

Job Planning and Pay Progression Appeals CCIT and BMA Joint Guide for Appeal Panels

1. Introduction

Schedule 4 of the Terms and Conditions of Service (T&Cs) set down the circumstances in which a mediation procedure and an appeal procedure are available. There are two such circumstances:

- a) where it has not been possible to agree a Job Plan, and/or
- b) where a decision has been made that a consultant has not met the required criteria for a pay threshold in a given year.

A formal appeal is available under the terms of Schedule 4 only in the event that a job planning or pay progression dispute has not been resolved by means of mediation.

2. Grounds for appeal

The appeal procedure is expressly restricted to dealing with appeals arising out of a failure to agree a job plan and achieve pay progression, as set out in the T&Cs. The procedure is not intended as a mechanism to raise issues that would more appropriately be addressed through other procedures, for example the employing organisation's local grievance procedure, or through collective bargaining via the LNC or Staff Side.

The issues to be determined by an appeal panel must be set out in writing by the appellant, and must fall within the scope of the appeals process. The appeal panel may only make recommendations in respect of issues within the scope of their jurisdiction and should decline either to comment or to make recommendations in respect of other issues. For example, the following issues may be matters upon which an appeal is brought (this list is intended to be illustrative and not exhaustive):

Failure to agree a job plan

- Lack of sufficient detail in the job plan itself
- That the offer of PAs in the job plan does not reflect adequately the agreed workload commitment
- Allocation of on-call category
- Balance between PAs. May include questions of typical averages and the number of PAs allocated to supporting professional activities, additional NHS responsibilities or external duties
- Recognition of unpredictable on-call commitments
- Disputes over timing and/or location of duties (including requirements to change external commitments)
- Recognition of travelling time
- Whether or not fee paying work is included in the job plan; issues of minimal disruption and retention of fees
- Objectives - appropriateness and reasonableness
- Supporting resources
- On-call rota frequency



Pay thresholds/progression

- Disagreement over the reason for denial of progression - i.e. any of the issues set out in Schedule 15.1
- Whether there have been exceptional circumstances that have not been taken into account when determining denial
- Introduction by the employer of additional criteria not provided for in the T&Cs - e.g. financial constraints
- Disagreements over whether the appropriate number of years of service have been fulfilled for progression (Schedule 15.7)

In deciding appeals brought on these grounds, the appeal panel is entitled to look at both the substantive issue(s) in dispute and at the local process that has culminated in the appeal. For example, in an appeal based on failure to agree a job plan, the appeal panel may wish to examine the extent to which the parties have engaged in a reasonable process and dialogue locally, to determine whether the employer has behaved reasonably in reaching its position in relation to the appellant consultant.

3. Matters outside the scope of the Job Planning and Pay Progression appeals procedure

Examples of issues we would not expect to be addressed within this appeals procedure include the following:

- Appeals for pay protection
- Appeals about seniority and consultant level experience
- Appeals based on a reinterpretation of the T&Cs as currently written e.g. an appeal on the basis that on-call rota frequency should count prospective cover rather than simply the number of consultants on the rota
- Appeals based merely on achieving parity with other consultants e.g. in another department or another employing organisation

Appeal panel members will receive the appellant's written statement of appeal in advance of the hearing. It would be helpful at that point for panel members to give some thought to the issues that the panel is being asked to consider, and to decide whether there are any issues within the appellant's case that should be set aside as inadmissible within this procedure.

4. Making a recommendation

After hearing from both parties to the appeal, the panel will need to decide on a recommendation to the board of the appellant consultant's employing organisation. A recommendation need not be made immediately on the day of the appeal, although if the appeal panel members consider they have enough information on which to proceed, they may wish to formulate a recommendation immediately.

In many cases the appeal panel will wish to seek clarification on technical issues or issues of interpretation, and will want to obtain specialist advice, for example human resources advice, before proceeding further. It may be possible to arrange for a human resources adviser to be on hand on the day of the hearing to advise the appeal panel. At the discretion of the appeal panel Chair, a human resources adviser may be present during the hearing to hear each party's case at first hand, although the adviser should not take any active part in the proceedings.

The model appeals protocol allows for an adjournment of the hearing in order that advice may be sought. It would be acceptable to adjourn the hearing after considering all the evidence but before deciding on a recommendation, and to notify the parties of the recommendation in writing at a later date, normally within two weeks of the appeal having been heard.

5. Bundle of documents for use by appeal panels

The following documents provide relevant authority, information and guidance on aspects of the 2003 consultant contract and have been brought together for use by appeal panel members.

Index

Definitive documents

1. Framework Agreement (and Annexes) 2002
2. Heads of Agreement 2003
3. Terms and Conditions of Service Consultants (England) 2003
4. Consultant Contract
5. Code of Conduct for Private Practice
6. Consultant Job Planning – Standards of Best Practice
7. Clinical Academics - Model Honorary Contract
8. Academics - Guidance Notes for the employment of Consultant Clinical Academics
9. Clinical Academic Substantive Contract Suggested Clauses

CCIT/BMA Jointly Agreed Guidance

10. Guidance on Part Time and Flexible Working
11. Appeals Protocol

Unilateral Guidance

12. Guide to Local Contractual Flexibilities
13. Key Pay Elements
14. Annualised Job Plans
15. Guide to Calculating On-Call Work
16. Mediation Protocol
17. Frequently Asked Questions (This document is subject to regular updates – for the most recent version check www.modern.nhs.uk/consultants)
18. External Duties
19. Using the Appeals Process

**Consultant Contract Implementation Team
and British Medical Association
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