

Partnership
review of
ill health
retirement,
injury benefit
and sickness
absence in
the NHS



Final agreement

THE NHS STAFF COUNCIL
WORKING IN PARTNERSHIP

Contents

1. Agreement between NHS Employers and NHS staff side	2
2. Managing sickness absences	3
3. Ill health retirement benefit arrangements	5
4. NHS Injury Benefit Scheme arrangements	10
5. Ill health retirement costings	11
6. Putting the right financial incentives in place to improve employee health at work and to tackle absences	14
7. Ill health retirement data	15

1 Agreement between NHS Employers and NHS staff side

This paper sets out the terms of the agreement reached between NHS Employers and the NHS staff side. This agreement takes into account formal representations made during the three month consultation exercise (completed on 22 January 2008).

This agreement covers proposed changes in respect of:

- NHS Pension Scheme ill health retirement benefit arrangements
- the management of sickness absence in the NHS.

Implementation of the new arrangements will take place alongside the introduction of the new NHS Pension Scheme arrangements on 1 April 2008.

The new arrangements for ill health retirement benefits will form part of the overall main Pension agreement and will be covered by the Scheme's governance arrangements.

An enabling agreement has also been agreed by the review partners and is intended to support employers and staff in the

management of sickness absence. This will sit within the NHS terms and conditions handbook and will be covered by the NHS Staff Council.

The design of the new arrangements has taken into account equality issues using an equality impact assessment tool. As part of the governance arrangements, the impact of these changes on equality will be kept under review.

Negotiations on the NHS Injury Benefit Scheme have yet to be concluded. The review partners propose to detail the arrangements for reaching agreement, following consultation on proposals for change, once the ill health retirement benefit and sickness absence arrangements have been implemented.

Supporting documentation to this final agreement includes:

- Analysis of consultation responses.
- Equality impact assessment.

All relevant review documentation is available at www.nhsemployers.org/illhealthreview

2 Managing sickness absences

Much of the review has focussed on identifying clear processes for handling sickness absence, rehabilitation, redeployment and ill health retirements, reflecting current good practice across NHS organisations. The review partners have agreed that these processes should be set out in an enabling agreement.

The review partners believe that the key aim of this agreement is to ensure the continuation of the provision of high quality ill health benefits whilst strengthening the aim of facilitating a return to work wherever possible. This will mitigate risk to the service and the NHS Pensions Scheme posed by premature and unnecessary ill health retirements.

This agreement identifies minimum standards for all NHS employers and is set out in an enabling agreement, which will sit within the NHS Staff Council terms and conditions handbook. The review partners agree that this will be put in place by 1 April 2008 alongside the introduction of the new ill health retirement arrangements.

This agreement will be on a UK-wide basis and has received the support of the appropriate authorities in Northern Ireland (Department of Health, Social Services and Public Safety) and Scotland (Scottish Government).

The enabling agreement requires amendments to be made to the existing section 14 of the NHS Staff Council terms and conditions handbook and introduces a new supporting annex. This supporting annex provides an outline framework for supporting employers and staff in the management of sickness absence.

To summarise, this enabling agreement covers:

- 2.1 *Legal responsibilities*, setting out mutual responsibilities of employers and staff under health and safety, disability and discrimination legislation.
- 2.2 *Key employer responsibilities in the management of absences*, recognising that a healthy workforce is an essential factor in providing effective services.
- 2.3 *Key employee responsibilities in the management of absences*, recognising the need for staff to work with employers to manage absence and explore options for return.
- 2.4 *Outline a framework for the management of absences*, recognising the need for employers to address ill health absences through the development of organisation-wide policies and practices, with specific reference to the appropriate stress management and moving and handling standards. The key elements of this framework includes:
 - a) *Structured review processes* – setting out that locally agreed procedures should have a series of reviews carried out to assess and monitor staff when they are off sick. If on long term absence this would culminate in a final review where a decision on the appropriate way forward is made (i.e. return to work, redeployment or termination of contract).

- b) *Rehabilitation* – identifying appropriate ways of supporting employees to remain in work or return to work at the earliest opportunity through:
- Early intervention so that staff can be considered for the appropriate treatment.
 - Providing staff with direct access through dedicated resources to key interventions such as physiotherapy and cognitive behavioural therapy.
- c) *Phased return* – enabling staff to work towards fulfilling all their duties and responsibilities within an appropriate time period, through interim flexible working arrangements whilst remaining in pay.
- d) *Redeployment* – enabling the retention of staff unable to do their own job through ill health or injury as an alternative to ill health retirement or termination.
- e) *Sick pay entitlements* – requirement that all necessary review and decision dates should be set out in light of an individual's sick pay entitlements, ensuring staff are promptly reviewed before their sick pay ends. Section 14 of the NHS terms and conditions handbook has been amended, primarily to clarify circumstances which could lead to staff accessing a period of extended sick pay. Specific reference to the NHS Injury Benefit Scheme arrangements has also been made.
- f) *Occupational health support* – recognising that occupational health represents both the individual and the organisation and the positive impact a well managed occupational health service can have. Where termination is considered the appropriate course of action all reasonable efforts should be made to obtain appropriate medical evidence via the occupational health service to support the decision, including occupational health advice on the likely outcome of a successful ill health retirement application.
- g) *Risk management* – setting out the need for integrated reporting arrangements for incidences and industrial injuries at work, recognising the legal requirements set out under reporting of injuries, diseases and dangerous occurrences regulations (RIDDOR). Employers should recognise that high levels of sickness absence are a financial risk to their organisation and should be dealt with as such.
- h) *Data collection* – recognising the need to have appropriate systems in place to collect good quality data on sickness absence.
- i) *Monitoring and review of policies* – regular monitoring and review under local partnership working arrangements to identify where and how policies can be improved.

3 Ill health retirement benefit arrangements

The review partners have agreed the creation of tiered arrangements for the determination of ill health retirement benefits, recognising that the different levels of benefits for members should be dependent on the severity of their condition and the likelihood of them being able to work again.

The agreed structure to this tiered arrangement, which is set out in the NHS Pension Scheme regulatory framework, is detailed on page 6.

It has been agreed that clarifying the definition of 'regular employment' within the scheme regulations provides a more robust approach to limiting any scope for the interpretation of the arrangements. These arrangements will be reflected in the Scheme's medical advisors guidance material.

It is accepted that these tiered arrangements are expected to deliver 75 per cent of successful applicants into the higher tier and 25 per cent into the lower tier. These figures are based on the results of a study commissioned from the Scheme's medical advisers during the review phase, using a representative sample of accepted ill health retirement applications during 2005/06.

Movement between tiers (1) – movement from tier 1 to tier 2

The review partners recognise that there may be limited circumstances where medical advisers believe that an applicant may become eligible for a tier 2 pension within a limited time period of no more than three years after approval of a tier 1 pension. This is a decision that would be made at the time of initial application.

It is agreed that the Scheme's medical advisers will have the option of deferring a decision on entitlement to a tier 2 pension through a review process. In these instances the medical adviser will be satisfied that the member meets the tier 1 criteria, but that the nature of the condition makes it difficult to assess the longer term outcome in terms of ability to permanently undertake any regular employment. Such a review would consider the condition(s) upon which the original decision was made and would be informed by further medical evidence. Neither subsequent conditions, nor deterioration related to ageing would be taken into account.

Any decision to award a tier 2 pension would take effect from the date of review. Pensioners will also have the opportunity to bring forward the date of review if they feel that they have sufficient medical evidence.

Movement between tiers (2) – movement from tier 2 to tier 1

The review partners have agreed that those in receipt of tier 2 pensions will be able to undertake some employment to support rehabilitation. However, earnings from employment may impact upon pension entitlement. The pensioner will be subject to an annual earnings declaration. This process would continue until age 60 for those who remain members of the current Scheme and 65 for new entrants and members who transfer to the new Scheme. Members affected would also be subject to abatement described above.

Two separate approaches are necessary in this arrangement, and are a common feature across other public sector schemes, depending upon the nature of the employer.

	Definition
Tier 1	<p>Applicant assessed as being unable to do own job.</p> <p>Entitlement to benefits where the Secretary of State is satisfied that the member is suffering from physical or mental infirmity that make him permanently incapable of efficiently discharging the duties of that employment.</p>
Tier 2	<p>Applicant assessed as being unable to do any 'regular employment'.</p> <p>Entitlement to benefits where the Secretary of State is satisfied that the member is suffering from mental or physical infirmity that makes him permanently incapable of engaging in regular employment of like duration in addition to meeting the tier 1 condition.</p> <p>The factors taken into account for the determination of 'regular employment' are:</p> <ul style="list-style-type: none"> • whether the member has received appropriate medical treatment in respect of the incapacity; and • such reasonable employment as the member would be capable of engaging in if due regard is given to the member's mental and physical capacity; previous training; and previous practical, professional and vocational experience, irrespective of whether or not such employment is actually available to the member • such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having regard to the member's mental and physical capacity • such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having regard to the member's mental and physical capacity, previous training; and previous practical, professional and vocational experience, irrespective of whether or not such employment is actually available to the member. <p>Therapeutic work under tier 2 arrangements</p> <p>The review partners recognise that the ability to undertake some therapeutic work can assist scheme members to manage their condition. This agreement allows members to earn up to the lower earnings limit (LEL) for national insurance contributions (currently £4,680 in tax year 2008/09). Full details of this arrangement is set out in this section.</p>

Members in receipt of tier 2 benefits who return to substantive employment **outside of the NHS**. In these circumstances:

- A pensioner has the ability to earn up to the equivalent of the National Insurance Lower Earnings Limit (LEL: stands at £4,680 in tax year 2008/09) each tax year without losing access to a tier 2 pension.
 - If pensioners exceed the LEL they will move down to tier 1 entitlements at the point the limit is exceeded.
 - Pensioners will be afforded one opportunity before NPA to re-access tier 2 benefits if it subsequently proves that they are unable to continue in that employment. This would be restricted to a period of 12 months from the first date of re-employment.
 - The pensioner would have to apply to the Business Services Authority Pensions Division (NHS BSA PD) within this 12 month period to re-access tier 2 entitlements.
 - To support a reinstatement of tier 2 benefits an individual must have supplied medical evidence. The purpose of the medical evidence is to confirm that the individual is unable to continue in that employment.
- Pensioners will be afforded one opportunity before NPA to re-access or maintain a tier 2 pension if it subsequently proves that they are unable to continue in that employment. This would be restricted to a period of 12 months from the first date of re-employment.
 - The pensioner would have to apply to the NHS BSA PD within this 12 month period to re-access or maintain a tier 2 pension.
 - To support a reinstatement or continuation of a tier 2 pension an individual must have supplied medical evidence. The purpose of the medical evidence is to confirm that the individual is unable to continue in that employment.
 - Pensioners returning to NHS employment within 12 months of a tier 2 pension being awarded will not be entitled to rejoin the NHS Pension Scheme.

Members in receipt of tier 2 benefits who return to substantive employment **within the NHS**. Different arrangements would apply in these circumstances:

- Where a pensioner earns below LEL in any tax year from any NHS employment, entitlement to tier 2 will only remain for 12 months from the start of that employment. After that time any NHS earnings will lead to a reduction to a tier 1 pension.
- If pensioners exceed the LEL during this 12 month period they will move to a tier 1 pension at the point the limit is exceeded.

Supporting guidance

The review partners have agreed that any associated Scheme guides detailing the medical and application processes in dealing with ill health retirement applications (including the relevant parts of the current guides used by the Scheme's medical advisers), will be agreed in partnership and made publicly available to ensure openness and transparency.

Abatement of pension whilst in NHS employment

The review partners have agreed that earnings from NHS employment after ill health retirement (up to NPA) will lead to abatement of pension. The amount of pension that can be abated is restricted to the proportion of pension above that which is payable following actuarial reduction. Actuarial factors are provided by the Government Actuary's Department (GAD).

	Entitlement
Tier 1	Accrued service only, with no actuarial reduction.
Tier 2	<p>In addition to the tier 1 award members will receive an enhancement of 2/3 prospective service*.</p> <p>The enhancement for a part time member will follow current arrangements. The enhancement will be in the proportion that their service at whole time equivalent length bears to their service at calendar length.</p> <p>For existing Scheme members transitional arrangements will apply, allowing for a minimum enhancement of four years. These arrangements will remain in place until 2016 and will be reviewed as part of the proposed governance arrangements attached to the NHS Pension Scheme's valuation cycle.</p>

* The service enhancement is capped at full prospective service to age 60 for those who remain members of the current Scheme and 65 for new entrants and members who transfer to the new Scheme.

This method is consistent with the approach agreed by the main NHS Pension Scheme review partners. Full details are set out in the paper '*Illustrative, theoretical early retirement factors for members aged under 50*' produced by GAD, available upon request.

Service enhancements

The accrual rate within each of the tiers will be as follows:

The minimum qualifying service for ill health retirement will remain at two years. The current minimum qualifying service of five years for ill health retirement enhancements will be removed.

Rationale for minimum four year enhancement

This transitional higher tier arrangement for existing members recognises that the largest group accessing ill health retirement benefits

are in the 56-60 age group and that these individuals are moving away from the current option of a 6 and 2/3 years enhancement.

Terminal illness

Where a member becomes terminally ill and medical evidence is available they will be allowed access to a lump sum payment, calculated on tier 2 benefits. Under new Pension Scheme arrangements members will be able to commute their entire pension for a one off lump sum, calculated using their maximum retirement lump sum and five times their post-commutation retirement pension.

Death in service

Death in service survivor pension entitlements will use the tier 2 arrangements for calculating benefits. Benefits will be similarly calculated where death occurs within 12 months of deferment.

Treatment of deferred members

Deferred Pension Scheme members may apply for early payment of preserved benefits as now. The tier 2 definition will apply, but will only be able to access the tier 1 benefits of accrued service only, with no actuarial reduction.

Special classes status

Current arrangements for those members with special classes status will continue to apply to members who have not had a break in Scheme membership of five years or more. 'Permanently incapable' for these members will continue to mean up to age 60 and enhancements will continue to be calculated up to age 60. Special classes status is

restricted to current Scheme members only and has been removed from the new NHS Pension Scheme arrangements. Those with special classes status who transfer into the new Scheme will therefore lose their right to retire at age 55.

Transition to new Scheme arrangements

Applications for ill health retirement received by 31 March 2008 will be treated under the rules of the 1995 Scheme. NHS BSA PD have assured the review partners that a degree of flexibility on the implementation of this criteria would be put in place, allowing for late applications to be accepted for consideration where supported by appropriate justifications e.g. organisational delay.

4 NHS Injury Benefit Scheme arrangements

Negotiations on the NHS Injury Benefit Scheme have yet to be concluded. The review partners propose to detail the arrangements for reaching agreement following

consultation on proposals for change once the ill health retirement benefit and sickness absence arrangements have been implemented (1 April 2008).

5 Ill health retirement costings

Detailed modelling work carried out by GAD has produced a baseline contribution rate of 19.7 per cent for existing members. Of this, 0.6 per cent relates to the excess cost of providing ill health benefits to members. The excess cost is the cost of providing benefits for those members who are expected to retire on ill health grounds, over and above what they would otherwise have received had they not retired on ill health grounds (rather than the total cost of providing those benefits).

The equivalent new entrant contribution rate baseline is 18.8 per cent. Of this, 1.1 per cent relates to the excess cost of providing ill health benefits to members. This is the excess cost of providing benefits as described above.

The agreed service enhancements within the new benefit structure noted above produces the following costs when the expected 75 per cent of successful applications fall into the higher tier:

For existing members:

	Entitlement	Excess cost of ill health benefits
Tier 1 enhancement	Accrued service only, with no actuarial reduction.	0.50%
Tier 2 enhancement	<p>Accrued service plus an enhancement of 2/3 prospective service*.</p> <p>Part time staff will be subject to the agreed rules on “scaling” which scales calendar service only.</p> <p>Transitional arrangements will apply, allowing for a minimum enhancement of four years*. These arrangements will remain in place until 2016 and considered as part of the proposed governance arrangements attached to the NHS Pension Scheme’s valuation cycle.</p> <p>Part time staff will be subject to the agreed rules on “scaling” which scales calendar service only.</p>	

* Service enhancement is capped at full prospective service to 60.

For new entrants:

	Entitlement	Excess cost of ill health benefits
Tier 1 enhancement	Accrued service only, with no actuarial reduction.	1.05%
Tier 2 enhancement	Accrued service plus an enhancement of 2/3 prospective service*. Part time staff will be subject to the agreed rules on "scaling" which scales calendar service only.	

* Service enhancement is capped at full prospective service to 65.

Based on GAD modelling of the final outcome of the the main Scheme review it is anticipated that these costings would be sufficient (all other things being equal) to allow employer contribution rates of 13.9 per cent in 2008 and 14.1 per cent in 2012 (note that these projected employer contribution rates are on a scenario under which the first threshold for tiered contribution rates is set at the Agenda for Change (AfC) pay point 17 (currently set at £19,683).

The tiered contribution structure described above produces a cost pressure on the projected employer contribution rates around 0.05 per cent higher than what was affordable. The proposed new ill health benefit structure absorbs this cost pressure and this agreement on the tiered contribution rate structure will enable a greater number of Pension Scheme members, relative to the main Scheme review consultation document published in August 2006, to remain within the 5 per cent contribution band.

'Banking' arrangements

It has been agreed that the non recurrent funding released from introducing the new ill health benefit structure, estimated by GAD to amount to 0.1 per cent of pensionable pay, would feed into future funding valuation results. An agreed aim of the main Scheme review is to maintain employer contributions at or just above the 14 per cent level until 2016. This would mean that there would be no reductions in the employer contribution rate with the funding released being 'banked' to reduce any potential upward pressure on the member contribution rate after 2016. Since it is anticipated that the savings generated by the change in ill health benefit structure will contribute – under the scenarios described above – to allowing an employer contribution rate of 13.9 per cent in 2008, these funds would effectively be 'banked' within the NHS Pension Scheme.

The review group recognises that there may be a need to use this 'banked money' in two ways:

- Partially or wholly to fund any shortfall in employee contributions created by delaying the implementation of the main Pension Scheme tiered contribution rates until 2009.
- Feed into supporting the level of employee contributions after 2012 under the agreed cost sharing arrangements, which would include any rise in the cost of ill health retirements.

Governance arrangements

As part of the main NHS Pension Scheme arrangements a Governance Group, involving management and staff side representatives, with access to expert actuarial advice, has been set up to consider the emerging valuation work at each valuation (on a four yearly basis from 2008). Subject to the overall employer cap (14.2 per cent in 2008 and 2012 and 14.0 per cent thereafter) the group will make recommendations to Government

(health departments and HM Treasury) on how to implement the evaluation results; in terms of any increase (or decrease) to employee contributions, or alternatively changes to the benefit structure to reduce (or increase) costs. This would cover ill health retirement issues (so that any changes in the ill health costs would be dealt with under the cost sharing arrangements agreed in the main Scheme review). The governance arrangements will also monitor the allocation of awards of pensions between tiers to ensure that the medical advisers are correctly following the regulations. There is also a need for data collection to monitor the impact of regulations upon members. This is with a view to ensuring that there are no adverse impacts upon any particular group. The output of this work would form recommendations to Government who would decide on and consult on any regulations needed to implement changes.

6 Putting the right financial incentives in place to improve employee health at work and to tackle absences

The review partners have explored a range of approaches that provide financial incentives for employers to improve the management of sickness absence, the starting point for all subsequent ill health retirement applications.

The set of options for recharging the cost of ill health retirements back to NHS organisations, as detailed during the consultation exercise, are outlined below. Each approach will be on a cost neutral basis, set across the whole NHS, at the time of implementation. Each option ensures that employers recognise the cost impact of ill health retirements, to varying degrees, and is intended to instigate a change in behaviour that recognises the cost benefits of proactive interventions.

It is expected that smaller organisations such as GP practices and Direction status bodies will pay the average contribution under each option.

- **Option 1**

Remove the excess cost of ill health retirement from the Pension Scheme and pass the responsibilities and costs to employers via a reduction in the employer contribution rate. The Pension Scheme would then recharge employers for each ill health retirement under a similar approach to redundancy. Risk would be transferred from the Pension Scheme to employers under this arrangement.

- **Option 2**

Differential rates of employer contributions depending on use of the ill health

retirement scheme and type of organisation.

- **Option 3**

Retain broadly the current funding regime, but with the addition of a capital charge to employers for each early retirement. This would involve a reduction in the employer contribution rate which would then be recycled to pay for any subsequent capital charges.

The review partners support the principle of recharging but recognise that this has not been reflected in a significant number of responses to the consultation exercise. Subsequently, no preferred option has been identified through this process. Further exploration of the financial impact of the proposals will need to be undertaken before a final decision on the way forward is taken. As any possible implementation of this proposal will not take place during 2008 the review partners propose that this work will be progressed through the NHS Pension Scheme Governance Group.

Incidence of ill health retirements

In each of these approaches employers would be incentivised to put in place a robust set of standards to support the effective management of ill health. Those employers who mitigate their risks by putting in place robust policies and practices could see costs reduce.

7 Ill health retirement data

The current review was hampered by difficulties in accessing comparable data prior to 2001 and found inconsistencies with data analysed beyond this date. The review partners require that ill health retirement data in future made available using the same definition for staff groups used by the NHS staff census. The review partners also require that that information be made available by ethnicity and disability. The review partners have therefore agreed that the identification of all appropriate Scheme data requirements

shall be progressed through the NHS Pension Scheme Governance Group, to ensure compatibility with main Scheme arrangements.

The collection of appropriate data will be important to inform the process of review under the established governance arrangements. As such, application forms for ill health retirement will need amending and systems introduced to collect relevant data.

Contact us

www.nhsemployers.org
enquiries@nhsemployers.org

NHS Employers
29 Bressenden Place
London
SW1E 5DD

2 Brewery Wharf
Kendell Street
Leeds LS10 1JR

This document is available in pdf format at www.nhsemployers.org/publications

Published March 2008

© NHS Employers 2008. This document may not be reproduced in whole or in part without permission.

The NHS Confederation (Employers) Company Ltd
Registered in England. Company limited by guarantee: number 5252407

EINF06101



75% recycled
This briefing is printed
on 75% recycled paper