Down banding

Background
The NHS job evaluation process under Agenda for Change (AfC) was established to comply with the principles of equal pay for work of equal value, and to end discrimination. Although the scheme has been challenged in the courts, it stands up to scrutiny: as the only systematic way to measure NHS jobs against each other, and determine the correct pay band for staff undertaking different roles.

Unite representatives have been active on job evaluation schemes and evaluation panels, and continue to work to protect the scheme, and our members’ grading.

Introduction
The NHS in England was forced to make £20 billion of efficiency savings by 2015\(^6\), largely resulting from collapsing world banks and subsequent currency crises\(^2\). The NHS reorganisation in England, following the passing of the Health and Social Care Act (2012)\(^4\), cost £3 billion\(^7\), and forced NHS employers to merge functions and out-source services, to try to save money.

At least 40% of income goes on staffing costs\(^6\), so eroding (AfC) pay, terms and conditions is seen as a way to make savings. Unite in Health sees these not as ‘efficiency’ savings, but devaluing the contribution of experienced healthcare workers, leading to a loss of efficiency and ‘corporate memory’, as disillusioned staff leave or take early retirement, and the morale of those left plummets.

In Wales, Scotland and Northern Ireland, similar public service cuts are required, although they are not subject to the Act.

What is down banding?
Down banding occurs when a job description is re-written with some elements removed, so that it can be evaluated at an AfC band lower than previously. This often happens as part of a restructure of a service, even with staff consultation and Human Resources personnel involvement.

How this affects staff
- people receive less remuneration, (or expect to, after a short period of protection – it should be noted that in Scotland there is protection for life, so down banding rarely occurs, since there is no financial incentive)
- job descriptions no longer include some responsibilities or specialised status, despite the staff having these skills
- competencies they have gained to do their job are no longer recognised
- loss of recognition of professional expertise, and status/standing
- few jobs are advertised or available under the new structure, staff have to compete against each other; often for lower-paid roles
- generic job descriptions may apply across a whole department, not recognising the uniqueness of what people do
- resistance is met with the threat of dismissal, then re-engagement on lower pay
- individual staff are asked to ‘act up’, into what should be promotional posts, vacant managerial or supervisory roles, but on their existing pay band
- lack of clinical leadership means ultimate responsibility for error falls onto individual team members
- individuals are under pressure to work unpaid overtime, or take work home (eg paperwork, records) and work-life balance is damaged
- fewer staff in the team mean that everyone is expected to take on more casework, or previously paid-for responsibilities and status
- lone working, like on-call, night shifts, or some home visits, can be dangerous for staff who are not qualified, or unsupervised
- no time for appraisal, or not meeting caseload targets mean staff cannot progress, improve, nor be awarded a pay increment

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• staff who are members of professional bodies are at risk of compromising their professional Code of Practice, by working above their qualification or competence level

• even when job descriptions no longer include responsibilities and tasks, staff carry on working above the level of their new lower pay; they cannot ‘switch off’ caring

Consequences for organisations

• higher banded roles are not re-advertised, or frozen – leading to loss of clinical leadership

• lack of commitment by staff who feel pressured (even bullied) to accept changes, in order to safeguard jobs and protect services for patients – this could be construed as organisational blackmail

• morale is low, stress and bullying can become the norm, as pressure increases, professionalism, respect and equality become strained or non-existent, affecting colleagues, patients, families, and at home

• ‘presenteeism’ - staff feel duty-bound to work even when they are ill, because they know no-one else can take their case-load, or colleagues have to cover, risking public health issues

• staff are absent because of stress at work, leaving colleagues to do more, with even less time and no recognition for the increased demands

• if staff are too busy to work carefully, costly and dangerous mistakes could be made

• unqualified staff may feel pressured to carry out work they should not do, or work unsupervised

• optimum care cannot be given if there are fewer staff to maintain resources, equipment or treatment facilities properly

• record-keeping is often done too quickly, briefly, or not to standard

• updating training is postponed owing to lack of time

How are patients affected?

• staff cuts and poor morale do not improve patient services, despite what employers may try to imply in the name of efficiency

• if caseloads are too large, staff cannot give patients or families the time they need

• fewer quality checks mean samples or symptoms could be misdiagnosed, or drugs incorrectly prescribed, dispensed or given

• when record-keeping is inadequate or non-existent, there is no continuity in patient notes – and dangerous where multi-disciplinary or multi-agency teams are involved in care plans

• increased risk of hospital acquired infection, and ‘presentee’ staff could spread disease, or be too ill to work safely

• patients’ dignity, as well as their physical and mental well-being, could be neglected if staff aren’t there to give proper care

• longer waiting times, or longer journeys for specialised care could mean deteriorating health

• staff without the right level of skill may be required to carry out a task they are not qualified to do

Why organisations fail

• services and people are not managed effectively: neither capacity (staffing levels), nor capability (by not training or developing staff)

• complaints increase, mortality is too high, but no time is given to learn or improve

• compensation claims cost money – NHS Litigation Authority or local organisations pay up-front, it’s still public money that could be invested back into the NHS

• bad publicity and poor reputation, locally and/or nationally – means not being seen as hospital or service of choice, and less investment, if there are fewer patients and treatments taking place

• targets are not met, so further penalties could be imposed – financial or resources

• staff turnover becomes critical, staff sickness absence is too high, and recruitment into key roles is impossible

• equal pay claims are expensive, especially if they affect a large number of staff

• services are cut, discontinued, or privatised, because they are cheap, not good value, nor efficient

• the organisation is also at risk, and managers could be referred to their professional regulatory bodies, for running an unsafe service.

How can down banding be resisted or avoided?

Any day-to-day change in job description or services must be agreed between the organisation/manager and members of staff, before it is put in place.

There is a full process that employers must follow to ensure that posts are properly evaluated. This is set out in the NHS Job Evaluation Handbook, fourth edition July 2013"
forms part of your legal contract and terms and conditions. (Unite took an employment tribunal claimutos, and it was upheld that employers have to follow all steps in the job evaluation handbook, and cannot cut corners). The Chair of the Employment Tribunal said:

“…the contents of the job evaluation handbook constitute an integral part of the Agenda for Change agreement and are contractually binding on NHS employers and employees. ... A failure or refusal to follow those provisions amounts to a breach of the terms and conditions of the individual employee's contract of employment. For the avoidance of doubt, the respondent's failure to follow the provisions of the job evaluation handbook did amount to a breach of the provisions of both claimants' contract of employment.”

Service redesign resulting in new, or significantly changed job roles, must be negotiated with recognised staff side trade unions. Make sure your Unite reps are involved if members’ jobs and services are being reviewed. If you don’t have a rep in your department, choose someone to get involved, so that you have your say, and your roles or service don’t get overlooked.

Working in partnership is not an optional extra, it’s a contractual obligation under Agenda for Change. It is therefore an integral part of any decision-making process over terms and conditions of employment, including banding. It is absolutely clear that employers must do all they can to work in partnership, ie, use a methodology with union representatives as set out in the Job Evaluation Handbook. Every stage of the process must be transparent, employers cannot create new job descriptions, nor alter the evaluation process, without full involvement of the unions.

Likewise, health unions must be fully involved in speaking up for members. Not to put forward a case could make it harder to appeal later on. Make sure your Unite rep knows what is happening.

When jobs change during a reorganisation, new job descriptions have to be agreed with post holders. If your role changes and you are not happy with the job description, challenge it at the earliest possible stage, and ensure that it fully reflects your role.

Wise words: If key words are missed out from a rewritten job description, it could lose points when evaluated, so your post comes out on a lower band. For example: ‘should’ becomes ‘may’; or ‘has responsibility for’ is rewritten as ‘advises on’. Your job description will be matched to national ‘job profiles’, by a joint panel of managers and staff side union representatives. If this is unsatisfactory, the job will then be re-matched (by a different panel), who must state reasons for their decision, and give you a copy of the matching form.

Still working the same way? Employers frequently argue following a reorganisation, that a member of staff is working above the level of their ‘new’ role. Claiming it’s not the banding which is wrong, but the worker, who cannot accept their responsibilities have diminished. Members usually argue that the job has not changed, and in practice they need to work at a higher-banded level. Evidence is the best way of substantiating this point.

Remind your manager that if something is not in the job description, then you will not be doing the task or carrying out the responsibility in the future. Changes in job descriptions or team roles should be clarified – ask ‘If you don’t want us to do this anymore, who is going to do it?’

If you are asked to work above your level of pay, you are effectively cheapening your role – additional responsibilities or status should be evaluated, recognised and rewarded.

What if my job role does change? Completely new roles should be measured and compared properly under the Agenda for Change job evaluation scheme, using all relevant factors, and matched to job profiles. You will need to fill out a Job Analysis Questionnaire, and be interviewed for more detail. Analysis should only be carried out by a trained panel of staff representatives and managers.

For job evaluation, it is not enough to just supply a generic job description. There is a strong possibility that this has been drawn up from the factor plan in the first place. The job description (generic or not) should be accompanied by a person specification, and ideally a knowledge and skills outline. These must be agreed, and up to date.

Equality impact assessments should be carried out across the department, service or organisation, to ensure that no-one is being discriminated against.

Staff working to a regulatory body’s professional Code of Conduct should not work above their level of competence, nor qualification, otherwise they risk referral to their regulatory body, and loss of their career.

Staff should never be asked to delegate responsibility or tasks to a member of staff without knowing if they have the requisite competencies, this is also a breach of Code of Conduct.

Professional regulation is there to protect staff and patients – you can use it to argue health and safety risks legitimately.

Who gets involved? If managers draft job descriptions, or are involved in the organisational design of a department, they should not be part of the job evaluation process. If an employer fails to understand its obligations in the job evaluation process, a submission to the Job Evaluation Group (JEG) of Staff Council must be made as soon as possible. Job descriptions are a matter for local agreement, however, the process can be overruled by JEG, if it is not being followed properly.
Use the argument of patient safety whenever the opportunity arises. Employing organisations are under increased pressure to safeguard patients, especially after the Francis Report. If you have concerns about poor or unsafe service because of cuts or down banding, speak out – talk to colleagues, and your Unite representatives. Organisations and managers should ask staff involved in the service for their suggestions on how to make things more efficient, or to save money – they're there every day, they know how things work, they care about their patients, clients and families - not like financial consultants who just consider the payroll.

Read these Unite books (ask your branch for a copy):

- ‘Putting Patients First, The Duty of Care, Practical guidance for healthcare staff’, Public World and Unite the Union 2014
- ‘Record Keeping and Documentation: A Guide for Health Professionals’, Unite the Union 2014

Recommendations

- Ask colleagues to join Unite if they are not in a union
- Find out who your workplace rep is
- Become a workplace rep yourself
- Attend branch meetings regularly
- Get trained and volunteer to serve on job evaluation panels
- Work with your employers and managers to deliver a quality service as efficiently as possible

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