NHS Employers’ interpretation of pay protection for career grades returning to training

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Context

This document has been produced to offer guidance on the pay protection provisions for career grade doctors and dentists who choose to return to training. It is not exhaustive.

Pay protection can offer a measure of financial security to a career grade doctor or dentist contemplating returning to training. However, it is a complex and regularly disputed issue. Applied incorrectly it can result in significant cost to both the current individual employer and future employers on the practitioner’s rotation, as well as being an inconvenience and creating uncertainty for the individual.

NHS Employers is committed to establishing a consistent approach to this subject, which can be supported by all parties concerned. This guidance has been created to clarify the current provisions of paragraphs 132 and 135 of the Hospital Medical and Dental Terms and Conditions of Service and provides examples of how to calculate pay for a sample of the grades that are eligible for pay protection upon return to training.
The rationale for pay protection for career grade practitioners returning to training

Pay protection was originally designed to reflect the expectation of a certain level of salary that being a career grade doctor would provide, which would otherwise be lost upon returning to training.

The current provisions were incorporated into the terms and conditions on 1 August 2007. The rationale behind this change was to make pay fairer and more affordable for career grade practitioners returning to training, but at the same time continue to provide the security of a defined level of income for the individual doctor and to provide a definitive criteria for the application of the provision.
Summary

- Pay protection applies to practitioners occupying a national career grade post contracted on national terms and conditions of service, titles and pay immediately prior to starting a training post.
- In order to be eligible, practitioners must have worked continuously in a national career grade post or posts on national terms and conditions for a minimum period of 13 months.
- Pay protection is calculated on basic pay only, with the practitioner receiving cost of living allowances but not incremental rises.
- Pay protection should continue until such time as the basic pay plus banding that the practitioner would normally receive as a trainee, is more beneficial than the pay point value the practitioner would receive under the pay protection provisions.
- Pay protection applies to the basic pay scale value only. It does not include any additional programmed activities, sessions, or additional notional half days.
- Banding supplements will not be payable to practitioners who are pay protected. Any work undertaken during out of hours or on-call in the training post will be paid for on the same basis as if the work had been carried out under the previous career grade contract. For example, through contracting for additional programmed activities (PAs), additional sessions, additional notional half days or on-call availability supplements as necessary.
- Junior doctor banding supplements are included when initially calculating whether pay protection is more beneficial to the practitioner. Please see the flowchart on page 10 for further clarification.
Eligibility

Practitioners who have given continuous service in a career grade post or posts for at least 13 months immediately prior to re-entering training will be eligible for pay protection for as long as it is more favourable. Career grade posts are classified as:

- consultant
- associate specialist
- specialty doctor / dentist
- medical officers / senior medical officers
- staff grade
- hospital practitioner
- clinical assistant
- salaried primary care dentist.

Individuals already paid or contracted under the previous pay protection arrangements before 1 August 2007 will continue to be so paid until the end of the contracted post.

Pay protection does **not** apply to doctors in local posts, for example trust doctors, as these are not national grades and therefore not eligible.
The application of pay protection

Pay protection applies to a practitioner’s basic pay point only. Pay protection is given on basic pay point only (which is frozen with the exception of cost of living increases) for so long as it is favourable to do so.

When calculating the more favourable method of remuneration, if the basic pay and applicable banding supplement the practitioner would receive under the training grade pay structure is higher than the basic pay point the practitioner received under their previous career grade post, then pay protection will cease to apply. The applicable training grade salary should be determined by calculating the number of years the practitioner has worked in the same or a higher grade in the past.

Once pay protection has been determined as the more favourable option then the total remuneration for the post, including elements such as premium time, additional hours and on-call remuneration (where an on-call working pattern is in effect) should be calculated as if the practitioner is still on their previous career grade terms and conditions. These payments should not be included when calculating the previous career grade basic pay point and are not pensionable.
It is possible that not every employer on a specialty registrar’s rotation will have a copy of a practitioner’s CV in advance of them rotating. Therefore it is crucial that employers are able to see at a glance whether a practitioner was being pay protected in their previous post.

For the trusts that use the Electronic Staff Record (ESR) payroll system, this should be possible by amending either the job title or payroll description of the post to include the words ‘salary protected’ and display each pay element separately in the body of the payslip so it is clear what the practitioner is being paid. Employers could also display the protected career grade pay code, for example MC46, on the practitioner’s records. This would help the current employer identify salary protected individuals when ESR is used to run data reports.

Where this adjustment is not possible we recommend that employers separate each pay element on the practitioner’s payslip so that it is as clear as possible to subsequent employers that the practitioner is being pay protected.
The case of Barts and the London NHS Trust v Verma regarding pay protection was taken all the way to the Supreme Court. The effects of the judgement are relatively limited due to the fact that the practitioner returned to training just before the pay protection rules were changed and, more importantly, due to the uniqueness of the case.

The case demonstrated that it is absolutely imperative that employers produce their own terms and conditions of service, contracts, titles and pay for trust posts to avoid confusion with national grades. For example, employers should not use titles such as ‘trust grade associate specialist’ as this can easily be confused with the nationally agreed associate specialist grade, which has been closed to new entrants since 2008.
Pay protection flowchart

The flowchart below aims to help employers determine where pay protection is appropriate.

Was the practitioner previously employed in a formal national career grade post contracted on national terms and conditions of service? I.e. staff grade, specialty doctor, associate specialist, hospital practitioner, clinical assistant, consultant or salaried primary care dentist.

Yes

Has the practitioner been continuously employed in a career grade post or posts for a minimum of 13 months immediately prior to re-entering training?

Yes

Is the career grade basic pay scale point higher than the appropriate training grade basic pay scale point plus applicable banding supplement?

Yes

Pay protect the practitioner on their previous career grade basic pay point and calculate payment for their total earnings in the same way as if they were still occupying their previous career grade post. The practitioner will not receive a banding supplement.

No

The practitioner should be paid using the training grade basic pay plus banding supplement as they do not meet the criteria for salary protection upon returning to training.

No

The practitioner should be paid using the training grade basic pay plus banding supplement as it is more favourable than the protected career grade basic pay scale point.
The examples given below use notional salaries for the sake of clarity.

Normal working hours for junior doctors are Monday to Friday, 7am to 7pm and premium time / out of hours apply to hours outside Monday to Friday, 7am to 7pm.

On return to training, if more favourable, eligible practitioners have their basic salary point on their previous career grade contract protected. They will continue to receive any applicable cost of living increases but will not receive any annual increments.

Any work in addition to the basic 40 hours necessary to carry out duties in the training post is calculated and paid for under the terms of their original career grade contract.

The examples will start by looking at what constitutes the protected salary of each career grade. We then look to see if the trainee pay is more favourable. Then, if the junior doctor salary is less favourable, we demonstrate how to calculate pay protection and how to pay for out of hours.

1. A staff grade practitioner on the pre-2008 contract returning to training

A staff grade practitioner before re-entering training earned £40,000 for a basic 10 session (40 hour) working week. They received £4,000 for one additional session giving a total take-home pay of £44,000. The protected basic pay point on return to training is **£40,000**. The additional session in the previous career grade post is not protected.

In contrast, if as a trainee the individual would earn £40,000 with a 50 per cent banding supplement, their total income would be £60,000, in which case it would be more favourable for the individual to receive the junior doctor salary. This is because the basic pay point the practitioner received as a career grade (£40,000) is lower than the junior doctor basic pay plus banding (£60,000).

**Example of calculating pay protection if it is more favourable**

Upon returning to training, if part of the work is undertaken in out of hours then that work may be included within the basic 10 sessions (40 hours). If duty over 10 sessions (40 hours) is required then the employer will contract the individual for additional sessions. The number of hours per session for out of hours should be determined according to the nature of the out-of-hours work. The provisions of paragraph 16d of the Hospital Medical and Dental Terms and Conditions of Service detail how to pay for on-call duties.

**Example of how to pay for out of hours**

In the training post the practitioner now works a full shift pattern for an average of 48 hours per week. Under the pay protection provisions the practitioner would have their protected basic pay point of £40,000 for the basic 40 hours, plus two additional sessions for the additional eight hours worked. Under the pay protection provisions they would now earn £48,000, receiving £4,000 per annum for each additional session worked.
If the doctor is working a non-resident on call and works for a substantial proportion of the out-of-hours period, they should receive one session for every six hours of on-call duty under paragraph 16d iv. If the practitioner works an average of 36 hours a week in hours with a further 12 hours of duty per week out of hours, then they should receive nine sessions for the 36 hours of in-hours work and two sessions for the 12 hours of out-of-hours work. This would make a total of 11 sessions, meaning total take-home pay of £44,000.

2. An associate specialist on the pre-2008 contract returning to training

An associate specialist before re-entering training earned £55,000 per week. They received £5,000 for one temporary additional notional half day (NHD) giving a total take-home pay of £60,000. The protected basic pay point on return to training is **£55,000**. The additional NHD in the previous career grade post is not protected.

In contrast, if as a trainee this individual would earn £40,000 with a 50 per cent banding supplement, their total income would be £60,000, in which case it would be more favourable for the individual to receive the junior doctor salary. This is because the basic pay point the practitioner received as a career grade (£55,000) is lower than the junior doctor basic pay plus banding (£60,000).

**Example of calculating pay protection if it is more favourable**
The pre-2008 associate specialist contract was a professional contract, not a time-based one. Additional NHDS or fractions thereof may be contracted for where the employer considers the duties to be particularly onerous. This approach may be used to reflect out-of-hours or on-call duties. Application will reflect normal practice in the use of the national contract provisions in the employing trust.

3. A specialty doctor (2008) returning to training

This example starts by assuming all hours worked are in standard hours and then examines the effect of out-of-hours work.

A specialty doctor before re-entering training earned £40,000 for a basic 10 PA working week. They received £4,000 for one extra PA giving a take-home pay of £44,000. The protected basic pay point on return to training is **£40,000**. The additional PA in the previous career grade post is not protected.

In contrast, if as a trainee this individual would earn £40,000 with a 50 per cent banding supplement, their total income would be £60,000, in which case it would be more favourable for the individual to receive the junior doctor salary. This is because the basic pay point the practitioner received as a career grade (£40,000) is lower than the junior doctor basic pay plus banding (£60,000).

**Example of calculating pay protection if it is more favourable**
In the training post, the practitioner now works a full shift pattern in normal working hours for an average of 48 hours per week. Under the pay protection provisions, the practitioner would have their protected basic pay point of £40,000 for the basic 40 hours plus two additional PAs for the additional eight hours worked. In this scenario, the practitioner would earn £48,000, receiving £4,000 per annum for each additional PA worked.

**Example of how to pay for out of hours**
If part of the 48 hours is worked in premium time, total pay might be calculated on the basis of four hours’ pay for every three hours worked in premium time. If, for example, an average of 36 hours a week (nine PAs) are worked in hours and 12 hours (four PAs) a week are worked in out of hours, then they should receive 13 PAs, meaning total take-home pay would be £52,000.

In addition, if the practitioner is required to take part in an on-call rota, the appropriate availability supplement should be applied to their basic salary in addition to the above premium time arrangements.
4. An associate specialist on the new 2008 contract returning to training

This example starts by assuming all hours worked are in standard hours and then examines the effect of out-of-hours work.

An associate specialist before re-entering training earned £75,000 for a basic 10 PA week. They received £7,500 for one extra PA giving a total take-home pay of £82,500. The protected basic pay point on return to training is £75,000. The additional PA in the original post is not protected.

In contrast, if as a trainee the individual would earn £48,000 with an 80 per cent banding supplement bringing their total income to £86,400, then it would be more favourable for the individual to receive the junior doctor salary as the basic pay point the practitioner received as a career grade (£75,000) is lower than the junior doctor basic pay plus banding (£86,400).

Example of calculating pay protection if it is more favourable

In the training post they now work a full shift pattern in normal working hours for an average of 48 hours per week. Under the pay protection provisions the practitioner would have their protected basic pay point of £75,000 for the basic 40 hours plus two additional PAs for the additional eight hours worked. In this scenario, the practitioner would earn £90,000, receiving £7,500 per annum for each additional session worked.

Example of how to pay for out of hours

If part of the 48 hours is worked in premium time, total pay might be calculated on the basis of four hours’ pay for every three hours worked in premium time. If, for example, an average of 36 hours (nine PAs) a week are worked in hours and an average of 12 hours (four PAs) a week fell in premium time, then they should receive 13 PAs, meaning total take-home pay would be £97,500.

In addition, if the practitioner is required to take part in an on-call arrangement, the appropriate availability supplement should be applied to their basic salary in addition to the above premium time arrangements.

5. A consultant on the 2003 contract in England returning to training

This example starts by assuming all hours worked are in standard hours and then examines the effect of out-of-hours work.

A consultant before re-entering training earned £75,000 for a basic 10 PA week. They received £7,500 for one extra PA giving a total take-home pay of £82,500. The protected basic pay point on return to training is £75,000. The additional PA in the original post is not protected.

In contrast, if as a trainee the individual would earn £48,000 with an 80 per cent banding supplement, bringing their total income to £86,400, then it would be more favourable for the individual to receive the junior doctor salary as the basic pay point the practitioner received as a career grade (£75,000) is lower than the junior doctor basic pay plus banding (£86,400).

Example of calculating pay protection if it is more favourable

In the training post they now work a full shift pattern in normal working hours for an average of 48 hours per week. Under the pay protection provisions the practitioner would have their protected basic pay point of £75,000 for the basic 40 hours plus two additional PAs for the additional eight hours worked. Under the pay protection provisions the practitioner will now earn £90,000, receiving £7,500 per annum for each additional session worked.
Example of how to pay for out of hours
If part of the 48 hours is worked in premium time, total pay might be calculated on the basis of four hours’ pay for every three hours worked in premium time. If, for example, an average of 36 hours (nine PAs) a week are worked in hours and an average of 12 hours (four PAs) a week fell in premium time, then they should receive 13 PAs, meaning total take-home pay would be £97,500.

In addition, if the practitioner is required to take part in an on-call arrangement, the appropriate availability supplement should be applied to their basic salary in addition to the above premium time arrangements.

Part-time doctors returning to training
Part-time career grade doctors should be considered for pay protection in the same way as full-time career grade doctors using the same criteria and principles. An example of how to calculate protection for part-time career grades is below.

A part-time specialty doctor returning to training as a part-time trainee
This example starts by assuming all hours worked are in standard hours and then examines the effect of out-of-hours work.

A specialty doctor before re-entering training earned £20,000 for a basic five PA week. They received £4,000 for one extra PA giving a total take-home pay of £24,000. The full-time basic pay scale point is £40,000. Their protected salary on return to training is £20,000 as they will still be working part time. The additional PA in the original post is not protected.

In contrast, if as a trainee the individual would be classified as F6 and therefore earn £24,000 with a 50 per cent banding supplement bringing their total income to £36,000, then it would be more favourable for the individual to receive the junior doctor salary as the basic pay point the practitioner received as a career grade (£20,000) is lower than the junior doctor basic pay plus banding (£36,000).

Example of calculating pay protection if it is more favourable
In the training post they now work a full shift pattern in normal working hours for an average of 24 hours per week (WTE of 0.5). Under the pay protection provisions the practitioner would have their protected basic pay point of £20,000 for the basic 20 hours, plus one additional PA for the additional four hours worked. Under the proposals the practitioner will now earn £24,000, receiving £4,000 per annum for the additional PA worked.

Example of how to pay for out of hours
If part of the 24 hours is worked in premium time, total pay might be calculated on the basis of four hours’ pay for each three hours worked in premium time. If, for example, an average of 14 hours (3.5 PAs) a week are worked in hours (between 7am and 7pm, Monday to Friday) and an average of 10 hours (3.3 PAs) a week fell in premium time, then they should receive 6.8 PAs, meaning total take-home pay would be £27,200.

In addition, if the practitioner is required to take part in an on-call arrangement, the appropriate availability supplement should be applied to their basic salary in addition to the above premium time arrangements.

In the case of a part-time specialty doctor returning to full-time training, their protected salary would be £40,000. This is because the doctor is protected on the basic pay scale point rather than the income they received in their previous career grade post. The only possible exception to this is where the previous career grade post does not have a full time equivalent.
Frequently asked questions

Q1. Which grades are eligible for pay protection?

Pay protection applies to practitioners occupying a national career grade post. The term ‘career grade’ is a reference to any NHS medical or dental practitioner appointment on national terms and conditions of service other than those in training grades. Career grades are:

- consultants
- associate specialists
- specialty doctor / dentists
- medical officers / senior medical officers
- staff grades
- hospital practitioners
- clinical assistants
- salaried primary care dentists.

Q2. Can a doctor choose whether they want to be pay protected or not?

No, a doctor cannot choose whether or not to be pay protected. The doctor will be placed on whichever salary is the greater as per paragraph 135.e of the terms and conditions of service:

"A practitioner entitled to protection under paragraph 132 shall continue to receive the leave entitlement of his or her previous post and shall receive the appropriate training grade salary plus the supplement or his or her protected salary, whichever is the greater."

Q3. Should I pay a banding supplement to my pay-protected doctor?

No, practitioners who are pay protected should not be paid banding supplements on top of protected pay under any circumstance. They should be remunerated for their out-of-hours or on-call work as if they were still working under their previous career grade terms and conditions through additional PAs, sessions or notional half days and on-call availability supplements where applicable.

Q4. When a practitioner is pay protected is their career grade annual leave entitlement also protected?

Yes, under paragraph 135. e a practitioner’s leave entitlement is protected:

“A practitioner entitled to protection under paragraph 132 shall continue to receive the leave entitlement of his or her previous post”
Q5. Does pay protection continue for the duration of a practitioner’s training?

This is possible but unlikely. Pay protection should continue until the basic pay plus banding the practitioner would normally receive as a trainee is more beneficial than the basic pay point value the practitioner would receive under the pay protection provisions. It is important that employers reassess a practitioner’s eligibility at the beginning of every contract of employment to ensure the practitioner is still receiving the most favourable pay.

Q6. If it is more beneficial to be pay protected, will the amount of money that the practitioner receives reduce?

This is possible. The amount of money a pay-protected doctor receives may differ between placements as the total hours they work as a trainee may fluctuate. For example, a doctor may be working 46 hours in one post and then rotate to another trust where they are working 40 hours in which case their remuneration would be adjusted to reflect this reduction. This reinforces the requirement for trusts to assess at the start of every new contract, whether pay protection continues to be more favourable than the junior doctor basic salary plus banding.

Q7. If a career grade doctor is returning to a LAT post are they still eligible for pay protection?

We believe that career grade practitioners who undertake LAT posts would be eligible for pay protection in the same way as a doctor moving to a substantive training post, as a LAT post is ‘for the purpose of obtaining approved training’, as required under paragraph 132 of the terms and conditions of service.

Q8. A doctor was working as a locum consultant in England for 13 months immediately prior to returning to training. Would their locum consultant basic salary be protected?

This is possible. If this doctor was continuously employed as a locum consultant in England on national terms and conditions immediately prior to re-entering training, then we believe they may be entitled to pay protection.

As the grade of locum consultant is bound by nationally negotiated terms and conditions under schedule 22 of the consultant terms and conditions, we think that locum consultant most likely is a career grade, as defined by Pay Circular 4/2007 and the Terms and Conditions of Service. In addition, there is nothing preventing a locum consultant working at any number of trusts for 12 months at a time and progressing as normal if they participate in the full appraisal and job planning process during that period. This adds weight to the argument that a locum consultant could be a ‘career grade’

However, ‘as and when’ locum consultant work would not be protected as it is not continuous service.
Q9. A doctor was working in a career grade post. She then went back into training, but her career grade pay was not protected as her junior doctor salary was more favourable. She is now rotating to our trust in another training post and asking us to pay protect her under para 132. Should her career grade salary be protected?

No, this doctor cannot be pay protected as they do not meet the eligibility criteria for pay protection. This is because they are not moving from a career grade post to a training post. She should therefore be placed on the appropriate junior doctor salary plus any applicable banding supplement.

Q10. A doctor was working in a career grade post and returned to training in August 2012. They did not claim pay protection at the start of their contract and are only now querying after they have rotated to another trust over 14 months after starting with us. Should they have applied for protection when they started rather than now? Is there a time limit for claiming pay protection?

There is no time limit for considering pay protection. The onus is on the employing organisation to calculate an employee’s starting salary based on their previous experience. When undertaking this assessment an employer would see where a practitioner was previously a career grade and should therefore assess which is the more favourable method of remuneration for a pay protected individual at the start of their placement.

Q11. Are salaried GPs eligible for pay protection?

It is debatable as to whether pay protection applies to salaried GPs. This is because this group of staff have model terms and conditions with a salary range rather than a distinct set of terms and conditions and a pay scale with defined incremental points. We believe that pay protection probably should be offered to salaried GPs if they have been employed under the model terms and conditions.

Q12. A doctor is asking that we calculate pay protection based on her total income as a specialty doctor (which includes additional sessions and on-call availability supplement) rather than just her basic pay point. Should we be including these elements when assessing whether pay protection or junior doctor salary are more favourable?

No, these elements should not be included when assessing which is more favourable. The terms and conditions state that the career grade salary that is protected is the incremental point or threshold they received in the previous career grade appointment:

132.a. Where a practitioner in a career grade takes an appointment in a training grade which is recognised by the appropriate authority as being for the purpose of obtaining approved training (which may include training to enable the practitioner to follow a career in another specialty) and the practitioner has given continuous service in a career grade post or posts for at least 13 months immediately prior to re-entering training, the practitioner shall, while in the training grade, continue to receive a salary protected on the incremental point or threshold the practitioner had reached in his or her previous career grade appointment.
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Paragraph 135e then goes on to clarify that only the protected salary (i.e. the incremental point or threshold they were paid as a career grade) is compared with the appropriate training grade salary plus supplement:

- A practitioner entitled to protection under paragraph 132 shall continue to receive the leave entitlement of his or her previous post and shall receive the appropriate training grade salary plus the supplement or his or her protected salary, whichever is the greater.

Q13. How do I calculate pay protection for a GP principal returning to training?

Paragraph 122.b of the Terms and Conditions state:

*General Practitioners* 122.b. On entry to a post under these terms and conditions of service a general practitioner who has been vocationally trained and has 4 years experience as a principal in general practice, or a general practitioner who has at least 8 years post-registration experience including at least 5 years as a principal in general practice, shall have entitlement to protection either of his or her pensionable income in his or her last complete year of practice uprated by the factor determined by the NHS Pension Scheme Regulations 1995 (as amended) or at the current rate of the second incremental point on the consultant scale, whichever is the lower.

Crucially, what this paragraph does not deal with is payment for out of hours for these individuals. As GP principles are self-employed individuals it is not common for them to have specific payments for out-of-hours work. In these instances we believe they should receive their basic protected salary only, as it would be inappropriate to pay them for their out-of-hours work using the provisions of a contract they never worked under.

Q14. I was a specialty doctor but have not worked for three months. I have been successful in obtaining a training number and am due to start my new job as a junior doctor in training in August. Am I eligible for pay protection?

No, you do not meet the criteria for pay protection. If there is a gap between your employment as a career grade and your employment as a doctor in training then you are not moving ‘immediately’ between posts and therefore do not meet the qualifying criteria for pay protection.

Q15. I have been employed as a trust grade doctor for 15 months and have just been offered a training number. Am I eligible for pay protection?

No, you do not meet the criteria for pay protection. A practitioner has to be employed as a career grade in order to be eligible for pay protection upon returning to training. A trust doctor is not considered a career grade.

Q16. Will I get my annual increment while I am pay protected?

No, pay protection is based on the incremental point or threshold reached in the career grade post the practitioner occupied immediately prior to re-entering training, not the payscale, as per paragraph 132:

“...the practitioner shall, while in the training grade, continue to receive a salary protected on the incremental point or threshold the practitioner had reached in his or her previous career grade appointment.”
Further information

This guidance is not exhaustive and is designed to give a description of how NHS Employers believe the pay protection provisions (Paragraph 132 and 135e of the Terms and Conditions of Service for NHS Medical and Dental Staff) should be followed. Employers who require further guidance are advised to contact NHS Employers’ Medical Pay and Workforce Team at doctorsanddentists@nhsemployers.org.
NHS Employers

The NHS Employers organisation is the voice of employers in the NHS, supporting them to put patients first. Our vision is to be the authoritative voice of workforce leaders, experts in HR, negotiating fairly to get the best deal for patients.

We manage employer negotiations with the NHS trade unions on pay, pensions and terms and conditions. On behalf of primary care trusts, we lead on specific contract negotiations for GPs and dentists and are involved in contract discussions on community pharmacy.

We work with employers in the NHS to reflect their views and act on their behalf in four priority areas:

• pay and negotiations
• recruitment and planning the workforce
• healthy and productive workplaces
• employment policy and practice.

The NHS Employers is part of the NHS Confederation.

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