



Gender Pay Gap Reporting

Briefing note on bonus pay and allowances

The deadline for publication of the second set of gender pay gap reports for public sector employers is 30 March 2019. In the period prior to publication last year, there was uncertainty within the NHS about how to calculate the bonus pay gap and debate about which payments should be deemed 'bonus pay' and which should be 'ordinary pay'. In this note, we provide guidance on payments which are regularly made by NHS organisations and how they should be classified for the purposes of the pay and bonus gap calculations and in order to enable analysis of the pay and bonus gaps in NHS organisations both regionally and nationally.

Pay gap and bonus gap

Employers which are within the scope of the Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 (the 'Regulations') must carry out calculations using 'ordinary pay' in respect of the gender pay gap, and 'bonus pay' in respect of the bonus pay gap.

'Ordinary pay' is defined as:

- (a) basic pay;
- (b) allowances;
- (c) pay for piecework;
- (d) pay for leave;
- (e) shift premium pay.

'Ordinary pay' does not include—

- (a) remuneration referable to overtime,
- (b) remuneration referable to redundancy or termination of employment,
- (c) remuneration in lieu of leave, or
- (d) remuneration provided otherwise than in money.

'Bonus pay' is defined as any remuneration that is in the form of money, vouchers, securities or options and relates to profit sharing, productivity, performance, incentive or commission.

For each employee who receives a bonus, organisations need to add together all bonus pay received by employees in the 12-month period ending on the snapshot date of 31 March each year. It is essential, therefore, for organisations to consider very carefully the variety of payments made to employees throughout the year and whether they can be categorised as ordinary pay or bonus pay under the above definitions or whether they should be excluded from the calculations altogether.

We consider below the main payments which are made to NHS employees which may be considered a bonus.

Clinical Excellence Awards

Clinical Excellence Awards (CEAs) are awarded to consultants who perform their role 'over and above' the expected standard.

Local CEAS

Local CEAs (LCEAs) are assessed by the employing NHS organisation. NHS organisations have taken a variety of approaches to the assessment and award of LCEAs in recent years, which tend to be set out in local policies. Some LCEAs will be dependent on the consultants' performance and a renewal process is mandatory, whilst in other organisations, LCEAs, once awarded, endure. The argument for this second category is that they should form part of ordinary pay rather than bonus pay.

Given the varying ways in which NHS organisations have approached LCEAs, it has not been possible to provide a definitive rule as to whether LCEAs should be included in the bonus gap calculation: each employer needs to look at their scheme. However, in assessing the first set of data from the reports, it is clear that this has led to anomalies and that agreement on how to treat LCEAs across the NHS is desirable in order to enable a fair comparison of NHS organisations.

Schedule 30

In April 2018, the BMA, the Department of Health and Social Care and NHS Employers reached an agreement on a new LCEA scheme to be put in place from 2018 until 2021, which is set out in schedule 30 to the 2003 Consultant Terms and Conditions. New LCEAs which are granted between 1 April 2018 and 31 March 2021 under schedule 30 will be non-consolidated and non-pensionable and payable for a period of up to three years only. Our view is that all new LCEAs granted since April 2018 will form part of bonus pay and not ordinary pay.

National CEAs

National CEAs (NCEAs) are subject to a renewal process every five years based on a consultant making an application for renewal. If the consultant is no longer providing an excellent service, the NCEA should be withdrawn. As such, we consider the NCEAs to be bonus pay and not ordinary pay in that they relate very clearly to performance.

NCEAs are assessed and awarded by Public Health England (PHE) but they are paid by the employing NHS organisation. It is understandable that employers may be reluctant to include these awards in their calculations as they have no influence over the award. However, the Regulations do not specify that the assessment of a bonus has to be carried out by the employer. Our view is that the NCEAs should be included in the bonus pay calculation because they are paid by the employer. Where employers find that the NCEAs have a significant impact on the bonus pay gap and relevant percentages, this should be set out in the narrative. Some Trusts may opt to carry out the calculations omitting the NCEA data in order to give a true representation of bonus pay which it, as an organisation, has assessed and awarded and set this out separately in the narrative.

Moving forward with CEAs

In the interest of being able to carry out a fair comparison between NHS organisations, we recommend that all LCEAs, whether existing LCEAs awarded prior to the introduction of Schedule 30 or new LCEAs and all NCEAs are considered bonus pay for the purposes of the bonus pay gap. This may lead to an increase in bonus gaps for some organisations which reported very low gaps, and some at 0%, last year, but we recommend that all CEAs be included as bonus pay from this point forward in order to track reductions as employers put their action plans in place.

VSM pay

Under NHSI's guidance for VSM pay at Trusts and Foundation Trusts, VSMs who are on salaries of £150,000 or more will have an element of earn-back included in their pay. The NHSI guidance states that this will normally be at least 10% of base pay and will be related to the attainment of agreed performance objectives. As the earn-back amount is performance related, this payment should fall under bonus pay for the purposes of calculating the bonus pay gap.

Similarly, any other performance related pay which is paid to VSMs should be considered bonus pay.

Long service awards

Under the Regulations, only payments which relate to profit sharing, productivity, performance, incentive or commission should be included in the bonus calculations. In the NHS, long service awards tend to be for nominal amounts and so do not provide the incentive usually associated with significant monetary long service bonuses. There was debate about whether nominal long service awards should be included as bonus pay but the ACAS guidance states that such awards with a monetary value should be included. In contrast, non-monetary long service awards, such as additional annual leave, should not be included as they are a benefit in kind which are excluded from the calculations.

Some employers have found that the payment of nominal long service awards, which Trusts have reported are paid predominantly to women, creates a significant bonus gap because the other bonus payments which tend to be made are CEAs, which are paid predominantly to men. This is a point to refer to in the narrative and we recommend that organisations also include details of what the gender bonus gap would be without the inclusion of nominal long service awards where these are skewing the data.

Childcare and cycle to work vouchers

Many NHS organisations offer workplace vouchers in relation to the cycle to work scheme or childcare. These vouchers are usually offered under a salary sacrifice arrangement whereby the employee sacrifices a proportion of their gross salary in return for the vouchers. NHS organisations which offer vouchers in this way should not include them as bonus pay or ordinary pay. This is because the calculations carried out under the Regulations are based on gross salary after the salary sacrifice amount has been deducted.

In some circumstances, employers offer workplace vouchers on top of salary as opposed to via a salary sacrifice scheme. If this is the case, the vouchers should be treated as a bonus payment as an incentive.

Recruitment bonuses and RRP's

Whether recruitment payments fall within bonus pay or ordinary pay will be fact specific and NHS organisations should carefully consider the way in which they make such payments. The ACAS guidance suggests that one-off payments which are made to individuals at the start of employment to encourage recruitment (sometimes known as 'Golden Hellos') should be treated as bonus pay as an incentive payment.

However, where an initial recruitment payment is paid monthly over a number of years, our view is that it is more akin to an allowance and should be deemed 'ordinary pay' for the purposes of the hourly rate calculations. Similarly, RRP's are deemed allowances rather than a bonus and should, therefore, fall within the ordinary pay calculation.

Relocation and accommodation expenses

The ACAS guidance highlights that the Regulations state that any payment that reimburses expenses used entirely for business purposes does not need to be included in the calculations as either ordinary pay or bonus pay. It is important for NHS organisations to think about whether any relocation costs paid to employees are in respect of actual expenses which are incurred. For example, are these expenses reimbursed on production of receipts? If a lump sum payment is made, is there a requirement to provide receipts at a later date? Relocation and accommodation costs in excess of the expenses actually incurred would fall within bonus pay as an incentive payment.

Some NHS organisations offer to reimburse visa application costs for members of staff. Our view is that such a payment falls as reimbursement of expenses and, therefore, should not be included in the calculations.

Benefits in kind

Many NHS organisations offer benefits which have a financial advantage for employees such as interest free travel loans or staff discounts either online or in-store with presentation of NHS ID.

These are benefits in kind and do not fall into 'bonus pay' where they are not remuneration in the form of money or a voucher. Benefits in kind are also excluded from the definition of ordinary pay. Rental deposit loans should be treated in a similar way. They are neither a bonus nor ordinary pay.

Type of payment	Ordinary pay	Bonus pay	Payment should not be included
Local Clinical Excellence Awards		✓	
National Clinical Excellence Awards		✓	
VSM earn-back and performance related pay		✓	
Long service award – monetary or voucher		✓	
Workplace vouchers – salary sacrifice			✓
Workplace vouchers – in addition to salary		✓	
Recruitment bonus – one off		✓	
RRPs	✓		
Relocation costs – reimbursement of expenses			✓
Relocation costs in excess of expenses		✓	
Benefits in kind – interest free loans, NHS discounts			✓