

## **HEADS OF AGREEMENT 24 November 2003**

### **NEW CONSULTANT CONTRACT**

#### **Introduction**

The DHSS&PS, HPSS Employers and the BMA(NI) and have reached the following agreement with a view to implementing the new contract in HPSS organisations in Northern Ireland. 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 HPSS organisations and for HPSS consultants.

#### **Job planning**

1. 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 HPSS 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 9 - 10 below.
2. Attaching a time value to programmed activities is intended to provide greater transparency about the level of commitment expected of consultants by the HPSS. 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.
3. 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**

4. 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.
5. 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 HPSS in preference to other organisations the first portion (one programmed activity) of any additional available professional time.

6. 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 HPSS organisations to use any system of quotas for pay progression.

7. Guidance will be drawn up to illustrate good practice on pay progression.

8. The consultant has the right to mediation and appeal using the mechanism described in the next section.

### **Appeals**

9. 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.

10. 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 DHSS&PS / HPSS Health Boards and the BMA(NI).

If there is an objection raised by either the consultant or the employing organisation to the first representative from the list, one alternative representative will be allocated. The list of individuals will be regularly reviewed.

No member of the panel should have previously been involved in the dispute.

- 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**

11. 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**

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

13. 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 HPSS patient first**

14. The contract will operate on the principle that the HPSS patient comes first.

15. 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.

16. The June 2002 framework agreement also sets out provisions that apply where consultants have any additional available professional capacity (on top of their basic contractual requirement) and wish to undertake other paid non-HPSS 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 HPSS in line with these provisions.

17. The BMA(NI) has accepted the provision of the framework agreement that all consultants should offer the HPSS first call on a portion of their additional available professional time before doing any remunerated non-HPSS clinical work. The Department and the HPSS Employers 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 HPSS before carrying out other paid non-HPSS clinical work in order to fulfil pay progression requirements.

18. As set out in the framework agreement, the provisions on offering any additional available professional capacity to the HPSS (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-HPSS 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.

19. As 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 HPSS.

### **Annual leave**

20. 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 DHSS&PS continues to support the concept of sabbatical schemes for consultants.

### **Part-time Working**

21. The parties have produced 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.

### **Pensions**

22. The parties have clarified the implications of the new contract for pensions. The new contract will not affect the final salary HPSS 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, any existing distinction awards or discretionary points (or any agreed negotiated replacement) and any other agreed pensionable pay. Mental Health Officer status will be unaffected.

## **Discretionary Points and Higher Awards**

23. The DHSS&PS is committed to the ongoing review of Discretionary Points and Higher Merit Awards and seeks to bring new arrangements into place from 01 April 2005 after a period of public consultation. In the interim the existing arrangements will apply.

24. The DHSS&PS undertakes to formally negotiate the Discretionary Points element of this review with BMA(NI) prior to any public consultation exercise.

## **Disciplinary Procedures**

25. The BMA(NI) and the DHSS&PS will develop a new framework for discipline and suspension. In the interim period current arrangements will apply.

## **Joint Appointment Consultants**

26. The BMA(NI) and DHSS&PS will produce guidance on the principles for applying the consultant contract to joint appointment consultants in the near future. However,

- There is commitment to the principle of parity in arrangements, including pay, between joint appointment consultants and substantive HPSS consultants
- Any new arrangements for joint appointment consultants will be based on the terms and conditions produced for substantive HPSS consultants

## **Transitional Arrangements**

27. Where a consultant gives a formal commitment to the contract by 07 January 2004 there will be the option for the consultant to choose backdating of either

- New salary and seniority to 01 October 2003

OR

- Seniority without backpay until 01 April 2003

28. Where a consultant gives a commitment to the contract after 07 January 2004, but on or before 31 March 2004, there will be an entitlement to backdating of the new salary and seniority for a period of 3 months from the date of commitment.

29. 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 on or after 1 April 2004, there will be no backdating.

30. All the parties will now work in partnership to seek to produce by 31 January 2004 final documents on the new contract, including new terms and conditions of service and any further accompanying guidance agreed as being required.

31. NICSC and DHSS&PS negotiators have concluded talks on what they consider to be the best available package. Both parties commend this to the profession in Northern Ireland. Consultants and SpRs will be asked their opinion in a ballot commencing Friday 28 November 2003 and closing on Friday 11 December 2003.