

Local clinical excellence awards

Arrangements from April 2022

28 March 2022

NHS Employers
Capsticks

About

This employer briefing, developed in collaboration with Capsticks, provides some information about the contractual requirements and expectations on employers when delivering local clinical excellence award (LCEA) schemes under new arrangements.

It is the first in a series of materials from NHS Employers, produced to support employers to design and deliver their own local award scheme.

Background

NHS Employers, the British Medical Association (BMA) and HCSA have been unable to reach agreement on a new scheme in respect of LCEAs, following the rejection of the proposed scheme by both trade unions.

In the absence of an agreement being reached, schedule 30 of the terms and conditions – consultants (England) 2003, sets out the contractual provisions that take effect from 1 April 2022. These provisions were confirmed in 2017 when the interim LCEA arrangements were agreed (covering 2018/19 - 2021/22 rounds) and were only to take effect in the absence of an agreement being reached on a new set of arrangements. The provisions require organisations to continue to invest in and run annual LCEA rounds but with a greater degree of flexibility about how they do this.

Below we consider implementation of the schedule 30 provisions which are effective from 1 April 2022 and questions employers are likely to ask in respect of LCEAs moving forward.

Local LCEA schemes

Schedule 30 sets out the rules which will apply to LCEA schemes from 1 April 2022. It provides that local variations, whereby current LCEA arrangements are altered at a local level, can be introduced through consultation with joint local negotiation committees (JLNCs) provided the following provisions are not varied:

- 1 LCEAs will be non-consolidated and non-pensionable and will be payable for a period of up to three years, paid annually by lump sum and will not include an uplift for those undertaking additional programmed activities (APA).
- 2 The minimum amount invested and paid annually in LCEA per eligible full-time equivalent (FTE) consultant within each employing organisation will be no less than the level spent on pre-2018 LCEA in 2016/17 (circa £7900) per FTE (the exact value will be confirmed in an updated schedule 30 in due course). For these purposes 'eligible' will be defined as substantively employed consultants with at least one year's service (on 1 April of the award year) at consultant level who do not hold a National Clinical Excellence Award (NCEA), a National Clinical Impact Award (NCIA) or a distinction award.
- 3 The LCEA award values will be subject to uplift in line with the outcome of recommendations made by the Doctors' and Dentists' Review Body (DDRB) that are confirmed by the Department of Health and Social Care (DHSC).

- 4 Spend on LCEAs from this sum will include monies expended on:
 - i the continued payment of consolidated pre-2018 LCEAs
 - ii costs associated with the reversion mechanism for NCEA holders, from 1 April 2022
 - iii LCEAs.
- 5 Pre-2018 LCEAs will be retained for pre-2018 LCEA holders and these awards shall remain pensionable and consolidated but subject to the review process set out in schedule 30. Pre-2018 LCEA holders will continue to receive uplifts when undertaking APA and award values will be subject to uplift in line with recommendations made by the DDRB that are implemented by the DHSC.
- 6 Level 9 pre-2018 LCEAs will continue to be subject to renewal arrangements.
- 7 Any LCEA scheme must include an appeals mechanism.
- 8 Reversion to pre-2018 LCEA awards for NCEA holders who are unsuccessful in their applications for NCEA renewal, will continue to apply where the individual previously held a pre-2018 LCEA. NCEA holders who have reverted to a pre-2018 LCEA will have these awards reviewed three years after the date of the reversion.

Subject to points 1-8 above and the provisions regarding review and reversion as set out in schedule 30, employers are free to introduce local new LCEA schemes which differ from current LCEA schemes in consultation with their JLNC.

FAQs regarding schedule 30

Employers can introduce LCEA schemes which vary from previous LCEA arrangements in consultation with JLNC. What does “in consultation” mean?

'Consultation' in an employment context means management actively seeking and considering relevant parties' views before making a decision but does not require agreement between the parties.

Therefore, provided an employing organisation completes meaningful consultation on a local LCEA scheme which varies from previous LCEA arrangements, it could proceed to implement the new scheme even if it is not agreed by the JLNC.

It will also be important to consider local recognition agreements regarding their scope and whether introducing a new LCEA scheme requires local collective agreement.

How should we calculate the LCEA fund?

From 1 April 2022, the full time equivalent (FTE) method of calculation should be used in calculating the fund (referring to, “minimum amount invested and paid annually in future LCEA per eligible full time equivalent (FTE) consultant”). For these purposes ‘eligible’ will be defined as substantively employed consultants with

at least one year's service (on 1 April of the award year) at consultant level who do not hold an NCEA, NCIA or a distinction award.

Do we include clinical academics in the calculation of the LCEA fund?

Clinical academics are not substantively employed by NHS organisations, but instead hold honorary contracts with them, and so are not 'eligible' for the purposes of the calculation of the LCEA fund. However, the expectation of the parties is that clinical academics will continue to be considered eligible to apply for LCEAs. Where a clinical academic is accepted as eligible to receive an award, additional funds will need to be provided by the employer to ensure that funding is not diluted for those with a contractual right to be considered eligible.

Can funds be rolled over from one year to the next?

Schedule 30 sets out that the minimum amount paid annually in LCEAs per eligible FTE consultant would be no less than the level spent on pre-2018 LCEA in 2016/17 and expressly stated that funding could not be deferred and must be awarded in full each and every year, unless there was agreement with the JLNC that any uncommitted funds would be carried forward and spent on awards in the following year.

The provisions regarding LCEAs awarded from 1 April 2022 state that they must be "paid annually" but do not deal specifically with use of funds or an exception to spending the whole fund and carrying forward uncommitted funds with JLNC agreement. The absence of express wording regarding an exception and reference to LCEAs being paid annually means, in our view, that all LCEA funds must be paid out each year and cannot be "rolled-over", even with the agreement of the JLNC.

Can we continue to distribute funds equally as we did during the pandemic?

Schedule 30 sets out that LCEA schemes must be run with reference to amended 2012 ACCEA guidance on employer-based awards. The value of awards under that guidance is dictated by the points awarded through the assessment process, with the exception of equal distribution during the years of the pandemic.

From 1 April 2022, locally, a JLNC could choose to make equal payments in the same way as for the last two years of the pandemic, particularly as this would be a quick and easy way to distribute funds, albeit not in accordance with the purpose of LCEAs which is to award individual performance. No further reference is made to the ACCEA guidance from 1 April 2022 onwards, but there are references to “performance pay” and so equal distribution from 1 April 2022 may be challenged.

Is there a specific appeals mechanism we need to put in place?

There are no provisions within schedule 30 which dictate the appeals mechanism to be put in place, only that any locally agreed scheme must include an appeals mechanism, giving organisations freedom in this regard.

What happens to newly awarded LCEAs when individuals move between organisations?

Under the rules which apply to pre-2018 LCEAs, where an individual in receipt of a pre-2018 LCEA moves to another employer to which schedule 30 applies and continues to work within the speciality for which the award was made, the award will continue to be paid by the new employer, subject to the provisions on change of circumstances as set out in the amended 2012 ACCEA guidance on employer-based awards. If the award holder ceases to work for any employer

to which the schedule applies, they will no longer receive any award value from the date that they leave their employer.

There are no express provisions on a change of employer for LCEAs awarded under an LCEA scheme from 1 April 2022 and so employers have the ability to move away from the previous provisions and refuse to recognise an LCEA awarded by a previous employer. However, doing so is likely to cause difficulties from a staff engagement and recruitment perspective.

What are the general risks around employers not meeting their legal obligations under the terms of schedule 30?

Generally, the risk of not meeting contractual obligations under schedule 30 is a claim from an individual that, had the terms been applied correctly, they would have received a higher level of LCEA payment. An individual bringing such a claim would require good evidence to show that was indeed the case.

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