

## Advice on jobs which cross boundaries between the health service and higher education

### 1. Introduction

1.1 The Job Evaluation Group (JEG) has received a number of queries about how to deal with jobs, which appear to cross the boundaries between the health service and higher education, in the context of Agenda for Change in the former and Pay Modernisation in the latter.

1.2 Enquiries revealed that HR staff in higher education have been dealing with similar queries, in some cases in relation to the same individuals. A joint meeting was held to explore the issues. This advice follows that meeting and has been prepared by JEG to assist health service organisations. It may also be helpful to the higher education sector.

1.3 One of the interesting facts to emerge from the joint meeting is the range of jobs which may cross boundaries between the health and higher education sectors. The most obvious examples are medical (which are in any event outside the scope of Agenda for Change) and clinical (for example, nursing, midwifery and AHP teaching and research roles, clinical psychologists, clinical scientists). However, there are also many other roles, ranging from laboratory scientists and technicians to secretarial and administrative staff. This guidance relates to all of these roles, except the medical ones.

### 2. Contract of employment as a starting point

2.1 The starting point for determining grading and pay for jobs, which cross the boundaries between the health service and higher education, must be the contract of employment. This is because any grievance in relation to contractual terms and conditions of employment, whether it be for unfair dismissal or equal pay, is against the employer who has responsibility for the contract.

2.2 The location of the work is not important, even if it means individuals on health service and higher education working alongside each other or even doing the same work on different salaries and other contractual terms. Such individuals are not legally in the same employment, because they have contracts with different employers. This has always been the case and is not altered by Agenda for Change or Pay Modernisation in the higher education sector.

### 3. Practical implications

Some practical implications of the contract of employment as starting point for grading and pay issues are:

- (1) NHS contracts: the jobs of those who hold NHS contracts for all of their work should be matched or evaluated, graded and paid in accordance with Agenda for Change. If some or all of the work is located in a higher education institution, this may require the higher education evaluators to undertake training in Agenda for Change or to ask health service colleagues to undertake the matching or evaluations on their behalf. The AfC matching or evaluation should cover all of the work, including that associated with the higher education institution (for example, developing and implementing teaching programmes). JEG members are of the view that such job features can be fairly assessed under the Agenda for Change JES.
- (2) Higher education contracts: the jobs of those who hold higher education contracts for all of their work should be matched or evaluated, graded and paid in accordance with the system in use in the particular institution, usually either HERA or Hay. If some or all of the work is located in a health service organisation, this may require the health service evaluators to undertake training in the relevant scheme or to ask higher education colleagues to undertake the matching or evaluations on their behalf. The HERA or Hay matching or evaluation should cover all of the work, including that associated with the health service. Tests undertaken by the consortium which developed HERA confirm that such job features can be fairly assessed under HERA. There is no reason why the same should not be the case for the Hay system of evaluation.

If this evaluation results in a lower salary on the higher education institution's salary structure than would be the case for an equivalent job in the health service, it is open to the higher education employer to introduce a market supplement, subject to the agreed procedures of the organisation, in order to recruit and retain suitably qualified and experienced staff.

- (3) Part time contracts: where an individual holds two distinct contracts, one with a health service organisation and one with a higher education institution, then these should be treated as two jobs with the first being matched or evaluated and paid under Agenda for Change and the second being matched or evaluated and paid under the higher education institution's job grading and pay system. This is probably what has happened previously. It may result in the two parts of the job being graded and paid differently, but that would be the case if each was a full-time job, undertaken by two individuals one employed the health service and one by the higher education institution.
- (4) 'Joint contracts': individuals may have been appointed on what are sometimes referred to as 'joint contracts' between a health service organisation and a higher education institution. Such a contract may cover the apportionment of time between the employing organisations and the allocation of responsibilities. However, in all such cases the employee's substantive contract of employment will be with one of the organisations. This organisation is responsible for grading and pay, including matching or evaluation under the relevant grading and pay system.
- (5) 'Honorary' and similar contracts: individuals may have a substantive contract with one organisation but an honorary contract with another, for example, a health service consultant clinician with an honorary professorship with a higher education institution, or other clinicians with honorary academic contracts. Such honorary contracts are not usually employment contracts, but cover the vicarious liabilities of the academic role. The job should be matched or evaluated and paid in accordance with the duties covered by the substantive employment contract, in this example, the health service. It would then be for the higher education institution and the

individual to agree whether there should be any recompense for any duties associated with the honorary appointment and, if so, what form it should take, probably in line with past procedures as long as these are fair and equitable.

#### **4. Conclusion**

Following the above advice should give a fair and equitable outcome and one that provides a basis for a legal defence in the event of challenge.

For the future, it may be sensible to consider the grading and pay implications of the various contractual options before establishing new arrangements which cross the boundaries between health service and higher education institutions.

#### **Job Evaluation Group**

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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.