Guidance on agreeing local variations to national terms and conditions of service

All employers in the NHS using national terms and conditions of service (TCS) have the occasional need to agree local variations to meet local needs. Such changes are generally minor tweaks agreed around the margins of the national TCS, rather than radical revisions to substantive terms. For example, some changes may affect pay for a proportion of staff, others will have no such impact. Changes may be prompted by an employer’s local public sector equality duty or may be needed to reflect local recruitment or retention needs, alternately, they may be necessary to incorporate a local policy into the TCS.

Further to the guidance document published on 12 December 2016 describing how to input varied pay terms into electronic staff record (ESR) system correctly, this paper sets out advice to employers on what to consider when seeking to agree local variations to the national TCS with your local negotiating body. Of course, employers are not obliged to seek any variations from national TCS, nor are they obliged to agree to any requests from staff or trade unions to agree variations. The advice in this document is only for those employers who might be seeking to agree a local variation.

All employers will have an existing change management policy, as well as a staff engagement policy, this guidance should be read in conjunction with those and any other related policies. In the event of a conflict between local policy and this guidance, your existing local policy should prevail.

Process for change

Unless local policy dictates otherwise, a simple step by step guide would be as follows:

- identify the problem or concern
- identify the change[s] to the TCS that might resolve the problem
- identify and understand the cost [and other] implications
- carry out an equalities impact assessment on the proposed change
- consult those affected
- agree the change
- implement and communicate the change.
Identify the problem or concern

The problem may be raised by staff side or by management. Either party may feel that they have identified an issue affecting either the staff or the organisation which could be addressed via a local change to the TCS.

Identify the possible change(s)

Consider the options available that might address the problem. In most circumstances, employers will not be looking at options that increase costs, unless there is a clear benefit to the organisation in doing so. Both unions and management may have suggestions as to what the solutions might be. Employers are advised to consider these carefully to make sure both that the suggestions will actually resolve the problem and that there will be no untoward knock-on effects. Some suggestions may be superficially attractive but on closer investigation, might fail to resolve matters, or might cause additional problems.

Understand the cost (and other) implications

Where the proposed changes have an impact on pay or expenses, the full cost (in year and recurrent) needs to be assessed to see whether or not the change is cost neutral. Employers are unlikely to wish to agree changes that are not cost neutral, other than in exceptional circumstances. Having accurate data of current costs under the national TCS, and how these might be impacted by any proposed variation to those TCS over the lifetime of the change, is a crucial precursor to any negotiation of this nature.

Additionally, you would need to consider whether the proposed change might result in further requests for changes for other staff, in other words, would this change set a precedent? If so, how would these be addressed? Consideration should also be given to the scope and applicability of any such change, including consideration as to whether the change should be open ended or perhaps time limited, after which point the position would default back to the national TCS. In this example, the contract end date and/or end of transition set natural time limits but for other changes, this might not be the case.

Carry out an equalities impact assessment on the proposed change

While national TCS are subject to a national equalities impact assessment (EIA), local changes are not. Any such changes are therefore subject to an employer’s public sector equality duty and employers should follow their local policy is deciding what level of EIA is required. (It may be that the proposed change arose from a previous EIA). Should the EIA give rise to concerns about the proposal, then employers will need to consider these
concerns carefully before deciding whether, or how, to proceed. The completed EIA should be shared with unions as part of any subsequent consultation process.

**Consult those affected**

Depending on the nature of the change, employers may wish to consult with staff directly, in addition to speaking with unions. Alternatively, you may wish to consult with the unions, and to ask them to speak to their members. Your local change policy may indicate which route you should follow, either way, those affected by the change need to be consulted and to have the opportunity to comment on the proposed change.

**Agree the change**

Having consulted on the proposal, you would then need to agree the change with your local negotiating body, following your local change management and/or staff engagement policy. The final agreement would include, as a minimum, the intended nature of the change, the staff group(s) affected by the change, the exact wording of the contract variation and the effective date of the change (and whether or not the change is to be backdated). The agreement to the change should be documented in the minutes of any relevant meetings.

**Implement and communicate the change**

Once the change is agreed, it needs to be communicated to those affected in writing, letting them know that a variation to their TCS has been agreed on their behalf.

See our [worked example of this process](#).