

## **Output from the New Fair Deal/ACCESS Workshop**

### **Introduction**

Following on from our New Fair Deal/ACCESS Workshop on 30<sup>th</sup> September, we would like to summarise the day, detail any actions and look at suggested next steps.

### **Objectives of the Day**

- Share important learning, best practices and messages from the implementation of the New Fair Deal and ACCESS policy;
- Discuss the current position on the review process for ACCESS provisions;
- Agree a process for promulgation of messages across commissioners, providers and Trade Unions.

The main issues that arose during the table discussions are summarised at **Annex A**, and the Q&A is detailed at **Annex B**.

### **Key themes**

There were 5 key themes that emerged from the Workshop discussions, these were

- 1) Communications
- 2) Commissioning
- 3) System
- 4) Local handling of employment issues
- 5) Subcontracting

#### **1) Communications**

Communications emerged as a key theme across the day. The other 4 themes also seem to have a communications focus. Although there is information on various websites that is already available around NFD and ACCESS it was felt that some of this could be built upon, and in some cases simplified.

#### **Possible actions arising from this:**

- Further stakeholder engagement – future events to ensure Commissioner engagement
- One stop shop / authoritative resource signposting to guidance/information – considerations around practicalities of this, DH will lead
- Case study to be developed from Helen Cunningham's slide pack
- Further information around Bulk Transfer process – Adrian Hale taking forward
- Definitions of key terminology i.e. Clinical/NHS 'type' work – DH to produce
- Simple guides on ACCESS/NFD – DH to produce
- Update and add to FAQs already available – DH will update

## 2) Commissioning

Commissioning was also a key issue and in particular how to ensure meaningful engagement with the Commissioners.

### **Possible actions arising from this:**

- Engagement with Commissioners – DH to lead
- SPF presentation – Julie Badon and Jon Restell have now presented, with the further feedback that we need to develop a very clear ask for commissioners, in terms of impact on finances, procurement process and workforce strategy.
- Engagement with Local Government

## 3) System

Possible actions arising from this:

- Simple table explaining the differences between NFD and ACCESS – DH will produce
- List of Contacts – DH will produce
- Update Q&A – DH will update
- Simple flow chart to explain NFD and ACCESS routes – DH to produce

## 4) Local handling of employment issues

Possible actions arising from this:

Covered under previous headings with a focus on using partnership working and forums to develop understanding of the policy and to manage implementation of policy in specific transfers of employment and with individual ACCESS employers and potential ACCESS employers.

## 5) Subcontracting

Possible actions arising from this:

- Communicating the risks associated with subcontracting – DH will lead
- Information around the tendering process
- Clarity over subcontracting and ACCESS

## Next steps

- Volunteers from this group to bring names forward – email Imogen.briers@dh.gsi.gov.uk
- Investigate which are the most appropriate networks to ensure useful dissemination of information – DH and others to explore
- Look at how we can engage NHS England & monitor – DH to lead

## Annex A – Information from Flip Chart session

<b>COMMUNICATIONS</b>
Engagement with Stakeholders
Key positive messages for Partnership i.e. trying to protect longevity if NHS staff package
Could we have simple crib sheet to identify ACCESS and Fair Deal differences
Communicating to staff
Fairness – staff in - Staff out
Commissioning Engagement
Ensuring at tendering stage – check list/Good practice guide
Scenario Pack
Commissioner engagement Clarity between NFD and Access - For organisations - Staff
Role of SPF regionally to engage with IPs? How?
Commissioners info sharing with TUs/SPF - How? - At what stage?
Communication to staff – HR must not give Financial Advice but there is a requirement for FA in order to aid employee understanding
Webinars
Pension Choice 2 – how will it be administered in conjunction with NFD
What incentive for IPs
Bulk transfers
Definition of NHS ‘type’ work e.g. research
Definition of Clinical
Access - Cost to employee of joining the scheme - Competition with lower benefit schemes - Employers encouraging membership of cheaper schemes - Issues when employer can’t afford access for its staff as part of cost saving

<p>measures , what redress?</p> <ul style="list-style-type: none"> <li>- 50% NHS Function – Clarity needed/practical examples/effect on staff</li> </ul>
<p>Bulk transfer guidance re. Contract with incumbents, bidders and contractual mechanisms to deal with worst case scenario issues/GAD costs</p>

<p><b>COMMISSIONING</b></p>
<p>Commissioner led?</p>
<p>Complexity around Local Authorities – commissioned services deploying ex NHS staff</p>
<p>Complex and cost – who pays contractor or commissioner</p>
<p>Patchy commissioner understanding</p>
<p>Visibility of contractor financial solvency on tendering process for commissioner – duty of care on commissioner</p>
<p>Commissioners should contract IPs into ACCESS</p> <ul style="list-style-type: none"> <li>- Lobby</li> <li>- Specific event for them</li> </ul>
<p>Transferred NHS staff working alongside staff on the company's own T&amp;Cs</p>
<p>Lack of thinking in the commissioning process resulting in chaos</p>
<p>Employers advantages for NHS Scheme</p>
<p>More info needed for local government</p>

<p><b>SYSTEM</b></p>
<p>National ESR/Workforce Information systems</p>
<p>Monitoring – who/what do we do? When? How?</p>
<p>Mandatory for future?</p>
<p>Concerns about continuity</p>
<p>Organisational risks as a result of 'Pension entrapment' v Career progression</p>
<p>How social care/healthcare integration agenda will affect</p>
<p>Payroll issues – ESR</p>
<p>Auto enrolment alongside NFD – challenge to administer opt out/communicate</p>
<p>Simplify the process</p>

Who is the arbiter of the 50% NHS work or not?
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<b>LOCAL HANDLING OF EMPLOYMENT ISSUES</b>
How often do you review more than 50% work?
Does this/will this apply in future to Closed Directions (NFD) r.e.50% working for NHS
Pension Scheme expertise – availability
Impact on Terms and Conditions Subsequent TUPE – out of NHS type work and back e.g. Facilities Management (soft FM)
Redundancy rights e.g. Beckman rights
Enforcement on default, what happens to members?
Bulk transfer terms on retender of contracts
Timing delay – Direction vs People being in the NHS (Death benefits)
Equity of ‘Access’
Non clinical TUPE transfers – lack of equity
Are employers allowed to offer additional pay to staff who are not members of any pension scheme - or decide to leave the auto enrolment scheme
Will employers granted ‘ACCESS’ be compelled to make NHSPS the auto enrolment scheme?
Classic APMS contractors forced to go down Access route
Private services performed by NHS

<b>SUBCONTRACTING</b>
Subcontracting challenge
Risks of subcontracting  - Possible future model of acute primary care providers as umbrella organisation in health economy
Short contracts will be problematic
50% of NHS services rule – reconcile with subcontractor prohibition

## **Annex B - New Fair Deal/ACCESS event**

### **Q&A**

**If you work in the NHS and are moved to a new company delivering NHS services and there are also new members of staff, do we apply for a direction for our existing staff and a different direction for new staff that have not been in the NHS?**

*NFD is like a closed box for people who were originally from the NHS, who move out and continue to deliver NHS services for the independent provider. NFD is only for staff who came from the NHS, therefore if some of your staff are from the NHS then they are covered by NFD, but no new staff can join. These staff will be covered by a direction issued through NHS BSA. You could choose to use the ACCESS provisions for new recruits if your organisation agreed to choose the Open ACCESS route. ACCESS is covered by the NHS PS Regulations and does not require a direction.*

**If a member of staff ceases to carry out NHS work what happens to their pension? Are full explanations given to staff on their pensions?**

*They become a deferred member and will leave their pension with the pensions agency. It would also be dependent on the circumstances of how the individual lost their NHS work.*

*The second question is down to individual employees. NHS Pensions would not speak to staff, it is the responsibility of the employer to make sure their employees have all the information and understand the entire package. All posts are checked before they are advertised for NHSPS eligibility.*

**If you have an employer who defaulted on Pension payments should that effect their chances in any future bidding processes?**

*There is the ability set out within the Regulations to deduct from contracts at source. We are developing a system between the relevant departments to share the intelligence around this so we can see why they have missed a payment, and whether this information should be shared in future bidding process.*

**At what point when an organisation fails to make payment is there an intervention and concern raised, and when are the scheme members informed that the company is not paying their agreed contributions?**

*We are putting in place mechanisms that will flag this up. If an organisation does not pay in the first month it can be taken from their contracts in the second month i.e. clawback. This will stop organisations getting into a difficult situations. Hopefully we are mitigating the risks by putting in place flags such as clawback, but we can also terminate contracts if they default on their payments.*

*We would not tell the members as we do not have the relationship with the employees directly, it is through the employer/commissioner.*

**If an employer goes bust and they cannot continue to contribute, what happens to the pensions? do these then cease to provide? And what happens to the people who originate from the NHS?**

*Individual's payments will not go down with the company. They will continue to pay in until the pensions contributions ends, but the money remains with the pensions agency until they retire.*

**We have services that are commissioned by local authorities but there is no statement that the LA will comply to NFD**

*Local authorities need to complete the work in following the NHSPS, as there are some NFD clauses which should be followed if they commission the work out. There are some very complex contracts in place. A solution to this problem is being working on by the relevant departments.*

**Where NHS staff are carrying out services funded by a LA which would have originally been carried out by the NHS would NFD apply?**

*It depends on your staff group as some have been protected. Guidance is on the BSA website.*

**Where a Social enterprise is looking at IP ACCESS, will staff go into the 95 or the 2008 scheme?**

*It would depend on when they move over, if they were protected, and if they are new.*

### **Bulk Transfer Q&A**

**Clinical requirements can leave a very short time frame, is there any guidance available around this?**

*The minimum time frame for a tender is 3 months. An indicative timetable of when things need to be done to make sure it is completed on time, including what preparation is needed and what else is involved would be a helpful tool.*

**What happens with deferred pension arrangements?**

*Anyone who is not in employment is left behind in the employers original scheme. There is nothing in place to move over those who have left employment, and it is not in the regulations to give them liability for holding them.*

**When there is a shortfall will the commissioner pay this, or will there be a competitive tender exercise?**

*How they manage the process is down to them, but this has to be along the lines of NFD level playing field requirements.*