



EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100090/2024

Held in Glasgow on 4, 5 & 6 June 2025

Employment Judge M Kearns

Mrs N Taylor

**Claimant
In Person**

Lanarkshire Health Board

**Respondent
Represented by:
Mr K Gibson -
Advocate**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal on liability was to dismiss the claim.

REASONS

1. The claimant was employed by the respondent from 5 December 2006 until 8 December 2023. From 2008 until her resignation on 8 December 2023, she was a Health Centre Administrator. Having complied with the early conciliation requirements, she presented an application to the Employment Tribunal on 5 January 2024 in which she claimed that the respondent had breached her contract by failing to re-band her post from band 4 to band 5 following the successful re-banding application of 4 colleagues. The respondent resisted the claims.

Issues

2. A case management order was issued to the claimant on 16 July 2024 requiring her to specify the contractual terms she relied upon for her claim, the sums claimed for and how they had been calculated. She responded to the order on 17 September 2024 but did not set out the particular contractual

terms relied upon. An unless order was eventually issued and the respondent applied for a Preliminary Hearing to determine whether the claimant's response to the order was compliant. The upshot of that hearing was that the contractual terms upon which the claimant relied were set out by EJ Sorrell in her Note of the hearing (paragraphs 12 to 18). At the outset of today's final hearing, I discussed with the parties the issues for determination by the Tribunal and the claimant agreed that her breach of contract claim was as set out by EJ Sorrell in her Note. It was also agreed that today's hearing would determine liability only.

- 10 3. Reference is made to paragraphs 12 to 18 of EJ Sorrell's Note but put shortly, the claimant's case is that:
- a) Clause 15 of her contract of employment dated 25 June and 14 July 2008 states that her terms and conditions are determined by the national Agenda for Change ("AfC") Terms and Conditions Agreement.
 - 15 b) Paragraph 4.1.1 of the AfC 'Re-banding of Post and Policy Procedure' (contained in the AfC Terms and Conditions Agreement) states that the date from which any re-banding is effective should be the date on which significant change took place.
 - 20 c) Paragraph 5 of the same Policy is titled: "*Roles and Responsibilities*" and under the sub-heading "*Managers*" states: "*Managers should consider if this re-banding request should apply to other staff within the team and/or across other sites*" (bullet 3) and: "*The manager is responsible for updating the job description to ensure the significant changes are reflected within 4 weeks of receiving the outcome.*" (Bullet 25 6).
 - d) The claimant also relies on Part 1 of the NHS Lanarkshire Terms and Conditions Handbook: Principles and partnership which at 1.4 states: "*Nationally, employer and trades union representatives have agreed to work in partnership to maintain an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff. The national partners have agreed to work together to meet the*
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reasonable aspirations of all the parties to - meet equal pay for work of equal value criteria.”

- e) Finally, she relies upon the introduction to the Job Evaluation Scheme which provides: *“The NHS Job Evaluation (NHS JE) scheme is used to determine the pay bands for all posts under the NHS terms and conditions of service (Agenda for Change) and supports equal pay for more than one million NHS staff. The NHS JE scheme measures the skills, responsibilities and effort that are required for a job and allocates it to a pay band. It does this by matching jobs to national job profiles or evaluating jobs locally, to set the basic pay for staff.”*

Evidence

4. The parties lodged a joint bundle of documents. The claimant also lodged a supplementary bundle. The claimant gave evidence on her own behalf. The respondent called Margaret Thomson, their Head of Health; Alison Young, Workforce Solutions Manager; and Sharon Simpson, Health and Social Work Manager for their NE Locality.

Findings in Fact

5. The following material facts were admitted or found to be proved:-

6. The respondent is Lanarkshire Health Board (also referred to as ‘NHS Lanarkshire’). The claimant commenced employment with the respondent on 5 December 2006. With effect from 25 June 2008 she was promoted to the role of Health Centre Administrator. The claimant received an ‘offer of employment letter’ from the respondent dated 25 June 2008 (243) on which she signed her acceptance on 14 July 2008 (248). The letter states: *“This document, in conjunction with your Job Description, constitutes your written particulars and contractual terms and conditions of employment.”* The letter stated at paragraph 4: *“Your job title is Health Centre Administrator, Band 4”* (244). Paragraph 15 (246) provided: *“The Terms and Conditions of Service for employees are determined by the National Agenda for Change Terms and Conditions Agreement.”* (246)

7. The national Agenda for Change Terms and Conditions Agreement incorporates a policy entitled: 'Re-banding of Post Policy and Procedure (Agenda for Change Terms and Conditions)' ("the re-banding policy"). This re-banding policy has gone through a number of versions. Version 4 (64) was in use from 20 March 2019 to 5 February 2023. It was superseded by Version 5 (83) which applied from 6 February 2023 to 6 August 2024.
8. Versions 4 and 5 of the re-banding policy both state so far as relevant as follows:

1. INTRODUCTION

NHS Lanarkshire is committed to providing a Job Evaluation Scheme which is fair and non-discriminatory. This policy is designed to clarify the rights and responsibilities of management and staff with the support of accredited trade unions/ professional organisations.

2. AIM, PURPOSE AND OUTCOMES

This policy summarises the arrangements for Re-banding of Posts in Lanarkshire which are subject to Agenda for Change Terms and Conditions of service. It describes how these arrangements will operate in practice and sets out the principles within which local procedures are determined. This policy will:

- Provide a framework for the review of job roles within NHS Lanarkshire.*
- Provide guidance on the process for both post holders and managers.*

3. SCOPE

3.1 Who is the Policy intended to Benefit or Affect?

The procedure summarised below applies to posts which are subject to Agenda for Change Terms and Conditions of service.

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4. PRINCIPAL CONTENT

4.1 Re-banding Process

It is possible that the situation may arise where the existing post holder and/or manager believe that the duties of a post have changed significantly since the post was originally banded. In these circumstances the post holder (supported by an Accredited Staff Side Representative if appropriate) and their manager must agree the significant changes to the job description and the date these changes occurred using the “Re-banding of Post Pro forma” (**Appendix A**)

This proforma must be agreed and signed by both the postholder and appropriate NHS General Manager/ Corporate Head of Service and NHS Professional Lead (if applicable) ... If agreement cannot be reached at this stage regarding the changes to the job description or the date these changes took place the “Resolution of Disputes and Grievances (Employee Dissatisfaction) Policy” may be used. In these circumstances the manager must provide written reasons. Posts will not be considered for re- banding unless the changes have been agreed by

- Postholder(s)
- NHS General Manager/ Corporate Head of Service
- NHS Professional Lead (if applicable)

.....

4.1.1 Effective Date

The date from which any re-banding is effective should be the date on which the significant change(s) to the role took place.

Please note that a re-banding application will not be accepted by the workforce team unless the effective date is agreed by all parties prior to submission.

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4.3 Grievance

In the event that the employee or group of employees or manager can demonstrate that any part of the Job Evaluation process was misapplied, they may pursue a grievance about the process, but not against the job evaluation outcome or pay banding decision. This grievance would be by use of the existing NHS Lanarkshire's "The Resolution of Disputes and Grievances (Employee Dissatisfaction)" Policy.

This would apply when:

- *Post holder/ Manager feel the process has not been followed correctly.*
- *Failure to reach agreement on the submission of evidence.*

5. ROLES AND RESPONSIBILITIES

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Managers

Managers have a responsibility to support individuals in their request.

Managers should ensure that the submission is an accurate reflection of the significant changes that have occurred to the role and they state the reasons when and why the changes took place."

9. Part 1 of the NHS Lanarkshire Terms and Conditions Handbook: Principles and Partnership states at paragraph 1.4: *"Nationally, employer and trades union representatives have agreed to work in partnership to maintain an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff. The national partners have agreed to work together to meet the reasonable aspirations of all the parties to.... - meet equal pay for work of equal value criteria...." (522)*

10. The introduction to the NHS Job Evaluation Scheme provides: *"The NHS Job Evaluation (NHS JE) scheme is used to determine the pay bands for all posts under the NHS terms and conditions of service (Agenda for Change) and supports equal pay for more than one million NHS staff. The NHS JE scheme*

measures the skills, responsibilities and effort that are required for a job and allocates it to a pay band. It does this by matching jobs to national job profiles or evaluating jobs locally, to set the basic pay for staff.” (399)

11. A version 6 of the re-banding policy was brought in in 2024, which provided at paragraph 5 that *“Managers should consider if this re-banding request should apply to other staff within the team and/or across other sites”* (110). However, this version did not apply to the claimant at the point when she resigned from her role with the respondent on 8 December 2023. Her resignation was before version 6 came in.
12. Prior to 2010, the respondent had 6 geographical units or localities: Motherwell, Bellshill, Wishaw, Coatbridge, Airdrie and Cumbernauld. However, in 2010, there was a requirement to reduce management. The respondent moved from having 6 localities with 6 General managers, 12 Service Development Managers and 6 Operational Support Managers plus 2 Mental Health Managers to a structure where there were 2 groups of 3 localities. Motherwell, Bellshill and Wishaw became the North East locality and Coatbridge, Airdrie and Cumbernauld became the North West locality. From 2010, the North East locality and the North West locality each had one General Manager, one Service Development Manager and one Operational Support Manager (“OSM”). There was also a Band 5 Business Support Manager for each locality. At the same time, the Mental Health Services that had been split across the six localities were amalgamated into one division which took on all mental health provision for the North East and North West localities. In or about 2013, the band 5 Business Support Manager (“BSM”) for the NW locality was moved across to the Mental Health Division and not replaced. In contrast, the Band 5 BSM in the NE locality was retained. The NE band 5 BSM post was held from 2010 to 2019 by Anne Burgone. Because the NW locality OSM did not have a band 5 support manager, she was more reliant on her HCAs (the next level down) for certain band 5 duties and there was accordingly asymmetry between the NW and NE localities from 2013 until around 2019.

13. In 2018, there was a national change in the NHS general medical services contract. An outcome of this was that a number of services, such as GP practices would be delivered by the respondent. This led to higher throughput of patients for the respondent. However, they had access to a source of funding for this; the Primary Care Improvement Fund. From that point (in or about 2019) it was decided that each locality (NW and NE) would have 1.5 FTE assistant OSMs. Because the NE had Ms Burgone, they were given an additional .5 FTE funding. However, NW were given 1.5 FTE in recognition that they did not already have the band 5 assistance for their OSM.
14. At all relevant times, the claimant was a band 4 Health Centre Administrator in the respondent's North East Unit. In or about 2016, four Health Centre Administrators ("HCAs") in the respondent's North West Unit ("the NW Four") made a re-banding application under the AfC Re-banding Policy, in which they argued that their posts had changed significantly since their original banding and that they should be re-banded at band 5. The claimant and her colleagues in the North East unit were made aware that this application was happening. However, they were not added to the application.
15. On 16 January 2020, the claimant emailed Shirley Nicol, one of the NW Four, to ask how their application was going. Ms Nicol replied to say it was taking a very long time. The claimant asked her (423): *"I guess in the meantime we are not to put an application in then?"* Ms Nicol said that was up to her but *"I think you would be better waiting until ours has been accepted and then the path for you should be easier"*.
16. In or about 2020, a grievance was submitted by the NW Four in relation to their re-banding application. The four had begun discussing their request for re-banding with management in 2016. A succession of managers had entered discussions with them about the content of their re-banding proforma. However, each of the managers had retired with no agreement having been reached about changes to the role for an agreed re-banding proforma. The grievance lodged by the NW Four was partly upheld and Margaret Thomson, the respondent's Head of Health was brought in to review their job description. She met with the two members of the NW Four who were still in post and a

job description was finally agreed and submitted for job evaluation. The job description did not match any of the existing job descriptions on the national database and it was declared a 'mismatch'. This meant that a job analysis questionnaire ("JAQ") was required. The JAQ process was conducted by Miss Thomson. Following the job analysis process, it was decided that the posts of the NW Four should be re-banded to Band 5.

17. After the outcome of the job evaluation process, Miss Thomson met with the NW and NE OSMs (Lorraine Russell and possibly Jeanette Brown) and HR to discuss firstly, the payroll and back-dating calculations for each of the four NW HCAs who had been re-banded and secondly, whether their re-banding should be applied to other HCAs in the same job family who had not gone through the re-banding process and to new recruits to the post. The decision taken on the second point was that the re-banding should not be applied more widely to other HCAs or to new recruits. The reason for this decision was that the NW Four's re-banding application related to the significant period from 2016 (the effective date in the application) to 2019 when the assistant OSM had been removed from the NW locality, with the result that band 5 duties had been absorbed by the NW HCAs, which had generated the re-banding request. Those present at the meeting considered that the management changes in 2018/19 had rectified that problem and that it would not be appropriate to apply band 5 to new recruits to the HCA post. Likewise, because the NE had retained their band 5 assistant OSM for the whole period, there had been asymmetry and they could not be sure the NE HCAs were doing the same role as the NW Four. The decision taken was that apart from the NW Four, the HCA post should remain at band 4. On 31 December 2022, seven years after they had originally submitted their application, the NW Four were re-banded to Band 5 with effect from (i.e. back-dated to) 1 June 2016. By this stage, only one of the NW Four was still in post. It was felt that if the NE HCAs and those who had replaced the original NW Four took a different view, it was open to them to seek re-banding themselves under the policy.

18. On or about 6 January 2023, the claimant emailed her line manager Angela Cooper (Jeanette Brown having retired) and her Health and Social Work

Manager, Sharon Simpson (258) to tell them that the NW Four had finally been re-banded to band 5. Ms Simpson responded to say she would seek advice from HR on next steps. HR responded to say that discussions would need to take place between line/senior management and postholders to agree a process for other staff currently in the HCA posts.

19. On 31 May 2023, the claimant, along with the other HCAs attended a Teams meeting with managers to agree a way forward. The meeting was chaired by Sharon Simpson, supported by Jan Hamill from HR. (Ms Simpson was relatively new in her role, having been appointed at the beginning of 2023.) The NE Unit line manager, Angela Cooper was there, along with the NW Unit manager, Lorraine Russell. Robert Foubister, Unison Representative was there to support the staff. The meeting was recorded on Teams. Ms Hamill explained that in line with the AfC Re-banding Policy, the successful re-banding only applied to the four HCAs whose names had been on the 2016 application. The claimant said that it had been her understanding that all HCAs would automatically be included in the re-banding and Ms Simpson asked those present to see if there was any written confirmation of this. The following day, Ms Simpson emailed staff to summarise some of the key points discussed at the meeting (259). Ms Simpson stated: *"In terms of moving forward, as offered at the meeting, if you feel your duties of your post have significantly changed during your time in the role, in the first instance you should have a discussion with your line manager. Both the OSMs advised on the call they have an open door policy and will meet with you to discuss should you wish to do so. She also mentioned that Mr Foubister had offered to meet with the HCAs as a team to progress discussions out with the formal meeting."*

20. Thereafter, meetings took place between management and the remaining HCAs, with trade union assistance from Mr Foubister. The content of the re-banding application was eventually agreed but management and staff did not agree about the effective date. The staff felt that as with the NW Four, they should be re-banded from 1 June 2016 and that their roles had changed significantly from that date. However, Ms Simpson was aware of the possible asymmetry between the NW and NE Localities and in the absence of the

written confirmation she had asked for from the claimant and others at the meeting, she did not feel she could sign this off because she could not confirm the facts of the matter, having only started in post at the beginning of 2023. There was much discussion over the summer of 2023 about the effective date for the proforma, including correspondence between Mr Foubister, the claimant and the respondent's chief executive. However, matters reached an impasse. Ms Simpson argued that the effective date should be October 2023 but following representations from Mr Foubister, she eventually accepted an effective date of 6 January 2023, when the claimant had begun the process by informing her of the successful re-banding of the NW Four.

21. At that point, the union advised that under the policy, the HCAs should put in their application with the January 2023 effective date that managers were prepared to agree and they could later lodge a grievance in respect of the refusal to agree the earlier effective date of 1 June 2016. All the HCAs except the claimant took the union's advice and acted accordingly. However, the re-banding proforma for this 'second cohort' could not be submitted with the claimant's name on it as she was not prepared to sign her agreement to an effective date of 6 January 2023 (289). Therefore, the claimant's name was removed from the re-banding application (288) and the final version for her colleagues ("the second cohort") was eventually submitted on or around 9 April 2024. Mr Foubister confirmed (290) that once that was approved, there was the option to lodge a grievance about management's refusal to agree the earlier effective date. Having removed the claimant's name from the collective proforma so that it could receive management sign off and go forward (288), Mr Foubister also put in a separate re-banding application proforma for the claimant with an effective date of 1 June 2016 (315). However, since the managers had refused to agree this date, the claimant's application could not be progressed further under the policy.

22. The claimant resigned from her employment with the respondent on 8 December 2023, before her colleagues' re-banding application had been submitted.

23. The re-banding application of the second cohort (all the other HCAs except the claimant) was batched with that of the NW Four and the second cohort received re-banding at band 5 back to 6 January 2023 as an outcome to their applications in or around 2024. It was only from the date the outcome to their re-banding applications was communicated to them that they became entitled to back-pay and band 5 terms from 6 January 2023. The claimant was not part of that application because she did not agree the effective date of 6 January 2023.
24. In or about 2022/23, the post of Health Visitor Team Leader ("HVTL") was re-banded by the respondent from a band 7 to a band 8a. All HVTL staff who were in post at the time were named on the re-banding application. Two trade union representatives and two HVTLs took responsibility for communicating progress with the re-banding application back to the rest of the cohort and for keeping the application updated with the names of any staff who joined prior to its submission. Their names were added into the application by their HVTL colleagues up until the date when agreement was reached with managers and the application was submitted. The application was successful and the applicants were re-banded at 8a. One new health visitor team leader had been recruited at band 7 while the process was underway. Sharon Simpson asked the two directors of nursing what should happen in relation to this new recruit. She was told that the health visitor team leader post would be banded at 8a going forward because the respondent had had problems with recruitment and retention of HVTLs because other health boards had re-banded the post at 8a. Ms Simpson was asked to meet with the new recruit and offer the post at 8a.

Discussion and decision

25. As Mr Gibson submitted, in order to come within the jurisdiction of the Employment Tribunal, the claimant requires to show that she had a contractual claim which arose or was outstanding on the termination of her employment. (Article 3 of the Employment Tribunals Extension of Jurisdiction (Scotland) Order 1994). He argues that as the claimant did not engage in a job re-banding application to conclusion, which resulted in a successful

outcome before she left employment and as the respondent has never agreed to pay her as a band 5 employee, she would need to show that the NW Four's re-banding process was sufficient to vary her contract automatically and entitle her to band 5 pay.

5 26. In a sense, the jurisdiction question is similar to the merits question and I therefore approach them both together. The starting point for this breach of contract claim is the claimant's employment contract for the Health Centre Administrator post. She received an 'offer of employment letter' dated 25 June 2008 (243) on which she signed her acceptance on 14 July 2008 (248). The
10 letter states: *"This document, in conjunction with your Job Description, constitutes your written particulars and contractual terms and conditions of employment."* The letter stated at paragraph 4: *"Your job title is Health Centre Administrator, Band 4"* (244). Paragraph 15 of the letter (246) provided that: *"The Terms and Conditions of Service for employees are determined by the*
15 *National Agenda for Change Terms and Conditions Agreement."* (246)

27. The respondent argued (21.1-2 of Mr Gibson's submissions) that the AfC 'Re-banding of Post Policy and Procedure' was not a contractual document as it was not referred to as such. Whilst I accept that the claimant did not specifically trace the precise route by which it was incorporated, by identifying
20 the relevant paragraphs in the AfC Terms and Conditions Agreement, her offer letter did state at paragraph 15: *"The Terms and Conditions of Service for employees are determined by the National Agenda for Change Terms and Conditions Agreement."* (246) Further, the various versions of the re-banding policy that were lodged all stated in their titles and on every page that they
25 were *"Re-Banding of Post Policy & Procedure (Agenda for Change T & Cs)"*. They all stated at paragraph 1: *"This policy is designed to clarify the rights and responsibilities of management and staff..."* They all stated at paragraphs 2 and 3 that they applied to posts which are subject to Agenda for Change terms and conditions of service. I have therefore given the claimant the benefit
30 of the doubt on this and concluded for present purposes that on balance (and subject to the timing issues below), the relevant version of the re-banding

policy in question was apt for incorporation and was incorporated into her contract of employment.

28. The claimant's principal argument was that the respondents had breached paragraph 15 of her employment contract (246) because they had not
5 complied with their re-banding and job evaluation policies.
29. Four different versions of the AfC 'Re-banding of Post Policy and Procedure' ('the re-banding policy') were lodged in the bundle of documents. I accepted the evidence of Alison Young on the issue of which version applied and when. She gave evidence with authority on the point. She was named on the Policy
10 as its 'contributing author'. She was also named in some of the change records as having implemented changes. The claimant fairly indicated that she did not know which version of the policy applied when. Therefore, regarding any conflict in the evidence about which version applied when, I preferred Ms Young's evidence as most likely to be reliable. With reference
15 to the dates on each document, Ms Young testified that version 2 (47) applied from 11 September 2013 to 29 June 2016; that version 3 (which was not lodged and applied from 29 June 2016 to 20 March 2019) was over-written by version 4; that version 4 (64) applied from 20 March 2019 to 5 February 2023; that version 5 (83) applied from 6 February 2023 to 5 August 2024; and that
20 version 6 (102) applied from 6 August 2024 (or possibly 4 April 2024, being the date on the footer).
30. The claimant argued that version 6 of the re-banding policy applied to her on the basis that it showed an implementation date of October 2016. However, it was clear from the change record that version 6 did not come into use until 6
25 August 2024 (or possibly 4 April 2024 at the earliest). Since the claimant resigned from the respondent's employment on 8 December 2023, version 6 could not be argued as having given her a right which arose or was outstanding on the termination of her employment.
31. The claimant argued that the changes to her job role (the effective date) dated
30 back to October 2016. However, she accepted that she did not seek to start a re-banding application under the re-banding policy until 6 January 2023. In

essence, since the claimant argues that the successful outcome of the re-banding application of her four North-west area colleagues (“the NW Four”) should have been applied to her when it was received by them or shortly thereafter; and since they received their outcome on 31 December 2022, I concluded on the facts found that the relevant version of the Policy in force at that time was version 4. At a push, the claimant might have been able to rely on version 5. However, there was no difference between versions 4 and 5 in the terms the claimant relied on. The relevant terms are the same. Neither contained the term about ‘managers’ referred to in paragraph 38 below.

10 *Section 4.1.1 re-banding Policy*

32. The claimant’s first submission was that paragraph 4.1.1 of the re-banding policy was breached by the respondent. In versions 4 and 5 of the policy, the paragraph states:

“4.1.1 Effective Date

15 *The date from which any re-banding is effective should be the date on which the significant change(s) to the role took place. // Please note that a re-banding application will not be accepted by the workforce team unless the effective date is agreed by all parties prior to submission.”*

- 20 33. In her submissions, the claimant states: *“I understand this to mean that when a job role significantly changes, the re-banding should be backdated to when those duties actually started, not when the paperwork is processed. In my case, I was carrying out the same duties as my colleagues who were re-banded from Band 4 to Band 5 following a 2016 submission. However, I was excluded from that process without justification, despite holding the same job title and duties. That is a breach of the re-banding policy and my contract.”*
- 25 With regard to this, firstly, Paragraph 4.1.1 does not give the claimant a freestanding right to re-banding in the event of significant change(s) occurring to her role. It simply defines the effective date in the context of an application made under the policy.

34. The claimant also stated that she was later asked to sign a revised proforma with a backdated effective date of January 2023, which she refused as it did not reflect the true date when the duties were assumed (i.e. 2016). Her case is that in these matters, the respondent breached their own policy by (a) excluding her from the original re-banding and (b) failing to reflect the correct effective date in any subsequent re-banding process.
35. With regard to whether the claimant was excluded from the NW Four's application as she asserts at (a), under paragraph 4.1 of the policy, the circumstances in which a re-banding of post proforma may be submitted are when the existing postholder (i.e. the claimant herself) and/or her manager believe that the duties of the post have changed significantly since the post was originally banded. The claimant could have initiated this process herself at the same time as the NW Four, but she did not do so. This point in relation to the other HCAs was fairly acknowledged by her then trade union representative at the meeting on 31 May 2023 as possibly having been a mistake. The claimant submits that she was not invited to join in or included in the proforma agreed between the NW Four and their managers. The respondent points to the transcript of the Teams recording of the meeting on 31 May 2023 (462) in which Ms Simpson asks: *"Was everybody then asked if they wanted to be part of that, Nicola?"* and the claimant appears to reply: *"I well, I was"*. However, she said that referred to something else.
36. In any event, as there was no contractual duty on the respondent to include the claimant in someone else's proforma re-banding application, I cannot see how that can be described as the claimant having been "excluded". The NW Four postholders began the process in 2016. There was nothing to stop the claimant doing so as well if she believed her own post had changed. The claimant stated in evidence that at a meeting in 2018, she and other HCAs were told by their line manager that they did not need to do anything themselves and should await the outcome of the [NW Four] process. There was no written evidence of this and I was reluctant to make a finding in fact about what had been said at the meeting of 2018 solely on the basis of the claimant's recollection of one phrase, because it would be really important to

know the context. The claimant's position that she did not act earlier because of an assurance in 2018 appeared to be inconsistent with such documentary evidence as there was. For example, the terms of the claimant's email to Shirley Nicol, one of the NW Four on 16 January 2020 (425) do not sit easily with this.

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37. With regard to the claimant's point (a), she has not shown that she had a contractual right to be included in the re-banding procedure with the NW Four, nor has she shown that she was improperly excluded. With regard to point (b), Paragraph 4.1.1 has to be read in the context of the whole section of the policy in which it appears. Section 4 of the policy sets out the re-banding process. It begins: *"It is possible that the situation may arise where the existing post holder and/ or manager believe that the duties of a post have changed significantly since the post was originally banded. In these circumstances the post holder and their manager must agree the significant changes to the job description and the date these changes occurred using the "Re-banding of Post Pro forma" (Appendix A)"* Paragraph 4.1.1 sets out how the effective date should be determined in the context of that application. Paragraph 4.1 says that if the parties can't reach agreement about this or about the changes, the grievance procedure should be used.
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- Thus, the policy sets out the route the claimant should have followed in the event that she invoked the policy and could not get management agreement to her chosen effective date. (Indeed, this was the route advised by her union). However, the claimant did not use it, with the result that her 2023 re-banding application did not go forward. I did not conclude that the claimant had shown a breach by the respondent of paragraph 4.1.1 of the contract.

Section 5 of the re-banding policy

38. The claimant confirmed under cross examination that her position was that version 6 of the re-banding policy applied to her and that the statement in paragraph 5 of that version that: *"Managers should consider if this re-banding request should apply to other staff within the team and/or across other sites"*
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- (110) gave her an automatic right to have the banding decision of the NW Four applied to her. It was clear from the evidence I accepted that this term

was not added to the re-banding policy until after the claimant's employment had terminated and any right it might have conferred on her did not arise and was not therefore, outstanding on the termination of her employment. However, even if the term had applied at termination of the claimant's employment, it was not in the policy in 2016 when the application of the NW Four was originally lodged. As I read it, it simply requires that management should consider if others should be included in the "request" rather than the outcome. Even if it did refer to the outcome, as Mr Gibson points out, it would mean that the outcome did not apply automatically to others. Finally on this point, Miss Thomson testified and I accepted that she did give consideration to whether the NW Four request outcome should be applied to the other HCAs and decided that it should not because it related significantly to a period from 2016 to 2019 when the assistant OSM had been removed from the NW locality, with the result that band 5 duties had been added to the NW HCAs, so that there was asymmetry at that point between the roles of the NW and NE HCAs. Her evidence, which I accepted, was that thereafter, the management changes in 2018/19 had rectified that problem.

39. The sixth bullet point was also not in the earlier versions of the policy and has no application to the claimant since she never got to the stage of receiving an outcome: *"The manager is responsible for updating the job description to ensure the significant changes are reflected within 4 weeks of receiving the outcome."*

Part 1 NHS terms and conditions handbook

40. In her submission, the claimant also relied on Part 1, Section 1.1 of the NHS Terms and Conditions Handbook 'Principles and Partnership', which states: *"All NHS Employers are obliged to adhere to employment and tax law and other statutory provisions."* (This did not appear in EJ Sorrell's Note of the claimant's case.) She further referred to Section 1.4 of the NHS Terms and Conditions Handbook, which reflects national policy and states: *"Nationally, employer and trades union representatives have agreed to work in partnership to maintain an NHS pay system which supports NHS service modernisation and meets the reasonable aspirations of staff. The national*

partners have agreed to work together to meet the reasonable aspirations of all the parties to - meet equal pay for work of equal value criteria.” The claimant argued that by failing to include her in the re-banding outcome, despite doing the same work, the respondent had failed to meet the principle of equal pay for work of equal value; and that by excluding her from the 2016 re-banding outcome, the respondent had created a pay disparity between staff undertaking the same role, thereby breaching this partnership principle and the legal principle of equal pay for work of equal value. I agree with Mr Gibson that this section of the document is a preamble with general principles, not a statement of contractual rights and obligations such as would be apt for incorporation into an individual employee’s employment contract. The Handbook does have contractual terms in it but they start at Part 3. Even if they were contractual, the sections quoted above do not mean that one successful re-banding application automatically applies to everyone else with the same job title.

41. Finally, the claimant relied upon the NHS Job Evaluation Scheme, which, she submitted is central to the AfC Terms and Conditions. The Scheme states: *“The NHS JE scheme is used to determine the pay bands for all posts under the NHS terms and conditions of service (Agenda for Change) and supports equal pay for more than one million NHS staff. The NHS JE scheme measures the skills, responsibilities and effort that are required for a job and allocates it to a pay band. It does this by matching jobs to national job profiles or evaluating jobs locally, to set the basic pay for staff.”* (399) She submitted that the JE Scheme requires that posts are evaluated based on duties, not on the individual postholder. She stated that: ‘The Respondent’s position that only named individuals in the original submission could benefit from re-banding flies in the face of this principle. The duties of the post, not the individual, determine the pay band.’ Again, this wording does not create a contractual right upon which the claimant can rely. As Mr Gibson submits, there is no term of the claimant’s contract providing that a successful application by one cohort of post holders must be applied to the rest of the postholders who did not participate in the application.

42. For completeness, the claimant also appeared to argue that a term that ‘a successful re-banding by one postholder is automatically applied to other postholders in the same post’ should be implied into the contract by custom and practice. The claimant said that the respondent had done this in the case of the Health Visitor Team Leaders (“HVTLS”) although she accepted that this was the only example she was aware of. She appeared to extrapolate from this one example that this was a near universal practice. There was nothing in this. On the evidence, all but one of the HVTLS had been added by colleagues as applicants to the re-banding application prior to its agreement by management and submission. With regard to the one new recruit who was not part of the application, a decision had been taken that the post would be banded at 8a going forward because the respondent had had problems with recruitment and retention of HVTLS because other health boards had re-banded the post at 8a.
43. At the point where her employment was terminated by her resignation, the claimant’s contract stated that she was employed as a Health Centre Administrator Band 4. If she considered that there had been significant changes to her role, the contract contained a procedure under which she - as postholder - could apply for re-banding. This procedure required her to agree any significant change(s) to the role and the effective date from which those changes applied with her managers. In the event of failure to reach agreement, the contract specifically provided for what was to happen in the second paragraph of 4.1: *“If agreement cannot be reached at this stage regarding the changes to the job description or the date these changes took place the “Resolution of Disputes and Grievances (Employee Dissatisfaction) Policy” may be used.”* The claimant did not follow through with any application for re-banding under the contractual policy. In terms of the policy, she therefore remained at Band 4 at the point when she terminated the contract. She has not shown that the respondent is in breach of the contract or any of the policies incorporated into it. It follows that the case is dismissed.