To: Chief Executives in England, Wales & N Ireland (with copies for HR Director & Finance Director)
Members of the National Joint Council

23 September 2013

Dear Chief Executive,

JOB EVALUATION SCHEME:
PUBLIC HEALTH TRANSFERRED EMPLOYEES

The NJC for Local Government Services has recently established a sub-group looking at ongoing public health workforce issues following the recent transfer of staff. The sub-group gives the Royal College of Nurses (RCN), British Medical Association (BMA) and Managers in Partnership (MiP) a consultative role but no recognition for collective bargaining which involves the three recognised unions (UNISON, GMB and Unite) only.

The sub-group is expected to have a life of up to three years. The sub-group includes staff from Public Health England in an advisory capacity.

The sub-group has inherited a number of tasks from the Concordat Steering Group which operated under the auspices of the Department of Health during the transition period. One of those tasks was to finalise guidance on job evaluation for public health roles. That guidance is attached along with a set of typical recognised public health role profiles with indicative evaluation scores using the NJC and GLPC schemes.

You may well have technical questions on the guidance. These should be addressed to Job_Evaluation_Enquiries@local.gov.uk All questions will be discussed by the joint Job Evaluation Technical Working Group or the Public Health Sub-Group as appropriate and answers will be provided as quickly as possible.

Yours sincerely,

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Joint Secretaries
NJC GUIDANCE AND
INDICATIVE
JOB PROFILES
ON THE
TRANSFER OF
PUBLIC HEALTH STAFF TO
LOCAL GOVERNMENT
1. Context – public health staff transfer and local government terms and conditions

1.1 This document is based on the fact that the transfer of public health jobs from the NHS to local government took place via transfer schemes that offer post-transfer protection of terms and conditions to transferees. In some cases, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to the transfer. In this case, the protections provided under TUPE will apply.

1.2 The 1997 Single Status Agreement in local government was designed to ensure pay and grading schemes which comply with equal pay legislation in each local authority party to the National Joint Council for Local Government Services (NJC) (1). An NJC job evaluation scheme was drawn up to help councils evaluate jobs, alongside joint NJC guidance issued to help councils and trade unions to review pay and grading in the light of the Single Status Agreement. The transfer of public health employees into local government needs to respect the rights of transferees, while ensuring that pay and grading systems are fair and reflect the requirements of equal pay legislation for transparency and equal pay for work of equal value.

2. Equal pay audits

2.1 At a time of organisational change, such as the transfer of public health staff to local government, it is good practice to carry out a pay audit to establish the pay and grading of employees, identify any equal pay issues and inform workforce development programmes. The 2004 National Joint Council (NJC) Implementation Agreement requires regular pay audits. Part 4.10 of the Green Book (2) recommends that local authorities use the equal pay audit toolkit available on the Equality and Human Rights Commission website which sets out that pay audits should cover:

- Relevant protections
- Basic pay
- Additional pay
- London/Regional weighting
- Other conditions of employment

3. Grading structures and contracts

3.1 Local authorities already work with the NHS and health organisations through integrated care, other joint working arrangements and joint appointments.

3.2 Most local authority jobs are evaluated under the NJC JE scheme, the Greater London Provincial Council (GLPC) (3) JE scheme or very occasionally other schemes. Chief officer and senior manager roles in local government are most often evaluated under the Hay JE scheme, or a scheme drawn up by the Local Government Employers. Chief executive job sizing and pay determination is most usually a matter of individual negotiation, but may be governed by principles encompassed in the local authority’s annual pay statement.
3.3 Local grading for NJC jobs is determined by the outcome of job evaluation which then forms the basis of exercises to place jobs on the relevant points of the NJC pay spine. Currently most public health and related jobs are evaluated under the Agenda for Change (AfC) JE scheme. Most transferees into local authorities will be transferring on AfC pay and conditions. However, a significant proportion will be transferring on either the medical consultant contract or under the pay framework for Very Senior Managers, which are both outside of the AfC scheme.

3.4 Local authorities will need to ensure the rights and protections of transferees, while ensuring fairness and equal pay for work of equal value in future pay systems, especially when new public health appointments are made. This may pose authorities with challenges, given that AfC salaries are higher than NJC equivalents in many cases, especially at more senior levels. Medical consultants or Very Senior Managers (VSMs) are outside the AfC pay and grading system. The effects will of course vary at local level.

3.5 It will be vital that local authorities engage with the unions and take a joint and transparent approach to pay and grading in order to avoid industrial disharmony and/or expensive equal pay litigation.

4. Pay and grading systems – transferees

4.1 The two options for dealing with transferees are:

   1. Maintain transferees on NHS pay and grading structures, with NHS conditions
   2. Integrate transferees into the local Single Status pay system, using the NJC JE scheme and role profiles provided and discussed below or the Hay/LGE scheme for Chief Officers and Senior Managers

4.2 Whichever option is taken, equal pay issues will need to be considered, including the extent to which TUPE/transfer scheme protections may provide a defence to pay disparities (see the equal pay section below).

4.3 Councils opting for 1) above, should use AfC matching procedures to ensure the proper maintenance of equality proofed pay structures for AfC transferees. Appendix 1 outlines what support is available to councils to assist in this process.

4.4 Those opting for 2) above will need to ensure that all the characteristics of public health jobs are fully taken into account in the job evaluation process. To assist local authorities, the Concordat Steering Group (CSG), now succeeded by the NJC subgroup on public health, has prepared job profiles which have been evaluated under the NJC and GLPC JE schemes. These are attached at Appendix 2. They are derived from AfC profiles, which were subject to extensive consultation and based on job evaluation questionnaires and job descriptions. They are not intended to prescribe what ought to be done at different levels of the public health job family or how councils should organise their public health services. They are simply a guide to how typical AfC profiles would evaluate under the AfC, NJC and GLPC JE schemes. Councils may well develop or add additional responsibilities locally. It will also be important to ensure that evaluations are consistent with local JE conventions used with the NJC and GLPC schemes.
4.5 Some public health jobs will be paid at a level which exceeds the top NJC scale point – 49. In this instance and where councils are pursuing option 2 (on preceding page) – and where jobs are not equivalent to chief officer or senior manager posts, – councils will need to check the suitability of their local scale points above 49 for accommodating public health jobs. Many councils have long had such scale points in their local ranges to accommodate certain senior jobs. This needs to be done carefully to ensure that gaps between scale points are consistent with the rest of the pay spine in order to avoid equality challenges on this basis. Where the evaluation of public health jobs shows them to be of equivalent value to NJC jobs, they should not be placed in the chief officer and senior manager grades – or above.

4.6 Some councils use two JE schemes – Hay and NJC – to evaluate senior NJC employees to ensure that pay and grading is fair in relation to Chief Officers and Senior Managers. There is an NJC Guidance Note on this process, which is listed at the end of this guidance note.

4.7 It should be noted that many public health professionals are required to hold post-graduate qualifications of a higher level than found in most local government roles. The specialist professional nature of these jobs might not render them a good ‘fit’ with the managerial nature of many Chief Officer or Head of Service posts. In that instance, local authorities could consider the development of appropriate – and equality proofed – local conventions to address this issue.

4.8 A joint review of the NJC JE scheme has produced revised guidance, including a technical note on the relationship between qualifications and levels of knowledge. This should help with issues related to qualifications.

5. Equal pay and TUPE/transfer scheme protections

5.1 Assessments carried out by the Concordat Steering Group (CSG) (4) suggested a mismatch at some levels between NHS public health pay and that of equivalent local authority jobs. This can be explained largely by the longer and higher pay ranges within the NHS. This disparity could give rise to equal pay issues. The protections against changing terms and conditions under TUPE and the transfer schemes may both provide a defence to pay disparities arising between transferees and local authority staff. Councils will need to carefully consider how those protections will apply in the particular circumstances, including whether those protections continue to apply and provide a defence at the relevant point in time. It is also recognised that when authorities are considering pay, they may be looking at the extent to which terms and conditions can be harmonised and in doing so they will be conscious of what changes may be possible under TUPE/the transfer scheme, in particular as under the transfer scheme the protections lapse on 31 March 2015.

5.2 However, the protections under TUPE and transfer schemes will not provide a defence to equal pay claims for new jobs or for existing public health posts which become vacant and are filled, as the associated protections will not apply.

6. Pay and grading systems – new starters

6.1 As outlined above, there are two main options open to councils when dealing with transferees from public health. However, it is assumed that newly advertised posts will be evaluated under the NJC or GLPC JE schemes and incorporated into the local
Single Status pay and grading structure. Once that is done, there may be compelling reasons for paying a supplement for some jobs (see labour market defences section below). This is most likely to apply to specialist recruitment and jobs that carry a clear market forces case.

7. **Labour market defences**

7.1 Councils may have a ‘market forces’ defence to equality challenges from non-public health local authority employees using a public health role as a comparator. It might be possible to argue that the relevant labour market for the job is the NHS, rather than local government and therefore it is necessary to pay a higher rate of pay for that role to ensure that the council can recruit and/or retain an appropriately skilled employee. However, it is important that local authorities exercise caution in the use of market forces arguments and use the NJC guidance in paragraph 3.57-3.60 of the Green Book. This states that market forces supplements should:

- Be based on clearly evidenced recruitment and/or retention problems
- Have clear and transparent criteria for their application
- Ensure that market salary testing uses appropriate market comparators for each individual post
- Apply to existing and newly recruited post-holders in the relevant job
- Ensure that the ‘job evaluated’ grade and any additional market supplements are clearly identified
- Be shown as a separate allowance to the pay/grade determined by job evaluation and is understood
- Ensure that the contractual terms of future payments are sufficiently clear to enable those payments to be withdrawn if the ‘market’ changes
- Be subject to regular equality audits
- Are subject to regular ‘testing’ to ensure that they continue to reflect the ‘market’
Glossary

The National Joint Council for Local Government Services (NJC)
The NJC was established in 1997 to bring together white collar and manual local government employees previously covered by the Purple and White Books – the collective agreements applying respectively to those two groups of employees.

The Green Book
The Green Book is now the collective agreement covering all local government employees in councils party to the NJC up to Chief Officer and Senior Manager grades.

Greater London Provincial Council (GLPC)
The GLPC is the Regional body of the NJC covering Greater London boroughs, which has its own job evaluation scheme for local government employees. This is used in some councils outside of London, especially in Wales and the South West.

Concordat Steering Group (CSG)
The CSG was the partnership forum established during the transition period surrounding the transfer of public health under the Health and Social Care Act 2012. It consisted of the Local Government Association, The Department of Health and the NHS trade unions. It has been succeeded by the NJC Working Group on Public Health with broadly the same composition.
Appendix 1

Guidance and support for councils assimilating transferees and new starters


- A comprehensive set of documents relating to the public health transition is available at: [http://www.hrtransition.co.uk/](http://www.hrtransition.co.uk/)