



SCOTTISH EXECUTIVE

Health Department
Human Resources Directorate

Dear Colleague

AMENDMENT TO HDL (2003) 50 SE/STUC PROTOCOL ON STAFFING MATTERS IN PUBLIC PRIVATE PARTNERSHIPS

Officials, on behalf of the Minister for Health and Community Care, were asked to look at issues around the practical application of the SE/STUC Protocol on Staffing Matters in Public Private Partnerships in the NHS. Specifically to ensure specific relevance to NHSScotland and to provide clarity around protection for NHSScotland staff who would not wish to transfer to contractors as part of agreed Hard FM staff transfer arrangements. :-

The following guidance on these issues has been produced in partnership. It is recognised that NHS Boards will be at different stages of a procurement process for Hard FM PPP Contracts, but it is expected that the guidance within this amendment to HDL (2003) 50 will be brought into play at the earliest date possible.

Specific relevance to NHS Scotland.

The language in the guidance note has a local authority focus. Considering the potential for the number of PPP contracts in the future, and that NHSScotland has specific Staff Governance requirements, this amendment provides further clarity and advice for NHS employers.

Staff Governance

NHS employers are required to comply with the legislative requirements of Staff Governance as set out in the NHS Reform (Scotland) Act 2004. The following illustrates what this might mean for NHS Boards :-

February 2006

Addresses

For action

Chairs, NHS Boards and Special Health Boards
Chief Executives, NHS Boards and Special Health Boards

For information

Medical Directors, NHS Boards and Special Health Boards
Finance Directors, NHS Boards and Special Health Boards
Directors of Human Resources, NHS Boards and Special Health Boards
Members, Scottish Partnership Forum
Members, Scottish Workforce and Staff Governance Committee

Enquiries to:

St Andrew's House
EDINBURGH EH1 3DG

Norman Kinnear – Private Finance & Capital
Tel: 0131-244 2786

Jacqui Jones – Workforce & Staff Governance
0131 244 5123



- As with all aspects of a PPP procurement, NHS Boards have access to detailed guidance and standard documentation that enables them to ensure that the short listed bidders are equipped to fulfil the service and contractual requirements set out in the standard project agreement. This covers the Staff Governance Standard set out in the NHS Reform (Scotland) Act 2004 and issued under HDL (2004) 39. Support is available from the Private Finance and Capital Unit and the HR Department within the Executive as necessary.
- NHS employers should also ensure that any contractor will be able to demonstrate that they will comply fully with the requirements of the Staff Screening Policy and Procedure in respect of Health Associated Infection.
- The principles of partnership working should be adopted in the development of capital projects including those procured through PPP. It is acknowledged that this goes beyond the minimum requirements within the Staffing Protocol to prepare a management strategy for staffing options and a consultation strategy. A framework for partnership working exists to enable staff involvement through their trade union/professional organisation representatives and this includes Area and Local Partnership Fora. NHS employers should ensure that all staff involved in potential PPP contracts should have the opportunity to be involved at the earliest stage of discussions and the opportunity to influence and shape decisions.
- Staff are entitled to be treated fairly and consistently. The Staff Governance Standard (page 4 – Treated fairly and consistently) states that “staff can expect security of employment through organisational change “. Further guidance and advice on this issue is given below under the heading “Staff Transfer”.

Staff Transfer

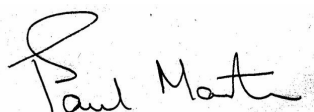
Under TUPE a transfer exists in terms of a Hard FM PPP contract. This means that as part of the undertaking staff have the right to transfer to the new contractor. However, some employees, will as a matter of principle, wish to remain in the employment of NHSScotland or at the least another public sector employer, and not transfer to a private sector employer. NHS employers should recognise that staff should not be forced to transfer to a private sector employer. NHS employers as part of the procurement process for a Hard FM PPP contract should seek to redeploy, relocate or retrain an employee before reaching the conclusion that all possibilities have been exhausted. However, staff will also need to be flexible and reasonable in order to assist this process. This includes the following :-

- NHS employers should work in partnership with each other, and with local authorities in order to maximise the potential to redeploy, relocate and / or retrain staff.
- Redeployment and retraining opportunities must be realistic, genuine and achievable. All NHS Boards should have a redeployment policy and procedure which as a minimum complies with the PIN Policy and Practice and which will be applied in these cases. Every reasonable effort should be made by employers to comply with the wishes of staff, providing that these are also reasonable and achievable. Staff should not refuse a reasonable request to redeploy or retrain. The consequences of an unreasonable refusal to redeploy or retrain could result in the employee either transferring to the private contractor or dismissing themselves from employment.

- It is recognised that in some areas there will be a limited ability to redeploy, relocate or retrain. It will depend on the need for a job, or a shortage of skills. In some instances, this may mean that another employee who wishes to work beyond 65 may not be granted this, in order to achieve a redeployment.

It is not possible to proscribe a period of time over which an employer should be able to redeploy, relocate or retrain an employee as each contract will have different time scales. However, all possibilities should be exhausted before the new contract or facility comes live, that is in effect the TUPE Transfer date. At that point the employee will either have to transfer or will be deemed to have terminated their own employment.

Yours sincerely,



Paul Martin
CNO and Interim Director of Human Resources.