



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

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Meeting 123 - 01/05/2014

## **Report of the Internal Review Panel into Business Cases received from Section 38 Agencies to reach compliance with Government Pay Policy**

### **1. Background**

In June 2012 the HSE Internal Audit (IA) undertook a review of the remuneration paid by Section 38 agencies (being bodies funded by the HSE pursuant to Section 38 of the Health Act 2004) to their senior management. The audit identified significant key findings and the overall assessment of the control environment was considered to be seriously inadequate due to the significance of the issues identified.

The Internal Audit report, which was presented at a meeting of the HSE Board on 23<sup>rd</sup> July 2013, made twenty-two recommendations to address the issues. HSE management unreservedly accepted the recommendations and immediately set about actioning the recommendations in conjunction with the Department of Health.

In response to a number of the recommendations contained in the audit report on 27<sup>th</sup> September 2013 the Department of Health, following consultation with the Department of Public Expenditure and Reform, issued Circular 11/2013 on compliance with health sector pay policy as it applies to the health services and in particular to those bodies funded by the HSE in whole or in part pursuant to Section 38 of the Health Act 2004. The Circular reflects Government policy on public service pay. The policy makes it clear that bodies funded under Section 38 of the Health Act 2004 shall not pay nor subsidise salaries, expenses or other perquisites which exceed those normally paid within the public sector and may not supplement approved rates of remuneration with either Exchequer funding or non-Exchequer sources of funding. The Circular confirmed the position already iterated by the HSE in its Section 38 agreements with the relevant agencies.

The Department of Health Circular was issued to the health sector by the National Director of Human Resources by way of HSE HR Circular 016/2013 on 30<sup>th</sup> September 2013, (attached in Appendix I). This communication issued to the CEO's of the Section 38 Agencies, which included a copy of the audit report, and sought confirmation of compliance with the terms of the Department of Health Circular.

Agencies were requested to confirm their unequivocal confirmation of compliance by 28<sup>th</sup> October 2013. A process of engagement between the Agencies and the National HR Office was progressed throughout November 2013 in working to reach compliance.

## **2. Regional Directors of Performance and Integration Verification Process**

In December 2013 the Regional Directors of Performance and Integration (RDPI's), with support from Regional HR, worked with each Agency through a further process of verification and clarification where deviance from the pay policy was previously recorded to ensure the full implementation of the provisions of the pay policy and to assist the Agencies in reaching compliance.

In line with the pay policy, and as part of the ongoing process to reach compliance, organisations seeking to make a business case for the continuation of an unapproved allowance were invited to submit their business cases for consideration by the HSE. Business cases were also required for the continued payment of allowances which are not encompassed by or in line with the Department of Health Consolidated Salary Scales but may have been sanctioned in the past. A total of 202 business cases were received.

## **3. Internal Review Panel Process**

In March 2014, an Internal Review Panel, comprising of nominated members of the HSE Leadership Team, reviewed each business case in detail. The membership of the Panel included: Ms Laverne McGuinness, Chief Operating Officer/Deputy Director General; Mr Pat Healy, National Director of Social Care; Mr Ian Carter, National Director of Acute Hospitals; and Mr Barry O'Brien, National Director of Human Resources.

143 business cases were received in respect of Senior Managers i.e. those at salary level of Grade VIII and above for consideration by the Internal Review Panel. In addition, 59 business cases in respect of salary level below Grade VIII were reviewed and dealt with at operational level by the Regional Directors of Performance and Integration with support from Regional HR.

### 3.1 The criteria used when assessing the merits of each business case was based on the following key principles:

- Any allowance or perquisite which is not encompassed by, or in line with the Department of Health Consolidated Salary Scales, and which has not previously been sanctioned in writing by the Minister for Health, with the consent of the Minister for Public Expenditure and Reform, must cease with immediate effect
- Agencies shall not pay nor subsidise salaries, expenses or other perquisites which exceed those normally paid within the public sector
- Agencies must adhere to the consolidated salary scales where they apply and are not authorised to pay salaries in excess of the Department of Health Consolidated Salary Scales for approved grades
- Only allowances included in the Consolidated Salary Scales may be paid. These must be paid in respect of the duties and grades specified
- The approval of the Department of Health will be required where a proposed allowance is not encompassed by existing rules
- Any allowance considered for sanction should be time-bound and subject to review within a specified period
- In accordance with the *one person one salary principle* serving public servants require the consent of the Department of Public Expenditure and Reform in order to undertake other forms of paid remuneration in any part of the public service

### 3.2 Decisions on business cases

- 3.2.1 All business cases in respect of Senior Managers have been reviewed and decisions made by the Internal Review Panel are outlined in the attached document, *Decisions on Business Cases Reviewed by the Internal Review Panel*, Appendix II. In implementing the decisions made health service employers should reference the points outlined below and refer to the legal considerations provided in Section 4 of this report.
- 3.2.2 In considering the implications of recommending allowances to cease, the Internal Review Panel have set a period of up to three months to 1<sup>st</sup> July 2014 to allow sufficient time for Agencies to make the necessary arrangements to cease the payment of all unapproved remuneration and to ensure appropriate risk mitigation measures are put in place to deal with issues as they arise.

- 3.2.3 In line with Recommendation No. 20 of the IA Report, a review of the remuneration rates of CEO's and Senior Management of Agencies identified as requiring review / sizing, particularly in the Social Care Division, should be undertaken to ensure the pay rates reflect the comparable size, scale and complexity of each organisation. This review should be undertaken by the HSE in consultation with the Department of Health
- 3.2.4 In line with Recommendation No. 22 in the IA Report, all future appointments to CEO or Senior Management posts in Section 38 funded agencies should be subject to specific sanction to approve the entirety of the remuneration package and no deviations should be subsequently allowed without formal approval by the HSE in consultation with the Department of Health. In addition the new Annual Compliance Statement introduced in December 2013 to enhance the overall governance framework between the HSE and the Section 38 agencies it funds, together with the annual Service Agreement, should provide a further control mechanism to ensure only approved salaries are paid.
- 3.2.5 *Future Health: A Strategic Framework for Reform of the Health Service 2012 - 2015* provides an overarching policy framework for the establishment of Hospital Groups. The management structure and the process to implement Hospital Groups as a transition to Independent Trusts has been set out in the Higgins Report. The changes necessary in our hospital system to achieve the goals set for the Hospital Groups will require significant change in the governance and management structure across the hospitals in the Group. Each Group will have a Chief Clinical Director (CCD) who will have overall responsibility for delivery of clinical services within the Group and all individual Clinical Directors will report to the CCD.

In reviewing business cases received in respect of additional remuneration / allowances for Consultants / Clinicians, not in line with the Consultants Contract or the Department of Health Consolidated Salary Scales, it has been decided that these allowances are not appropriate and should cease to be paid in line with the time frame set out in this report. In addition it is recommended that, to ensure continued patient safety and quality of service delivery, as a matter of priority in the period available up to 1<sup>st</sup> July 2014, a process to review the appointment of Clinical Directors throughout the health service is conducted under the auspice of the National Director of Acute Hospitals in consultation with the Hospital Group Chief Executive Officers' and the Chief Clinical Directors in each Hospital Group.

- 3.2.6 Where an allowance or payment has been identified as appropriate under the *one person one salary principle* then sanction to approve such an arrangement must be sought immediately from the Department of Health and the Department of Public Expenditure and Reform in line with Section 5 of the pay policy.

#### **4. Legal Considerations**

The Internal Review Panel is cognisant of the fact that the HSE is not the employer of the individuals in receipt of the allowances under consideration. It is therefore appropriate for the employer, not the HSE or the Department of Health, to take ownership of implementation of the decisions made by the Internal Review Panel.

In guiding the Agencies to deal with the cessation of unapproved remuneration the Internal Review Panel has noted the following approaches might be considered.

##### **4.1 The principal ways in which allowances being paid to individual recipients might be removed are:**

- 4.1.1 Obtaining the agreement of the receiving employee to the cessation of the unapproved allowance.
- 4.1.2 If the allowance in question is not contractual and is genuinely discretionary;
- 4.1.3 If the allowance in question is subject to specific terms and conditions e.g. terms that dictate a defined period of time over which the allowance is payable, or an express right of the employer to remove or cease the allowance, the exercise of same should be explored;
- 4.1.4 If the allowance related to a specific duty or obligation or equivalent that is no longer carried out or required, the allowance might legitimately be defunct and the employer entitled to cease paying it;
- 4.1.5 Implementing a more direct change such as:
  - a) Imposing the change (i.e. rejecting the “offending” allowance/contractual term and offering continued employment on precisely the same terms and conditions of employment, with full recognition of service to date, but with the offending allowance/provision excised from the contract/employment relationship, with a view

to securing the employee's acceptance of the change or , or achieving another form of compromise with the employee; or

- b) Terminating the "offending" contract and offering immediate reengagement on precisely the same terms and condition of employment, with full recognition of service to date, but with the offending allowance excised from the employment relationship.

The Internal Review Panel would expect each employer to take advice prior to implementing such changes so that it does so in a legally compliant manner and/or mitigating risk to the greatest extent possible.

#### **4.2 Promotion or new working arrangements for current employees**

In making a new offer of employment, either through promotion or revised working conditions, it should be a condition of any such offer that the employee accepts remuneration in conformity with the consolidated pay scales, thereby removing any unapproved allowance. In circumstances where the allowance in question was paid to a previous holder of the post in question, the employee might contend the situation is unfair relative to his/her predecessor, however no legitimate claim to such unapproved allowance can arise as (a) the allowance in question was unauthorised and (b) acceptance of the offer of the new/revised post by the employee in question is strictly voluntary. It is important throughout that the employer make it abundantly clear that the difference in terms relates to the removal of an unauthorised allowance and, for example, is not grounded on a prohibited ground such as the nine discriminatory grounds set out in the Employment Equality Acts.

#### **4.3 New employees/recipients**

There is no reason why the historic practice of paying a particular unauthorised allowance to an individual manager/post requires that practice to be continued for future appointees and the practice (if it arises) should cease immediately.