

## NHS Providers response to invitation to share views on the NHS Pay Review Body process

NHS Providers is the membership organisation for the NHS hospital, mental health, community and ambulance services that treat patients and service users in the NHS. We help those NHS foundation trusts and trusts to deliver high-quality, patient-focused care by enabling them to learn from each other, acting as their public voice and helping shape the system in which they operate.

NHS Providers has all trusts in England in voluntary membership, collectively accounting for £115bn of annual expenditure and employing 1.4 million people.

### Timing

In recent years, the timing of the pay round and current pay setting process for many public sector workers resulted in pay awards being announced in the summer. The start of the pay year for NHS staff begins in April, meaning pay awards were backdated to the 1 April.

What do you see as the advantages and disadvantages of the current pay round timing for NHS staff? Please provide any evidence or examples to support your view.

As a point of principle, NHS staff should go into each new financial year knowing their pay for that period. In November 2022, 86% of trust leaders responding to our annual pay survey said delays to the announcement and implementation of the pay award negatively affects staff morale, while 82% said it creates uncertainty for staff. The 2022/23 pay award was announced 110 days after it should have taken effect, which resulted in the need for months of backdated pay. Given the rise in the rate of inflation, such delays caused real cost of living challenges for staff. All trust leaders responding to our cost of living survey (between August - September 2022) said they were extremely or moderately concerned by the impact of the increased cost of living on staff financial wellbeing, and 99% said they were extremely concerned by the impact on their mental wellbeing.

Delays to the pay award also have practical implications for trusts as employers; employers should begin the new financial year knowing staff pay for the period. 78% of trust leaders responding to our

annual pay survey said that backdating pay awards creates an additional administrative burden, and 71% said delays cause uncertainty in trusts' financial planning.

In September 2022, staff on Agenda for Change (AfC) received six months of backdated pay as part of the implementation of the 2022/23 pay award, which resulted in the deduction of backdated pension contributions. For most AfC staff, six months of backdated gross pay averaged between £605.50 and £831.27 after backdated pension contributions had been deducted. However, those at the entry points of band 3 and band 5 received considerably less (£497.83 and £352.70 respectively). Staff at the entry point of band 8a were worst affected, with an average deficit of £141.52 after backdated pension contributions were deducted. This has been a recurring issue in previous years with several staff groups.

Trust leaders also express concern at the mismatch between timing of the AfC pay award announcements and the increase to the national living and minimum wages in April each year, which results in the lowest paid NHS staff falling below the national minimum wage for a period of time. This is unacceptable. Trusts are tasked with addressing this discrepancy, often without the provision of additional funding at a time when budget flexibility is severely constrained. Our view is that this speaks to the importance of bringing the timing of the NHS Pay Review Body (PRB) round in line with the financial year. It also speaks to the fact that the lowest rate of pay for NHS staff is very close to legal minimums – a significant factor in the struggle to recruit and retain staff in lower pay bands, who undertake vital work for the service. While it is outside the scope of this question, we believe that AfC pay scales should be aligned at least with the annual increases of the real living wage. These rates are already voluntarily paid by nearly 10,000 employers, but national alignment and funding would be welcomed by both providers and staff. We note that the recently agreed AfC deal for 2023/24 does lift staff above national minimum rates.

**In your view, what timetable should the NHS Pay Review Body run to and what factors would need to be considered in moving to this timetable? Please provide specific examples or evidence to illustrate your point, including any potential challenges or benefits.**

While we welcome DHSC comprehensively exploring the PRB process with stakeholders, our view is that this review should ideally be completed for implementation by September 2023. If this is not possible, the 2024/25 round should not be delayed as a consequence of an ongoing process review. In this instance DHSC and the PRB would need to consider how the pay round could be appropriately resourced alongside an ongoing process review, and how staff side organisations could contribute meaningfully to both the pay round and the process review.

Significantly improving the timescales for the PRB process lies within the gift of government and DHSC. In recent years, remit letters from the secretary of state have been received by the PRB in November, asking for parties to submit written evidence in early January. This is a difficult timeline for stakeholders to work towards due to the intervening Christmas period, exacerbated by delays in the sending of the remit letter. Written evidence from DHSC is often submitted past the deadline, which has ramifications on the scheduling of oral evidence for other parties and sends an unhelpful, and perhaps inaccurate, message to staff and stakeholders about the level of priority given by DHSC to this process. The Chair of the Health and Social Care Select Committee noted in a session centred on the PRB on 31 January 2023 that DHSC was 21 days late in their submission of written evidence this year.

To ensure alignment with the financial year, it is our view that the PRB timeline should be as follows:

- **Early September:** secretary of state sends remit letter to Chair of the PRB and the PRB send written and oral evidence invitations to parties. On this latter point, sending invitations for both forms of evidence at the same time would help stakeholders plan diaries and prepare accordingly
- **September - October:** stakeholders prepare written evidence
- **November:** deadline for written evidence early in the month and remaining time for oral evidence preparation
- **December:** PRB runs oral evidence sessions. We acknowledge this is close to the Christmas period, but the receipt of invitations in September would allow for this to be planned accordingly
- **January:** PRB call for any new supplementary evidence from stakeholders while preparing their written report. This allows for stakeholders to respond to changes in the landscape since the submission of written and oral evidence
- **February:** PRB report finalised and published, in the public domain, at the beginning of the month. This affords the review body a month to write the report after oral evidence and three months after the receipt of written evidence
- **March:** Government announce pay decision by middle of the month at the latest, allowing NHS trusts time to amend the payroll, accounting for the fact that some staff are paid weekly or fortnightly
- **April:** pay award implemented and paid out to staff

Amending the timelines of the PRB process is wholly within the gift of government, assuming that the PRB remains appropriately resourced.

## Appointments process

Members of the NHS Pay Review Body are appointed following an open recruitment process which is run in accordance with the Governance Code on Public Appointments and is regulated by the Commissioner for Public Appointments. Roles are openly advertised and include a published person specification setting out the essential criteria for appointment.

In your opinion, what are the advantages and disadvantages of the current recruitment process for appointing members of the NHS Pay Review Body? Please provide specific examples or evidence to support your views

We are largely satisfied with the open application process for appointments to the PRB. To improve upon it, DHSC may wish to consider whether stakeholders could be afforded the opportunity to comment on person specifications and the balance of experience represented on the review body. A process by which stakeholders could comment on the membership of the review body at any given point would also be welcome.

We note that the NHS Staff Council has previously been invited to observe appointment panels. We would be supportive of an expansion of this involvement, with the co-chairs of the NHS Staff Council sitting on these panels in the future.

The core concern of many stakeholders in relation to the PRB process is related to the group's independence instead of the panel's membership. The remit letters received from the secretary of state always clearly stress that the PRB's recommendations must fit within the government's overall spending plans. This limits the review bodies' ability to provide a truly independent recommendation on the level of pay they feel is appropriate for NHS staff. Addressing this is key to any re-evaluation of the PRB process, particularly given that government will always make the ultimate decision on NHS pay awards.

In your opinion, how could the appointments process be adjusted to address any concerns with the current process? Please provide evidence, experiences, or specific example, including any potential challenges or benefits of such adjustments.

There is scope for consideration of the membership term. This could be shortened to allow for more diversity – in terms of protected characteristics and experience – of panel members, or could be

lengthened to allow for continuity of knowledge. Additionally, members could be limited to one term, again to encourage greater diversity of knowledge and experience. If shorter terms were to be introduced, concerns around continuity of knowledge could be mitigated by the PRB secretariat having a formalised role in advising the panel of previous recommendations made and their impact.

From the information publicly available about the pay review body panel, it lacks diversity in terms of ethnicity and potentially with regard to other protected characteristics. If the pool of applicants applying to the review body is limited in its diversity, efforts to build a more diverse talent pipeline may offer a suitable mitigation in the short term.

Finally, we are also of the view that the balance of expertise on the panel should be reviewed. A mixture of economic and human resource experience across various sectors is advantageous, but NHS employer experience is currently underrepresented which does feel to be a serious omission.

## Use/availability of data

The NHSPRB welcomes evidence from stakeholders and considers this alongside already published data and evidence relevant to their terms of reference. Parties are welcome to share any evidence they wish, alongside specific areas requested by the NHSPRB.

In your opinion, what are the advantages and disadvantages of the current process for providing evidence to the NHS Pay Review Body? Please provide specific examples or evidence to support your views.

The fact that the PRB process is open, with anyone able to request to make a written submission, is positive. It is also valuable for stakeholders to be able to see all key data and findings collated in one document once the PRB's final report is published.

However, not all individual parties' evidence is published, in full, in the public domain, nor is modelling on the impact of the PRB's recommendation on staff in different AfC bands. These would be welcome changes in the interest of increased transparency.

In your opinion, what changes could be made to the use and availability of data during the NHS Pay Review Body process? Please provide specific examples, evidence, or suggestions that can inform possible improvements.

In our view, all written evidence should be published and available in the public domain – this includes the final PRB report and its recommendations, which should be made publicly available upon submission to the Government, instead of after the Government’s announcement of the pay award. This would go some way to addressing concerns about the independence of the PRB.

As referenced in our response to the previous question, we would welcome the PRB undertaking, and including in its final report, modelling that demonstrates the impact of the recommended pay award on each AfC pay band. This should include, where possible, interactions with pension contribution tiers, income tax and National Insurance thresholds, and relativity to the national minimum and living wage.

The PRB could also directly request specific information from specific parties, while continuing to allow all stakeholders to submit any evidence they feel is important. On occasion, requests from the PRB for data are directed to parties that do not hold that data and would, instead, be better directed to the Department, NHS England or other public bodies.

## Involvement of the NHS Staff Council in the NHS PRB process

The NHS Staff Council is a national partnership of Agenda for Change (AfC) unions and employers, which works to negotiate any changes in core conditions for staff on AfC terms. Currently the NHS Staff Council is a party which participates in the NHSPRB process, providing written and oral evidence.

In your opinion, what are the advantages and disadvantages of the current interaction between the NHS Staff Council and the NHS Pay Review Body? Please provide specific examples or evidence to support your views.

It is important that there is staff side input in the form of written and oral evidence, not just from the NHS Staff Council but also from the individual trade unions representing AfC staff, as each have quite different membership. We welcome that the current process allows for this.

However, many trade unions representing AfC staff have disengaged with the PRB process in recent years, and as a result their input to the process is limited. The current context of unprecedented industrial action and its impacts for patients and staff makes this review all the more important. This review should prioritise finding a way forward with trade unions that ensures their future engagement with the PRB process. We have seen a breakdown in relationships between AfC trade unions and the

Government with regard to the PRB process continuing in its current form. Trade unions are clear that they are concerned about the level of independence the PRB has from Government, pointing to affordability constraints set in the remit letters sent by the secretary of state. The willingness of Government to engage on the wider issue of PRB independence will also be central to finding a way forward that addresses these concerns.

**In your view, how could a more effective feedback mechanism be established between the NHS Staff Council and the NHS Pay Review Body? What would the process look like? Please provide specific examples, evidence, or suggestions to support your ideas.**

As referenced in our responses to the above questions, we would welcome a continuation of what currently works well as part of the PRB process, including the opportunity for NHS Staff Council co-chairs to sit on appointment panels.

We also believe that open lines of communication should be maintained with all stakeholders throughout the PRB process, giving updates on the report's progress, and that the PRB's final report should be available in the public domain immediately after submission to the Government for consideration.

We suggest that DHSC explores the possibility and the pros and cons of regular multi-year collective agreements on pay between government and Staff Council. The PRB could monitor the impact and implementation of these agreements, and to give recommendations for amendments to the agreements in the event of significant changes in the economic or NHS landscape. The extreme breakdown of relationship between trade unions and government due to pay setting processes is evidence that buy in from staff side organisations is vital to effective pay arrangements.

In the absence of collective agreements, we believe there is merit – particularly for the 2024/25 pay round if this review is still underway – in Staff Council involvement in setting the remit for the PRB. It is the remit which has caused the most concern among trade unions to date and this may be a method of enabling their buy in to the process.

We welcome the opportunity to provide feedback as part of this review process and look forward to contributing as part of next steps.