual handling injuries. Reorganisations and cuts are also taking their toll on the health and wellbeing of NHS employees.

However, where employers take a risk assessment and pro-active approach to safeguarding the wellbeing of their staff, it is shown that real progress is made in reducing the level of sickness absence. Fast-tracking staff back to work can make a real difference too.

Regrettably, the NHS employers have decided to take a punitive approach to managing sickness in their proposed changes to your terms and conditions. We have already seen many employers
using disciplinary measures against those who have been genuinely ill, which has even led to dismissals. People coming to work when they are ill, presenteeism, not only puts patients at risk, but can create greater expense – patients may stay in hospital for longer, other staff become ill, and the individuals themselves may eventually take longer off work.

With the government extending the state pension age, it is probable that sickness absence will increase in the NHS if not managed. The employer has a responsibility to ensure the wellbeing of the aging workforce.

The NHS employers, nationally, regionally and locally, have started discussing a range of other cuts to sickness entitlements including non-payment for the first three days of absence, halving sick pay to three months full pay, three months half pay and to pay sickness benefit at the basic rate – i.e. without any unsocial hour payments.

There is no evidence that punitive sickness management enhances the wellbeing of staff, and aids recovery. Additional financial stress at a time of ill health can have the reverse impact.

DOWN BANDING

Agenda for Change was established as a fully job evaluated process, where people were graded according to a range of factors through an equality based system. Remuneration was then based on this system.

In order to save costs, NHS employers are re-organising staff and seeking to downgrade and ‘down band’ staff.

This is showing itself in a variety of ways. In some employers, responsibilities are being removed from certain grades of staff, which is leading to down banding. Elsewhere the job evaluation process is being sidestepped to keep staff grading down. In other areas, they are removing the senior bands of staff altogether. Often staff who have been down banded are expected to work at the same level as they were working previously.

In other areas, staff are being asked to work above their competencies to cut down on the number of more qualified staff. This again is impacting on patient safety, and goes against professional codes of conduct.

Having the right skill mix is essential for patient safety, ensuring best practice, improving patient outcomes and professional standards. Staff with experience are essential for raising the standards of all in their teams.

No member of staff should work outside their professional competencies, nor the requirements of their banding.

EXTENDING THE WORKING DAY

NHS employers have said that the NHS is a 24/7 service, and therefore there should be no distinctions in the benefits package. This would mean that those working Saturdays, Sundays or Bank Holidays will be paid at the same rate as the rest of the week.

They have also said that they want to extend the working day, so those working early in the morning or into the night would not receive any enhancements either. 24/7 working with no enhancements at all has been mooted in some areas.

Ensuring a good work-life balance is essential for all staff. It enhances productivity and improves wellbeing. Where there is a clinical need for providing seven day working, Agenda for Change makes it clear that enhancements should be paid. Working weekends disrupts family life, and can lead to further expense, such as additional child care costs.

Research has shown that there is detriment to the long term well being of staff who work nights or changing shift patterns. Enhancements paid to those that work these hours, in part, recognises this. Out of hours childcare, is incredibly expensive, and therefore additional remuneration is understood to address these costs.

Finally staff working into the night need to ensure that they have safe travel arrangements. This comes with an additional cost to the individuals concerned, so these enhancements accommodate this.
Of course working into the night or at weekends, for some professions, could be clinically contraindicated, unnecessary, or put the NHS employee at risk.

**ANNUAL LEAVE**

Some NHS employers believe that your annual leave entitlement should be reduced, however you might be able to buy back some annual leave as part of a “Total Reward” package.

Annual leave plays a very important role in helping staff have a work-life balance and to give adequate rest periods to enable staff to revitalise, spend time with family and therefore be in a place to work effectively again.

Staff should not be expected to sacrifice another part of their terms and conditions package. The cuts to annual leave will have a negative impact on wellbeing. NHS leave arrangements are pretty standard, and would certainly not be classed as excessive.

**BANK HOLIDAYS**

In Wales, Scotland and Northern Ireland, and some employers in England, the additional Bank Holiday on 29 April 2011, was recognised and remunerated accordingly. The NHS Employers in England have said that they will not recognise the additional bank holiday for the Queen’s diamond jubilee, and it will be for local determination. In the devolved countries, a day in lieu will be given for those who work the bank holiday, but Agenda for Change enhancements will not be paid.

**NATIONAL RECRUITMENT AND RETENTION PREMIUM**

Agenda for Change enabled groups of employees, where there were recruitment and retention issues, to qualify for a national recruitment and retention premium. In addition, if there were local recruitment and retention issues, then a local employer could make local arrangements (although this is non-pensionable). An equal value pay case was brought to an employment tribunal which required an independent review of the use of long term national recruitment and retention premia. The review led to the phased removal of the NRRP. In Unite, this impacted on members working in estates and maintenance and chaplaincy services.

We have presented a case to the NHS employers about the special circumstances around chaplaincy accommodation (which is why they received the recruitment and retention premium in the first place).

For colleagues in estates and maintenance, we have asked you to highlight recruitment and retention problems and advise that you negotiate a local recruitment and retention premium locally. We have raised our concerns with the Pay Review Body, and asked that a review of the National Recruitment and Retention Premium to be brought forward.

The NRRP has resulted in a loss of up to 16 per cent of pay for some of our members (staged over a two year reduction). This also has implications for pensions, and we have made the case that all those affected should be able to revisit their pension choices.

**ON CALL**

When Agenda for Change was introduced, on call arrangements were not migrated onto the new terms and conditions, due to the complexity of multiple arrangements within the NHS. A working group was therefore set up to look at on call, and this reached its conclusions in 2010. Since then local employers have been instructed to work in partnership with staff sides to introduce new on call working arrangements, without a cut to the overall budget.

Very few agreements have been reached. However Unite has produced guidance, which reps can access, to assist with their negotiations.

We are now learning of some employers who are refusing to work in partnership, and instead trying to force agreement through the staff side, trying to impose new terms and conditions, or even threatening to dismiss staff and then re-engage them on inferior terms and conditions. Employers have tried to introduce cuts to on call payments which could lead to up to 25 per cent reduction in income across many groups of staff.
Where staff side have resisted these moves, including balloting to take industrial action, they have been successful in progressing negotiations, and protecting the worst outcomes for staff.

**PAY**
From 2011-13, NHS staff pay has been frozen, except for those earning up to £21,000, where they received £250. On 29 November, it was further announced that pay would be capped across the public service at one per cent for the following two years. Without negotiation it is looking like local market considerations will also be introduced at the same time. This will result in four years of pay restraint, when the cost of living (for example, food, fuel and energy) and the rate of inflation is at the highest it has been for over a decade. In other words staff are experiencing a real term pay cut.

The Coalition’s Chancellor, announcement that he wants to see a move to regional pay, and for there to be a levelling down to match local labour markets rates of pay. For many areas in the public sector, this could lead to around a 20 per cent cut. There have been no formal decisions about this yet, Unite has submitted evidence to the pay review body to ensure that pay remains nationally negotiated for the UK.

When pay is cut in the public sector, pay is further cut in the private sector, so you end up with a race to the bottom in wages for everyone.

**PENSIONS**
Unite’s health sector held a consultative ballot on the government’s pension proposals and over 94% clearly rejected these. We are therefore continuing the campaign to safeguard NHS pensions.

**Working longer**
The government are refusing to acknowledge the impact that working longer can have on some members of staff, including the physical ability to do the job, mental agility, occupational stress and personal wellbeing. They have asked the employers to find a solution to this. The employers believe that these problems can be addressed through redeployment and alternative employment.

There is a serious lack of understanding of what people do in the NHS and the demands that their jobs make on them. Redeployment is not a real option, and can only be viewed as a means of forcing people out of a service with less pension. For those that will be required to work until they are 68, it could be seen as 16 years less pension, as they could have been retiring at 60, so will be paying for an additional eight years of pension, and will be able to enjoy their pension for eight years less. In addition, working until you are 68, or longer, could result in early morbidity.

**Contribution Rate**
Unite members have had a contribution increase imposed from 1 April 2012. The rise in the amount that people would be expected to pay in years two and three are yet to be determined, however it shows that there will be near a 50% increase in contributions for some members of the pension scheme.

**CARE (Career Average Revalued Earnings)**
We have not been able to move away from a CARE scheme in the proposals, which will result in a serious loss in pension for those that make progression through the pay bands during their careers.

**Fair Deal**
For services that are outsourced, we are arguing that they should be included in the pension scheme. However, with the threats of the Health and Social Care Act (in England), it is looking likely that many groups of staff will not be outsourced, but contracts will simply be awarded externally to the NHS, so staff would not gain from this benefit. However ensuring that Fair Deal is applied, remains an important principle.

**RPI to CPI**
The change from RPI to CPI has been made without consultation.

**In summary, NHS staff are still expected to work longer, pay more and get less.**
Enough is Enough – we have to get organised

The scale of the attacks on NHS staff is unprecedented. We therefore need to ensure that we stand together to resist this race to the bottom of your terms and conditions.

How?

It is essential that every member of staff joins a union. Unite is a union that will resist change and protect its members. We have proved that when our members stand together it really makes a different.

Unite negotiates from a position of strength.
- We build a strong evidence base – from research and from the experience of our members
- We resist change when it is not in the interest of staff or patients
- We have a strong local, regional and national structure to support our members and representatives defend their terms and conditions.
- Our comprehensive professional work supports our arguments on terms and conditions
- We ensure that our members determine the outcome of all decisions

Next steps

1. Ensure that all your colleagues are in Unite
2. Ensure that you elect a local representative to represent your department/team.
3. Notify Unite of who your representative is so we can get them accredited and trained.
4. As soon as your employer attempts to change your terms and conditions:
   a. Contact your Regional Officer
   b. Email the proposals to Unite’s research department
      James.Lazou@unitetheunion.org
   c. Build support to resist cuts to your pay, pensions terms and conditions.