CHANGE FOR THE BETTER NOT FOR THE WORSE

AMICUS EVIDENCE TO THE PAY REVIEW BODY- 2005

Introduction

1. This is the first evidence from Amicus since the introduction of the new pay system know as Agenda for Change (AfC). Amicus used to previously submit evidence as part of the Nursing and Midwifery Staffs Negotiating Council (NMC), the Professions Allied to Medicine (PAMs) Staff Negotiating Council and the Community Practitioners and Health Visitors Association (CPHVA).

2. We note you have indicated how you would like Amicus to set out its evidence for this year. However, we would rather be honest and state that many of the questions that you have raised cannot be answered with any degree of accuracy because of the stage that we have reached in the implementation of Agenda for Change. Some of the questions that you have raised we would wish to avoid repetition of the evidence submitted from the Staff Side to which we fully contributed.

3. We obviously recognise that because of AfC the Review Body is in transition and this is transitionary evidence from Amicus. We primarily wish to explore in this evidence the pay uplift for staff covered by the Review Body for 2006 and assist in shaping and defining your new role for the future.

Coverage by the Review Body

4. We start by addressing the scope of coverage of the Review Body. We estimate that over 80 per cent of the new occupations included in the remit of the Review Body are in areas where Amicus is the principal representative of staff[1].

5. We are the largest union for health service staff in the following new groups: healthcare science, psychology, psychotherapy, family therapy, speech and language therapy, pharmacy, optometry and increasingly in theatres.

6. Amicus campaigned for the Review Body's expanded coverage because we respected the work that you undertake and believed that the deliberative approach forced parties to pay negotiations to forsake traditional postures and link salary levels to service considerations. It allowed our members to table a number of concerns that we had and believed the Review Body was a receptive audience.

[1] See Agenda for Change Proposed Agreement – September 2004 p.48-51.

7. More practically the Review Body made a number of recommendations which enabled us as a trade union to address concerns our members had about abuses of the Whitley Clinical Grading criteria for Nurses and Professions Allied to Medicine.

8. At the time the expanded coverage was discussed Amicus was seeking even a further expansion of your remit in terms of occupations covered. Unfortunately we had to reserve our position on these occupations but subsequently the Agenda for Change outcomes both in terms of the job demands on which these occupations were evaluated and their pay band outcome has confirmed to us that we were right to raise inclusion of these groups at the initial stages of the Agenda for Change talks.

9. These fall into three main categories:

a) Those occupations which Amicus sought to be covered by the Review Body in the initial talks which includes Cognitive Behavioural Therapists, Counsellors, Genetic Counsellors, Healthcare Chaplains and Sexual Health Advisors.
b) Those occupations that are part of the same broader job family already listed but inexplicably are excluded which includes Dance Therapists and Play Therapists.
c) Those occupations groups which were overlooked in the initial talks which are predominantly Professions Complementary to Dentistry: Dental Hygienists, Dental Nurses, Dental Therapists and Oral Health Promoters as well as Maxillo Facial Prosthetists and Technicians.

10. All those occupations detailed above provide clinical services and require at least a degree to enter practice or directly support the work of other professions. In some cases there is the contradictory position where because the profession originates from another profession (predominantly nursing) on taking on their new role the staff member moves out of the remit of the Review Body e.g. Counsellors, Genetic Counsellors and Sexual Health Advisors. All these occupations require an additional qualification to their original professional qualification. All are seeking registration with the General Dental Council (Dental Hygienists and Therapists already registered) or the Health Professions Council.

Amicus therefore seeks the extension of coverage of the Review Body (under para. 13.8 of the proposed agreement) to the following groups:

Cognitive Behavioural Therapists
Counsellors
Dance Therapists
Dental Hygienists
Dental Nurses
Dental Therapists
Genetic Counsellors
Healthcare Chaplains
Maxillo Facial Prosthetists and Technicians
Oral Health Practitioners
Play Therapists
Sexual Health Advisors

Agenda for Change and equal pay for work of equal value

11. Amicus is fully committed to the process of pay modernisation in the NHS. The Agenda for Change pay talks were established following long standing concerns that we had raised regarding the Whitley pay structure and followed a series of successful equal value claims pursued by Amicus members. Amicus pioneered the use of equal pay legislation in the NHS with a landmark case on behalf of senior Speech and Language Therapists (Enderby v DOH) which went as far as the European Court.

12. We accept that analytical Job Evaluation is the only means by which roles in the NHS can be ranked informed by the principles of equal pay for work of equal value. The Job Evaluation Scheme (JES)[2] which was developed is a bespoke scheme, created in partnership, by people working in or for the NHS. Amicus has contributed more than most to the completion of this process.

13. We are confident that if applied fairly and consistently the JES will make a significant step towards achieving equal pay for work of equal value. We have made an initial comparison between the pay ranges (bands) available for complainants in previous equal value cases and compared these with those available for the comparators in those equal value claims. The initial assessments of these comparisons are very favourable in equal value terms. However, we intend to continue to monitor the situation for some of our key occupational groups.

14. Clearly, the AfC is very much a learning curve for all parties to the agreement. We all certainly under estimated the scale of the task in hand and the only consistent in this process is that deadlines are rarely met. Therefore, we have a degree of frustration that implementation is still target led and these targets are set too high with no reasonable prospect for completion by the due date. It also has the effect of possibly undermining the prospects of achieving equal value as NHS employers respond to undue pressure by cutting corners. We remain of the view that this project will be more successful if we go for quality of outcomes rather than quantity of outcomes.

15. The next stage of the process to achieve equal value is to monitor consistency of outcomes across the NHS. The national monitoring system – Computer Assisted Job Evaluation – provides useful data of outcomes across job families, bands and factors. However, Amicus is seeking to supplement this data with our own surveys so that a qualitative assessment can be made on whether equal value has been achieved. Our main occupational advisory committees are undertaking this additional work as we draft this submission.

Amicus therefore proposes that the OME undertakes an equal pay audit of Agenda for Change outcomes informed by Equal Opportunities Commission guidelines and supported by technical experts in this area.

[2] Contained within the NHS Job Evaluation Handbook (Second Edition) November 2004

16. We have under estimated the degree to which "subjective" factors would shape outcomes across some NHS employers. We had hoped that we could avoid raising issues regarding abuses of the Agenda for Change equivalent of nurse clinical grading.

17. We are beginning to build up evidence, which goes beyond the anecdotal that abuses of the JES scheme are taking place. These include:

- Matching by old Whitley grade rather than by the job demands of the role being matched.
- The reduction of the assessment of knowledge to that required to practice rather than required for the role.
- Inconsistent application of the section on Evaluating Knowledge Training and Experience in the JE Handbook.
- Consistency panels being misused by NHS employers to downgrade outcomes apparently in some crude Band mix exercise to meet departmental budgets that are established on old Whitley based assumptions. This is despite the tightening up of consistency guidance following similar practices in some Early Implementer sites.

18. Underpinning these abuses is the claim that NHS Employers cannot afford to implement AfC. We have been re-assured by the current Secretary of State for Health and her two predecessors that AfC is fully funded. We believe the Government when they state that they have made a significant investment in the new contracts for NHS staff. We believe that this money in most cases has made its way through to NHS Employers.

19. The question of how this money has been distributed on receipt by the NHS Employers is the key question. It would be inappropriate for AfC to be unfairly implemented if this money has been allocated to other expenditure headings or to fund other staff contracts which may have had "first call" because the negotiations were concluded earlier than those for AfC.

20. Besides such abuses of the AfC processes will leave NHS Employers vulnerable to equal value claims which we will be duty bound to pursue.

21. At the same time that fragmentation resulting from organisational changes such as Commissioning a Patient-Led NHS or Foundation Trusts could seriously compromise a national pay system and reintroduce inequalities.

22. We hope to tackle the abuses in process and therefore there remains a great deal of uncertainty for our members. For example in one Early Implementer Trust with some 5000 employees there are 1800 requests for reviews of AfC matching outcomes. This is perhaps an extreme example but even a review rate of 10-20 per cent will mean a significant number of staff do not know how much they will be paid under Agenda for Change. In addition, assimilation rates are running at 58 per cent for England, 20 per cent for Wales and 0 per cent for Northern Ireland and Scotland.

23. Therefore the "final settlement" as a result of Agenda for Change is not known. Because of this uncertainty and combined with further uncertainty caused by proposed service changes, Amicus members are steadfastly against a longer term pay deal which is being proposed in some quarters. Indeed the strength of feeling amongst our members is that any such deal would be overwhelming rejected in any ballot.

Amicus therefore seeks a one year pay award of a substantial increase across the salary ranges (Bands) which we define as being above the cost of living and that will rest comfortably in the upper quartile of salary increases for the second quarter of 2006.

Staff morale

24. The debate and hiatus surrounding the publication of Commissioning a Patient-led NHS needs to take account of today's reality.

25. Amicus the union has presented to the Secretary of State for Health initial findings of a survey among our community nurse members that shows examples of job freezes and redundancies. Add to this reports of reduced training places for health visitors and the large proportion of community nursing staff expected to retire in the next 5 years, it seems clear to us that the future of community nursing services is at severe risk.

26. So in this context we can agree with government advisers that action needs to be taken to prevent such cuts to frontline specialist nurses and other health professionals by tackling a system that squeezes expenditure in primary care.

27. Given the opportunity Amicus would have been more than happy to discuss proposals to realign PCTs and SHAs. It was a pity that Social Partnership was on this occasion pushed to one side.

28. We are absolutely at one with the aim of strengthening disease prevention and health promotion strategies.

29. Where we part company is in relation to the vague reference to NHS staff who currently provide services from within the existing PCT structure. It is frustrating in the extreme to hear the naive claim that staff will be 'protected'. We know for a fact this is not the case when it comes to transfers into the voluntary or private sectors. So AfC, personal professional development, and the benefits gained from Improving Working Lives and pensions are at risk.

30. One leading activist in Amicus called for all those involved in the AfC process to "down tools" on implementation because Commissioning a Patient Led NHS did not address how the AfC vision would be carried across into the new employing arrangements and all their work was therefore a "waste of time".

31. That said our members are primarily preoccupied with the implications to service provision should the fragmentation of community services go ahead.

32. Our survey also revealed highly worrying reports of staff having been threatened with dismissal if they speak publicly about their concerns, at precisely the time when the DH is again attempting to step up work to tackle bullying in the workplace. Bullying is now the most major non-pay factor impacting on staff morale and results in lost time through absences.

33. Our members are leading many of the examples of innovation and good practice cited in the Patient-led NHS. Amicus is not opposed to change, yet we must be convinced it is change for the better not for the worse.

Recruitment and Retention Premia and High Cost Area Allowances

34. Amicus believe that this is a key area for the future work of the Review Body. Previously NHS Employers would address recruitment and retention problems by putting staff on higher grades than that indicated by clinical grading criteria. This is despite the facility, which existed in some Whitley Council agreements to pay supplements of up to 30 per cent of salary, which were rarely used.

35. The opportunity for NHS Employers to do this has been greatly narrowed because if NHS Employers instead put staff in areas with relatively high levels of recruitment and retention problems on higher pay bands it could open up equal value questions for those in areas with relatively low problems as recruitment and retention does not influence the evaluation.

36. The agreement itself provides for long term and short term Recruitment and Retention Premia (R&RP)[3]. A group of occupations are listed where there is prima facie evidence that long term and recruitment retention premia will be paid to maintain the NHS's competitive position. Many of those listed fall with the remit of the Review Body. However in the main the application of this section of the agreement is being operated as pay protection plus. The difficulty being is that a national R&RP cannot be established in the absence of comprehensive data about the Agenda for Change outcomes for the occupation being considered.

37. In addition, the suitability of paying a R&RP cannot be considered in the absence of this information because hopefully AfC itself will address many of these problems. Certainly some of the groups listed as appropriate for long term R&RP because of our understanding of the JES scheme at the time, will probably no longer require this as our understanding has developed, leaving us confident that few if any in that occupation will suffer pay loss. The resulting salary levels may still result in a recruitment and retention problem but this will leave them in no different position from those occupations not included in that list and their case for a R&RP then should stand or fall on the same consistent criteria.

38. The Office of Manpower Economics has laid excellent foundations for a discussion of this issue through the report that it commissioned [4].

[3] Agenda for Change – NHS Terms and Conditions of Service Handbook - November 2004 p.17-19.
[4] High Cost Area Supplements and Recruitment & Retention Premia: A report for the Office of Manpower Economics by NHS Partners Research & Information – May 2005

39. R&RPs are a complex and multi-dimensional issue. By its very nature the report studies methodologies for assessing the applicability for R&RPs and how their levels are set. It also uses economic modelling to determine their effectiveness. In exploratory talks with the OME it appeared that we was set on determining a consistent methodology for establishing the need for a R&RP and determining its level and applicability.

40. Following the report we are now convinced that this may prove a daunting task and prohibit the introduction of R&RPs where they are patently needed. Also the dimensions of a recruitment and retention problem in any given occupation may differ e.g. ageing workforce, competition from other sectors.

41. Also the traditional methodology for identifying a potential recruitment and retention problem is not robust. The vacancy rate survey at best provides an impure assessment of a recruitment and retention problem. These figures take no account of the setting of current and future establishment levels, the use of agency or locus staff and the incidence of overtime working. Therefore "real" recruitment and retention problems are partly disguised or under-estimated.

42. As we stated before we very much appreciate the deliberative approach to assess salary levels for the NHS staff within its remit. There should be no reason why we should not establish a second round of evidence where Staff Side organisations and the Employers should put forward for consideration occupations that need to be covered by a long term R&RP. The case will stand or fall based on the evidence supplied in this process. The Staff Side evidence states that should be a matter for the parties concerned.

43. Therefore the Review Body more simply needs to set the terms on the basis on which these applications would be considered to reduce speculative approaches.

44. In equal pay terms there does not have to be a common methodology, rather any R&RP has to be objectively justified which should be supported by any evidence provided.

Amicus therefore proposes a second round of evidence looking at the need for a recruitment and retention premia for particular occupations. We further propose that this year the Review Body should consider the need for a R&RP for pharmacist[5] and cytology screeners[6].

45. Amicus is aware that the Treasury has required the Review Bodies to review progress made on introducing regional pay flexibility into public sector pay systems.

46. The Staff side evidence covers this issue in greater detail. From experience and our surveys regional pay flexibility has been used in some regions as a means to pay staff less than that indicated by the national clinical grading criteria. In effect negative grade drift was introduced in areas of so-called low cost areas as determined by the employers. Such approaches have proven to be self-defeating in the context of

[5] Evidence to support this attached as an Annexe.
[6] Evidence to support this will follow shortly.

AfC because funding was based on previous salary levels and therefore the resulting increased costs are all the greater.

47. Such regional flexibilities are unlikely to be considered favourably by NHS staff if they undermine national salary levels established by job profiles. High Cost Allowances (HCAs) should be payments made in addition to these national rates.

48. There is also a danger than over time that on introduction that the value of the basic salary will decline as greater investment is made in HCAs. In effect the basic pay of those in relatively lower cost areas will be depressed to fund HCAs for those in relatively higher cost areas.

Amicus therefore proposes that the OME should establish for health staff within its remit a salary index similar to that of the New Earnings Survey so as to give staff confidence that basic salaries are not being depressed and enable staff side organisations to enter meaningful negotiations on HCAs.

49. We support the view of the Staff Side evidence that there should be no radical changes to HCAs this year save for an increase of existing allowances in line with the overall pay uplift.

50. The existing AfC agreement permits local discussions on introducing HCAs in areas currently not covered.

Agenda for Change's architecture and recruitment and retention

51. The vast majority of registered and other degree level professions are entering at Pay Band 5. This is obviously right and consistent.

52. However the salary range for this Band has been set by collective bargaining. The Review Body in time will have to determine whether the salary range for pay Band 5 is set at sufficiently high enough levels to recruit and retain skilled and professional staff. This is a multi-faceted issue.

53. Despite the Government's ambitious targets for expanding higher education planned recruitment targets are still exacting to recruit from the graduate pool. The salary range for Band 5 compares unfavourably with starting salaries for graduates in other parts of the economy. International recruitment has partly "inflated" the success of the NHS in recruiting new staff. Albeit we recognise recruitment has been an undoubted success for the NHS. However international recruitment cannot be a solution to recruitment and retention issues facing many occupations organised by Amicus for a number of reasons.

54. There are apparently conflicting visions of professional development based on the interpretation of Annexe T[7] of the agreement which impacts on pay and will ultimately determine whether the NHS becomes a more attractive employer for newly qualified graduates.

[7] Agenda for Change – NHS Terms and Conditions of Service Handbook November 2004 p.167

55. It is apparent that many NHS Employers vision that in any given profession the majority of practitioners will be placed on Band 5 with the numbers tapering as we progress up the Bands.

56. Our understanding of the factor plan and Annexe T leads us to believe that in the majority of professions, the practitioners period on Band 5 will be a great deal shorter than progression to the top of that salary scale i.e. 8 years. In effect we believe that Band 6 will become the career grade for most professions depending on the starting Band. The resulting salary range will make the NHS a competitive employer of graduate professionals.

57. Amicus is confident that our officers and stewards will win this difference of view in most NHS Employers. NHS Employers that seek to hold back graduate professionals will find that their staff will over time move to other NHS Employers. However it is early days in the AfC implementation process to properly assess whether Band 6 has been established as the career grade for these professions.

Amicus therefore proposes that the OME investigates the distribution of staff across the Pay Bands in the professions within its remit and seek to determine through evidence whether any differential outcomes can be objectively justified with a view to making recommendations on salary progression within the terms of the Job Evaluation Scheme.

58. At the same time Annexe U[8] provides for consistency of treatment for trainees. We welcome the agreed clarification on the operation of this Annexe[9]. But at the same time we are receiving reports that Workforce Development Confederations who commission-training places are receiving no additional funding for AfC despite this being fully funded. As a result it is feared training places will be cut. This is hardly joined up thinking.

59. Amicus is committed through the Knowledge and Skills Framework to upskill our non-professionally qualified colleagues and support moves to provide vocational routes into the professions. Once again because of the operation of Annexe U opportunities to professionally develop may be restricted. Once again this is not joined up thinking.

Amicus therefore proposes that the Review Body make recommendations that the Government takes steps to ensure that sufficient funding is provided for the implementation of Annexe U without negatively impacting on training places.

[8] Ibid p.168
[9] Available on www.doh.gov.uk

60. We hope that our evidence starts to set an agenda for the Review Body which can assist it define a new role for itself post Agenda for Change. We have very much appreciated the work of the Review Body in previous years but we are committed to putting tried and trusted approaches behind us and help the Review Body meet its objectives for the period ahead. We would very much appreciate exploring the issues that we have raised in giving oral evidence.

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29th September 2005

Summary of proposals and recommendations

1. Amicus therefore seeks the extension of coverage of the Review Body to the following groups:

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Counsellors
Dance Therapists
Dental Hygienists
Dental Nurses
Dental Therapists
Genetic Counsellors
Healthcare Chaplains
Maxillo Facial Prosthetists and Technicians
Oral Health Practitioners
Play Therapists
Sexual Health Advisors

2. Amicus therefore proposes that the OME undertakes an equal pay audit of Agenda for Change outcomes informed by Equal Opportunities Commission guidelines and supported by technical experts in this area.

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