

## Appeals in Senior Medical and Dental Doctor Job Planning & Pay Progression Disputes

Date	Version	
May 2014	5.2	
<b>Purpose</b>		
<p>This policy has been agreed between PHNT management and the Local Negotiating Committee (LNC). It sets out the terms in which appeal can be made if a Senior Medical and Dental Doctor is not satisfied with the outcome of a mediation procedure in job planning and pay progression disputes.</p>		
<b>Who should read this document?</b>		
<p>All Senior Medical and Dental Doctors            Care Group Directors and Service Line Directors            Care Group General Managers and Service Line Managers</p>		
<b>Key messages</b>		
<p></p>		
<b>Accountabilities</b>		
<b>Production</b>	Medical HR Business Partner	
<b>Review and approval</b>	Medical Staff Panel	
<b>Ratification</b>	Director of Human Resources & Organisational Development	
<b>Dissemination</b>	Medical Workforce Office	
<b>Compliance</b>	Medical Director	
<b>Links to other policies and procedures</b>		
<p>Mediation for Senior Medical and Dental Doctors in Job Planning and Pay Progression</p>		
<b>Version History</b>		
<b>Draft 2.1</b>	Apr 2007	Comments (i.e. viewed, reviewed, amended or approved by person or Committee)
<b>Draft 3.1</b>	Aug 2009	LNC updated in line with management structure and EIA requirements
<b>Draft 4.1</b>	Mar 2011	Trust Commitment to Valuing People amended in line with the Equality Act 2010. Electronic policy paths updated
<b>Draft 4.2</b>	Jun 2011	Review date extended
<b>Draft 4.3</b>	Jun 2012	Review date extended
<b>5.1</b>	November 2018	Extended to April 2019 by HR SMT

<b>5.2</b>	August 2019	Extended to April 2020 by Louise Tate
<b>Last Approval</b>		<b>Due for Review</b>
22 <sup>nd</sup> May 2014		Extended to April 2020

*The Trust is committed to creating a fully inclusive and accessible service. By making equality and diversity an integral part of the business, it will enable us to enhance the services we deliver and better meet the needs of patients and staff. We will treat people with dignity and respect, promote equality and diversity and eliminate all forms of discrimination, regardless of (but not limited to) age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage/civil partnership and pregnancy/maternity.*

**An electronic version of this document is available on Trust Documents, Larger text, Braille and Audio versions can be made available upon request.**

<b>Section</b>	<b>Description</b>	<b>Page</b>
1	Introduction	4
2	Purpose, including legal or regulatory background	4
3	Key elements	4
4	Consultation and ratification	8
5	Dissemination and Implementation	8
Appendix 1	Dissemination Plan	9
Appendix 2	Review and Approval Checklist	10
Appendix 3	Equality Impact Assessment	11
Appendix 4	Mediation and Appeals Framework	13

## **1 Introduction**

Schedule 4 of the 2003 Consultant Contract Terms and Conditions of Service (T&Cs) and Schedule 5 of the Associate Specialist and Speciality Doctor 2007 Terms and Conditions of Service makes provision for a formal appeal in the event that a Senior Medical or Senior Dental Doctor is not satisfied with the outcome of a mediation procedure in job planning and pay progression disputes.. This protocol should be read in conjunction with the detailed provisions of Schedule 4 of the 2003 Consultant Contract Terms and Conditions of Service and Schedule 5 of the Associate Specialist and Speciality Doctor 2007 Terms and Conditions of Service.

A formal appeal panel will be convened only where it has not been possible to resolve the disagreement using the mediation process. A formal appeal will be heard by a panel under the procedure set out in the above T&Cs and should take into account the guidance set out below.

An appeal shall be lodged in writing to the Chief Executive within two weeks (two working weeks for the Senior Doctor allowing for holidays, sickness etc) of the date of the letter notifying the Doctor of the outcome of the mediation process. The letter of appeal should set out the points in dispute and the reasons for the appeal, together with an indication of the desired outcome. The Chief Executive will, on receipt of a written appeal, arrange for an appeal panel to be convened, to meet within four weeks of receipt of the appeal letter.

## **2 Purpose**

This policy should be followed providing a consistent approach in resolving job planning difficulties. All appeals will be handled in line with this policy. The number of appeals will be recorded on the Medical HR database and will be reported via the HR Trust Board Report when they occur.

## **3 Key elements**

### **1. The Appeal Panel**

1.1 The appeal panel shall comprise three members, reflecting a balance of interests as follows:

- a) a chair nominated by the appellant's employing Trust – Plymouth Hospitals NHS Trust. (PHNT)
- b) a panel member nominated by the Senior Doctor
- c) an independent third member chosen from a list of individuals approved by NHS South and the BMA and BDA.

1.2 No member of the panel should have previously been involved in the dispute. To ensure probity and to avoid the perception of any conflict of interest, the appeal panel shall not include any individual who may stand to benefit personally from the outcome of the appeal. For example, the spouse or partner of the appellant doctor, or a colleague in the same department who may benefit from the decision of the panel.

#### **(i) The panel Chair**

The employer is responsible for nominating the Chair of the panel. It is anticipated that this role would normally be undertaken by a senior person such as a non-executive director of the trust.

## **(ii) The panel member nominated by the Senior Doctor**

The Senior Doctor is responsible for nominating the second panel member. A list of suitable panel members from which the doctor may choose will be held in the HMSC Office. The LNC will ask for self-nomination to this list from time to time. Alternatively, the Senior Doctor can nominate an individual of their own choice.

## **(iii) The independent third panel member**

**NHS South** will provide the name of the third panel member from a list of individuals jointly approved by NHS South the BMA and BDA.

- 1.3 In the event of an objection raised by either the Senior Doctor or PHNT to the independent third panel member, NHS South will arrange for an alternative nominee to be allocated from the approved list. Any objection should be made in writing to NHS South and supported by an explanation of the grounds of the objection, which will be kept on record.

## **2. Clinical Academic Consultants**

- 2.1 The appeals panel constitution for clinical academic staff is as set out in Annex B to the Honorary Consultant Contract (England), December 2003. (See Appendix 4)

## **3. Approving the List of 3rd Panel Members**

- 3.1 In order for fairness and balance to be achieved, the third panel member must be regarded by both parties to the appeal as independent and impartial. This should help to ensure that both parties accept the appeal outcome as a final resolution to the dispute, notwithstanding that the final decision rests with the Board of PHNT. The appointment process for the third member therefore needs to be seen to be fair.
- 3.2 The NHS South and the BMA/BDA will nominate individuals for the lists to be held by NHS South.. Either party will have the right to reject names put forward by the other party. Where a name is rejected, sound reasons must be supplied. If NHS South and BMA/BDA locally are unable to agree a list, or have insufficient names to put forward for appeals, they may draw upon the approved list held by a neighbouring region..
- 3.3 There shall be four separate lists to be held by NHS South, for appeals by:
  - a) NHS consultants (other than public health consultants)
  - b) Dental consultants
  - c) Public health consultants
  - d) Clinical academic staff

There is no reason why individuals cannot by agreement be included on more than one of these lists.

- 3.4 Each list should consist of equal numbers of names put forward by NHS South and BMA/BDA. NHS South will monitor the way in which individuals on this list are allocated to appeal panels, to avoid particular individuals being routinely called upon and to ensure a fair and balanced selection process. To ensure equity, NHS South will draw names from the lists randomly. The lists of individuals will be regularly reviewed.

- 3.5 In nominating panel members for the approved lists, NHS South and BMA/BDA shall consider the key attributes of independence and impartiality required of such nominees. Panel members might be individuals already engaged in analysis and decision making in separate but related NHS fields such as:
- a) Members of dispute, grievance and disciplinary panels
  - b) Members of inquiry and senior interview panels
  - c) Complaints convenors and assessors (e.g. for the NCAS)
- 3.6 This is an illustrative rather than exhaustive list and should not be seen to exclude particular groups of potential nominees. For example, many consultants and NHS senior managers will equally possess the proven skills to help consultants and employers achieve resolution. It is anticipated that the names of many suitable people will already be known to NHS South, the BMA and BDA locally.
- 3.7 The BMA/BDA will determine via their local offices/regional committees the routes for putting forward nominees to the approved lists. This nomination mechanism will differ for the different lists above. NHS South may wish to obtain from Trusts additional names for joint consideration and incorporation in the lists.

#### **4. National NHS Employers**

- 4.1 There are a number of employers of consultants that fall outside the purview of the NHS South structure, for example the Health Protection Agency and National Blood Authority. For these and similar organisations, the third panel member will be chosen from the appropriate list in the area where the consultant is located geographically. NHS South should, wherever possible, seek nominations from such employers for the list of third panel members.

#### **5. The Process**

- 5.1 The Chief Executive will confirm in writing to the appellant Senior Doctor and Medical Director (or other nominated representative of the employing organisation) the membership of the appeal panel and hearing date, and will invite the parties to submit their written statements of case. The parties to the appeal will submit their written statements of case to the appeal panel and to the other party, to be received no later than one week before the appeal hearing. The appeal panel will hear verbal submissions on the day of the hearing. Management will present its case first explaining the position on the Job Plan, or the reasons for deciding that the criteria for a pay threshold have not been met.
- 5.2 The Senior Doctor may present his or her own case in person, or be assisted by a work colleague or trade union or professional organisation representative, but legal representatives acting in a professional capacity are not permitted.
- 5.3 Where the Senior Doctor, the employer or the panel requires it, the appeals panel may hear additional expert advice on matters specific to a specialty. The Senior Doctor or employer, as appropriate, shall be responsible for arranging the attendance of their expert witness on the day of the appeal hearing. The relevant employing organisation shall pay the reasonable travel and subsistence expenses of any such expert witnesses. Unavailability of a witness will not ordinarily be treated as sufficient reason (subject to the provisions of paragraph 5.4 below) for delaying or adjourning proceedings.

- 5.4 It is expected that the appeal hearing will last no more than one day. However, the Chair will have discretion to adjourn the appeal hearing in order to call on expert advice where the panel requests such expert advice prior to making their decision, or for any other reason that, in the Chair's opinion, would facilitate a full and fair hearing of the issues.
- 5.5 The appeal panel will make a recommendation on the matter in dispute in writing to the board of the employing organisation, normally within two weeks of the appeal having been heard. This recommendation will normally be accepted. The parties to the appeal will receive a copy of the recommendation when it is sent to the Board. The Board will make the final decision at their first available opportunity (normally the next Board meeting) and will inform the parties in writing of their decision.
- 5.6 Group appeals are admissible under this protocol, by prior agreement between PHNT and consultants concerned. One member of the group would represent the case and the panels decision would apply to all cases in the group.
- 5.7 The recommendation of an appeal panel in a particular case will not set a precedent unless the relevant parties locally agree otherwise.
- 5.8 No disputed element of the Job Plan will be implemented until confirmed by the outcome of the appeals process. Any decision that affects the salary or pay of the Senior Doctor will have effect from the date on which the Senior Doctor referred the matter to mediation or from the time he or she would otherwise have received a change in salary, if earlier.
- 5.9 If a non-executive director has been involved in the mediation stage (normally for the Medical Director), they shall not take part in any subsequent appeal. Any board member involved in the mediation or appeals process for a particular case should not participate in the board's subsequent consideration of the appeal outcome for that particular case.

## **6. Agreed Document Bundle**

- 6.1 The Senior Doctor and their representative will work together with the Trust to establish an agreed bundle of documents (e.g. contract, terms and conditions of service, relevant guidance) to be offered to all appeal panels. This is intended to reduce duplication of workload at a local level. This will not preclude either party to the appeal submitting further evidence. The agreed document bundle will be provided to all members of the panel.

## **7. Time Off and Expenses for Appeals**

- 7.1 The Trust will give reasonable time off by substitution of programmed activities to employees involved in the appeals process either within the Trust or for another organisation.
- 7.2 The relevant employing organisation shall pay the reasonable travel and subsistence expenses of panel members.

## **4 Consultation and Ratification**

The design and process of review and revision of this policy will comply with The Development and Management of Trust Wide Documents.

The review period for this document is set as default of **three years** from the date it was last ratified, or earlier if developments within or external to the Trust indicate the need for a significant revision to the procedures described.

This document will be approved by the **Medical Staff Panel** and ratified by the **Director of HR & OD**.

Non-significant amendments to this document may be made, under delegated authority from the **Director of HR & OD**, by the nominated author. These must be ratified by the **Director of HR & OD** and should be reported, retrospectively, to the Medical Staff Panel and HR & OD Committee.

Significant reviews and revisions to this document will include a consultation with named groups, or grades across the Trust. For non-significant amendments, informal consultation will be restricted to named groups, or grades who are directly affected by the proposed changes

## **5 Dissemination and Implementation**

Following approval and ratification, this policy will be published in the Trust's formal documents library and all staff will be notified through the Trust's normal notification process, currently the 'Vital Signs' electronic newsletter.

Document control arrangements will be in accordance with The Development and Management of Trust Wide Documents.



Core Information				
Document Title	Appeals in Senior Medical and Dental Doctor Job Planning & Pay Progression Disputes			
Date Finalised	22 <sup>nd</sup> May, 2014			
Dissemination Lead	Medical Workforce Business Partner			
Previous Documents				
Previous document in use?	Yes			
Action to retrieve old copies.	The document controller will ensure that old versions are archived in the archive master file. Access to archived documents will be through the document controller.			
Dissemination Plan				
Recipient(s)	When	How	Responsibility	Progress update
Medical and Dental Consultants	Ratified	Electronic	Medical Workforce Team	
Directorate Managers, Clinical Directors and Service Line Directors	Ratified	Electronic	Medical Workforce Team	

<b>Review</b>		
<b>Title</b>	Is the title clear and unambiguous?	Y
	Is it clear whether the document is a policy, procedure, protocol, framework, APN or SOP?	Y
	Does the style & format comply?	Y
<b>Rationale</b>	Are reasons for development of the document stated?	Y
<b>Development Process</b>	Is the method described in brief?	Y
	Are people involved in the development identified?	Y
	Has a reasonable attempt has been made to ensure relevant expertise has been used?	Y
	Is there evidence of consultation with stakeholders and users?	Y
<b>Content</b>	Is the objective of the document clear?	Y
	Is the target population clear and unambiguous?	Y
	Are the intended outcomes described?	Y
	Are the statements clear and unambiguous?	Y
<b>Evidence Base</b>	Is the type of evidence to support the document identified explicitly?	Y
	Are key references cited and in full?	Y
	Are supporting documents referenced?	Y
<b>Approval</b>	Does the document identify which committee/group will review it?	Y
	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	Y
	Does the document identify which Executive Director will ratify it?	Y
<b>Dissemination &amp; Implementation</b>	Is there an outline/plan to identify how this will be done?	Y
	Does the plan include the necessary training/support to ensure compliance?	Y
<b>Document Control</b>	Does the document identify where it will be held?	Y
	Have archiving arrangements for superseded documents been addressed?	Y
<b>Monitoring Compliance &amp; Effectiveness</b>	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	Y
	Is there a plan to review or audit compliance with the document?	Y
<b>Review Date</b>	Is the review date identified?	Y
	Is the frequency of review identified? If so is it acceptable?	Y
<b>Overall Responsibility</b>	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?	Y

<b>Core Information</b>	
<b>Manager</b>	Yvonne Linley-Shaw
<b>Directorate</b>	HR & OD
<b>Date</b>	January 2014
<b>Title</b>	Appeals in Senior Medical and Dental Doctor Job Planning & Pay Progression Disputes
<b>What are the aims, objectives &amp; projected outcomes?</b>	The policy sets out the terms in which an appeal can be made if a Senior Doctor Is not satisfied with the outcome of a mediation procedure in job planning and pay progression disputes.
<b>Scope of the assessment</b>	
<b>Collecting data</b>	
<b>Race</b>	This is mitigated as the guidelines can be made available in alternative languages
<b>Religion</b>	The document has no impact in this area
<b>Disability</b>	This is mitigated as the guidelines can be made available in alternative formats
<b>Sex</b>	The document has no impact in this area
<b>Gender Identity</b>	The document has no impact in this area
<b>Sexual Orientation</b>	The document has no impact in this area
<b>Age</b>	The document has no impact in this area
<b>Socio-Economic</b>	The document has no impact in this area
<b>Human Rights</b>	The document has no impact in this area
<b>What are the overall trends/patterns in the above data?</b>	There are no trends/patterns in this data. External consideration has been given to 2011.12 NHS Litigation Authority Risk Management Standards for NHS Trusts.
<b>Specific issues and data gaps that may need to be addressed through consultation or further research</b>	Trust wide documents can be made available in a number of different formats and languages if requested. No further research is required as there are no further equality issues.
<b>Involving and consulting stakeholders</b>	
<b>Internal involvement and consultation</b>	These guidelines have been compiled by Consultant medical staff representatives and has been circulated for consultation to LNC members and the Medical Staff Panel.
<b>External involvement and consultation</b>	None
<b>Impact Assessment</b>	

<b>Overall assessment and analysis of the evidence</b>	<p>The assessment has shown that there could be an impact on race or disability groups. However, this document can be made available in other formats and languages if requested.</p> <p>The document does not have the potential to cause unlawful discrimination. The document does not have a negative impact.</p>
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<b>Action Plan</b>				
<b>Action</b>	<b>Owner</b>	<b>Risks</b>	<b>Completion Date</b>	<b>Progress update</b>
Provide documents in alternative formats and languages if requested	Medical Workforce Business Partner	Potential cost impact	Ongoing	This action will be addressed as and when the need occurs

1. This Annex sets out a nationally agreed Framework (supplemented by Local guidelines) for Mediation and Appeals in the case of disputes arising from the integrated job planning process or decisions about pay progression, in the case of University employed clinical academics who are employed in the NHS consultant grade via an honorary contract. The Framework embodies the principle of joint working recommended in the Follett report.
  
2. National Framework  
Where it has not been possible to agree an integrated Job Plan, or a clinical academic disputes a decision that he or she has not met the required criteria for a pay threshold in respect of a given year, a mediation procedure and an appeal procedure are available.
  
3. Mediation  
The clinical academic, or (in the case of a disputed Job Plan) the University manager or the clinical manager, may refer the matter to the Dean (or his/her nominee) who will consult with the NHS Medical Director. If the Dean (or his/her nominee) or Medical Director is one of the parties to the initial decision, the referral will be to an appropriate, designated other person. Where a clinical academic holds an honorary contract with more than one NHS organisation, a designated honorary employer will take the lead. The purpose of the referral will be to reach agreement if at all possible.
  
4. The process will be that:
  - a) the clinical academic or either manager makes the referral in writing within two weeks of the disagreement arising;
  - b) the party making the referral will set out the nature of the disagreement and his or her position or view on the matter;
  - c) where the referral is made by the clinical academic, the managers responsible for the integrated Job Plan review, or for making the recommendation as to whether the criteria for a pay threshold have been met, will set out the employing organisations' agreed position or view on the matter;
  - d) where the referral is made by either the University manager or the clinical manager, the clinical academic will be invited to set out his or her position or view on the matter;
  - e) the Dean (or his/her nominee), working with the Medical Director, or appropriate other person, will convene a meeting, normally within four weeks of receipt of the referral, with the clinical academic and the responsible managers to discuss the disagreement and to hear their views;
  - f) if agreement is not reached at this meeting, the Dean (or his/her nominee), in consultation with the Medical Director will decide the matter (in the case of a decision on the integrated Job Plan) or make a recommendation (in the case of a decision on whether the criteria for a pay threshold have been met) to the Vice Chancellor, copied to the NHS Chief Executive 2 , and inform the clinical academic and the responsible managers of that decision or recommendation in writing;

- g) in the case of a decision on whether the criteria for a pay threshold have been met, the Vice Chancellor will inform the clinical academic, the Dean (or his/her nominee) and Medical Director and the responsible managers of his or her decision in writing;
- h) if the clinical academic is not satisfied with the outcome, he or she may lodge a formal appeal under this procedure.

5. Formal appeal

A formal appeal panel will be convened only where it has not been possible to resolve the disagreement using the mediation process. A formal appeal will be heard by a panel under the procedure set out below.

6. An appeal shall be lodged in writing with the Vice Chancellor, copied to the NHS Chief Executive (The Chief Executive of the (lead) NHS Trust or PCT holding the clinical academic's honorary contract.), as soon as possible, and in any event within two weeks, of the outcome of the mediation process. The appeal should set out the points in dispute and the reasons for the appeal. The Vice Chancellor, in consultation with the NHS Chief Executive, will, on receipt of a written appeal, convene an appeal panel to meet within four weeks of receipt of a written appeal. The Vice Chancellor may delegate operational procedures as appropriate, but he or she retains overall responsibility for the appeal.

7. The membership of the panel will be:

- a) a chair nominated by the University;
- b) a representative nominated by the honorary employer;
- c) a representative nominated by the clinical academic; contract.
- d) a member chosen by the University from the list of individuals approved by the Strategic Health Authority and the BMA and BDA. which will also be used for job planning appeals for NHS consultants. The list will also include a number of clinical academics and other University employees nominated by the University. The Strategic Health Authority will monitor the way in which individuals are allocated to appeal panels to avoid particular individuals being routinely called upon. If there is an objection raised to the first representative from the list, one alternative representative will be chosen. The list of individuals will be regularly reviewed.
- e) a member chosen by the clinical academic from the list described at sub-paragraph above of individuals approved by the Strategic Health Authority and the BMA and BDA. The process will be identical to that described at sub-paragraph iv) above and if an objection is raised one alternative representative will be chosen.

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

9. The parties to the dispute will submit their written statements of case to the appeal panel and to the other party one week before the appeal hearing. The appeal panel will hear oral submissions on the day of the hearing. The employers will jointly present their case first explaining the agreed position on the integrated Job Plan, or the reasons for deciding that the criteria for a pay threshold have not been met.

10. The clinical academic may present his or her own case, or be assisted by a work colleague or trade union or professional organisation representative who is not a member of the appeals panel. Legal representatives acting in a professional capacity are not permitted.
11. Where any party or the panel requires it, the appeals panel may hear expert advice on matters specific to a speciality.
12. It is expected that the appeal hearing will last no more than one day.
14. The appeal panel will make a recommendation on the matter in dispute in writing to the Vice Chancellor, copied to the Board of the honorary employing organisation, normally within two weeks of the appeal having been heard and this will normally be accepted. The clinical academic should see a copy of the recommendation when it is sent to the Vice Chancellor. The Vice Chancellor will make the final decision and inform all the parties in writing.
14. No disputed element of the integrated Job Plan will be implemented until confirmed by the outcome of the appeals process. Any decision that affects the salary or pay of the clinical academic will have effect from the date on which the clinical academic referred the matter to mediation or from the time he or she would otherwise have received a change in salary, if earlier, or as determined by the appeals process.
15. The appeals process set out in this Annex applies only to job planning and pay progression. No further right of appeal through the University's procedures exists.