

A good practice guide to merger & reconfiguration of health service organisations

1. Introduction

This Guide provides advice on the equal pay implications of merger and practical advice for organisations undergoing mergers and reconfigurations in the Health Service. Its aim is to show how Agenda for Change principles and practices in relation to the Job Evaluation System can be used to assist organisations in developing and implementing new or revised job structures.

The Guide is based on relevant legal decisions, good practice advice from the Equal Opportunities Commission and experience of those who have been through similar exercises.

2. The equal pay implications of mergers and reconfigurations

Following merger or reconfiguration, there will be a single employer and employees of the merged organisation will be treated as being 'in the same employment' for the purposes of the Equal Pay Act 1970. This means it may be possible for employees of one of the constituent organisations to the merger to pursue equal pay claims citing comparators from one of the other merging organisations.

Although the merging/ reconfiguring organisations should all have applied the Agenda for Change job evaluation scheme, they may be vulnerable to equal pay claims if there are significant differences in the way each constituent organisation has implemented the scheme, although the risk of such claims is likely to be lower than, for example, where merging organisations have not previously undertaken job evaluation. To protect itself against claims, the reconfigured organisation would be advised as matter of good practice to review and consistency check all evaluations, re-visiting and, if necessary, re-evaluating wherever there appear to be inconsistencies.

Given the emphasis placed on consistency checking, it should not be the case, but, if it emerges from the review and consistency check that the same scheme has been applied in significantly different ways by the merging organisations (with more than marginally different evaluation outcomes for the same or similar jobs), then it will be necessary to treat each exercise as though different schemes had been adopted and re-evaluate to common principles and procedures using the Agenda for Change job evaluation scheme.

3. Timing

Designing a common job structure and evaluating any resulting new or changed jobs is a major exercise for any organisation, and in particular for a new organisation, where concerns arising from uncertainty may be at a high level. For this reason, it is not an exercise which should be rushed. Time should be taken at the design and planning stages of the exercise to ensure that the proposed new job structure is suitable for the organisation's future needs.

Although there will be a transitional risk of equal pay claims, overall the risk of such claims is likely to be low and probably lower than the risk of claims arising from poor application in haste of the Agenda for Change job evaluation scheme to new and changed jobs. In the long run, it would be preferable to spend time at the planning stage ensuring that the new structure is 'fit for purpose' than to rush the exercise for this reason.

4. First practical steps

At the outset of the exercise it is appropriate to:

- a. **establish partnership arrangements.** The principles and practices of the original Agenda for Change implementation should also apply to post-merger/ reconfiguration exercises. Experience shows that it is important to get such arrangements established as quickly as possible. An early task for the new partnership groups could be to review the locally determined Agenda for Change procedures and to agree those to be adopted by the new organisation. This will save delays at later stages.
- b. **organise the logistics.** For example, timescales, project management and resources for the introduction of a common job structure for the merged/ reconfigured organisation. This step should include a review of relevant HR IT systems to ascertain what data they can provide and to ensure they are compatible.
- c. **develop a common terminology.** A possible barrier to progress is use in the constituent organisations of the same term for different concepts (roles, policies, structures) and different terms for the same concept. As the meanings of words are important in the context of job matching and evaluation, it may well be worth spending some time at the outset on clarifying and defining any terms likely to be used frequently.
- d. **devise a communications strategy.** Employees in the new organisation are likely to be particularly anxious about their positions. Therefore it is imperative to ensure good communications keeping employees informed of progress.

Step 1: Conducting a jobs audit

The first step in introducing a common job structure is to conduct an audit of jobs in the merged organisation. This is usually an HR function. It can be started before the vesting date of the new organisation and can then inform the development of the new job structure (see below). It involves preparing a comprehensive list of job titles within the new organisation and gathering together relevant job descriptions and person specifications, where they exist.

By comparing job descriptions for similar areas of work it will be possible to identify how many different jobs there are and how many share common job titles. Some jobs occur commonly in healthcare organisations, although often with some variations, and may have common job titles. Other jobs may be the same or broadly similar but have different job titles. This is particularly true in administrative and clerical fields. In addition, it is likely there will be a number of 'one off' jobs that will not be common to all constituent parts of the merging organisation.

Where jobs are the same or broadly similar but have different job titles, it will be necessary to rationalise job titles, at least for review purposes. This may appear to be a laborious task but is essential to the next steps in the process and a good investment of time for the future. A decision will need to be made as to whether this is the point at which to agree common job titles for all jobs in the new organisation, in consultation with the individuals concerned and their trade union representatives.

All employees should have had up to date and accurate job descriptions for the initial Agenda for Change implementation, but some may already be out of date and some of the formats adopted for Agenda for Change job descriptions may not have proved useful for other purposes. This is an opportunity to review the organisation's job description format and for any out of date job descriptions to be brought up to date. It will not only assist and inform this stage of the exercise but also serve as preparation for matching and/or evaluation of new or changed jobs.

Step 2: Designing a common job structure

Having conducted a jobs audit, the next step is to design a common job structure. This entails consideration of how the organisation should be structured to meet its needs and objectives in the future. This could involve significant changes to at least some of the jobs and structures which operated in the old organisations. Even if significant changes to most jobs are not anticipated, the exercise should be undertaken.

Designing a new job structure is a major exercise which will obviously need political direction from senior managers. It should involve managers at all levels and be undertaken in consultation with the relevant trade unions and professional organisations.

Step 3: Implementing the common job structure or reviewing matching/evaluation

The crucial question at this stage is the order in which the next steps in the exercise take place. There are two possible options:

- Implement the new common job structure and then undertake Agenda for Change matching and evaluation of new or changed jobs; or,
- Review the matching/evaluation of the jobs that exist on merger/ reconfiguration, implement the new job structure and then re-match or evaluate the new jobs in the structure as necessary.

Each approach has advantages and disadvantages. The advantage of the first approach is that it potentially saves time on a second round of matching/ evaluations. However, implementing a new job structure is a major exercise and can be very time consuming, leaving the organisation vulnerable to equal pay claims until it is completed, if there are any significant inconsistencies in banding. It can also prove de-stabilising for employees.

The advantage of the second approach is that the risk of equal pay claims is reduced to an absolute minimum. Note that those jobs which remain the same in the new structure will not need to be re-evaluated, unless a very long period of time has elapsed since the original Agenda for Change matching and evaluations. This approach also allows for job re-structuring (and any further evaluations) to be carried out in a phased programme. The second approach is therefore recommended.

Step 4: Matching and evaluating new and changed jobs following merger/ reconfiguration

Points to bear in mind:

- The principles, practices and procedures should be exactly the same as for the original Agenda for Change implementation. Where different procedures had been adopted for the aspects to be determined locally, it is obviously necessary to agree a single approach and helpful if this has been done in advance of the process.
- Jobs which all parties agree have not changed following the merger/ reconfiguration do not need to be re-matched or re-evaluated, as long as the review shows there are no inconsistencies in the previous processes. If inconsistencies are found, then it will be necessary to re-match or evaluate.
- Consistency checking should take place during the post-merger matching/ evaluations in exactly the same way as in the original exercise. Overall consistency checking should include jobs which have not needed to be re-matched or evaluated, to ensure that outcomes are consistent across all jobs in the new organisation. Not doing this risks internal grievances or external legal challenge.
- Employees should have the same right of review of matching or evaluations of new and changed jobs as in the original exercises.

Job Evaluation Group November 2006

The Job Evaluation Group is a national technical sub-group of the NHS Staff Council whose remit is to continue to ensure that the NHS Job Evaluation Scheme is fit for purpose. Its membership includes representatives of the health service, the UK health departments in each of the UK countries and representatives of the NHS joint unions.