
NHS Pay Review Body

The implementation of the 2018 NHS terms and conditions of service framework agreement

Joint NHS Staff Council submission

2019/20

Background

1. In June 2018 the NHS Staff Council reached agreement on a three-year pay deal that focused on:
 - pay structure reform and pay progression;
 - terms and conditions of service revisions that would support productivity, recruitment and retention.
2. The purpose of these changes was to ensure that the NHS term and conditions of service continued to deliver '*flexibility, capacity, fairness and value*'. The key aims were to:
 - support the attraction and recruitment of staff by increasing starting pay in every pay band
 - support the retention of staff by increasing basic pay for the 50 per cent of staff who are at the top of pay bands and speeding up progression to the top of the pay band
 - increase staff engagement by putting appraisal and personal development at the heart of pay progression, so that staff are supported to develop their skills and competences in each pay band and are rewarded for this. This will help ensure that all staff have the appropriate knowledge and skills they need to carry out their roles, so make the greatest possible contribution to patient care. It will be underpinned by a commitment from employers to enhance the relationship line managers have with their staff and to fully utilise an effective appraisal process
 - ensure that the pay system can support the growing use of apprenticeships in the NHS.
 - ensure that the pay system is supportive of new training pathways and that the health service can deliver on the aspiration to focus on 'careers, not jobs'.
 - map out future work that the NHS Staff Council could undertake to encourage consistency of approach e.g. to bank and apprenticeships careers.
 - improve the health and wellbeing of NHS staff to improve levels of attendance in the NHS with the ambition of matching the best in the public sector.
3. The agreement is included as Annex 1.
4. For year two of the deal the NHS Staff Council has prioritised the following work:
 - Enhanced Shared Parental Leave;
 - Child Bereavement Leave;
 - Apprenticeship pay;
 - Buying / Selling annual leave.

The key aspects of the agreement

Scope

- it is a three-year deal covering the financial years 2018/19, 2019/20, and 2020/21.
- it covers all NHS employers in England (covered in Annex 1 of the Terms and Conditions of Service Handbook).

Pay

- starting salaries increased across all pay bands.
- Fewer pay points in each pay band, with overlapping pay points removed, enabling faster progression to pay band maxima
- New system of pay progression.
- Top of pay bands to be increased by 6.5 per cent over the three years (apart from band 8d and 9 which will be capped at the cash value of the increase of Band 8c).
- Minimum rate of pay in the NHS to be set at £17,460 from 1 April 2018 – ahead of the Living Wage Foundation rates.

Structural changes

- Band 1 to be closed to new starters from 01 December 2018, with an agreed process for upskilling Band 1 jobs to Band 2 during the 3 years of the pay deal.
- Bands 2 to 4 and 8 to 9 will move to two pay points in the new structure. Bands 5 to 7 to move to three pay points.
- Staff below band 8 will have the opportunity to reach the top of their pay band more quickly than under the pre-April 2018 pay system.
- The time it takes for bands 8 to 9 to reach the top remains unchanged.
- Re-earnable pay remains for those staff that have reached the top of their pay band in bands 8c to 9

Other changes

- Terms and conditions amendments to:
 - include enhanced shared parental leave
 - child bereavement leave
 - a national framework on buying and selling leave.
- Unsocial hours payments while off sick to be paid only to existing staff earning at or below £18,160.
- Unsocial hours percentage rates for Band 1 – 3 to be adjusted in line with increases to basic pay.

Ambulance sector

- New entrant ambulance staff, and those changing jobs or moving roles internally or moving to a new employer, to be paid unsocial hours under Section 2 rather than Annex 5.
- Voluntary move to Section 2 terms will be offered to all existing ambulance staff.

Future NHS Staff Council work programme

- Programme of work to improve health and wellbeing to support better attendance levels and reduce sickness absence.
- To explore the alignment between the NHS TCS and other senior NHS pay arrangements.
- NHS Staff Council to negotiate provisions for apprenticeship pay as a matter of urgency.
- NHS Staff Council to explore the scope for a collective framework agreement on bank and agency working.
- Monitoring the impact of any deal.

Role of the NHS Pay Review Body

- NHS Pay Review Body retains its standing remit and will look at the progress of implementation and its impact.
- This monitoring role will also consider the future use and values of RRP's and High Cost Area Supplement (HCAS) payment.

NHS Staff Council work update – 2018/19

5. The NHS Staff Council has set up several task and finish partnership subgroups to focus on the following work areas.

Pay progression

6. The task and finish group on pay progression completed their work during 2019. As a result of the work, a new Annex 23 was agreed and incorporated into the NHS terms and conditions of service handbook from 1 April 2019 to implement the new progression arrangements set out in the Framework.
7. The new arrangements apply to all new starters and anyone who is promoted from 1 April 2019. Existing staff will continue with their current pay progression arrangements until the end of the three-year deal, at which stage the new arrangements will apply.

8. The new Annex was published alongside a range of Staff Council material about the new progression system including guidance for staff and managers; flow-charts; standard templates and scenarios.
9. It had been intended that the Staff Council would also reach agreement on the process for implementation of re-earnable pay in bands 8c, 8d and 9. This work was suspended pending the outcome of delayed work on the very senior manager (VSM) pay framework taking place across the civil service. The discussions are set to resume early in 2020, with the expectation that new Staff Council guidance on re-earnable pay arrangements within these pay bands will be in place by March 2020.

Closing of Band 1

10. Following the closure of Band 1 to new entrants from 1 December 2018, a task and finish group was convened to manage the process of moving existing staff to Band 2.
11. The group reached a national agreement on the process for moving staff from Band 1 to band 2 which was published in December 2018, ahead of the last Review Body round. This agreement guaranteed all band 1 staff the option to move to Band 2 with a common effective date of 1 April 2019.
12. During 2019, the Staff Council has supported and monitored the implementation of the new agreement. This has involved:
 - Producing a range of guidance materials for different audiences;
 - Encouraging trusts to hold workshops for staff and managers;
 - Working with the Job Evaluation Group to provide advice and FAQs on the differences between band 1 and 2 roles.
13. Due to the large numbers of band 1 staff in some organisations, the choice exercise has been staggered. The Staff Council has received updates on the numbers of staff moving between bands 1 and 2 in order to track progress.
14. The NHS Staff Council is continuing to monitor the implementation of the closing of Band 1 and the expectation is that all staff that move into Band 2 will be eligible to move to the top of Band 2 on the 01 April 2021.

Enhanced shared parental leave

15. From the 01 April 2019, new occupational shared parental leave provisions were incorporated into the NHS terms and conditions of service handbook. These enhanced the shared parental leave pay arrangements to the same levels as occupational maternity pay arrangements. This was an improvement on the statutory provisions previously offered.

Child bereavement leave

16. From the 01 April 2019, new contractual child bereavement leave provisions were incorporated into the NHS terms and conditions of service handbook ahead of the governments anticipated statutory provisions due in 2020

Apprenticeship pay negotiations

17. After extensive negotiations on apprenticeship pay, see Annex 3, both sides concluded that they were unable to reconcile the employer side need for an affordable and flexible outcome with a staff side need for a fair and equality-proof solution integrating pay rates for apprentices into the reformed NHS TCS structure alongside the wider workforce. The discussions explored possible options in relation to:

- Graduate apprenticeship pay – where an impasse was reached over affordability issues of the TU model proposals;
- An ‘in principle’ approach to graduate apprenticeship pay that could be implemented if backfill costs and the suggested pay rates were fully funded – employers were accepting of a percentage approach similar to that set out in Annex 21 but not able to agree on the proposed percentage rates.
- Post-graduate apprenticeship pay – where two approaches were identified in principle, staff already employed receiving pay protection and new staff following a similar approach to graduate apprenticeships.
- Band 2 – 4 apprenticeship pay – where the group had discussions to explore what currently happens and whether there was scope for agreement on a consistent approach.

18. The current constraints of funding, and the lack of levy funding flexibility to support backfill costs for clinical apprenticeships, limited the NHS Staff Council’s ability to reach a national agreement on apprenticeship pay.

Buying and selling of annual leave

19. A task and finish group was set up in 2018 to undertake negotiations on a national agreement on buying and selling annual leave.

20. The group undertook a scoping exercise and discovered that a range of local policies were in place across trusts in England.

21. In May 2019, the Department of Health and Social Care clarified that the mandate for the negotiations was to agree an optional Staff Council framework that NHS Trusts could apply.

22. The group produced a set of good practice principles to ensure that the health and wellbeing of staff is protected within local policies but were not able to reach agreement on the rates for which annual leave should be sold.

A joint paper was produced by the group and is included at Annex 4.

Bank and agency working

23. A task and finish group was set up to start work to explore the potential for a collective agreement on bank and agency working. At the time of writing, a survey had been issued to all English Trusts to gather the basic data required to undertake discussions about Bank arrangements.

Next Steps

24. The priority for 2020/21 will be for the NHS Staff Council to conclude the outstanding work on:

- exploring a possible bank and agency framework;
- agreeing some joint guidance to support staff being able to take their annual leave and TOIL;

25. In addition, the NHS Staff Council will be reviewing monitoring data to ensure that the agreement is being implemented as expected, that any equality impact is taken into consideration and any appropriate action taken.

26. As we move towards the end of the three-year pay deal, there will be a need for the Staff Council to consider what priority to attach to refining the pay structure further. Areas already flagged for consideration include:

- focusing on the value of the gaps between pay bands to ensure we maintain appropriate incentives for career progression;
- reviewing where mid points currently fall and whether there is scope to equalise the jumps between step points;
- looking at Bands 8 and 9 and whether there is scope to reduce the time between the step points from five to four years.

NHS Staff Council secretariat
January 2020

Annex 1

**Framework agreement on the reform of NHS Terms
and Conditions of Service (Agenda for Change)**

THE NHS STAFF COUNCIL
WORKING IN PARTNERSHIP

**Framework agreement on
the reform of Agenda for
Change**

27 June 2018



Jon Lenney – Employer side Chair of the NHS Staff Council



Sara Gorton – Staff side Chair of the NHS Staff Council

FRAMEWORK AGREEMENT ON THE REFORM OF NHS PAY STRUCTURE FOR AGENDA FOR CHANGE STAFF

27 June 2018

Scope and status

- i. This framework agreement is adopted by the NHS Staff Council following consultation and agreement with constituent parties.
- ii. This Framework is adopted following the confirmation of the relevant funding received from the Department of Health and Social Care on 21 March 2018.
- iii. It is intended that this agreement covers all NHS employers in England listed in Annex 1 of the NHS Terms and Conditions of Service handbook.
- iv. This framework agreement enables partners in Scotland, Cymru/Wales and Northern Ireland to hold discussions about whether, and how, the content of this agreement is implemented, in light of the funding available in accordance with the Barnett formula.

Introduction and context

The introduction of Agenda for Change (AfC) in 2004 was a significant achievement; bringing together several different pay arrangements into one overall structure underpinned by job evaluation.

Whilst this structure has stood the test of time, NHS trade unions and employers have agreed on the need for changes to be made to modernise AfC in a number of areas. The agreement reached in England in 2013 was recognised by all parties as the start of a wider conversation on a refresh of AfC.

At the November budget the Chancellor of the Exchequer reconfirmed the intention to end the 1 per cent basic pay policy, and announced that additional funding could be made available for a multi-year pay deal for AfC staff that would support productivity and recruitment and retention.

This framework document sets out a three-year agreement covering the years from 1 April 2018 to 31 March 2021. It sets out both the pay investment that will be made and the reforms that employers, NHS trade unions and the Department of Health and Social Care are agreeing to implement over the period of the agreement and going forward.

The key objectives in the discussions leading to the details set out in this framework agreement document have been to:

- support the attraction and recruitment of staff by increasing starting pay in every pay band
- support the retention of staff by increasing basic pay for the 50 per cent of staff who are at the top of pay bands and speeding up progression to the top of the pay band
- increase staff engagement by putting appraisal and personal development at the heart of pay progression, so that staff are supported to develop their skills and competences in each pay band and are rewarded for this. This will help ensure that all staff have the appropriate knowledge and skills they need to carry out their roles, so make the greatest possible contribution to patient care. It will be underpinned by a commitment from employers to enhance the relationship line managers have with their staff and to fully utilise an effective appraisal process
- ensure that the pay system can support the growing use of apprenticeships in the NHS.
- ensure that the pay system is supportive of new training pathways and that the health service can deliver on the aspiration to focus on 'careers, not jobs'.
- map out future work that the NHS Staff Council will undertake to encourage consistency of approach to bank working (including how the service can better incentivise staff to offer their own time to the bank) and to the development of apprenticeship routes to healthcare careers.
- improve the health and wellbeing of NHS staff to improve levels of attendance in the NHS with the ambition of matching the best in the public sector.

The partners have developed this agreement in full awareness of the Public Sector Equality Duties and recognise that an equality impact assessment will need to be commissioned to support this agreement.

Details

1. To help the NHS attract and recruit new staff

- 1.1. Starting salaries across all pay bands will increase as outlined in Annex A.
- 1.2. The increases to starting salaries are achieved by the following action: points which overlap with a lower pay band will be removed from the bottom of each current pay band, with one point being removed in 2018/19, and further points being removed in 2019/20.
- 1.3. A new provision detailing pay for apprentices will be negotiated by the NHS Staff Council as a matter of priority, and added to the NHS Terms and Conditions of Service Handbook (the Handbook). This will help employers find affordable solutions, that make maximum use of the apprenticeship levy, to develop a new as well as existing workforce and to increase capacity.

2. To help the NHS retain staff

- 2.1. The intention of the reforms to the pay structure is that by the end of the three-year period - and on 1 April of each of the years covered by this agreement – individuals will have basic pay that is of greater value than under current expectations (which are defined as a 1 per cent pay award per annum plus contractual increments).
- 2.2. The value of the top points of each pay band will be increased by 6.5% cumulatively over the three-year period for Bands 2 - 8c. The value of the top pay points in Bands 8d and 9 will be capped at the level of the increase in value at the top of band 8c.

The value of the top pay points for Bands 2 - 8c will increase each year as follows:

- 3 per cent in 2018/19
- 1.7 per cent in 2019/20
- 1.67 per cent in 2020/21.

The value of the top pay points in bands 8d and 9 will be capped at the level of the increase in value at the top of band 8c.

- 2.3. The effective date for pay awards will remain as 1 April in the relevant year.

- 2.4. In 2019/20 only, a cash lump sum will be made available to deliver an additional 1.1 per cent to the staff employed on the top points in bands 2 – 8c. For the staff employed on the top pay points in bands 2 – 8c on 31 March 2019 the total in year cash value of the award on basic pay and the additional cash sum in 2019/20 will be 2.8 per cent. The lump sum will be paid out to staff in April pay and will be non-consolidated.
- 2.5. For band 8d and 9 the cash lump sum will be capped at the value given to band 8c.
- 2.6. Existing pay bands will be restructured and the number of pay points will be reduced to 2 points for Bands 2, 3, 4, 8a, 8b, 8c, 8d and 9 and 3 points for Band 5, 6 and 7. Restructuring will be completed by 1 April 2021.
- 2.7. Pay Bands 8c, 8d and 9 will continue to include an element of re-earnable pay. In the year after the employee has reached the top of the band, up to 10 per cent of basic salary will become re-earnable subject to performance. This process is described in full in Annex A. Those staff on bands 8c, 8d and 9 with reserved rights from the 2013 AfC agreement will receive protection of reserved rights on a marked time basis.
- 2.8. The new pay structure will enable staff in Bands 2-7 to access the top of the pay band more quickly than in the current system.

	Current system	New system
Band 1	1 year	N/A
Band 2	6 years	2 years
Band 3	6 years	2 years
Band 4	6 years	3 years
Band 5	7 years	4 years
Band 6	8 years	5 years
Band 7	8 years	5 years
Band 8a	5 years	5 years
Band 8b	5 years	5 years
Band 8c	5 years	5 years
Band 8d	5 years	5 years
Band 9	5 years	5 years

- 2.9. For each pay point on each pay band, the detail of the ‘individual journey’ for staff is detailed in Annex A.

- 2.10. The new pay structure and values for each point in each of the years 2018/19, 2019/20 and 2020/21 is set out at Annex A.
- 2.11. Paragraph 2.1 sets out the policy intention for the reforms to the pay structure. In the unlikely event that transition to the reformed pay structure results in this policy intention not being met, the principle of 'no detriment' will apply to the individual(s) concerned.

3 To ensure the NHS is better able to recruit and retain staff in the lower pay bands

- 3.1 A new rate of £17,460 will be introduced from 1 April 2018 as the minimum basic pay rate in the NHS, in order to future proof the pay structure, stay ahead of statutory requirements, and ensure the NHS in England retains a competitive market advantage in the jobs market for staff employed at this level.
- 3.2 Band 1 will be updated to this minimum pay rate with effect from 1 April 2018. Band 1 will be closed to new entrants from 1 December 2018.
- 3.3 The NHS Staff Council will agree a framework to support and encourage provider organisations to upskill roles currently in Band 1 to Band 2 roles. This exercise should be completed by 31 March 2021, in line with a process that will be agreed by the NHS Staff Council.

4 Pay progression

- 4.1 A new NHS Staff Council progression framework will be put in place by 1 April 2019, so that within each pay band staff will be supported to make the best use of their skills. The new progression framework is set out in Annex B.
- 4.2 The new pay progression system will help ensure that all staff have the appropriate knowledge and skills they need to carry out their roles, and so make the greatest possible contribution to patient care. It will be underpinned by a commitment from employers to strengthen and improve the appraisal process.
- 4.3 The new pay progression system will:
- a. enable staff in Bands 2-7 to reach the top of their pay band more quickly
 - b. describe minimum periods of time before progression to the next pay-step point
 - c. not be automatic

- d. give staff the opportunity to demonstrate they have met the required standards, including appraisals
 - e. require line managers and staff to follow the pay-step submission process (described in the pay progression framework document) in order to access the next pay-step point
 - f. require employers to provide information to enable the NHS Staff Council to undertake monitoring of pay progression and re-earnable pay in relation to employees with protected characteristics.
- 4.4. The Staff Council will oversee the implementation of the pay progression system. This will include the amendment of payroll systems from 2018/19.

5. *To help support the service and members of NHS staff*

- 5.1 The partners will work together through NHS Staff Council and Social Partnership structures to improve levels of attendance through a focus on staff health and wellbeing at a national and local level. The ambition is that through positive management of sickness absence the NHS will match the best in the public sector. To identify changes that will support this ambition, a work programme will be set up to include an assessment of the principal factors affecting levels of attendance and a review of the current agreement on absence management. This will include reviewing Annex 26. This will not alter the sick pay provisions set out in Section 14 of the terms and conditions of service handbook.
- 5.2 The NHS Staff Council will explore what scope there is for a collective framework agreement on bank and agency working, including the opportunity to provide cost-effective incentives to encourage staff to offer their own time to internal staff banks to increase capacity.

6. *To encourage greater consistency of terms*

- 6.1 Employing organisations will work in partnership with trade unions to introduce local mechanisms to guarantee access to those annual leave and time off in lieu (TOIL) provisions set out in the NHS Terms and Conditions of Service Handbook.
- 6.2 New provisions will be added to the NHS Terms and Conditions of Service Handbook to give staff access to consistent child bereavement Leave, enhanced shared parental leave (extension of statutory), and a national framework for buying and selling annual leave.

- 6.3 The variation in approach to payment schemes for unsocial hours will be reduced by taking the following steps:
- a. A new provision will be added to the handbook to open Section 2 (maintaining round the clock services) unsocial hours payment arrangements to all ambulance staff. This will apply to all new entrants to the Ambulance Service in England from 1 September 2018 and all changes of roles (including promotion). Existing ambulance staff will be offered a voluntary move to the Section 2 rates with details of how this will be offered and managed to be agreed via the NHS Staff Council.
 - b. Section 14 (sickness absence) paragraph 4 of the NHS Terms and Conditions of Service Handbook will be adjusted to convert the eligibility for payment of unsocial hours during occupational sick leave (currently available to staff on spine points 2-8) to a cash value (basic salary) of £18,160. New entrants to the NHS, appointed with effect from 1st July 2018 onwards, will not have access to payment of unsocial hours during occupational sick leave. This will ensure that over time, the calculation for sickness absence pay is the same for all staff on the NHS terms and conditions of service.
 - c. Section 2 of the handbook will be adjusted to introduce new percentage rates for Bands 1, 2 and 3. The new percentages will reflect the increase to basic salary levels while preserving the value of the current payment tiers. The percentage rates are set out at Annex A. The percentages will stay at the 2020/21 rates going forward.
- 6.4 In conjunction with the ongoing review of senior pay, the NHS Staff Council will explore the scope for further alignment between Agenda for Change and other senior NHS pay arrangements, with a view to achieving greater coherence.

7. *The role of the NHS Staff Council*

- 7.1 The NHS Staff Council will retain its existing role as described in the NHS Terms and Conditions of Service Handbook.
- 7.2 In addition, the Staff Council will agree a work programme in partnership to monitor the implementation of the proposed deal over the three-year period, and ensure all aspects of the agreement are implemented as intended.

Ends

Annex A

The new pay structure for 2018/19, 2019/20, & 2020/21

		Current	Year 1	Year 2	Year 3
Band	Years of experience	2017/18	2018/19	2019/20	2020/21
Band 1	1	£15,404	£17,460	£17,652	£18,005
TOP	2	£15,671	£17,460	£17,652	£18,005
Band 2	1	£15,404	£17,460	£17,652	£18,005
	2	£15,671	£17,460	£17,652	£18,005
	3	£16,104	£17,460	£17,652	£19,337
	4	£16,536	£17,460	£17,652	£19,337
	5	£16,968	£17,460	£17,652	£19,337
	6	£17,524	£17,787	£17,983	£19,337
TOP	7	£18,157	£18,702	£19,020	£19,337
Band 3	1	£16,968	£17,787	£18,813	£19,737
	2	£17,524	£17,787	£18,813	£19,737
	3	£18,157	£18,429	£18,813	£21,142
	4	£18,333	£18,608	£18,813	£21,142
	5	£18,839	£19,122	£19,332	£21,142
	6	£19,409	£19,700	£19,917	£21,142
TOP	7	£19,852	£20,448	£20,795	£21,142
Band 4	1	£19,409	£20,150	£21,089	£21,892
	2	£19,852	£20,150	£21,089	£21,892
	3	£20,551	£20,859	£21,089	£21,892
	4	£21,263	£21,582	£21,819	£24,157
	5	£21,909	£22,238	£22,482	£24,157
	6	£22,128	£22,460	£22,707	£24,157
TOP	7	£22,683	£23,363	£23,761	£24,157
Band 5	1	£22,128	£23,023	£24,214	£24,907
	2	£22,683	£23,023	£24,214	£24,907
	3	£23,597	£23,951	£24,214	£26,970
	4	£24,547	£24,915	£26,220	£26,970
	5	£25,551	£25,934	£26,220	£27,416
	6	£26,565	£26,963	£27,260	£27,416
	7	£27,635	£28,050	£28,358	£30,615
TOP	8	£28,746	£29,608	£30,112	£30,615
Band 6	1	£26,565	£28,050	£30,401	£31,365
	2	£27,635	£28,050	£30,401	£31,365
	3	£28,746	£29,177	£30,401	£33,176
	4	£29,626	£30,070	£32,525	£33,176

	5	£30,661	£31,121	£32,525	£33,176
	6	£31,696	£32,171	£32,525	£33,779
	7	£32,731	£33,222	£33,587	£33,779
	8	£33,895	£34,403	£34,782	£37,890
TOP	9	£35,577	£36,644	£37,267	£37,890
Band 7	1	£31,696	£33,222	£37,570	£38,890
	2	£32,731	£33,222	£37,570	£38,890
	3	£33,895	£34,403	£37,570	£40,894
	4	£35,577	£36,111	£37,570	£40,894
	5	£36,612	£37,161	£38,765	£40,894
	6	£37,777	£38,344	£38,765	£41,723
	7	£39,070	£39,656	£40,092	£41,723
	8	£40,428	£41,034	£41,486	£44,503
TOP	9	£41,787	£43,041	£43,772	£44,503
Band 8A	1	£40,428	£42,414	£44,606	£45,753
	2	£41,787	£42,414	£44,606	£45,753
	3	£43,469	£44,121	£44,606	£45,753
	4	£45,150	£45,827	£46,331	£45,753
	5	£47,092	£47,798	£48,324	£45,753
TOP	6	£48,514	£49,969	£50,819	£51,668
Band 8B	1	£47,092	£49,242	£52,306	£53,168
	2	£48,514	£49,242	£52,306	£53,168
	3	£50,972	£51,737	£52,306	£53,168
	4	£53,818	£54,625	£55,226	£53,168
	5	£56,665	£57,515	£58,148	£53,168
TOP	6	£58,217	£59,964	£60,983	£62,001
Band 8C	1	£56,665	£59,090	£61,777	£63,751
	2	£58,217	£59,090	£61,777	£63,751
	3	£60,202	£61,105	£61,777	£63,751
	4	£63,021	£63,966	£64,670	£63,751
	5	£67,247	£68,256	£69,007	£63,751
TOP	6	£69,168	£71,243	£72,597	£73,664
Band 8D	1	£67,247	£70,206	£73,936	£75,914
	2	£69,168	£70,206	£73,936	£75,914
	3	£72,051	£73,132	£73,936	£75,914
	4	£75,573	£76,707	£77,550	£75,914
	5	£79,415	£80,606	£81,493	£75,914
TOP	6	£83,258	£85,333	£86,687	£87,754
Band 9	1	£79,415	£84,507	£89,537	£91,004
	2	£83,258	£84,507	£89,537	£91,004
	3	£87,254	£88,563	£89,537	£91,004
	4	£91,442	£92,814	£93,835	£91,004
	5	£95,832	£97,269	£98,339	£91,004
TOP	6	£100,431	£102,506	£103,860	£104,927

Increases in starting salaries

Cumulative change from current (2017/18) starting salaries:

	Current	Cumulative change from 17/18 (£)			Cumulative change from 17/18 (%)		
		2018/19	2019/20	2020/21	2018/19	2019/20	2020/21
Band 1	15,404	2,056	2,248	2,601	13.3%	14.6%	16.9%
Band 2	15,404	2,056	2,248	2,601	13.3%	14.6%	16.9%
Band 3	16,968	819	1,845	2,769	4.8%	10.9%	16.3%
Band 4	19,409	741	1,680	2,483	3.8%	8.7%	12.8%
Band 5	22,128	895	2,086	2,779	4.0%	9.4%	12.6%
Band 6	26,565	1,485	3,836	4,800	5.6%	14.4%	18.1%
Band 7	31,696	1,526	5,874	7,194	4.8%	18.5%	22.7%
Band 8A	40,428	1,986	4,178	5,325	4.9%	10.3%	13.2%
Band 8B	47,092	2,150	5,214	6,076	4.6%	11.1%	12.9%
Band 8C	56,665	2,425	5,112	7,086	4.3%	9.0%	12.5%
Band 8D	67,247	2,959	6,689	8,667	4.4%	9.9%	12.9%
Band 9	79,415	5,092	10,122	11,589	6.4%	12.7%	14.6%

Individual pay journeys – 2018 to 2021

Please note a pay calculator is available online at www.nhspay.org.

Band	Spine Point	2017/18 (current)	2018/19 (Year 1)	2019/20 (Year 2)	2020/21 (Year 3)	Earnings gain (£)	Earnings gain (%)
1	2	£15,404	£17,460	£17,652	£18,005	£2,601	16.89%
	3	£15,671	£17,460	£17,652	£18,005	£2,334	14.89%
2	2	£15,404	£17,460	£17,652	£19,337	£3,933	25.53%
	3	£15,671	£17,460	£17,652	£19,337	£3,666	23.39%
	4	£16,104	£17,460	£17,652	£19,337	£3,233	20.08%
	5	£16,536	£17,460	£17,983	£19,337	£2,801	16.94%
	6	£16,968	£17,787	£19,020	£19,337	£2,369	13.96%
	7	£17,524	£18,702	£19,020	£19,337	£1,813	10.35%
	8	£18,157	£18,702	£19,020	£19,337	£1,180	6.50%
3	6	£16,968	£17,787	£18,813	£21,142	£4,174	24.60%
	7	£17,524	£18,429	£18,813	£21,142	£3,618	20.65%
	8	£18,157	£18,608	£19,332	£21,142	£2,985	16.44%
	9	£18,333	£19,122	£19,917	£21,142	£2,809	15.32%
	10	£18,839	£19,700	£20,795	£21,142	£2,303	12.22%
	11	£19,409	£20,448	£20,795	£21,142	£1,733	8.93%
	12	£19,852	£20,448	£20,795	£21,142	£1,290	6.50%
4	11	£19,409	£20,150	£21,089	£24,157	£4,748	24.46%
	12	£19,852	£20,859	£21,819	£24,157	£4,305	21.69%

	13	£20,551	£21,582	£22,482	£24,157	£3,606	17.55%
	14	£21,263	£22,238	£22,707	£24,157	£2,894	13.61%
	15	£21,909	£22,460	£23,761	£24,157	£2,248	10.26%
	16	£22,128	£23,363	£23,761	£24,157	£2,029	9.17%
	17	£22,683	£23,363	£23,761	£24,157	£1,474	6.50%
5	16	£22,128	£23,023	£24,214	£26,970	£4,842	21.88%
	17	£22,683	£23,951	£26,220	£27,416	£4,733	20.87%
	18	£23,597	£24,915	£26,220	£27,416	£3,819	16.18%
	19	£24,547	£25,934	£27,260	£30,615	£6,068	24.72%
	20	£25,551	£26,963	£28,358	£30,615	£5,064	19.82%
	21	£26,565	£28,050	£30,112	£30,615	£4,050	15.25%
	22	£27,635	£29,608	£30,112	£30,615	£2,980	10.78%
	23	£28,746	£29,608	£30,112	£30,615	£1,869	6.50%
6	21	£26,565	£28,050	£30,401	£33,176	£6,611	24.89%
	22	£27,635	£29,177	£32,525	£33,176	£5,541	20.05%
	23	£28,746	£30,070	£32,525	£33,779	£5,033	17.51%
	24	£29,626	£31,121	£32,525	£33,779	£4,153	14.02%
	25	£30,661	£32,171	£33,587	£37,890	£7,229	23.58%
	26	£31,696	£33,222	£34,782	£37,890	£6,194	19.54%
	27	£32,731	£34,403	£37,267	£37,890	£5,159	15.76%
	28	£33,895	£36,644	£37,267	£37,890	£3,995	11.79%
	29	£35,577	£36,644	£37,267	£37,890	£2,313	6.50%
7	26	£31,696	£33,222	£37,570	£40,894	£9,198	29.02%
	27	£32,731	£34,403	£37,570	£40,894	£8,163	24.94%
	28	£33,895	£36,111	£38,765	£41,723	£7,828	23.09%
	29	£35,577	£37,161	£38,765	£41,723	£6,146	17.28%
	30	£36,612	£38,344	£40,092	£44,503	£7,891	21.55%
	31	£37,777	£39,656	£41,486	£44,503	£6,726	17.80%
	32	£39,070	£41,034	£43,772	£44,503	£5,433	13.91%
	33	£40,428	£43,041	£43,772	£44,503	£4,075	10.08%
	34	£41,787	£43,041	£43,772	£44,503	£2,716	6.50%
8a	33	£40,428	£42,414	£44,606	£46,518	£6,090	15.06%
	34	£41,787	£44,121	£46,331	£48,519	£6,732	16.11%
	35	£43,469	£45,827	£48,324	£51,668	£8,199	18.86%
	36	£45,150	£47,798	£50,819	£51,668	£6,518	14.44%
	37	£47,092	£49,969	£50,819	£51,668	£4,576	9.72%
	38	£48,514	£49,969	£50,819	£51,668	£3,154	6.50%
8b	37	£47,092	£49,242	£52,306	£55,450	£8,358	17.75%
	38	£48,514	£51,737	£55,226	£58,383	£9,869	20.34%
	39	£50,972	£54,625	£58,148	£62,001	£11,029	21.64%
	40	£53,818	£57,515	£60,983	£62,001	£8,183	15.20%
	41	£56,665	£59,964	£60,983	£62,001	£5,336	9.42%

	42	£58,217	£59,964	£60,983	£62,001	£3,784	6.50%
8c	41	£56,665	£59,090	£61,777	£64,931	£8,266	14.59%
	42	£58,217	£61,105	£64,670	£69,285	£11,068	19.01%
	43	£60,202	£63,966	£69,007	£73,664	£13,462	22.36%
	44	£63,021	£68,256	£72,597	£73,664	£10,643	16.89%
	45	£67,247	£71,243	£72,597	£73,664	£6,417	9.54%
	46	£69,168	£71,243	£72,597	£73,664	£4,496	6.50%
8d	45	£67,247	£70,206	£73,936	£77,863	£10,616	15.79%
	46	£69,168	£73,132	£77,550	£81,821	£12,653	18.29%
	47	£72,051	£76,707	£81,493	£87,754	£15,703	21.79%
	48	£75,573	£80,606	£86,687	£87,754	£12,181	16.12%
	49	£79,415	£85,333	£86,687	£87,754	£8,339	10.50%
	50	£83,258	£85,333	£86,687	£87,754	£4,496	5.40%
9	49	£79,415	£84,507	£89,537	£94,213	£14,798	18.63%
	50	£83,258	£88,563	£93,835	£98,736	£15,478	18.59%
	51	£87,254	£92,814	£98,339	£104,927	£17,673	20.25%
	52	£91,442	£97,269	£103,860	£104,927	£13,485	14.75%
	53	£95,832	£102,506	£103,860	£104,927	£9,095	9.49%
	54	£100,431	£102,506	£103,860	£104,927	£4,496	4.48%

Unsocial hours enhancement rates – 2018/19 to 2020/21

	2018/19	2019/20	2020/21
Band 1 All time on Saturday (midnight to midnight) and any week day after 8 pm and before 6 am	Time plus 49%	Time plus 48%	Time plus 47%
Band 1 All time on Sundays and Public Holidays (midnight to midnight)	Time plus 97%	Time plus 95%	Time plus 94%
Band 2 All time on Saturday (midnight to midnight) and any week day after 8 pm and before 6 am	Time plus 43%	Time plus 42%	Time plus 41%
Band 2 All time on Sundays and Public Holidays (midnight to midnight)	Time plus 85%	Time plus 84%	Time plus 83%
Band 3 All time on Saturday (midnight to midnight) and any week day after 8 pm and before 6 am	Time plus 36%	Time plus 35%	Time plus 35%
Band 3 All time on Sundays and Public Holidays (midnight to midnight)	Time plus 72%	Time plus 70%	Time plus 69%

Re-earnable process for Bands 8c, 8d and 9

Annually earned pay is already a feature of the NHS terms and conditions of service for Bands 8c, 8d and 9, this was introduced in 2013. Creating an effective link between personal accountability for performance and pay is a key objective of these arrangements, building on the 2013 changes.

The new pay progression framework will apply to bands 8c, 8d and 9, and more detailed guidance will be produced to help employers achieve an effective and consistent use of annually earned pay.

In the year after the employee has reached the top of bands 8c, 8d and 9, up to 10 per cent of basic salary will become re-earnable. Subject to performance, the employee will retain their basic salary or their salary will be reduced by 5 per cent or 10 per cent. The employee will be able to restore their salary at the end of the following year by achieving agreed levels of performance.

Employers will put in place robust monitoring arrangements for the use of annually earned pay. The NHS Staff Council will also evaluate monitoring data to ensure the arrangements are compliant with equalities legislation.

Employees on the top two points of these bands on 31 March 2013 have reserved rights to the relevant point. This reserved right will be retained on a marked time basis. At the end of 2020/21, 5 per cent of pay will become annually earned and then, when annual increases to the top of the band add a further 5 per cent, annually earned pay will apply to 10 per cent of basic pay.

Annex B

Progression within the new pay system

Aims

1. Patients are at the heart of everything the NHS does. The introduction of a new pay system is an opportunity to ensure that, in a patient centred health care system, staff are supported to develop and utilise the skills and behaviours a modern NHS needs. This is crucial whether staff are just starting their NHS career or are long-serving and already at the top of their pay band.
2. The new pay system will help ensure that all staff have the appropriate knowledge and skills they need to carry out their roles. This will be underpinned by a commitment from employers to strengthen and improve the appraisal process.
3. The NHS Management and Health Service Quality report, from Michael West et al. found that good management of NHS staff leads to higher quality of care. It states that:

“The more engaged staff members are, the better the outcomes for patients and the organisation generally. Engagement can be fostered through good staff management. Having well-structured appraisals (where clear objectives are set, the appraisal is helpful in improving how to do the job, and the employee is left feeling valued by their employer) is particularly important”.

The report’s summary concludes that:

“The proportion of staff receiving well-structured appraisals is related to patient satisfaction, patient mortality, staff absenteeism and turnover, and better performance on the Annual Health Check... By giving staff clear direction, good support and treating them fairly and supportively, leaders create cultures of engagement, where dedicated NHS staff in turn can give of their best in caring for patients.”

4. By strengthening the existing national mandatory appraisal system within a new pay structure, and insisting on good quality appraisals between staff and line managers, organisations will be better placed to identify, right across their workforce, ways to improve patient care through staff learning and development. Effective use of appraisal will enable trusts to identify those staff that would benefit from further development opportunities, and to help develop a culture of continuous learning which in turn will help improve the patient experience. This approach is supported in the CQC’s well led guidance, which states that in well led organisations, “the leadership, management and governance of the organisation assures the delivery of high-quality and person-centred care, supports learning and innovation, and promotes an open and fair culture”.

5. Getting the appraisal process right is an integral part of patient care. The responsibility for patient care does not rest on individuals alone but on how the entire health care team works together. Capability of line managers is critical in ensuring the new pay system operates in a fair and transparent way. All staff should be supported to demonstrate that they have the knowledge, skills, values and behaviours their organisation expects.
6. The aim is to create a partnership approach between staff and line managers where line managers are supported to make the appraisal experience as positive as possible and where staff are supported to take shared responsibility for showing how they meet the required standards.
7. The new pay system is just one part of creating an NHS where staff want to work, where continuous learning and development is encouraged, where work life balance and health and wellbeing is taken seriously, and where bullying, harassment, and violence are not tolerated.
8. The new pay system seeks to:
 - i. create a simple process for assessing the standards for progression through the pay band, where a manager/employee submission process needs to be followed for pay-step points to be achieved
 - ii. help drive consistency across the NHS whilst allowing local flexibility to develop assessments against individual and/or organisational objectives, including values and behaviours
 - iii. allow faster progression to the top of each pay band through fewer pay-step points
 - iv. provide meaningful pay increases at each pay-step point
 - v. encourage staff to take responsibility for showing that they meet the defined standards
 - vi. ensure line managers make available to their staff the appropriate training, support and development opportunities
 - vii. encourage organisations to assess staff against local values and behaviours, agreed in partnership with staff side and informed by the NHS Constitution
 - viii. ensure pay-step points are achieved only where managers are satisfied that their staff have met the required standards.

Employer and employee support

9. Further details on how the annual appraisal process, required standards and progression through pay-step points should operate will be agreed in partnership and set out in further NHS Staff Council guidance. The partners will also work closely with colleagues responsible for the Electronic Staff Record to consider how existing functionality (or any new functionality) can best support line managers and staff in the effective delivery of annual appraisals and the new pay system.

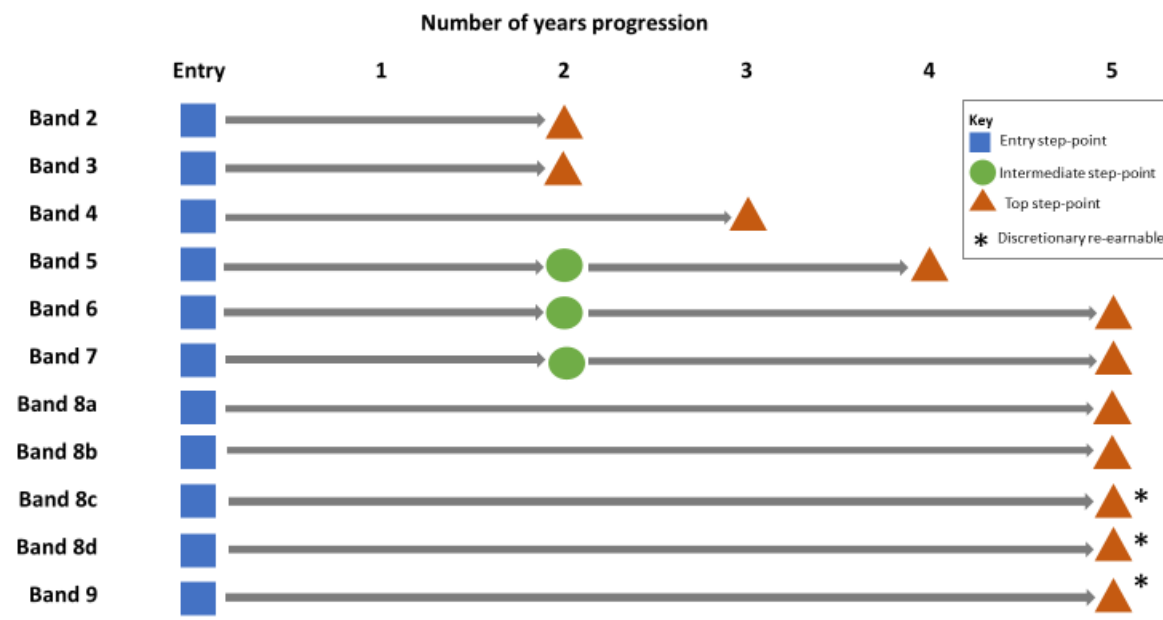
Equality analysis

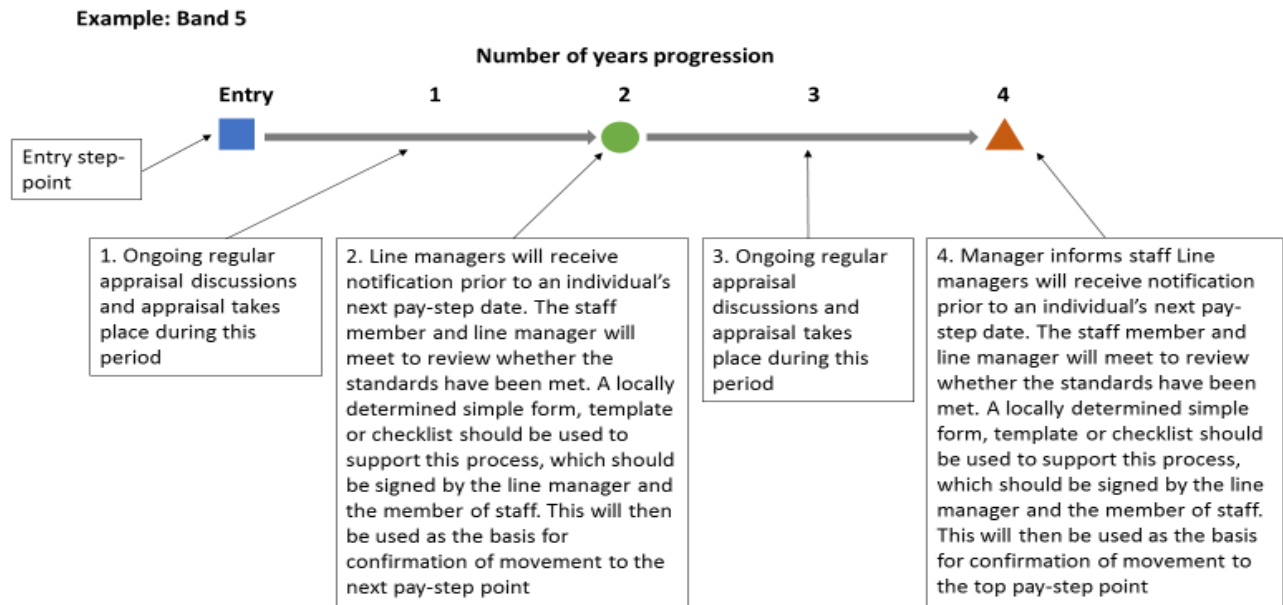
- 10. Local NHS organisations are required to demonstrate that they have paid ‘due regard’ to their Public Sector Equality Duties under the Equality Act 2010. A national equality analysis is being developed in partnership and which will cover any wider changes to Agenda for Change terms and conditions of service. Local organisations will be able to use the national analysis as a basis for carrying out their own local equality analysis.

Pay structure and pay-step points

- 11. The new pay system includes fewer pay points but significant pay increases on average at each pay-step point. To deliver good patient care whether staff work directly with patients or not, there is an expectation that standards must be met. The mandatory annual appraisal process should involve regular conversations between staff and their line manager to ensure the required standards are understood and additional support identified in good time. The expectation is that all staff will meet the required standards and therefore be able to progress.

12. **Pay Structure**





Standards for pay progression

13. Staff will progress to their next pay-step point in their pay band where the following can be demonstrated:
- i. The appraisal process has been completed with outcomes in line with the organisation's standards and no formal capability process is in place
 - ii. There is no formal disciplinary action live on the staff member's record.
 - iii. Statutory and/or mandatory training has been completed.
 - iv. For line managers only - must have completed appraisals for all their staff.
 - v. Any local standards, as agreed through local partnership working.

Progressing through pay-step points

14. The estimated time taken to reach the top of each pay band reflects the minimum period of time staff must remain at each pay-step point before progressing to the next.

Achieving pay-step points

15. It is expected that employees who meet the required standards at their pay-step date will progress to the next pay-step point.
16. Pay-step points will be 'closed' on the payroll system (ESR). Line managers will initiate a meeting to review standards. Once the line manager is satisfied that the

required standards as assessed through their local appraisal processes have been met, the pay-step point will be 'opened'.

17. Although staff must have successfully completed the appraisal process to move to their next pay-step point, the date of appraisal is not linked to the pay-step point. The pay-step date is set in relation to the member of staff's start date in their pay band. Further guidance will be developed to ensure clarity and consistency across the service.

The pay-step submission process

18. The following bullet points describe the pay-step submission process:
 - i. Line managers will receive notification prior to an individual's next pay-step date.
 - ii. The staff member and line manager will meet to review whether the standards have been met.
 - iii. A locally determined simple form, template or checklist should be used to support this process, which should be signed by the line manager and the member of staff.
 - iv. This will then be used as the basis for confirmation of movement to the next pay-step point.

If staff do not achieve a pay-step point

19. It is expected that staff will achieve the required standards at the point of their next pay-step date. It is also expected that staff and their line manager should be aware of any problems in reaching the required standards before the pay-step date. This will allow time for issues to be raised and possible solutions found. Guidance on the circumstances when pay-step points are not achieved will be produced in partnership, including appeal processes.

Roles and responsibilities

20. Successful implementation of the new pay system depends on good working relationships between NHS organisations and the NHS Staff Council, and between line managers and their staff, with the support of the regulator (NHS Improvement). Roles and responsibilities for each of these stakeholders are outline below:

NHS Staff Council responsibilities

- i. Work with NHS Improvement (NHSI) to identify the required mechanisms that they will use to track progress from transition through to full implementation (NHSI to provide progress reports to the Staff Council).

- ii. Post implementation, work with NHSI to establish ongoing monitoring and reporting mechanisms.
- iii. Identify, and produce guidance and advice as required.

Organisation responsibilities

- i. Operate the agreed pay structure fairly.
- ii. Commit to staff development.
- iii. Enable staff to work safely and effectively.
- iv. Value the appraisal process and understand the importance of the line manager/staff relationship to staff development and their positive impacts on recruitment and retention, staff morale and performance, and patient satisfaction and safety.
- v. Operate an agreed appraisal policy with equality monitored processes and consistent outcomes across the organisation.
- vi. Ensure that the pay-step submission process does not have the effect of discriminating directly or indirectly against any member of staff.
- vii. Work with NHSI to report on the initial and ongoing implementation of the pay structure.
- viii. Support line managers in delivering appraisals through training and resources, including, but not limited to, equalities training.
- ix. Enable line managers and staff to participate in the appraisal process, including, but not limited to, facilitating adequate time to prepare and have meaningful discussions.
- x. Ensure staff records are kept accurately so that pay-step dates are shared in advance and line managers alerted to the need for discussion.
- xi. Ensure sufficient statutory/mandatory training is available and accessible to all staff.
- xii. Financially plan and budget on the basis that all staff are expected to achieve their pay-step points.
- xiii. Develop and maintain relevant policies and procedures in partnership with local staff side, including a right of appeal and effective equalities monitoring.
- xiv. Have a comprehensive training and development policy covering all staff.

Line manager responsibilities

- i. Carry out their role as outlined in the local annual appraisal process.
- ii. Undertake annual appraisals for all members of their team and ensure they are fully completed.
- iii. Ensure that all employees have access to, and undertake statutory/mandatory and any essential skills training.
- iv. Hold regular appraisal discussions with staff on the basis of 'no surprises', so that if an individual may not be on track to reach their pay-step point any areas for development or improvement are identified and remedial action taken at the earliest opportunity.

- v. Conduct an objective review of the individual's work against the required standards as part of the annual appraisal process. This should include an assessment of the employee's achievement of any personal and or organisational objectives, including values and behaviours.
- vi. Demonstrate they have encouraged and supported the employee to achieve the standards required during each local appraisal process.
- vii. Ensure that staff understand what evidence they will need and its relevance to achieving the required standards.
- viii. Review submitted evidence to demonstrate that they have met the required standards.
- ix. Undertake a meeting with the employee to review standards and follow the pay-step submission process.

Employee responsibilities

- i. Actively participate in the annual appraisal process, and agree with their line manager their personal and/or corporate objectives.
- ii. Complete the local appraisal process each year, regardless of whether or not their next pay-step date is that year.
- iii. Make their line manager aware of any issues that may be preventing them from achieving their objectives.
- iv. Tell their line manager about anything that is preventing them from undertaking relevant training.
- v. Show through relevant evidence, where it is available, that they have met the required standards and achievement of objectives in line with the local appraisal process.
- vi. Work with their line manager to ensure that all relevant statutory, mandatory and essential skills training is up to date.
- vii. Undertake a review of their standards together with their line manager, completing local documentation as part of the pay-step submission process.

Monitoring transition and implementation

- 21. To help ensure consistency in how the new national pay system is implemented, the NHS Staff Council and NHSI will consider how, over the period of transition to full implementation, NHS organisations implement the collective agreement as the partners intend. For example, feedback/evidence as part of the existing performance meetings between NHSI and trusts.
- 22. The NHS Staff Council will work with NHSI to identify the mechanisms which will best measure and track progress and ensure that any barriers to implementing the new pay system are identified and addressed as early as practicable. For example, NHSI will:

- i. Track progress in implementing the collective agreement from transition to full implementation.
- ii. Monitor organisations' appraisal processes.
- iii. Check that appropriate learning and development needs are being addressed.
- iv. Ensure the new pay progression system is operating as outlined in the agreement.
- v. Monitor use of the Electronic Staff Record (the payroll system used by most NHS organisations) to unlock pay-step points.
- vi. Ensure that NHS organisations comply with the agreement or explain why it has not been possible.
- vii. Work in partnership with the NHS Staff Council and provide progress reports to the NHS Staff Council.

It is hoped that this approach to pay progression will help improve industrial relations, prevent local disputes, and should support improvements in recruitment, retention, and engagement.

Annex 2

**NHS terms and conditions of service handbook –
Annex 23: Pay progression (England)**

Annex 23: Pay progression (England)

Introduction

1. The 2018 [framework agreement on the reform of Agenda for Change](#) introduced provisions to move to a new pay system with faster progression to the top of pay bands through fewer pay step points. This annex describes the agreed pay progression framework which underpins the pay structure and requires a manager/staff submission process to be followed for pay step points to be achieved.
2. This pay progression framework will be underpinned by local appraisal policies that deliver the mandatory annual appraisal process. It is intended to ensure that within each pay band staff have the appropriate knowledge and skills they need to carry out their roles and so make the greatest possible contribution to patient care. Local appraisal policies will be agreed in partnership with trade unions and may cover issues such as development opportunities and organisational values and behaviours (see also paragraph 54).
3. The expectation is that all staff will meet the required standards (see paragraph 19) and therefore be able to progress on their pay step date. Appraisal processes should involve regular conversations between staff and their line managers to ensure that required standards are understood, and additional support identified in good time.

Timetable for transition to the new pay progression arrangements

4. The provisions in this annex will apply to all staff commencing NHS employment or promoted on or after 1 April 2019. Promotion means moving to a higher banded role.
5. For all other staff who were in post before 1 April 2019, current organisational pay progression procedures will continue to apply until 31 March 2021 after which time they too will be subject to the provisions in this annex.
6. After 1 April 2021, pay step submissions for all staff will only take place after two, three or five years depending on pay band. Appraisals will continue to take place annually.
7. From 1 April 2021 all pay bands will have either one or two step points with specified minimum periods before staff become eligible to progress. An employee's pay step point is set in relation to their start date in that pay band. The exception to this is the re-banding of paramedics to the band 6 job profile in ambulance trusts in England who retain their personal pay step date. It is expected that staff who meet the required standards at their pay step date will progress to their next pay step point.

Arrangements for staff in post prior to 1 April 2019

8. During the three-year transition period ending on 31 March 2021, current organisational pay progression procedures will continue to apply, unless the employee is promoted to a new post. These staff, unless they have received a promotion, will continue to receive incremental progression according to the transitional arrangements and follow the individual pay journeys described in the framework agreement on the reform of Agenda for Change (June 2018). During transition, pay points are removed from the pay structure in April 2018, April 2019, and April 2020. Staff already on a pay point at the time it is to be removed will immediately move to the next available point, even where this does not coincide with their existing incremental date. These staff will not receive a further increase on their incremental date, because they will have received their pay increase early.
9. Staff will retain their existing incremental date throughout transition. On their incremental date, (if they have not already benefited from deletion of a pay point) it is expected that all staff will move to the next pay point reflecting their additional complete year of experience. Pay progression during transition will continue to be subject to any existing locally-agreed arrangements for managing pay progression which may have been implemented locally in accordance with the Staff Council's 31 March 2013 pay progression agreement.

Pay step dates

10. The pay step date is the anniversary of the date the individual commenced employment in their current band.
11. It is expected that staff new to the NHS will be appointed to the bottom of the relevant pay band.
12. Where staff move to a job in a higher pay band, their pay step date will become the anniversary of the date they commenced in that new band. The exception to this is professional roles covered by annex 20 who will retain their original pay step date.
13. Where a post is re-banded to a higher band as a result of a changed job evaluation outcome (see provisions of the [Job Evaluation Handbook](#)), the pay step date will become the anniversary of the agreed date that the new job description is deemed to have taken effect.
14. In all other cases including changing jobs within the same band, and moving to a lower band as part of an organisational change process, pay step dates will remain unchanged.

15. The new pay bands describe the minimum length of service on a pay step point required before staff are eligible to move to the next pay step.
16. Continuous previous service with any NHS employer counts in respect of reckonable service for pay step eligibility (See section 12: Contractual continuity of service).
17. Employers will continue to have discretion to take into account service with employers outside the NHS for this purpose, where this is judged to be relevant (See section 12.2: Contractual continuity of service).
18. There should be clear responsibilities agreed for the appraisal review where an employee is on a secondment to a different role at the time of their pay step date to ensure that they are able to access their pay step point without any detriment.

Pay progression standards

19. Staff will progress to the next pay step point on their pay step date where the following can be demonstrated:
 - vi. The appraisal process has been completed within the last 12 months and outcomes are in line with the organisation's standards.
 - vii. There is no formal capability process in place.
 - viii. There is no formal disciplinary sanction live on the staff member's record.
 - ix. Statutory and/or mandatory training has been completed.
 - x. For line managers only – appraisals have been completed for all their staff as required.
20. 'Capability process' in paragraph 19ii will be defined in the organisation's local policy and covers processes for dealing with lack of competence, including professional and clinical competence, and clear failure by an employee to achieve a satisfactory standard of work through lack of knowledge, ability or consistently poor performance. 'Process' means that there has been an outcome placing the employee in a formal stage of the process. Investigations, informal stages and processes for dealing with absence due to ill health are all excluded from this pay progression standard.
21. 'Disciplinary sanction' in paragraph 19iii refers to sanctions in relation to conduct only, and excludes warnings applied in relation to absence due to ill health. It refers to formal disciplinary sanctions such as formal warnings. It does not include investigations, informal warnings, counselling or other informal activities that may come within a disciplinary policy.

22. If a disciplinary sanction in place at the time of the pay step date is subsequently repealed, for example as a result of a successful appeal, the pay step will be backdated to the pay step date if all other standards have been met.
23. Where factors beyond the individual's control, such as organisational or operational issues, have prevented compliance with any of the requirements in paragraph 19 these should not prevent the employee from progressing. Managers should ensure that they take full account of such factors and staff should bring these to the attention of their line manager as soon as possible (not waiting until the pay step review) so that these can be addressed and remedied.
24. Appraisals should continue to take place as a minimum on an annual basis, regardless of whether it is a year which includes a pay step date.

Pay step submission process

25. The pay step submission process is as follows:
- v. Line managers will receive notification before an individual's next pay step date and initiate a meeting to review whether the requirements for progression have been met. This meeting will draw on the most recent appraisal outcome and consider the standards in paragraph 19. It is not necessary to schedule appraisals to coincide with pay step dates.
 - vi. A locally determined simple form, template or checklist should be used to support this process, which should be signed by the line manager and the member of staff.
 - vii. This will then be used as the basis for confirmation of movement to the next pay step point.
26. Pay step points will be closed on the payroll system. Once the pay step review has been successfully completed the line manager must take the necessary action to open the pay step point.
27. Line managers must ensure that the pay step submission process is completed in a timely fashion to ensure that pay step points can be implemented in time for the staff member's pay step date. This must take account of local payroll timescales.
28. Although staff must have successfully completed their last appraisal to move to their next pay step point, the date the appraisal takes place does not have to be linked to their pay step date.
29. If the last appraisal outcome was not satisfactory but remedial actions have been successfully completed by the time of the pay step date the staff member will be able to progress without delay if they meet the other standards.

Decisions to delay a pay step

30. It is expected that staff will achieve the required standards at the point of their pay step date. It is also expected that staff and their line manager should have regular discussions about any problems in reaching the required standards before the pay step date. This will allow time for issues to be raised and possible solutions found to enable the pay step point to be opened on time.
31. In situations where standards have not been met as per paragraph 19, and there are no mitigating factors sufficient to justify this, it is expected that an individual's pay step will be delayed, subject to arrangements outlined in paragraphs 32-38.
32. The line manager must use the pay step review meeting process in paragraph 25 to discuss the standards that have not been met and review previous discussions about these, consider any mitigating factors, and record their decision.
33. The line manager should advise the member of staff of their right to contest any decision using the locally agreed procedure where the required level of performance is deemed not to have been met in line with the local policy (see paragraph 53viii). If this is upheld, the pay step should be applied backdated to the pay step date.
34. The line manager should also discuss and agree a plan with the staff member for any remedial action needed to ensure that the required standards for pay progression are met, including a timescale, and how any training and support needs will be met.
35. The staff member must take all necessary steps to meet the requirements as soon as possible and the line manager must provide the necessary support.
36. A further pay step review meeting should be arranged at an agreed date to review progress and, where satisfactory, initiate the opening of the pay step. The effective date for progressing to the next pay step should be the earliest date that the relevant requirements are shown to have been met. The pay step date for future years will remain unchanged.
37. Where a pay step is delayed due to a live disciplinary sanction, or a formal capability process, the line manager should initiate a pay step review meeting before the expiry of the sanction or capability plan. This should be used to confirm that all other requirements have been met and to ensure that the staff member progresses to the

next pay step, effective the day after the sanction expires. The pay step date will remain unchanged.

38. A disciplinary sanction cannot be applied retrospectively to delay a pay step if it comes into effect after the pay step date.

Re-earnable process for bands 8c, 8d and 9

39. The principles and standards for pay progression and then re-earnable pay for staff in bands 8c, 8d and 9 are the same as the principles and standards for all other staff.

40. Once they have reached the top of their band, the expectation is that all staff will meet the required standards and will re-earn the relevant element of pay annually. The first point at which the re-earnable element becomes relevant is 12 months after employees have passed through their pay step point to reach the top of the band.

41. In the year after an employee has reached the top of bands 8c, 8d or 9, 5 per cent or 10 per cent of basic salary will become re-earnable. Where the standards in paragraph 19 are met, salary is retained at the top of the band. If standards are not met salary may be reduced by 5 per cent or 10 per cent from the pay step date, subject to the provisions in paragraph 23. The employee will be able to restore their salary to the top of the band at the end of the following year by meeting the required standards. The employee has the right to contest a decision to reduce their pay using the locally agreed procedure.

42. The standards that apply to staff in these bands are defined in paragraph 19-24. Employers will put in place robust monitoring arrangements for the use of annually re-earned pay in line with the expectations set out in paragraph 50-52.

43. Staff on the top two points of these bands on 31 March 2013 have reserved rights to the relevant point. This reserved right will be retained on a marked time basis. At the end of 2020/21, 5 per cent of pay will become annually earned and then, when annual increases to the top of the band add a further 5 per cent, annually earned pay will apply to 10 per cent of basic pay.

Absent from work when pay step is due

44. If a staff member is absent from work for reasons such as sickness or parental leave when a pay step is due, the principle of equal and fair treatment should be followed so that no detriment is suffered as a result.

45. In the case of planned long-term paid absence such as maternity, adoption and shared parental leave the pay step review can be conducted early if this is reasonable and practical, allowing the pay step to be applied on their pay step date in their absence.
46. If an individual is on long-term paid absence such as maternity, adoption and shared parental leave and a pay step review cannot be conducted prior to the pay step date, the pay step point should be automatically applied in the individual's absence, subject to paragraph 44.
47. If there was a live disciplinary sanction in place at the point the individual went on leave, the pay step point should be applied in their absence if appropriate, effective the day after the sanction expires.
48. If there was an active formal capability process underway at the point they went on leave, the pay step point can be delayed. The improvement process should be resumed immediately upon their return. On satisfactory completion, the period of their absence should be set aside and the pay step point backdated to an agreed date as if they had completed the improvement process without being absent. Employers will need to take particular care to avoid any discrimination or detriment on the grounds of maternity, sex or disability that could arise in relation to staff on maternity/adoption/parental leave or sick leave.
49. Suspension from work on full pay is a neutral act. In order to ensure this is the case, employers should ensure that the pay step point is applied from the pay step review date where an individual is suspended on that date, provided they were meeting the standards in paragraph 19 at the point of suspension.

Monitoring and reporting

50. Data on pay step and re-earnable pay outcomes must be collected, audited, published and monitored locally in partnership with trade unions, including by protected characteristics and contract status, and in line with Staff Council guidance
51. Organisations should have a clear line of accountability for investigating and taking action on any evidence of disadvantage or discrimination in process and outcomes
52. Organisations must also collect and submit the required data necessary to support national monitoring of the pay progression system by and on behalf of the Staff Council.

Local appraisal policies

Principles

53. The following principles will inform the development of local appraisal policies:

- i. policies will need to be consistent with the employer's local objectives and the NHS Constitution for England.
- ii. organisations will budget and plan financially on the basis that all staff are expected to achieve their pay step points on their pay step dates.
- iii. regular appraisal, performance and/or development reviews will continue to play a central role in determining whether an individual has met the standards required of them for pay progression.
- iv. local policies will be developed, monitored and reviewed in partnership with trade unions and include a comprehensive training and development policy covering all staff.
- v. every line manager undertaking appraisal will have access to appropriate time, training and development including training on their equality responsibilities.
- vi. staff will actively participate in appraisal processes and receive time and support to do so.
- vii. performance will need to be monitored throughout the year so that problems are identified and addressed appropriately as soon as possible
- viii. individuals will have the right to contest any decision where the required level of performance is deemed not to have been met.
- ix. local systems will be equality assessed before implementation, and equality monitored once in operation.

Checklist

54. The following is a checklist for local appraisal schemes

- i. Focus on organisational values and objectives, for example those linked to patient care.
- ii. Identify relevant competency frameworks such as the KSF and ensure staff and managers understand how they operate.
- iii. Have clear processes to document objectives and personal development plans.
- iv. Provide guidance for how appraisals will be conducted in atypical situations such as staff on secondment, staff acting up, staff in split roles.
- v. Ensure adequate provision for statutory and mandatory training and for access to continuing learning and development opportunities, including paid time and appropriate facilities.

- vi. Ensure effective systems for accurately flagging in advance when a pay step date is due.
- vii. Review and improve equality and diversity data held on staff to ensure that monitoring is based on comprehensive information.
- viii. Cross-check and review interaction with the organisation's disciplinary policy to ensure fairness and safeguard against inequity. Key factors to review:
 - Are disciplinary sanctions disproportionately applied to groups with particular protected characteristics?
 - Is there a process of checking dates before disciplinary sanctions are applied to understand and review whether they will have the effect of delaying a pay step point, and whether this would create inequity?
 - Is sickness absence dealt with through a separate absence management process (unless a conduct issue is involved)?
- ix. Develop in partnership with trade unions a procedure which allows staff to contest decisions relating to their pay progression or re-earnable pay and includes clear timescales and processes.

Annex 3

**NHS Staff Council apprenticeship pay sub-group:
Summary report on the outcome of negotiations –
November 2019**

NHS STAFF COUNCIL APPRENTICESHIP PAY SUB-GROUP

SUMMARY REPORT ON THE OUTCOME OF NEGOTIATIONS –NOVEMBER 2019

Background

2. As part of the 2018 Framework Agreement on pay, terms and conditions, the NHS Staff Council committed *“To help the NHS attract and recruit new staff”* via *“a new provision detailing pay for apprentices will be negotiated by the NHS Staff Council as a matter of priority, and added to the NHS Terms and Condition of Service Handbook”*
3. Previous discussions in the Staff Council during 2017 had resulted in the agreement of [joint guidance](#) on applying annex 21 to apprentices. In addition, NHS Employers had issued interim advice that employers should employ nursing degree apprentices on band 3 as a minimum, or their current pay point if higher.
4. Formal negotiations on apprenticeship pay started in June 2018. Employer and Trade Union (TU) representatives have been actively engaged in the negotiations. The employer representatives have been clear that if a national solution is to be agreed with the TUs, it must be affordable and flexible. Staff side trade unions have been equally clear about their objectives for a fair and equality-proof solution consistent with the 2018 NHS Terms and Conditions of Service (TCS) agreement.
5. The sub-group decided to start the discussions from first principles rather than the current annex 21 which was conceived for different purposes. The group spent time exploring possible options in relation to:
 - Graduate apprenticeship pay – where an impasse was reached over affordability issues of the TU model proposals;
 - An ‘in principle’ approach to graduate apprenticeship pay that could be implemented if backfill costs and the suggested pay rates were fully funded – employers were accepting of a percentage approach similar to that set out in Annex 21 but not able to agree on the proposed percentage rates.
 - Post-graduate apprenticeship pay – where two approaches were identified in principle, staff already employed receiving pay protection and new staff following a similar approach to graduate apprenticeships.
 - Band 2 – 4 apprenticeship pay – where the group had discussions to explore what currently happens and whether there was scope for agreement on a consistent approach.
6. This report sets out the positions of the two sides, followed by a history of the subgroup negotiations.

Summary of positions

Employer Position

7. Employers had a number of objectives that they were looking to achieve from the negotiations:
 - Any national agreement must maintain maximum flexibility for employers to ensure that the apprenticeship route is an affordable (taking into account the total reward offer and costs of backfill), sustainable and desirable option for employers to use as part of workforce strategy and planning.
 - The rates for apprenticeship pay need to consider the level of off-the job learning; this would ensure that apprenticeships are attractive to employers compared with other alternatives;
 - Employers believe:
 - A newly appointed band 2 apprentice, where appropriately used, will differ from an entry level band 2 role and therefore should not attract the same level of remuneration.
 - If a band 2 apprentice and an entry level band 2 employee are paid the same, then employers are more likely to just appoint to band 2 without an apprenticeship route at this level.
 - Based on employer engagement with HRD networks and their Chairs, a floor set at the bottom of the NHS TCS pay scale (Bottom of Band 2) was not considered affordable for many employers; and could result in many choosing not to use apprenticeships if this is agreed, or using local provision in place of any national provisions;
 - that we should take account of the full reward package, including the value of future career prospects when the employee obtains a degree qualification.
 - Employers report, via engagement through HRD networks and their Chairs, that there is high demand for apprenticeships, that lead to a significant formal qualification, where employers offer the statutory minimum rates of pay. Lower pay (in itself) does not appear to be a barrier to meeting their demands for quality applicants, particularly with graduate apprenticeships where the total value of the reward package offer (graduate degree and low debt) is understood and appreciated.
8. Employers also face challenges with the current apprenticeship policy in that:
 - The apprenticeship standards of some of the apprenticeships, e.g. the nursing apprenticeship requires 50 – 60 percent supernumerary off-the-job training and the resultant backfill costs;
 - The fact that the banding cost caps for the use of the levy money are too generic and do not reflect the true cost of running specific apprenticeships;
 - The slow progress of developing apprenticeship standards that reflect the diverse roles that the NHS has, limiting the choice of apprenticeships that the NHS can currently run.

Trade Union position

9. The trade unions set out several key objectives that they were seeking to achieve in negotiations:
- Fairness in pay rates for apprentices integrating them into the reformed NHS TCS structure alongside the wider workforce);
 - Pay arrangements underpinned by the principles of NHS TCS job evaluation and equal pay
 - A handbook provision to cover pay arrangements for staff recruited as apprentices *and* existing staff who are deployed onto an apprenticeship – with the principle that there should be no loss of pay in order to avoid barriers to participation
 - Clarity, simplicity and consistency of approach between employers;
 - Pay rates that support employers to:
 - widen participation and improve workforce diversity and inclusion;
 - recruit and retain high quality apprentice numbers across the intermediate / advance / higher level apprenticeships (Bands 2 - 4);
 - expand Graduate / Post graduate apprenticeships as a key solution to current and impending workforce supply problems;

The negotiations in more detail

10. Over the year the group held a series of negotiation meetings to look at possible principles to inform further discussions.
11. Both sides agreed to explore options in two stages – apprenticeships leading to roles in bands 2-4; and those leading to roles at band 5 and above.
12. The **TUs' starting position** was the expectation that apprentices should have a job description setting out the roles and responsibilities they will perform as an apprentice, and that this job description should be matched or evaluated in the normal way. Apprenticeships are jobs with training, where off-the-job learning must form a minimum of 20% of time. However, this is not necessarily away from the workplace and involves activity that has value for the employer.
13. As part of the negotiations the TUs sought to achieve:
- A clear national steer on pay that delivers consistency across all employers;
 - A floor defined by the bottom of the NHS TCS structure, below which apprenticeship pay should not drop, aligning with the TU policy objectives for the Living Wage in the NHS achieved through the 2018 Framework Agreement;
 - Some form of pay recognition for the progressive acquisition of skills, knowledge and competency during the apprenticeship, where these

develop significantly as in graduate level apprenticeships that last longer than 2 years, e.g. nurse, AHP, finance and accountancy degree apprenticeships.

14. The employers' starting position included:

- Consideration of the cost of any backfill needed for off-the job learning components especially in clinical apprenticeships.
- The total reward package on offer, including the value of future career prospects when the employee obtains a qualification.
- With graduate apprenticeships, a recognition that degree tuition fees would be covered by the employer, allowing apprentices to achieve a degree without student debt.
- The principle that any solution would need to be affordable.
- Some employers want to be able to use the statutory minimum apprenticeship rate and/or the age-related statutory living wage provisions, especially for school leavers who lack experience/life skills. This is to reflect the previous apprenticeship schemes where additional costs are incurred to support individuals from socially excluded groups into work.

Intermediate/Advanced/Higher apprenticeships leading to roles at bands 2-4

15. The TUs had identified some employers who were recruiting to Band 2- 4 apprenticeship roles, paying apprenticeship wages, but using substantive band job descriptions. The fear was the employers were misusing apprenticeships to get substantive roles on the cheap. In effect the same training that would previously have been delivered via NVQ or equivalent programmes is now delivered through an apprenticeship, however the pay is now significantly lower. This gives rise to inequity and situations where employees doing the same level of work are paid very differently, with the potential for discrimination and disadvantage, and pricing sections of the local community out of these jobs.

16. Employers also shared the TU concerns around misusing the role of apprenticeships, in particular in relation to the poor practice around the use of substantive band job descriptions for apprenticeships roles.

17. Key policy considerations included:

- Apprenticeships in this group involve relatively short periods of development similar to the development of new non-apprentice entrants which has been reflected in the new pay band and pay step design
- The risk of age discrimination in having rates differentiated by age for work of equal value
- The risk of breaches of equal pay legislation where the lack of analytical job evaluation removes a key defence against equal value claims

- Whether there is a need for a separate apprenticeship option to cover targeted apprenticeship schemes which support individuals with additional needs into work (equating to the old Band 1 level)

18. The following, without prejudice principles, were reached at a joint sub-group meeting held in March 2019 that looked at Band 2 -4 roles:

- All apprenticeships should have an apprenticeship specific job description / person specification, an apprenticeship job description could be job evaluated to determine the banding and associated pay for the job.
- Consideration would need to be given to:
 - How to address the 20% off-the-job training pay arrangements;
 - How to address the clinical back fill challenges and whether this would be reflected in a different pay rate for the off the job training component.
- Internal applicants for apprenticeships – those in Bands 2-4, in relevant roles, should not suffer a loss in pay for undertaking an apprenticeship through “pay preservation”. The justification for this should be recorded in writing. Where the pay does not need preserving due to the entry pay being greater, then the individual would move to the higher rate of pay.

19. Employers gave consideration to a counter proposal in relation to alternative pay rates for apprenticeships but in the end could not reconcile the need for affordability with the variety of current employer practice, and the trade union need for rates of pay to not be less than the minimum of the pay scale (bottom of band 2)

Graduate apprenticeships leading to roles at bands 5 and above

20. Discussions relating to graduate apprenticeship schemes reached an impasse due to employers not being able to accept the trade union proposals and not being in a position to put forward counterproposals. The employers’ view is that the TU position would mean they could not afford to run graduate apprenticeship schemes, with alternative options (e.g. offering bursaries, recruiting from overseas) being more affordable.

21. The biggest barrier for employers, in the context of affordability, were the current apprenticeship rules that prevent employers from utilising their levy pot money to help cover the backfill costs.

22. The positions of both sides are set out below.

Graduate apprenticeships (band 5 jobs)										
Initial TU proposals	Initial Employer response – where no additional funding for apprenticeships is available									
A percentage-based pay approach along the lines of Annex 21.	A percentage-based pay approach along the lines of Annex 21.									
<p>Percentage values to reflect three key features of these apprenticeships:</p> <ul style="list-style-type: none"> • Significantly enhanced protected learning time compared to other apprenticeships • Benefit to apprentice of student debt-free degree • Progressive acquisition of knowledge and skills on a steep trajectory 	Percentage rate would reflect the additional £27k in tuition fees of the total reward package (a total package including salary per year of circa £22k)									
<p>Model for a four-year apprenticeship</p> <ul style="list-style-type: none"> • Starting at 60% of top of Band 5 (£17,765 on 2018/19 rate) • Step point after two years to 70% of top of Band 5 (£21,430 on 2020/21 rate) <p>This reflects the design of the reformed NHS TCS structure where (below band 8) the minimum length of stay before pay progression is two years</p> <p>The 60% and 70% figures are based on the following approach</p> <table border="0"> <tr> <td>Enhanced protected learning time</td> <td>–</td> <td>10% reduction</td> </tr> <tr> <td>Value of a debt-free degree</td> <td>–</td> <td>10% reduction each year</td> </tr> <tr> <td>Training towards the job role</td> <td>–</td> <td>20% reduction year 1 and year 2; 10% reduction for year 3 and 4.</td> </tr> </table>	Enhanced protected learning time	–	10% reduction	Value of a debt-free degree	–	10% reduction each year	Training towards the job role	–	20% reduction year 1 and year 2; 10% reduction for year 3 and 4.	<ul style="list-style-type: none"> • Setting the rate broadly in line with the 25+ national minimum wage at around 52% of top of Band 5 (£15,396 on 2018/19 rate). • Option to have a second step point after two years but with a value that employers could live with to be decided (but not necessarily at the same level as the TU proposal)
Enhanced protected learning time	–	10% reduction								
Value of a debt-free degree	–	10% reduction each year								
Training towards the job role	–	20% reduction year 1 and year 2; 10% reduction for year 3 and 4.								
Existing staff seconded/released to do these apprenticeships would retain their current salary or the rates for new apprentices, whichever is higher up to the maximum of band 4.	Need to consider how internal candidates are treated with regard to any protection of earnings prior to entering the apprenticeship, e.g. paying the rate they are able to operate at for on-the-job work component.									

23. As a result of this impasse, it was agreed that the sub-group would continue the discussions on the basis of a without prejudice 'in principle' position about what a fair and attractive pay provision would look like if there were sufficient funding to support employers to run apprenticeship schemes at scale. The intention was that these discussions could then be used to help inform further policy discussions that either party may be having about the scope for additional government investment in apprenticeships as part of the workforce strand of the NHS Long Term Plan. This would also allow us to respond to any funding announcements in relation to flexibility in the use of the apprenticeship levy.
24. The employers gave this a lot of consideration. The areas where there was common ground were:
- Exploring a percentage model where the pay rates were a percentage of the top of the pay band that the individual was training into;
 - Exploring pay protection for existing staff (although the employers' preference would be that this should be a local matter)
25. The TU model for a four-year apprenticeship leading to a substantive job in band 5 would provide two years at a salary that sits within band 2 and two years at a salary between band 3 and 4. The TUs believed this was a fair way to capture trajectory of skills and responsibilities to arrive at Band 5 by the end of the scheme, which remains in keeping with the overall design of the reformed NHS TCS.
26. Where there was not agreement was over the percentage rates proposed by the TUs of 60% and 70%. Employers acknowledged that the TU proposal took into consideration the employer views on the value of a debt free degree and the cost implications of the enhanced protected learning (in particular for the nursing apprenticeships). However, it was felt that the proposed percentage values may be unaffordable, even in a hypothetical scenario of backfill and salary costs being funded, and out of step with the Band 2-4 apprentices, who might be undertaking similar work and working alongside the graduate apprentices.
27. Since the trade unions' red line was the bottom of band 2, employers believed they would prefer to spend any additional funding made available for salaries and backfill on more apprenticeships rather than increasing pay rates.

Post-graduate apprenticeships

28. The sub-group had undertaken an initial discussion looking at this area. The key issues for further discussion identified are:
- What are the options for employed staff who are using an apprenticeship as part of their development?
 - What are the options for new entry roles, e.g. Physician Associates who join at Band 6 and 7 and how this would interact with established training schemes such as those in healthcare science.

29. Further discussions to explore these options would be needed to resolve the issue.

Trade union proposal and employer consideration

30. Following exploration of all the options described above the sub-group reported back to the respective sides that there was no scope for agreed recommendations being reached in the sub-group. This was discussed at the full Staff Council in March 2019 where staff side representatives stated that a failure to reach any agreement would reflect badly on the Staff Council and the commitments made within the Framework agreement, It was agreed that the matter should be remitted to the Staff Council Executive for further consideration of possible ways forward.
31. Following discussions among the joint trade unions, the unions tabled a proposal at the Staff Council Executive in May 2019 attached as Annex A. This was an attempt to comply with the framework agreement to agree a new provision for the handbook, which is currently silent on the matter of apprentice pay, by describing a minimal set of provisions to place apprentice pay within the broad principles of the NHS TCS pay framework ..
32. The employer side carefully considered the proposal and responded formally at the September Staff Council that there were elements of it that may be unaffordable and that it may compromise those employers who had already agreed something different, potentially causing unrest at local level.
33. Employers considered submitting a counterproposal and in order to canvass wider opinion undertook a survey of employers in England, which showed that there were a number of approaches that had been agreed, including:
- a percentage rate in line with annex 21 or in some cases a percentage rate based on the minimum salary of the band;
 - spot rates;
 - apprenticeship minimum wage and other statutory living wage rates; and
 - job evaluation.
34. The fact that there were a variety of solutions already reached would make it extremely difficult to agree any one solution, as this would compromise the position of those employers who had agreed different solutions along with the commitment to find an affordable solution to apprenticeship pay.
35. The staff side expressed their disappointment at this response as both sides had made a commitment to negotiate a new provision detailing pay for apprentices which, if achieved, would have required changes to some employer arrangements currently in place.

Conclusion

36. With both sides having reached an impasse over being able to agree a mutually acceptable appropriate level of remuneration for apprenticeships that met the employer need for affordability and the trade union need for a minimum level of pay set at the bottom of the pay scale, the negotiations have gone as far as they currently can under the circumstances.
37. There is a commitment for the NHS Staff Council to update the NHS Pay Review Body, on an annual basis, progress on the implementation of the 2018 Framework Agreement. It is proposed that this position paper form part of that update.
38. In addition, it is suggested that this position paper is used to inform policy discussions around the People Plan funding and in relation to making the case for levy reforms to government given the NHS is the largest contributor to the levy pot but is struggling to effectively benefit from its contributions.
39. It is suggested that the respective sides consider how they will update their constituents on the outcome of these negotiations and how this may feed into any local partnership discussions on apprenticeships. In addition, the NHS Staff Council may wish to consider what joint communications they might wish to agree, along with re-highlighting the jointly agreed [guidance](#) that the NHS Staff Council issued in July 2017.

Annex A

Apprenticeship pay sub-group staff side update

Proposal for a 'do minimum' position

Staff side of the sub-group have considered what a minimal position that could go in the NHS TCS handbook might look like, as below.

FRAMEWORK AGREEMENT JUNE 2018

“Para 1.3 A new provision detailing pay for apprentices will be negotiated by the Staff Council as a matter of priority, and added to the NHS Terms and Conditions of Service Handbook.”

DRAFT PROVISION ON APPRENTICES TO ADD TO THE HANDBOOK

- All apprentices must have a job description which captures the job they are employed to do as an apprentice, alongside the time they spend training.
- As for any other employee, job descriptions should be job matched and pay bands determined in line with the provisions of the NHS Terms and Conditions of Service and the Job Evaluation Handbooks.
- All employees covered by the NHS Terms and Conditions of Service, including apprentices, must be paid no less than the minimum pay rate contained in Annex 2 of the handbook.

Where existing staff move into an apprenticeship programme as part of a career development pathway, or as a result of organisational change, they will retain their current terms and conditions for the duration of the programme and either:

- Maintain their current rate of pay and banding for the duration of the apprenticeship
- Increase their rate of pay where the rate of pay for others recruited to undertake that apprenticeship programme is higher at any point during the programme

Staff will receive whichever rate is the highest.

Where existing staff decide on a career change and voluntarily apply for an apprenticeship programme that will qualify them for a post at a lower band than their current post, they will be paid at no less than the agreed rate for those recruited to that apprenticeship programme. However they will retain their current terms and conditions for the duration of the apprenticeship programme.

Annex 2 – Apprenticeship Levels

Apprenticeship Level	Qualification Equivalence	Types of role the apprenticeship leads to	Typical Length of Time
Intermediate (Level 2)	GCSEs / NVQ 2	Band 2 HCA, admin assistant	12 ~ 18 months
Advanced (Level 3)	A Level / NVQ 3	Band 3 HCA, business administrator	12 ~ 24 months
Higher (Level 4/5)	Foundation Degree	Band 4 Nursing Associate / Associate Ambulance Practitioner/Assistant Practitioner; HR consultant	12 ~ 24 months (reduced for Accreditation of Prior Experiential Learning (APEL))
Degree (Level 6)	Degree	Band 5 Nurse and other AHP roles; Chartered manager; Project manager	3 ~ 4 years (reduced for APEL)
Post Graduate (Level 7)	Masters / Post graduate diploma	Band 6 and above Nursing / AHP roles; internal audit professionals	12 ~ 24 months

Annex C – NHS Terms and Conditions of Service Handbook

Annex 21: Arrangements for pay and banding of trainees

1. The NHS has a wide range of people described as trainees, working and studying within its services. The arrangements set out below describe how those trainees employed by the NHS should be dealt with.

2. Trainees fall into three broad categories:

(i) trainees studying and/or working in the NHS, who are already in possession of qualifications at a high level. Such staff are often studying for a higher level qualification and undertaking a role that can be assessed using the NHS Job Evaluation Scheme. An example of this category is a trainee psychologist;

(ii) trainees who are undertaking a short period of learning on the job, usually less than 12 months. Typically, these staff enter whilst undertaking the role. This type of trainee can also be evaluated using the NHS Job Evaluation Scheme. If profiles for this role exist, the lowest banded profile will be appropriate. During the period of traineeship the post holder should not move through the KSF foundation gateway when this is in use in an organisation. An example of this type of trainee is a trainee secretary;

(iii) trainees who enter the NHS and undertake all their training whilst an employee. Typically, these staff develop their knowledge and skills significantly during a period of time measured in years. Given the significant change in knowledge and skills during the training period the use of job evaluation is not appropriate. Pay should be determined as a percentage of the pay for qualified staff.¹

3. For trainees covered by paragraph 2(iii), where periods of training last for between one and four years, pay will be adjusted as follows:

(i) up to 12 months prior to completion of training: 75 per cent of the pay band maximum of the fully qualified rate;

(ii) more than one but less than two years prior to completion of training: 70 per cent of the pay band maximum of the qualified rate;

(iii) more than two but less than three years prior to completion of training: 65 per cent of the pay band maximum for the qualified rate;

(iv) more than three years from completion of training: 60 per cent of the pay band maximum for the qualified rate.

4. Starting pay for any trainee must be no less than the rate of the main (adult) rate of the National Minimum Wage. Where the calculation above results in the National Minimum

Wage being payable for year two and beyond, an addition to pay should be made on top of the minimum wage. The addition should be equal to the cash value of the difference between the percentages of maximum pay in the year of payment and the previous year. For example, the supplement in payment in year two would be the value of 65 per cent of pay band maximum minus 60 per cent of maximum pay for the band.

5. On assimilation to the pay band following completion of training, the trainee should enter either on the first pay point of the appropriate pay band or the next pay point above their training salary.

¹See the question and answer guidance in Annex 28 (England and Wales) or Annex 28 (Scotland and Northern Ireland).

Pay circular (AforC) 2/2013: amendment number 28

Apprenticeships in the NHS – NHS Staff Council Guidance

This guidance has been agreed by the NHS Staff Council to support employers and local partnerships in considering the options available to them in relation to pay and conditions of apprentices in the NHS. It should be considered together with any relevant apprenticeship policy guidance and/or statutory requirement produced by the UK, Scotland, Wales and Northern Ireland governments.

This guidance provides general advice on the employment of apprentices in the NHS. The Staff Council may issue further specific advice for particular apprentice training programmes as required.

Introduction

1. Apprenticeships are jobs with an accompanying skills development programme available to anyone aged 16 and over¹. They enable learners to demonstrate their competence while gaining a recognised qualification, achieved through a mix of on the job training and study, whilst at the same time being paid a salary. Apprentices can be new or current employees.
2. Apprenticeship standards and frameworks have been published for a range of roles that are relevant to the NHS and wider health sector including healthcare science assistants, healthcare support workers, assistant practitioners, and those employed in the support functions.
3. The NHS Staff Council recommends local partnership working around the planning and development of apprenticeships. Local employers and local trade unions are encouraged to develop joint approaches that underpin how apprenticeships will operate.
4. Some key areas for partnership consideration may include:
 - progress towards meeting local targets
 - apprenticeship developments being included on the agendas of joint consultative meetings
 - pay and terms and conditions issues with the aim of ensuring fairness and equality
 - the use apprenticeships as part of the employer's wider learning and development strategy
 - how to encourage applications and provide opportunities from disadvantaged and under-represented groups
 - the implications of the apprenticeship levy.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/588786/EMPLOYER_RULES_Final_010217.pdf

Apprenticeship agreements

5. Apprentices are expected to be recognised as a genuine and sustainable investment in the future NHS workforce. Apprentices will be developed to equip them with the skills they need to be employed in the NHS workforce.
6. Apprenticeship agreements form part of the apprentice's contract of employment. In addition to the particulars of employment, apprenticeship agreements must include a statement of the skill, trade or occupation for which the apprentice is being trained. If a contract of employment is already in place, a statement will just need to be added to that effect.
7. This is in addition to a learning agreement, which describes the learning programme and sets out how the employer and the training provider will support the apprentice, including:
 - content, schedule and expected duration of the apprenticeship
 - the training that will be provided
 - the qualifications the apprentice is working towards
 - the process for resolving complaints or queries about the apprenticeship.

General requirements for apprenticeship

8. Apprenticeships are to support progression into genuine job roles and must not be created purely for the purposes of the apprenticeship programme.
9. The minimum duration for an apprenticeship is 12 months (24 months in Northern Ireland) and the apprentice must spend at least 20 per cent of their time on off-the-job training and be allowed to complete the apprenticeship within their working hours.
10. The statutory minimum wage provisions provide for a statutory minimum rate for apprentices who are aged under 19, or who are 19 or over and in the first year of the apprenticeship.²
11. Government guidance (England)³ states all apprentices must be offered the same conditions as other employees working at similar grades or in similar roles within an organisation. This includes:
 - paid holidays
 - sick pay
 - any benefits you offer such as childcare voucher schemes
 - any support you offer such as coaching or mentoring.

² All statutory minimum rates by age, and for apprentices aged under 19 or in the first year of their apprenticeship, are published annually at <https://www.gov.uk/national-minimum-wage-rates>

³ <https://www.gov.uk/take-on-an-apprentice/pay-and-conditions-for-apprentices>

Employment of apprentices – Agenda for Change

12. Apprenticeships for job roles within the scope of the Agenda for Change agreement will normally be employed on contracts incorporating the NHS Terms and Conditions of Service Handbook.
13. This NHS Staff Council guidance will assist employers to achieve compliance with the legal and contractual obligations for apprentices arising from NHS Terms and Conditions of Service and associated equal pay requirements.

Approaches to Pay

14. The NHS Terms and Conditions of Service Handbook Annex 21 (previously Annex U) sets out the options for the pay and banding of trainees. The paragraphs below provide guidance on applying it to apprentices.

Job evaluation

15. Job evaluation may be used where apprentices are undertaking a role that can be assessed using the NHS Job Evaluation Scheme.
16. Annex 21 para 2(ii) covers situations where the learning necessary to undertake the job role can usually be achieved in less than 12 months. In an apprenticeship situation, trainees would spend the remainder of the apprenticeship embedding their skills. Para 2(ii) states that:

“This type of trainee can also be evaluated using the NHS Job Evaluation Scheme. If profiles for this role exist, the lowest banded profile will be appropriate...An example of this type of trainee is a trainee secretary.”

For most apprenticeships at Bands 1-3, the learning element would not normally be expected to amount to more than 12 months. Most apprentices are more quickly carrying out the main job duties and will use the remainder of the apprenticeship to embed their skills.

17. There are published profiles for roles where apprenticeships are commonly used such as healthcare support and business administration
18. Use of job evaluation for apprentice roles will help to ensure equal pay requirements are met.

Percentage of qualified band maximum

19. Annex 21 says that these provisions can be used where staff develop their knowledge and skills ***“significantly during a time period measured in years.”*** This may be applicable in the case of apprentices with no prior

knowledge or experience and who are embarking on a Higher Apprenticeship. These currently make up only a minority of apprenticeships undertaken in the NHS but are expected to grow in the future.

20. Annex 21 paragraph 4 states that application of a percentage of the qualified band maximum cannot be applied if it would take the starting rate of pay for any trainee below the rate of the main (adult) rate of the National Minimum Wage. It should be noted that the Agenda for Change agreement does not make provision for age related pay rates.
21. In Scotland the requirement in para 4 is that the starting rate may not fall below the Scottish Living Wage⁴.

Traineeships⁵

22. Where individuals are not immediately capable of fulfilling a job role, an apprenticeship will not be suitable and a traineeship may be considered. A traineeship is an education and training programme with work experience and is aimed at young people who are not yet ready to do an apprenticeship. There is no contract of employment and trainees can be paid on the basis that they are undertaking work experience.

There is some grant funding available for these schemes⁶.

Current employees

23. Where existing employees are required to undertake apprenticeships as part of their ongoing learning and development, they would normally remain on their current pay, terms and conditions for the duration of the programme.
24. Some employees may choose voluntarily to apply for an apprenticeship programme within the same organisation in order to support a career change. The pay arrangements for such situations is a matter for local agreement, subject to equality requirements and expressed transparently as part of agreed apprenticeship policies.
25. Where an existing employee is released to undertake an apprenticeship in a different occupation/area, the employee should remain in that area where a job opportunity continues to exist.

New starters

26. The employer will have to decide whether to offer a fixed-term or permanent contract to an apprentice. Where an apprentice is filling a permanent vacancy then a permanent contract would be considered

⁴ [https://www.sehd.scot.nhs.uk/pcs/PCS2016\(AFC\)04.pdf](https://www.sehd.scot.nhs.uk/pcs/PCS2016(AFC)04.pdf)

⁵ <https://www.gov.uk/government/collections/traineeships--2>

⁶ <https://www.gov.uk/guidance/traineeship-information-for-employers>

appropriate. Any performance or competence issues can be dealt with under normal procedures.

27. Where fixed-term contracts are used, these should be flexible enough to allow for extensions if necessary, e.g. to cover maternity absence.

28. New apprentices should be treated like other new staff and have access to the NHS pension scheme in accordance with auto-enrolment legislation. The NHS Pension Scheme regulations require that all new employees who are eligible to join the NHS Pension Scheme are automatically included in the scheme from the first day of their employment. This requirement applies even if an apprentice does not meet the age and earnings criteria to be eligible for automatic enrolment.

Further information on apprenticeships

England

Gov.UK - [Apprenticeships, traineeships and internships.](#)

Skills Funding Agency - [Apprenticeship funding: rules and guidance for employers](#)

NHS Employers - [Changes to apprenticeships: what employers need to know](#)

NHS Employers – [Apprenticeship Q&A](#)

Scotland

<https://www.apprenticeships.scot/>

Wales

<https://businesswales.gov.wales/skillsgateway/apprenticeships>

Northern Ireland

<https://www.nibusinessinfo.co.uk/content/apprenticeships-employers>

Annex 4

Buying and selling of annual leave – update report

NHS STAFF COUNCIL BUYING AND SELLING ANNUAL LEAVE
SUB-GROUP

SUMMARY REPORT ON THE OUTCOME OF NEGOTIATIONS: DECEMBER 2019

Background

1. As part of the 2018 Framework Agreement on pay, terms and conditions, the NHS Staff Council committed that *“New provisions will be added to the NHS Terms and Conditions of Service Handbook to give staff access to consistent child bereavement leave, enhanced shared parental leave (extension of statutory), and a national framework for buying and selling annual leave”*.
2. A sub-group comprising trade union, employer and NHS Employers representatives was formed in late October 2018. The sub-group was initially tasked with taking forward the negotiations on buying and selling annual leave, access to annual leave and TOIL and bank and agency framework. The NHS Staff Council Executive prioritised the buying and selling annual leave negotiations.
3. Formal negotiations on buying and selling annual leave commenced in November 2018. Employer and Trade Union (TU) representatives have been actively engaged in the negotiations.
4. The employer representatives were clear that if a national solution was to be agreed with the TUs, it had to be flexible and affordable. The protection of health and wellbeing of staff was also a priority.
5. Equally, the Trade Union representatives were clear that any solution must protect the health and wellbeing of staff and ensure applications for buying and selling annual leave are processed in a fair, equitable and consistent manner.
6. The sub-group commenced discussions from a point of initial principles. The group spent time exploring the following:
 - staff having the option to choose to buy or sell their leave and this flexibility should be maintained in any negotiated outcome
 - the maximum amount of leave that can be sold, ensuring compliance with the *Working Time Regulations 1998*
 - whether a maximum limit to the amount of leave that can be bought should apply?
 - the pay rate for buying and selling annual leave
 - a fair and equitable process for the consideration of all applications and an annual review of decisions.
 - an appeal process for all non-approved decisions
 - local policies should not be considered a substitute for the ability of individuals to take the annual leave.

7. This report sets out the positions of the two sides, followed by a history of the sub-group negotiations.

Summary of positions

Employer position

8. Employers were seeking to achieve a number of objectives from the negotiations:
- any national agreement must maintain flexibility and affordability
 - the right to refuse a request
 - as part of the considerations to approve a request, the ability to maintain high quality services.
 - retain local flexibility in relation to existing policies
 - provide flexibility over how payments are collected and paid (for example, in a lump sum, through regular payments or providing staff with the option to choose)
 - an appropriate limit on the number of annual leave days bought and sold, ensuring compliance with the *Working Time Regulations 1998*

Trade Union position

9. From the negotiations, the Trade Unions were seeking to achieve several key objectives:
- all employees should have the right to request to buy and sell leave; this should not be specific to the area and capacity in which they work.
 - requests to buy or sell leave should always be a matter of choice for the member of staff and no one should be pressured into buying or selling annual leave
 - to ensure staff faced no detriment, staff should receive payment for the selling of annual leave in line with paragraph 13.9 ([Section 13](#)) of the NHS TCS Handbook.
 - staff should buy additional annual leave at a base rate.
 - the selling of annual leave should be capped to a maximum of 37.5 hours (pro rata for part time staff). This would ensure the health and wellbeing of staff is protected and to maintain compliance with the *Working Time Regulations 1998*.
 - applications for buying and selling leave must be processed in a fair and transparent way. Requests should be accepted unless employers provide in writing a clear objectively justified operational reason why the request cannot be agreed. In such cases, the employer should offer an alternative, wherever possible.
 - staff should always have a right to appeal a non-approved decision and be permitted to be represented by a trade union representative.

- all requests received and decisions made should be reviewed annually in partnership with local trade union representatives for the purposes of equality, fairness and consistency.

The negotiations in more detail

10. It was initially anticipated that negotiations on this element (buying and selling annual leave) would be concluded in time for the January 2019 NHS Staff Council Executive.
11. During the first meeting both sides acknowledged the need to undertake engagement work which would support the development of the draft principles by helping to inform the respective positions. Prior to the first meeting, NHS Employers conducted an employer survey on local policies, the findings of which were shared with the sub group.
12. The first joint meeting of the subgroup was held in November 2018, where a number of principles were agreed. These included:
 - that the framework applied only to staff employed under the NHS Terms and Conditions of Service in England. The devolved nations of Scotland, Wales and Northern Ireland would need to decide if and how they would agree to a framework for buying and selling annual leave.
 - the framework should apply to all staff groups within the service employed under the NHS terms and conditions of service in England. The subgroup did recognise the different pressures that apply across different departments and staff groups at various points within the year.
 - that staff who bought additional annual leave should use this in the same annual leave year.
 - the window in which employees can buy and sell annual leave should be left to local determination.
 - that staff have the *right to request* to buy additional or selling a proportion of their existing leave entitlement. The framework was not intended as a *right to buy or sell annual leave*.
13. Following the first meeting of the group, employer representatives agreed to begin drafting a set of principles and trade union colleagues agreed to commence drafting a set of frequently asked questions (FAQs). Ahead of the second meeting in January 2019, these were shared with the other party.
14. At this meeting, the trade unions provided an update on their engagement activities to date, which included gathering information on local policies, experiences of staff and trade unions representatives.
15. The following points were agreed and were subsequently embedded into the draft principles:
 - organisations should undertake an annual review of all applications and decisions for buying and selling annual leave. This would allow

organisations to audit their policy ensuring their approvals process was being managed in an equitable, fair and consistent way.

- all organisations should develop their buying and selling policies in partnership with their recognised trade unions.
- employers can agree how payments are collected and paid (for example, in a lump sum or through regular payments) and can provide the employee with choice over the method of repayment.

16. Trade Union colleagues advised that whilst the draft principles were a useful starting point, agreement on the principles would be subject to further engagement and consultation.
17. The subgroup continued discussions on what constituted appropriate rates of pay for the buying and selling of leave and the maximum and minimum number of hours staff could buy and sell. On the latter element, both parties were committed to protecting the health and wellbeing of staff and ensuring policies did not restrict employees' ability to take their annual leave.
18. During two subsequent meetings in February 2019 and April 2019, the subgroup continued to draft the principles that formed the framework agreement and continued their work on the FAQs. Following these meetings, the subgroup had yet to reach agreement on the rate of pay for the selling of annual leave
19. As discussions continued, uncertainty around the remit and scope of the framework emerged. Both sides had a different understanding of the remit from the Department of Health and Social Care; specifically whether all organisations were being mandated to run both buying and selling annual leave schemes.
20. As such, the development of the framework could not continue until clarity was sought. This issue was escalated to the Staff Council Executive in May 2019, where a Department of Health and Social Care representative confirmed the following:

The new framework would apply to all NHS trusts but would not be mandated.

Trusts would have the freedom to decide whether or not to operate a buying and selling policy.

Those choosing to operate a policy would need to ensure that it met the minimum criteria as outlined within the framework.

21. The policy steer from the Department of Health and Social Care confirmed organisations would have the freedom to decide how to operate their buying and selling leave policy.
22. On that basis employers wanted complete flexibility on how the framework should be locally applied. For example, organisations may decide to run both the buying and selling element of their policy, where others may decide to run just the buying or the selling element of their policy.
23. Trade Unions felt they were unable to commit to complete flexibility as employers could choose to run selling only schemes, and this would be detrimental to the

health and wellbeing of staff. The initial drafting of the framework and supporting FAQs made reference to local policies being unable to run selling only schemes.

24. The subgroup was unable to agree a position on the application of the policy and this was subsequently escalated to the NHS Staff Council in September 2019.
25. A change over in NHS Employers representation at the end of May 2019, afforded a review of the subgroups' position. Some provisions which had already been agreed by the subgroup were reopened for negotiation as it was felt these would not have received endorsement from NHS Staff Council Executive employer members. These areas were:
 - the appeals process for non-approved decisions
 - the approvals process; specifically the need for each application to be printed off and signed
 - the number of hours employees could choose to buy and sell.
26. Employers felt that the agreed wording for an appeals process was too prescriptive. Whilst the need for staff to be able to contest a decision where they believed it had been made unfairly was understood, employers felt mandating a separate standalone appeals process was not a balanced approach and proposed that the reference to a right to appeal should be removed from the national framework. It was suggested by employers that the grievance process would be the most appropriate mechanism to use and the draft principles should make reference to this only.
27. However, the trade unions were keen to ensure that a national framework should expressly refer to a right to contest a decision. Reflecting on the standalone appeals process for flexible working requests, the trade unions suggested that the framework should set out a comparable process for buying and selling leave applications.
28. This remained an area in which the subgroup were unable to agree before this outstanding area was escalated to the Staff Council Secretariat in September 2019, alongside other areas where agreement had not been reached.
29. The second provision which was re-opened for negotiation focused on the need for all applications for buying and selling leave to be printed off and signed. Employers felt this did not best reflect the use of technological applications and may lead to administrative burden.
30. The subgroup subsequently agreed a revision to the wording of this provision, as set out below:

Local policies should set out the mechanism for the approval of buying and selling of annual leave and the consent for any deduction of salary.
31. The final impasse area was the rate of pay for the selling of annual leave.
32. The trade unions were clear that staff should not experience any detriment where a choice was made to sell a proportion of their leave. To protect staff, the trade unions were seeking payment for the selling of leave to be *"the going rate for the*

work undertaken but must not be paid any less than they would have received had they been undertaking normal duties, including payments for unsocial hours, overtime and other regular supplements”.

33. Employer representatives were unable to agree to this on the basis that this would be unaffordable and would cut across current practice, which intelligence suggested was already working well. Employers also reinforced the position that it was not a mandatory policy and therefore staff were not obliged to sell their leave.
34. In addition, legal advice sought on behalf of employers, confirmed that as a discretionary benefit, where staff would be choosing to sell a proportion of their contractual leave, for the purposes of drafting the framework the group had the scope to negotiate the rate at which leave could be sold.
35. The subgroup was unable to reach agreement on what constituted an appropriate rate of pay for the selling of leave. This impasse area was subsequently escalated to the NHS Staff Council Secretariat for decision in September 2019.
36. Although agreement on the number of hours an employee could choose to buy and sell had been reached at a previous subgroup meeting, this element was re-opened for negotiation for a brief period. This was to ensure the wording provided flexibility on the amount of leave which could be bought.
37. The subgroup finally secured agreement on the number of hours which could be bought and sold. These were embedded into the draft framework.
38. The amount of leave which could be sold was capped at 37.5 hours per leave year [pro rata for part time staff]
39. The subgroup was content not to permit the selling of an additional 15 hours (pro rata) of leave, to align with the statutory minimum (28 days inclusive of public holidays), to protect the health and wellbeing of all staff.
40. The subgroup jointly agreed that local policies should not cap the total amount of leave which employees can request to buy at less than 37.5 hours each leave year (pro rata for part time staff). However, staff could ask to buy less than 37.5 hours.

Escalation to the NHS Staff Council Secretariat (September 2019)

i. Non-approved decisions

41. Agreement was reached on the impasse area of non-approved decisions. Compromise by the NHS Staff Council Secretariat saw joint agreement to amend the wording of the provision to:

Local policies should set out how they will resolve any disputes over decisions made taking into consideration equality duties. This may be through local grievance policies or any other locally agreed procedure.

ii. Application of the policy

42. Agreement was reached on the impasse area of how policies should be applied. The framework was drafted to confirm local policies must include both the buying and selling of annual leave.

43. For example, where an organisation runs a buying only scheme, the expectation would have been that their existing policy would be reviewed, in partnership, in line with the principles outlined within the framework. The organisation would update their policy to incorporate the selling element. However, the organisation would have the freedom to choose which element(s) (buying and/or selling) they chose to run each year.

iii. Rates of pay for the selling of leave

44. At the meeting of the Secretariat, the trade unions put forward two counter proposals for the rate at which leave should be sold. These were:

- all hours to be paid at time and a half; or
- all hours to be paid in line with paragraph 13.9 ([Section 13](#), NHS TCS Handbook)

45. It was agreed for both the counter proposals to be taken away for further discussion with a wider employer reference group at the NHS Staff Council plenary meeting on 13 September 2019.

46. At the NHS Staff Council meeting, employers provided a clear mandate that neither of the counter proposals could be accepted. The rationale for this included:

- both proposals were unaffordable, particularly all hours to be paid at time and a half
- in practice, existing buying and selling schemes were working well. The introduction of one of these proposals would jeopardise this and strip away the flexibility that employers currently have.
- the framework for buying and selling annual leave was not being mandated, therefore if staff felt they would be at a detriment for selling leave in instances where base rates would be paid, they would likely choose to observe their leave and decide not to sell.
- agreeing to one of the counter proposals could incentivise staff to sell their leave. This could have a negative impact on the health and wellbeing of staff. Similarly, there may be unintended consequences where staff, particularly in the lower pay bands, may feel compelled to sell their leave in return for more pay.
- a preference to not reach agreement rather than agree to rates that would have a perverse impact for employers within the service.

Negotiation outcome

47. At the September NHS Staff Council plenary meeting it was agreed for the subgroup to hold one further meeting where acknowledgment would be given to being unable to reach agreement. This meeting was held on 14 October 2019.
48. At this meeting, the group agreed to develop joint communications with the aim of ensuring message consistency. This communication was subsequently published on 25 November 2019 ([link](#)).
49. Areas of good practice, as agreed by the subgroup, are highlighted within the joint communication. These include:
- limiting the amount of leave which employees can request to sell, to 37.5 hours per year (pro rata for part time staff)
 - ensuring there is a fair process for considering requests to buy or sell annual leave with a default position of accepting requests unless there is a clear, objectively justified reason for not approving an application. This should include a right of appeal.
 - putting in place an annual review of all the requests and decisions for buying and selling annual leave, undertaken in partnership with local trade union representatives for the purposes of equality, fairness and consistency.
50. In the absence of a national agreement, local organisations are encouraged to consider the above points if they develop their own local policy, in partnership with their local trade unions. The main aim is to ensure the health, safety and wellbeing of staff is protected.

Conclusion

51. With both sides having reached an impasse in being able to agree a mutually acceptable level of pay for the selling of annual leave that met the needs of both employers and trade unions, the negotiations have been taken as far as they can.
52. There is a commitment for the NHS Staff Council to update the NHS Pay Review Body, on an annual basis, on progress with implementation of the 2018 Framework Agreement. It is intended for this position paper to form part of that update.