

# OUR PAY, OUR SAY -

Plotting a course to collective bargaining on NHS pay rises







## Introduction

This report sets out the results of the Health Service Group Executive's (HSGE) 2022 consultation on UNISON's policy for how annual pay rises should be determined in the NHS. The consultation with regions and branches set out to scope the implications and required actions involved with seeking to move away from the Pay Review Body (PRB) system towards collective bargaining.

The report includes a ten-point plan which the Health Service Group Executive will reflect in a motion submitted to the 2023 service group conference.

### Context

The current PRB system is wrapped up in legislation and written into the 'Agenda for Change' handbook. A change would need to be formally enacted by the Westminster and relevant devolved governments. We also need to get agreement from bodies representing NHS employers as well as buy-in from at least some of the other major trade unions representing NHS staff, many of which currently have formal policy in favour of the PRB route.

We know from collective bargaining in local government that headline pay outcomes have been broadly similar to AfC PRB-led outcomes over the last few decades. So the simple fact of arriving at pay settlements through a process of negotiation may not in itself lead to better outcomes.

And we know from UNISON Scotland's post-PRB experiences of leading annual pay bargaining that this necessitates changes to how we work; and that the capacity and behaviour of other unions, employers and government will all be critical to building long-term effectiveness.

While securing and then embedding effective collective bargaining would be complex and difficult to achieve, the potential benefits would extend beyond pay outcomes themselves.

We know that member engagement in the process of negotiating the 2018-21 deals was better than it has been in PRB-led pay rounds. Over three quarters of members we surveyed said they had read UNISON information about the pay offer, over two-thirds said they used our pay calculator, and over three in five said they spoke to colleagues about the pay offer.

Members were positive about the process of bargaining over pay with a significant majority (76 per cent) saying that it was "a more transparent way to make changes to NHS pay"; with a smaller majority agreeing that they felt "more involved in the process than in previous [PRB-led] pay years" (55 per cent).

# The HSGE's future pay determination consultation

For UNISON to commit resources to pushing for change, the HSGE has been clear that at all levels of the union we need to have a realistic understanding and commitment to the work involved in:

- a. winning the argument for change
- b. delivering improved pay outcomes which meet our policy priorities
- c. delivering consistently improved levels of recruitment, organisation and member participation in pay settlement processes

The HSGE consultation was designed to generate this understanding and commitment, and capture ideas from branches and regions about the work that needs to be done.

To support the consultation exercise the HSGE produced a number of documents:

- Full discussion document – relaunched at Conference 2022: [https://www.unison.org.uk/content/uploads/2022/03/26728\\_looking-forward.pdf](https://www.unison.org.uk/content/uploads/2022/03/26728_looking-forward.pdf)
- Summary discussion document – relaunched at Conference 2022: [https://www.unison.org.uk/content/uploads/2022/03/26734\\_summary.pdf](https://www.unison.org.uk/content/uploads/2022/03/26734_summary.pdf)
- FAQs for members – issued spring 2022: <https://www.unison.org.uk/content/uploads/2022/06/How-should-NHS-pay-rises-be-set-FAQs.pdf>

Appendix 2 provides a timeline of the conference policy resolutions, culminating in 2022's motion 7 One team, one say – which way on pay? which led up to this consultation and report.

## Consultation methodology


A 'future pay determination' consultation workshop was offered to all regional health committees (RHCs) and it was left to them whether to broaden these out to a wider group of branch activists from across the regions.

The content included a quiz on some of the history of the PRB; a presentation setting out the key issues; group work looking at branch case studies based on organising around the summer 2021 pay consultative ballot; and a discussion session on the HSGE consultation questions – see Appendix 3 for more details.

Workshop content was adapted for each region depending on the time available and the numbers of participants.

In total eight workshops were delivered (four in-person, two hybrid and two online) with participation from a total of 256 activists – 140 of these were in a session run by





Greater London Region at their regional activists training conference. See appendix 3 for further details.

The intense work around the 2022 industrial action ballots meant it was not possible to deliver planned workshops in the remaining two English regions. Summary outputs from the eight regional workshops were sent to these regions with the opportunity for RHCs to flag any objections or omissions.

The Northern Ireland health committee submitted motion 8 to the 2022 conference which called for an immediate disengagement from the PRB process in order to demand direct negotiations with the Westminster government at UK level. The motion, which fell, reflected the clear position of the committee. The committee will review the outcomes of the HSGE's consultation and contribute to next steps.

The Scotland health committee has shared learning on 'collective bargaining growing pains' which is included in Appendix 1 part E.

## **Consultation findings**

The consultation took place in the context of a PRB-led round (outside Scotland) that once again delivered a real-terms pay cut in an outcome announced four months late and in the context of a cost-of-living crisis which made the severity of the cut this year particularly acute. The consultation therefore co-occurred with the preparations for and conduct of the biggest industrial action balloting exercise the union has undertaken in health for decades. This meant that discussions about a move to collective bargaining requiring continual ballot-readiness were informed by very direct and 'live' experience!

Across all regions participating there was a high degree of commonality in the assessment of the risks and opportunities, as well as views on the approach to stakeholders and the actions and timeframe required for the union to become collective-bargaining-ready. These findings are summarised in Appendix 1.

The following 10-point plan has been formulated to turn the ideas and priorities workshop participants contributed into a clear set of actions for the HSGE to take forward.



# Plotting a course to collective bargaining – ten-point plan

The HSGE received a report summarising the outcomes of the consultation at its meeting of 15 November 2022 and agreed to work on the following ten-point plan.

1. Adopt a policy position of actively building support for change to the current system.
2. Pursue an end goal of collective bargaining on annual pay awards at a national level (England and devolved administrations) within a UK-wide AfC framework – in a way which guards against regional or local AfC breakaway attempts.
3. Recognising that achieving collective bargaining will require us to convince government and employers to negotiate with us – develop a wide-ranging stakeholder influencing plan covering political, employer, trade union and wider civil society audiences.
4. Building on the campaigning, organising and data systems experiences gained through 2022's industrial action balloting – work with all parts of the union to develop a comprehensive collective bargaining operating model which clearly identifies resourcing, re-prioritisation and support needs at branch, regional and national levels.
5. Reflect in the operating model that the following will need to become core activities for health branches:
  - Maintaining discipline and collective responsibility behind agreed claims, bargaining policy positions and decisions on how to respond to outcomes
  - Getting information and updates out to all members at key points in the negotiating cycle
  - Delivering high levels of member participation in consultative ballots on pay offers
  - Being able to mobilise members in the numbers required to win lawful industrial action ballots and mount effective industrial action.
6. Plan on the basis that full collective bargaining-readiness will take a couple of years to achieve and will require focus and re-prioritisation.
7. Continue to draw on learning from the Scotland health committee's experiences with maturing bargaining arrangements.
8. Not unilaterally disengage from the PRB where this would leave UNISON members without a voice in processes which may affect our members' pay. But adopt a clear position that any participation does not bind the union to PRB outcomes which we will continue to challenge when they do not meet our pay goals.
9. Explore the scope for staged reforms which take us towards our goal of collective bargaining – including potential to:
  - shift more responsibilities to the Staff Council and away from the PRB
  - reduce government control – for example looking at composition of PRB members, independent publication of reports, union influence over evidence topics.
10. Build improving ballot-readiness into all pay campaign activity while this work is developed.



# APPENDIX 1 – summary of the outputs from regional workshops (England and Cymru/Wales)

## Contents at a glance:

- A. Risks of pushing to scrap the PRB system**
- B. Opportunities from pushing to scrap the PRB system**
- C. Key actions:**
  - 1. Prepare to make the argument: stakeholder engagement planning**
  - 2. Plan and manage process of pushing for change**
  - 3. Prepare operating model for any new collective bargaining system**
  - 4. Bargain to win: communications and campaigning**
  - 5. Bargain to win: ballot-readiness**
- D. Assessment of timescales**
- E. Collective bargaining growing pains – learning from the Scotland health committee**

## **A. Risks if the HSGE adopts a policy to push for scrapping the PRB system**

### **UNISON marginalisation**

- Pushing too hard on this if other stakeholders are not on board could leave UNISON isolated and shut out of ongoing PRB process – ‘outside the tent’. If all unions disengage the PRB would be completely free to stitch things up with government
- Scope for inter-union conflict

### **Unintended consequences**

- Requires UNISON to take more responsibility for outcomes – triggering member blame/dissatisfaction when pay offers are unsatisfactory
- Other unions may seek to exploit UNISON’s leadership role
- Attempting to secure change could trigger regional or sub-regional employer breakaway attempts and localised/market pay



- Attempting to secure change could trigger occupational divide and rule (eg nurse-only breakaway initiatives)

### **Internal capacity constraints**

- Could see disaffection and loss of members in outsourced or private sector as more union resource gets re-directed to the directly employed
- Insufficient knowledge, skills and experience could undermine our ability to run collective bargaining effectively
- Additional costs and call on resources for branches/not enough reps/resources not available in regions – could mean we spread ourselves too thin
- Prioritising this and maintaining partnership functions could come at the expense of organising

### **No guarantee outcomes would improve**

- Anti-trade union laws could get tougher before next election making it more difficult to back our claims through industrial action
- Loss of any ‘independent’ player in the process could make it easier for a hostile government to hold wages down
- Government could still procrastinate within a bargaining system so that outcomes are still late
- If we press for this and outcomes aren’t any better UNISON would look weak

## **B. Opportunities if the HSGE adopts a policy to push for scrapping the PRB system**

### **UNISON empowerment**

- Ability to talk directly to decision-makers
- More options for taking control eg submission of timely pay claims, ability to ballot for action earlier in the process
- Scope to pursue a holistic approach and a progressive bargaining agenda

### **Member engagement**

- Process of change creates chances to regularly educate/engage members as a springboard for more active participation
- Chance to counter member disengagement that has set in because current system doesn’t deliver
- Recruitment of new members and activists through delivering wins, selling successes
- Empowerment and greater say for members with greater accountability for lay leaders and negotiators



## Branch capacity

- Upskilling of branches, enthusing new activists
- Catalyst for investment in data and records systems

## Pay outcomes

- More scope to make gains in key areas of UNISON policy eg tackling low pay
- Chance to re-set timelines and have the power to submit pay claims on our terms to support timely resolution

## AfC maintenance and reinforcement as national framework

- Scope to ensure managed programme of renewal and updating of pay and terms within AfC
- Could strengthen partnership working by deepening mutual investment in AfC and giving employers a voice in the pay process – and chance for us to influence their positions

## C. Key actions

### 1. Prepare to make the argument: stakeholder engagement planning

The HSGE should map all stakeholders and develop an engagement plan based on their levels of influence and their current stance on the PRB system. This should include production of a concise options appraisal document suitable for external audiences together with an articulation of how a collective bargaining system could work effectively – capturing the benefits for different audiences:

### Employer bodies

- Lobby national employer leadership bodies
- Use social partnership structures to initiate dialogue with employers and arms-length bodies
- Use ICS structures in England to engage employers and build relationships – appeal to their wish to reduce poaching and competition between employers
- Give branches talking points to raise with local employers including a clear ask to use their networks to explore the case for change – build on current pay dispute as part of this



## Other unions

- Ensure lead activists in branches have talking points to influence activists from other unions to debate the issues within their unions
- Encourage branches to discuss within local staff sides
- Support branches to get more UNISON reps into staff-side leadership positions
- Use TUC channels to engage and influence

## Labour link and other opposition parties

- Position reform of pay determination in wider policy package of workforce investment – pitch for how collective bargaining could solve current problems

## Parliamentarians – Westminster and devolved

- Develop briefings making case for change for use in lobbying

## Pressure and campaign groups

- Show link to safer staffing and investment in the workforce


*(Note that general view where this was discussed was that we need to start by getting other unions on board – start closest to home and build outwards. Next priority would be employers).*

## 2. Plan and manage process of pushing for change

- Analyse and mitigate the risks identified in section A
- Act to safeguard current levels of influence through any change process
- Consider pushing for reform of PRB as a staging post rather than going straight for its abolition

## 3. Prepare operating model for any new collective bargaining system

- Secure agreement from other parts of the union for an operating model that sets out clear resourcing provisions, expectations and requirements for national functions, regions and branches – this to include resourcing of the service group's member consultation methodology
- Comprehensive all year-round work programme around pay engagement and participation in bargaining cycle overseen by regional health committees and regional council
- Pay comms and consultation plan in every branch updated annually and reviewed through branch assessment – plan-do-evaluate model
- Dedicated and targeted support from regions for branches struggling with capacity and support for exchange of good practice
- Embed and strengthen regional pay campaign committees with a remit to promote branch accountability and deliver co-ordination

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- Build on Earnings Max and other local pay related wins eg real living wage – use hot topic issues such as car parking to get involvement
  - Sustain and build on the pay campaign contact (109) model started in the 2022 dispute through developing training and support models
  - Programme of activist training and member education around industrial action and the Trade Union Act and dynamics of pay setting in the NHS
  - Contribute to NEC review of industrial action handbook and strike funds
  - Recognise the additional staffing and capacity needs to resource collective bargaining within the devolved administrations

#### **4. Bargain to win: Communications and campaigning**

- Improve national-regional-branch communications flow so reps consistently get core information with clear actions
- Invest in communications and campaigns skills and capacity at every level in the union, including standardised training and tools
- Create digital communications and campaign specialists in branches – outreach to young members
- Develop systems which prioritise pay comms and/or link other campaigns to pay issues
- Develop research and analytics skills for using effective localised workforce/labour market intelligence
- Learn from other unions about achieving success in IA ballot turnouts

#### **5. Bargain to win: Ballot-readiness**

- Raise with NEC issues around current distribution of RMS access and responsibilities
- Scope how we can overcome structural issues such as NHS firewalls blocking our comms
- Improve support to branches to make mapping and updating workplace records a priority branch activity
- Increase and maintain email penetration – reduce numbers relying on employer systems
- Build in phone-banking as a regular branch activity
- Address issues of member digital literacy and access



## **D. Assessment of timescales**

The most common assessment from the options presented was that getting collective-bargaining-ready was achievable over a couple of years with significant re-prioritisation. There were some who were more optimistic based on the view that the current momentum of industrial action balloting is an accelerator but there was recognition of the wide variation among health branches in terms of readiness and resources. There were however also some that thought a longer period would be required.

Comments included that we need a managed approach, and that the devolved administration dimension has additional resource requirements.

## **E. Collective bargaining growing pains – learning from the Scotland health committee**

### **Introduction**

Following the three-year pay deals we negotiated for the period 2018-21, the governments for England, Cymru/Wales and Northern Ireland defaulted to the NHS Pay Review Body (PRB) system for the 2021/22 and 2022/23 pay rounds. By contrast the Scottish government decided that it would not use a PRB process for the 2021/22 pay round and with the 2021 Scottish parliamentary election timetable to focus minds entered into negotiations which concluded with a final offer totalling 4% on the paybill with extra backdating to December 2020.

This was accepted by the majority of AfC unions in May 2021. This outcome reflected the Scottish government's policy commitment to maintaining an AfC 'Scottish pay premium' so that pay rates remain ahead of the rest of the UK. It also showed that, despite their formal policy positions, all AfC unions were prepared to take part in collective bargaining once there was a government decision not to use the PRB.

For the 2022/23 round the government responded to the joint union pay claim that UNISON was a part of by offering the same 5% position it had adopted across all public sector bargaining groups. This offer was only improved in response to industrial action ballots.

Intensive pay campaigning and member engagement over the last few pay rounds, as well as the experience of following the three-year deal by leading two rounds of negotiations, have put the Scotland health committee in a good position to share learning about the realities of maturing collective bargaining. This learning will be relevant to the HSGE's deliberations on policy for the rest of the UK.

### **Benefits of leaving the PRB behind**

The PRB was discredited in the eyes of members in Scotland – it was seen as no longer listening and overly influenced by Westminster government positions.

Moving to collective bargaining is enabling the union to build campaigns around pay which directly engage the government and employers.

It has allowed the union to engage members in the process of developing and lodging claims and it means they can have input on strategy and tactics and a direct say on outcomes.



## Challenges of bedding in effective collective bargaining

### ▪ **Internal**

There are significant implications for our structures and ways of working for example quarterly health committee meetings were not aligning with the pay cycle. There are also challenges in establishing protocols and being clear around the processes for building pay policy into a meaningful bargaining agenda. All of this has implications for data collection and management.

The reality of 'live' negotiations is that the union cannot always be in control of timelines and the speed of developments so we need the ability to adapt and respond while remaining as pro-active as we can be.

The scope for backlash from members is greater – if we don't secure a 'good deal' it's our fault.

### ▪ **Other unions**

Making the bargaining process more effective requires investing time and effort in relationships with other unions and building consensus around the key objectives of a claim. UNISON negotiators need to have a clear mandate for what can we 'give' to gain support for our objectives from other unions.

There is a need to develop and agree constitutional provisions and protocols for the joint union machinery – including how to handle situations where unions are making different recommendations on an offer and/or end up with different outcomes after a ballot.

All unions will be making an assessment about the relative merits of national 'harmony' vs local opportunism and UNISON's leadership position means this is something we have to grapple with.

The experience so far throws up the question as to how far the national machinery in its current form lends itself to multi-union collective bargaining on pay.

### ▪ **Employer and government capacity/skills**

The Scottish government is the funder of pay awards which begs the question what role is there for the employers? It is questionable as to how well government ministers and officials really know the realities of the service and the staffing issues.

As officials come and go there is a need build a longer-term narrative/strategy to create some common ground around the issues the parties are seeking to address/solve through pay bargaining.

To make bargaining effective the government needs to properly resource pay modelling and financial forecasting capacity to support negotiations.



## **Resource implications and new ways of working for branches and the health committee**

### **▪ *Recruitment and organising***

Maturing collective bargaining requires comprehensive work to map our membership density and diversity to build up detailed knowledge of our members. There is considerable reliance on email communication and therefore a need to have systems to extend email penetration and ensure email contact details are kept up to date.

Collective bargaining provides opportunities to properly recruit around pay issues using the fact that members get to influence pay claims and make decisions over outcomes.

### **▪ *Member participation***

The new tools the union has (Movement/Teams/online voting) make generating member participation easier but still need time and energy to use/maintain. But they also need to be underpinned by activity in workplaces. And the union needs a commitment at national and regional level to resource the infrastructure needed for member participation in pay bargaining as an ongoing feature.

### **▪ *Member data/ballot readiness***

Maintenance and cleansing of data need to be constant and continuous processes raising the question as to whether we have, or can build, the capacity to do this at every level.

### **▪ *Campaigns & communications***

The bargaining cycle provides plenty of opportunity for cyclical pay campaigns but member fatigue of surveys/emails etc could be a real risk. This means we need to build in more involvement from officers at branch level doing workplace activity and conversations.

The union will need to move quickly on some issues during 'real time' negotiations which creates a communications tension between knee-jerk reactions which create noise and disquiet and more measured and useful communications which take a little longer.

Communications with branches and activists need to be clear and consistent in transmitting the union's lines - this may need national/regional input.

## **Planned next steps to strengthen processes and outcomes**

The Scotland health committee will conduct a review after the 2022/23 pay round is complete. Key areas already identified for action are the need for membership mapping and a pay protocol, together with discussions about resourcing of pay work all year round.

## APPENDIX 2 – conference policy development timeline

1. In 2019 UNISON's health conference passed a resolution (motion 9) **Pay determination beyond 2022**. In the context of the three-year negotiated pay and reform deals the motion highlighted the opportunity to review UNISON's policy position on pay determination and decide what mechanism we will work to put in place over the coming years. The motion called on the Health Service Group Executive (HSGE) to work with regions and relevant lay committees, including those covering the devolved administrations, to scope the options for future pay determination beyond 2022. The motion called for proposals to:
  - Reflect our aim for UK-wide consistency on pay and pay structures and recognise the realities of devolved public-sector and NHS pay settlements.
  - Make clear that UNISON will represent members' pay interests through whatever 'official' mechanisms are in place.
  - Take account of the positions likely to be taken by other NHS trade unions on this issue.
2. A discussion document to implement motion 9 was prepared and published ready to be launched at the 2020 health conference as the catalyst for a regional consultation exercise. However, the COVID-19 pandemic meant the conference did not take place and the work had to be put on hold.
3. In September 2021 the service group's virtual special conference passed Composite B which called on the HSGE to: restart the 'Future pay determination' regional consultation exercise mandated by the 2019 health conference; re-set the timeline; build in evaluation of the 2021/22 pay round; and make use of any available pay-setting processes in the meanwhile.
4. In April 2022 the HSGE's Motion 7 **One Team One Say – which way on pay?** was passed. This reaffirmed the union's intent to 'use whatever routes are in place to make arguments common to all members across the whole UK' and set out action points to:
  - note the HSGE's discussion document including a timetable for consultation;
  - embed UNISON's devolution protocol in this consultation, noting that the Health Committees in Scotland, Cymru/Wales, and Northern Ireland will determine the positions adopted by UNISON in those administrations
  - embed the flat rate principle as a long term pay policy objective to be pursued in all evidence/claims



- ensure all evidence/claims put forward include practical and specific proposals to drive out low pay in the NHS
5. The passing of motion 7 meant that Motion 8 **Collective bargaining – the way to win**, submitted by the Northern Ireland region, fell. This motion called for the union to ‘no longer submit evidence to the Pay Review Body’ and ‘demand direct negotiations with government at a national level on funding’.

## APPENDIX 3 – consultation workshop content

### Workshops delivered

Date	Region	No activists participating
27 June	South East	15
28 July	Cymru/Wales	14
6 September	North West	25
9 September	East Midlands	15
16 September	Eastern	12
20 September	South West	27
27 September	West Midlands	8
7 October	Greater London	140

### Regional workshop objectives

1. To consider
  - how we could work to win more power over pay-setting at Westminster and devolved government levels
  - resource and capacity implications for branches, regions and at national level required to deliver a move towards effective collective bargaining
  - how to maximise organising opportunities and build member participation to levels which enable genuine challenge to pay outcomes
2. To generate summary feedback from the region on the HSGE’s key questions:
3. To gain understanding of the next steps in the HSGE’s process
4. To understand the links between the future pay determination consultation and our approach to the current pay round.

## HSGE consultation questions

**1. Getting agreement for change from other stakeholders – current government, other political parties, employers, other unions – will require time and effort. As will making sure that other parties are ready and equipped to participate in collective bargaining.**

- What does the HSGE need to do
- What do regions need to do
- What do branches need to do

**2. How do we put ourselves in the best position to deliver gains if we do succeed in securing a change in favour of collective bargaining?**

To operate collective bargaining effectively and use it to secure better pay outcomes we need to:

- Develop pay claims which have widespread member input and buy-in
- Maintain discipline union-wide behind agreed claims and settlements
- Get information and updates out to all members at key points in the negotiating cycle
- Deliver high levels of member participation in consultative ballots on pay offers
- Be able to mobilise members in the numbers required to win legal industrial action ballots and mount effective industrial action

For branches across your region to improve collective-bargaining-readiness what are the three priority actions that need to be done at

- Regional level?
- Branch level?

**[Context: summer 2021 pay consultation turnout figures were provided for each region. (England average was 28%)]**

**3. Region self-assessment:**

Thinking about experiences in recent years of the One Team 2k and Put NHS Pay Right campaigns and balloting how would you rate the readiness of branches across your region to do all of the above work set out in Q2?

- 4 Close now
- 3 Achievable within a year
- 2 Achievable over a couple of years
- 1 Only achievable over a longer period with significant re-prioritisation
- 0 Not realistically achievable