

Mediation for Senior Medical and Dental Doctors in the Job Planning & Pay Progression Disputes

Issue Date	Review Date	Version
May 2014	Extended to February 2022	4.5

Purpose

This policy has been agreed between PHNT management and the Local Negotiating Committee (LNC). It sets out a framework for Senior Medical and Dental Doctors and Clinical Managers to follow if there are problems agreeing their job plan which provides a consistent approach to the resolution of the issue.

Who should read this document?

All Senior Medical and Dental Doctors
 Care Group Directors and Service Line Directors
 Care Group General Managers and Service Line Managers

Key messages

This policy must be followed in resolving job planning difficulties to ensure there is a consistent approach. All mediation is to be handled in line with this policy.

Accountabilities

Production	Medical HR Manager
Review and approval	Medical Staff Panel
Ratification	Director of Human Resources & Organisational Development
Dissemination	Medical Workforce Office
Compliance	Medical Director

Links to other policies and procedures

Appeals for Senior Medical and Dental Doctors' for the Job Planning and Pay Progression Dispute Policy

Version History

1.1	Apr 2007	Comments (i.e. viewed, reviewed, amended or approved by person or Committee)
3.1	Mar 2011	Trust Commitment to Valuing People amended in line with the Equality Act 2010
3.2	Jun 2011	Review date extended
3.3	Jun 2012	Review date extended
4	May 2014	Re-formatted and reviewed
4.1	November 2018	Extended to April 2019 by HR SMT
4.2	August 2019	Extended to April 2020 by Louise Tate
4.3	August 2020	Extended to April 2021 by Medical Staff Panel
4.4	June 2021	Extended to September 2021

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.**

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1 Introduction

Schedule 4 of the 2003 Consultant Terms and Conditions of Service and Schedule 5 of the 2007 Associate Specialist and Speciality Doctor Terms and Conditions of Service makes provision, as specified, for mediation.

Mediation is a process for resolving disputes, in which a neutral person helps the parties agree a settlement outside the formal appeal procedure by helping them to find their own resolutions to disputes. Senior Medical and Dental doctors, and clinical managers, should make every attempt to resolve potential disputes at the earliest possible opportunity, resorting only to the mediation process where necessary.

This guide outlines the protocol for mediation in the event of disputes arising from

- a) disagreements over job plans or
- b) a decision not to allow pay progression in a given year

Mediation will normally be carried out by the Medical Director of Plymouth Hospitals NHS Trust but may be carried out by an alternative internal Clinical Manager e.g. Care Group Director, Service Line Director or other consultant with managerial experience outside of the specialty or an external mediator as appropriate e.g. the Medical Director of a neighbouring Trust or a designated other person. In the case of a disagreement over a job plan for the Care Group Directors, or the Medical Director, mediation would be carried out by a suitable individual, for example, in the case of a Care Group Director a Medical Director from another Trust or in the case of the Medical Director a Non-Executive Director. In the latter case, external clinical advice may be required.

The decision as to who shall be the designated mediator will be made by the Medical Director of Plymouth Hospitals NHS Trust in consultation with the Director of Human Resources. A judgment will be made about possible role-conflicts that would render the case inappropriate for internal mediation. No person who has been directly involved in the initial disputed decision should be appointed to mediate in that dispute. Care should be taken when involving in mediation any individual who may be expected to participate in a subsequent decision arising from the appeal stage on behalf of the employing Trust, e.g. a Trust Board member. In circumstances where a Board member has mediated a dispute, that person may not take part in the final decision of the Board following an appeal.

The designated mediator may not sit on any subsequent appeal panel in respect of a case in which he or she undertook the mediation process. The mediator may attend a subsequent appeal hearing to present the reasons for any decision or recommendation he or she made as an outcome of the mediation process.

2 Purpose

This policy must be followed in resolving job planning difficulties to ensure there is a consistent approach. All mediation is to be handled in line with this policy. The number of mediations 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. Stage 1: Referral to the Medical Director

- 1.1 The Senior Medical or Dental doctor or (in the case of a disputed job plan) the clinical manager will normally make a written request to their Medical Director to attempt a mediated resolution, within two weeks of the dispute arising e.g. when

failure to agree a job plan is acknowledged by the parties, or within two weeks of the written decision on pay progression or receipt of the proposed job plan in writing. In the event that the Medical Director is one of the parties to the initial dispute, the initial written request may be made to the Director of Human Resources, who will arrange for an alternative mediator to be designated. The Director of Human Resources will notify the Medical Director of any such request by a consultant or clinical manager, as a courtesy.

- 1.2 The purpose of the referral will be to reach agreement if at all possible.
- 1.3 Where a Senior Medical or Dental doctor is employed by more than one NHS organisation, a designated employer will take the lead (in the case of a disputed job plan, a lead employer should have already been identified). Where the dispute involves an Honorary Consultant Clinical Academic, separate provisions shall apply, in line with Annex B of the Honorary Consultant Contract (England) December 2003. (see Appendix 4)
- 1.4 Within two weeks of receiving a referral for mediation, the Medical Director (or HR Director as appropriate) will confirm to the parties that a request for mediation has been received. The parties will be advised of the details of the designated mediator and will be invited to present their respective positions in writing directly to the mediator.
- 1.5 Time scales may only be amended by mutual agreement which shall not be unreasonably withheld.

2. Stage 2: Preparation

- 2.1 The following process will be observed in advance of the mediation meeting:
 - a) Within one week of receiving notification of the details of the mediator, both parties to the dispute will set out in writing the nature of the disagreement and their own position or view on the matter, and will send this to the mediator
 - b) The mediator will liaise with the parties to negotiate a suitable date and venue for a mediation meeting. The mediator will be responsible for communicating the details of the agreed date and venue to all parties
 - c) The mediation meeting will normally be held within four weeks from referral, subject to Stage 1 above.

3. Stage 3: Mediation

- 3.1 The mediator will convene a meeting with the consultant and the responsible clinical manager to discuss the disagreement and to hear their views. Both parties will have an individual one-to-one meeting with the mediator initially, so that their position or view is understood clearly by the mediator. The parties will then be brought together for a face-to-face mediated meeting, the purpose of which will be to try to reach agreement.
- 3.2 No provision exists for a representative of the consultant to attend the mediation meeting. A representative may participate at the formal appeal stage, should the mediation fail to produce agreement.

4. Stage 4: Reporting the Outcome

- 4.1 If the mediation fails to produce agreement between the parties, the mediator will decide the matter (in the case of a decision on the job plan) or make a

recommendation to the Chief Executive (in the case of a decision on whether the criteria for a pay threshold have been met). The mediator will inform the Senior Medical or Dental doctor and the responsible clinical manager and, if appropriate the Chief Executive, of that decision or recommendation in writing within 5 working days of the meeting.

- 4.2 In the case of a recommendation by the mediator on whether the criteria for a pay threshold have been met, the Chief Executive will inform the Senior Medical or Dental doctor, the Medical Director and the responsible clinical manager of his or her decision in writing, within 5 working days of receiving the mediator's recommendation.
- 4.3 In the case of a dispute concerning the job plan, if the mediation succeeds and agreement is reached, the mediator will arrange for the parties to proceed to sign off the job plan within 5 working days.
- 4.4 With the exception of the recommendations mentioned in 4.2 above, the content of the mediation process will not be disclosed or reported to any other party by the mediator.
- 4.5 If the mediation fails to produce agreement and the Senior Medical or Dental doctor is dissatisfied with the mediator's decision or recommendation, or if the Chief Executive rejects the mediator's recommendation, the consultant may lodge a formal appeal. An appeal shall be lodged in writing to the Chief Executive as soon as possible, and in any event within two weeks of receiving the mediator's report of the outcome of the mediation process.

5. Time Frame

- 5.1 The preliminary stages should be completed within two weeks. The mediation itself should usually take no more than a further two weeks to complete, i.e. a total of four weeks from referral. However this may be extended by mutual agreement to allow for leave etc.
- 5.2. Medical HR will provide all parties concerned with a copy of this policy drawing particular attention to the timeframes. It will be the responsibility of the mediator to report within the specified timeframes, any deviation, should be reported to the Medical Director

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.

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

Core Information				
Document Title	Mediation in Senior Medical and Dental Doctor Job Planning & Pay Progression Disputes			
Date Finalised				
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	

Review		
Title	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
Rationale	Are reasons for development of the document stated?	Y
Development Process	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
Content	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
Evidence Base	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
Approval	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
Dissemination & Implementation	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
Document Control	Does the document identify where it will be held?	Y
	Have archiving arrangements for superseded documents been addressed?	Y
Monitoring Compliance & Effectiveness	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
Review Date	Is the review date identified?	Y
	Is the frequency of review identified? If so is it acceptable?	Y
Overall Responsibility	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?	Y

Core Information	
Manager	Yvonne Linley-Shaw
Directorate	HR & OD
Date	January 2014
Title	Mediation for Senior Medical and Dental Doctors in the Job Planning & Pay Progression Disputes
What are the aims, objectives & projected outcomes?	This policy must be followed in resolving job planning difficulties to ensure there is a consistent approach.
Scope of the assessment	
Collecting data	
Race	This is mitigated as the guidelines can be made available in alternative languages
Religion	The document has no impact in this area
Disability	This is mitigated as the guidelines can be made available in alternative formats
Sex	The document has no impact in this area
Gender Identity	The document has no impact in this area
Sexual Orientation	The document has no impact in this area
Age	The document has no impact in this area
Socio-Economic	The document has no impact in this area
Human Rights	The document has no impact in this area
What are the overall trends/patterns in the above data?	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.
Specific issues and data gaps that may need to be addressed through consultation or further research	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.
Involving and consulting stakeholders	
Internal involvement and consultation	This policy has been compiled by medical staff representatives and has been circulated for consultation to LNC members and the Medical Staff Panel.

External involvement and consultation	None			
Impact Assessment				
Overall assessment and analysis of the evidence	<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>			
Action Plan				
Action	Owner	Risks	Completion Date	Progress update
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 1 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.

National Framework

2. 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.

Mediation

3. 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 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.

Formal appeal

- 5. 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, 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;
 - 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 iv) 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.
- 13. 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.