

Pay Circular (M&D) 3/2007

Amendment to the Terms and Conditions – Consultants (England) 2003

To: All NHS employers

Summary

This pay circular notifies employers of a change to the Terms and Conditions of Service (TCS) – Consultants (England) 2003. A link to the amended TCS is below.

Agreement

- 1 The Joint Negotiating Committee (Seniors) has approved amendments to the TCS which are detailed below.

Action

- 2 Employers are requested to make use of the amended TCS from 2 April 2007.

Recommended action

- 3 A 2006 High Court judgment highlighted the need for NHS employers to take all reasonable steps to ensure that the effects of nationally negotiated collective agreements are incorporated into individual contracts of employment.
- 4 It is recommended that employers should:
 - o write to individual medical and dental practitioners in order to notify them of the revisions to the TCS; and
 - o place a copy of the notification on each individual's HR record.

Schedule 16 – Pay supplements (On Call Availability Supplements)

- 5 It has been agreed that the provisions in Schedule 16 by which On Call Availability Supplements (OCAS) are paid to consultants be amended so that the OCAS is no longer determined by the headcount on the rota, but by recognition of commitment to the rota. This brings the arrangements for full time consultants in line with those for part time consultants, whose variable contribution has always been recognised. The amended arrangements provide a more accurate and appropriate system of reward for the variable contribution of full and part time consultants.
- 6 A number of Frequently Asked Questions (FAQs) on the amended provisions have been included at Annex A.

Record of amendments

- 7 For ease of reference, all amendments which have been made to the TCS since publication are collated in a record of amendments log. The log also records the Advance Letter, Pay Circular, or other reference under which amendments were issued.
- 8 Each amendment in the TCS has been given a reference number which appears in the text as a superscript number at the end of each amendment i.e., 'the superscript shows you that wording in this paragraph has changed¹³'. The superscript number corresponds to the number assigned to the amendment in the record of amendments log. By doing this, the reader is notified that an amendment has been made to the TCS and is directed to the relevant section of the record of amendments log. A link to the web page which holds the record of amendments log is given below.

Enquiries

- 9 Employees should direct personal enquiries to their employer.
- 10 Employers should direct enquiries to doctorsanddentists@nhsemployers.org

Further copies

- 11 Copies of this circular can be downloaded from the NHS Employers website at the following web address: <http://www.nhsemployers.org/pay-conditions/pay-conditions-707.cfm>

A copy of the amended TCS can be downloaded from the NHS Employers website at the following web address: <http://www.nhsemployers.org/pay-conditions/pay-conditions-348.cfm>

A copy of the amended record of amendments log can be downloaded from the NHS Employers website at the following web address: <http://www.nhsemployers.org/pay-conditions/pay-conditions-348.cfm>

Copies of previous Advance Letters from 1995 onwards may also be obtained from the Department of Health website at: www.dh.gov.uk/letters

Yours faithfully,



Gill Bellord
Head of Pay and Negotiations
NHS Employers

Annex A

Q. Why have NHS Employers and the BMA amended the On Call Availability Supplement provisions?

A. The Department of Health asked NHS Employers to examine the On Call Availability Supplement (OCAS) provisions to see if they could be amended to more accurately reflect and reward the variable contributions made by full time and part time consultants to on call rotas.

Under the original provisions, the percentage value of the availability supplement was determined by the headcount of consultants on the rota. Previously, both full time and part time consultants on the same rota received an equal percentage supplement to their basic salary. The TCS also recognised that if a part time consultant made the same contribution to the on call rota as the full time consultants they would receive the appropriate percentage of the equivalent full time salary. However, full time consultants who made a partial commitment to the rota continued to be paid the appropriate percentage of their full time salary. It was agreed that recognising the variable contribution of full time consultants would be fairer and more equitable.

Q. When do the new arrangements apply from?

A. The new arrangements will apply from 2 April 2007. Where there is a change to the frequency of rota commitment, the level of OCAS should be amended on a prospective basis.

Q. We have six full time consultants on a rota. Two of them share a rota slot. The work has been assessed as Category A.

Under the previous arrangements rota frequency was determined by reference to the number of consultants on the rota. This meant the consultants were on a Medium Frequency Band, as the rota fell within a 1 in 5 to a 1 in 8 frequency. All six consultants received 5% OCAS.

Will the new provisions make a difference to the level of OCAS the consultants receive?

A. In the situation you describe, the consultants who make a full time commitment to the rota work a 1 in 5 pattern and so should continue to receive 5% OCAS, as this continues to fall within the Medium Frequency Band. The consultants who make a partial commitment to the rota, working a 1 in 10 pattern, will move to the Low Frequency Band and as a result their OCAS should reduce to 3%.

Q. We have three full time and two part time (0.6) consultants on a rota. The two part time consultants share a rota slot. The work has been assessed as Category A.

Under the previous arrangements, rota frequency was determined by reference to the number of consultants on the rota. This meant the consultants were on

a Medium Frequency Band, as the rota fell within a 1 in 5 to a 1 in 8 frequency. All consultants received 5% OCAS.

Will the new provisions make a difference to the level of OCAS the consultants receive?

A. In the situation you describe, the consultants who make a full time commitment to the rota work a 1 in 4 pattern, so should now receive a High Frequency Band supplement of 8%. The consultants who make a part time contribution to the rota working a 1 in 8 pattern shall remain in the Medium Frequency Band and so their OCAS will remain at 5%.

Q. We have implemented the amended provisions and this has meant that two of the consultants on the rota (who make a part time contribution to the rota) have moved from a 5% to a 3% OCAS. Should we protect their OCAS?

A. No. Schedule 16.4 of the Terms and Conditions states that where there is a change to the consultant's contribution to the rota, or the categorisation of the on call duties, the level of the OCAS will be amended on a prospective basis. Where this results in a reduction in the level of OCAS, there will be no protection arrangements in relation to previous entitlements. The consultant is entitled to challenge any changes to the assessment of on call duties through the Job Planning process.

Q. We do not have any full time consultants who make a partial contribution to any of our rotas. Our part time consultants either receive the appropriate percentage of the equivalent full time salary, where they make the same contribution to the on call rota as their full time colleagues, or their OCAS is paid pro rata where they make a partial contribution. We don't think we need to make any changes to any of our consultants' OCAS; could you confirm our understanding is correct.

A. On the basis of the information you have given to us we do not think that you need to reassess your rotas, at this point. We would expect that the categorisation of the duties carried out on call and the contribution to the rota would be routinely examined as part of the Job Plan review.

Q. What do we do if a consultant wishes to vary their contribution to the rota?

A. If it has been agreed that the consultants' commitment to a rota can change, then you should reassess the level of OCAS for all consultants on that rota, in case movement between the frequency bands has occurred. The level of the OCAS should then be amended on a prospective basis.