

NHS Employers' interpretation of pay protection within doctors' terms and conditions of service

March 2006

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Pay protection can offer a measure of financial security to the doctor in training to whom it might apply. However, it is a complex and regularly disputed issue. Applied incorrectly it can result in significant cost to a trust which employs large numbers of this staff group.

The relevant terms and conditions of service and associated guidance for hospital, medical and dental staff, doctors in public health medicine and the community health service were jointly agreed and issued by the Department of Health and the British Medical Association (BMA). Even so, interpretation varies considerably between those two bodies and between individual employers within the NHS.

NHS Employers is committed to establishing a consistent approach to this subject, which can be supported by all parties concerned. This guidance has been created to clarify employers' and doctors' respective responsibilities and expectations in regard to pay protection. It outlines pay arrangements for doctors in training, presenting the rationale for pay protection with a guide to calculating its value. Appendices cover extracts from Terms and Conditions of Service, Advance Letter (Medical and Dental) 1/2001, and an agreed letter from the Department of Health to HR Directors in 2001 relating to the junior doctors' contract and pay protection. An Excel spreadsheet is also available separately to demonstrate the calculations.

The rationale for pay protection for doctors in training

Working time legislation, combined with the commitment of both the BMA and employers in the NHS to improve the quality of the working lives of doctors, is reducing the hours they work. In particular, this is likely to bring about a reduction in the unsocial elements of posts and related pay supplements.

To allow financial planning and so that doctors are neither financially disadvantaged nor discouraged from complying with this downward trend, pay protection covers the post currently occupied, and future contracted posts.

Summary

- Pay protection applies to any post in a rotation from the date the employer or authorised agent offers a specified post to the doctor and the doctor formally accepts the contract.
- Protection applies at the banding in place at the time of such acceptance and contract. The calculation of protected pay is shown in a worked example later in the guidance.

Protected pay has two components:

- The total cash sum of the basic salary plus the supplement, which the doctor was paid or would have been paid had he/she been in post, immediately before re banding, on a mark time (without benefit of increments or pay awards) basis, plus
- The cash value of increments due, if any, on the scale in place at the time of the contract.

Most importantly, the offer by a deanery of appointment to an educational rotation does not automatically imply an offer of employment.

Pay arrangements for doctors in training

Doctors in training, referred to after this point as doctors, receive a basic salary which rises by annual increments on a scale appropriate to their grade. Doctors who work part-time are paid a proportion of the basic salary, according to the proportion of full-time work they undertake.

In addition, doctors who are either required to undertake work outside the hours of 8am to 7pm on weekdays, to work in excess of 40 hours a week, or both, are paid a supplement determined by the actual work undertaken.

Almost all hospital doctors receive a supplement, the minimum of which is 20% of basic salary. In practice, this supplement amounted to an average of 56% of basic salary for full-time doctors in England in September 2005.

Pay protection in the post currently occupied

As a minimum, a doctor is assured of pay at the current rate agreed with the BMA for the duties he or she undertakes. Working hours are monitored twice yearly and pay bands adjusted to reflect workload. If work intensity increases, pay rises to follow. If work intensity and bandings decrease, pay protection ensures that salary does not fall below the protected level while the doctor remains in the same post. Pay is protected at the level in place immediately prior to the band reduction. It will remain protected for the entire period the post is occupied, for so long as it is more favourable.

Pay protection covering future contracted posts

If a doctor accepts a formal contract of employment for a specified future post, and the pay band of that post has decreased in the time between acceptance of the contract and entering the post, pay protection will apply. This ensures that pay upon take up of the post is no lower than that in place when the contract was made, regardless of band reductions in the intervening period. It enables doctors in this situation to make future arrangements based on the pay band in place when the appointment was made.

In some cases pay protection will apply at the start of the rotation, when the full, detailed training plan is set, posts identified, and contracts offered. In other cases the training plan will be developed as training progresses, and posts will be identified and appointed to at later points in the process. Under these circumstances pay is protected at the level in place at the time of each subsequent appointment.

When occupied posts are changed such that the supplement would normally decrease, doctors in post at the time of the change have their pay protected at the level immediately before the change. Protection will apply until the end of that post. This protection extends to known

future posts to ensure that, from the time when doctors contract for such posts, they can make future financial arrangements based on the pay band in place when the contract was made.

For some doctors this will be at the start of the rotation, when the total detailed training plan is set and posts identified. For others the training plan will be developed as training progresses, and posts will be identified and contracted for at later points in the training process.

In all cases, doctors will be paid on the basis of the work they are actually undertaking, except where the duties of the post have changed to reduce the pay band in the interval between contract and take-up. Under these circumstances pay will be protected to reflect the level in place at the time of the original contract.

The application of pay protection

Pay protection for doctors involves two considerations: eligibility for protection, and the calculation of the value of protected pay.

1. Eligibility

It is NHS Employers' view, supported by expert advice from the service, that:

- doctors, appointed to a rotation where posts are specified at the time of that appointment, receive pay protection in each post at the level in place at the time of that initial appointment, so long as a contract of employment for each post is established at that time;
- doctors appointed to a rotation where posts are determined on an ongoing basis throughout the rotation are not pay protected until a contract is offered and appointment made to a specified post; protection then applies at the level in place at the time of that appointment.

Future posts might not be specified at the time of the initial appointment to the rotation because of, for example, personal preference, or as a result of developmental needs identified by on-going assessment. Instead posts may be identified from time to time during the period of the training. In this event, the pay band applicable to a possible future placement could change before it is offered to a doctor. Whether a doctor retains the benefit of the pay band applicable at the time of the initial appointment to the rotation depends upon the interpretation of the relevant contractual terms. These are sub-paragraphs 21(i), (l) and (m) of the Terms and Conditions of Service (TCS), which apply to doctors in training (see Annex A).

Sub-paragraph 21(i) deals specifically with rotational appointments. The provisions of that paragraph can be broken down as follows:→

A If

- 1 A doctor in a rotational appointment has accepted appointment to a future post in that rotation for which a New Deal compliant pay band assessment has been made at the time of appointment to the rotation; and
- 2 The duties of that future post have been changed before the practitioner actually takes it up

Then sub-paragraph 21(h) shall apply and *'the practitioner shall be treated as if he or she has already been occupying the post at the time of the change'*.

B If

1 No assessment of the pay band has been made at the time of the appointment

Then

2 Sub-paragraphs 21 (c), (d) and (e) apply.

Each point is considered in more detail, as follows:

Satisfying pre-condition A1

- The doctor must have accepted appointment to a specified future post in the rotation. Therefore, if the doctor has accepted appointment to a rotation but has not accepted appointment to any specified future posts in that rotation, pay protection under paragraph 21(h) cannot operate.
- In addition, the future post in the rotation must be one for which a New Deal compliant pay band assessment has been made at the time of appointment to the rotation. This means that the assessment must have been made at the time of initial appointment to the rotation, not at the time of appointment to the future post.

Satisfying pre-condition A2

- This condition is satisfied if the duties of the post have been changed before the practitioner actually takes it up.

Our interpretation of this situation is that the duties must have changed since the doctor accepted appointment to the post. The reasons are as follows:

The purpose of pay protection is, in our view:

- (i) to avoid financial disadvantage or to prevent injustice to a doctor as a result of a cut in the pay he or she receives in his/her existing post; and
- (ii) to avoid financial disadvantage or to prevent injustice as a result of a pay cut before he/she takes up the future post.

In our view, financial disadvantage or injustice can occur only if the pay cut takes effect after the doctor has accepted the future post. We believe that a doctor cannot have any relevant pay expectations until he/she has actually contracted for a future post.

If A1 and A2 are satisfied, pay protection operates as specified under sub-paragraph 21(h).

In practice, therefore, the following conditions must be satisfied in order for pay protection under sub-paragraph 21(h) to apply:

- The doctor must have been offered and accepted a contract of employment for and appointment to a specific future post.
- A New Deal compliant pay band assessment for that post must have been in existence at the time the doctor was initially appointed to the rotation.
- There must have been a change in the duties of the future post between the time when the doctor accepted appointment to that post and the time when he/she actually started work in the post.

If these three conditions are satisfied pay protection operates as stated in sub-paragraph 21(h): the doctor is treated as if he/she has been working in the post at the time of the change. Otherwise, pay protection operates (if at all) as stated in sub-paragraphs 21 (c), (d) and (e).

If there is a change in duties after the doctor has actually started work in a particular post, sub-paragraph 21(h) will apply and pay protection will operate in accordance with that sub-paragraph.

Interpretation of sub-paragraphs 21(l) and (m) (New Deal Non-Compliant Posts)

Sub-paragraph 21 (l) reads as follows:

"Where a future post/placement in a rotation, which has been accepted by the practitioner at pay band 3, becomes compliant before 1st December 2002, the practitioner when they take up that post/placement shall retain the overall salary protected at the pay band 3 rate applicable at the time of the re-banding, for so long as it is more favourable and for the duration of that post/placement. The salary shall be increased only to take account of increments in the base salary on the old scale."

In NHS Employers' view, pay protection at the band 3 rate only applies if the post becomes compliant with the New Deal after the doctor has been offered and accepted a contract for the particular post/placement. Therefore, if a post becomes New Deal compliant between appointment to the rotation and acceptance of the particular post, pay protection under sub-paragraph 21(l) will not apply when the doctor takes up the particular post.

Sub-paragraph 21(m) reads as follows:

"Where a future post/placement in a rotation, which has been accepted by the practitioner at pay band 3 becomes compliant on or after 1st December 2002, the practitioner when they take up that post/placement shall have their salary protected at the pay band 2A rate applicable at the time of the re-banding, for so long as it is more favourable and for the duration of that post/placement. The salary shall be increased only to take account of increments in the base salary on the old scale."

In NHS Employers' view, the interpretation of this paragraph is the same as for sub-paragraph 21(l). Pay protection only operates where the post becomes compliant after the doctor has been offered and accepted a contract for that particular post. Therefore, if the post becomes New Deal compliant after the doctor's appointment to the rotation, but before the doctor has accepted that particular post, pay protection under sub-paragraph 21(m) will not apply when the doctor takes up that particular post.

If a post becomes compliant after the doctor has actually started work in the post, pay protection is governed by sub-paragraph 21(j) or (k) rather than sub-paragraph 21(l) or (m).

Rotations where expectation of specific posts appears clear

There has been some debate over whether a contract can come into being at the start of a rotation if the area of training is so specialised that there will only be x possible number of training posts, and x is the exact number of the posts the doctor will complete during their rotation over the next 5 years.

As the doctor will work in each one of the posts at some point in the next 5 years it might be considered that sufficient certainty exists in these circumstances, as the doctor will work in each one of the posts at some point in the next 5 years, for a contract to arise with each of the trusts involved at the start of the rotation. However, after further consideration NHS Employers believes that unless there is an express or implied offer to the doctor, which the doctor makes an express effort to accept, there cannot be a contract in place. The law of *estoppel*, which gives extra rights above normal contractual rights, does not entitle doctors to argue that their certain expectation to join one of these trusts will give rise to a contract or other similar legally enforceable rights.

Pay protection can therefore only be relevant when a doctor expressly accepts a specific post and where the pay levels in that post are changed detrimentally after that acceptance, but before the doctor takes up the post.

Acceptance of a rotation is merely an acceptance by the doctor to participate in training with any of the trusts involved in offering that training. If the identities of the specific trusts are not known, there can be no legally enforceable offer, or acceptance of a contract of employment on which to base a right to a fixed minimum salary. Even if the identities of the trusts are known, without a specific offer of employment made by an individual or body with the authority to make such an offer, a doctor cannot show that he/she had an expectation of a specific salary level and pay protection is not appropriate.

It is therefore insufficient for a doctor simply to demonstrate that he or she 'knew' where he or she would be working. Crucially, pay protection relies on the existence of a contract of employment. To come into being this needs both the offer of a specific post by the employer,

and the explicit acceptance of that post by an individual doctor. It follows logically that a binding contract cannot be formed until both parties are properly aware of the relationship.

NHS Employers is fully committed to ensuring that protection is implemented in a fair and reasonable manner, and expects and advises employers to act in good faith by giving prospective employees as much notice as is reasonable of future appointments.

2. Calculation of protected pay

Unlike protected pay for other NHS staff groups for whom pay is frozen at mark-time and is, therefore, of a fixed cash value, doctors' protected pay continues to rise by the value of annual increments. To understand this and to apply this provision correctly, it is important to consider exactly what has been contracted for, at the time the contract is made. When a doctor accepts appointment to a post, he or she accepts it on the terms and incremental scale then in place. Whilst a doctor might anticipate cost of living increases on that scale, there can be no guarantee that these will happen. Consequently any expectation of future pay, and financial commitment made on this basis must of necessity be based on the scale in place at the time of the appointment, rather than at some later point in time. Pay protection explicitly reflects this expectation.

In other words, when a post is rebanded, total pay at the time of rebanding is frozen at mark time, and increments on the scale in place at the time of appointment to the post are applied on the appropriate incremental date.

Paragraph 21 of the Terms and Conditions of Service (see Appendix 1), taken together with the explanatory text of the Advance Letter (Medical and Dental) 1/2001 (see Appendix 2) with which it was issued, supplemented by the Department of Health's letter to the NHS of 12th March 2001 (see Appendix 3) sets out the basis for calculating protected pay. All were agreed between the Department of Health and the BMA before publication, and together set out the collective agreement,

The wording of the paragraphs of the Terms and Conditions of Service varies a little between compliant and non-compliant posts. However, when read together with the Advance Letter it is apparent that the same calculation applies.

Paragraphs 21(h) and (j) from the Terms and Conditions of Service are as follows:

21(h) Pay protection in New Deal compliant posts

Where a practitioner reaches agreement with his or her employing authority on a new or revised contract on or after 1 December 2000, the practitioner's post shall be re-assessed in accordance with paragraphs 19 to 23, effective from the date of the change. For so long as it is more favourable, and so long as the practitioner remains in the same post, the practitioner shall

retain the overall salary applicable to the band he or she was placed in immediately before the change. The salary shall be increased only to take account of increments in the base salary on the old scale.

21(j) Pay protection in New Deal non-compliant posts

Where a New Deal non-compliant post/placement (pay band 3) becomes compliant before 1 December 2002, the practitioner shall retain the overall salary protected at the pay band 3 rate applicable at the time of rebanding, for so long as it is more favourable and for the duration of the post/placement. The salary shall be increased only to take account of increments in the base salary on the old scale.

In other words, while the doctor retains the 'overall salary applicable to the band ... before the change' in a compliant post, the doctor in a non-compliant post receives protection 'at the ... rate ... at the time of rebanding'. In both cases reference is made to salary increases to 'take account of increments in the base salary on the old scale'. This offers scope for confusion as the compliant protection appears to relate to a fixed value, while non-compliant protection refers to a fixed rate. In addition, the 'old scale' could be interpreted either as the scale in place at the time of appointment to the post, or that in place at the time of rebanding (the BMA have argued the latter).

If the increment were to be understood to apply to the base salary and 'rate' in the paragraph on non-compliance was taken to mean that the protected rate applied to the now incremented base salary, the protected salary would increase. However, this would have the effect of increasing both the basic salary and the supplement, in a situation where the doctor is already being paid in excess of the normal rate for the post. Both these points are addressed and clarified in paragraphs 31 and 34 of the Advance Letter.

31 Pay protection arrangements for compliant posts after transition

For compliant posts/placements which are rebanded to a lower band, postholders shall have salary protected at the rate of the original band applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

34 Pay protection arrangements for non-compliant posts after transition

For posts/placements which become compliant before 1 December 2002 postholders shall have salary protected at the Band 3 rate applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

Protected pay clearly consists of two separate and independent components. The total salary (basic plus pre-rebanding supplement) component, at the level payable immediately before the change, is at 'mark time' and is fixed in value. References to 'rate' in the wording of the TCS paragraphs in this context serve only to identify the amount payable at the time of transition. Thereafter, the rate is of no consequence. To this component are then added increments in the base salary on the scale in place at the time of appointment to the post, on the incremental date.

The calculation of protected pay on entry to the post is as follows:

Protected pay = Mark Time component (B x M) + Increment/s (B[ii] - B[i])

Where:

- B = Basic salary of the pay point the doctor was on at the time of rebanding on the scale in place at that time.
- M = Multiplier in place before rebanding (1.8 in the case of non-compliant posts).
- B[i] = Basic salary at the pay point the doctor was on at the time of rebanding on the scale in place at the time of appointment to the post.
- B[ii] = Basic salary at the pay point the doctor is on at the time of entry to the post on the scale in place at the time of appointment to the post. (The value of B[ii] will increase annually on the doctor's incremental date to reflect increments in the base scale, subject to the doctor not being already at the top of the scale.)

This allows total protected pay to be properly calculated, and superannuation to be correctly applied. Total pay consists of a superannuable component which is the basic pay at the current pay point of the doctor on the current scale, plus a non-superannuable supplement. The value of the supplement will be the difference between current basic pay and protected pay.

Example

Specialist Registrar – extract from pay scales				
SpR	3	4	5	6
2005	32,607	34,337	36,067	37,796
2004	31,658	33,337	35,016	36,695
2003	30,825	32,460	34,095	35,730
2002	29,850	31,435	33,020	34,605

(Note: scales run from April to March i.e. The 2002 scale runs from April 2002 to March 2003)

In January 2003 a doctor then on point 3 of the SpR scale, was offered and accepted a contract of employment for a post, due to start in January 2006. His incremental date is in August. The post is re banded to from Band 2A to Band 2B in July 2003.

B	Basic salary at re banding	£30,825 (point 3, 2003 scale)
M	Multiplier at re banding (2A)	<u>x 1.8</u>
(B x M)	Mark time component of protected pay	£55,485

This sum is uplifted by the cash difference between point 3 (scale point at the time of rebanding) and point 6 (scale point in January 2006), on the scale at the time of appointment (2002).

B[ii]	Scale point 6 (2002)	£34,605
B[i]	Scale point 3 (2002)	<u>£29,850</u>
(B[ii] – B[i])	Incremental component of protected pay	£4,755
(B x M)		£55,485
(B[ii] – B[i])		<u>£4,755</u>
	Total protected pay (January 2006)	<u>£60,240</u>

This is paid as two components:

Superannuable basic salary (point 6, 2005)	£37,796
Non-superannuable supplement	<u>£22,444</u>
Total Protected pay (January 2006)	<u>£60,240</u>

Status of the interpretation

Employers should note that this paper sets out the views of NHS Employers informed by discussions with NHS organisations and other stakeholders, and does not represent legal advice. Trusts will need to seek their own legal advice on a case by case basis. We are aware that a number of Employment Tribunal cases have arisen from interpretations of the pay protection provisions. This paper represents our current interpretation; we will advise employers and amend this paper as necessary as a result of any relevant Employment Appeal Tribunals.

NHS Employers, March 2006

Appendix A

Terms and Conditions of Service

Paragraph 21

Full time practitioners in the grades of SR, SpR, R, SHO, HO and PRHO receive a base salary. An additional supplement will be paid according to one of the pay bands, in accordance with the assessment of their post as described in paragraph 22 below, at the rates set out in Appendix I.

- a. For practitioners contracted to work 40 or more hours of duty per week, pensionable pay for contributions purposes must be based on the practitioner's actual whole-time basic pay (1.0) only. Pay supplements over and above base salary are non-pensionable.

Pay protection at transition

- b. Pay protection in compliant posts will apply from 1 December 2000 to any junior doctor whose total pay under the ADH system (at current ADH percentages) in the post they are occupying on 1 December 2000, or in any post in a rotation accepted before 1 December 2000, where a formal ADH assessment has been made, would be higher than that due under the proposed new contractual arrangements.
- c. Until 1 December 2003 pay protection will also apply to any post or placement in a rotation accepted before 1 December 2000 where no formal ADH assessment was made but where the post, at the time the junior doctor accepted the rotation, was paid at a higher rate under the ADH system than is the case under the new contractual arrangements when the junior doctor takes up the post.
- d. On 1 December 2000, where a post attracts a higher rate ADH payment in recognition of excessive intensity, under EL (96)10 or HSC 1998/027 (in England), then the post shall attract the same overall salary for so long as it is more favourable until the intensity problem has been shown to be resolved. This shall also apply where a claim with full supporting evidence has been lodged by 30 November 2000 in accordance with these circulars.

Principles of pay protection

- e. The principle of pay protection applies to practitioners in all bands for the duration of the post/placement or within a rotation subject to the conditions set out in sub-paragraphs 21.h to m.
- f. Pay protection applies to the base salary on the scale plus the supplement in payment at the time the post or placement is rebanded. The salary shall be increased only to take account of increments in the base salary on the old scale.

Pay protection in New Deal compliant posts

- g. Where a practitioner reaches agreement with his or her employing authority on a new or revised contract on or after 1 December 2000, the practitioner's post shall be re-assessed in accordance with paragraphs 19 to 23, effective from the date of the change. For so long as it is more favourable, and so long as the practitioner remains in

the same post, the practitioner shall retain the overall salary applicable to the band he or she was placed in immediately before the change. The salary shall be increased only to take account of increments in the base salary on the old scale.

- h. If a practitioner in a rotational appointment has accepted appointment to a future post in that rotation for which a New Deal compliant pay band assessment has been made at the time of appointment to the rotation and the duties of that future post have been changed before the practitioner actually takes it up, then sub-paragraph 21.h shall apply, and the practitioner shall be treated as if he or she had already been occupying the post at the time of the change. If no assessment of the pay band has been made at the time of appointment then sub-paragraphs 21.c, d and e apply.

Pay protection in New Deal non-compliant posts

- i. Where a New Deal non-compliant post/placement (pay band 3) becomes compliant before 1 December 2002, the practitioner shall retain the overall salary protected at the pay band 3 rate applicable at the time of rebanding, for so long as it is more favourable and for the duration of the post/placement. The salary shall be increased only to take account of increments in the base salary on the old scale.
- j. Where a New Deal non-compliant post/placement (pay band 3) becomes compliant on or after 1 December 2002, the practitioner shall have their salary protected at the pay band 2A rate applicable at the time of rebanding, for so long as it is more favourable and for the duration of the post/placement. The salary shall be increased only to take account of increments in the base salary on the old scale.
- k. Where a future post/placement in a rotation, which has been accepted by the practitioner at pay band 3, becomes compliant before 1 December 2002, the practitioner when they take up that post/placement shall retain the overall salary protected at the pay band 3 rate applicable at the time of the rebanding, for so long as it is more favourable and for the duration of that post/placement. The salary shall be increased only to take account of increments in the base salary on the old scale.
- l. Where a future post/placement in a rotation, which has been accepted by the practitioner at pay band 3, becomes compliant on or after 1 December 2002, the practitioner when they take up that post/placement shall have their salary protected at the pay band 2A rate applicable at the time of the rebanding, for so long as it is more favourable and for the duration of that post/placement. The salary shall be increased only to take account of increments in the base salary on the old scale.

Definition

- m. For these purposes a rotation is a series of posts or placements forming part of a training programme which might be at PRHO, SHO, or SpR level. Such a rotation may involve the trainee having a series of different employing trusts and contracts, but will not involve a new appointment panel.

Appendix B

Text of the Advance Letter (Medical and Dental) 1/2001

Pay protection arrangements for compliant posts after transition

31. For compliant posts/placements which are rebanded to a lower band, postholders shall have salary protected at the rate of the original band applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.
32. For rotations, future posts/placements which have been accepted by the appointee at a compliant band that are rebanded to a lower band shall have salary protected at the rate of the original band applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

Pay protection arrangements for non-compliant posts after transition

33. All posts which are non-compliant will be paid at the Band 3 rates applicable at the time.
34. For posts/placements which become compliant before 1 December 2002 postholders shall have salary protected at the Band 3 rate applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.
35. For posts/placements which become compliant on or after 1 December 2002 postholders shall have salary protected at the Band 2A rate applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.
36. For rotations, future posts/placements which have been accepted by the appointee at Band 3 that become compliant before 1 December 2002 shall have salary protected at the Band 3 rate applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

37. For rotations, future posts/placements which have been accepted by the appointee at Band 3 that become compliant on or after 1 December 2002 shall have salary protected at the Band 2A rate applicable at the time of rebanding on a mark time basis, ie for so long as it remains favourable, for the duration of the post/placement. Salaries to be increased only to take account of increments in the base salary on the scale applicable at the time of appointment, excluding any changes to the supplement rate.

Appendix C

Department of Health – Letter to the NHS

12 March 2001

For: Chief Executives/HR Directors Bulletin

Dear colleague

JUNIOR DOCTORS' CONTRACT: PAY PROTECTION

The Department of Health and the Junior Doctors Committee of the BMA have now reached agreement on pay protection under the new banding system. Details of how pay protection will apply is contained in the Advance Letter and paragraph 21 of the Terms and Conditions of Service, but I thought it might be helpful if I explained how and why we came to this agreement and answered some of your queries.

Pay protection is a long standing provision within doctors terms and conditions of service and it was important that a suitable system was devised under the new banding arrangement. With trusts adjusting to the new pay system and achieving compliance across posts over the next few years there will inevitably be movement across pay bands and it is important that junior doctors do not become financially disadvantaged by this. Equally, there must be clear incentives for trusts to reduce hours and improve working conditions. Under the new system junior doctors will have sufficient certainty about future earnings to allow them to work effectively with trusts to reduce hours and implement changes to working patterns. Trusts have the flexibility to offer future postings at expected future bands, to be validated and verified before the start of that post using the Regional Action Teams and after the start of the post in accordance with the rebanding mechanism as detailed in AL(MD)1/01. In this case pay protection applies to the pay band offered, which may not be the pay band in place at the time the post is filled. Under the new system pay protection will apply across all pay bands for the duration of the post/placement subject to the conditions set out in the agreement. Protection will apply to the base salary on the scale plus the supplement in payment at the time the post/placement is rebanded, for so long as it remains favourable, on a mark time basis. The pay band escalator will not apply to the protected banding supplements.

It is therefore very important that all junior doctors are banded correctly and in accordance with the guidance issued to the service on 12 October 2000 and 7 February 2001. There is now a contractual obligation on employers and on individual doctors to monitor New Deal compliance and the application of the banding system and you should begin working together immediately to ensure that this happens. Under the new arrangements Trusts can introduce changes in working practice providing they have consulted the postholder/clinical tutor and supplied details of the new rota to the Regional Action Team.

The NHS Executive and BMA have agreed to conduct a joint review of compliance starting in August 2002. Since the roll out of the new junior doctors' contract it has become clear that the banding questionnaire, which was based on general working arrangements within the NHS, does not capture all possible working patterns. This has proved problematic for employers when attempting to band those juniors working less than 48 hours with very low frequency on call, who in the majority of cases meet the criteria for Band 1C. In such cases, employers must work together with the junior doctors, to resolve individual cases within the guidance already circulated. Employers will want to come to an agreement with the juniors on the equitable approach. If agreement cannot be reached, and the matter cannot be resolved within the Health Authority/Trust, it should be referred to your local Regional Action Team for their final advice. If you have any queries about the rebanding process or pay protection you should contact your Regional Action Team for advice. A copy of this letter can be found on the NHS Website at: <http://www.doh.nhsweb.nhs.uk/nhs/hr/juniordoctors.htm>

This is now the final piece in the deal on the new junior doctors contract. By now all juniors (including flexible trainees) on national terms and conditions of service should have been allocated a pay band that reflects their working arrangements. Full details of the agreement, including guidance on implementation, revisions to terms and conditions of service and a new model contract, have been circulated. The deal itself supports the modernisation of working practices in the NHS, rewarding those junior doctors who give most to the NHS, whilst providing clear incentives to employers to secure compliance with the New Deal and we appreciate your continuing support in implementing the changes.

Yours sincerely

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Deputy Director of Human Resources

NHS Employers

NHS Employers is the employers' organisation for the NHS in England. Our aim is to help employers improve the working lives of staff who work in the NHS and, through them, to provide better care for patients. NHS Employers is part of the NHS Confederation but we have our own director, policy board and assembly. In striving to make the NHS an employer of excellence, we have four key roles:

- negotiating on behalf of employers
- representing employers
- supporting employers
- promoting the NHS as an employer.

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