

**HUMAN RESOURCES DIRECTORATE  
PAY AND EMPLOYMENT UNIT**

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Your Reference: **HSC (JNF) (9) 2011**

18 October 2011

Dear Colleagues

**AGENDA FOR CHANGE: APPLICATION OF REVIEW OUTCOMES TO  
STAFF OUTSIDE THE REVIEW GROUP - IMPLEMENTATION DATE 1  
OCTOBER 2008**

**Introduction**

1. In March 2010 the Joint Negotiating Forum (JNF) considered the implications for staff outside AfC review groups where the AfC band had increased following review.
2. At the outset it was recognised that any resolution to this issue would have cost implications for employers and parallel discussions between DHSSPS and the Department of Finance and Personnel took place to secure the necessary financial backing. On 26 May 2011 Management informed TUS that a limited amount of funding had been secured and they wished to enter the next stage of the negotiations to reach a collective agreement to resolve this issue.

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<sup>1</sup> The Health and Social Care Board, HSC Trusts, the Public Health Agency, the Business Services Organisation, the Northern Ireland Blood Transfusion Service Agency, the Northern Ireland Guardian ad Litem Agency, the Northern Ireland Practice & Education Council for Nursing, Midwifery & Health Visiting (NIPEC), the Northern Ireland Social Care Council (NISCC), the Patient & Client Council, the Northern Ireland Regulation and Quality Improvement Authority and the Northern Ireland Medical and Dental Training Agency (NIMDTA)

## Detail

3. At its meeting on 18 August 2011, the JNF reached a collective agreement (Annex A) on the application of review outcomes to staff outside of the review group. This agreement has been developed in partnership and agreed by the Joint Negotiating Forum under the Health and Social Care partnership working arrangements. The content of this Circular has been agreed with locally recognised trade unions.
4. This Circular applies to those staff on Agenda for Change terms and conditions of service who have been identified as outside of the review group but are currently undertaking duties identical to those staff (within the review group) who have benefited from an increase in their banding following the review process. The three specific groups of staff that will be subject to the outcome of this collective agreement are:

**Group 1** - Staff in post at 1 October 2004 who did not seek a Review within the agreed extended timeframe; 28 February 2009.

**Group 2** - New starts appointed after 1 October 2004 who did not have the opportunity to apply for a Review

**Group 3** - Staff on a lower pay band who, as a result of a merger, find that they are currently undertaking duties identical to staff in their new organisation who are in receipt of a higher banding.

## Red Circling

5. As a result of the Trust mergers, it may be possible that employees of one of the legacy organisations is currently undertaking duties identical to others in the new organisation but is banded differently. To ensure that equal pay principles are adhered to new Trusts, following the Review of Public Administration should now review and consistency check all AfC outcomes, revisiting and, if necessary, re-matching/ evaluating where inconsistencies cannot be objectively justified. Red Circling is the practice of protecting the pay of individuals whose jobs are downgraded following an equal pay review, or in the case of new posts, following a full match or evaluation. The detailed agreed procedures for Red Circling are set out in Annex B.

## Implementation

6. The implementation date for this new agreement is 1 October 2008 for staff in post at that date. For staff appointed after 1 October 2008 to whom this agreement applies, the implementation date will be the date of appointment. HSC employers should ensure that the implementation of this agreement is carried out in line with the implementation agreement at Annex C. This agreement does not represent an opportunity for staff still dissatisfied with their banding to seek a further review.

## Enquiries

7. Enquires about the contents of this Circular should be directed to the Pay and Employment Unit of the Human Resources Directorate, Room D1, Castle Buildings, Upper Newtownards Road, Belfast, BT4 3SJ, telephone 028 90522832, email; [p&e@dhsspsni.gov.uk](mailto:p&e@dhsspsni.gov.uk).
8. Employees should direct personal enquiries to their employer or their trade union.

## Further Copies

9. Copies of this Circular can be obtained from the Department's website at [www.dhsspsni.gov.uk/index/publications](http://www.dhsspsni.gov.uk/index/publications). A copy of the NHS Terms and Conditions of Service Handbook can be downloaded from the NHS Employers website at:  
[http://www.nhsemployers.org/sitecollectionDocuments/afc\\_service\\_handbook\\_aw\\_010708.pdf](http://www.nhsemployers.org/sitecollectionDocuments/afc_service_handbook_aw_010708.pdf).

*Diane Taylor*

**DIANE TAYLOR**  
**Director of Human Resources**

**Agreement on the Application of Agenda for Change Review  
Outcomes to Staff outside the Review Group**

**Introduction**

1. In March 2010 the Joint Negotiating Forum (JNF) considered the implications for staff of AfC review outcomes where the AfC band had increased following review. At the outset it was recognised that any resolution to this issue would have cost implications for employers and parallel discussions between the Department and DFP took place to secure the necessary financial backing. On 26 May 2011 Management informed TUS that a limited amount of funding had been secured and they wished to enter the next stage of the negotiations to reach a collective agreement to resolve this issue.
  
2. The three specific groups of staff that will be subject to the outcome of this collective agreement are:
  - Group 1** - Staff in post at 1 October 2004 who did not seek a Review within the agreed extended timeframe; 28 February 2009.
  
  - Group 2** - New starts appointed after 1 October 2004 who did not have the opportunity to apply for a Review
  
  - Group 3** - Staff on a lower pay band who, as a result of a merger, find that they are currently undertaking duties identical to staff in their new organisation who are in receipt of a higher banding.
  
3. Arrangements developed in partnership for Red Circling is at **Annex B**.
  
4. Arrangements developed locally in partnership to identify Individual staff who are to benefit from this collective agreement and subsequent confirmation and sign off is at **Annex C**.

5. Normal rules of assimilation will apply from the effective date of 1 October 2008.

## **Red Circling**

### **1. Background**

When the implementation of Agenda for Change commenced in October 2004, the HPSS N.I. comprised 19 Health Trusts. Following the Review of Public Administration in April 2007, the number of Trusts has reduced to 6 as the result of the merger of a number of legacy Trusts into one organisation. This policy will only apply in the circumstances detailed below. It is separate from other protection arrangements which are applicable in the circumstances of Organisational Change.

### **2. AFC Pay Anomalies as a results of a merger**

As a result of the mergers, it may be possible for employees of one of the legacy organisations to pursue equal pay claims, citing comparators from one of the other merging organisations. To ensure that equal pay principles are adhered to new Trusts, following the Review of Public Administration should now review and consistency check all AFC outcomes, revisiting and, if necessary, re-matching/ evaluating where inconsistencies cannot be objectively justified. This is in line with section 4 paragraph 2 of the NHS Job Evaluation Handbook.

### **3. New Posts**

It is standard job evaluation practice for proposed new jobs to be matched or evaluated as a desk-top exercise in order that a provisional band can be determined for recruitment purposes. Anyone being appointed to the post should be advised of the provisional nature of the pay band. Once the full demands of the post are clear, it should be reassessed using the full matching or evaluation procedure as appropriate. This is in line with section 3, paragraph 5 of the NHS Job Evaluation Handbook.

### **4. Revised/ Confirmed Bandings**

In the event that a review or rematch/ evaluation, or in the case of new posts, full matching/ evaluation, produces a band outcome lower than the original/ provisional outcome, then red circling will apply from the date of the revised outcome.

If a band outcome is increased, the reassessed outcome will apply from the start date of the new post or the date of the merger whichever is appropriate.

### **5. Principles of Red Circling**

**5.1** Red Circling is the practice of protecting the pay of individuals whose jobs are downgraded following an equal pay review, or in the case of new posts, following a full match or evaluation.

**5.2** Red Circling will be the means used by the Trust to provide pay protection while removing unequal remuneration. It is recognised however, that the nearer in time it is to the circumstances which gave rise to it, the more likely it is that Red Circling can be justified.

**5.3** When posts are Red Circled, an individual's pay will be frozen until such time as the salary for the post catches up with the frozen salary or up to 5 yrs whichever is the sooner.

**5.4** An individual whose current post has been red circled can access a suitable range of training and development opportunities to enable them to apply for future vacancies that may arise at the higher band. Should an individual be required to take on other duties as part of a permanent arrangement, the new post will be evaluated and if deemed to be at a higher band, the red circling arrangement, which applied to the former post, will no longer apply to that individual.

## **6. Application of Red Circling**

**6.1** For the purposes of the AFC equal pay review, posts that are downgraded may retain a Red Circle rate for up to 5 years, as per paragraph 5.3 above, thereafter the postholder will move to the maximum point of the payband as determined by the new job match/ evaluation.

**6.2** In the case of any new posts that are downgraded as a result of full matching/ job evaluation, postholders may retain a Red Circle rate for up to 5 years, as per paragraph 5.3 above. Thereafter the postholder will move to the maximum point of the payband as determined by the full job match/ evaluation.

**6.3** Individuals recruited to such posts after red circling has been applied will not be entitled to join the Red Circle. These posts will be advertised at the correct payband as determined by the new evaluation/match review and staff appointed will be paid accordingly.

**6.4** Red Circling protection will cease, if, during the period of protection, an employee is appointed to another post and the payband pertaining to the new post will apply.

**6.5** All decisions on Red Circling must be fully documented.

**7.** This policy will be reviewed no later than 1 October 2014.

## IMPLEMENTING THE HSC CLUSTERING AGREEMENT

### 1. Background to clustering issue:

Under the Agenda for Change implementation process staff grading reviews have been ongoing across HSC organisation for a number of years; as certain groups or individuals have sought to have their initial grade reviewed.

HSC employers have now identified a number of staff who are currently outside the Review Group **but are currently undertaking duties identical to those staff (within the review group) who benefited from an increase in their banding** following the Review process. These staff fall mainly into three groups:

**Group 1** - Staff in post at 1 October 2004 who did not seek a Review within the agreed extended timeframe; 28 February 2009.

**Group 2** - New starts appointed after 1 October 2004 who did not have the opportunity to apply for a Review

**Group 3** –Staff on a lower pay band who, as a result of a merger, find that they are currently undertaking duties identical to staff in their new organisation who are in receipt of a higher banding.

This paper outlines the process that HSC employers will follow to implement the collective agreement on 'AFC Clustering'.

### 2. Scope:

In order for these arrangements to be applicable to any member of staff, he/she must meet the conditions of Group 1, 2 or 3 outlined below:

**Group 1:** A member of staff who was in the regraded post as at 1<sup>st</sup> October 2004 and who did not submit a review along with other staff who did and who were subsequently successful at obtaining a higher banding. This will therefore be applicable to staff from within a single legacy HSC organisation.

**Group 2:** A new start since 1<sup>st</sup> October 2004 who did not have the opportunity to submit a review or be part of the review cluster but the outcome was not known at recruitment stage. This could therefore be applicable to staff recruited to a single legacy HSC organisation or a newly merged organisation.

**Group 3:** A member of staff who as a result of a merger of legacy HSC organisations, finds that s/he is currently undertaking duties identical to staff from a different legacy organisation and who are now within the same management structure in the new organization but in receipt of a different banding.

### **3. Process for implementing Clustering Agreement for each Group.**

#### **Step 1:**

The local HSC AFC team, in partnership with Trade Union side, will be required to consider each case as to whether it is appropriate for the clustering agreement to be applied to the circumstances of the case. AFC teams should have access to the following minimum set of information, detailed on the proforma at Appendix 1 which must be signed by the employee :

- Name
- Details of post in question
- Date of commencement in the post
- Details of the review post they are comparing themselves to
- Details of manager who can consider the request

#### **Step 2:**

The AFC team in partnership will then determine which Group the employee is aligned to – Group 1, 2 or 3.

#### **Step 3:**

Managers will be required to supply the necessary information to enable the AFC Team to confirm if the employee falls into one of the three groups covered by the clustering agreement.

The following process describes how this will be undertaken:

#### *Groups 1 & 2:*

Local AFC Team will ensure that all appropriate information is sent, along with the completed proforma at Appendix 1, to the manager to enable them to confirm that:

The employee is unequivocally undertaking identical duties as colleagues who had their payband uplifted as a result of a successful review and that the postholder has been doing these 'identical' duties as at the effective date of the clustering agreement <insert date finally agreed> or later if a new start. The manager must be able to support this decision with appropriate evidence, for example, the employee is interchangeable on a rota with members of staff belonging to the review group.

For staff in Group 1 specifically, the AFC Team should also verify that the postholder was in the same post at 1 October 2004.

The proforma should be signed and dated by the manager / countersigned by Head of Service / Assistant Director or Co-Director level.

Group 3:

Once it is established that duties are identical as for Groups 1 and 2 above, an equal pay review should be carried out on the two posts. This review should be in line with the guidance contained in the NHS Job Evaluation Handbook - Section 14 Consistency Checking and Section 4 Merger and Reconfiguration of Health Service Organisations, including potential application of the regional HSC Red Circling Policy.

**Step 4:**

The local AfC Team will notify the member of staff as to whether the Clustering Agreement is to be applied to their post and the effective date of backdating. Normal assimilation rules apply at the effective date.

**Proforma to record details of case to be considered for application of clustering agreement**

<b>Name</b>	
<b>Staff Number</b>	
<b>Address for correspondence</b>	
<b>Contact number</b>	
<b>Post details (including AFC job reference number for matching)</b>	
<b>Date commenced in post</b>	
<b>Details of post being compared to</b>	
<b>Name of relevant manager</b>	
<b>Contact details of relevant manager</b>	
<b>Manager's contact number</b>	

Employee signature \_\_\_\_\_

Date: \_\_\_\_\_

*Post details and AFC ref no.:* \_\_\_\_\_

AFC Team:

Clustering Group being considered in the above case:

Group 1	A member of staff in post at 1 <sup>st</sup> October 2004 and did not submit a review along with other staff who did and were successful at obtaining a higher banding. Applicable to staff from within a single legacy HSC organisation.	
Group 2	New start since 1 <sup>st</sup> October 2004 who did not have the opportunity to submit a review or be part of the review cluster as it was submitted before they commenced, but the outcome was not known at recruitment stage. Applicable to staff recruited to a single legacy HSC organisation or a newly merged organisation.	
Group 3	A member of staff who as a result of a merger of legacy HSC organisations, finds that s/he is currently undertaking duties identical to staff currently within the same management structure in the new organization and who are in receipt of a higher banding.	

**Manager's confirmation:**

I confirm that, having considered the relevant documentation supplied by the AFC Team, \_\_\_\_\_ is doing exactly the same duties as colleague(s) who had their payband uplifted as a result of a successful review.

I can confirm that the postholder has been doing these 'identical' duties as at the effective date of the clustering agreement <insert date finally agreed> **or** from \_\_\_\_\_(insert date if a new start). (please delete)

**Manager's signature** \_\_\_\_\_

**Date** \_\_\_\_\_

**Countersignature:**

**HOS / Assistant Director signature** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Post details and AFC ref no.:** \_\_\_\_\_

**AFC Team**

AFC Clustering agreement applies? Yes / No

Group 1	
Group 2	
Group 3	

Date postholder notified	
Date manager notified	
Date payroll notified	

**Signature of Management Side JE Lead** \_\_\_\_\_

**Signature of TU Side JE Lead** \_\_\_\_\_