

The Fair Pay Agreement (FPA) Explainer

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Executive Summary

This report outlines the proposals for establishing a statutory Fair Pay Agreement (FPA) for the Adult Social Care sector. The Department of Health and Social Care (DHSC) proposes the creation of a Non-Departmental Public Body (NDPB) to oversee negotiations, supported by a Secretariat. The report sets out the governance structure, representation of workers and employers, the negotiation process, remit, coverage, dispute resolution, and compliance arrangements. The FPA aims to address low pay, improve recruitment and retention, and ensure fair and consistent terms and conditions across the sector. Key risks include affordability, enforceability, and ensuring representation across a fragmented provider landscape.

Confidential Report

The Government proposes an NDPB (Non-Departmental Public Body) and an expert committee. An NDPB is arm's length from Ministers, providing independent advice free from political control, and is normally made up of independent experts with a chair. Members are specialists with staffing support from Civil Servants. The Minister appoints members. Creating the ASCNB as an NDPB would bring greater alignment with the Dept of Education School Support Staff Negotiation Body.

Chair and Leadership

The secretariat is designed to help negotiations go smoothly, the negotiation body will need a secretariat function, this is standard practice in NJC which covers 1.4 million government workers in England. The secretariat will support the chair by providing minute taking organising meetings managing relationships with involved parties and drafting reports. It is proposed the Secretary of State for Health and Social Care has capability to Commission or carry out additional research and analysis and ensure negotiations are based on comprehensive evidence that would support the negotiation body to reach agreement and that all members have a shared understanding of the evidence base.

Two options are:

1. Civil Servants seconded into the negotiating body if the negotiating body is an expert committee, it will be staffed by civil servants within the Department of Health and social care.
2. An external delivery partner which would require a regular procurement exercise, and organisations could bid for the secretariat contract. The organisation would be accountable to the department through a contract management relationship.

Option 1 uses the existing skills and capabilities of the policy team and analysts in the department. It also supports continuity and knowledge retention, and civil servants would be acting independently from the department. Regarding option 2, an external delivery partner would bring in external expertise.

Representation

The adult social care workforce comprises 1.59 million people in England and is estimated to include 18,500 employers across many different settings. The consultation needs to ensure that workers and employers are fairly represented in negotiating body. The ERB states that membership must include officials of one or more trade union representatives in the interests of social care workers and a body representing the interests of employers of the social care workforce. In addition, the act allows for persons of other descriptions to be appointed.

It is proposed that the negotiating body has an equal number of seats for worker and employer representatives so that both are heard equally. If others are appointed, it is proposed that they are appointed as observers or advisers only, which ensures the negotiations remain between workers and employers.

Members of the negotiating body will be reimbursed for any expenses. They will not be paid fees for their participation.

Each bargaining side will be responsible for determining how seats should be shared amongst themselves. Each side will submit membership proposals to the Secretary of State for review and approval.

Worker Representation

The Trades Union Congress (TUC) has developed proposals for how workers could be represented in the negotiations and consist of; Unison, GMB, Unite, and the RCN, working with TUC as the convener, and will establish an adult social care fair pay agreement trade union group who will sit on negotiation body. These trade unions all have membership recognition and collective bargaining coverage access across the sector and have been active within the sector for many years.

The DHSC will decide on the overall number of seats for the adult social care negotiating body.

Union groups who set the criteria will submit proposals to the Secretary of State on how votes of the negotiating body are allocated to the worker representatives. The criteria are not yet established but could include holding significant membership across the adult social care sector and having meaningful experience of collective bargaining membership. The ASCNB will be reviewed regularly to account for changes to the trade union landscape. Unions must be independent, and the Secretary of State has the power to appoint members to the negotiating body establishing a membership criterion.

Although not all adult social care workers are members of a trade union, once negotiated, and the fair pay agreement is implemented, it will apply to all workers who are covered by the agreement. The ERB includes measures that will improve trade union access to the workplace in turn providing scope to increase trade union membership, ultimately providing greater representation and strengthening collective bargaining.

Employment Rights Bill (ERB) – Trade Union Reforms

The ERB introduces significant changes to trade union law by repealing key aspects of the Trade Union Act 2016. These reforms are designed to strengthen collective bargaining, simplify processes, and improve workers' rights.

Key Reforms:

- Removes high turnout and support thresholds for strike ballots.
- Restores simpler rules for industrial action and picketing.
- Expands entitlements to paid time off for union duties.
- Guarantees access to workplace facilities.
- Strengthens protection from detriment short of dismissal.
- Removes the 12-week cap on unfair dismissal protection during strikes.
- Maintains recognition of unions with a certificate of independence.
- Establishes clear rights to workplace and digital access for organising and bargaining.
- Requires employers to inform workers in writing of their right to join a trade union.
- Simplifies recognition procedures by removing the 40% workforce support threshold.
- Reduces scope for legal challenge based on technicalities
- Rebalances power between workers, unions, and employers.
- Reduce bureaucracy and unnecessary barriers to industrial action.
- Strengthen collective bargaining as a means of addressing inequality, insecurity, low pay, and poor working conditions.

Employer Representation

Similar to the trade union group, there will be an organisation that will convene employers and coordinate participation, this is likely to be an employer representative group seat share amongst employers and will be allocated following an analysis of the breakdown of the market by the DHSC to ensure a range of provider types, sizes, and specialisms can be representative of care staff employed. If local authority and NHS are covered in the fair pay agreement, employee representation will include the Local Government Association and NHS Employers as representatives of those parts of the workforce.

The Care Provider Alliance will hold responsibility for selecting negotiating body members and will assess potential members against criteria including sector experience representative legitimacy, expertise, and having a collaborative approach. The CPA are being proposed due to their coverage in bringing together 10 main national associations representing independent and voluntary adult social care providers in England. They will also need to work with those parts of the sector that it does not represent. It is recommended membership will be submitted to the Secretary of State for Health and Social Care by the CPA. The Secretary of State will review and appoint members and will review regularly to account for changes in the employer landscape.

The role of local government

Commissioners will play a vital role in implementing the fair pay agreement negotiating provider fee rates and contracts which ultimately influence workforce pay. It is therefore important that the local authority commissioners have a clear role in the fair pay agreement. A package of measures is proposed to ensure the local government has a strong role in negotiation process. This will be triggered in the remit letter which sets out the terms of reference for negotiating body and the roles and responsibility of the Chair which should specify that the interests of local government must be considered and the negotiating body must have regard to the views of local government and be represented throughout the negotiation. Local government will be able to provide the Secretary of State with a written assessment of the proposed pay agreement once negotiations are concluded. The Secretary of State will then consider this when deciding whether to ratify the agreement.

Other Members

The ERB allows the ability to appoint other members to negotiating body to ensure that the negotiating body is as representative of the adult social care sector as possible and that all interests are considered.

The Secretary of State has the power to put conditions on appointments to help ensure representation is legitimate and covers as much of the sector as possible. If a member of the negotiated body steps down, the negotiation body is still able to continue to put an agreement to the Secretary of State and negotiations are not stalled.

Negotiation Process

the negotiations will work on a cyclical basis mostly following the same set of steps for each cycle which could concentrate on all possible things or a specific set each time, for example it might look at just care workers and baseline pay, or annual leave.

The main stages in negotiations will be that the cycle begins triggered by letter from the Secretary of State by way of the remit letter, the negotiating body then convenes and engages the sector to understand the existing evidence and gathers new evidence before holding negotiations to achieve a proposed agreement. Both sides of the negotiating body consult their members on the proposed agreement and each side then confirms whether they agree or wish to negotiate further depending on their members' feedback. Where the ASCNB reach an agreement and is not in dispute, the Chair puts the agreement to the Secretary of State for ratification accompanied by evidence on how local government were consulted and sharing local government's assessment of the agreement. If the Secretary of State agrees, with the outcome, it is ratified and laid in parliament, if not the Secretary of State can refer back to the negotiation body for reconsideration, should for example new pay terms or conditions come into force for all workers during the negotiation period which need to be considered.

The cycle is in six phases:

1. Cycle begins,
2. Negotiation body convenes and the negotiations begin.
3. Negotiation body consults respective membership on draft agreement.
 - a. Dispute resolution/negotiation.
4. Agreement is reached.
5. Agreement is ratified.
6. New terms conditions come into force.

The remit letter provides an opportunity for government to set the financial envelope and any potential priorities or specific considerations for agreement. The letter to the negotiating body sets out any priority areas at the government to be considered which could include specific role or pay terms and conditions, any other factors that negotiation bodies should consider, or conditions the agreement must meet. This includes specifying amounts of funding available for that round of negotiations which the negotiation body must work within, and the timelines by which the negotiation body should aim to reach an agreement and submit to the Secretary of State.

How the negotiations would work

Before the negotiations begin, the ASCNB may wish to conduct a period of engagement and evidence gathering to understand the sector and existing landscape. The ASCNB will have the freedom to approach negotiations as they see fit, this should include discussing which roles and elements of pay terms conditions are to be in scope for this cycle led by the Chair. The negotiating body will work through all the issues at hand to reach a draft agreement. Once it has a draft agreement on the table, each bargaining side will be responsible for consulting with its own members and relevant organisations to determine whether the agreement should be accepted and put to the Secretary of State. Where the ASCNB are unable to reach an agreement, the process will refer to the dispute resolution process.

The Chair will lead the negotiating body to develop its own terms of reference setting out how it works. This could include a code of conduct setting out expectations for how the negotiations are conducted and how to continue work in case where some matters are harder to reach an agreement on than others to establish a good working relations between members and create a culture for successful negotiations.

The ERB gives the Secretary of State the ability to define how the adult social care negotiating body reaches an agreement. For an agreement to be considered agreed and ready for submission to government, it simply needs both sides to agree to it and inform the Chair. It is proposed that the government does not define in detail how each bargaining side reaches agreement.

Timelines

It is proposed that the fair pay agreement is negotiated on an annual basis as a standard practice and each cycle of negotiations may concentrate on different issues. It may choose to negotiate

terms for specific care roles or different terms and conditions such as training, holiday pay, etc., depending on whether it is in the remit of each cycle. The Secretary of State could also choose to fund an agreement that covers multiple years by setting this out in the remit letter.

Timeline for negotiations

Time needs to be allowed for negotiations to ensure it strikes the right balance and should allow around six months for negotiations, leaving six months for implementation. It is not proposed if an agreement is not reached by this point that negotiations will end with no resolution available. Instead, it is proposed that this is the time planned for and that the ASCNB and the DHSC will keep constant contact to review progress made and adjust plans when needed.

Coverage and Remit

Social care is diverse and provides residential care, day care, domiciliary care, and community and health services there are a variety of job roles such as direct job roles which include care workers, personal assistants, managerial roles, and regulated roles like social workers, nurses, and occupational therapists amongst others. There are different areas of pay, terms and conditions, and wider employment policies subject to the type of job roles, service, and settings the negotiation body should cover for the workforce due to its diversity.

The remit refers to the areas the negotiating body should negotiate on, and whether this should be in addition to pay and terms and conditions, for example training and development policies relating to health and safety and more.

Defining the coverage of the adult social care negotiating body

Defining an adult social care worker as anyone who is employed wholly or mainly in or in connection with the provision of social care to individuals age 18 and over in England, is defined as:

“Any form of personal care or other practical assistance provided for individuals who by age or illness, disability, pregnancy, childbirth, dependency on alcohol or drugs, or any other similar circumstances, are in need of such care or other assistance.”

This definition intends to capture anyone who spends most of their working time providing adult social care in England. It also only captures workers that are under contract. The Secretary of State may make regulations to refine this definition to a more specific subset of social care workers.

Defining whether the worker falls within the coverage of the negotiating body is the responsibility of the employer to determine whether the majority of their workers or agency workers time is spent on activities relating to adult social care, and may find it difficult to determine if their worker fits within the definition of the adult social care worker, particularly if they work across different care settings or sectors such as education, health, or children's social care. Guidance will be shared in due course to help employers understand if their workers are covered by the negotiating body.

Role of Local Government

The sector uses a range of frameworks to categorise the workforce these include The Care Workforce Pathway definition of roles which addresses:

- New to care
- Support workers
- Enhanced care workers
- PA's
- Supervision and leaders
- Practice leaders
- Deputy managers and Registered managers

It also uses the Skills for Care Adult Social Care Workforce Dataset which covers:

- Care workers
- Support workers
- PA's
- Ancillary staff
- Other professions
- Admin
- Regional Managers
- Senior Managers
- Middle Managers
- Social Workers
- First line managers
- Supervisors
- Registered nurses

Lastly the ONS also have a methodology and framework for classifying the adult social care workforce which covers:

- Care workers
- PA's
- Other i.e., NA, OTs, and support workers
- Social Workers
- AHP's
- Regulated Healthcare Professionals
- Care and non-care Registered Managers
- Ancillary
- Staff
- Admins

Excluded sections of the workforce

There are parts of the workforce that are not within the negotiating bodies coverage specifically those that are self-employed under informal care arrangements, because they are not covered set out in the employment rights bill.

Many choose self-employment for the flexibility it allows to set their own pay, terms, and conditions. There are with the impact the FPA might have on individuals who are self-employed or working under informal agreements. Government will consult on single status of workers and explore how to ensure protection for self-employed workers.

Agency Workers

Unlike self-employed bank and informal workers, the ERB includes agency workers and bank staff within the negotiation body because of high reliance on indirectly employed registered nurses support, outreach workers, care staff, and social workers. As the use of temporary staff is frequent in adult social care the government view is appropriate for both agency and bank staff to be within the negotiating body

Cross-Border Workers

The ERB allows for the creation of individual negotiating bodies in each of England, Scotland, and Wales by their respective governments recognising that social care is funded separately in each and will allow for a separate pay agreement in each nation. Some care workers operate across borders for example and provide care to people both in England and Wales for example and therefore are in scope for more than one FPA.

The current position in the ERB is that the work will be covered by the FPA for the number of hours they work in each nation, therefore employers and workers will need to consider whether they are covered by an process in England, Scotland, or Wales and ensure that employees are paid with the relevant terms conditions as appropriate. This may result in potential unintended consequences for cross-border care workers and providers at the point of the proposal is ratified and implemented. This could include challenges such as staff choosing to work in different nation for better pay, terms, and conditions, as well as more complicated operations for providers operating across borders.

The current position the ERB could be changed in secondary legislation. Alternative approaches are that a care worker is only covered by an FPA in the place where they spend most of their time working or where they live.

Informing the remit of the negotiating body

The ERB sets out a remit for the negotiating body to negotiate matters that relate to pay for adult social care workers' terms and conditions of employment for adult social care workers and any

other matters related to an adult social care worker which must be specified in regulations. The consultation seeks views on different elements of pay terms and conditions as well as other employment policies such as training and development policies, people and culture, and additional benefits and financial incentives that could be part of the negotiating bodies remit.

Pay, Terms and Conditions

Pay is generally received for work performed as an employee or worker in the form of salary and wages; terms and conditions are workers contracted terms usually setting out things like holidays sick pay and pensions. The consultation seeks views on which elements of pay should be prioritised such as sectoral minimum wage pay scales or one of payments, it also is interested in which terms and conditions should be considered a priority. This will inform the Secretary of State setting up priority areas and can be considered against other information sources such as the adult social care workforce and work related quality of life survey, which identified well-being, work related quality of life, violence, abuse and harassment, learning and development, and an intention to leave the workforce as other factors impacting workforce retention.

The ERB ensures that anything agreed in the negotiating body and then ratified by the Secretary of State will not have the effect of lowering workers' pay or reducing any other terms conditions.

Questions on pay priorities

The impact assessment set out that low pay is a contributing factor to poor domestic recruitment and retention. By improving pay government believes it can support the delivery of high-quality care to people leading to a more skilled experience and productive workforce.

The impact assessment covers:

- Minimum wage aligns to NHS band 3 or Real Living Wage
- Payment for all working time including travel and sleep in shifts
- Transparent pay slips
- Improved pensions with employer contributions starting at 5% to 7%.
- Occupational sick pay
- Guaranteed hours contracts
- Compensation for last minute shift changes
- Training and development including mandatory care certificate pay progression.
- Union access and greater awareness of the rights under the FPA

The benefits assumed a pay rise of £2,050 a year for 603,000 care workers and that recruitment and retention would be boosted by 10% for 90,000 care workers, care recipients would benefit from stable high quality services reducing hospital delays, and the economic fiscal return reduced poverty and gender/ethnic pay gaps and that 40p is recouped for every £1.00 spent. It also estimated the cost to be £42m in 2023 to enforce minimum wage compliance, £688m to raise care

worker pay to the real living wage, and up to £2 billion pounds for full agenda and reforms to be government funded.

Terms and Conditions Priorities

Workers in adult social care are often employed on statutory minimum terms and conditions including sick pay and annual leave entitlements. This is often an important reason for workers leaving their roles or not being attracted in the first place. The ERB delivers an important improvement in employment rights for all workers including statutory sick pay and a right the guaranteed hours which are particularly relevant for adult social care workers.

Why Employment Matters

The ERB allows the negotiating body to negotiate on other matter relating to an individual being employed as an adult social care worker. Typically, these wider employment matters would be policies that sit outside of the workers contract such as areas around access to training, special leave, expenses, or enhanced pay during statutory leave.

Unlike pay, terms and conditions, these matters must be in the regulations to make them part of the remit to be able to be considered by the negotiating body.

By including these wider employment matters within the negotiated bodies remit an FPA has great potential to solve issues, to improve the individual worker experiences and well-being, as well as encourage better recruitment, retention, and productivity, and standardise some of the excellent workforce initiatives like care workforce pathway seen in the sector. The ASCNB could negotiate on relative priorities for the sector such as training and development, career progression, people and culture, and additional benefits and financial incentives.

The consultation also welcomes views of whether there are areas outside of those that negotiation body should also consider in the remit.

Training, Development and Career Progression

As the government has set out, improving training opportunities, development and career progression for the care worker is a priority. By addressing these, governments can support retention of the workforce. Skills for Care suggest an average 7.4% lower turnover amongst care workers who had received some form of training, compared to those who had not (28% versus 35.4%). Improved retention also has productivity benefits.

If training development and career progression were to be included in the remit it, the ASCNB will be able to negotiate;

- Training elements of the workforce which could include annual training days access to a training budget the right to request training amongst others.

- Specialist training requirements such as dementia training artificial intelligence training delegated healthcare task training and others.
- Career progression policies such as through the implementation and/or adherence to the care workforce pathway
- Providing development opportunities and qualifications to the workforce

People and Culture

Findings by the Social Care Workforce Race Equality Standards highlighted that staff from Black, Asian and minority ethnic backgrounds faced worse outcomes compared to white colleagues including disproportionately high levels of workplace bullying including incidents of racism and violence in the workplace. It also demonstrates that international recruited workers often face discrimination racism and feelings of exclusion compared to UK born workers.

Dispute Resolution

How is a dispute triggered?

The Chair should aim to resolve points of contention first as part of the normal course of their duties the Chair is also best placed to identify where negotiations cannot continue and declare a dispute. The ASCNB needs to agree that the negotiations require the dispute resolution process to ensure participation. If it is in doubt, they can call a vote to trigger the process. This vote must have a majority 50% + 1 member of both employer and workers sides of the negotiating body.

How is a dispute resolved?

An independent party becomes involved to work with the negotiation body to help them reach an agreement. This ensures the process is independent from government. The fair pay agreement working group has discussed the Advisory Conciliation of Arbitration Services (ACAS) should be the designated body to resolve any disputes arising from the negotiating body. The government gives the powers to the third party, as part of secondary legislation.

The methods available to them are conciliation which would be the first step of the dispute resolution process aiming to find a solution that everyone finds acceptable. It will be carried out by an ACAS own conciliator who is impartial and an independent third party expert, and supports finding common ground for building resolution through a series of meetings, blended group conversations, or one to one conversations, between the conciliator and the parties, or mediation which arises after the collective conciliator has worked with the parties and together they have identified this as the best approach working with the parties to develop clear recommendations for them to resolve their dispute through an independent and impartial expert from the ACAS register of arbitrators

What happens when negotiating body has reached an agreement?

Once agreement is reached, steps will be taken to give the agreement legal effect and make it part of the workers' contracts for the Secretary of State. Alongside, the government reviews the proposed fair pay agreement to ensure it is affordable and deliverable. The next stage is reconsideration following review by the Secretary of State who can either accept the agreement or ask the ASCNB to reconsider and make changes, and finally ratification taken by the Secretary of State once they have accepted the agreement. Ratification is a process that happens within parliament to give the pay agreement legal effect and make it part of workers contracts.

Once ratified, aspects which relate to pay terms conditions automatically apply to the contracts of workers in scope and can be enforced. Workers and employers will not need to do anything for it to apply to them. It is vital to ensure that the sector, particularly employers, workers, and commissioners, are aware of these changes and are ready to implement them.

The Secretary of State Health and Social Care and the Ministry of Housing Communities and Local Government will then review and decide whether it is affordable and deliverable before accepting it. The review could include an analysis to independently verify costings. Officials and the Secretary of State may also seek views from other government departments with a direct interest in the FPA including HM Treasury and the Department of Business and trade.

Reconsideration

the government believes that representatives are best placed to negotiate an FPA for the sector, but it is important that government ensure that negotiated outcome can be successfully implemented. Therefore, following a review, the Secretary of State can either accept the agreement or ask the negotiating body to reconsider and submit a revised agreement. Some examples might be affordability given the funding envelope, or reconsider if it proposed an agreement which is deemed to be unaffordable, for example there could be a change in the economy that changes affordability, and needs to be taken into consideration, such as increased inflation, or a new national living wage increase, or missing elements of the Secretary of State's remit letter. The government must be sure the FPA can be implemented on the ground but there may be wider changes that influence the adult social care sector, for example changes in employment law.

Ratification

Once the Secretary of State has accepted an agreement it will be ratified, which is the legal process that incorporates the FPA into workers contracts if it relates to pay terms and conditions. Any pay, terms and conditions that are contrary to the agreement are automatically overwritten. This means that from day one, the regulations come into force (or another date specified within negotiations) the FPA becomes automatically enforceable within workers contracts with no required action from employees or workers.

The only exception is that ratification does not give effect to an agreement change to terms and conditions including pay if the contract would be to the detriment of the worker or was less favourable than existing pay terms conditions for example giving less day's annual leave. Then that part would not apply to their contract. Employees are still free to offer terms that are more favourable.

Ratification is a parliamentary process that starts with a public announcement that a fair pay agreement is accepted through a written ministerial statement made in parliament, putting acceptance of the agreement in public record. This is also the start of the communication and implementation period.

Regulations will be laid through a negative strategy instrument procedure to ratify the agreement, meaning it will not be debated further in parliament.

There may be parts of the FPA that are not well placed to be in employment contracts, for example training, health, and well-being. Where this happens, statutory guidance or codes of practice may be issued instead to bring those parts of the agreement into effect.

Reporting

Once accepted it will be important to ensure that the sector is clear on the terms of the new agreement and understands how it was decided.

The employment rights bill gives a Secretary of State the ability to ask the negotiating body to publish reports supported by the secretariat and the Department of Health and Social Care to produce reports that after ratification of each fair pay agreement, which will be available on .gov.uk

Failing to reach Arrangement following dispute resolution

If the ASCNB fails to reach an agreement, the Employment Rights Bill creates a way to do this giving the Secretary of State the ability to decide on pay and terms and conditions to create an FPA. This is a decision made by someone who has the legal authority to do so namely the Secretary of State, who can only make decisions on the matters covering those originally referred to in the remit letter. This means ratifying a determination would require more parliamentary scrutiny than ratifying an agreement by the ASCNB, and it would require both the House of Commons and the House of Lords to approve.

Communication guidance and codes of practice

It may not be possible to incorporate some terms of an FPA for example things like new workplace disciplinary and grievance policies into workers contracts. If this is the case guidance or a code of practice could be issued.

Regulations, statutory guidance, and duties could be imposed on organisations and individuals if these statutory duties are not followed. Court or tribunal cases could result from non-compliance.

In addition to statutory guidance specifically related to elements of the FPA, as described there must be a wide range of communication guidance to support the sector to ensure that everyone is ready for implementation of the agreement. It is important that this piece of guidance is developed with those who are affected by the agreement and includes:

- Care Workers so they understand the new rights they are getting.
- Employers and managers of care services so they can implement the FPA to their services.
- Commissioners of care and local authorities to provide information about how the commissioners of care can support the implementation of the FPA.

It is also vital that guidance is communicated to the widest possible audience. Government plan to work with the sector to achieve this. This will include members of the FPA working group such as Trade Unions and Employer Representatives as well as other organisations within the care sector. Guidance is to be co-produced and co-published by the ASCNB and the DHSC with input from other parts of the government where appropriate.

Compliance and Enforcement

Local authority commissioners of care have a parallel responsibility to consider the remuneration contractual terms and conditions offered to staff employed by care providers from whom they commission services.

Remuneration must be at least sufficient to comply with national minimum wage legislation and national living wage rates for hourly pay or equivalent salary and will also need to comply with the FPA once the FPA regulations come into force. Likewise, the NHS should also ensure that their contractual terms allow for compliance when commissioning social care services.

The ERB enables Secretary of State to publish guidance and statutory codes of practice if the statutory duties are not followed which may mean they may be considered by an Employment Tribunal when determining a final award by the tribunal.

Government's view is that guidance and statutory codes of practice are necessary to support groups to comply with FPAs and intends to use guidance to explain what terms of the FPA mean, and how the FPA affects workers and employers, and the actions they need to take, for example; setting out how an employer should assess whether an employee's existing contractual terms and conditions are better or worse than those in the ratified FPA and how they should update their employees contracts, and use codes of practice to outline what the department expects employers to do. The department also has other levers available including powers in other pieces of legislation outside the ERB.

Enforcement

It is important to have appropriate enforcement regimes in place to investigate any breaches, and so that workers have routes to complain if they feel they are not receiving their rights. Currently it is up to the individual worker to enforce their contractual employment rights by pursuing a complaint against their employer over breach of contract of employment or unlawful deduction of wages.

Typical first steps for workers are to try to resolve a contractual dispute informally within the workplace and/or by initiating employees formal grievance policy. Workers can seek support from bodies such as ACAS who give workers and employers free confidential and impartial advice.

The ERB is laying the foundations to set up a Fair Work Agency (FWA) which will be responsible for enforcing labour market legislation including the pay elements of a ratified FPA. The FWA will bring existing enforcement functions together like HM Revenue and Customs, the Gangmasters and Labour Abuse Authority, and the Employment Agency Standards Inspectorate, and over time, take on enforcement of a wider range of employment rights such as holiday pay and statutory sick pay. The FWA will provide better support to businesses on how to comply with the law and will take tough action against rogue employers who exploit their workforce.

Currently HMRC enforce the national living wage and national minimum wage on behalf of the DBT. Breaching the national minimum wage or national living wage that rules HMRC can recover unpaid wages and impose fines.

Remuneration under fair pay agreement can be enforced using the notice of underpayment regime (NoU) which is like how the national minimum wage and national living wage is currently enforced the process is as follows.

The FWA may issue a NoU which requires the employer to pay the worker the money they are owed and requires the employer to pay a penalty of up to 200% of the arrears with a minimum penalty of £100 and a maximum of £20,000 per worker. If an employer within 14 days of being given an NoU pays at least 50% of the penalty and pays the worker the amount owed, the penalty is regarded as having been paid in full.

The employer may appeal against the NoU within 28 days. If an employer does not comply with the NoU the FWA can start civil proceedings to recover the amount.

The FWA will use records that employers currently keep supporting its enforcement approach. The ERB also provides a power to the Secretary of State to make regulations requiring employers to keep and preserve certain records, and this power may be exercised to support the fair pay agreement enforcement.

Individual enforcement routes such as ACAS and Employment Tribunals will continue to be available to workers in respect of breaches of remuneration and non-remuneration related applicable breaches of terms and conditions that are incorporated into workers contract by fair pay agreements.

Equalities Impact

In accordance with the Equalities Act 2010, when making decisions, Ministers must have due regard in relation to protected characteristics to eliminate unlawful discrimination, improve equality of opportunity, and encourage good relations.