

The NHS Staff Passport



Transferring from a job in the NHS
to a job in a local council

Transferring from a job in the NHS to a job in a local council

What is the NHS Staff Passport?

The NHS Staff Passport is a toolkit developed by the Social Partnership Forum, designed to provide NHS staff facing transfer with an easy-to-use, practical guide to the employment standards and rights they can expect when being transferred either to another NHS provider or outside the NHS to a provider who is contracted to offer NHS services.

The NHS Staff Passport is primarily a web-based toolkit which takes staff, their representatives and their employers through the workforce implications of five different types of transfer. This booklet explains the employment standards and rights staff can expect when transferring from Transferring from a job in the NHS to a job in a local council.

Some of the information provided in the toolkit may need an explanation to help individuals understand the implications. We suggest that wherever possible staff talk through the toolkit with managers, HR advisors or trade union representatives as this will add real value to the information provided.

Further information on the toolkit and other types of transfer can be found at www.socialpartnershipforum.org

The NHS Staff Passport also aims to give HR advisors, trade union representatives and managers an online advice tool that they can use to advise staff facing a transfer on the employment standards that they can expect.

The NHS Staff Passport:

- is not meant to replace discussions between staff and their employers and/or trade union representatives
- covers standards and rights after the point of transfer – not at the point of transfer
- sets out minimum standards and rights; it is not an exhaustive list of all associated employment policies and practices, but rather a guide to facilitate further discussion with local employers and/or trade union representatives on individual circumstances

- does not set new standards, legislation, policy or guidance; it signposts and brings together existing information
- is applicable to NHS staff working in England
- is not specific advice on individuals' circumstances; your existing contractual terms and conditions are protected under TUPE and Cabinet Office Standards of Practice and will remain in place post transfer. They cannot be unilaterally changed post transfer except in very exceptional circumstances.

If any of these policies or practices in the NHS Staff Passport form part of your contract of employment with your existing employer then they can be changed, but only with the agreement of you and/or your trade union representative.

TUPE (the Transfer of Undertakings Protection of Employment rules) – what does this mean?

When transferred under TUPE, your existing contractual terms and conditions are transferred. Your terms and conditions cannot unilaterally be changed after transfer except in very exceptional circumstances. However, after you have been transferred your new employer can change your terms and conditions but only with the agreement of you and/or your trade union representative.

All terms and conditions (except pensions, which are handled separately) are contractual and are written into your contract of employment, and therefore they automatically transfer under TUPE. This is a complex legal area which applies differently for individuals and different situations, therefore we advise that all staff consult their employers and/or trade union representative to ascertain their own situation and how this affects them.

For any transfer under TUPE you have the right to be consulted through your trade union representative. We therefore advise that you discuss any proposed transfer with your employer and/or trade union representative.

Complying with the standards outlined in the NHS Staff Passport

It is Government policy that the NHS should be the preferred provider of NHS services. There may be circumstances however in which local commissioners decide to put an existing NHS service out to competitive tender. In this situation, commissioners are responsible for ensuring that any potential new provider (and hence potential new employer) provides evidence that they are both able and committed to meeting the employment standards outlined in this NHS Staff Passport. This should be reflected in the relevant tender processes and documentation, including the terms of any subsequent service contract. The responsibility applies equally to any change of service delivery linked to the development of a social enterprise, and is underpinned by Department of Health policy guidance to commissioners and employers. The responsibility for making sure that the commissioning process is done properly lies with your strategic health authority (SHA).

Where changes to service delivery are being considered which have the potential to lead to a change of employer, the responsibility for ensuring that you and your trade union representative are fully engaged lies with your current employer up to the point of transfer, and with your new employer thereafter. This responsibility is underpinned by the NHS Constitution and in the principles designed to create a framework to support NHS Employers in managing change – NHS Next Stage Review: Managing Organisational Change Principles.

Where you have concerns that decisions are being made without your full engagement, these concerns should be raised through local management and trade union structures as soon as practical. Where problems cannot be resolved through this process, you will have access to formal grievance procedures.

Where you and/or your trade union representatives have concerns about either:

- i. the ability or commitment to good employment standards of a potential new provider of services; or
- ii. whether the commissioning process is fully complying with Department of Health policy guidance in this area

these concerns should be fed into the commissioning process as soon as practicable through local management and trade union structures, and as a last resort through SHA partnership structures. Failure to properly consider staff concerns would be a potential breach of the NHS Constitution, as well as of Department of Health policy guidance.

When a decision is made to award a service contract to a new employer, certain legal rights are triggered in relation to transfer of employment. A failure by your current employer to consult with you and your trade union, or to provide proper information on the terms of transfer and any linked changes, can potentially be challenged through an employment tribunal if this cannot be resolved internally.

Following any transfer to a new employer, if you feel the employment standards contained in this NHS Staff Passport are not being adhered to, you should raise your concerns through local and trade union structures, and if necessary through your new employer's grievance procedure. If changes to your terms and conditions of employment are introduced without your agreement, these may be challengeable through an employment tribunal if internal processes cannot resolve the problem.

Use the NHS Staff Passport by visiting the Social Partnership Forum website at www.socialpartnershipforum.org

Pay and terms and conditions

Q What do we mean by pay and terms and conditions?

All staff working for the NHS have the right to NHS pay and terms and conditions. Staff employed by other organisations delivering NHS services have the right to equivalent pay and terms and conditions.

Terms and conditions include such details as holidays, sick leave and contractual redundancy benefits. For staff directly employed by NHS organisations these are set out in the NHS Staff Council terms and conditions handbook and for NHS employed medical and dental staff in their relevant terms and conditions of service.

These documents may cover more than strictly contractual terms and conditions issues and therefore they may not all automatically transfer under the Transfer of Undertakings Protection of Employment regulations (TUPE). Please refer to your HR department or staff representative for further clarification.

If you are transferred from NHS employment to join another organisation providing healthcare services to the NHS, your pay and terms and conditions should remain the same.

Q How will my transfer affect my pay and terms and conditions?

If you are compulsorily transferred to a non-NHS organisation which is providing NHS services under a service delivery contract, your pay and terms and conditions are protected under TUPE – the Transfer of Undertakings (Protection of Employment) Regulations 2006. TUPE protects your existing NHS pay and terms and conditions, at the point of transfer, but future changes in NHS terms and conditions, such as annual pay increases, are not automatic and will need to be negotiated.

Pensions

Q What do we mean by pensions?

All staff employed in the NHS have the right to be members of the NHS Pension Scheme. Other staff not employed by the NHS but delivering NHS services have the right to access a good quality pension scheme. Pensions under the NHS Pension Scheme include the retirement pension and early payment of pension on grounds of ill health.

If you are compulsorily transferred from the NHS to another organisation providing healthcare services to the NHS you can, in certain limited circumstances, continue with your membership of the NHS Pension Scheme. Your continued membership depends on the nature of the new employer organisation, and on the circumstances of the transfer from NHS to non-NHS employment. The advice below will tell you what applies in your case.

From 1 April 2008 the NHS Pension Scheme has two sections: the 1995 section; and new arrangements for staff who joined on or after 1 April 2008, described as the 2008 section. All staff currently in the 1995 section will be offered the choice to remain in the 1995 section or to transfer to the 2008 section. Given the scale of the exercise, the Pensions Choice Exercise (PCE) will be delivered in phases between July 2009 and 31 March 2012. The PCE will be delivered regionally, beginning in January 2010 in the South West, moving up the country to the North East and finishing in Wales.

Each SHA region will see two periods of 'choice' activity, with staff aged 50 and over offered choice during 2010/11 and staff aged 49 and younger during 2011/12. For efficiency reasons, all staff in smaller organisations, for example general medical practices, will receive their choice during 2010 aligned to their SHA region.

Further advice can be found in *What happens to my pension?*, which can be downloaded from the NHS Staff Passport website at:

www.socialpartnershipforum.org

Q How will my transfer affect my pension?

If the NHS employer you work for enters into partnership arrangements with the local authority to provide integrated health and social care, and you are compulsorily transferred to the local authority, the Secretary of State can make an order by which you maintain your membership of the NHS pension scheme. Alternatively, you may be eligible to join the local council pension scheme.

HR policies and practices

Q What do we mean by HR policies and practices?

All staff delivering NHS services can expect to work for an organisation that is committed to being 'an employer of choice'. That is, an employer who provides a high-quality working environment for their staff – an employer people choose to work for and stay with.

One way of ensuring a high-quality workplace is by having good HR policies and practices. These are the policies and practices developed by your employer in partnership with local trade union representatives, which have an effect on your employment. Although developed locally, they are often based on national initiatives and guidance. Areas covered by such policies include: equality and diversity; health, well-being and safety; work-life balance and flexible working; discipline and grievance; and recruitment and promotion.

In the NHS there are a number of good employer initiatives that have been developed nationally in partnership with NHS Employers, the government and with trade unions. Such initiatives include: Improving Working Lives in the NHS – a framework (2009); the NHS Staff Council Occupational Health and Safety Standards (2008); *The Healthy Workplaces Handbook* (2007); and Part 5 of *The NHS Terms and Conditions of Service Handbook – Equal Opportunities*.

The good practice guidance contained within these key national documents is accessible to both NHS and non-NHS employers as reference documents to help develop local policies and practices in partnership with staff and trade union representatives.

Q How will my transfer affect my HR policies and practices?

If you leave direct NHS employment to join another organisation providing healthcare services to the NHS, you will not necessarily continue with exactly the same HR policies and practices you had with your former employer, unless they form part of your existing contractual terms and conditions of employment.

Your new employer may take some or all of your former employer's policies and practices and amend these to reflect the structure and size of the new organisation, or it may decide to develop a new set of policies and practices, or it may already have a set of existing policies and practices.

Contractual terms and conditions of employment (other than pensions, which are handled differently) are protected in a transfer except in very exceptional circumstances. HR policies and practices, however, do not normally form part of your contractual terms and conditions. If you are unsure what is included as part of your contract of employment you should speak to your HR department and/or trade union representative.

Your new employer is also expected to adhere to the Joint Statement on Access to Skills, Trade Unions and Advice in Government Contracting. This means that if you want to speak to someone about your job, or any aspect of your working life, you can seek advice and support from someone who is informed, such as your line manager or a member of staff from the HR department.

Regardless of who your new employer is following transfer, you can expect the HR policies and practices of your new employing organisation to not only meet the requirements of employment and discrimination law but also to reflect a commitment to the provision of a high-quality workplace and to being a good employer, as stated in the NHS Constitution and Handbook (2009). Your existing employer should work closely with you, your trade union representative and your new employer to achieve this.

Staff engagement and partnership

Q What do we mean by staff engagement and partnership working?

All staff delivering NHS services can expect to be engaged by their employer in decisions affecting them and the services they provide.

Good employer-employee engagement encompasses not only legal rights in relation to trade union membership and representation, and information and consultation, but also a range of activity from the sharing of information and gathering of views to working in partnership with recognised trade unions or other staff representatives on local workplace issues.

The best performing organisations have staff who are engaged with their employer, and empowered to put forward ways of improving how things are done. This applies equally to both NHS and non-NHS providers of healthcare to NHS patients.

Q How will my transfer affect staff engagement and partnership working?

Trade union recognition will transfer from your existing NHS employer to your new employer in certain circumstances. If you are unsure as to whether this will apply in the case of your transfer you should speak to your line manager, your HR adviser or trade union representative. Regardless of who your new employer is following transfer, you can expect:

Joint working

That your new employer is committed to the principles of effective joint working as set out in the NHS Constitution and Handbook (2009) and the NHS Partnership Agreement (2007). This means that your employer should talk to you, your trade union, your professional representative body and other stakeholders, as appropriate, about decisions that affect you and the services you provide.

Your right to remain a member of a trade union

That your employer will respect your right to either remain a member of a trade union or to join one if you wish (regardless of whether the union is recognised by your new employer or not); to be represented by a recognised trade union; and be entitled to other rights set out in employment law concerning information and consultation.

Your right of access to trade unions

To be given access to trade unions as a source of advice about your working life and rights at work as set out in the Joint Statement on Access to Skills, Trade Unions and Advice in Government Contracting. This means that your new employer should give you basic information about trade unions and legal rights concerning union membership.

In addition, if you are a member of a trade union your new employer should allow you to access and make use of the services offered by your union at a time agreed between your employer and your union. This is a legal right for members of recognised trade unions and is supported by the Statement as good practice where no such union recognition exists.

Staff experience survey
 Your new employer (or the principle commissioning organisation) to undertake a staff experience survey at least once a year, and you may be invited to take part. A summary of the survey results and actions in response to the results should be available to staff.

Openness
 Your new employer to commit to achieving a climate of openness where you feel able to raise concerns, in a reasonable and responsible manner, on any aspect of service delivery without fear of recrimination. Your new employer should have an appropriate whistleblowing procedure in place.

Education and training

Q What do we mean by education and training?

The term 'education and training' includes a wide variety of education and training opportunities, usually stemming from staff appraisal or regulatory requirements, for example on-the-job training, in-house courses, external courses, NVQs, higher level courses and secondment opportunities.

All providers of NHS-funded services are expected to provide adequate development to their staff to ensure they are updated and safe to carry out their day-to-day practice. There is also a requirement, built into the NHS Constitution, in terms of staff pledges: "To provide all staff with personal development, access to appropriate training for their jobs and line management support to succeed."

In addition, a good employer will use training to ensure effective succession planning within their organisation. It is for individual employers to develop their local plans in line with their organisational strategy. All providers of NHS services are required to offer student placement opportunities, where they are properly accredited and where they can provide the necessary supervisory support – as required by the universities and colleges. This is also a requirement for non-NHS community services providers under *Enabling New Patterns of Provision*.

Q How will my transfer affect my education and training?

If you are compulsorily transferred to a non-NHS organisation which is providing NHS services under a contract, it is clearly stated in the contract that all providers of NHS-funded clinical services are expected to provide adequate training for their staff to ensure they are properly updated and safe to carry out their day-to-day practice. This is a contractual requirement, which is likely to be reinforced by the introduction of mandatory 'terms of business' for the NHS, to ensure delivery of the staff pledges in the NHS Constitution including; ***"To provide all staff with personal development, access to appropriate training for their jobs and line management support to succeed."***

Additional training to ensure succession planning of their workforce would be for individual employers to develop in line with their own organisational strategy and service delivery requirements. Non-NHS providers will be required to offer student placement opportunities, where they are properly accredited and where they can provide the necessary supervisory support, as required by the university and colleges. This is a specific requirement for non-NHS community services providers under *Enabling New Patterns of Provision*.

Further information

www.socialpartnershipforum.org