

Royal College of Nursing response to Department of Health and Social Care consultation on Fair pay agreement process in adult social care

About the Royal College of Nursing

With a membership of over half a million registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector.

The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

About You

In what capacity are you responding to this survey?

On behalf of an organisation, trade union and professional body – The Royal College of Nursing.

Supporting the ASC Negotiating Body

Which option for delivering the secretariat function do you believe is best suited to the fair pay agreement process?

Option 1 – delivered by civil servants

RCN response:

A civil service secretariat provides public accountability (FOI), continuity and alignment with statutory equality/impact duties. It can commission independent modelling (e.g., travel time and sleep-ins), manage document control and evidence synthesis across cycles, and maintain institutional memory.

Anchoring core functions within DHSC preserves confidence among unions and employers, reduces fragmentation and speeds decisions, while allowing targeted use of external specialist support. This proportionate model offers value for money and supports timely, credible negotiations and implementation across England's mixed market.

The secretariat should be governed by a code of practice or regulatory mechanism that will shield the negotiating body from political interference

Worker representation

Do you agree or disagree with this proposal?

Strongly agree

RCN response:

The proposed worker side reflects sector diversity and brings complementary strengths – coverage in homecare/residential, experience with private/charitable providers, and nursing-specific clinical expertise.

The workforce the RCN represents in this sector is a diverse one, with a large number of internationally recruited members in registered nurse and nursing support roles. Amplifying the voices and experiences of these workers is crucial.

We strongly support an employee side that facilitates the group to gather evidence, embed equality and safety, and negotiate disciplined, timely agreements. A unified worker voice avoids duplication in a fragmented sector and underpins enforceable outcomes that improve recruitment, retention and care quality.

The RCN, in common with the other identified trade unions, has in place strong member governance structures, putting members at the heart of everything we do and ensuring members' voices are heard and central to the activities of the RCN.

Employer representation

Do you agree or disagree with our proposal for co-ordinating and selecting employer representatives?

Agree

RCN response:

Employer representation must capture private, charitable and local authority services, agencies and varied settings. Safeguards should prevent large-chain dominance and ensure SMEs and specialist providers are heard.

Commissioner input (e.g. local government/ICS observers), that falls short of formal involvement in negotiations, aligns outcomes with fee-setting and contracts, preventing delivery gaps. However, the negotiations must be conducted between employer representatives and the trade union representatives and there must be an equal balance between the employer representatives and the trade union representatives.

Any involvement of Commissioner representatives should not include any voting rights, unless as part of the employer representatives' group (not commissioners) and the balance of any voting rights between the employer representatives and the trade unions remains equal (e.g., 12 votes for employer representatives and 12 votes for trade union representatives).

Supported, coordinated employer bodies can test practicality (payroll, rostering, travel time) and communicate with constituencies within consultation windows, producing standards implementable by providers of all sizes.

Role of local government

Do you agree or disagree with our proposed approach for involving local government in the fair pay agreements process?

Agree with comment

RCN response:

We agree with local authority involvement, but on an advisory basis only. The extent of direct employment from local authorities in this sector is small, and those who are directly employed are less likely to be care workers.

The role of local authorities in the most part is a commissioner one, and therefore our view is that they should not be directly involved in the body's negotiation and voting processes.

This would safeguard the sector from pay agreements that are based on the poorest or bankrupt local authorities, as has been the case in school nursing and Health visiting contracts.

Other organisations

Do you think that there are any other organisations who should be members of the ASC Negotiating Body, in addition to the proposed worker and employer representatives?

No

RCN Response:

Only employer representatives and trade unions should be members of the negotiating body. The RCN favours an additional advisory panel rather than an expansion of voting membership.

Lived experience, Skills for Care and equality experts, with regulators observing (CQC/NMC), can strengthen evidence and scrutiny without formally being part of the negotiations.

Clear terms of reference for advisory inputs maintain accountability with worker/employer sides and keep focus on pay, terms and conditions while enabling timely technical input on training, culture and safety.

Others' interests

How should the interests of people who pay for their own care be considered as part of the negotiation process?

RCN response:

Clear communications for self-funders and parity of treatment between funded and self-funded residents will help maintain confidence and continuity.

This will require transparent fee-setting, equality impact assessments, staged implementation if needed, and guidance to avoid cost-shifting.

It is important for all funders of social care, self-funders and public-funders, to recognise the true value of nursing care and other care provision in adult social care, and to be able to pay the appropriate rates and terms and conditions of employment.

How should the interests of NHS commissioners be considered as part of the negotiation process?

RCN response:

The RCN favours an approach that aligns with ICS planning, Continuing Healthcare (CHC) and Funded Nursing Care (FNC). This can be achieved by establishing a formal route for ICS input to remit letters to ensure seamless pathways across health and social care.

Membership criteria

Are there any specific criteria that you think the Secretary of State for Health and Social Care should consider when appointing members to the ASC Negotiating Body?

Yes

RCN response:

Appointments to the Negotiating Body should ensure legitimacy, balance and capability. RCN proposes criteria on representativeness (roles/regions/settings), evidence literacy, equality and transparency, and conflict-of-interest handling, as well as fixed terms with rotation to reflect sector change.

It must be for the RCN to decide who we have on the Negotiating Body representing and negotiating on behalf of RCN members. In addition, we do not want the RCN 'seat' on the Negotiating Body to be limited to a fixed term. These seats should be permanent and it should be the role of the trade unions in the Negotiating Body to decide on their representatives.

Clear criteria can improve public confidence and the quality of outcomes by ensuring members can gather views from their constituencies, weigh evidence on costs and benefits, and reach timely agreements.

Negotiation process

Remit letter – anything else to set out?

Yes with comment

RCN response:

The remit letter must not set 'an affordability envelope' which would limit or curtail the genuine negotiations through the Negotiation Body between the employers and the RCN and other trade unions.

Such a remit would result in the Negotiating Body simply negotiating over the distribution of what has been decided by the government/ministers and would not reflect true sectoral collective bargaining between workers' representatives (the RCN and other trade union) and the employer representatives. Instead, the sector requires a remit letter that sets out specific issues for the, alongside broader objectives for the ASCNB.

Of particular importance for RCN members in this sector, priorities include addressing low pay and pay inequalities, addressing workforce and skilled nursing shortages. We

would also want considerations to be made during the remit letter process on safeguarding staff from exploitation, particularly those who are subject to immigration controls.

The remit letter must also include a requirement for equality impact assessment, safety and quality considerations (supervision, violence prevention, exploitation), and evaluation measures. This focuses negotiations on material issues, reduces ambiguity for providers and councils, supports transparent ratification and enables monitoring and iterative improvement.

The RCN view is that this remit process should not be one that constrains negotiations. We have previously raised concerns about the remit and Pay Review Body process in the NHS and we do not want to see these issues being mirrored in this new body.

Do you agree or disagree with our proposal for how negotiations will work?

Agree

RCN response:

We agree, with enhancements: publish agendas/minutes/evidence summaries, establish technical groups for pay modelling and key terms (travel, sleep-ins, guaranteed hours), embed equality, health and safety, and safeguarding considerations.

These measures raise transparency and evidence quality, maintain momentum and improve stakeholder confidence and compliance.

This approach aligns with the RCN view that a robust process should support timely agreements, reduce disputes and build confidence across the sector, while retaining flexibility to respond to new evidence or practical issues raised during the negotiation window.

Do you agree or disagree with our proposal that each of the bargaining sides manages their own voting system, with a requirement that each side simply informs the chair whether they can support a proposed settlement?

Strongly agree

RCN response:

Clear decision-making helps avoid deadlock, ensures representatives are accountable to their constituencies, and gives government confidence when considering ratification and the legal effect of the final agreement.

Side autonomy is appropriate if outcomes are published and the chair confirms consensus against remit conditions and equality impacts. A super-majority safeguard can prevent minority veto. This improves transparency, respects internal governance and gives government confidence at ratification of legally enforceable standards.

The RCN, in common with the other identified trade unions, has in place strong member governance structures, putting members at the heart of everything we do and ensuring members' voices are heard and central to the activities of the RCN.

It would be for the RCN and the other trade unions to agree and manage the voting arrangements within the trade union group of the negotiating body. Employer representatives should manage their group voting and governance arrangements.

Do you think 6 months is enough time for an agreement to be reached in negotiations?

Yes

RCN response:

Timelines must balance urgency for workforce improvements with the practicalities of modelling impacts, consulting constituencies and drafting legally robust text. Evidence on seasonal pressures, data availability and market engagement will help calibrate a workable schedule.

A six-month window for the first cycle should suffice to conduct formal negotiations including assembling evidence, consulting constituencies and drafting legally robust text.

One of the priorities for the body in its first negotiation period should be to focus on key issues around pay. Other issues, that we have been highlighted by us in this submission, which may be more complex and take longer to negotiate, may be relevant but could be addressed in future cycles.

Do you think 6 months is enough time for the sector to prepare for implementation of the pay agreement?

Yes

RCN response:

A 6-month implementation period should be sufficient. In the RCN's current negotiations with large national social care employers, agreements are often implemented in time for the following month's pay run.

A 6-month window should therefore be more than adequate and takes into account the time that will be required for implementation following negotiations taking place at a larger and more complex scale with the ASCNB.

Coverage and Remit

Are there any roles, either in your organisation or that you employ, that you are concerned do not fit within the definition of an adult social care worker and would not be within coverage of the ASC Negotiating Body?

Yes

RCN response:

Clarity on coverage is essential for enforceability and for fair, consistent application of minimum standards. Mixed roles exist, such as nurse educators/clinical leads supporting care homes; community matrons across health/social care; integrated team members crossing sectors.

Guidance should set majority-time tests, evidence requirements and documentation, and treat ancillary roles integral to care delivery (e.g., care coordinators) clearly to prevent loopholes or undercutting.

The RCN strongly favours an adult social care worker definition that captures the whole workforce, and limits the ability of employers to include or not include all or some of their employees to the detriment of those employees.

How can DHSC support you or your organisation to determine whether your workers will be within coverage of the ASC Negotiating Body?

RCN response:

Implementation will require consistent methods for determining which workers fall within scope. RCN favours the provision of role mapping tools, worked examples for mixed roles, and documentation templates.

Further support should be extended for small providers and individual employers. Clear, practical materials will reduce administrative burden, promote consistent commissioning and auditing, and help employers and workers understand their rights and responsibilities once a fair pay agreement is ratified and applied to contracts in England.

Excluded sections of the workforce

Are there any settings, services or roles that you think should be excluded from the ASC Negotiating Body's coverage?

No

RCN response:

We do not recommend exclusions beyond clearly non-adult-social-care roles, or where the roles operate within adult social care but are employed by an organisation with an existing national collective bargaining arrangement, i.e., staff employed on NHS Terms and Conditions negotiated by the NHS Staff Council.

Creating or developing other exclusions from coverage by the ASC Negotiating Body for staff in adult social care risks perpetuating the fragmentation of the workforce and the continued fragmentation of pay, terms and conditions across the adult social care sector which has, in many cases, created a 'race to the bottom' by employers for workers' pay, terms and conditions.

Broad scope promotes equity, reduces fragmentation and undercutting, and simplifies compliance. Where overlaps do exist we would favour coordinating, rather than excluding, setting clear boundaries in guidance and contracts.

Are there any other settings, services or roles that you think should be included within the ASC Negotiating Body's coverage that have not been mentioned?

Yes

RCN response:

Include nurse educators/clinical supervisors embedded in providers and ancillary roles integral to coordination (where these roles are not employed by the NHS and covered by the NHS terms and conditions of service handbook and the negotiations of the NHS Staff Council).

Inclusion supports quality, supervision and retention. Provide guidance and commissioning templates so providers apply standards consistently across service types.

Please share any thoughts on whether the ASC Negotiating Body could affect those that are self-employed or working under informal arrangements

RCN response:

The RCN favours the provision of guidance and signposting for those categorised as personal assistant employers/self-employed. This will ensure the protection of choice for workers while encouraging fair and transparent pay and conditions.

This guidance will also help those on informal agreements to understand and, where appropriate, align with new standards.

Self-employment and the employment of personal assistants in adult social care must not be an opportunity to bypass the outputs of the ASC Negotiating Body and the provisions of any Fair Pay Agreements set by the ASCNB.

Areas of the workforce to note

Do you agree or disagree that workers covered by the National Joint Council should be in the ASC Negotiating Body's coverage?

Disagree

RCN response:

Staff covered by NJC agreements already have national sectoral collective bargaining and predominantly better pay, terms and conditions overall compared to non-NJC staff.

There needs to be a recognition that if the ASCNB agreed pay, terms and conditions for ASC workers which were better than NJC pay terms and conditions, the NJC take this into account.

Do you agree or disagree that workers covered by the Agenda for Change contract should be in the ASC Negotiating Body's coverage?

Strongly disagree

RCN response:

Where roles operate within adult social care but are employed by an organisation with an existing national collective bargaining arrangement, i.e., staff employed by an NHS organisation on NHS Terms and Conditions negotiated by the NHS Staff Council those staff must remain covered by the national NHS terms and conditions handbook and the NHS Staff Council.

The RCN supports maintaining the application of NHS Terms and Conditions Handbook (Agenda for Change) coverage for NHS-employed roles but establishing formal alignment mechanisms, so parity is achieved without dual frameworks. Dual coverage risks complexity, while coordination delivers equivalent outcomes with lower administrative burden.

Where roles operate within adult social care but are not employed by an organisation with an existing national collective bargaining arrangement those staff should be within the purview of the ASC Negotiating Body.

Informing the remit of the ASC Negotiating Body

Pay priorities:

- Sectoral pay floor above National Living Wage
- Pay bands linked to career progression
- Pay supplements (unsociable hours/recruitment/retention)
- Other (specify below)

RCN response:

The RCN favours a fair pay and banding structure that is linked to the demands of the job, which include knowledge and skills, physical and emotional demands, and management and leadership responsibilities.

Pay supplements priorities should focus on unsociable hours, particularly at weekends and bank holidays, as well as additional paid leave.

Terms and conditions priorities:

- Paid holiday/annual leave
- Pension contributions/conditions
- Other (specify below)

RCN response:

Given the choice, RCN members would prioritise additions in their basic and extra pay packets. Alongside pay for travel time and expenses, we would want to include pay for being on-call and when disturbed. This priority area should also include enhancements to annual leave.

Standardising holiday pay/sick leave/pay for bank holidays would be a priority to address inequity for international recruits. A review of our member cases reveals that internationally educated nursing staff often have less favourable conditions than their domestically trained colleagues. This section of the remit must include standardised repayment clauses for international recruits that align with the DHSC's code of practice for international recruitment.

For a predominantly female workforce addressing the woeful provisions of pensions and maternity pay are also key factors which cannot be ignored. The generally poor pensions provided across the ASC sector are storing up significant poverty-related issues for the current ASC workers when they come to retirement age, which remains a high age for very physically and mentally demanding roles.

Pay for travel time and costs between visits is already covered by legislation regarding 'working time'. Whilst many employers don't pay it properly, that's an implementation issue rather than a negotiating priority.

Training, development and career progression:

- Training entitlements
- Specialised training (e.g., dementia, delegated health tasks)
- Policies to support career progression
- Policies to support development opportunities
- Policies to support specific qualifications

Other (specify below)

RCN response:

Other elements should include the provision of regular clinical supervision/reflection for all clinical and support staff, and provision of higher education and research opportunities to develop advanced knowledge and improved practice in social care settings.

For internationally recruited staff, this area should prioritise appropriate inductions for these workers.

People and culture policy:

- Equality, diversity and inclusion
- Wellbeing
- Dignity at work (including bullying/harassment)
- Family-friendly/flexible working
- Health and safety (including preventing violence)
- Whistleblowing/speak-up
- Other (specify below)

RCN response:

'Whistleblowing/speaking up' should include the issues of workers raising concerns.

We would also want to see the inclusion of staff support for attendance at work, alongside establishing and/or enhancing behaviour and performance improvement frameworks.

Additional benefits and financial support:

- Travel to work schemes
- Tailored financial support

Travel and expenses

Other incentives (e.g., counselling, wellbeing)

Other incentives

RCN response:

Other incentives to be covered in the remit letter and negotiations should include issues of facilities and staffing levels to enable rest breaks away from the employees' area of work. Plus access to and availability of healthy meals and refreshments during a shift.

If there are any additional areas that the ASC Negotiating Body should consider or have in its remit, please outline them here.

RCN response:

Introduce safe nurse staffing with mandatory nurse to client/patient ratios and/or client/patient caseloads. Also include clinical supervision standards in settings employing registered nurses, violence prevention policies, paid time for education, training and revalidation, transparent progression frameworks, and fair on-call arrangements.

Dispute resolution

Do you agree or disagree with our proposed approach to dispute resolution, where disputes are triggered by the chair and referred to Acas for independent resolution?

Strongly agree

RCN response:

The RCN supports the proposed approach whereby the chair can trigger a formal dispute and refer the matter to Acas for independent resolution.

A clear, neutral route to conciliation strengthens confidence in the process, preserves momentum and helps avoid prolonged stalemate. Acas' independence and focus on constructive settlement make it the appropriate backstop for the body when talks stall.

In addition, where the majority of either the trade union group or the employer group seek/lodge a triggering of a formal dispute neither the chair nor the other group should have a veto.

To maximise effectiveness, we recommend transparent trigger criteria for the chair, such as defined indicators of impasse, tight timelines for entering and exiting conciliation, with published milestones, so the overall negotiation calendar is kept on track.

Plus, brief published summaries post conciliation to maintain trust across the sector.

Implementation

What do you think should be included in guidance and communications to support you to implement fair pay agreements?

RCN response:

Once an agreement is ratified, clear guidance and communications will be essential for smooth implementation. This should include clear information on what has been agreed, alongside model contract clauses, payroll calculators for travel/sleep-ins, role-coverage checklists, equality guidance, FAQs, and timelines aligned to commissioning cycles.

The guidance should also include the positive benefits of employers engaging with the trade unions, through local members, local representatives and national representatives to support the employer delivering the Fair Pay Agreement reached by the Negotiating Body.

Together, these materials should be practical, auditable and proportionate, enabling providers of all sizes to implement the agreement at pace while improving recruitment, retention and quality of care.

Do you agree or disagree that DHSC and the ASC Negotiating Body should co-author and publish guidance?

Strongly agree

RCN response:

The RCN supports co-authoring and jointly publishing guidance by DHSC and the ASC Negotiating Body, as this would create a single, authoritative source that combines policy clarity with operational insight from employers and unions.

To ensure equity and practicality, content should include accessibility formats, tailored content (SMEs, personal assistant employers, councils), equality and safety considerations, and alignment to commissioning and budget cycles.

With these safeguards, coauthored guidance will be trusted, practical and auditable, enabling providers of all sizes to implement the fair pay agreement at pace while improving recruitment, retention and quality of care.

Compliance and enforcement

What do you need guidance on to help you or your organisation to comply with a fair pay agreement?

RCN response:

To comply confidently and consistently with a fair pay agreement, we need clear, practical guidance. This could include a national implementation calendar aligned to budget/commissioning cycles; payroll reports and self-assessment checklists and a clear dispute pathway (including Acas when necessary).

The goal is to minimise administrative burden while ensuring workers receive the agreed minimum standards. Practical compliance tools will also support monitoring and enforcement arrangements and help regulators and commissioners assure consistent application across a fragmented provider landscape. The establishment of the Fair Work Agency will play a crucial role, working in partnership with employers and relevant authorities to ensure legal standards across the sector are upheld.

The guidance should also include the positive benefits of employers engaging with the trade unions, through local members, local representatives and national representatives to support the employer delivering the Fair Pay Agreement reached by the Negotiating Body.

Please share any views or evidence from your perspective about the current processes for resolving disputes and complaints about contracts of employment, pay or working conditions. If there are any changes that you think should be made to these processes, please include them in your response.

RCN response:

Workers in social care often lack union presence and access to fair procedures. The RCN favours strengthening signposting to Acas, improving employer grievance and disciplinary processes, including collective grievances, and ensuring commissioners monitor compliance through contracts to protect staff and service continuity.

We would also welcome targeted support and outreach that is tailored to support social care workers going through the disputes process across the different areas of adult social care.

This would include clearly defined dispute triggers, timelines and roles (including when Acas is engaged) and publish brief sector updates following determinations, to maintain confidence without breaching confidentiality.

For further information, please contact:

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Policy & Public Affairs (UK & International)
Royal College of Nursing
January 2026