

# The NHS Staff Passport



## Managing the principles of organisational change

## 1. Introduction

The Government published *High Quality for All*, the final report of the NHS Next Stage Review, led by Lord Darzi on 30 June 2008. The report describes wide ranging proposals to place quality of care at the heart of the work undertaken by the NHS, empowering patients and staff to secure effective and personalised care. Along with *High Quality for All*, the Government also published a proposed NHS Constitution for consultation and papers which, set out a strategy for improving workforce planning, education and training, *NHS Next Stage Review: A Quality Workforce* and plans for primary and community care services, *NHS Next Stage Review: Our vision for Primary and Community Care*. ***There is also the need to review services looking for innovation and improvements whilst still maintaining quality.***

These principles are designed to create a framework to ensure that the NHS can undertake the change processes required to deliver the improved services for patients and clients envisaged by the report and to provide support and re-assurance to staff affected by change.

These principles have been drawn up in partnership ***through the Social Partnership Forum (SPF)*** between NHS Employers, the Department of Health and the NHS Trade Unions nationally. It is designed to ensure that all NHS staff are appropriately consulted in a fair, equitable and transparent manner to facilitate their involvement in changes to services necessary to provide the public with innovative and responsive health and social care services. ***Staff should not find out about a decision after it has been made.***

This document does not replace organisational change management procedures where they already exist but rather sets minimum standards.

The principles outlined in this document have already been established in HR frameworks that support organisational change issues arising through CPLNHS and the independent sector elective and diagnostic schemes programme for example.

NHS Employers ***and Trade Unions through their membership*** will continue to work to support the service through facilitating the sharing of best practice and by providing access to other appropriate information and resources.

## 2. Purpose

The purpose of this framework is to ensure that during any change (for example to structures, processes, ways of working, skill mix and so on) necessary to improve health and social care services, disruption to patients/clients is avoided (so far as is possible) through a consistent

approach to managing change across the NHS and by ensuring that staff have security in employment and terms and conditions.

### 3. Principles

The following are the key principles which all NHS organisations would adopt to underpin the management of proposed changes

- All staff should be kept fully informed and supported during the change process.
- All reasonable steps should be taken to avoid redundancies in order to ensure that valuable skills and experience are not lost to the service.
- An integrated HR process should be applied which will be fair and transparent and which will seek to match individual abilities with available posts. This process should also be mindful of the need to move quickly and to continue to deliver a high quality service.
- No employee should receive less favourable treatment on grounds of age, gender, marital status, race, religion, creed, sexual orientation, colour, disability, working patterns, or on the grounds of trade union membership.
- All appointment and selection procedures must be seen to be fair and transparent, and meet the requirements both of equal opportunities legislation and best practice.
- There should be partnership working with trade unions at a national level and local level. The views of trade unions should be taken into account in managing the change process.

These principles are further explored in the sections below :

#### 3.1 Partnership working and employee engagement

Effective change is best facilitated by effective partnership working and by fully involving employees and their representative organisations in any service reviews or proposed changes. ***The value of working in partnership with trade union representatives and the positive contribution they can make in areas such as management of change has been well summarised in both the NHS Partnership Agreement and a recent joint publication by the Government, CBI and TUC “Reps in Action – How workplaces can gain from modern union representation”***

Trusts should support effective partnership working by providing protected time and other facilities for trade union representatives ***including the opportunity to consult with their members.***

In order for consultation to be effective and meaningful, dialogue with staff and their representatives should commence before any decision is made

whilst still at a stage where there is an opportunity to genuinely influence that outcome. Continuous dialogue with the trade unions must be maintained throughout the process.

All employees should be kept fully informed and supported throughout any change process.

### **3.2 Equality**

No employees should receive less favourable treatment on the grounds of age, gender, marital status, race, religion, creed, sexual orientation, colour, disability, working patterns of trade union membership. The basis of law for these protections comes broadly from the provisions regarding unlawful discrimination on the grounds of race, sex, disability and trade union membership contained within the Race Relations Act 1976 (as amended), the Sex Discrimination Act 1975 (as amended), the Disability Discrimination Act 1995, the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended) and the impending Employment Equality (Age) Regulations 2006.

It is important to understand the impact on equality of any change. Employers should undertake an equality impact assessment to evaluate the impact of change

### **3.3 Fair and transparent processes**

Any processes that are established as part of managing the organisational change must be fair and transparent. These may include recruitment and selection, selection for redundancy, transfer or secondment.

It is therefore appropriate that information is shared at any early stage with staff and their representatives.

### **3.4 Communication**

Good communication is essential for the effective management of change. Employers should have in place processes for sharing information with all staff and for obtaining feedback from them.

### **3.5 Staff as a resource**

Staff may often have good ideas about how change may best be achieved effectively based on their own local expert knowledge. Employers should seek to tap the resources and ideas of employees through, for example, departmental meetings, task forces and working parties.

### **3.6 Training**

Ensuring that adequate training takes place early enough to develop the necessary skills and competencies is important to achieving a successful

change. Employers need to assess training needs at a very early stage of planning for change.

### 3.7 Avoidance of redundancy

An employer has a legal obligation to seek to avoid redundancy by trying to identify suitable alternative employment for displaced staff. **As an** employee may forfeit his/her right to redundancy payment if they do not apply for or accept an offer of suitable alternative employment **employers should undertake dialogue locally on what may constitute suitable alternative employment.**

## 4. Approaches to service improvement

### Service review

Local staff side unions should be consulted about the timetable and process and detail for undertaking any service review. Staff side unions should be involved formally throughout any service review via existing mechanisms for negotiation and consultation. It is likely that specific working groups will need to be set up as appropriate to support effective consultation with staff and their representatives. The results of service reviews should also be reported to the staff side and staff side organisations should be consulted about any proposals to improve services and timescales for implementation.

### Skill mix and/or changes to working practices

If the outcome of the service review is to change the skill mix and/or ways of working, staff side unions should be consulted about the plans for change and in the detail of implementation.

### Redundancies

There are specific legal requirements in the event of any redundancies – see below - and local agreements are also likely to apply.

### Tendering

In the event that tendering to re-provide services is deemed necessary to achieve required improvements, consultation with staff side trade unions should begin as soon as this is identified as the preferred approach.

**Examples of areas that discussions might cover include the reasons for the approach being considered, possible alternatives, the timetable envisaged, the information on workforce issues that will be required from organisations putting in a tender and the role of Staff Sides in tendering process.**

Any decisions on tendering should be transparent and open. There should be “no surprises”.

## Transfer of employment

Where tendering results in a contract for an existing service being awarded to a new provider, it is likely that TUPE will apply. Trusts will need to ensure that they comply with relevant employment law.

In line with the Cabinet Office Code of Practice on staff transfers Trusts would normally be expected to ensure that they treat employees no less favourably than under TUPE even in situation where it is considered that TUPE does not apply.

## 5. Consultation Arrangements

Consultation with staff representatives should be based on the principles set out in section 26 of Agenda for Change, i.e. at a stage which allows for the development of alternative proposals, which should be given due consideration and with the aim of reaching a consensus. Consultation is more than the passage of information and should be conducted in the spirit of partnership but is not a joint decision making process.

The legal requirements that an employer must adopt on consultation or staff involvement will depend upon the nature of the proposed change. Employers may also have locally agreed procedures and processes that will need to be followed. Particular areas for consideration, although *not* an exhaustive list or one meant to replace the need to seek appropriate legal advice

- **The Transfer of Undertakings (Protection of Employment) Regulations 2006** applies when a transfer of an undertaking, business or part of an undertaking or business occurs. The purpose of the legislation is to preserve the employment and the associated terms and conditions of service of those staff affected by the transfer.

These Regulations require that the transferor employer provides information to the transferee employer about the transferred employees. In addition they are required to consult with representatives of the affected workforce before the transfer takes place.

- **Trade Union and Labour Relations (Consolidation) Act 1992** In the event of collective redundancies arising i.e. when more than 20 staff are dismissed on the grounds of redundancy within a period of 90 days or less, there is a legal duty to consult prior to issuing any notice of dismissal. However, we would expect organisations to be consulting with staff side on any redundancies as per partnership working arrangements.

- **Information and Consultation Regulations 2004.**NHS Trusts should follow the principles of these regulations

A failure to undertake the appropriate consultation may of course give rise to a legal challenge.

### Reference documents

Equity in implementing organisational change  
NHS Employers  
April 2006

Employment Rights in the Transfer of an Undertaking – A Guide to the 2006 TUPE Regulations for Employees, Employers and Representatives  
Department of Trade and Industry  
2006

Staff Transfers in the Public Sector Statement of Practice  
Cabinet Office  
January 2000

Code of Practice on Workforce Matters in Public Sector Service Contracts  
Cabinet Office  
March 2005

The Transfer of Undertaking (Protection of Employment) Regulations 2006  
Statutory Instrument 2006 No 246

The Information and Consultation Regulations 2004  
Statutory Instrument 2004 No 3426

A "Code of Practice on Workforce Matters in the Public Sector Services Contracts" (Cabinet Office March 2005)

The soft facilities agreement (agreed between DH, NHS Employers, CBI and trade unions)

Standards for implementing good human resource practice and value for money when staff are affected by organisational change – NHS Employers

Commissioning a Patient-Led NHS , Human Resource Framework for SHA's and PCT's - DH, Gateway Ref 5832

Agenda for Change Terms and Conditions Section 26

Partnership Agreement – an agreement between DH, NHS Employers and NHS trade unions, Department of Health, March 2007.

