

**Merger and
reconfiguration of health
service organisations
(chapter four)**

1. Introduction

1.1 This chapter provides advice on the equal pay implications of mergers and practical advice for organisations undergoing mergers and reconfigurations in the NHS. Its aim is to show how AfC principles and practices in relation to the NHS JE Scheme, can be used to assist organisations in developing and implementing new and revised job structures.

1.2 The advice draws on relevant legal decisions, good practice advice from the Equality and Human Rights Commission and experience of those who have been through similar exercises.

1.3 This guidance should be read in conjunction with annex 24 - Guidance on workforce re-profiling in the NHS Terms and Conditions Handbook.

1.4 The principles of this guidance are also applicable in situations where health and social care services are being integrated, perhaps due to regional devolution or the development of new models of service delivery.

2. The equal pay implications of mergers and reconfiguration

2.1 Following merger or reconfiguration, there will be a new single employer and employees of the merged organisation will be treated as being 'in the same employment' for the purpose of the Equality Act 2010 and the Equal Pay Act (Northern Ireland) 1970. This means 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.

2.2 Although the legacy organisations should all have applied the NHS JE Scheme, they may be vulnerable to equal pay claims if there are significant differences in the way each constituent organisation has implemented it. However, 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 should at the earliest opportunity review and consistency check all

evaluations, revisiting and, if necessary, re-evaluating where inconsistencies cannot be objectively justified.

2.3 If it emerges from the review and consistency check that the same scheme has been applied in significantly different ways by the legacy organisations, then it will be necessary to treat the exercise as though different schemes had been adopted and to re-evaluate to common principles and procedures, using the AfC JE Scheme.

2.4 Where NHS organisations are employing social care staff from Local Authorities, it is important that they are aware of the equal pay risks they may face if they have staff on two different pay scales with two different job evaluation mechanisms (NHS and local government).

3. Timing

3.1 It is a major exercise for any organisation to design a fresh job structure with new and changed jobs, even more so when this follows a merger of organisations which already have their own structures and where there are uncertainties about their future.

3.2 For this reason, it should not 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 new organisation's future service needs.

3.3 Although there may be a transitional risk of equal pay claims, this risk is likely to be lower than the risk of claims arising from poor application of the 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' and implemented with vigour.

4. First practical steps

4.1 At the outset of the exercise it is important to:

- 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.
- Devise a communications strategy. Employees in the new organisation are likely to be particularly anxious about the future of their jobs, so it is imperative to ensure there is good communication to keep all staff informed of progress.
- Organise the logistics. It is important not to underestimate the resources required for the introduction of a common job structure for the merged/reconfigured organisation eg project management, timescales. This step should include a review of relevant HR IT systems to ascertain what data they can provide and to ensure they are compatible.
- Develop a common terminology. A possible barrier to progress is the use of legacy organisations' terminology eg using the same term for different concepts and different terms for the same concept. As the meanings of words are important in the context of job matching and evaluation, it is worth spending some time at the outset on clarifying and defining any terms that are likely to be used frequently.

4.2 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 start before the merger takes place 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 relevant job descriptions and person specifications, where they exist.

4.3 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. Other jobs may be the same or broadly similar but have different job titles. This is particularly true in administrative and

4.4 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. Any decisions to agree common job titles for the new organisation should be made in consultation with the individuals concerned and their trade union representatives.

4.5 All jobholders should have had up-to-date and accurate job descriptions for the initial AfC implementation, but some may already be out of date and some of the formats may not be useful for other purposes. This is an opportunity to view 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 evaluating of new and changed jobs.

4.6 Step 2: Designing a common job structure

Having conducted a jobs audit, the next step is to design a common job structure. Consideration will need to be made as to how the organisation should be structured to meet its future needs and objectives. This could involve significant changes to some of the jobs and structures which operated in the legacy organisations. The exercise should be undertaken, even if significant changes are not anticipated for most jobs.

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

4.8 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 AfC 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.

4.9 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 can be very time consuming, leaving the organisation vulnerable to equal pay claims if there are any significant inconsistencies in banding. It can also be de-stabilising for staff.

4.10 The advantage of the second approach is that the risk of equal pay claims is minimised. Those jobs that 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 AfC 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.

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

Points to bear in mind:

a. The principles, practices and procedures should be exactly the same as the original AfC 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.

b. 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.

c. 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 legal challenge.

d. Employees should have the same right of review of matching or evaluations of new and changed jobs, as in the original exercises.