

HEADS OF AGREEMENT 17th July 2003

NEW CONSULTANT CONTRACT

Introduction

1. In June 2002, the UK Health Departments, the BMA and the NHS Confederation agreed a framework for a new contract for NHS consultants. The Department of Health, the BMA and the NHS Confederation have reached the following agreement with a view to implementing the new contract in NHS organisations in England. The agreement clarifies, varies and supersedes some features of the June 2002 framework and subsequent clarificatory statement, whilst retaining the key principles of the framework and avoiding any change in the estimated financial impact of the contract for NHS organisations and for NHS consultants.

Job planning

2. Job planning under the new contract will be based on a partnership approach. The clinical manager will prepare a draft job plan, which will then be discussed and agreement sought. Such job plans will list all the NHS duties of the consultant, the number of programmed activities for which the consultant is contracted and paid, a schedule for carrying out programmed activities, the consultant's objectives and agreed supporting resources. The consultant must fulfil their agreed duties and make best endeavours to meet their objectives. If it is not possible to reach agreement on the job plan, the consultant may invoke the process of mediation and, if necessary, appeal set out in paragraphs 10-11 below.
3. Attaching a time value to programmed activities is intended to provide greater transparency about the level of commitment expected of consultants by the NHS. However, clinical managers and consultants can agree flexible arrangements for timing of work. The new arrangements are emphatically not intended to diminish professionalism or override clinical judgement.
4. Consultants will generally be expected to carry out programmed activities at their main place of work or other locations agreed in the job plan. There will be local flexibility to agree off-site working where appropriate, for example for supporting professional activities.

Pay progression

5. It will be the norm for consultants to achieve pay progression. Pay progression may only be deferred where the consultant has not met the specified criteria in the framework agreement.
6. These criteria are that the consultant has made every reasonable effort to meet the job plan commitments and objectives, has participated satisfactorily in the job plan review and appraisal, has observed the

agreed code of conduct on private practice, and has offered the NHS in preference to other organisations the first portion (one programmed activity) of any spare professional time.

7. Employing organisations cannot introduce any other criteria. For instance, pay progression cannot be withheld or delayed on the grounds of the employing organisation's financial position. Nor would it be acceptable for NHS organisations to use any system of quotas for pay progression.
8. Guidance will be drawn up to illustrate good practice on pay progression.
9. The consultant has the right to mediation and appeal using the mechanism described in the next section.

Appeals

10. Wherever possible, disagreements over job planning or pay progression should be resolved by referral to the medical director for mediation. If matters are not resolved in this way, there will be access to a fair and balanced appeal process.
11. Under this process:
 - the panel will have three members:
 - ⇒ the chairman nominated by the employing organisation
 - ⇒ a representative nominated by the consultant
 - ⇒ a third member chosen from a list of individuals approved by the Strategic Health Authority and the BMA.
 - legal representatives acting in a professional capacity will not be involved in the process, but the consultant may be accompanied by a friend or adviser during the process
 - the panel will issue a recommendation to the Trust Board, which will normally be accepted. The Trust Board retains the right to make the final decision.

Evening and weekend work

12. Non-emergency work after 7pm and before 7am during weekdays or at any time at weekends should only be scheduled by mutual agreement between the consultant and his or her clinical manager. Consultants will have the right to refuse non-emergency work at such times. Should they do so, there will be no detriment in relation to pay progression or any other matter.

Recognition for evening and weekend work

13. There will be extra recognition for work outside the hours of 7am to 7pm (weekdays) and work at weekends.

14. The basic principle will be that at nights, evenings and weekends, three (rather than four) hours of work will be equivalent to one programmed activity. In other words:
 - where out-of-hours work is scheduled in advance, i.e. it is a normal programmed activity, a programmed activity will be treated as lasting for three hours. (As under the June framework, where a programmed activity falls only partly during the out of hours period, the part falling in the out of hours period will be treated accordingly.)
 - in relation to unpredictable work arising from on-call duties, three hours of such work will be counted as one programmed activity, subject to the upper limits in the June framework.

Putting the NHS patient first

15. The contract will operate on the principle that the NHS patient comes first.
16. The June 2002 framework set out different provisions for the number of programmed activities that new consultants and established consultants should typically devote to direct clinical care. It has been agreed that a full time consultant, whether new or established, will normally devote on average 7½ programmed activities per week to direct clinical care except where their agreed level of duties in relation to supporting professional activities, additional responsibilities and other duties is significantly greater or lower than 2½ programmed activities. In this case there will be local agreement as to the appropriate balance between direct clinical care and other activities. Supporting professional activities, additional responsibilities and other duties are as defined in the June 2002 framework agreement.
17. The June 2002 framework agreement also sets out provisions that apply where consultants have spare professional capacity (on top of their basic contractual requirement) and wish to undertake other paid clinical work. Pay progression may be deferred where a consultant undertaking other paid clinical work has declined the offer to undertake additional programmed activities for the NHS in line with these provisions.
18. The BMA has accepted the provision of the framework agreement that all consultants should offer the NHS first call on a portion of their spare time before doing any remunerated clinical work (as defined in Annex B of the framework document) outside their main NHS contract. The Department and the NHS Confederation have agreed that the same provisions will now apply equally to all consultants regardless of the stage of their career. All consultants will be expected to offer no more than one additional programmed activity to the NHS before carrying out other paid clinical work in order to fulfil pay progression requirements (see paragraph 6).
19. As set out in the framework agreement, the provisions on offering spare professional capacity to the NHS (in preference to other organisations)

apply only where a consultant is not already providing one or more weekly additional programmed activities on top of the minimum contractual commitment. In other words:

- full-time consultants who are currently working the equivalent of 11 or more programmed activities and agree with their clinical manager that the same level of activity should form part of their job plan under the new contract would not be expected to offer any additional work on top of this
- part-time consultants who wished to use some of their non-NHS time to do private practice would not be expected to offer any more than one extra programmed activity on top of their normal working week.

20. As also set out in the framework agreement, there will be flexibility for Trusts and consultants to agree that some categories of other clinical work do not fall within the scope of these provisions, in other words that the consultant can undertake such work without being expected to first offer additional work to the NHS.

Other points

21. The points set out above address what were the six main areas of outstanding disagreement. In addition, we have agreed the following points.

22. It has been agreed that the new contract will provide extended annual leave entitlement for consultants who have completed seven years of service in the consultant grade, including equivalent service elsewhere (e.g. in the armed forces). The new contract will provide for an extra two days annual leave from April 2005 onwards and one extra day's annual leave in 2004/05. The Department of Health continues to support introducing a new sabbaticals scheme for consultants and will now review the timetable for this.

23. The parties will produce a single document that summarises and explains what the new contract will mean for part-timers. It is agreed that the implementation of the contract should provide the necessary flexibility for those consultants who wish to work part-time. There is also of course a legal duty to ensure that part-time consultants suffer no discrimination in the implementation of the contract.

24. The parties have clarified the implications of the new contract for pensions. The new contract will not affect the final salary NHS pension scheme. Under the new contract, pensionable pay will include basic salary (up to 10 programmed activities, but not any additional programmed activities above this), on-call availability supplements, clinical excellence awards and any existing discretionary points or distinction awards and any other agreed pensionable pay. Mental Health Officer status will be unaffected.

25. The parties have confirmed that there is agreement to the key elements of the Department's proposals for a new clinical excellence award scheme to replace the current systems of discretionary points and distinction awards, to be implemented from 2004/05. There will be at least the same level of funding for clinical excellence awards as there would have been for new discretionary points and distinction awards under the current systems. There will now be joint discussions between the parties to finalise the details of the new scheme.
26. There has been progress in agreeing the key elements of the Department's proposals for new disciplinary procedures to replace the existing local and national procedures (HC[90]9). This will include the removal of the paragraph 190 procedures. There will now be joint discussions between the parties to finalise the details of the new disciplinary procedures.
27. The Department has indicated and the BMA has accepted that it will continue with its plans to pilot and implement fee-for-service incentive schemes alongside either the current or the new contractual arrangements.
28. All the parties will now work in partnership to produce by 14 August:
 - final documents on the new contract, including new terms and conditions of service and accompanying guidance such as guidance on what the contract means for part-time consultants, a code of conduct on private practice and guidance on job planning
 - final documentation on the new clinical excellence award scheme and new disciplinary procedures.
29. The parties will also work in partnership with other relevant stakeholders to agree how the principles of the new contract should apply to clinical academics.
30. Pay increases under the new contract will be backdated to 1 April 2003 where a consultant gives a formal commitment to the contract by 30 September 2003, or by three months where the formal commitment is given between 1 October 2003 and 31 March 2004. In each case, backdating will be conditional upon a job plan being agreed within 3 months, except where this deadline is not met for reasons beyond the consultant's control. In each case, consultants may choose any shorter period of backdating if they so wish. In the event of a commitment to the contract being made after 1 April 2004, there will be no backdating.
31. CCSC negotiators have today successfully concluded talks on what they consider to be the best available package. They will be advising CCSC to accept the package in full and consultants will then be asked their opinion in a ballot.