



# HR Framework for developing Integrated Care Boards

Supporting the successful transition of  
people into integrated care boards

Version: March 2022

## Document management

### Revision history

Version	Date	Summary of changes	Section	Page
V2	Mar 2022	Revision of date - to reflect changes to expected timescale for ICB establishment.	About this document	3
V2	Mar 2022	Revision of guidance on issuing notice to Governing Body members on a contract for service.	Section 4.6 – Disestablishing CCG governing bodies	26
V2	Mar 2022	Amendment to the scope of the section to highlight that the safe transfer of staff applies to CCGs and other NHS Bodies following the legislative amendments to the scope statutory transfer scheme.	Section 5 – Safe Transfer of People	27, 28, 29, 31
V2	Mar 2022	Update to dates for ESR transition.	Section 5.10 – ESR	38
V2	Mar 2022	Removed reference to information and consultation around TUPE taking place in <u>early 2022</u> .	Appendix 1 – TUPE guidance	39

# ICS implementation guidance

Integrated care systems (ICSs) are partnerships of health and care organisations that come together to plan and deliver joined up services and to improve the health of people who live and work in their area.

They exist to achieve four aims:

- **improve outcomes** in population health and healthcare
- **tackle inequalities** in outcomes, experience and access
- enhance **productivity and value for money**
- help the NHS support broader **social and economic development**.

Following several years of locally led development and based on the recommendations of NHS England and NHS Improvement, the government has set out plans to put ICSs on a statutory footing.

To support this transition, NHS England and NHS Improvement are publishing guidance and resources, drawing on learning from all over the country.

Our aim is to enable local health and care leaders to build strong and effective ICSs in every part of England.

Collaborating as ICSs will help health and care organisations tackle complex challenges, including:

- improving the health of children and young people
- supporting people to stay well and independent
- acting sooner to help those with preventable conditions
- supporting those with long-term conditions or mental health issues
- caring for those with multiple needs as populations age
- getting the best from collective resources so people get care as quickly as possible.

# Contents

About this document.....	3
Equalities and health inequalities statement.....	4
Introduction .....	5
Roles and responsibilities .....	6
Framework scope and objectives .....	7
Scope .....	7
Objectives .....	8
HR Transition Core principles .....	9
Employment Commitment.....	10
Section 1: Staff engagement and partnership working .....	13
1.1 National.....	13
1.2 Regional .....	14
1.3 ICS .....	14
1.4 Employer.....	14
Section 2: Looking after our people.....	15
2.1 Promoting health and wellbeing and supporting colleagues .....	15
2.2 Support for senior leaders and ‘board-level’ post holders .....	16
2.3 Maximising talent.....	17
2.4 Supporting displaced senior leaders .....	17
2.5 Outplacement support.....	18
Section 3: Belonging in the NHS .....	18
3.1 Filling of posts in transition .....	18
3.2 Inclusive approach to recruitment and talent .....	18
3.3 Appointing to senior leadership roles .....	19
3.4 Advancing equality, diversity and inclusion .....	20
3.5 Equality training .....	22
3.6 Assessing the impact of change on equality .....	22
3.7 Staff networks.....	22
3.8 Leadership diversity .....	22
Section 4: Managing the change for board-level colleagues .....	23
4.1 Management of change process within clinical commissioning groups .....	23

4.2 Management of change at board level.....	23
4.3 Management of the change business case .....	24
4.4 Board-level colleagues on fixed-term contracts .....	25
4.5 Guidance on exit and special severance payments .....	25
4.6 Disestablishing clinical commissioning group governing bodies .....	26
Section 5: Safe transfer for all people .....	27
5.1 Mechanism of transfer.....	27
5.1.1 Transfer schemes .....	28
5.1.2 Lift and shift .....	29
5.1.3 Transfer of Undertaking (Protection of Employment) Regulations (TUPE) .....	29
5.1.4 COSOP .....	30
5.1.5 Summary of transfer mechanism. ....	31
5.2 Preparation and people impact assessment .....	31
5.3 Fixed-term contracts and secondment arrangements .....	33
5.3.1 Fixed-term contracts .....	33
5.3.2 Secondments.....	34
5.4 Joint appointments .....	34
5.5 Commissioning support unit colleagues .....	35
5.6 Temporary staffing .....	35
5.7 Section 75 agreements .....	35
5.8 Management of ongoing change.....	36
5.9 NHS England and NHS Improvement models of employment .....	36
5.10 Electronic Staff Record (ESR) .....	38
Appendix 1: Technical Guidance on TUPE .....	39
Appendix 2: NHS England and NHS Improvement operating models .....	47
Appendix 3: Six high impact actions for inclusive recruitment and promotion .....	51

## About this document

This HR Framework for Developing Integrated Care Boards applies to NHS organisations affected by the proposed legislative changes as they develop and transition towards the new statutory Integrated Care Boards (ICBs). These organisations will include CCGs and other NHS employers hosting ICS staff or shared services.

This guidance provides national policy ambition and practical support to complement regional and ICB approaches and local employer policies for dealing with the change processes required to affect the transfer and the transition.

### Key points

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- A clear national change approach and principles for the handling of this transition, where the direction and expectations are to be met by all relevant parts of the NHS.
- Establishing ICBs in a way that minimises uncertainty and limits employment changes, to achieve this those responsible for designing and planning the change must approach it with a different mindset to that for previous structural changes.
- Endorsing a 'one NHS Workforce' approach that facilitates the movement of our people and increasing collaboration in a movement away from the traditional organisational change approach.

### Action required

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- Ensure the safe transfer of people to the new integrated care board on 1 July 2022.
- Take steps to plan and implement the transition in line with this guidance and the Employment Commitment, encouraging best people practices throughout the transitional arrangements and enabling the right conditions for these new significant organisations to start to deliver their ambitions.
- Ensure that where possible our NHS talent is retained and deployed to support systems in an agile way driving forward the 'one NHS workforce' ambition.

## Other guidance and resources

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- [ICS Design Framework](#)
- [Employment Commitment](#)
- ICS Guidance available on NHS Futures site [ICS Core Resources](#)

## Equalities and health inequalities statement

Promoting equality and addressing health inequalities are at the heart of NHS England and NHS Improvement's values. Throughout the development of the policies and processes cited in this document, we have:

- given due regard to the need to eliminate discrimination, harassment and victimisation, to advance equality of opportunity, and to foster good relations between people who share a relevant protected characteristic (as cited under the Equality Act 2010) and those who do not share it
- given regard to the need to reduce inequalities between patients in access to, and outcomes from, healthcare services and in securing that services are provided in an integrated way where this might reduce health inequalities.

# Introduction

NHS organisations, local councils and other partners have increasingly worked together as integrated care systems (ICS) since 2018 – and now cover the whole of England. By joining forces, ICS partners have developed better and more convenient services, invested more to keep people healthy and out of hospital and set shared priorities for the future. Our response to the pandemic showed the importance of joined-up working and accelerated the changes on which we had embarked – for example, through more provider collaboration. As recommended by NHS England and NHS Improvement, the government now plans to legislate to put Integrated Care Boards (ICBs) on a statutory footing, baking in the notion of collaborative working.

[Integrating care: Next steps to building strong and effective integrated care bodies across England](#) identified that the establishment of 42 new statutory organisations takes us a step further to achieving one workforce strategy in line with the NHS People Plan and People Promise, to improve the experience of everyone working in the NHS. New opportunities will emerge to support rewarding career pathways across systems and to create organisations that value diversity, developing a workforce that is representative of the population it serves.

The [White Paper](#) sets out the vision for ICS development but crucially mandates some specific ways of handling this change. These should be considered when developing policy, planning and implementing the change.

“We know that we need to support colleagues during organisational change by **minimising uncertainty and limiting employment changes**. We are therefore seeking to provide **stability of employment** and will **work with NHSE and staff representatives** to manage this process.”

The aims of the change and transition approach are to:

- deliver this change in a way that demonstrates the importance and value of our people and their health and wellbeing and enables the continued delivery of our NHS priorities including the recovery of our colleagues and services



- minimise uncertainty and provide employment stability for our people (see [Employment Commitment](#))
- effectively manage the transition period leading up to the establishment of ICBs
- establish the new ICBs and manage the transfer of functions, people, assets and liabilities safely and effectively
- ensure that our NHS talent is retained and deployed to support systems in an agile way, building on our people's skills, experience, aspiration and passion
- take a 'one NHS workforce' approach that facilitates the movement of our people and increasing collaboration, rather than a traditional organisation change approach that tends to move from one fixed point to another.

The HR Framework is therefore structured to support this approach to change as set out above. There are five main sections:

1. Staff engagement and partnership working
2. Looking after our people
3. Belonging in the NHS
4. Managing the change for board-level colleagues
5. Safe transfer for all people

The framework provides professional advice, guidance and best practice in relation to the human resources and employment law considerations required to enable the safe transfer of people to the new NHS ICBs.

It has been co-developed with national trade union sub-group of the Social Partnership Forum, the ICS Transition Partnership Group, clinical commissioning group (CCG) and ICS HR directors, and NHS England and NHS Improvement HR and OD leads.

## Roles and responsibilities

This document outlines key activities, responsibilities and/or considerations required at a national, regional, system and organisational level.

We recognise that the majority of the transition responsibilities and activities lie with the current statutory employers (such as CCGs) and the future receiving

organisation, which will be represented by the current ICB leadership (as set out in the [Planning guidance](#) and [Design Framework](#)) and then by the designate leadership as they are appointed. We also acknowledge that not all colleagues who currently support systems are employed directly by CCGs and the safe and effective transfer of staff will entail a broader impact assessment encompassing those engaged via different employers and on a range of contractual arrangements.

The national role of NHS England and Improvement is to set out clear policy intent and guidance and where sensible to undertake tasks that can be done once and apply nationally. This will be identified in each relevant section.

The regional role of NHS England and Improvement is to provide co-ordination and support to the whole range of ICB development activities including those relating to the transfer of people. Regions will provide professional support and guidance in the implementation of national guidance and assist with finding solutions, in partnership, to address issues that arise.

# Framework scope and objectives

## Scope

This HR Framework applies to NHS organisations affected by the proposed legislative changes as they develop and transition towards the new statutory ICBs. These organisations will include CCGs and other NHS employers hosting ICS staff or shared services.

This guidance is designed to provide national policy ambition and practical support that complements regional approaches, ICB approaches and local employer policies for dealing with the change processes required to affect the transfer and the transition.

It applies throughout the transition period which runs until the new ICBs are established; however, the fundamental principles of care for our people, belonging in the NHS and one workforce approach should be sustained into the future.

We recognise that this is a transition from established organisations into new statutory bodies where there is a degree of variance in the maturity in ICSs as partnership organisations. The aim is to support consistency of application and encourage best people practices throughout the transitional arrangements and, as the new ICBs are established, enable the right conditions for these new significant organisations to start to deliver their ambitions.

Given this degree of variation we recognise that implementing the national framework may present local challenges. As the framework has been developed in partnership, we expect that any such challenges will be resolved in partnership with trade unions, regions, systems and employers.

ICB leads and individual employers involved in the transition have an obligation to ensure that all decisions are taken with due regard to:

- the NHS [People Plan](#) and NHS People Promise with the aim to ensure all colleagues are valued and treated with compassion and respect
- the HR Transition Core Principles
- the [Employment Commitment](#)
- compliance with employment law, equality legislation and the public sector equality duty to ensure that decisions are fair, transparent, accountable, evidence-based and consider the needs and rights of the workforce.

## Objectives

This HR Framework aims to provide system leads, employers and HR and OD colleagues with:

- clarity on the implications of the desired change and transition approach
- clear steer on how to manage the transition in line with the Health and Care Bill, the ambitions in the White Paper, the [ICS Design Framework](#) and the [Employment Commitment](#)
- confidence in and understanding of the legal framework for this change
- access to advice and guidance on handling key aspects of organisational change
- clarity over what will be done nationally, regionally, system and at local employer level.

Setting out a clear national approach, including a set of principles for the handling of this transition, is key to its success, providing clear direction and expectations to be met by all relevant parts of the NHS.

To create new and different organisations in a way that minimises uncertainty and limits employment changes, those responsible for designing and planning the change must approach it with a different mindset to that for previous structural changes. This impacts on policy and strategy, technical change processes and our own behaviours.

## HR transition core principles

The overarching principles that apply throughout the transition period and which were agreed in partnership with national trades unions are:

People centred approach – in line with the People Promise	Compassionate and inclusive	Minimum disruption	Subsidiarity
<ul style="list-style-type: none"> <li>Thinking about the needs of patients and the impact on our people as a first step and amending plans if necessary</li> <li>Taking a supportive talent-based approach with colleagues impacted by the changes</li> <li>Seeking to provide stability of employment where possible</li> <li>‘One NHS workforce’ inclusive change approach supported by the Employment Commitment</li> </ul>	<ul style="list-style-type: none"> <li>Openness and transparency of process and actions</li> <li>Taking action to increase the diversity of the new ICB workforce and particularly the leadership</li> <li>Co-creating at the appropriate level</li> <li>Individual behaviours</li> <li>Supportive change approach</li> </ul>	<ul style="list-style-type: none"> <li>Taking the minimum position to enable the change and setting the direction for future evolution by the new NHS ICBs</li> <li>Keeping policy as simple as possible and testing thinking against these principles</li> <li>Working together to avoid unnecessary duplication of effort and achieve greatest value – based on the principle of subsidiarity</li> </ul>	<ul style="list-style-type: none"> <li>Moving functions and accountability to where the work should be carried out to ensure the enablement of continuous improvement and partnership responsibility to the ICS ambitions, through a population health management approach across all functions</li> <li>People follow the function in line with the Employment Commitment for people below board level</li> <li>Organisation design at national and regional level should mirror the legislative approach and be as minimally</li> </ul>

People centred approach – in line with the People Promise	Compassionate and inclusive	Minimum disruption	Subsidiarity
			prescriptive as possible

It will be everyone's responsibility to ensure that these overarching principles are applied and adhered to.

## Employment Commitment

**This section applies to all employees in organisations impacted by this legislation.**

The Employment Commitment as defined in the [FAQs](#) published on 11 February 2021 is:

“NHS people within the wider health and care system (below board level) affected directly by these legislative changes, including CCGs, NHS England and NHS Improvement and NHS providers, will receive an Employment Commitment to continuity of terms and conditions (even if not required by law) to enable all affected colleagues to be treated in a similar way despite a variety of contractual relationships. This commitment is designed to provide stability and remove uncertainty during this transition.”

Our consultation paper [Integrating care: next steps to building strong and effective integrated care bodies](#) (paragraph 4.22) stated that throughout the transition towards establishing the new ICBs, the aim of the Employment Commitment is:

- not to make significant changes to roles below the most senior leadership roles
- to minimise the impact of organisational change on current colleagues by focusing on the continuation of existing good work through the transition and not amending terms and conditions
- to offer opportunities for continued employment for all those who wish to play a part in the future.

Throughout the transition period, the Employment Commitment aims to ensure that the continuation of the good work being carried out by the current group of colleagues is prioritised by minimising disruption. In turn, we hope this will promote best practice through engaging, consulting and supporting the workforce during a carefully planned transition that is free from the distraction of significant organisational change programmes.

It is envisaged that ICBs will have similar functions to those that clinical commissioning groups (CCGs) have currently. NHS England will be making transfer schemes to transfer CCG colleagues to ICBs. Colleagues below board level should 'lift and shift' from one organisation to the other, resulting in minimal change.

The Employment Commitment also seeks to provide stability during the transition period, particularly before the establishment of the statutory ICBs.

To apply the commitment in practice, organisations affected by and involved in the proposed changes should:

- ensure there is a continued and sustained focus on the day-to-day delivery that supports the restoration and recovery of services
- avoid undertaking large-scale organisational change programmes throughout the transition period to 2022, wherever possible, and instead look to embed new ways of working through positive engagement and communication with the workforce
- where organisational change is identified and is unavoidable, demonstrate this to colleagues who are affected by it, and their trade union representatives, at the earliest opportunity and only undertake change that is essential
- seek to retain talent from affected organisations wherever possible by supporting the broadening of skills and capabilities
- maximise opportunities for the development of the talent by enabling the ongoing evolution and development of roles across the system
- retain terms and conditions and continuity of service of those colleagues affected by the transition
- provide robust and proactive support to those affected by the changes

- communicate and engage with trade union representatives at national, regional, system and local levels to support effective partnership working throughout the transition
- engage regularly with those affected by the changes and ensure an open, transparent, and constructive approach to communication and engagement is adopted.

## Senior leadership/board-level roles

Colleagues in senior leadership/board-level roles are likely to be impacted by the need to establish the designate executive/board-level roles of each ICB **ahead** of its establishment. It is therefore not possible to commit to limiting organisational change ahead of the establishment to this group of people.

**‘Board level’ in this context therefore means those colleagues who are likely to be affected by change following the confirmation of a statutory ICS executive/board-level structure.**

Due to local determination of several roles on a statutory ICS board/executive and the variety of roles that currently exists at this level, this guidance is not intended to be prescriptive or definitive about the actual people determined as ‘board level’. Detailed people impact assessments will take place locally when the new executive/board-level structures are confirmed, and these will identify the colleagues affected.

However, we anticipate that the colleagues most likely to be affected will be:

- ICS leads or accountable officers of a CCG
- director or executive level roles that report to the ICS lead, or to an accountable officer of a CCG
- CCG governing body roles, as defined by the Health and Social Care Act 2012 and outlined in previous NHS Commissioning Board guidance including GP board members
- senior posts within NHS England and NHS Improvement functions that are expected to be the responsibility/function of an ICS in the future
- other senior posts within the system that may be expected to take on the responsibility/function of an ICS in the future (e.g., senior provider collaborative posts).

Officer roles held under a contract for services including CCG lay members are not covered by the commitment, however, whilst the statutory body they were engaged by will no longer exist when ICBs are established, it is vital to retain their expertise and knowledge where possible.

All other employees, including those **engaged** in functions working in commissioning support units and clinical leads, are covered by the Employment Commitment.

The full [Guidance on the employment commitment](#) should be reviewed alongside this guidance document when implementing change and transition.

# Section 1: Staff engagement and partnership working

The changes associated with the transition towards ICBs will involve the movement of thousands of colleagues to new organisations. The core principles outlined above refer to working in partnership with trade unions.

The expectation is for trade unions to be consulted by an employer at a local level as well as through the social partnership arrangements at national, regional and ICS level.

## 1.1 National

A new sub-group of the national Social Partnership Forum (SPF) called the ICS Transition Partnership Group has been established to ensure robust partnership working at the national level. This group includes national trade union representatives from Unison, MiP, RCN and BMA, as well as employer representatives from CCGs, ICBs and NHS Employers. The terms of reference for the group and other information can be found at <https://www.socialpartnershipforum.org/>



## 1.2 Regional

Where regional SPFs exist, the aim is to develop their role in supporting systems and employers in their regions to maintain effective partnership working. It is anticipated that the role of regional SPFs will be:

- to ensure that the national messages are communicated appropriately to system and employer level forums
- support consistency of approach and understand reasons for difference
- share good practice and case studies across the region
- contribute to the development of national products by providing feedback from regional representatives to the national Transition Partnership Group.

## 1.3 ICS

In anticipation of becoming an employer, each ICS is encouraged to establish a partnership arrangement which enables effective employer partnership working with local trade union representatives. We recognise that ICS Social Partnership Forum's might also exist with partner organisation representation with a focus on the wider system workforce, people and culture elements.

## 1.4 Employer

There are legal requirements to consulting on these changes as well as locally negotiated HR and change policies and best practice principles for a change of this scale. Effective consultation and partnership working at employer level will be vital to ensuring organisations successfully manage the risks and challenges associated with the transition.

Organisations involved in the transition, in partnership with their relevant trade union representatives, will therefore:

- be responsible for the effective management of the transition at local level
- be conversant with any relevant policies, procedures, and guidance, including nationally agreed guidance
- agree locally how national guidance will be communicated and translated into CCG and/or system level HR plans

- avoid local disputes by using the range of partnership working arrangements available across employer, regional and national level.

We recognise that due to their size some CCGs do not have local colleague-side representatives. In such circumstances the relevant area or regional trade union representatives should be engaged and consulted to agree appropriate representation and establish consultation forums during the transition process.

## Section 2: Looking after our people

### 2.1 Promoting health and wellbeing and supporting colleagues

We recognise that these changes will be taking place against a background of significant and ongoing challenges associated with COVID-19. It is therefore critical that organisations prioritise the health and wellbeing of all colleagues involved in the transition.

When planning the necessary change and transition programmes, the people impact assessment (see Section 5.2) should be undertaken to understand the potential impact on the health and wellbeing of the workforce. Early discussions and engagement should be undertaken with employees to test this thinking and to understand what support would be beneficial throughout.

The NHS People Plan also asks that all NHS colleagues have a health and wellbeing conversation and are supported to develop a personalised wellbeing plan. Both are important during change and transition. [A guide to health and wellbeing conversations](#) is available on the NHS Employers website.

The Employment Commitment is also made in the spirit of ensuring that our colleagues feel valued and supported during this transitional process as we know change can cause concern and anxiety. Uncertainty can also increase where there is a lack of control, voice and information, and a national change of this nature can compound this sense. We recommend the following steps to counteract this:

- maximise the availability of career conversations for all colleagues with the aim of supporting them to think about and understand where they are in their career and what their ideal next steps will be
- enable colleagues voice, working closely with trade union colleagues to ensure that your trade union representatives are in a good position to support colleagues and represent members in various partnership forums
- provide regular information: supporting this transition with robust communications and engagement strategies is key to ensuring colleagues are well informed about the current situation and developments in the transition.

Support for all NHS colleagues to access in addition to that provided by organisations' employee assistance programmes is available on the [Our NHS People](#) webpage.

## 2.2 Support for senior leaders and 'board-level' post holders

Although senior 'board-level' roles are not covered by the Employment Commitment, it is critical that these colleagues are appropriately supported throughout the transition.

The approach should still be to minimise uncertainty and provide employment stability. However, there is a need to provide this in a different way, given the higher likelihood that the transition will affect colleagues in these roles.

The aim is to take a talent approach to this change. Our board-level leaders are colleagues who have led our organisations for many years and have achieved so much for patients and colleagues. It is crucial that, where possible, we retain our talented leaders and their experience and knowledge to ensure the future success of ICBs. Chapter 4 below provides further guidance on support for senior colleagues.

A dedicated resource has been developed on [Our NHS People](#) website to support senior leaders and board level post holders throughout the development and transition towards statutory ICBs and employers and ICS's are asked to promote its availability locally.

## 2.3 Maximising talent

### The talent approach has the following key aims:

- attracting and retaining the right people in the right roles and enable them to do their work in the right place
- value and support colleagues through transition and beyond
- enabling talent management at system level by embracing employment models, sharing agreements and passporting to create 'one workforce' that is agile and focused on our people's skills, experience, aspiration, and passion
- ensure a fair and equitable approach to recruitment and retention activities.

There are a range of interventions are needed to achieve these aims and national and regional talent teams with the Leadership Academy will work with local systems to ensure they are implemented.

In terms of talent management, systems and regions should work closely to ensure the appropriate processes are in place for good quality career conversations to happen, insight and data to be captured on workforce aspirations and actions to be taken to support people in their career journey. This work should link closely to the actions set out in the Section 3.2 on inclusive recruitment.

## 2.4 Supporting displaced senior leaders

While systems will seek to avoid any unnecessary change- we recognise that the transition from CCGs to ICBs will likely have a direct impact on senior leaders. ICBs must, therefore, ensure a package of support is available for displaced leaders.

Organisations should undertake proactive engagement with leaders affected by change and explore the impact on individuals as early as possible.

They should also adopt a flexible approach to seeking alternative employment for displaced leaders, recognising the wider benefits of retaining senior talent and skills for the health and care sector.

Tailored packages of support should be discussed and agreed with individuals, depending on their personal aspirations and circumstances.

## 2.5 Outplacement support

The need for outplacement support should be minimal but CCGs or ICBs post establishment may wish to consider procuring such packages for board-level employees who may benefit from independent career development support.

# Section 3: Belonging in the NHS

## 3.1 Filling of posts in transition

Transparency of approach and equality of access to opportunities are vital during this transition and will impact on the feeling of belonging to the 'one workforce' of the future ICS.

We recommend ICBs and CCGs set out their approach to filling vacancies that arise. This is for regional and local determination and there is no national mandate to operate any recruitment freezes. The national ambition is for the work to continue with minimal disruption and therefore permanent replacements below board level might be appropriate. While CCG colleagues will transfer over to the new organisation by way of a transfer scheme made by NHS England, there will be occasions where undertaking a recruitment process is necessary, particularly for new roles that are not currently employed in the existing organisations.

Before proceeding the systems should determine a clear and transparent process for recruitment that maximises opportunities for existing colleagues within the system, aligns with local policies and procedures and promotes fairness and equity.

Where it is deemed necessary to externally recruit for a post, this will only proceed following consideration of any transferred senior staff whose roles may otherwise be at risk.

## 3.2 Inclusive approach to recruitment and talent

Once ICBs are established as new statutory employers, they should ensure that their recruitment process and practices are consistent with this guidance.

The NHS People Plan outlines that employers in partnership with staff representatives should overhaul recruitment and promotion practices to ensure the workforce reflects the diversity of communities, and regional and national labour markets.

To deliver this outcome six high-impact actions for inclusive recruitment and promotion have been developed. These are expected to bring positive and rapid progress on inclusive recruitment and promotion and sit underneath the NHS People Plan actions that invite organisations to:

- **ensure board-level senior managers own the agenda** as part of wider culture change in NHS organisations, with improvements in representation
- promote ‘explanation and accountability’ to **ensure fairness during selection processes**
- **create talent panels with fair, inclusive, and transparent values**
- **enhance inclusive recruitment and promotion practice support**
- overhaul the candidate selection process with **training on fair and inclusive practices**
- adopt resources, guides, and tools to **have productive conversations on core inclusion topics**, such as disability and race.

Further detail on the actions, including intended outcomes and measures and how they link to race equality standards, can be found in Appendix 4.

We published an evidence-based case study pack, [Inclusive Recruitment: Leading Positive Change](#), in collaboration with NHS Employers in April 2021. Learnings from the evidence-led work can be used for other areas and we encourage a system approach to the adoption of the six actions. As ICBs develop, we are in a unique position to harness opportunities that will ensure equality, diversity and inclusion are at the forefront of next generation NHS workforce design.

### 3.3 Appointing to senior leadership roles

Getting the right leadership in place for each new ICB will be critical to its ongoing success. Systems should therefore consider how they will recruit to the new leadership positions.

As part of its transitional arrangements and plans, each developing ICS should also set out its aspirations to address any underrepresentation across the entire range of characteristics where necessary. Reference to the baseline people impact assessment (see section 5.2) will identify the current situation and where underrepresentation exists.

Due to the direct impact these changes will have on existing leadership teams the ICB will need to consider whether senior leaders already working within the system should be 'ring-fenced' or 'pooled' for specific roles, on a role by role basis. ICBs are significantly different statutory organisations and many of the senior roles will not be deemed similar to existing roles.

All senior appointment processes including the designate chief executive and those reporting to the chief executive must have appropriate representation from the relevant NHS England and NHS Improvement regional team. Professional or qualified roles must also be represented by a member of the relevant profession from NHS England and NHS Improvement. All panels must have a diverse make up in line with the commitments outlined in the [NHS People Plan](#).

Where ICSs undertake external open recruitment processes for key leadership roles an appropriate attraction strategy should be considered to attract the best candidates possible. ICSs may wish to consider the use of external executive search agencies and Commissioning Support Units.

Advice should be sought from HR throughout any recruitment process.

### 3.4 Advancing equality, diversity and inclusion

As outlined in the [NHS People Plan](#), there is strong evidence that where an NHS workforce is representative of the community it serves, patient care and the overall patient experience are more personalised and better. Therefore, a focus on advancing equality and fairness must lie at the heart of all decision-making.

The equality, diversity and inclusion priorities identified for 2021/22 focus on two strategic areas:

1. **The need for NHS employers, including system leaders, to increase ethnic minority representation within each employer and to encourage rapid and focused corrective actions delivered by:**

- refreshing [model employer](#) goals to improve racial disparity ratios in the workforce, by setting target metrics at employer/system level and supporting employers/systems to accelerate progress towards these goals
- implementing inclusive recruitment and promotion practices across the NHS to ensure a more diverse and inclusive NHS workforce by rapid implementation of the six high impact actions
- enabling a compassionate and inclusive culture by establishing an online community of practice among leaders and refreshing the national culture leadership programme

**2. Raising the profile and voices of ethnic minority colleagues so that they can contribute effectively to decision-making in their organisation, delivered by:**

- ensuring the needs of ethnic minority colleagues are met as we move from response to recovery and restoration through lived experience events, cataloguing lessons learnt and reflecting on what innovations need to be embedded
- continuing to strengthen and support growth of high-performing staff networks, including by establishing staff network governance frameworks and best practice guidance for all networks
- supporting leaders and line managers to become empowered to hold productive discussions on race, health and equality within their organisation.

While there is a continuing focus on furthering these strategic priorities, ICB equality and diversity plans should be representative of all protected categories.

Employers are responsible for ensuring that all decisions are taken with due regard to relevant employment law, equality legislation and the public sector duty to ensure that decisions are fair, transparent, accountable, evidence-based and consider the needs and rights of the workforce.

Throughout the transition organisations will be required to demonstrate their commitment to and provide assurance on their plans to advance equality, diversity and inclusion.



### 3.5 Equality training

All key decision-makers, including interview panel members and senior managers, should have received training in best practice for diversity in equality considerations, cultural competence and related current legislation. In the run up to the proposed changes, employers should ensure that senior managers have received refresher training if necessary.

### 3.6 Assessing the impact of change on equality

Procedures should be designed to support diversity and equal pay with due regard to equality legislation and ensure that there is no unlawful direct or indirect discrimination, victimisation or harassment against any individual or group of employees. All proposed changes should be accompanied by an equality impact assessments (EQIA), which should include an analysis of the equality and rights impact of any changes on the workforce.

We recommend that an EQIA is conducted at different points in the transition process to support monitoring of equality impacts over time. This should include during the initial people impact assessment (see Section 5.2), as well as when decisions are taken as a result of formal consultation and when roles are being and have been recruited.

Employers must keep records of the decisions they take during this period of change which affect the employment of groups and individuals. They should use these records to monitor the decisions they make to ensure no direct or indirect discrimination and report on those decisions.

### 3.7 Staff networks

Organisations should also engage and communicate with established staff networks and ensure governance arrangements support staff networks to contribute to and inform decision-making processes. Where staff networks are not established, the development of other appropriate networks should be supported.

### 3.8 Leadership diversity

In establishing the new leadership team for each ICB, organisations should outline their aspirations and intentions regarding leadership and board diversity, aligned to

the aims in the [model employer](#) guidance. In developing the new ICBs, all organisations must work together to ensure that new leadership teams are diverse and representative of the communities they serve. As part of its transitional arrangements and plans, the developing ICB should also set out its aspirations to address any underrepresentation across the range of characteristics.

## Section 4: Managing the change for board-level colleagues

### 4.1 Management of change process within CCGs

CCGs as sending employers will be expected to follow their own organisational policies on managing organisational change and apply these to any change processes that take place ahead of establishment. This includes board-level changes.

### 4.2 Management of change at board level

While board-level roles are not covered by the employment commitment, it is critical that these colleagues are appropriately supported throughout the transition.

Our board-level leaders are colleagues who have led our organisations for many years and have achieved so much for patients and colleagues. It is crucial that, where possible, we retain our talented leaders and their experience and knowledge to ensure the future success of ICBs. A co-ordinated approach at national, regional and system level is being developed to provide this.

If someone is dismissed by a sender (transferor) organisation before a TUPE transfer because there is no role for them in the receiver (transferee), their dismissal is likely to be automatically unfair. The expectation is therefore that board-level colleagues will transfer to ICBs along with other colleagues. Discussions about roles and responsibilities for CCG and ICB board-level colleagues should begin in

good time before the transition, with a view to securing alternative roles by agreement wherever possible, having regard to the principles in Section 3.

The aim in this change is to retain as many people as possible, however, where suitable alternative roles cannot be identified for senior colleagues, either locally or in the NHS regionally and nationally, and following full and timely consultation, redundancy on contractual terms may be appropriate.

Colleagues will be expected to work out their notice period and will be supported to do so by their ICB and NHS England and Improvement Regions.

Any redundancies will be implemented by the receiving ICB. The appropriate approvals should be sought through local remuneration committees and through the exit payment approval process within the [Guidance on public sector exit payments](#) (see Section 4.5). Demonstration of a comprehensive exploration of suitable alternative employment across the NHS will be a minimum requirement.

## 4.3 Management of the change business case

Planning for formal organisational change for board level colleagues is required ahead of establishment, so it is important for a management of change business case to be prepared in accordance with local organisational change policies as soon as the new executive structures are confirmed. The business case should include:

- People Impact Assessment – showing who is in scope and the proposed impact
- managing formal change including pooling arrangements, recruitment and selection standards and approaches, appointments processes and timetables,
- employee and trade union communication, engagement and formal consultation arrangements
- supporting employees going forward including due consideration for health and wellbeing
- arrangements for the redeployment of any employees displaced as a result of the transfer
- processes for resolution of disputes
- legal risks arising from the timing of organisational change processes.

## 4.4 Board-level colleagues on fixed-term contracts

Some board-level colleagues will be employed on fixed-term contracts, which will transfer under TUPE in the same way as any other employment contract. If a contract is due to expire immediately before the transfer, careful consideration should be given to whether it should be renewed, allowing the individual concerned to transfer to the ICB. If the CCG allows a fixed-term contract to expire because the individual is identified as not having a role in the ICB, their dismissal is likely to be automatically unfair. The legal liability for any automatically unfair dismissals in this situation would transfer to the relevant ICB.

## 4.5 Guidance on exit and special severance payments

Special severance payments are any payments made on termination of employment to employees, office holders, workers and contractors which do not correspond to an established contractual, statutory or other right. This would therefore not include statutory or contractual redundancy pay, or pay for untaken annual leave, but is likely to include:

- any payments reached under a settlement agreement
- write-offs of any outstanding loans
- any special leave, such as gardening leave
- honorarium payments or gifts
- payment in lieu of notice (PILON).

**HM Treasury updated its [Guidance on public sector exit payments](#) in May 2021. The guidance sets out the government's position on the use of special severance payments including:**

- the criteria employers should consider before making a special severance payment
- the control process for relevant special severance payments
- the transparency requirements for special severance payments.

Chapter 3 of the guidance provides detailed provisions for the approval process. These include:

- securing HM Treasury approval before any offers are made, either in writing or verbally
- securing ministerial approval for an exit package, including special severance payments, which is £100,000 or more and/or where the individual earns over £150,000.

Payment in lieu of notice (PILON) may constitute a special severance payment, depending on whether the payment is permissible under the terms of an individual's contract. We do not expect PILON will be used during this change and transition process on the basis that public sector employers are responsible for ensuring that special severance payments are made only when there is a clear justification for doing so, represent value for money and are fair to taxpayers who fund them.

## 4.6 Disestablishing CCG governing bodies

CCGs will be abolished under the proposed new legislation, and their functions will be largely subsumed into the functions of the new ICB. CCG governing bodies will cease to exist on abolition of CCGs. Any employed members of governing bodies will be within the scope of transfer schemes applying to all CCG employees and should be included in the formal management of change process.

Members of governing bodies who hold contracts for services are not employees and will not be within the scope of TUPE, COSOP or any statutory transfer scheme. It will be for local employers to assess the ongoing nature of these contracts for service, but those that are planned to continue beyond the date of transfer should transfer from the CCG to the ICB.

CCGs should undertake a review of contracts for services with a view to determining when notice of termination should be given to avoid Governing Body contracts of service expiring prior to the target date for establishment of ICBs or the need to pay in lieu of any unexpired notice when CCGs are disestablished.

Lay members and other office holders who are interested in continuing to support the NHS in a non-executive role should contact [nhsi.chairsandneds@nhs.net](mailto:nhsi.chairsandneds@nhs.net) to be included in a talent database held by NHS England and NHS Improvement's Talent and Appointments Team which oversees appointments to NHS non-executive director roles.

# Section 5: Safe transfer for all people

This section sets out how the change and transition process should be approached to facilitate the safe and effective transfer of people between CCG, or other NHS Body senders and ICB receivers in line with the agreed change and transition approach.

[Integrating care: Next steps to building strong and effective integrated care bodies across England](#) highlighted that the transition and change processes associated with the development of ICBs should be characterised by care for our people and no distraction from the 'day job'.

All functions currently undertaken by CCGs will move to the new ICB and will then evolve over time to focus on system priorities and ways of working. A few functions will be more directly impacted, principally those of chief officers of CCGs, CCG leadership/executive teams, governing bodies and board members. The immediate priority will be the continuation of the good work being carried out by the current group of colleagues and we will promote best practice in engaging, consulting and supporting the workforce during a carefully planned transition, minimising disruption to colleagues.

Except for senior leadership and board level posts, which will be more directly impacted by the transition (see section 4.2 above), organisations should use the Employment Commitment to allow enough time to balance current delivery challenges, with the development of the functions of the future ICS. The Employment Commitment asks organisations to minimise disruption and avoid organisational change for colleagues below board level ahead of establishment.

## 5.1 Mechanism of transfer

**The scope of this section relates to CCG colleagues and those engaged in ICS work whether employed by a CCG or another NHS organisation. The employment models for affected NHS England and Improvement colleagues are covered in section 5.7.**

The mechanism to transfer NHS staff deemed to be in scope of transfer to the newly established ICBs on the expected date of establishment will be a transfer scheme made by NHS England (see section 5.1.1). Early drafts of the legislation linked the transfer scheme to colleagues employed by CCGs, but this has now been broadened to include those who will transfer from other NHS bodies, including NHS England, NHS Trusts and Foundations Trusts and Special Health Authorities, to ensure that all transferring colleagues are afforded the same protection.

The process by which the transfers will happen will be in line with that required by the Transfer of Undertakings (Protection of Employment) Regulations 2006 otherwise known as (TUPE) and the Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP). TUPE and COSOP might also apply to relevant transfers outside of the scope of the transfer scheme, for example, where members of the existing ICS workforce are not currently employed directly by CCGs, but perhaps hosted by, seconded from or jointly appointed between other employers. Specialist advice may be required locally on the management of these cases.

The employment commitment made to support affected colleagues mandates the 'lift and shift' approach for CCG colleagues below board level. A description of what is meant by lift and shift is at section 5.1.2.

Colleagues at board level will have to be part of some organisational change ahead of the establishment of the new ICB, see Employment Commitment Guidance and section 4.2 in this framework for more information. However, all board level colleagues in place on the transfer date will be part of the transfer scheme and will transfer into the new ICB, whether in a new designate role or in a displaced position.

For those colleagues engaged by a CCG in work for an ICS either via a contract for services or on secondment from another organisation on the transfer date, the transfer scheme will ensure that the contract or secondment agreement will move to the new ICB.

### **5.1.1 Transfer schemes**

The proposed new legislation includes provision for transfer schemes made by NHS England which will implement transfers of colleagues, property and liabilities



from CCGs and other NHS Bodies including NHS England, NHS Trusts and Foundations Trusts and Special Health Authorities, to ICBs.

The main advantage of a transfer scheme, from the employees' point of view, is that it will preserve statutory continuity of service for transferring colleagues, ensures TUPE equivalent protection (as required by COSOP) and ensures protection for terms and conditions.

Technical guidance on TUPE can be found in appendix 1 and frequently asked questions in appendix 2.

### **5.1.2 Lift and shift**

A 'lift and shift' transfer is the desired approach as established in the [Guidance on the Employment Commitment](#). Under this transfer all colleagues (below board level) of a CCG will transfer from the CCG to the ICB with no requirement for organisational change. No job matching or pre-transfer selection process will be required.

It will be for each ICB to decide how it will want to deliver the range of functions and services they have responsibility for after the transfer. This may involve a reorganisation of staff previously lifted and shifted from CCGs at some future date. Any reorganisation would need to take place in accordance with applicable statutory requirements and the policies and procedures for that organisation and should involve consultation with Trade Unions and colleagues.

### **5.1.3 Transfer of Undertaking (Protection of Employment) Regulations (TUPE)**

Whilst the statutory mechanism for transfer from CCGs and other NHS Bodies to ICBs will be a transfer scheme (see 5.1.1 above), the process for each CCG will follow the legal requirements of the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) and the Cabinet Office Statement of Practice 'Staff Transfers in the Public Sector' (COSOP) guidance.

TUPE protects employment rights of employees when their employer changes as a result of a transfer of an undertaking to avoid them being disadvantaged because of the change. A relevant transfer may include the transfer of a business or part of a business, or a service provision change where a contractor takes on a contract to provide a service for a client from another contractor.



The question of whether TUPE applies to staff transfers in the public sector can be complex and fact specific. Under regulation 3(5) of TUPE, transfers of public sector administrative functions will not be relevant transfers. This is sometimes referred to as the 'Henke' exemption, after the European Court of Justice case in which it first arose. It is possible that regulation 3(5) would apply to most or all of the transition of colleagues from CCGs to ICBs, taking them outside the scope of TUPE.

The Guidance on the Employment Commitment has already established that colleagues should receive an employment commitment to continuity of terms and conditions, even if not required by law, to enable all affected colleagues to be treated in a similar way despite any variance in their contractual relationship or the change and transition process taking place within their system. This commitment is designed to provide stability and remove uncertainty during this transition, and it is for this reason that there needs to be adherence to the COSOP policy and TUPE equivalent protection provided via the transfer scheme.

Further technical guidance on the application of TUPE can be found in appendix 1 and frequently asked questions in appendix 2.

#### **5.1.4 COSOP**

The Cabinet Office Statement of Practice on Staff Transfers in the Public Sector (COSOP) is a policy document which seeks to address a number of factors including the uncertainty caused by the *Henke* exemption referred to in section 5.1.3. In essence, COSOP guides:

- public sector bodies to apply the principles of TUPE, even if it does not apply as a matter of law (for example, because the Henke exception applies); and
- receivers to put in place broadly comparable pension arrangements (at least) for transferring colleagues.

COSOP guides employers to inform and consult unions about the proposed transfer and to provide guaranteed protection of terms and conditions and contractual continuity of service (for Agenda for Change benefits, for example).

However, COSOP is not a mechanism of transfer and therefore does not protect statutory continuity of service, even if all parties to a transition agree that that would

be desirable. The only way to protect statutory continuity is via a TUPE transfer, or via a statutory transfer order or transfer scheme.

COSOP does not create any legal rights for employers or trade unions. However, compliance with COSOP has been regarded as effectively mandatory for public sector employers, as a matter of policy, since it was introduced implemented and employees may bring judicial review proceedings if it is not followed.

### **5.1.5 Summary of transfer mechanism.**

The statutory transfer schemes will give NHS colleagues transferring to ICBs essentially the same legal protection as if TUPE applied to their transfer to ICBs. For all colleagues transferring their employment to ICBs, the mechanism of transfer should look and feel identical to a TUPE transfer, in terms of the process followed by their current employers and ICBs, regardless of whether TUPE applies as a matter of law.

## **5.2 Preparation and people impact assessment**

A people impact assessment (PIA) is required to support the identification of the potential impacts of the proposed changes on people working within CCGs or existing ICB workforce structures, with a view to making the process of change as transparent as possible, and to minimising the impact on performance and motivation.

This assessment will also support the identification of risks and any mitigating actions that could be taken so that these can be built into the management of change process.

The PIA should include an assessment of:

- colleagues employed within each CCG below board level who will be transferred to an ICB by the transfer scheme via a process of being lifted and shifted from the one organisation to another
- colleagues in senior leadership/board-level roles are likely to be affected by the need to establish the designate executive/board-level roles of the ICB
- CCG Governing Body colleagues and whether they are directly employed and in scope of a statutory transfer scheme and any TUPE transfer, or

engaged via contracts for service that should transfer as part of the transfer of assets and liabilities.

- lay members and other office holders and the plans to retain their knowledge and expertise within the ICB /system
- the status of fixed-term contracts, secondments and joint appointments and whether there is a service requirement for them to extend beyond the transfer date
- commissioning support unit (CSU) colleagues working under contracts for services whose service contract should transfer to an ICB as part of the transfer of assets and liabilities
- employees who are absent from the workplace and how they will be engaged and not disadvantaged by the process
- the need for health and wellbeing support for all colleagues or specific groups at different stages of the process
- the demographic baseline of the colleagues across the ICB footprint which is required to support the ongoing equalities impact assessments.

The PIA process should be carried out at an early stage to assess the likely impact of the change and transition. It will be necessary for PIA to take place at both CCG level and ICB /system level as an assessment completed in isolation may not provide a full review of staffing associated with clinical commissioning and ICB /system working under current organisational structures.

Organisations are encouraged to share anonymised PIA summaries of affected colleagues within systems at an early stage and in advance of the legal requirement to share employee liability information 28 days before transfer under TUPE (see Appendix 1). Organisations should safeguard against sharing information that would breach data protection regulations, including personally identifiable information, without prior consent from individual colleagues. It may be necessary to establish data sharing agreements between organisations to facilitate this process where they are not already in place.

This is the first stage of the change process and the baseline PIA will enable the first stage equality impact assessment (see Section 3.3) which should be completed to create the baseline. This will enable further assessment at key decision points and the timely identification of whether proposed changes will have a

disproportionate effect on any groups, allowing action to address this before decisions are taken.

## 5.3 Fixed-term contracts and secondment arrangements

We recognise that fixed-term contracts and other temporary resourcing methods are widely used across ICSs and CCGs, both in programme-funded roles and ICB roles. This section clarifies the legal position in respect of handling these situations but does not provide individual advice. Each organisation must determine how it will handle individual situations in line with the guidance, the law and the Employment Commitment.

### 5.3.1 Fixed-term contracts

Employees working under fixed-term contracts are protected by the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 which require that fixed-term employees are treated no less favourably than comparable permanent employees. In general terms:

- The expiry of fixed-term contract is treated as a dismissal.
- When a fixed-term contract expires, the statutory reason for dismissal depends on why it has been allowed to expire. If this is because the work is no longer needed or the funding for the post has expired, the reason for dismissal will be redundancy. However, if the fixed-term role was to cover for maternity leave, for example, the need for the work will not have reduced when the contract expires, so the reason for dismissal will be 'some other substantial reason' (SOSR).
- Employees who have two years' continuous service with their employer at the date the fixed-term contract expires have the right not to be unfairly dismissed.
- If the employee has two years' service, the employer must have a fair reason for the dismissal – for example, redundancy or some other substantial reason – and must follow a fair process when enacting that dismissal. In either case this would include considering suitable alternative employment.

- A dismissal made directly in relation to a TUPE transfer is automatically deemed unfair unless an economic, technical or organisational (ETO) reason can be justified.
- While redundancy can normally be justified as an ETO reason, in the context of this change it is noted that the current employer of the fixed-term employee should not dismiss them by reason of redundancy prior to the transfer of services to the ICB.
- If an employee has prior unbroken NHS service, that prior NHS service will be considered as reckonable service for the purposes of redundancy eligibility and calculation.
- Fixed-term employees who have been continuously employed for four years or more on one or more successive fixed-term contracts are deemed to be permanent employees.

### 5.3.2 Secondments

The Employment Commitment sets out that colleagues who, on the transfer date, are seconded to a CCG from another employer to support a transferring CCG function, should continue to be seconded if that function has transferred. The secondment agreement should transfer from being with a CCG to the ICB under the relevant transfer scheme.

Decisions around secondment agreements should however be taken with reference to any guiding principles set out in an organisations management of change policy and procedure, the secondment agreement itself and in agreement between the parties to that agreement.

## 5.4 Joint appointments

**This section excludes appointments to Chair and Chief Executive of the new ICB, the parameters around joint appointments are covered by the [Design Framework](#).**

As effective partnership and place organisations, CCGs and ICSs have developed a range of joint appointments at both board level and below board level. These could include appointments between CCGs and local authorities where either could be the substantive employer. There is no intent in this change and transition for statutory ICBs to reduce this effective partnership approach, however with the

creation of the new statutory organisation it might present an opportunity to review such arrangements.

The People Impact Assessment should identify all the existing joint appointments, and this will enable the parties to these arrangements to begin discussions and consider the available options for the post-holders.

## 5.5 CSU colleagues

Colleagues employed in CSUs in functions supporting CCGs are covered by the employment commitment. CSU colleagues are not expected to be within the scope of any staff transfers arising from legislative changes because contracts between CSUs and CCGs will transfer via the transfer scheme from the CCGs to ICBs. CSU colleagues will continue to be employed by the NHS Business Services Authority.

## 5.6 Temporary staffing

Where a CCG hold contracts with temporary staffing agencies for the provision of temporary and agency staff, these contracts will continue with an ICB following the transfer of people and property under the transfer scheme.

Sending organisations are required to provide details of the numbers of temporary and agency staff currently supporting the transferor and in what capacity when informing and consulting trade unions in line with TUPE (see appendix 1 for further details).

## 5.7 Section 75 agreements

Section 75 of the NHS Act 2006 allows partners including NHS Bodies and Local Authorities to contribute to a common fund to support integrated services across health and social care. In some cases, the pooled funding is used to engage both NHS and/or Local Authority staff to support integrated services and there is no intention for the transition process to affect these agreements. CCG rights and liabilities under Section 75 agreements will transfer via transfer schemes from CCGs to ICBs.

## 5.8 Management of ongoing change

Through the Employment Commitment NHS England and NHS Improvement have asked organisations affected by the transition to commit to not making significant changes to roles below the most senior leadership roles. Recognising this commitment, in addition to our aim of supporting a carefully planned transition that minimises disruption to colleagues, organisations must be cognisant of the impact any structural changes could have on the delivery of day-to-day operations.

Where organisational change is already underway, e.g. in the case of existing recent CCG mergers, the management of change proposals regarding transfer should demonstrate whether the intention is for the proposed changes to cease, to progress as proposed or to be amended to reflect the establishment of the ICB. The appropriate course of action will depend on how far the existing change proposals have progressed and support the aims of the development of ICB, and should be agreed in partnership.

### Responsibilities

National	System	Organisation
<ul style="list-style-type: none"><li>• Provision of transfer scheme(s)</li></ul>	<ul style="list-style-type: none"><li>• Conducting a people impact assessment of the workforce currently supporting the ICB establishment and communicating the need for a clear transition plan for everyone identified</li><li>• Defining measures in line with TUPE</li></ul>	<ul style="list-style-type: none"><li>• Conducting a people impact assessment of the existing CCG workforce to identify how colleagues will be impacted by the change process</li><li>• Information and consultation</li><li>• Disclose employee liability information relating to in-scope colleagues to receiving organisations as part of the TUPE transfer process</li></ul>

## 5.9 NHS England and NHS Improvement models of employment

ICBs will have the opportunity to take on responsibilities for a greater range of NHS England and Improvement direct commissioning functions enabling them to address population needs end-to-end, and tackle care fragmentation.



We are proposing delegation rather than formal transfer. Delegation means that NHS England and Improvement and an ICB agree that the ICB should perform the specified NHS England and Improvement commissioning functions and the functions then become the responsibility of the ICB, with NHS England remaining accountable. The ICB can then take commissioning decisions on behalf of its population becoming the operational and legal owner of the function, whilst we retain accountability. Delegation provides greater flexibility, for example differential pacing across the country; the ability to set conditions and to retract functions if necessary. Delegation of direct commissioning functions to ICBs does not necessarily mean that colleagues delivering those functions will need to transfer their employment; formal transfer of employment in line with TUPE/COSOP is only one of the six staffing models that could be adopted across NHS England and Improvement to support delegation (see Appendix 2 for more details). In line with these models, colleagues who are aligned, assigned, embedded, or seconded to an ICB will retain their NHS England and Improvement employment and would not formally transfer.

Elements of some commissioning functions should be retained by NHS England and Improvement. This includes (but is not limited to) responsibility for some highly specialised services; negotiating national contracts; setting standards and specifications; and providing some back-office support via NHSBSA.

Regional and ICB circumstances will determine which employment model will be the most appropriate for colleagues and for ICBs; NHS England and Improvement national responsibilities will also need to be taken into account. NHS England and Improvement affected colleagues (below board level) are covered by the employment commitment and are considered part of the ICS one workforce. ICS leads and CCGs should ensure that NHS England and Improvement colleagues are actively included in discussions and decisions around delegation and the appropriate employment model to be used. This will be discussed and agreed with colleagues and trade unions at a regional and national level within NHS England and Improvement as part of the change and transition process. We will be mindful of the impact of each of these models has on the ability of NHS England and Improvement and ICBs to discharge their respective functions and intend for them to be adopted in a way which facilitates effective information sharing and collaboration.



NHS England and Improvement employees affected should have access to job opportunities advertised across the ICS footprint to which they are aligned.

## 5.10 Electronic Staff Record (ESR)

To enable the transfer of colleagues from CCGs to ICBs on their establishment, CCG and ICS leadership will need to take a partnership approach to enacting changes in the Electronic Staff Record (ESR) to enable business as usual activities, including payroll, to continue beyond the planned transfer date of 1 July 2022.

A number of mechanisms can be used to deliver the organisational changes required to merge CCGs into a new statutory ICB within ESR. This can be achieved by using a technical merger or mass organisation change process (MOCP) or by manually moving staff records from one VPD to another. The method used will depend on the scale and complexity of the change. Information on the best approach to take will be available in guidance on the creation of integrated care system's Electronic Staff Records (ESR) on the NHS Futures Platform.

A technical merger may be the preferred mechanism to facilitate large-scale movements of staffing records involving multiple or large CCGs. This is normally arranged at organisation level via a service request sent to IBM, which in turn secures a programme slot on a planned merge event. These events typically take place every three months starting in May each year. Given the scale of the changes required in ESR, NHS England and NHS Improvement will facilitate the allocation of available programme slots at a national level and, to avoid the potential loss of available slots, they will be released to CCGs and their associated ICB based on an assessment of readiness. To help with the planning of programme slots for merge events we ask CCGs to complete and return the ESR IBM Data Collection Template available on the NHS Futures platform.

# Appendix 1: Technical guidance on TUPE

## What is TUPE?

The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) protect terms and conditions and continuity of employment for employees if the organisation or service they work for changes hands. Although the transfer of employees from CCGs to ICBs will be covered by statutory transfer schemes, it is possible (but not certain) that TUPE will also apply. CCGs should therefore carry out a transfer process in accordance with the requirements of TUPE.

TUPE applies in two situations:

- when a business or organisation (or part of one) is transferred to a new employer
- when a 'service provision change' takes place. Service provision changes arise where contracts are reassigned, for example, where services are outsourced, in-housed or retendered.

## TUPE and ICBs

This note is intended principally (but not exclusively) to assist with the transfer of CCG employees to ICBs: it will therefore refer to transferors as CCGs and transferees as ICBs.

ICBs will not exist as corporate bodies until the commencement date of the relevant provisions of the Health and Care Bill. This means that the necessary preparatory steps for ICBs relating to the transfer of CCG colleagues will be conducted by designated ICB leads who are authorised to give and receive information on behalf of the statutory ICB.

## What does TUPE protect?

When TUPE applies the new employer, (the transferee/ICB) takes on the rights, responsibilities and liabilities of the old employer (the transferor/CCG) relating to the employees. This means that, in outline:

- all employees of the CCG employed in the transferring entity immediately before the transfer are automatically transferred to the ICB
- employees are protected against having their terms and conditions changed in connection with the transfer. Each employee's contract of employment automatically transfers to the ICB. The effect is as if the contract was made originally between the employee and the ICB
- employees can claim automatically unfair dismissal if they are dismissed on account of the transfer
- the CCG and ICB both have an obligation to inform and consult representatives of affected employees
- the CCG must give the ICB information about the transferring employees, and the ICB must tell the CCG about any 'measures' that it might take which could affect employees
- Liabilities that transfer from the CCG to the ICB include all statutory and contractual rights. This includes:
  - current terms and conditions of employment
  - continuity of service
  - redundancy payments, both statutory and contractual
  - arrears of pay, holiday pay and sick pay and any accrued holiday entitlement
  - liabilities accruing prior to the date of transfer under employment protection legislation, including liability for unfair dismissal and discrimination
  - the terms of any collective agreement incorporated into the employment contract.
  - liability for any current or potential claims relating to the actions of the CCG.

Most pension rights do not transfer under TUPE, although this is not relevant to transfers between NHS employers because colleagues will retain their NHS pension scheme membership due to the HM Treasury New Fair Deal.

In addition to terms and conditions of employment transferring under TUPE, TUPE regulations also provides for all rights, powers, duties, and liabilities under or in connection with any such employment contract to transfer. This raises the question of whether policies and/or procedural documents have contractual effect or not and whether these would transfer regardless. This is not a straightforward question; some policies may be non-contractual on the face of it but may contain statements which have contractual effect alongside other parts which do not. ICBs are encouraged to consult with union representatives before undertaking any review of transferred policies.

A dismissal for a transfer-connected reason will be automatically unfair unless it is for an economic, technical, or operational (ETO) reason. Dismissal by the ICB on the grounds of redundancy after the transfer could amount to an ETO reason. However, a redundancy dismissal by the CCG before the transfer cannot rely on the ICB's ETO reason. What this means is that, for example, a CCG could not make redundancies to 'streamline' its workforce in preparation for the transfer. Any such pre-transfer dismissals would very likely be automatically unfair. Liability for any TUPE-related automatically unfair dismissals by CCGs would pass to ICBs.

Colleagues who transfer with NHS Terms and Conditions will continue to benefit from national collective agreements post transfer, including pay awards.

## The steps in a TUPE transfer process

The key elements of a TUPE transfer process are:

### Identifying

Determine which employees are in scope of the transfer. This can be done using a people impact assessment outlined in section 5.2. Employees on short-term and long-term absences, career break and parental leave should be included in the

assessment to identify if they are in scope of transfer, as should employees on fixed-term contracts and secondment.

In most cases it is anticipated that it will be straight forward to identify which ICB staff would transfer to, particularly where ICBs will be coterminous with existing CCGs, or multiple CCGs are moving to one new ICB. However, if CCGs are fragmented by a boundary change it will be necessary for affected colleagues to be allocated to one ICB or another in line with the Employment Commitment. It can be useful to look at percentage current of time allocation spent supporting each territory when making this decision, preferably as part of multi-factorial assessment of where the main value of the role is delivered. This might include assessment of resource allocation to each CCG for example. These assessments should be carried out in partnership between the CCG and ICB and involve trade unions and the employees affected from an early stage.

### **Informing and consulting representatives**

If the CCG recognises unions in respect of the transferring employees, it must inform and consult those unions. If it does not recognise unions for some or all of its employees, it should take steps to elect representatives to inform and consult about the transfer. CCGs should take advice on the appropriate approach because there can be substantial financial penalties in the event of a claim relating to failure to inform and consult correctly.

### **Information**

In good time prior to the transfer, the CCG should inform and consult the recognised union or elected representatives for all affected employees, communicating the fact that the transfer is happening and how they can object. The CCG must provide the recognised union, or the employee representatives, with the following information:

- the fact that the transfer is to take place
- the date or proposed date of the transfer
- the reasons why it is to take place
- the implications of the transfer for the affected employees
- the number of agency workers working temporarily for and under the supervision and direction of the employer.

- the parts of the employer's undertaking in which those agency workers are working.
- the type of work those agency workers are carrying out.
- any measures proposed, either by the CCG or the ICB in connection with the transfer that will affect the employees; if there are no measures to be taken, this must be made clear too.

### **Consultation with staff**

The CCG will consult with the recognised union or other representatives for all affected employees well in advance of the transfer.

The consultation must be meaningful and conducted with a view to seeking the agreement of the union or employee representatives to any proposals connected with the transfer. There is no requirement to consult about the fact that the transfer is taking place. Employers must respond to any representations made by the representatives, and if the employer rejects what they have to say, the employer must explain the reasons. The CCG also needs to verify any measures that are being considered by the ICB in respect of the affected employees.

The sooner the process starts, the more likely it is to be meaningful. The ICB must remember to inform existing employees as well and it is often useful for the consultation process to be planned collectively between CCG and ICB so that meaningful consultation can take place with both parties.

A failure to inform and consult can give rise to employment tribunal claims and awards of compensation of up to 13 weeks' pay per affected employee.

### **Employee liability information (ELI)**

ELI must be provided by the CCG to the ICB at least 28 days before the transfer. Parties are encouraged to share anonymised due diligence information at an earlier stage if possible, to allow both parties to prepare for transfer.

TUPE requires that the following information (known as 'employer liability information') must be given to the new employer before the transfer takes place.

- Identity (usually the name) and age of the employees who will transfer.

- Information contained in their 'statements of employment particulars', such as written statement of pay, hours of work, holidays and so on (usually contained in the employee's offer letter or contract of employment).
- Information about any relevant collective agreements, including where partnership and facility agreements have been agreed to enable trade union representatives to support local employee relations.
- Details of any disciplinary action taken against an employee in the last two years.
- Details of any grievance action raised by an employee in the last two years.
- Details of any legal action (before the court or employment tribunal) brought against the employer by an employee in the last two years and information about any potential legal action.

As employers must disclose the information required under TUPE the Data Protection Act allows this disclosure because it is required by law. However, both parties must take care to comply with data protection principles when handling this personal information. Although employee identity is required, and may be disclosed 28 days before the transfer, it is not required before that date. This means that, if CCGs intend to assist the process by releasing information earlier than that, that information should be anonymised. Extra information should only be shared with the consent of the individuals concerned, or with appropriate safeguards in place, such as an information sharing and confidentiality agreement, to make sure that the information will only be used in connection with the proposed transfer.

It is likely that once the transfer has taken place the ICB will need a large proportion of an individual's employment record to manage the workforce and run the organisation. CCGs will not need the employees' consent to the transfer of their personal information if it is necessary for the purpose of the transfer and business needs of both parties but should consider whether all the information in the personnel files is needed and delete or destroy unnecessary information. Further information and retention schedules can be found the [NHS Records Management Code of Practice](#).

Further information on the due diligence process and a template due diligence checklist can be found in the ICS Establishment Guidance – Due Diligence.

## Measures

The ICB will inform and consult on any planned measures relating to the employees after the transfer, considering any implications of the employees' terms and conditions of employment. This may include proposed changes to base, pay date, or line management arrangements as well as any anticipated structural changes envisaged after the transfer, including any necessary organisational change. The consultation must be undertaken with a view to reaching agreement on the measures.

Any consultation in relation to organizational change after the transfer should take account of the core principles of the change and transition process as outlined in section 3.1 and the Guidance on the Employment Commitment.

It is noted that any consultation regarding measures relating to base should embrace new ways of working in relation to the potential for home working, hybrid working and in person office based working, taking account of both the needs of the new integrated care system and individual preferences for working in more agile ways.

## Effect on Terms and Conditions of Service

- Terms and conditions must not be varied by the CCG or the ICB if the only or principal reason for the variation is the transfer. There are a few exceptions when variation or harmonisation may be permissible which include where:
  - the reason for variation is completely unrelated to the transfer
  - there is an economic, technical or organisational reason (ETO reason) entailing changes in the workforce and the employer and employee agree the variation
  - ETO reasons are described as follows:
    - Economic reasons – where the viability of the ICB is unsustainable without restructuring the workforce. A desire to harmonise rates of pay would not be a valid economic reason.
    - Technical reasons – where the ICB wishes to use new technology to support new ways of working and digitalisation will have an impact on the workforce.
    - Organisational reasons – for example where there is a need for organisational change involving changes in job roles and/or numbers,



including redundancies at a particular workplace because of changes in office location.

## Redundancies

It is not anticipated that redundancies will be required below board level because of the transfer. The aim of this change is to retain as many people as possible.

However, where suitable alternative roles cannot be identified for senior colleagues, either locally or in the NHS regionally and nationally, and following full and timely consultation, redundancy on contractual terms may be appropriate.

ICBs may wish to engage board level colleagues in conversations about board level structures before the transfer with the CCGs' cooperation, but any pre-transfer redundancy dismissals enacted by CCGs would be automatically unfair if the reason for the redundancy was principally to prepare for the new ICB structure.

In light of this, it is anticipated that board level colleagues will also transfer to ICBs alongside their colleagues and any necessary redundancies would take place after the transfer. Consultation regarding redundancy would need to take place in line with local policies on organisational change and collective consultation rules as required.

# Appendix 2: NHS England and NHS Improvement operating models

Model	Type of integration	New employer?	Change of line manager to host or new employer?	Significant change in other terms of employment, e.g. salary, benefits, etc?	Placed in another organisation?	New job description?	Permanent change?
<b>Aligned</b>	Virtual	x	x	x	x	x	✓ x
<b>Assigned</b>	Virtual	x	x	x	✓ x	✓ x	✓ x
<b>Embedded</b>	Virtual	x	✓ with link to manager within NHS England	x	✓	✓ x	✓ x
<b>Transferred</b>	Actual	✓	✓	x	✓	✓ x	✓
<b>Seconded</b>	Actual	x	✓	✓ x	✓	✓	x
<b>Recruited</b>	Actual	✓ x	✓	✓	✓ x	✓	✓

**Key:** x= no

✓= yes

✓ x= depends on the situation

**Comments:** Many of the models have some flexibility in how they are applied in practice. For example, an employee could be assigned to work in a system on a permanent or temporary basis. It is unlikely that such an employee will require a new job description. However, if the assignment requires a significant change to the employee's duties, it may require a new job description, which would be agreed in advance with the employee.

In addition, the individual circumstances of the situation will dictate the legal consequences of using a particular model. For example, embedding functions or posts in another organisation could unintentionally trigger a transfer of employment under the TUPE legislation. This could result in a change in the employer for the affected employees.

## Indicators of employment models

Model	Meaning	Indicators
<b>Aligned</b>	Colleagues will have their priorities aligned towards a local system, NHS England and NHS Improvement priority or programme and carry out work in that space.	<ul style="list-style-type: none"> <li>• Employment retained by NHS England and NHS Improvement</li> <li>• Colleagues will remain at their current working location</li> <li>• Managed day to day by NHS England and NHS Improvement</li> <li>• Undertaking work on behalf of NHS England and NHS Improvement</li> <li>• Making decisions on behalf of NHS England and NHS Improvement</li> </ul>
<b>Assigned</b>	A member of colleagues is assigned to work in a particular system.	<ul style="list-style-type: none"> <li>• Employment retained by NHS England and NHS Improvement</li> <li>• Potential change in working location</li> <li>• Line managed by NHS England and NHS Improvement</li> <li>• Undertaking work on behalf of NHS England and NHS Improvement and/or other organisations</li> <li>• Making decisions on behalf of NHS England and NHS Improvement</li> </ul>
<b>Embedded</b>	In which functions/posts are placed in another organisation in the system for a period and work is managed by that organisation.	<ul style="list-style-type: none"> <li>• Employment retained by NHS England and NHS Improvement</li> <li>• Likely change in working location</li> <li>• Managed day to day by employees of other organisations</li> <li>• Overall managed by NHS England and NHS Improvement</li> </ul>

Model	Meaning	Indicators
		<ul style="list-style-type: none"> <li>• Undertaking work on behalf of NHS England and NHS Improvement and/or other organisations</li> <li>• Making decisions on behalf of NHS England and NHS Improvement</li> </ul>
<b>Transferred</b>	The relevant function transfers to another employer in the system, with the employee's post or posts transferring with that function.	<ul style="list-style-type: none"> <li>• Whether any tangible assets (buildings, moveable property, etc) are transferred</li> <li>• Delegation of a significant function or outsourcing of a significant service to another legal entity</li> <li>• Colleagues are dedicated to the provision of that function/service</li> <li>• Degree of similarity between the activities carried out before and after the transfer</li> </ul>
<b>Seconded</b>	The member of colleagues leaves their post to go and work for another organisation in the system for a time limited period and there is a right to return to NHS England and NHS Improvement.	<ul style="list-style-type: none"> <li>• Employment retained by NHS England and NHS Improvement</li> <li>• Likely change in working location</li> <li>• Managed day to day by employees of other organisations</li> <li>• Will manage employees of other organisations</li> <li>• Overall line managed by NHS England and NHS Improvement</li> <li>• Undertaking work on behalf of other organisations</li> <li>• Making decisions on behalf of other organisations</li> <li>• Potential for conflicts of interests that needs to be addressed</li> <li>• Employee will return to NHS England and NHS Improvement</li> </ul>

Model	Meaning	Indicators
		<ul style="list-style-type: none"> <li>• Role does not require the employee to be employed by the other organisations</li> </ul>
<b>Recruited</b>	Either NHS England and NHS Improvement or another organisation in the system creates a post that an individual is appointed to. These could be joint posts between organisations.	<b>Joint employment</b> <ul style="list-style-type: none"> <li>• A need for an employee to work across more than one organisation</li> <li>• Their role/time with each organisation is not readily divisible</li> <li>• Individual must be employed by the organisations to carry out their role and make decisions on their behalf</li> </ul>

# Appendix 3: Six high impact actions for inclusive recruitment and promotion

Action	Evaluation measure	WRES	WDES
<p><b>Action 1:</b> Ensuring board leaders own the agenda</p> <p><b>Outcome:</b> To embed accountability and make workforce diversity and inclusion an organisational priority in order to increase the likelihood of appointing candidates from diverse backgrounds to post</p>	% of Board members by ethnicity/disability compared to BME workforce	% BME workforce available	% Disabled workforce available
<p><b>Action 2:</b> Promoting 'explanation and accountability to ensure fairness during selection processes</p> <p><b>Outcome:</b> To reduce/eliminate impact of conscious and unconscious bias during selection processes to increase likelihood of appointing candidates from diverse backgrounds to post</p>	Local and regional measures		

<b>Action 3:</b> Talent identification  <b>Outcome:</b> To increase diversity within talent pools and programmes in order to increase the likelihood of appointing candidates from diverse backgrounds to post.	Percentage of staff believing that their Trust provides equal opportunities for career progression or promotion (N)	Indicator 7	Indicator 5
<b>Action 4:</b> Enhance inclusive recruitment and promotion practice support  <b>Outcome:</b> To make workforce diversity an organisational priority; to increase the consistency and competence of interview panels and panel behaviours; in order to increase the likelihood of appointing candidates	Likelihood ratio of staff from under-represented groups being appointed from shortlisting compared to applicants from other groups (N)	Indicator 2	
<b>Action 5:</b> Overhaul candidate selection processes  <b>Outcome:</b> To close/reduce inequality gaps during selection process interviews; to increase the likelihood of appointing candidates from diverse backgrounds to post	Likelihood ratio of staff from under-represented groups being appointed from shortlisted compared to applicants from other groups		

<p><b>Action 6:</b> Adopt resources, guides and tools to have productive conversation on core inclusion topics such as race and disability</p> <p><b>Outcome:</b> To break down cultural barriers in the workplace, enabling productive discussion of diversity and inclusion among staff; to increase the likelihood of promoting candidates from diverse backgrounds</p>	<p>Improvements in staff survey scores from under-represented groups on questions relating to employee experience and diversity (N)</p>	<p>Derive from NHS Staff survey</p>
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