

13. CLINICAL ACADEMIC CONSULTANTS (Note: To be read with the guidance associated with Section 13 issued as Annex C to NHS Circular PCS(DD)2004/2)

INTRODUCTION

The terms and conditions set out in this Section apply to medical and dental consultants who are employed in Higher Education Institutions (HEIs), or other organisations, in a research and/or teaching capacity and who also provide services for NHS patients in NHS facilities.

The terms and conditions set out in this Section, together with the relevant parts of **Sections 1 to 15**, govern the delivery of duties under the honorary NHS contract and should be read in conjunction with the terms and conditions of the University Employer which, taken together, provide the full contractual framework in which the clinical academic consultant is expected to deliver his/her agreed duties and is remunerated. Where the terms and conditions specific to clinical academic consultants as set out in this Section vary from the terms and conditions in **Sections 1 to 15**, this Section will prevail

Throughout this section, the terms “NHS Employer” and “University Employer” are taken to mean the NHS body issuing the honorary contract and the substantive HEI employer (or other substantive employer such as a medical charity or research council) respectively, and the term “academic activities” is taken to include academic-related activities such as administration and management undertaken on behalf of the University Employer.

13.1 PAY PARITY AND THE WORKING WEEK

Principles

- 13.1.1 There will be consistency in approach between universities and across the NHS in Scotland in the application to clinical academic consultants of the new consultant contract, with incorporation of the principles of the Follett Review into the terms and conditions affecting clinical academic consultants.
- 13.1.2 Pay equivalence for clinical academic consultants will be achieved by linkage to the new NHS consultant contract which allows, in the case of full-time consultants, for a core commitment of 10 weekly programmed activities and up to 2 extra programmed activities. In exceptional circumstances and subject to the legal requirements of the Working Time Regulations, the limits of 2 EPAs and 12 PAs in total may be extended.
- 13.1.3 Pay will be determined on the basis of a joint assessment of the current and prospective clinical and academic components of the integrated clinical academic workload by the University Employer, the NHS Employer and the consultant through the job planning process.

- 13.1.4 Superannuable pay will be the consultant's basic salary (plus any extra programmed activities up to 10 programmed activities in total). Superannuable pay will also include discretionary points and distinction awards (or any successor schemes), on-call availability supplements and any other agreed superannuable salary.
- 13.1.5 The core academic and clinical service commitments taken together will not exceed the equivalent of 10 weekly programmed activities (see **paragraphs 13.1.8 and 13.1.9**) or, with extra programmed activities (see **paragraphs 13.1.10 to 13.1.13**), normally 12 weekly programmed activities in total. These commitments, which make up the integrated job plan (see **paragraph 13.2.1**), will be carried out by cross-referencing substantive University and honorary NHS contracts and given equal weight. Termination of one contract will result in a review of the other contract which may only be terminated after due process of the other employer.
- 13.1.6 For clinical academic consultants, university activities governed by their substantive contracts will include:
- undergraduate teaching and assessment;
 - research;
 - administration and management undertaken on behalf of the University employer.
- 13.1.7 Programmed activities for clinical academic consultants working under their honorary contracts will be as for NHS consultants, and separated into:
- direct clinical care duties;
 - supporting professional activities;
 - additional agreed responsibilities;
 - other agreed external duties.

Pay Linked to Core Activities

- 13.1.8 For a full-time clinical academic consultant, the equivalent of 5 weekly programmed activities will be set as the floor for the core academic component of pay. Core academic pay may nevertheless be varied upwards (e.g. where a clinical academic consultant has a substantive university administrative or managerial role), subject to a maximum equivalent to 10 weekly programmed activities, by agreement between the University Employer and the clinical academic consultant, in consultation with the NHS Employer.
- 13.1.9 For a full-time clinical academic consultant, 5 weekly programmed activities will be set as the core commitment for the clinical service related component of pay covered by the honorary NHS element of the combined substantive and honorary contracts (but see also **paragraphs 13.2.2 and 13.2.3** below), subject to variation by agreement between the NHS Employer, the University Employer and the clinical academic consultant.

Pay Linked to Extra Programmed Activities

- 13.1.10 A clinical academic consultant with a core commitment equivalent to 5 academic programmed activities will additionally be offered by the University employer the equivalent of 1 extra programmed weekly activity over and above the core academic related component of pay, except where he/she undertakes the normal maximum of 2 extra weekly clinical service programmed activities by agreement (see **paragraph 13.1.13**) or is contracted to work part-time. The clinical academic consultant will be under no obligation to accept the offer of the equivalent of 1 extra academic activity and failure to do so will not influence pay progression.
- 13.1.11 Where a clinical academic consultant has a substantive university administrative or managerial role, the equivalent of 2 extra programmed weekly activities over and above the core academic-related component of pay may be offered by the University employer, in consultation with the NHS Employer.
- 13.1.12 Normally, for full time consultants, not more than 1 extra weekly clinical service programmed activity will be contracted for locally over and above the core commitment of 5 weekly clinical service programmed activities. Nevertheless, the number of extra clinical service programmed activities may be varied by agreement between the NHS Employer, the University Employer and the clinical academic consultant, subject to a maximum within the integrated job plan equivalent to normally 12 weekly programmed activities for clinical service and academic activities combined.
- 13.1.13 Where a clinical academic consultant undertakes 2 or exceptionally more than 2 extra weekly clinical service programmed activities by agreement with the NHS and university employer (see **paragraph 13.1.12**), extra academic activity equivalents (see **paragraphs 13.1.10 and 13.1.11**) over and above a core equivalent to five programmed activities will not normally be offered by the University Employer until such time as the contractual commitment to extra clinical service programmed activities falls to below two extra programmed activities.

13.2 JOB PLANNING

- 13.2.1 There will be assessments of the academic and clinical workloads, which together constitute the integrated workload, implemented via an integrated job plan which will be jointly agreed with the clinical academic consultant by the University Employer and the NHS Employer prior to appointment and at the annual job plan review. Clinical academic consultants will be accountable to the University Employer (usually via the Dean) through their substantive contracts and via their honorary contracts to the NHS body in which they work (usually via the Clinical Director, Medical Director or Director of Public Health).
- 13.2.2 The core commitment of a full-time clinical academic consultant to clinical service will be set at 5 weekly programmed activities, and will normally not

exceed 6 programmed activities per week. Nevertheless, the clinical service component may be varied outwith these parameters by agreement between the clinical academic consultant with the Dean and Medical Director/Director of Public Health (or their nominees). Unless otherwise agreed, the ratio of direct clinical care activities to supporting professional activities as outlined at **Section 4.2.2** will be applied to the core clinical service commitment. In reaching an agreement on the ratio of direct clinical care activities to supporting professional activities within the job plan of a clinical academic consultant, account will be taken of the commitment of NHS consultants to formal undergraduate teaching within the relevant medical/dental school-NHS Board system. NHS direct clinical care activities will include consultant-led clinical teaching activities where patients are managed (or management is planned).

- 13.2.3 Unless otherwise agreed, emergency work undertaken during or as a consequence of the on-call period will count towards the total number of direct clinical care programmed activities at the level of 1 activity per week averaged over the year for a clinical academic consultant contracted for 5 weekly clinical programmed activities. This can be varied pro-rata for a clinical academic consultant working more or less than 5 clinical programmed activities by agreement as in **paragraph 13.2.2** above.
- 13.2.4 A clinical academic consultant qualifying for an on-call availability supplement will receive the appropriate supplement determined by the frequency of the on-call commitment, in accordance with the provisions of **paragraphs 4.10.9 to 4.10.15**.
- 13.2.5 In scheduling on-call rotas, the NHS employer will take account of the full integrated workload of the clinical academic consultant, applying the principle that the clinical and academic components of the job are of equal importance (see **paragraph 13.1.5**).

13.3 JOB PLAN REVIEW

- 13.3.1 The integrated job plan will be reviewed annually. The integrated job plan review will be informed by the same information systems that also feed into appraisal, and by the outcome of the appraisal discussion.
- 13.3.2 An interim job plan review will be conducted where duties, responsibilities or objectives have changed or need to change significantly within the year.
- 13.3.3 The job plan review will be carried out by the clinical academic consultant and the Head of Unit/Department (or other appropriate person nominated by the Dean – designated in the following paragraphs as the University manager) jointly with the Medical Director /Director of Public Health or the Clinical Director, or other lead clinician nominated by the Medical Director/Director of Public Health (designated below as the NHS manager), and will review the job content and objectives as well as the delivery of commitments.

- 13.3.4 As part of the job plan review, progress against objectives and factors affecting delivery will be considered. The University and NHS managers and the clinical academic consultant should discuss whether targets had been set at the right level, resources provided by each organisation were adequate, and whether the timetable of time and service commitments should be amended.
- 13.3.5 The employer may decide to delay progression through seniority points in any year only where it can be demonstrated that, in that year, the clinical academic consultant has not:
- met the time and service commitments in his/her job plan; or
 - met the personal objectives in his/her job plan or - where this is not achieved for reasons beyond the individual clinical academic consultant's control - has made every reasonable effort to do so; or
 - participated satisfactorily in annual appraisal, job planning and objective setting; or
 - worked towards any changes agreed as being necessary to support achievement of both organisation's service objectives in the last job plan review; or
 - allowed, in preference to any other organisations, the NHS to utilise the first portion of any additional capacity (see **paragraph 13.6.1**) they have; or
 - met the required standards of conduct governing the relationship between private practice and University or NHS commitments.
- 13.3.6 Following the annual job plan review, the Head of Division (or other Dean's nominee), jointly with the Medical Director/DPH, will make a report on whether the clinical academic consultant has met the criteria set out at **paragraph 13.3.5**, taking into account the provisions at **paragraph 13.5.3**. This report will be prepared by the Head of Division (or Dean's nominee) within 2 weeks of the job plan meeting and will be sent to the clinical academic consultant and the Dean and Chief Executive. Where the clinical academic consultant disagrees with the terms of the report he/she will be entitled to invoke the process set out in **paragraph 13.4.1 (stage 1)**.
- 13.3.7 Where the Dean makes a recommendation to the Vice-Principal, based upon the Head of Division's report, that progression through seniority points should be withheld in any year, the clinical academic consultant will be entitled to invoke the process set out in **paragraph 13.4.1 (stage 2)**.
- 13.3.8 Following receipt of any decision by the Vice-Principal to withhold progression through seniority points, the clinical academic consultant will be entitled to present a formal appeal to the University employer under the terms of paragraphs 13.4.2 – 13.4.13.

13.4 MEDIATION AND APPEALS

Mediation

- 13.4.1 Job plans and variations to job plans should be agreed between the University employer, NHS employer and the clinical academic consultant after full discussion and with all parties using their best endeavours to resolve any issues arising. This should include referral for mediation by more senior management in the event of continuing disagreement between the clinical academic consultant and his/her immediate University or NHS managers. In such circumstances the process set out below will be followed:

Stage 1

The clinical academic consultant and/or University manager or NHS manager will, within two weeks of the exhaustion of their initial discussions, refer the point of disagreement, in writing, to the Dean who will consult with the Divisional Medical Director/Director of Public Health. If the Dean or Divisional Medical Director /Director of Public Health was involved directly or indirectly in the job plan under disagreement, the referral will be to another appropriate person nominated by the Dean and agreed with the clinical academic consultant and Divisional Medical Director/Director of Public Health. The Dean, working with the Divisional Medical Director/Director of Public Health (or other agreed person), will convene a meeting with the clinical academic consultant and the University and NHS managers, normally within three weeks of the referral, to discuss the point of disagreement and to hear the parties' consideration of the issues. All parties will use their best endeavours to ensure that agreement is reached at this stage. The Dean, in consultation with the Divisional Medical Director/Director of Public Health (or other agreed person) will, normally within two weeks of the meeting, advise the clinical academic consultant and the University and NHS managers of his/her decision concerning the point of disagreement, giving full reasons to explain his/her decision.

For a Medical Director or Director of Public Health, mediation will take place via a suitable individual nominated by the Divisional Chief Executive (or successor equivalent) or NHS Board Chief Executive.

Stage 2

Following receipt of this decision, where exceptionally a clinical academic consultant remains dissatisfied with the proposed job plan, he/she may refer the point of disagreement to the University Vice-Principal (or other appropriate person nominated by the Vice-Principal) who will consult with the Divisional Chief Executive (or in the case of a clinical academic consultant in public health medicine, the Chief Executive of the NHS Board). This referral should be made, in writing, within two weeks of the receipt of the decision. The Vice-Principal (or nominee), in consultation with the Divisional Chief Executive (or Chief Executive of the NHS Board in the case of a clinical academic consultant in public health medicine) will convene a meeting with the clinical academic consultant and the University

and NHS managers to discuss the point of disagreement and to hear the parties' consideration of the issues. All parties will use their best endeavours to ensure that agreement is reached at this stage. The Vice-Principal (or nominee), in consultation with the Divisional Chief Executive (or Chief Executive of the NHS Board in the case of a clinical academic consultant in public health medicine) will, normally within two weeks of the meeting, advise the clinical academic consultant and the University and NHS managers of his/her decision concerning the point of disagreement, giving full reasons to explain his/her decision.

Formal Appeal

- 13.4.2 There may be exceptional cases where agreement cannot be reached through mediation. In such circumstances the process set out below will be followed:

Following receipt of the decision from the Vice-Principal (or nominee), where a clinical academic consultant remains dissatisfied with the proposed job plan, he/she will be entitled to present a formal appeal to the University Employer. Such a request will be made in writing to the Principal within four weeks of the receipt of the decision. The Principal will, on receipt of a written request for appeal, convene an appeals panel which should meet normally within 6 weeks of the request. Membership of the panel will be:

- One member nominated by the Principal on behalf of the University Employer, with the agreement of the Chief Executive of the NHS Board, who would act as the chair;
- One member nominated by the clinical academic consultant;
- One member appointed from an agreed clinical academic consultants' appeals panel list.

- 13.4.3 Where either the clinical academic consultant or the University or NHS employer requires it, the appeals panel will hear expert advice on matters specific to a specialty.

The List

- 13.4.4 A list of members (the clinical academic consultants' appeals panel list) suitable for acting as the third appeals panel member will be agreed between the University Employer, the NHS Board, the BMA Medical Academic Staff representative and, where appropriate, the representative of the BDA. If a local list is unavailable, the third member should be drawn from a "national" list, which will be the combined list of all those which have been agreed.

- 13.4.5 The member from the list will be nominated by the Principal after discussion with the NHS Employer and the clinical academic consultant or their representative. Where there is a recognised incompatibility with the first member nominated, the Principal will select an alternative from the list. The Principal should endeavour to ensure that individuals on the list are normally used in rotation.

13.4.6 The list should be regularly reviewed.

Membership of the Appeals Panel

13.4.7 No one will be a member of the appeals panel if they have been involved directly or indirectly in the job plan under disagreement.

13.4.8 The clinical academic consultant has the right to be represented at each stage of the appeals process by a representative of the BMA or BDA, or other trade union / professional association, or colleague.

13.4.9 The appeals panel will not include legal representatives acting in a professional capacity.

13.4.10 Appeals panel members do not act in an advocacy role but are expected to judge each case on its merits.

13.4.11 The employer and clinical academic consultant nominees will be University employees or NHS employees/NHS Board members.

Administration

13.4.12 The appeals panel will make a final decision (on a majority basis) on the proposed job plan which will be binding on both parties; no further right of appeal exists.

13.4.13 No point of disagreement of the job plan will be implemented until confirmed by the outcome of the formal appeal except that any decision of the panel which has implications for the salary of the clinical academic consultant will have effect from the date at which the clinical academic consultant gave notice of their intention to appeal formally.

13.5 STARTING SALARY AND PROGRESSION THROUGH SENIORITY POINTS

13.5.1 There are both clinical and academic factors to be considered and applied in determining the starting point for a clinical academic consultant's substantive contract. These will be governed, in the case of the NHS elements of the individual's commitments, by **Sections 5.1 and 5.4**. The University Employer may also apply academic criteria (over and above the NHS terms and conditions) in determining the overall starting salary for the clinical academic consultant's integrated contract and this will not be less than the minimum point on the consultant pay scale.

13.5.2 Decisions on a clinical academic consultant's progression through seniority and pay points will be led by the University Employer (usually the Dean) but undertaken jointly with the NHS Employer (usually the Medical Director or Director of Public Health). These decisions will be informed by the annual

job plan review. The appeals procedure relating to pay progression will be the same as set out for job planning in **Section 13.4** above.

- 13.5.3 The clinical academic consultant will normally progress each year through the seniority points set out in **Appendix 3**. Progression through seniority points can only be withheld or delayed as detailed in **paragraph 13.3.5**.
- 13.5.4 Progression through seniority points will not be deferred in circumstances where the inability to meet the requirements set out in **paragraph 13.3.5** above is occasioned by factors outwith the control of the clinical academic consultant, for example, absence on leave.
- 13.5.5 Progression through seniority points must not be related to or affected by the outcome of the appraisal process.
- 13.5.6 Where a manager believes that a clinical academic consultant is unlikely to meet the criteria set out in **paragraph 13.3.5**, an interim job plan review should be arranged to address this at the earliest opportunity.

13.6 ADDITIONAL CAPACITY

- 13.6.1 Additional capacity, in relation to private practice, will be deemed to exist where a full time clinical academic consultant is contracted for 5 clinical service weekly programmed activities (or less) within a total equivalent to less than 12 weekly programmed activities in the integrated job plan. The utilisation of extra programmed activities for direct clinical care, as detailed in **paragraphs 4.4.6 – 4.4.12**, should be subject to agreement between the clinical academic consultant, the University Employer and the NHS Employer. Where a clinical academic consultant does not personally profit (e.g. the profits are retained by the university/charity) from undertaking private practice as defined in **paragraph 4.4.7**, there will be no expectation that he/she should then offer an extra programmed activity in order to qualify for pay progression.

13.7 PRIVATE PRACTICE AND FEE PAYING WORK

- 13.7.1 The rules and conditions regarding private practice, outlined in **Section 6** and **Appendix 8**, apply equally to clinical academic consultants as to NHS consultants. Where a clinical academic consultant wishes to undertake private practice, and this is allowed for under the terms of **Section 6** and is permitted under the terms of the University Employer's regulations, the impact on the university and NHS components of the clinical academic consultant's working week should be a matter for local determination by the University Employer (usually the Dean), with the full participation of the relevant NHS Medical Director/Director of Public Health, bearing in mind the need to achieve a fair balance between the individual's NHS and university commitments.
- 13.7.2 Any separate remunerated work undertaken by a clinical academic consultant explicitly on behalf of the University Employer will be exempt from the rule that he/she must first offer an extra programmed activity in

order to qualify for pay progression. For all other remunerated work the same rules as apply to NHS consultants will apply.

13.8 DISCIPLINARY AND GRIEVANCE PROCEDURES

- 13.8.1 The University Employer and NHS Employer will prepare agreed procedures for investigating and managing matters related to poor performance, discipline and grievance.
- 13.8.2 The University Employer and NHS Employer will agree on whether a matter related to poor performance, discipline or grievance will be dealt with under the procedures of the University Employer or those of the NHS Employer and, will work together at all stages of the jointly agreed procedures, irrespective of whether the issue has arisen in relation to the substantive or honorary contract.
- 13.8.3 Disciplinary or other proceedings undertaken by either the University Employer or NHS Employer resulting in the termination of the substantive or honorary contract may have implications for the continuation of the other contract which may only be terminated after due process of the other employer.
- 13.8.4 For clinical academic consultants, the university procedures for disciplinary and grievance matters are laid down by statute. Therefore, any matter leading to disciplinary action which arises under the clinical academic consultant's honorary contract, even if it is the result of a jointly agreed and jointly administered procedure, may be the subject of a further procedure undertaken by the University Employer in accordance with statute. However, disciplinary and grievance matters arising under the substantive contract, and investigated and managed under university statute as part of a joint procedure, will not be subject to any such further university procedure.

13.9 INTELLECTUAL PROPERTY

- 13.9.1 It is recognised that the University Employer and the NHS Employer (and grant awarding body funding the research and/or employing the clinical academic researcher) will have rules about intellectual property. The rules that will apply to a particular piece of research will require a written agreement between all interested parties and must be made explicit to the clinical academic consultant before the particular piece of research commences. Work undertaken outwith the integrated job plan and which is not related directly to activities undertaken within the job plan will not be subject to the rules about intellectual property of the University or NHS employer, or research council/charity where relevant, (referred to below as the stakeholders). Work of this nature may nevertheless raise issues of sharing intellectual property if carried out with the stakeholders' equipment or within the stakeholders' time and in these circumstances should be agreed with the interested parties at the start of the work.

13.10 ANNUAL LEAVE AND PUBLIC HOLIDAYS

13.10.1 The clinical academic consultant's annual leave and public holiday entitlement will be determined by the University Employer and set out in the substantive contract. It is expected, that in planning and taking annual leave, the clinical academic consultant will take into account the impact of the timing of annual leave on his/her clinical service and academic commitments and obtain the agreement of the appropriate University and NHS managers. Such agreement will not unreasonably be withheld. Where the annual leave entitlement does not incorporate university or public holidays, clinical academic consultants who are required to work on any part of one of a university or public holiday to fulfil the requirements of their job plan shall receive a day off in lieu.