

## **HCA Re-grading: Backpay Proposal**

**Joint SFT and UNISON communication to all UNISON members who have been successfully re-graded**

### **1. Background**

SFT received a collective re-grading claim, submitted by UNISON on behalf of its Health Care Assistant (HCA) members in February 2022, regarding the potential inconsistency of pay bandings for HCAs (ie Band 2 HCAs undertaking Band 3 HCA roles and responsibilities).

Over the past 12 months, SFT and UNISON representatives have worked positively in partnership with managers and HCA colleagues to complete a comprehensive review of HCA roles across Musgrove Park Hospital, Community Hospitals and Yeovil District Hospital.

The review has resulted in updated Job Descriptions for Band 2 and Band 3 HCA roles for each area of the service, establishing a clear differentiation between personal care and clinical duties. It has also informed the future skills mix required by the trust in each team. A massive amount of work has gone into this project, and we would like to thank HCA colleagues for their involvement and commitment.

To deliver the required change, SFT and UNISON agreed a re-grading process in line with the Job Evaluation policy, enabling each individual HCAs and their manager to carry out an assessment against the revised JDs and relevant clinical competency framework for the service. All HCA staff who met the criteria were offered the opportunity to move up to Band 3 if they wished. Staff with at least 3 years' experience who chose to transfer, were placed at the top pay point of Band 3.

Re-grading decisions have been confirmed so far for all HCA colleagues working in MPH and the Community Hospitals. We anticipate that the YDH phase of the re-grading process will be concluded in September.

All re-grading decisions have been backdated, effective from 1 April 2023.

## **2. Backpay proposal**

The re-grading process has provided welcome clarity of HCA roles and bandings going forward, among other benefits such as a clear career development pathway for staff.

SFT and UNISON have also worked extensively together to negotiate the terms of a draft backpay proposal, to compensate HCA staff for loss of pay relating to previous service at the trust when they are deemed to have been consistently working above Band 2 duties.

The proposal was ratified at the joint staff-side committee meeting on 15 August and so has the support of all unions recognised by SFT.

In outline, the proposal seeks to recognise each month of service that an individual has served between April 2017 and March 2023. It takes into account an estimated 12-month induction period for a new starter to gain the knowledge and skills required to work at Band 3 level.

SFT and UNISON believe that this agreement achieves the right balance between fairness and affordability and settles the legal uncertainty that could have arisen for both sides in the absence of a negotiated outcome.

The table in Appendix 1 shows the payment schedule proposed for Band 2 HCAs who have agreed a variation of contract to transfer to a Band 3 job description. The payments are pro-rata to full-time equivalent hours, and taxable as base pay.

Some Frequently Asked Questions are included in Appendix 2, and will be added to as new queries arise.

## **3. Next steps and timetable**

UNISON will be conducting an electronic ballot of its members on the draft backpay proposal. This is a necessary step for the union to confirm majority support and reach a formal collective agreement with SFT, in full and final settlement of the re-grading claim the union submitted in February 2022.

The UNISON ballot will be launched after all re-grading decisions and appeals have been made. This is likely to be late September, to allow for YDH to complete its part in the assessment process. All UNISON members who have been successfully re-graded will be eligible to vote.

If you are a member of a different union, please contact your representative for details of how your union intends to consult you on the proposal.

A meeting of the joint staff-side committee has been scheduled on 17 October to receive a report on the results of union member consultations. If agreed, the backpay proposal will then be formally signed-off and implemented.

This timescale envisages payment of backpay in the November payroll.

## **4. Contact details for queries**

UNISON can be contacted at  
[office@unisonsh.org.uk](mailto:office@unisonsh.org.uk).

To ensure receipt of a ballot form, members can  
update their email contact details via  
<https://my.unison.org.uk/>

## Appendix 1

Start date	Actual Length of service as of 1st April 2023	qualifying months of service	Proposed payment (pro rata)
Mar-22	13	1	£ 74.59
Feb-22	14	2	£ 149.18
Jan-22	15	3	£ 223.77
Dec-21	16	4	£ 298.36
Nov-21	17	5	£ 372.95
Oct-21	18	6	£ 447.54
Sep-21	19	7	£ 522.13
Aug-21	20	8	£ 596.72
Jul-21	21	9	£ 671.31
Jun-21	22	10	£ 745.90
May-21	23	11	£ 820.49
Apr-21	24	12	£ 895.08
Mar-21	25	13	£ 969.67
Feb-21	26	14	£ 1,044.26
Jan-21	27	15	£ 1,118.85
Dec-20	28	16	£ 1,193.44
Nov-20	29	17	£ 1,268.03
Oct-20	30	18	£ 1,342.62
Sep-20	31	19	£ 1,417.21
Aug-20	32	20	£ 1,491.80
Jul-20	33	21	£ 1,566.39
Jun-20	34	22	£ 1,640.98
May-20	35	23	£ 1,715.57
Apr-20	36	24	£ 1,790.16
Mar-20	37	25	£ 1,864.75
Feb-20	38	26	£ 1,939.34
Jan-20	39	27	£ 2,013.93
Dec-19	40	28	£ 2,088.52
Nov-19	41	29	£ 2,163.11
Oct-19	42	30	£ 2,237.70
Sep-19	43	31	£ 2,312.29
Aug-19	44	32	£ 2,386.88
Jul-19	45	33	£ 2,461.47
Jun-19	46	34	£ 2,536.06
May-19	47	35	£ 2,610.65
Apr-19	48	36	£ 2,685.24
Mar-19	49	37	£ 2,759.83
Feb-19	50	38	£ 2,834.42
Jan-19	51	39	£ 2,909.01
Dec-18	52	40	£ 2,983.60
Nov-18	53	41	£ 3,058.19
Oct-18	54	42	£ 3,132.78
Sep-18	55	43	£ 3,207.37
Aug-18	56	44	£ 3,281.96
Jul-18	57	45	£ 3,356.55

Jun-18	58	46	£ 3,431.14
May-18	59	47	£ 3,505.73
Apr-18	60	48	£ 3,580.32
Mar-18	61	49	£ 3,654.91
Feb-18	62	50	£ 3,729.50
Jan-18	63	51	£ 3,804.09
Dec-17	64	52	£ 3,878.68
Nov-17	65	53	£ 3,953.27
Oct-17	66	54	£ 4,027.86
Sep-17	67	55	£ 4,102.45
Aug-17	68	56	£ 4,177.04
Jul-17	69	57	£ 4,251.63
Jun-17	70	58	£ 4,326.22
May-17	71	59	£ 4,400.81
Apr-17	72	60	£ 4,475.40
Mar-17	72+	61	£4,550.00

## Appendix 2 – Frequently Asked Questions

### HCA backpay FAQs

#### Eligibility for backpay

##### *Who is eligible for backpay?*

Any HCA that has been re-graded to Band 3 as a result of formal assessment against the updated job descriptions, and with a service start date at the Trust (SFT and formerly YDH) on or prior to 31 March 2022, will be eligible for backpay.

##### *I used to be a HCA but my role has changed, am I eligible for backpay?*

Any former HCA still employed within the Trust, who has previously been a Band 2 HCA, will need to be reviewed on a case-by-case basis, as these colleagues will not have automatically been assessed against the new job descriptions.

##### *I've retired and returned as a HCA, am I eligible for backpay?*

As part of the retire and return process, there is a requirement for colleagues to have a break in service. Therefore this is treated as a new contract of employment. Only service from the return date will be recognised for backpay.

The exception is for UNISON members who were in membership in February 2022 when the union claim was submitted, and who have retired and returned since this date. For these colleagues, relevant service prior to the new contract of employment will also be considered for backpay.

##### *One of my colleagues is leaving/ has left the trust, are they entitled to backpay?*

Any HCA who is due to leave or has left since April 2023, date of re-grading process implementation, will be eligible for backpay. UNISON members in membership in February 2022, when the claim was submitted, who have since left the Trust may also be included in the settlement. This will be reviewed on a case by case basis with UNISON, as these colleagues will not have been assessed against the revised job descriptions. HCA colleagues who have left the Trust, outside of the above criteria, will not be eligible for backpay and are likely to be outside of the legal framework to make a claim.

##### *I work exclusively on the bank, why am I not eligible for backpay?*

Bank-only workers are not direct employees of the Trust and are not covered by the Agenda for Change agreement which sets out the national pay and grading structure. Under the terms of the bank working agreement, HCAs can choose the shifts that they want to work, and accept work on the pay rates offered at the time.

#### Backpay calculations

##### *How has the backpay been calculated?*

The payment schedule has been calculated using a formula of £74.59 per month worked between April 2017 and March 2022. The formula reflects the 6 year average of the historic difference between the top of Band 2 and top of Band 3 pay scales. Costs of

compensation, trust finances (affordability) and assessment of legal risk have also been considered within the negotiation of the formula.

*How do I work out what I will get?*

The payment schedule listed in Appendix 1 indicates the amounts in compensation proposed, depending on the month in which you started work as an HCA for the Trust. The amounts are for full-time equivalent hours of work, and will be paid pro rata for part-time working hours.

*Why is 12 months discounted from the length of service in calculating the backpay?*

The development pathway/ programmes of induction and training indicate that it typically takes around 12 months for a new starter with no healthcare experience to gain the competency levels required for the various clinical duties in the Band 3 role.

*Why is recognition of previous service limited to 6 years?*

We recognise that many HCAs have considerably longer service than 6 years. A cap had to be set as the Trust funds to address historic liability are not limitless. It also becomes harder to evidence the change in duties that has occurred over time, the further back we go into formal records. 6 years is the maximum period set in civil courts for breach of contract claims, and it was deemed to be the most reasonable reference point for negotiating a settlement.

*Over the past few years/ recently, I have reduced/ increased my working hours, how does this impact on the calculation of backpay?*

As backpay is calculated over a prolonged period, we appreciate that colleagues' working hours may have been subject to change during this time. Basing payment on current working hours could inadvertently create winners and losers, unrelated to actual service history. We therefore propose that backpay is paid based on an average full-time equivalent [FTE] over the qualifying months of service.

*I work additional shifts on the bank, do these hours count towards the assessment of service for backpay?*

Where part-time colleagues on a substantive contract of employment can demonstrate that they have regularly undertaken additional bank shifts, on a regular pattern and on the same ward or unit in which they are normally employed, there may be potential to acknowledge these hours of work for the FTE calculation. Defining regular shifts is a

complicated area and will need to be evaluated on a case by case basis, under the guiding principle of demonstrating a clear pattern of work over a 24-month period.

### Payment issues

*Will unsocial hours enhancements previously earned at the higher rate for Band 2 work be clawed back under this proposal?*

No. Compensation has been worked out on the difference between Band 2 and Band 3 base salary only.

*When will the backpay be processed for payroll/ paid?*

We are aiming to complete the consultation requirements and formalisation of the collective agreement in time for the November payroll.

*Is the backpay taxable?*

Yes. As it relates to a correction in pay that would have been earned, backpay is subject to normal income tax and NICs.

*Can I ask for the backpay to be paid in instalments?*

A process will be in place for colleagues to be paid in instalments to avoid or minimise any benefit consequences for individuals.

**Any colleagues wishing to be paid in instalments must contact [payrollsp@somersetft.nhs.uk](mailto:payrollsp@somersetft.nhs.uk) by 6 October 2023. The lump sum must be paid in full by the end of March 2024.**