

# Pay for section 15: leave for doctors in training

## Nodal point pay progression

December 2021

This guidance has been developed to clarify whether an anticipated move from one grade to another, for example, from a CT2 to ST3 would constitute a move to a higher pay point, as per the provisions set out in paragraph 15.22 of the NHS staff handbook.

The way training grade is linked to pay point under the 2016 TCS potentially suggests that doctors in training may not meet the requirements set out in 15.22 and 15.92 of the NHS staff handbook.

This guidance document clarifies when an anticipated move to a higher nodal point should be reflected within a doctor's pay when they have taken leave in accordance with the provisions of, Section 15: Leave and Pay for New Parents, of the NHS staff handbook.

This guidance document was necessitated following queries relating to maternity pay and whether anticipated moves to higher nodal points should be recognised within maternity pay. The principles of this guidance document also applies to doctors who take adoption leave and shared parental leave, and the interpretation of the relevant paragraphs for these provisions, which are 15.39 and 15.63 respectively. Paragraph 15.91 of the staff handbook, see below, highlights that a consistent approach should be taken.

## **The NHS Staff Handbook states:**

### **Calculation of maternity pay**

15.22 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Maternity Pay entitlements, subject to the following qualifications:

- i in the event of a pay award or move to a higher pay point being implemented before the paid maternity leave period begins, the maternity pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Maternity Pay calculation period. If such a pay award was agreed retrospectively, the maternity pay should be re-calculated on the same basis;
- ii in the event of a pay award or move to a higher pay point being implemented during the paid maternity leave period, the maternity pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the maternity pay should be re-calculated on the same basis.

## Calculation of adoption pay

15.39 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Adoption Pay entitlements, subject to the following qualifications:

- i in the event of a pay award or move to a higher pay point being implemented before the paid adoption leave period begins, the adoption pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Adoption Pay calculation period. If such a pay award was agreed retrospectively, the adoption pay should be re-calculated on the same basis;
- ii in the event of a pay award or move to a higher pay point being implemented during the paid adoption leave period, the adoption pay due from the date of the pay award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the adoption pay should be re-calculated on the same basis.

## Calculation of shared parental leave pay

15.63 Full pay will be calculated using the average weekly earnings rules used for calculating Statutory Shared Parental Pay entitlements, subject to the following qualifications:

- i in the event of a pay award or move to a higher pay point being implemented before the paid shared parental leave period begins, the shared parental pay should be calculated as though the pay award or new pay point had effect throughout the entire Statutory Shared Parental Pay calculation period. If such a pay award was agreed retrospectively, the shared parental pay should be re-calculated on the same basis;
- ii in the event of a pay award or move to a higher pay point being implemented during the paid shared parental leave period, the shared parental pay due from the date of the pay

award or new pay point should be increased accordingly. If such a pay award was agreed retrospectively the shared parental pay should be re-calculated on the same basis.

## **Pay progression**

15.91 An employee on maternity / adoption / shared parental leave will progress through their pay step on the date the pay step is due unless a pay-step review meeting has taken place prior to the commencement of leave which confirmed that the required standards for pay progression would not be met. If a pay-step review cannot be conducted prior to the pay-step date the pay-step point should be automatically applied in the individual's absence. Refer to Annex 23 (England) for further information.

15.92 For staff on medical or dental contracts that are covered by this section the general principle will apply that there should be no detriment to pay progression or annual leave accrual as a result of taking maternity/adoption/shared parental leave.

## **Issue**

Due to the way the 2016 TCS, pay is structured (linked to training grade), the above paragraphs are not clear on how the provisions apply to a planned progression to a new nodal point, for example, if a trainee is not working at the relevant grade they cannot be paid at that grade.

Paragraph 15.92 could be interpreted as where a trainee was expecting to move to a higher nodal point and this move was planned (for example, an agreed specific date) then the move to the higher pay point should be reflected within their maternity pay.

## **NHS Employers' and BMA's position**

NHS Employers and the BMA agree that where a doctor has received an ARCP outcome prior to commencing their leave, or during their leave, which would have enabled them to progress to the next training grade and would have resulted in a move to a higher nodal point, then this higher nodal point should be reflected within the doctor's pay for their section 15 leave.

Where a doctor has been unable to undertake their ARCP as a result of their section 15 leave, but return to work in their next planned post, rather than the post from which they took leave. Then upon receipt of a successful ARCP outcome, they should have the impact of the move to a higher nodal point retrospectively applied to the pay for their section 15 leave to the date at which they would otherwise have moved to that nodal point. Where a doctor has returned from their section 15 leave and moved to their next planned post with the new employer, any retrospective payment to the doctor should be paid by the previous employer that the doctor was employed by when they took their leave.

### **Impact of different contractual arrangements on application of contractual provisions**

NHS Employers and the BMA agree that the interpretation of paragraph 15.92 could be impacted by the contractual arrangement that the doctor was employed under. Therefore, below we set out how we believe different contractual arrangements could affect the application of these contractual provisions:

#### **Employed under lead employer contract**

- As pay progression is occurring under the same contract, and the doctor has met the criteria for the progression, it would be reasonable to apply the higher nodal point.

### **Employed under separate contracts for the posts, but with the same employer**

- With this arrangement the doctor is covered by separate contracts. Therefore, the doctor would be asking for the pay only associated with their prospective post (and contract) to be applied to their current post, which is being extended for the purposes of their parental leave. Due these posts being with the same employer, it would be reasonable to apply the higher nodal point to the doctor's section 15 pay.

### **Employed under separate contracts for the posts and with different employers**

- In this circumstance it is at the doctor's existing employer's discretion to apply the higher nodal point, there is no contractual requirement for the employer to honour the arrangements of their prospective contract and pay, which they are only due to have with their next employer. However, NHS Employers and the BMA would advise, in the interest of providing equity and potential unlawful deduction of wages, that employers honour the higher nodal point where the above criteria has been met.
- The prospective employer fulfils what can be reasonably expected of them by allowing the doctor to defer their start date and guarantee their post upon their return from section 15 leave.

## **Application**

NHS Employers and the BMA are in agreement that where a trainee has a planned and expected move to a higher nodal point, and this was only prevented due to the doctor going on section 15 leave, the value of the higher nodal point should be reflected within the trainee's pay for their section 15 leave, from the date this would have been expected to have been applied. The doctor would have to receive a satisfactory ARCP outcome, which confirmed that they were eligible to progress to the next training grade / post.

If a doctor has been prevented from moving to a higher nodal point as a result of their section 15 leave, this move to the higher nodal point should be reflected in their pay from the date they would have been paid according to this higher nodal point, had they not taken their section 15 leave.

The application of this higher nodal point to a doctor's pay should be applied in the same manner as pay awards are applied to the pay of doctors on section 15 leave, when a pay award is implemented after the doctor's pay calculation reference period.

## **Scenario**

A doctor who is contracted as a CT2 in England and is currently on maternity leave which is due to end on 25 May 2022 and her annual leave period will begin. The doctor started maternity leave on 26 May 2021 while in her CT2 post.

The doctor was offered an ST3 post on 11 June 2021. She was then notified of her ARCP outcome 6, on 17 June 2021. The doctor's CT2 contract was set to end on 3 August 2021 but was extended to cover her maternity leave.

In this scenario, the doctor's maternity leave pay should reflect their anticipated move to the next training grade, and the associated higher nodal pay point from the date that they would have started receiving this higher pay had it not been for being maternity leave. Therefore, from 4 August 2021 onwards, the doctor's maternity leave pay should be revalued to reflect the value of nodal point 4, rather than nodal point 3.