

Dear Colleague

## CONSULTANT JOB PLANNING GUIDANCE

### Summary

1. This Director's Letter provides updated guidance to NHS Employers in Scotland on aspects of the consultant job planning process.

### Background

2. Following discussions between representatives of the Management Steering Group (MSG) and BMAScotland aimed at improving the consultant job planning process, the following documents have been jointly agreed:

Annex A: Engaging the Team – Creating the Right Connections Between Consultant Job Planning and Team Service Planning

Annex B: Consultant Job Plan Review: Resolving Disagreements

3. This guidance supplements but does not replace the provisions set out in the 2004 consultant terms and conditions of service.

4. SGHSCD, MSG and BMAScotland ask NHS employers in Scotland to ensure that the principles outlined in these documents on the consultant job planning process are adopted.

### Action

5. NHS Boards, Special Health Boards and NHS National Services Scotland (Common Services Agency) are asked to ensure that this letter is drawn to the attention of those involved in the consultant job planning process.

**DL (2016) 14**

22 June 2016

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### Addresses

#### For action

Chief Executives, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)  
Directors of Human Resources, NHS Boards and Special Health Boards and NHS National Services Scotland (Common Services Agency)

#### For information

Members, Scottish Partnership Forum  
Members, Scottish Terms and Conditions Committee  
Members, Scottish Workforce and Governance Group

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### Enquires to:

Sandra Neill  
Scottish Government  
Health Directorates  
Health Workforce  
Ground Floor Rear  
St Andrew's House  
Regent Road  
Edinburgh EH1 3DG

Tel: 0131-244 3283

E-mail:

[Sandra.neill@gov.scot](mailto:Sandra.neill@gov.scot)

6. Employers are asked to make their own arrangements for obtaining additional copies of this Director's Letter (DL) which can be viewed at [www.sehd.scot.nhs.uk](http://www.sehd.scot.nhs.uk) and on the MSG website at [www.msg.scot.nhs.uk](http://www.msg.scot.nhs.uk)

Yours sincerely

A handwritten signature in black ink that reads "Shirley Rogers". The signature is written in a cursive style with a period at the end.

**SHIRLEY ROGERS**  
Director of Health Workforce

## **ENGAGING THE TEAM – CREATING THE RIGHT CONNECTIONS BETWEEN CONSULTANT JOB PLANNING AND TEAM SERVICE PLANNING**

### **1. Introduction**

1.1 This document sets out agreed principles between NHS Scotland MSG and BMA Scotland on how the job planning process can be improved by engaging consultants on an ongoing basis in the development of service objectives through team service planning and by building connectivity and synergy between this process and job planning for individual consultants.

1.2 Section 3 of the 2004 Consultant Contract sets out the contractual requirements associated with the job planning process, making it clear that job planning is an activity that is conducted between individual consultants and their employers. It is not the intent or the effect of this guidance to make changes to agreed contractual arrangements.

### **2. Service Planning and Job Planning – Creating the right connections**

2.1 While a job plan and the annual job planning meeting are specific to individual consultants, these should be both informed by departmental and service plans and objectives and responsive to the needs of individual consultants. The development of the service plans and objectives should in turn have been informed and influenced by full engagement and participation of medical staff, creating a flow between these processes which has the potential to effect improvement at all levels.

2.2 A model of service planning which is inclusive in nature, with meaningful consultant engagement throughout the year can facilitate better informed individual job planning, maximising the effectiveness of the annual job planning meeting from the point of view of both Boards, as employers, and individual consultants.

2.3 Job planning, rather than being a timetabling exercise, should be a systematic activity designed to produce clarity of expectation for employer and employee about the use of time and resources to meet individual, departmental, service and broader NHS objectives.

### **3. Specific Steps**

3.1 There are a number of specific steps Boards, service areas and individual consultants could take to promote connectivity between collective and individual objectives.

3.2 Before the annual job planning round commences, Boards should:

- agree organisational service objectives which should inform and influence Team service plans

- publish the timetable for the job planning round
- confirm that the Board guidance to medical managers is up to date and is communicated to all parties in advance of the job planning round.

#### **4. Inclusive Team Service Planning– Engaging the consultant workforce**

4.1 An inclusive model of team service planning is not a ‘one off’ event. Teams need to meet regularly throughout the year so that team service plans are developed and owned by the teams who provide the service. Neither the team service plan nor the individual clinician’s job plan can be drawn up in isolation. Each informs the other.

4.2 Discussions undertaken in a model of service planning and engagement between employers and their medical staff throughout the year should contain the following elements:

- Reviewing the previous year and identifying what went well and where there might be areas for improvement across the organisation/directorate;
- Reviewing the clinical workload as defined in the business plan;
- Reviewing any changes to service delivery that have taken place during the year
- Identifying the actions and resources needed to maintain and improve service delivery and the quality of care to patients;
- Reviewing areas of strength and weakness and methods to maximise the opportunities and minimise the possible risks such as workforce gaps and other threats to service continuity;
- Taking account of broad NHS Scotland aims, identifying the priorities organisations(s) and team(s) want to deliver and the objectives flowing from these which might influence and inform individual job plans;
- Taking account of the spread of activities throughout the team to inform individual job planning
- Understanding the resources the Department receives (e.g. salaries, recharges, Medical School sessions, teaching roles etc);
- Setting out what might be needed to meet clinical governance requirements including education, training, and research;
- Using local data to provide a robust evidence base for both the service planning and individual job planning processes;
- Taking account of specific individual objectives that may require broader team support or impact on service delivery;
- Taking account of any additional responsibilities, in particular external duties, undertaken by consultants, specifically the impact this has on service delivery and on the workload of the department;
- Including input from SAS and Junior doctor representatives within the department where appropriate.

4.3 Teams could also consider sharing information on service planning with others within the organisation(or with other organisations) to secure consistency and

benefit from best practice. Teams should reflect on what they want to achieve over the year and their shared objectives, to inform individual job plans.

4.4 Inclusive service planning processes which have demonstrably involved medical staff in setting out what will be delivered, how it will be delivered and with what resources will facilitate the alignment of individual job planning processes with service planning. This will place job planning firmly in the context of service needs while balancing the needs and objectives of individual doctors and the agreed objectives of the service.

## **5. Balancing Team and Individual Objectives**

5.1 Achieving balance between the needs and objectives of individual doctors and the agreed objectives of the service will necessitate some specific consideration during individual job planning discussions on the level of standardisation which can be applied to the work carried out by consultants. The following principles may be useful:

- Boards need to plan and structure delivery of their services, with consultant job plans forming a critical element of these plans and structures.
- Where workload is predictable in nature, it may be possible to establish some locally agreed norms, thus introducing an element of standardisation within and between consultant job plans.
- Where norms are agreed with the relevant consultants, this should be based on evidence and done by collaborative discussion with the consultants providing the service.
- If moving outside the agreed norm, there should be a discussion and exploration of the reason behind this, conducted with the degree of transparency appropriate in each circumstance.
- While providing a solid base for delivery of services, any standardisation in job planning should not be conducted in a manner which leads to inflexibility or fails to take into account the complexity of both consultant work and the environment in which that work is carried out.
- Any standardisation of consultant job plans within or across Departments should take account of potential variations related to factors such as Departmental size and workload, and should be based on a sophisticated understanding of the nature of the actual workload being discussed.
- In any discussion of standardisation within and between job plans, fairness, both for individual consultants and the teams within which they operate, quality of service, and patient safety will be the paramount considerations.

## **6. Individual Consultant Job Planning**

6.1 Prior to completing their own job plan, and in the context of the engagement alluded to above, consultants should consider the following:

- Personal and career objectives and development needs
- Job plan objectives

- Board/Directorate/service developments to which they could contribute
- Identification of all external commitments (including private practice)
- Any amendments to the previous job plan
- Any additional resources required to fulfil NHS commitments.

## **7. Conclusion**

7.1 Improving both team service planning and individual consultant job planning is in the interests of patients, of NHS Scotland as a whole and of individual consultants. The purpose of this joint guidance is to set out how processes across NHS Scotland can be improved by adopting an inclusive approach to service planning based on continuous engagement within the teams who deliver services and building the right connections between the different levels at which planning takes place.

7.2 The guidance has been discussed and agreed between BMA Scotland and the Management Steering Group and we would commend it to all staff involved in these processes.

## CONSULTANT JOB PLAN REVIEW: RESOLVING DISAGREEMENTS

### Introduction

1. Job planning is a core part of the 2004 terms and conditions of service (TCS<sup>1</sup>) and is a requirement for all consultants. Job plan reviews perform a vital role in the job planning process, and should be undertaken at least annually. Most job plan reviews will be straightforward, but occasionally, a consultant and their medical manager will find it difficult to reach agreement. In such circumstances it is unhelpful for this to be left unresolved.

2. The TCS set out a clear mechanism for resolving job planning disagreements. This joint guidance from BMA Scotland and the NHS Scotland Management Steering Group does not seek to undermine or replace those TCS provisions in any way. However, the TCS are now over a decade old, and the roles and structures they refer to are not always still appropriate. This guidance is an attempt to ensure that processes relate to the current NHS in Scotland, without undermining the overall approach specified in the TCS. It also suggests a more mediated and less adversarial approach, which should help resolve disagreements at an earlier stage in the process.

### Key points

- There are detailed arrangements in the TCS regarding job plan mediation and appeals. These include specific timescales with regard to submitting a request for mediation or appeal as well as when the meeting should be convened and the outcome advised to the parties. It is in everyone's interests to make every effort to work within the prescribed timescale, especially with regard to convening meetings. In particular, consultants may need support from more senior management in order to enable attendance at a meeting convened in a relatively short timescale, with significantly less than the notice normally required for cancellation of clinical activity.
- Although the TCS state that the appropriate mediators at stage 1 and stage 2 should be the divisional medical directors and divisional chief executives, these role titles no longer exist in most board management structures. Even where broadly equivalent roles do exist, strict application of this provision could create significant workload issues for specific individuals. We recommend that boards agree appropriate schemes of delegation with Local Negotiating Committees (LNCs) for all stages of the mediation and appeals process.
- Acting as a mediator requires a specific skill set, and it may well be appropriate for the task to be delegated, with the full agreement of the consultant concerned, to an individual with appropriate mediation skills who might not be part of the usual 'structures', but who both parties have faith in and wish to use. Whoever

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<sup>1</sup><http://www.msg.scot.nhs.uk/wp-content/uploads/Consultant-contract-2007-version.doc>

undertakes the role of mediator, it is vital for the credibility of the process that they have the confidence of both the consultant and the medical manager.

- Where boards adopt the approach of broadening the range of senior managers able to mediate in job planning disagreements, they will develop a cohort of individuals to whom requests for mediation could be delegated. This may come with a training need for some mediators and boards should consider how best to address this. An extended pool of appropriately skilled individuals should improve the process and increase the likelihood of a successful outcome at an early stage. Guidance for mediators on how to undertake their role is attached at Annex A.
- The formal appeals process will reflect the locally agreed procedure for conduct of appeals with regard to submission of information and the conduct of the appeal hearing itself.
- The TCS make reference to the consultant appeals panel list. Each board is meant to hold a list of suitable nominees to appeals panels agreed between the board and the LNC. As appeals are rare occurrences, it is likely that such a list was agreed when the new contract was implemented and it is also likely that it has not been regularly reviewed and updated. In encouraging consultants to make full use of the mediation and appeals process it will be necessary for LNC and boards to review and potentially update the local lists. These local lists will then be collated into a national list<sup>2</sup>, updated annually by the Scottish Government, and held jointly by MSG and BMA Scotland.

## **Job planning**

- Job plans and variations to job plans should be agreed between the employer and the consultant after full discussion with both parties using their best endeavours to resolve any issues arising. All job plans require to be reviewed annually and most job plan reviews should result in agreement on a fair and balanced job plan.
- In reality it is very often the case that both the consultant and their medical manager will be largely content with the current job plan and as a result minimal change will be required. However it is important that there is still a job plan review as there will need to be agreement on the objectives and PDP for the coming year and a recommendation on progression through seniority points.
- In the event that either party is looking for more substantive change, then agreement is likely to be much easier to achieve when there has been regular dialogue throughout the year, good team service planning and ongoing engagement between the medical manager and the consultant team. This would mean that both parties would know in advance the likely nature of the discussion and there would be no surprises in the course of the meeting.

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<sup>2</sup>The national list is used where no one suitable from a local list is available, e.g. in some very small boards.



- In advance of the job planning meeting the medical manager and the consultant will make all possible efforts to ensure that there is clarity on the content of the discussion at that meeting. The medical manager responsible for the job plan review should have discussed and engaged appropriately within the management structures of the board. The process and timescale of job plan sign off should be stated clearly to consultants and medical managers prior to job planning meetings. This should normally mean that sign off is by the medical manager at the end of a satisfactory job planning meeting(s) and once a job plan has been agreed between the consultant and the medical manager, there should be no need for any further 'sign off' by senior management.
- It is open to either party (or both parties jointly) to seek further advice in order to try to resolve a disagreement in advance of proceeding to mediation. Whilst it is obviously preferable for disagreements to be resolved through such 'informal facilitation'<sup>3</sup> it is equally important to reach genuine agreement and give all parties clarity as to the prospective job plan.
- It is accepted that there will be times when despite everybody's best efforts for some reason agreement cannot be reached between the consultant and the medical manager. It is important that such disagreement is recorded and either or both parties refer the matter to mediation in line with the provisions of the TCS. It is counter-productive for both the manager and the consultant to simply ignore the failure to agree. It is good practice that such failures to agree are referred to mediation in line with section 3.4 of the TCS.

## **Mediation**

- Section 3.4.1 of the TCS details the mediation process; the intention of the guidance below is not to create any additional stages, only to complement the existing provisions of the TCS, and to facilitate an approach to resolving disagreements which is representative of a true mediation process.

### *Stage 1*

- Once the consultant and medical manager have concluded that they are unable to agree a job plan then the consultant and or medical manager will, within two weeks of the exhaustion of the initial discussion, refer the point(s) of disagreement, in writing, to the next level of medical management, provided that the doctor concerned has not had any previous involvement in the job plan review. In the event that the more senior manager has been involved in the discussion to date then the referral will be to another appropriate person nominated by the senior medical manager and agreed with the consultant.
- The individuals who undertake the mediation do not necessarily have to be formally trained in mediation but rather should be individuals who are trusted by both parties and who have the interpersonal skills to be able to facilitate a constructive dialogue and enable both parties to put forward their issues and

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<sup>3</sup><http://www.staffgovernance.scot.nhs.uk/improving-employee-experience/dignity-at-work-project/review-of-mediation-services/>

concerns. Ultimately if there is no resolution in the course of the mediation meeting they may be required to make a decision, however their approach should be one of trying to reconcile the differences and reach agreement in the meeting.

- The mediator should convene the meeting within three weeks of the referral for mediation. There is no obligation on either party to provide information to the mediator in advance of the meeting but it is often helpful for both parties to provide the reasons why they have been unable to agree so that the mediator has some insight into the matters under consideration. Providing a lot of new information on the day is likely to simply delay the process, which is not in the interests of either party.
- Following the meeting the mediator will, normally within two weeks, advise the consultant and manager of the outcome of the mediation and provide in full the reasoning for this.
- Experience has shown that most disagreements will be resolved by stage 1 mediation. However if following receipt of the outcome a consultant remains dissatisfied with the proposed job plan the point(s) of disagreement may be referred to stage 2 mediation.

### *Stage 2*

- A consultant who remains dissatisfied with the proposed job plan should refer the matter to the senior manager set out in the scheme of delegation agreed with the LNC (or chief executive where no scheme of delegation has been agreed) within two weeks of receipt of the outcome of the stage one mediation. S/he will then convene a meeting with the consultant and the medical manager (i.e. the one who was involved in the original job planning meeting) to discuss the outstanding point(s) of disagreement and to hear the parties' consideration of the issues. As with Stage 1, with the agreement of the consultant concerned, responsibility for this stage of mediation may be delegated to a colleague of equivalent seniority with appropriate mediation skills who has had no previous involvement in the job planning issue under consideration.
- Following this meeting the stage 2 mediator will, normally within two weeks of the meeting, advise the consultant and manager of the outcome of the mediation and provide in full the reasoning for this.
- If following the stage 2 mediation a consultant remains dissatisfied, s/he is entitled to present a formal appeal to the employer, the outcome of which is binding on both parties.

### **Formal appeal**

- Sections 3.4.2 –3.4.3 of the TCS detail the formal appeal process.
- A consultant has four weeks following receipt of the outcome of stage 2 mediation to submit an appeal, and the relevant panel should be convened within six weeks of receipt of the appeal.

- Consultants should request an appeal by contacting the senior manager set out in the scheme of delegation agreed with the LNC. Where no scheme of delegation has been agreed, the appeal should be to the board chief executive, or the board chair for consultants in public health medicine.
- The membership of the appeal panel is set out within the terms and conditions in section 3.4.2.
- The appeal panel comprises
  - one member nominated by the chief executive who chairs the panel
  - one member nominated by the consultant
  - one member appointed from the agreed consultants appeals panel list
- The appeals process will reflect the locally agreed procedure for conduct of appeals with regard to submission of information and the conduct of the appeal hearing itself.
- This stage exhausts the process and there is no further right of appeal.

## **Conclusion**

3. While in the vast majority of cases consultant job planning results in an agreed plan which both individual consultants and medical management in Boards commit to, there are instances where there is a lack of agreement. While the 2004 terms and conditions of service (TCS) contain provisions for dealing with these circumstances discussions between BMA Scotland and the NHS Scotland Management Steering Group identified potential for guidance which, while not changing or replacing the agreed TCS would be of assistance to both NHSS managers and individual consultants in moving towards agreement, using mediation as a means of doing so.

4. The guidance has been discussed and agreed between BMA Scotland and the Management Steering Group and we would commend it to all staff involved in the processes referred to.

### **Consultant job planning: guidance for those undertaking the role of mediator under section 3.4.1 of the TCS**

- Mediation is a confidential process by which an impartial third party helps people in dispute to work out an agreement. It involves appropriately skilled mediators dealing with situations where both parties are willing to work together to resolve an issue and where the problem has to do with something that the parties themselves can change.
- Mediation provides a structured, confidential and informal way of resolving disagreements, and focuses on the future rather than the past. The mediator facilitates a series of private and joint meetings with the parties to address the underlying root causes of the disagreement, but it is the parties to the dispute, rather than the mediator, who determine the terms of any agreement.
- With regard to job planning, the use of the term mediation in the TCS is something of a misnomer. Unlike in true mediation, the TCS ultimately place the mediator in the position of determining the outcome of the mediation, in a way which more closely reflects the grievance process than mediation. It is however, entirely possible, using a skilled impartial mediator, to approach the process as if it was a true mediation without undermining the mechanism laid out in the TCS. The aim of this guidance is to facilitate such an approach.
- The TCS allow for the consultant to be represented at all stages of mediation. While in true mediation there would not usually be representation as such, there are many situations in which the mediator will value the contribution of a fully informed representative. There should be discussion and agreement on a case-by-case basis as to how this will work in practice as the nature of the situation may vary considerably, with implications for the level of actual representation required.
- It will generally be helpful for the mediator to meet separately with both parties (and then if appropriate, shuttle mediation can be utilised) prior to the joint meeting in order to enable a full understanding of the points of disagreement, bearing in mind that it is only the points of disagreement which are subject to mediation, not the entire job plan. Along with the detail of the points of disagreement, these separate meetings may also help to establish areas of common ground.
- The initial separate meetings should also provide an opportunity for the parties to provide the mediator with any supporting information and to give the context for this, rather than simply submitting documentation prior to the joint meeting. Any information submitted by either party in the course of the mediation process must be directly relevant to the points of disagreement under discussion.
- A mediation-focused approach to the process should improve the prospects of the two parties reaching an agreement on some or all of the areas of disagreement. It is only necessary for the mediator to make a decision

themselves, in accordance with the TCS, on any areas of disagreement left outstanding at the end of the mediation process.

- Confidentiality is important in ensuring all parties' confidence in the process. The mediator and the parties should agree at the outset that all discussion during mediation is confidential and that no formal note of discussion will be kept on record. If agreement is reached in the course of the discussion then an agreed record of that agreement is all that should be retained. If agreement cannot be reached, then the formal notification of the mediator's decision, with full reasons for that decision, should be the only record that is retained.