

AMICUS GUIDANCE ON UNDERGOING A REVIEW OF YOUR MATCHING OUTCOME

Background

Agenda for Change (AfC) is a major modernisation of the NHS pay system. It is the most significant change of its kind ever attempted. About 1.2 million employees in about 500 different occupations whose pay was previously governed by over twenty separate Whitley structures are now being assimilated onto a single spine point via a Job Evaluation scheme informed by the principals of equal pay for the work of equal value.

In addition, AfC is being implemented in 'partnership', which is embedded in the agreement but in reality may in some places be strained, as 'old habits' may be hard to break. Taking into account the scale of the task and the "human" element caused by partnership it would be very surprising if some staff were not content with their new pay outcomes and sought to undergo an appeal or review. Therefore from the very outset when the process of assimilation through matching was agreed it was always intended that a review process should exist.

So why a review and not an appeal? The spectre haunting this process is nurse clinical grading which heralded massive levels of appeals amongst the largest section of the NHS workforce.

We expect that AfC will create less demand for reviews than clinical nurse grading. This is because the Job Evaluation Factor Plan was developed in partnership. The clinical nurse grading criteria was agreed in this way **but** no agreement was reached on the guidance used.

A measure of the success of the AfC scheme will be the level of reviews being sought. We expect this to be below that of nurse clinical grading. If this exceeds this level it will be as much a failure of partnership as the AfC Factor Plan and processes.

Grounds for review

All parties to the Agenda for Change agreement believed that any review process should not be long drawn out. There is evidence that in the public sector staff use all stages of a procedure on the basis of "if at first you do not succeed try, try and try again" as there is "nothing to lose". Weak human resource management that rarely saw deadlines for the completion of the appeal stages being met exacerbates this. The last appeal against nurse clinical grading which was introduced in 1988 was heard in 2004!

The process was designed to deter vexatious applications for reviews whilst guaranteeing staff timely, transparent, fair and robust procedures. Amicus believes this is the best approach to adopt as long drawn out procedures may deter parties from looking at other means of addressing pay related issues arising from Job Evaluation e.g. service development or re-organisation, professional development or recruitment and retention premia.

This means postholders have a right to review on the basis that they have been matched to the wrong profile or incorrectly evaluated if undertaken locally. There is no right of review against the contents of the profile or the JE Factor Plan itself. Once you have exercised this right you will need to supply the grounds for your application in writing, which goes before a review panel that is constituted in the same way as a matching panel but does not involve participants in the original matching decision.

There is no right to a second review. You may only then file a grievance based on procedural matters. Although we suspect “procedural matters” will be able to be interpreted broadly.

Assessing the need for a review

Please seek advice from Amicus or your peers before considering a review. A review that has little prospect of success is likely to reduce morale and the standing of the profession further.

Amicus would particularly wish to avoid “speculative” reviews or those that sought to replicate the Whitley pay hierarchy. Whitley clinical grading is at best an impure measure of postholder’s level of practice and/or responsibility as the criteria has not been consistently applied. Otherwise everyone at the same level of practice and/or responsibility in each profession would be on the same level of pay. We know this is not the case and other factors such as recruitment and retention or local labour markets has impacted both positively and negatively on Whitley grading levels and therefore pay.

This variation is particularly acute in those Whitley structures where postholders are assigned three points on a much broader Band or grade. AfC is going to necessarily change these differentials and rightfully so as they were not justified on the basis of equity in the first place. Likewise any differentials, which are established, must be justified not only within the profession concerned but also must bring equal outcomes with other professions who have similar career ranges.

To illustrate this simply you could not replicate the existing nursing hierarchy in AfC Pay Bands because if you started with a D grade staff nurse at Band 5, an I grade would end up at Band 8c. This is unsustainable in JE terms and undeliverable in pay terms. Besides this approach would disadvantage and open up equal value questions for those groups who had “flatter” Whitley structures.

In addition this approach may act to our disadvantage as the career Bands may end up higher than initially envisaged following an assessment of matching outcomes. For example some professions are going to have more people in Band 6 than in Band 5.

Instead reviews should be based on evidence that you have matched the wrong profile for your level of practice and/or responsibility not based on our current or former Whitley grade. In contrast a review that succeeds is likely to improve morale, the standing of the profession and the position of Amicus. Contrary to the belief there is “nothing to lose” - a great deal is at stake.

So what will you need?

The begin prepare for a review you will need the following:

The matching outcome report that should be issued to each postholder who has undergone matching.

A copy of the JE Handbook (available from the DOH website – doh.gov.uk).

Copies of the information submitted (primarily Job Descriptions/person specifications) to the matching panel.

A full range of profiles for the profession and others relevant profiles such as those for the professional manager (available from – doh.gov.uk).

Any employer procedure for conducting review (available from the project manager or your Union rep).

Please make sure you do not fall at the first hurdle by missing deadlines for applying for review. If this deadline is pressing please make your application ASAP stating that you will be supplying full and better particulars at a later date.

Should you seek a review or file a grievance?

You should seek a review only when you believe that you have been matched to the wrong profile. For issues such as non-adherence to best practice procedures (e.g. postholders signing off their own job information), the Job description being used to match not agreed with the postholder or interference in matching results (e.g. matching to budget or current Whitley grade) postholders should file a grievance reserving their right to a matching review.

Case study one

You are a Theatre Nurse. Your matching outcome is Band 5. You believe that the matching panel has not taken account of your postgraduate education and training in reaching its decision. *Amicus advice: seek a review.*

You are a Theatre Nurse. Your matching outcome is Band 5. Your matching was batched together with other “D and E grade staff nurses”. *Amicus advice: take out a grievance as postholders must agree clustering and you may have been matched outside the job family.*

Case study two

You are a time served electrician. Your matching outcome is Band 3. You believe that the matching panel has not taken account of your post apprenticeship acquired knowledge and skills and additional short courses. *Amicus advice: seek a review.*

You are a timed served electrician. You have recently undergone a review to match at Band 4 and been informed that you cannot make this level unless you agree to multi-skill. *Amicus advice: take out a grievance, as the trust/health board should not relate matching outcomes to broader management objectives that need to be raised via the KSF. An intervention with the review panel is likely to have taken place that goes beyond consistency checking.*

Case study three

You are the clinical manager of a specialist speech and language therapy service but not overall Head of Speech and Language Therapy. You have been matched at Band 7. You believe that the matching outcome under values a number of factors. *Amicus advice: seek a review.*

You are the clinical manager of a specialist speech and language therapy service but not overall Head of Speech and Language Therapy. You have been matched at Band 7. You have been told that you cannot match the Professional Manager profile, as “there is only one of those in each service”. *Amicus advice: take out a grievance, as there are no quotas for profile matches in any service. Different services are configured in different ways. It is likely that factor levels have been depressed to achieve Band 7 match.*

Case study four

You are a Biomedical Scientist. Your matching outcome is Band 5. You believe that the matching panel has not taken account of your postgraduate education and training in reaching its decision. *Amicus advice: seek a review.*

You are a Biomedical Scientist. Your matching outcome is Band 5. Your manager refused to accept your JD/person specification stating, “all I require is a basic BMS and I did not ask you to develop besides the departmental budget cannot afford a Band 6 match”. *Amicus advice: take out a grievance. All JDs/person specification has to be co-signed by the manager and the postholder. You have been required to work at that level. AfC is fully funded.*

So what is the role of the representative?

It is a fact that unless the representative comes from the same work area as the colleague seeking a review no one knows better than the postholder what s/he does or whether the outcome was fair and robust. The postholder should also be the best source of additional information. The role of the representative is to mentor members through this process.

A representative should become more involved on matters that need to be pursued via a grievance. This grievance may also be raised at the staff side council, as it may be symptomatic of wider issues effecting a whole department or the trust/health board itself. If issues related to disagreements about procedures cannot be resolved at employer level there may be a case to refer the point of principal to the Strategic Health Authority AfC Partnership Forum (England) or country partnership forum. These organisations can seek clarification from the NHS Staff Council.

Preparing for the review

Members may spend a lot of time on a review to little effect.

The first stage is to compare the profile to which you have been matched with the profile to which you aspire to match. You need to ask yourself how do the profiles differ? What are the differences in the factor levels? What factors are key to achieving a match to the higher Band? Have you achieved any of the higher levels due to variations on your original match?

The two 'must match' factors are Knowledge, Training and Experience and Freedom to Act. There is almost a directly correlation between the Knowledge Level and the pay Band. Knowledge accounts for 25 per cent of the points in the overall scheme.

Whilst you should challenge all factor outcomes, which you believe are unfair. Please do not undertake speculative challenges that may end up undermining your broader case or submerging your case on key factors in detail.

Next you need to determine what evidence you need produce to support your case for higher factor levels. Many professions have produced guidance on the application of Job Profiles. Guidance itself does not constitute evidence. However it may indicate what evidence you need to supply. Of course it may still remain that you have supplied evidence as indicated by any guidance but the panel may differ on the interpretation of the appropriate factor level in response to this evidence. Guidance is just that and does not constitute an "instruction" to the review panel.

Finally are you the only one at your level of practice who is matched in this way? May you want to go for review as group or cluster? This is for you to decide.

Preparing the case

If you have been matched incorrectly this is mainly due to the fact that the original matching panel either has insufficient information or misinterpreted the information supplied. Matching panels are working under great pressure. They may sometimes get it wrong. They are fellow members of staff. We need to help them to come to the right decision about matching.

If there are "political" agendas being pursued these should be addressed by the grievance procedure not through a review.

A good case for review should be:

Concise.

Informed.

Evidenced.

Well structured.

By concise we should focus on the core of the arguments in an outline. Supporting documents should be placed in annexes or as attachments to the outline. Where these can be summarised, they should be.

By informed we should relate our core arguments to the factor plan, as it is not as how we would like it to be.

By evidenced we should refer to any inconsistencies in factor levels within professions and between professions working at the same levels of practice which cannot be sustained in JE terms.

By well-structured we should order in sequence the factors we are challenging, covering our arguments and relating each to the relevant section of the factor plan. The arguments should be cross referenced to any supporting documents in annexes or as attachments citing chapter, page and paragraph.

The review

Most employers will have procedures for Reviews. These are best organised on a conciliatory basis. If your case is prepared in advance the review can focus on areas of difference of understanding and interpretation. They should allow applicants for review an opportunity to cover any ground not covered in order to ensure confidence in the process.

After the review all applicants should receive a timely notification of the outcome of the review.

Consistency checking

All matching outcomes are monitored through the Computer Assisted Job Evaluation (CAJE) system. Accredited representatives should have access to this information locally through rights for information for collective bargaining purposes and to comply with equal pay legislation on transparency of pay systems.

Amicus will also monitoring outcomes nationally through CAJE but by also working with Occupational Advisory Committees (OACs) and associated professional bodies on recording results.

We have realistic aspirations for certain outcomes for key professional groups that we represent. We believe that these aspirations are sustained by our detailed understanding of the JE Factor Plan. We will of course be raising any concerns that we have nationally through the DoH and NHS employers and through local representation and where necessary, campaigning.