

# NHS Employers consultant contract – frequently asked questions

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# Contents

Backdating salary and pay progression	3
Clinical excellence awards	5
Directors of public health	5
Fee paying services	6
Job planning	7
Locums	8
London weighting	10
New appointments	10
On call supplement	11
Payment for programmed activities	13
Annual leave and study leave	14
Bank and public holiday working	14
Clinical academics	15
Cover for colleagues absent through sickness	15
Part time consultants	17
Payment for additional programmed activities	17
Payment for additional responsibilities and extra contractual duties	18
Pensions	18
Retirement	20
Seniority	20
Dual qualification	22
Overseas experience	22
GP principal experience	23

## Backdating salary and pay progression

**Q. What is the position regarding backdating of pay if a consultant retires from NHS employment after 1 April 2003, but before giving a commitment to the new contract?**

A. Where a consultant retires from the NHS after 1 April 2003, but before committing to the new contract, s/he should not be eligible to receive backdating of pay.

**Q. If a consultant leaves the NHS after s/he had given formal commitment to the contract, but before a Job Plan has been agreed, was the employer expected to grant back pay to 1 April 2003?**

A. Where a consultant gave a formal commitment to the new contract, but retired prior to 31 October 2003, s/he should not be eligible for backdating of pay. A formal commitment to the new contract should have been made in good faith, with the full expectation of taking it up. Giving a commitment, whilst intending to retire prior to 31 October 2003, would not have been in the spirit of the agreed backdating arrangements.

Where a consultant gave a formal commitment to the new contract before 31 October 2003 but retired after this date, and before agreeing a Job Plan, due consideration should have been given by the employer to the retirement date before deciding whether backdating applied.

**Q. If a consultant's contract is backdated to 1 April 2003, did this become his/her incremental date for the purpose of pay progression?**

A. It is no longer appropriate to describe this as an incremental date because the 2003 contract has pay thresholds rather than incremental points. 1 April would become the date at which seniority is calculated and the anniversary of that date is when eligibility for pay progression occurs.

**Q. Could a consultant delay moving to the contract until after their current incremental date?**

A. Yes, but this would affect the amount of back pay to be awarded. A consultant who gave a formal commitment to the contract by 31 October 2003 would have pay increases backdated to 1 April 2003, whilst a consultant who committed between 1 November 2003 and 31 March 2004 would have pay increases backdated by three months. However, for some consultants, delaying the date of entry to the contract would have given them an additional year of seniority and they may have preferred this to receiving the full amount of back pay available. It was up to the consultant to decide the date upon which s/he would wish to move to the 2003 contract. For further details of how this would affect backdating of pay see Schedule 13 of the Terms and Conditions, which may be found at <http://www.nhsemployers.org/pay-conditions/pay-conditions-348.cfm> and the introductory note on Key Pay Elements, which may be found at

[http://www.wise.nhs.uk/cjpt/docs/reference/7\\_key\\_pay\\_elements.pdf](http://www.wise.nhs.uk/cjpt/docs/reference/7_key_pay_elements.pdf) Please note, the backdating provisions were time limited.

**Q. Why does Schedule 14 give two definitions for date of appointment?**

A. Because they are for two different purposes. Schedule 14.1 defines to whom that Schedule applies, that is those who took up their first consultant appointment on or after 31 October 2003. For this purpose “date of appointment” is defined as the date on which the post was offered. This is to establish if they should be caught by the provisions of Schedule 13 instead; it also allowed a consultant to take up the old contract if they preferred to do so. Schedule 14 does not distinguish between a conditional offer and an unconditional offer. Conditional offers fall away with no right of redress on the applicants’ part if the conditions are not met, so it is best that the employer determines this.

Schedule 14.2 addresses pay progression. It tells us that if someone is caught by Schedule 14, then they become eligible to progress on the anniversary of their appointment. For this purpose the date of appointment is defined as the date they started work under the new Terms and Conditions.

**Q. Several consultants have moved to our Trust recently. They were employed as consultants by other Trusts. They wish to move to the new contract. Who is responsible for the back pay?**

A. There are two scenarios that need to be considered in order to answer this question.

**Scenario 1:** the consultant moved to your Trust before giving a formal commitment to take up the new contract. In this instance the consultant should have informed both you and the previous employer that they wished to take up the new contract. The former employer is responsible for back pay between the start date of the new contract and the date of moving to you, and the former employer’s liability for back pay is based on the Job Plan that would have been agreed for the former post.

**Scenario 2:** the consultant moved to your Trust after giving a formal commitment to take up the new contract. The consultant should have told you that they had given a commitment and should have made every effort to agree a Job Plan with you within three months of moving to your Trust. As before, the former employer will be responsible for back pay between the date of backdating of the new contract and the date of moving to you, based on the Job Plan that would have been agreed for the former post.

**Q. Does back pay include the On Call Availability Supplement?**

A. Not always (although generally it will). Where there has been a significant change in on call arrangements (e.g. the consultant was not undertaking any previously) the backdating of any On Call Availability Supplement will reflect the actual working arrangements over the relevant period of time.

**Q. Were part time consultants eligible for back pay?**

A. Yes, the backdating provisions applied in just the same way as to full time consultants.

### Clinical excellence awards (CEAs)

**Q. Can a consultant in receipt of a DA or DPs apply for a CEA?**

A. Yes. Consultants in receipt of a DA or DPs will keep them, subject to existing review provisions, and can apply for awards under the new scheme in the normal way. The award of a CEA would subsume the value of any DPs or DAs held by the consultant. Please see the guidance to the new scheme, which can be found at [www.doh.gov.uk/accea](http://www.doh.gov.uk/accea).

**Q. Are the costs of CEAs fully funded through the consultant contract?**

A. The funding for the Clinical Excellence Awards scheme is completely separate from the 2003 contract. The same level of funding for CEAs has been made available as would have been provided for new DPs and DAs under the pre existing reward systems.

### Directors of public health (DsPH)

**Q. Does the 2003 contract apply to Directors of Public Health?**

A. Yes, it is available to Directors of Public Health and other consultants in public health.

**Q. Are Directors of Public Health still paid a DPH supplement?**

A. Yes. See Schedule 16 of the Terms and Conditions.

**Q. Is there any guidance on job planning specifically for Directors of Public Health?**

A. Yes, see the step by step guide for consultants for whom a significant part of their Job Plan will be annualised, and this includes Directors of Public Health at [http://www.wise.nhs.uk/cjpt/docs/reference/ccit\\_annualised\\_job\\_plans.pdf](http://www.wise.nhs.uk/cjpt/docs/reference/ccit_annualised_job_plans.pdf)

## Fee paying services

### **Q. How are Fee Paying Services incorporated into the 2003 contract?**

A. Schedules 10 and 11 of the Terms and Conditions cover Fee Paying Services. The general principle is that where the activities have been agreed as a part of the Job Plan and occur within PAs then the consultant will not be paid an additional fee. However, there are circumstances where the consultant can retain the fee, for example where the work is undertaken in the consultant's own time.

### **Q. I undertake family planning work whilst working for the NHS. I have been paid an additional fee for this work in the past. My new Job Plan now includes this work as part of my PAs. I thought I would continue to receive a fee as usual, but my manager tells me fees may no longer be retained and any fees I have been paid since the date I was placed on the new contract may be netted off my back pay. Is my manager correct?**

A. From the description you give, your manager is correct. Family planning work can, by agreement, reasonably be undertaken during PAs under the 2003 contract (subject to the proviso that a consultant cannot be compelled to do this work, as set out in HC(PC)(76)20). If family planning work is included in PAs, then payment is via the normal salary for contracted PAs. No additional fee will be due to the consultant, unless the employer expressly agrees otherwise.

The 2003 contract established the general principle that consultants will not be paid twice for the same period of time. Work that is undertaken during PAs will not attract payment or retention of additional fees, unless agreed otherwise by the employer (see below). If a consultant is paid a fee for family planning work, or any other Fee Paying Services that are undertaken during PAs, the default position is that the fee shall be remitted to the employing organisation. Schedule 11 of the Terms and Conditions refers to this.

However, where the employer agrees that Fee Paying Services, including family planning work, carried out during NHS time cause minimal disruption to NHS work, there is provision in the contract for employing organisations to agree to allow the consultant to retain the fee. Schedule 11.2 refers to this. In the absence of any agreement that the consultant can retain the fee, the fee shall be remitted to the employer.

Consultants can also retain any fee that is paid for Fee Paying Services that are carried out in the consultant's own time, or during annual or unpaid leave.

In respect of the back pay period, those fees already paid for family planning and other Fee Paying Services (domiciliary visits for example) should not be netted off back pay, unless those services are incorporated into the agreed Job Plan that applies during the back pay period. There should also be no netting off from back pay if those Fee Paying

Services were undertaken during a consultants own time or were previously agreed as being minimally disruptive to NHS work.

It continues to be the case that a consultant does not have to agree to undertake family planning work if they have ethical or other objections to doing so. If another member of the surgical team undertakes the work then they remain able to receive the fee as per their Terms and Conditions.

## Job planning

**Q. Can you direct us to any detailed guidance on how we can refine our approach to job planning?**

A. Yes. Comprehensive information and guidance may be found in the Job Planning Toolkit and related CD-ROM available free of charge from [http://www.wise.nhs.uk/cmsWISE/Workforce+Themes/Using\\_Task\\_Skills\\_Effectively/workdesignandplanning/consultantjobplanning/toolkit.htm](http://www.wise.nhs.uk/cmsWISE/Workforce+Themes/Using_Task_Skills_Effectively/workdesignandplanning/consultantjobplanning/toolkit.htm) and from [ma@prolog.uk.com](mailto:ma@prolog.uk.com) (quote reference 265057)

The toolkit comprises -

- a job planning handbook
- a training package
- an evaluation framework and
- a reference manual.

The toolkit is also available in Braille, on audio cassette tape and in large print.

**Q. How should we apply the 2003 contract to consultants who work in excess of 48 hours?**

A. As consultants are bound by the Working Time Directive they would need to sign a waiver if they are to continue to work more than 48 hours per week. However, you should first ensure that all of the work they do could only be undertaken by a consultant and not by other members of the clinical team, and also examine their workload to see if it can, by agreement, be reduced. Exceptionally, if the hours cannot be reduced or controlled by annualisation, employers may agree additional PAs.

**Q. Does job planning satisfy WTD compensatory rest requirements?**

A. Job Plans must take account of the European Working Time Directive in terms of total hours worked and patterns of rest. More information on compensatory rest can be found on the DTI website at [www.dti.gov.uk/er/work\\_time\\_regs](http://www.dti.gov.uk/er/work_time_regs).

**Q. How should study leave be recorded?**

- A. This is a matter for local determination but generally it should be recorded in the same way as annual leave.

## Locums

**Q. Were locum consultants included in the backdating arrangements for the 2003 contract?**

- A. This depends upon the circumstances, but generally yes. Where a locum gave a formal commitment to the new contract during a period of continuous locum employment, then s/he should have been entitled to back pay. This principle would also apply where a locum moved to another locum post without a break in service. Where a consultant had been working as a locum, but moved to a substantive post s/he should have been entitled to back pay.

**Q. Does locum service count towards seniority?**

- A. This is a matter for employers to decide at local level. Our expectation is that it would only count if it was equivalent to a substantive post i.e. the locum had carried out the full range of duties and responsibilities of a consultant. We regard it as very unlikely that a short term locum appointment (i.e. less than three months and probably less than six months) would count. Also it can only count once, so if it has been taken into account when deciding where the consultant starts on the pay spine it cannot count again for seniority.

**Q. What effect has the 2003 consultant contract had on locum consultants employed directly by Trusts (i.e. not through locum agencies)? Do the Whitley Council rules stipulating that locum consultants would previously be given the mid-grade salary of consultant grade continue to apply?**

- A. Schedule 22.4 of the Terms and Conditions applies. Basically, new locums now start at the first point on the salary scale, subject to the provisions for pay progression, as set out in that Schedule. The previous arrangements no longer apply. Also see the guidance on locum appointments. Both documents are available on our website <http://www.nhsemployers.org/pay-conditions/pay-conditions-348.cfm>

**Q. In my trust I have noticed that locum consultants are paid on a different pay scale (MC73) to substantively employed consultants. The MC73 pay pathway does not look like either the MC51 or MC72 scales but the figures appear to be drawn from these scales. Why is there a different pay scale for locum consultants?**

- A: When the consultant contract was introduced in 2003 it was agreed that MC51 to MC71 and MC72 00 to 19 should be the designated pay codes for consultants first appointed before 31 October 2003 and on or after 31 October 2003 respectively.

Payroll providers also made available the MC73 pay code so that, if they so chose, employers could distinguish by pay code those consultants appointed substantively and those appointed on a locum basis. However, MC73 is not a pay scale like MC51 or MC72, where there is a clear progression path through the thresholds. It is simply a collection of pay values which includes every possible threshold point from both the MC51 and MC72 scales, including transitional points, upon which a locum consultant could be placed.

In response to employer feedback we have included the MC73 pay values in Pay Circular (Medical & Dental) 1/2006.

As locum consultant appointments are not permanent posts and tenure is as agreed on appointment, i.e. for a maximum of six months and then in exceptional circumstances up to twelve months, we would expect a reassessment of basic salary to take place with each new locum appointment. Please see Schedule 22 of the Terms and Conditions for details.

In addition, Schedule 22.7 provides for the recognition of continuous or cumulative locum service for pay progression purposes. When pay progression is awarded, a reassessment of basic salary and subsequent repositioning to a different value on the MC73 pay code will be required. This may occur part way through a locum appointment.

**Q: I am still unsure where I should place a locum consultant on the MC73 scale.**

A: To determine where on MC73 a locum consultant should be appointed to, you should work out the appropriate basic salary as provided for by Schedule 22.4 to 22.6 of the Terms and Conditions.

Broadly, Schedule 22.4 refers to a locum consultant who has not previously held a substantive consultant post i.e. is newly appointed whilst 22.5 refers to those who hold a substantive consultant post, i.e. existing consultants; and 22.6 applies to those who do not currently hold a substantive consultant post e.g. retired consultants.

Once you have worked out the basic salary, you can then appoint to the correct MC73 pay value.

A couple of examples are outlined below:

**Q: A consultant is appointed to their first NHS post with 4 years overseas service, where would they be plotted?**

A: They would be aligned to MC72:04, but would actually start on MC73:09.

**Q: A consultant is appointed with existing NHS service of 6 years, where they would be plotted?**

A: They would be aligned to MC56, but they would be plotted on the locum scale as MC73:08.

## London weighting

**Q. Could you clarify the position of the London Weighting Allowance with respect to the 2003 consultant contract?**

A. The provisions remain unchanged. Schedule 16 of the Terms and Conditions refers to this.

## New appointments

**Q. Which contract should have been offered to existing consultants (on the old contract) being recruited to another NHS consultant post?**

A. If the post was advertised before 31 October 2003 then the consultant should have been able to choose which contract to take up. If the vacancy was advertised after this date then only the 2003 consultant contract applied.

**Q. At which point did NHS organisations start using the 2003 contract for newly appointed consultants?**

A. From 31 October 2003, Trusts should have advertised all consultant vacancies on the basis of the 2003 contract, and applied only this contract to consultants who take up these posts. Where consultants have taken up posts that were advertised before 31 October 2003 on the basis of the old contract (or any other contract) they should have the opportunity to switch to the 2003 contract, but they will not be required to do so (unless they change employment) if they do not wish.

**Q. We employ a consultant under the old contract; s/he has requested a change in their contractual hours. Does this mean s/he should be moved onto the 2003 contract?**

A. No, our view is that a simple change in hours, from full time to part time or vice-versa is an insufficient reason to require a move to the 2003 contract. The consultant may remain on the old contract if s/he wishes, however the 2003 contract should be offered and a Job Plan review will be required.

**Q. When advertising for new consultant posts, can I advertise posts with a requirement for more than ten PAs?**

A. We would advise against this. The full time consultant contract is based on ten PAs per week. Consultants can be asked to perform more but have the right not to exceed ten PAs if that is their wish. Advertisements for full time posts should be for ten PAs, but the advertisement could indicate (assuming funding is available) that more could be available if the appointee wished. This would need to be discussed after the post had been filled.

**Q. We find it difficult to fill certain consultant posts and are considering advertising a post at the top of the scale (as we have done previously). Our finance department tells us we would be wrong to do so. What do you advise?**

A. The advice from your finance department is correct. For new consultants without approved consultant level experience, the start point is Pay Threshold Level 1. However, the Terms and Conditions do allow for Recruitment and Retention Premia to be paid for hard to fill posts. The provisions for these premia are set out in Schedules 16.12 to 16.14. We would advise you to contact your SHA as many have set out local policies which address the detailed criteria to be met and provide a guide to the local consultation and decision making processes expected.

### On call supplement

**Q. How is on call work recognised?**

A. Predictable on call duties should form part of the working week's PAs. Unpredictable on call work counts towards the number of Direct Clinical Care PAs. This was up to a maximum average of one PA per week until 31 March 2005 and a maximum average of two PAs per week from 1 April 2005. Schedule 5 of the Terms and Conditions refers to this. In exceptional circumstances the employing organisation may agree additional arrangements with the consultant to recognise work in excess of this limit either by additional remuneration or time off. See Schedule 5.2.

**Q. How should I interpret the words “typically” and “complex” as applied to Category A of the On Call Availability Supplement? I am always ready to return immediately to site when on call, but actually do so only occasionally. When I don't return I often make decisions about which drugs to prescribe. I think both these situations and interventions make me Category A, but my clinical manager tells me I am Category B. Who is correct?**

A. On the basis of the information you have provided, your clinical manager is correct. The arrangements for On Call Availability Supplements are as set out in Schedule 16 of the Terms and Conditions. The two key words “typically” and “complex” do require particularly careful interpretation.

Please see the full “Guide to determining On Call Availability Supplements”, available online at [http://www.wise.nhs.uk/cjpt/docs/reference/CCIT\\_guides/ref\\_guide\\_suppl.pdf](http://www.wise.nhs.uk/cjpt/docs/reference/CCIT_guides/ref_guide_suppl.pdf) for further advice and examples of what may constitute “complex” and “typically”.

**Q. We have six full time consultants on a rota. Two of them share a rota slot. The work has been assessed as Category A.**

**Under the previous arrangements rota frequency was determined by reference to the number of consultants on the rota. This meant the consultants were on a**

**Medium Frequency Band, as the rota fell within a 1 in 5 to a 1 in 8 frequency. All six consultants received 5% OCAS.**

**How will the level of OCAS be calculated under the latest arrangements introduced 2 April 2007?**

- A. In the situation you describe, the consultants who make a full time commitment to the rota work a 1 in 5 pattern and so should continue to receive 5% OCAS, as this continues to fall within the Medium Frequency Band. The consultants who make a partial commitment to the rota, working a 1 in 10 pattern, should be on the Low Frequency Band and as a result their OCAS should be 3%.

**Q. We implemented the amended provisions and this has meant that two of the consultants on the rota (who make a part time contribution to the rota) have moved from a 5% to a 3% OCAS. Should we protect their OCAS?**

- A. No. Schedule 16.4 of the Terms and Conditions states that where there is a change to the consultant's contribution to the rota, or the categorisation of the on call duties, the level of the OCAS will be amended on a prospective basis. Where this results in a reduction in the level of OCAS, there will be no protection arrangements in relation to previous entitlements. The consultant is entitled to challenge any changes to the assessment of on call duties through the Job Planning process.

**Q. We employ a part-time consultant who is required to participate in an on-call rota. How do we calculate their on-call availability supplement?**

- A. Consultants who are required to participate in an on-call rota shall be paid an on-call availability supplement in addition to their basic salary. The level of the supplement will depend on both the contribution to the on-call rota and the category of the consultant's on-call duties. The availability supplement will be paid at the appropriate rate set out in Table 1 of Schedule 16 of the Terms and Conditions.

For part-time doctors, this shall be calculated as the percentage of their equivalent full-time basic salary, relevant to their contribution to the on-call rota. Payment will cease when the Consultant ceases to be on an on call rota.

E.g. a consultant working eight PAs and making a 1 in 6 contribution to a rota (at category A) will receive 5% of the full time salary at their pay point. A full time consultant on the same rota making only a 1 in 12 contribution to an on call rota (at category A) would receive 3% of the full time salary at their pay point.

**Q. What do we do if a consultant wishes to vary their contribution to the rota?**

- A. If it has been agreed that the consultants' commitment to a rota can change, then you should reassess the level of OCAS for all consultants on that rota, in case movement

between the frequency bands has occurred. The level of the OCAS should then be amended on a prospective basis.

## Payment for programmed activities

### **Q. Should fractions of a PA be included in Job Plans and paid as part PAs?**

- A. The 2003 contract is not hours based, but structured around ten Programmed Activities (PAs) each with a timetable value of four hours. PAs can be divided into half units, for example, and the number can vary (by agreement) week by week to reflect service needs. This does not mean that each week must necessarily contain the same number of PAs, but the average number of PAs per week over the year should be a whole number.

Such flexibility means it is not our expectation that PAs will commonly need to be contracted for and paid in half units, but that they may, by agreement, be worked in half units or any other fraction. This is however ultimately a matter for local discretion. The new Job Plan should not simply be based on a retrospective exercise to count the hours currently worked, but on a prospective assessment of the duties that, it is jointly agreed, will be carried out under the 2003 contract.

### **Q. What are the applicable terms if a consultant wishes to undertake private practice?**

- A. All consultants, including those who work part time, will, if they wish to remain eligible for pay progression, be expected to offer no more than one PA per week of spare professional capacity to the NHS before undertaking other paid clinical work. This Additional PA will be paid at the appropriate rate. A full time consultant with a Job Plan for eleven or more PAs would not be expected to offer any additional work on top of this. Schedule 6 of the Terms and Conditions refers to this.

### **Q. My employer informed me that I was not entitled to pay protection on my transfer to the 2003 consultant contract. They had calculated that my twelve PA salary plus On Call Availability Supplement was greater than my previous full time salary plus intensity supplement. However, I do not think that my two Additional PAs should be included in the calculation. If they were removed from the calculation, I would be entitled to pay protection. Who is correct?**

- A. The content of your message suggests that you are correct. The Terms and Conditions, Schedule 13.11 states that it is the total of basic pay plus any On Call Availability Supplement that is compared to previous basic pay plus any Intensity Supplement. Therefore, extra and Additional PAs should not be included in the calculation. For a full time consultant, basic pay under this Schedule equates to ten PAs.

## Annual leave and study leave

### **Q. Could you explain the annual leave entitlement especially for consultants with seven years completed service?**

- A. This is as set out in the Terms and Conditions, Schedule 18.1 – 18.3. Those who have completed less than seven years service as a consultant are entitled to six weeks annual leave. From 1 April 2005, those with seven or more complete years' service as a consultant were entitled to six weeks plus two days annual leave. So, from 1 April 2005 all consultants appointed on or before 1 April 1998 should receive six weeks plus two days annual leave. However, the leave year is calculated from the anniversary of appointment. Thus, consultants who attain seven years service or more in a leave year starting after 1 April 2005 onwards receive the six weeks plus two days entitlement from the start of that leave year.

Transitional arrangements applied for leave years commencing between 1 April 2004 and 31 March 2005. As an example, take a consultant appointed on 1 August 1990. Their entitlement to annual leave was:

- Six weeks for the leave year 1 August 2003 – 31 July 2004
- Six weeks plus one day for the leave year 1 August 2004 – 31 July 2005
- Six weeks plus two days from the leave year which commenced on 1 August 2005.

For part time consultants the entitlement to annual leave is pro rata.

## Bank and public holiday working

### **Q. How should we pay our consultants who work on public holidays?**

- A. The definitions set out in the preface to the Terms and Conditions state that work on a public holiday counts as work in Premium Time. This affirms that such work counts the same as that undertaken on a weekend, or outside of 7am to 7pm Monday to Friday.

Schedule 7 of the Terms and Conditions sets out the compensation arrangements for scheduled and unpredictable work undertaken during such time (see 7.2 in particular). This draws no distinction between the reward for Public Holidays and the reward for other periods or days that meet the definition of Premium Time.

### **Q. Are consultants obliged to work on public holidays?**

- A. Many consultants will work, by agreement, on public holidays in order to undertake routine or emergency work. We would expect such arrangements to form a normal part of Job Plans.

The definitions set out in the preface to the Terms and Conditions state that work on a public holiday counts as work in Premium Time. This affirms that such work counts the

same as that undertaken on a weekend or outside of 7am to 7pm Monday to Friday. Clause 7.1 of the contract states that non emergency work will not be scheduled in Premium Time without agreement.

## Clinical academics

### **Q. Should the NHS or University employer pay for any additional PAs worked by clinical academics?**

- A. This is a matter to be decided by the employers themselves. Either, or neither, or both the NHS or University employers can offer one or two additional PAs (over and above the ten that make up a full time contract in any numerical combination).

The arrangements are intended to be flexible and payment should be made by the employer choosing prospectively to buy the additional activity. When preparing integrated Job Plans, employers and consultants have a high degree of flexibility in the choice of arrangements. The emphasis is on joint planning of service and educational interests, in keeping with the principles outlined in the Follett Report.

## Cover for colleagues absent through sickness

### **Q. Before the introduction of the 2003 contract, consultants in our Trust would normally automatically cover for a colleague's absence through sickness.**

**Some of those who have taken up the 2003 contract are now questioning whether they have any obligation to continue to work in this way. There is acceptance of the need to cover the emergency aspect of work long enough for the Trust to employ a locum (perhaps 48 hours), but beyond this some are of the view that these additional duties are not part of a consultant's contracted work and should be separately remunerated. As the work covered is not specified in their agreed Job Plans, these consultants are now asking for payment at an enhanced additional rate, equivalent to agency locum rates of pay. How should we deal with the requests for additional payment?**

- A. Schedule 2.3 of the Terms and Conditions contains a specific obligation that consultants are expected "...in the normal run of their duties to deputise for absent consultant or Associate Specialist colleagues so far as is practicable, even if on occasions this would involve interchange of staff within the same employing organisation. This does not include deputising where Associate Specialists are on a rota with doctors in training."

This is not a new requirement. It is expressed in almost identical terms to the obligation that arises from paragraph 106 of the 'old' contract Terms and Conditions. There is, therefore, a continuing general obligation to provide cover where practicable.

Some Trusts have put in place a policy to cover this matter, an approach we would endorse. In the absence of such a policy we would offer the following guidance.

Employers and consultants are encouraged to come to agreement locally on what is deemed to be practicable, what the proposed cover entails and establish that the work is of a suitable nature to be covered by the consultant. In establishing suitability, due regard must be given to a doctor's duty to recognise and work within the limits of their professional competence. It may be necessary to agree re-arranged duties for one or more consultants in the short term in order to provide adequate cover.

In terms of remuneration, obviously it is not possible to schedule PAs for unexpected absences into a prospective Job Plan. There are a number of ways of addressing the issue of compensation for additional work. The 2003 contract is sufficiently flexible that the length of the working day (or week) is not expected to be the same week in, week out. It may be possible to re-arrange, by agreement, duties flexibly so that a consultant providing additional cover for an absent colleague can take time off in lieu later.

Duties may be rearranged temporarily so that, for example, extra Direct Clinical Care PAs are worked to cover the absence, with Supporting Professional Activities PAs time shifted to be taken at a later, more convenient date perhaps in lieu of Direct Clinical Care PAs at that time. Alternatively, or in addition, thought may be given to a temporary reallocation of specified responsibilities (with enhanced supervision as necessary) to an Associate Specialist or specialist registrar.

In the longer term, the question of additional remuneration may arise, including in respect of the On Call Availability Supplement (if the rota frequency has increased) and PAs for on call work undertaken. These may need to be re-calculated. The formula for calculation and payment is that contained within the Terms and Conditions. Schedule 16.4 of the Terms and Conditions anticipates changes in rota frequency, which may require a change in On Call Availability Supplement. Schedule 5 deals with recognition for work arising from on call duties, while Schedule 13 deals with payment for Additional PAs.

In summary, cover for an unexpected absence is not 'extra-contractual', but is a contractual obligation for consultants, whether on the 'old' contract or the 2003 contract. The practicability of providing such cover should be determined locally by agreement. Compensation for the additional work should be in accordance with the applicable contract.

## Part time consultants

**Q. How should PAs for part time consultants who wish to transfer to the 2003 contract be calculated?**

A. Part time consultants can choose to take up the contract on the number of PAs nearest to their hours or work, or the same number of PAs as the existing number of Notional Half Days. Please see the guidance on part time and flexible working at <http://www.nhsemployers.org/pay-conditions/pay-conditions-348.cfm>

**Q. Our consultants tell me that the 2003 contract appears to have halved the current time allocated for professional and study leave from ten days for each (i.e. twenty days in total) per year, to ten in total for both. This is despite the fact that the new contract places much emphasis on CPD, appraisal etc. Are they correct?**

A. No, from what you have said, they are wrong. The “old” and 2003 contracts have almost identical conditions attached to professional and study leave. Comparison of paragraphs 250 to 254 of the “old” Terms and Conditions, with Schedule 18.9 to 18.16 of the 2003 Terms and Conditions, shows little difference. Both set out a recommended standard for professional or study leave of up to a maximum of thirty days in three years, whilst additional periods of such leave may be granted at the discretion of the employer. Note also that PAs for Supporting Professional Activities, which comprise activities that underpin Direct Clinical Care, may include participation in training, CPD and appraisal. See the definitions in the Terms and Conditions for full details.

**Q. Should study leave be counted as part of a PA?**

A. Study leave is not intended to form part of the content of PAs allocated to Supporting Professional Activities.

## Payment for additional programmed activities

**Q. How do I calculate the value of an Additional Programmed Activity (APA)? As I see it different consultants will receive different levels of remuneration for an APA.**

A. It is the case that levels of remuneration will vary. Schedules 13.10 and 14.7 of the Terms and Conditions describe how to calculate the value of an Additional Programmed Activity. This is variable depending on (1) the pay threshold and (2) whether or not the consultant holds Discretionary Points or a Distinction Award or a Clinical Excellence Award.

To calculate the value of one Additional PA per week:

Take the value of the basic full time pay threshold point (or in some instances the value of the assimilation point). No other payments should be added. Divide this payment by 10. This provides **figure “A”**.

If the consultant has DPs or DAs or CEAs perform the following calculation to calculate **figure “B”**:

DPs: Divide the annual value of the DPs by 10 = “B”

DA: Divide the value of 8 DPs by 10 = “B”

CEA: If level 1-9, divide the value by 10 = “B”

If level 10-12, divide the value of level 9 by 10 = “B”

**Outcome:** the annual value of 1 APA for that consultant = “A” + “B”

### Payment for additional responsibilities and extra contractual duties

**Q. Under the old contract we paid two extra sessions to reflect the additional responsibilities of medical director/clinical director/clinical tutor roles, how can we reward these activities under the 2003 contract?**

A. Trusts are able to make additional payments in respect of these roles – see Schedule 16.16 of the Terms and Conditions.

**Q. A consultant who has now decided to move to the 2003 contract is currently contracted for a Temporary Additional Notional Half Day a week to undertake extra contractual duties as a local postgraduate tutor. If this were continued as one PA under the 2003 contract would it also count as the extra PA offered to allow private practice whilst retaining eligibility for pay progression?**

A. Activity as a postgraduate tutor comes under the definition of Additional NHS Responsibilities and in clause 7.3 of the contract the balance of activities may vary to take account of such a responsibility. However, if assimilated into a ten PAs full time contract, there would be no extra payment. If by agreement these activities were performed as an Additional PA there would be standard rate payment, and the consultant would have fulfilled the private professional services requirements detailed in Schedule 6 of the Terms and Conditions.

### Pensions

**Q. I am an existing Maximum Part Time consultant. If I choose to move to the new consultant contract, how will this affect my pension?**

A. If you decide to move to the new contract your future pension contributions will be treated as whole time under the NHS Pension Scheme. Your previous credits will remain at 10/11ths. This means that you would receive whole time membership credits for your pension benefits based on whole time pay.

**Q. If a part time consultant contracts for Additional PAs are these pensionable?**

A. They may be. Schedule 17.2 lists payments that are pensionable. These include “the consultant’s basic salary (up to ten PAs), including pay thresholds”. The NHS Pensions Agency has confirmed that PAs worked by part time consultants are pensionable up to a total combined maximum of ten PAs. That is, the total of their basic contracted PAs plus any additional PAs. If that total were to exceed ten, then only the first ten are pensionable.

**Q. What is the pensionable earnings cap, when does it apply and what does this mean for those who earn more than the limit under the 2003 contract?**

A. The Finance Act 1989 put a limit on the earnings that can be taken into account for pension purposes. The cap only applies to those who joined a pension scheme, or rejoined a scheme after a break of twelve months or more, on or after 1 June 1989. The earnings cap for the financial year 2005/6 was £105,600.

If someone joined, or rejoined the NHS Pension Scheme on or after 1 June 1989 they will only pay contributions on their pay up to the earnings cap limit. If their pay at retirement is higher than the earnings cap, then pension benefits will be based on their capped pay.

**Q. Will the arrangements regarding the pensionable earnings cap change because of the simplified tax regime for pensions being introduced by HM Revenue and Customs (HMRC) from 6 April 2006 (A-Day)?**

A. NHS Employers is currently leading the development of a new NHS Pension Scheme. Part of this work includes looking with staff representatives at flexibilities available to schemes under the simplified tax regime, including the scope to change limits on contributions, pay and membership. Until the review is complete, existing main scheme rules and limits will continue including the operation of the cap on pensionable earnings. The cap will continue to be updated annually. For the financial year starting 6 April 2006 it is £108,600.

**Q Will the new HMRC annual and lifetime limits on tax-free pension savings apply?**

A Yes. From A-Day (6 April 2006) the new HMRC lifetime and annual limits on tax-free pension savings will apply to all members of the NHS Pension Scheme. The limits will take account of all pension savings, not just those from the NHS Pension Scheme and the NHS Money Purchase Additional Voluntary Contributions Schemes.

**Q Where can I find more information about the new limits?**

A More information can be found on the NHS Pensions Agency website here <http://www.nhspa.gov.uk/LAC/frontdoor.cfm>

**Q Where can I find more information about the work to develop a new NHS Pension Scheme?**

More information on the NHS Pension Scheme Review can be found here <http://www.nhsemployers.org/pay-conditions/pension-review.cfm>

## Retirement

**Q. If a consultant expects to retire at age 65 in February 2007, but his/her salary does not reach the last threshold until April 2008, would s/he have to remain in post until April 2008 to get the maximum pension benefit of the higher level of pay?**

A. Yes. The rules and requirements of the NHS Pension Scheme are not changed by the 2003 contract.

**Q. Can a consultant work beyond the age of 65?**

A. There is nothing in the 2003 contract and Terms and Conditions that relates to retirement age. Consultants can work beyond the age of 65 if they wish.

**Q. If a long serving consultant on the “old” contract retires and returns to work as a locum, should the previous service be taken into account when calculating seniority?**

A. Yes. See Schedule 22.6. They should be paid at the point appropriate to their seniority, which may well be towards the top of the pay for those with a long period of NHS service.

## Seniority

**Q. How is a consultant’s seniority calculated?**

A. The full details are set out in the Terms and Conditions which can be found on our website <http://www.nhsemployers.org/pay-conditions/pay-conditions-348.cfm>

In summary, it’s the number of completed whole years worked for the NHS as a consultant (or other employment as specified) plus the position on the “old” salary scale when first appointed. The salary scale in the old contract has 5 points (0 to 04) so the position is the actual salary point plus 1. In addition, approved non-NHS consultant level

experience may be taken into account assuming it has not already been counted in establishing the starting salary point. For example:

Dr A was appointed at salary point 02, i.e. position 3 of the salary scale in September 1998, therefore his seniority at September 2003 is position 3 plus 5 total years as a consultant = 8 years of seniority.

However, if Dr A calculated his seniority from 1 April 2003 it would be position 3 plus 4 completed years as a consultant = 7 years of seniority.

**Q. Does previous employment as a Maximum Part Time (MPT) consultant affect the way in which seniority is calculated?**

A. No, the fact that this was employment as a MPT consultant does not affect the method of calculation. Seniority is calculated as set out in the answer to the question above.

**Q. Does locum service count towards seniority?**

A. This is a matter for employers to decide at local level. Our expectation is that it would only count if it was equivalent to a substantive post i.e. the locum had carried out the full range of duties and responsibilities. We regard it as very unlikely that a short term locum (i.e. less than three months and probably less than six months) would count. Also it can only count once, so if it has been taken into account when deciding where the consultant starts on the pay spine it cannot count again for seniority.

**Q. Do both paid and unpaid leave for maternity or illness count towards the calculation of seniority?**

A. Yes

**Q. Does NHS service comprising sabbatical leave count towards the calculation of seniority?**

A. Yes

**Q. With regard to flexible training, is there a formula for calculating additional credited seniority, or is it at the discretion of individual Trusts to decide what counts towards seniority?**

A. No, a formula does not exist. However, Schedule 13.7 and Schedule 14.6 of the Terms and Conditions are clear that employers should credit appropriate additional seniority so as to negate the effects of prolonged training by virtue of a flexible training scheme. For example, if flexible training extended a training programme by three years, then an additional three years seniority would be given to the consultant upon first appointment to the 2003 consultant contract.

## Dual qualification

**Q. I note the Terms and Conditions provide for additional seniority (in some circumstances) for those who undertook lengthened training because of undergoing dual qualification. I also understand that dual qualification is necessary for some consultant posts (e.g. maxillo-facial surgeons need dental and medical degrees), but is that the same as dual accreditation?**

A. Schedules 13.7 and 14.6 provide for additional seniority if a consultant's training has been lengthened as a result of undergoing dual qualification, if this would prevent the consultant reaching the pay threshold s/he would have attained had s/he trained on a single qualification basis. This provision and the term "dual qualification" should be interpreted as applying only to those posts that require the holder to possess two undergraduate degrees, as in the maxillo-facial surgeon example.

Dual accreditation is not, therefore, the same as dual qualification. The following list gives illustrative situations or qualifications that are not covered by the definition as set out above, and would not increase seniority:

- dual accreditation for a consultant post
- the possession of MD/PhD/MS
- subspecialty qualifications
- Medical Royal College fellowship/membership
- GP training for subsequent directors of public health
- intercalated undergraduate degree
- switch from one career or course to another, e.g. science to medicine.

## Overseas experience

**Q. I have been offered a consultant post in the NHS with a starting salary at threshold 1. However, I was a consultant in India for 17 years and I believe that this experience should be taken into account in assessing my salary. What should I do?**

A. Before you sign your contract you need to discuss with your future employer the consultant level experience that you believe would qualify you for a higher pay threshold.

Schedule 14.4 of the Terms and Conditions specifies that the basic salary on commencement will be the first pay threshold. Schedules 14.5 and 14.6 make provision for basic salary to be set at a higher threshold to reflect any approved consultant level experience prior to first appointment as an NHS consultant. Your prospective employer

should consider any relevant experience that you gained in India and its equivalence to a consultant role in the UK. However, such assessments of equivalence are not always easy to make because of the different ways in which medicine is practised overseas.

When determining equivalence, our view is that the following could be considered:

- level of expertise and range of skills
- degree of independent practice
- supervision of other medical staff
- possession of postgraduate medical qualifications (e.g. FRCS or MRCP)
- teaching and research experience
- The above examples are illustrative and not exhaustive.

You will have satisfied the Postgraduate Medical Education and Training Board (PMETB) (formerly Specialist Training Authority) that your training and qualifications are equivalent to a UK Certificate of Completion of Specialist Training (CCST) in your speciality. Holding a CCST allows you to be on the General Medical Council (GMC) Specialist Register and be exempt from the GMC's Professional and Linguistic Assessment Board (PLAB) test. However, the assessment by the PMETB does not automatically demonstrate your level of responsibility in your former post or its equivalence to a consultant post in the UK, or your entitlement to a higher pay threshold on appointment under the 2003 contract.

In order to help your employer assess the level of equivalence (if any), you should set out clearly your roles and responsibilities in your previous posts, and discuss with the appropriate manager.

**Q. We are about to employ a consultant with five years of consultant level experience gained overseas but no previous NHS consultant experience. He claims that he should start on level 6 of the new pay thresholds. Is he right?**

A. No, from what you have said he is wrong. Pay thresholds are not the same as an annual incremental scale. Schedule 14.7 specifies the gap in years between the different pay threshold points. This consultant would start on threshold point 5, and be eligible to move to threshold 6 after a further four full years in post.

## GP principal experience

**Q. Does work as a GP Principal count as experience equivalent to that of a consultant for seniority purposes?**

A. No, our view is that it does not. Schedule 13.5 of the Terms and Conditions, which defines seniority makes provision for the recognition of previous employment as a

consultant and/or NHS consultant level experience and/or non flexible training (as defined).

Previous service as a GP Principal is not, in our view, the same as employment in the NHS as a consultant. The training route, resulting qualification, and professional experience differ markedly between GPs and consultants. For GPs, a shorter period of training prepares them for work in a primary care setting. For consultants, following SHO training, an extended period of four to five years' specialist training is required in order to receive the necessary accreditation for entry to the GMC's Specialist Register, which is a pre-requisite for working as a consultant in the UK.

We acknowledge that, within the UK, only consultants and General Practitioners are able to practice without supervision. However, our understanding is that a general practitioner may not practice without supervision in a hospital setting (unless in a GP or community hospital) but would normally be under the supervision of a named consultant, similar to the position of Staff Grade or Associate Specialist doctors. GP Principals working sessions in a hospital are employed either as Clinical Assistants, or Hospital Practitioners. A characteristic of both grades is that they have no independent clinical responsibility. This distinguishes them from consultants working in the same setting, in terms of professional seniority. For the above reasons, we do not believe GP Principals are caught by the first provision for granting additional seniority.

Nor do we believe service as a GP Principal could count under the second provision related to non-NHS consultant level experience. When considering what should be counted as non-NHS consultant level experience it is necessary to have a benchmark. We believe that an appropriate benchmark is the accreditation that a practitioner would be expected to hold in order to be considered as equivalent to a NHS consultant in the UK. For doctors within the EEA this is clear-cut, as the equivalent qualifications are contained within the relevant legislation. For other overseas doctors, the test of equivalence is whether they have been trained to a standard equivalent to CCST. A GP Principal in the UK would not be able to meet the test of equivalence applied to EEA or other overseas doctors and we therefore believe that to allow experience as a GP Principal in the UK to be counted towards seniority would be discriminatory.

We do not believe it appropriate to consider previous work as a GP Principal nor, for the avoidance of doubt, as a Clinical Assistant or Hospital Practitioner to be equivalent to that of a consultant for seniority purposes.

## NHS Employers

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NHS Employers represents trusts in England on workforce issues and helps employers to ensure the NHS is a place where people want to work. The NHS workforce is at the heart of quality patient care and we believe that employers must drive the workforce agenda. We work with employers 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.

NHS Employers is part of the NHS Confederation.

## Contact us

For more information on how to become involved in our work, email [getinvolved@nhsemployers.org](mailto:getinvolved@nhsemployers.org)

[www.nhsemployers.org](http://www.nhsemployers.org)  
Email [doctorsanddentists@nhsemployers.org](mailto:doctorsanddentists@nhsemployers.org)  
NHS Employers  
29 Bressenden Place  
London SW1E 5DD

2 Brewery Wharf  
Kendell Street  
Leeds LS10 1JR

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