

9th June 2021

BY EMAIL

Our Ref: FOI 1486

Dear [REDACTED]

Your request for information was received on 28th May 2021 and was dealt with under the terms of the Freedom of Information Act 2000. Please be advised that the Business Services Organisation (BSO) has now completed its search for the information you requested with regards to pay for agency workers and Trust staff.

Please find this information, below and attached.

Why is the BSO pretending to have nothing to do with backpay, when a NI agency manager says the backpay can not be paid without BSO's approval?

The BSO's position is set out within the response to FOI 1410, which you have already received. This is attached for your reference.

Please outline all action since the 4 March 2021 letter referred to in your 22nd April response, sent / communicated to all care agencies in NI, and Trusts, to ensure that Trusts and agencies know that BSO will not obstruct any backpay sign offs. And that on the contrary, as your 4 March letter infers, paying workers the legal, parity rate is important to the BSO.

I again refer you to the response for FOI 1410, which you have already received. Specifically, this notes that "BSO PaLS is not responsible for the rates of pay agreed". The BSO will provide no further comment.

Please Outline CLEARLY all pertinent issues within discussions, meetings, and written correspondence, between Trusts, BSO and agencies in relation to the delay in changing the rates over to the new, legal, higher rate for agency workers, since the March 4th letter was issued.

Please refer to the above response. Please also find attached copies of correspondence sent by BSO to Trusts in relation to the 4th March letter issued



to Recruitment Agencies. Please note that some information has been redacted in accordance with Section 40 of the Freedom of Information Act 2000 ('Personal Information').

Please Outline CLEARLY all pertinent issues within discussions, meetings, and written correspondence, between Trusts, BSO and agencies in relation to the delay in issuing backpay to all agency workers affected, since the March 4th letter was issued.

Please refer to the above response.

I hope that the information provided assists you. If you are dissatisfied in any way with the handling of your request, you have the right to request a review. You should do this as soon as possible or in any case within two months of the date of issue of this letter.

In the event that you require a review to be undertaken, you can do so by writing to

Information Governance Manager,
2 Franklin Street,
Belfast,
BT2 8DQ

If, following an internal review, carried out by an independent decision making panel, you remain dissatisfied in any way with the handling of the request, you may make a complaint under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the BSO has complied with the terms of the Freedom of Information Act.

You can contact Information Commissioner at:

Website: www.ico.org.uk
Phone: 0303 123 1113
Email: casework@ico.org.uk
Post: Information Commissioner's Office
3rd Floor, 14 Cromac Place
Belfast
BT7 2JB

In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out. However the Commissioner has the option to investigate the matter at his discretion.

Yours Sincerely,

A handwritten signature in cursive script that reads "Karen Bailey".

Karen Bailey
Acting Chief Executive

Enc

**Electronic communication
issued to all Contracted
Suppliers via eTendersNI**

Tel: 028 9536 1373
Website: www.hscbusiness.hscni.net

Contact us using the eTendersNI portal
Website <http://etendersni.gov.uk>

04 March 2021

To all Contracted Suppliers

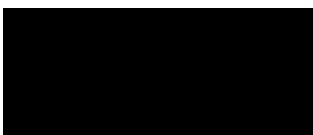
Framework No: 486666

Framework Title: Agency Workers – Nursing and Healthcare Support Workers

We would like to remind contracted suppliers of their obligations under the Framework and the Agency Worker Regulations (Northern Ireland) 2011 to ensure that, in terms of the payment of enhancements for unsocial hours, pay parity is applied to the hours 8.00pm-6.00am for night shift workers as outlined in the NHS Terms and Conditions of Service Handbook. We would like specifically to remind contracted suppliers of the following from the Handbook:

Where a continuous night shift or evening shift on a weekday (other than a public holiday) includes hours outside the period of 8pm to 6am, the enhancements should be applied to the whole shift if more than half of the time falls between 8pm and 6am.

Yours sincerely



Senior Procurement Manager

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Suppliers via eTendersNI**

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Website: www.hscbusiness.hscni.net

Contact us using the eTendersNI portal
Website <http://etendersni.gov.uk>

04 March 2021

To all Contracted Suppliers

Framework No: 556151

**Framework Title: Agency Workers – Non-Medical (Excluding Nursing and
Healthcare Support Workers)**

We would like to remind contracted suppliers of their obligations under the Framework and the Agency Worker Regulations (Northern Ireland) 2011 to ensure that, in terms of the payment of enhancements for unsocial hours, pay parity is applied to the hours 8.00pm-6.00am for night shift workers as outlined in the NHS Terms and Conditions of Service Handbook. We would like specifically to remind contracted suppliers of the following from the Handbook:

Where a continuous night shift or evening shift on a weekday (other than a public holiday) includes hours outside the period of 8pm to 6am, the enhancements should be applied to the whole shift if more than half of the time falls between 8pm and 6am.

Yours sincerely




Senior Procurement Manager

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: Framework 486666 - Communication to Contracted Suppliers regarding payment of Unsocial Hours Payments.
Date: 08 March 2021 16:47:28
Attachments: [REDACTED]
Importance: High

Dear all

The attached communication was issued by PaLS on behalf of the Assistant Director of HR for each of the Trusts and BSO; it was sent to all contracted suppliers on the above Framework for Nursing and Healthcare Support Workers. Please ensure that this is shared with all managers within your Trust/organisation who have responsibility for placing orders, approving timesheets or making invoice payments for Agency Nursing and HSW staff.

Regards

[REDACTED]
Procurement Team Leader



Procurement and Logistics Service | 77 Boucher Crescent | Belfast | BT12 6HU
Tel: [REDACTED] | email: [REDACTED]@hscni.net
Website: www.hscbusiness.hscni.net

Tender Opportunities advertised on: eTendersNI.gov.uk

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: Framework 556151 - Communication to Contracted Suppliers regarding payment of Unsocial Hours
Date: 08 March 2021 16:48:45
Attachments: [REDACTED]
Importance: High

Dear all

The attached communication was issued by PaLS on behalf of the Assistant Director of HR for each of the Trusts and BSO; it was sent to all contracted suppliers on the above Framework for the supply of Non-Medical Agency Workers. Please ensure that this is shared with all managers within your Trust or organisation who have responsibility for placing orders, approving timesheets or making invoice payments for Non-Medical Agency workers.

Regards

[REDACTED]
Procurement Team Leader



Procurement and Logistics Service | 77 Boucher Crescent | Belfast | BT12 6HU
Tel: [REDACTED] | email: [REDACTED]@hscni.net
Website: www.hscbusiness.hscni.net

Tender Opportunities advertised on: eTendersNI.gov.uk

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: Framework 556151 - Communication to Contracted Suppliers regarding payment of Unsocial Hours
Date: 08 March 2021 16:48:45
Attachments: [REDACTED]
Importance: High

Dear all

The attached communication was issued by PaLS on behalf of the Assistant Director of HR for each of the Trusts and BSO; it was sent to all contracted suppliers on the above Framework for the supply of Non-Medical Agency Workers. Please ensure that this is shared with all managers within your Trust or organisation who have responsibility for placing orders, approving timesheets or making invoice payments for Non-Medical Agency workers.

Regards

[REDACTED]
Procurement Team Leader



Procurement and Logistics Service | 77 Boucher Crescent | Belfast | BT12 6HU
Tel: [REDACTED] | email: [REDACTED]@[hscni.net](mailto:[REDACTED]@hscni.net)
Website: www.hscbusiness.hscni.net

Tender Opportunities advertised on: eTendersNI.gov.uk

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: Unsocial Hours
Date: 12 March 2021 15:55:00
Attachments: [REDACTED]
Importance: High

All

Please see attached emails from [REDACTED] to all Trust CAG representatives confirming communication to all agency suppliers. Please can I ask that this is circulated to all staff in your Trust/Organisation who have responsibility for placing orders, approving timesheets or making invoice payments for Agency staff.

Regards

[REDACTED]

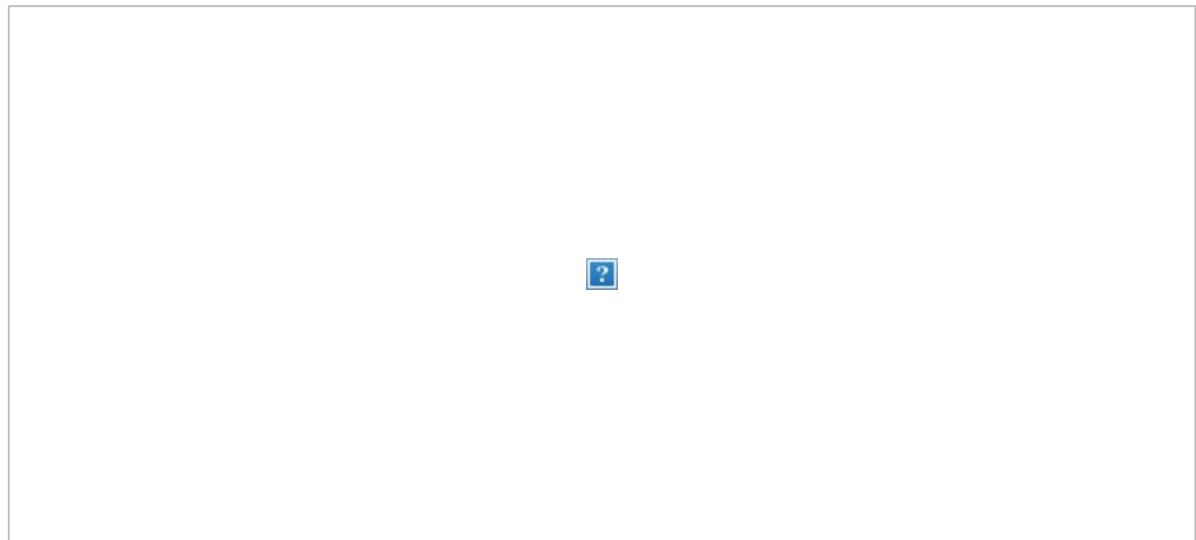
[REDACTED]

Senior Procurement Manager

Description: gif bso


Procurement and Logistics Service | 77 Boucher Crescent | Belfast | BT12 6HU
Telephone: [REDACTED] | Mobile: [REDACTED] | Email: [REDACTED]@hscni.net
Website: www.hscbusiness.hscni.net

Tender Opportunities advertised on: eTendersNI.gov.uk



30th June 2021

BY EMAIL

[REDACTED]
[REDACTED]
Our Ref: FOI 1486

Dear [REDACTED]

We are writing to you in response to your request for a review of the above referenced Freedom of Information request, received by the Business Services Organisation on 10th June 2021.

We can advise that a review panel was convened on 28th June 2021 to evaluate the matter. This panel consisted of Ms Julie Erskine (Chair, BSO) Mr Peter Wilson (Interim Director of Operations, BSO) and Mr Alphy Maginness (Chief Legal Advisor).

The panel reviewed your Freedom of Information request, the response to it, as well as the other FOI request referenced within this response.

The panel recognises that you remain dissatisfied with BSO's position. However, the panel concluded that BSO holds no further information with which to furnish you, other than what has been provided already. The panel would therefore reiterate a part of the response to FOI 1410, issued to you on 1st March 2021, namely:

"BSO PaLS is not responsible for the rates of pay agreed. The Contractor must ensure that all Agency Worker rates of pay comply with the Agency Workers Regulations (Northern Ireland) 2011 and the Agenda for Change pay structure as outlined in Part 2 of the NHS Terms and Conditions of Service Handbook".

The panel, however, wished to provide the following clarification to you, as it might provide further assistance:

- The relevant procurement framework was set up by BSO on behalf of HSC organisations including Trusts, and clearly sets out what rates are to be paid;
- Recruitment agencies are obligated to pay the correct hourly rate, and submit invoices to Trusts;



- The terms and conditions of the framework require those participating companies (recruitment agencies) to apply Agenda For Change terms and conditions where enhancements are applicable for example unsocial hours payments (Agenda for Change Handbook Section 2);
- Trusts verify these invoices against agreed rates and authorise payments to the agencies.

The panel wishes to advise that it is incumbent upon the agency to ensure invoices are submitted correctly, with the correct rate of pay and that rate is in turn paid to the worker they have provided. The contractual relationships involved in agency recruitment arrangements are:

- Trusts contract with the Agencies to provide a worker but do not employ that worker. The Trust pays the Agency for a service which includes the cost of providing that worker;
- The Recruitment Agency holds the contract of employment for the worker and is responsible for payment to the worker for the hours worked at a pre-agreed rate. Terms and conditions of the contract between the Trust and the Recruitment Agency, set out in the framework established by BSO, require that payment to the worker of agreed rates should include the enhancements set out in section 2 of the Agenda for Change Handbook where applicable.

In line with the response to FOI 1410, the panel wishes to reiterate that the BSO are not responsible for ensuring that recruitment agencies pay the correct hourly rate to workers they place in HSC organisations, that responsibility lies with the recruitment agency themselves. The panel would also like to draw your attention to communications issued to contracted suppliers, provided to you previously under FOI 1410, reminding the suppliers of their obligations.

If an agency has submitted incorrect invoices they should raise that matter directly with the individual Trusts involved in order to seek resolution.

If you have evidence that an agency has charged a Trust at the enhanced unsocial hours rate and failed to pass that rate on to the worker BSO would welcome sight of such evidence.

The panel would therefore advise that should you have issues with rates of pay received, you should raise them directly with the Agency or Agencies, who in turn can raise them with the Trust(s).

We hope that the outcome of this review panel has been of assistance to you.

If, following this internal review, carried out by an independent decision making panel, you remain dissatisfied in any way with the handling of the request, you may make a complaint under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the BSO has complied with the terms of the Freedom of Information Act.

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In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out. However the Commissioner has the option to investigate the matter at his discretion.

Yours Sincerely



Ms Julie Erskine
BSO Chair



Mr Peter Wilson
Interim Director of Operations



Mr Alphy Maginness
Chief Legal Advisor