

Doctors in flexible training

Principles underpinning the new arrangements for flexible training

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Any reform of less than full-time training should go hand in hand with a better approach to full-time training that aims to promote work-life balance. This needs to be backed up with effective locally tailored strategies on care for junior doctors' dependents, including childcare, and with efforts to make their rotations family friendly.

However, this will require a significant change of culture within medicine, associated disciplines, and the NHS at large, which will not happen overnight. In the meantime, action is required to address the increasing need for flexible training.

The following principles have been agreed between the BMA Junior Doctors Committee (JDC), NHS Employers, the Department of Health (DH) and other UK Health Departments, and the Conference of Postgraduate Medical Deans (COPMeD):

1. All doctors in training can apply for flexible training. Every application will be treated positively. It is expected that those with Category 1 reasons for training flexibly (see below) will be accommodated. All efforts will be made to provide flexible training for those applicants with reasons in Category 2.
2. It is expected, and the parties to this agreement support the principle, that the number of flexible trainees will double in the next three to five years, subject to demand.
3. Flexible training will be integrated into mainstream full-time training in the following ways:
 - a. the use of slot-shares, and the continuing development of this system into a wider view of training opportunities, in terms of whole-time equivalents, which can be filled by any combination of flexible and full-time trainees
 - b. in specialties and trusts/equivalent bodies where numbers allow it, the development of permanent flexible posts
 - c. guaranteed equality of access to study leave, out-of-hours working and all other employment rights and protections. In particular, the right of timely return to appropriate work from maternity leave will be respected and promoted; and
 - d. revised pay arrangements that will ensure there is no financial disincentive for trusts that accept flexible trainees.

4. Where slot-share arrangements are not practical, alternative arrangements for supernumerary training should be sought by the deanery. This approach should also be taken for those who need flexible training at short notice, for example those in ill-health, and those with dependents who suddenly need increased care. These arrangements could also be used as a short-term arrangement to allow a phased return to work, for example after illness or maternity leave. It is expected that in such circumstances trainees should not be limited in their ability to train flexibly by the non-availability of slot-shares.
5. Applications for flexible training will normally be processed and completed within three months, in accordance with Improving Working Lives best practice. Once funding has been agreed the trainee will be expected to take up the post promptly subject to reasonable notice of a start date to allow appropriate arrangements, such as childcare, to be made. In exceptional circumstances the start date may be deferred through liaison with the employing trust, or equivalent body and the deanery/National Education Scotland (NES).
6. Current flexible trainees will have their overall salary at the time of transition to the new system protected as set out in Terms and Conditions of Service (TCS) and Advance Letter (MD)1/01 in England, Advance Letter (MD)(W)1/2001 in Wales, in NHS PCS(DD) 2001/3 in Scotland, Circulars HSS(TC8)1/01 and HSS(TC8) 2/04 in Northern Ireland, and in any subsequent agreed guidance, as if the post had been re-banded, until such time as salary under the new system overtakes it.
7. Data will be collected centrally and available publicly in order to monitor progress.
8. There will be a transparent, independent and fair appeals mechanism for cases where an application to train flexibly has been rejected, with clear and simple supporting documentation for both appellants and deaneries.
9. Flexible training will be included as one of the Improving Working Lives (England) standards on the Trust Educational Contract, initially with a minimum of 5 per cent flexible trainees within all educational contracts and aiming to increase this over five years to 20 per cent, subject to demand*. These targets will apply across the UK.
10. The revised arrangements for access and pay will be reviewed by a UK working group representing all key stakeholders after two years from the date of implementation of the changes.

* All parties recognise that given the present proportion of flexible trainees in Northern Ireland (1.5 per cent) the province may not have achieved 20 per cent in the time frame given. This figure will be subject to legitimate demand in all four UK regions.

Implementation of less than full-time medical training

Aims

- To retain within the medical workforce doctors who are unable to continue their training on a full-time basis.
- To promote career development and work/life balance for doctors training within the NHS.
- To ensure continued training in programmes on a time equivalence (pro-rata) basis.
- To maintain a balance between less than full-time arrangements, educational requirements and service needs.

Eligibility

All trainees, both men and women, are eligible to apply for flexible training. Those wishing to do so must show that training on a full-time basis would not be practical for them for well-founded individual reasons (EC Directive 93/16/EEC). It is for the associate dean (flexible training) and, where appropriate, the postgraduate dean to determine whether a trainee's request to train flexibly is well founded. If a trainee does not meet the eligibility criteria, they should be encouraged to discuss alternative career pathways with the postgraduate clinical tutor or where necessary, the associate dean (flexible training).

Formally, the only requirement to be permitted to train flexibly is a well-founded individual reason. In practice, at present, reasons for needing to train on a flexible basis are put into two main categories by COPMeD, and used by deaneries to assess eligibility. However, these categories are not exhaustive.

Category 1

Those doctors in training with:

- disability or ill health (this may include those on in vitro fertility programmes)
- responsibility for caring (men and women) for children
- responsibility for caring for ill/disabled partner, relative or other dependant.

These result in the individual doctor or dentist being professionally disadvantaged by circumstances, and less able to fulfil their potential on a full-time rather than on a part-time basis.

Category 2

Those doctors in training with:

- unique opportunities for their own personal/professional development, for example training for national/international sporting events, or short-term extraordinary responsibility, for example a national committee

- religious commitment – involving training for a particular religious role which requires a specific amount of time commitment
- non-medical professional development such as management courses, law courses, fine arts courses or diploma in complementary therapies.

Other well-founded reasons may be considered but it would be dependent on the particular situation and the needs of the specialty in which the individual was training.

Category 1 applicants have priority and deaneries will support all Category 1 applicants. In general, non-medical interests will be treated on their individual merits. Access to Category 2 is dependent on individual circumstances and the availability of funding. Where an application is refused by the deanery the applicant has a right of appeal. The appeal process is detailed in Annex A to this document.

All requests for flexible training will be treated positively. However, the overall training capacity of a training programme and service commitment will have to be taken into consideration.

Trainees may train flexibly from the outset or transfer from full-time to flexible (and back again if required).

Return of trainees to full-time training, should this be required, will be facilitated but will depend upon the availability of training capacity and funding. There may be a delay in transferring back to full-time training.

Access to flexible training is resource limited. Whilst accepting that there is no automatic right to flexible training, provisions should be made for those who meet the criteria. Deanery funding provides the educational component of the basic salary, and banding arrangements are the responsibility of the employer. These funding arrangements are intended to avoid financial disincentives for employers. The availability of flexible training is ultimately dependent on available funding from both the deanery and NHS employers; however, where possible, appropriate measures should be taken to facilitate access.

N.B. Clinical research should be accommodated within the training programme by negotiation with the programme director/regional adviser. Clinical research is NOT considered a reason to seek flexible training; only in exceptional circumstances would research be considered a reason for training flexibly. Research should be accommodated within the ordinary training programme. By working with the programme directors, all doctors and dentists both full-time and those working flexibly should be enabled to pursue research as part of their normal training.

Requirements of the flexible trainee applicant

- Trainees will be required to undertake at least 50 per cent of a normal working week. Day-time working, on-call and out-of-hours duties should be undertaken on a basis pro rata to that worked by full-time trainees in the same grade and specialty, unless the circumstances which justify

flexible training make this impossible, provided that legal and educational requirements are met.

- Trainees will normally be expected to move between posts within rotations on the same basis as a full-time trainee in the same specialty, to ensure they receive a coherent programme of training that is educationally comparable with full-time trainees.
- When full-time trainees in the same specialty normally work out of hours, training without night or weekend working should normally be allowed for a maximum period of six months only, during the period of flexible training. This shall be subject to educational approval.
- Trainees should not normally be permitted to engage in any other paid employment whilst undertaking flexible training.

The application process

The administration of an application may take up to three months, and applicants must not expect to be placed immediately; the giving of as much notice as possible will facilitate the process for all concerned. A deanery's /relevant NES region's inability to find a post at short notice should not be taken as a refusal of flexible training; an individual's needs and expectations must be considered in the context of educational standards and service capacity.

The normal process for acceptance to flexible training will include the following stages:

- a) The trainee may seek advice on eligibility for flexible training in a meeting with the postgraduate deanery representative (in Scotland, the postgraduate dean).
- b) If the trainee is not already working within the grade and specialty, appointment through open competition will be necessary. The active application of the principles and practice of equal opportunity is essential in such cases to ensure that issues of flexible training cannot prejudice the appointment process. Potential applicants who do not discuss with the associate postgraduate dean their intention to train flexibly in advance of application to a post will find that funding is unlikely to be immediately available. In this event they would have the options of awaiting funding availability while either not working, continuing in their present post where this has not already been filled, or taking the whole-time post in the interim.
- c) The trainee will need to agree a training programme with the deanery/relevant NES region. The programme must be equivalent in quality to full-time training and include the full range of training to be provided. The deanery/NES will ensure the trust, or equivalent body is able to provide the training, and will liaise with the specialty programme director to ensure Royal College approval of the programme. Time for protected study/research should be included within a normal working week. Each post in the programme must be New Deal and European Working Time Directive (EWTd) compliant, and the rota arrangements

and pay band should be determined and approved by the relevant authority.

- d) The regional specialty education committee/programme director will approve the training programme on behalf of the postgraduate dean and the appropriate Royal College. This approval should take no longer than six weeks to obtain. Approval will be given initially for one year subject to annual review; if the flexible trainee wishes to move to a different placement outside the agreed programme they will need to seek approval from the postgraduate dean and the relevant College that the experience is equivalent. Funding will need to be agreed as in paragraph (e) below.
- e) Approval of the deanery/relevant NES region and the employing trust, or equivalent body, will be necessary for funding of the post. As recurrent funding available to the deanery/NES is limited, applicants considering flexible training should apply as early as possible and at least three months in advance of anticipated need.

Once all approvals have been obtained and all parties involved are aware of the appointment, the start date will be confirmed with the trainee, and the NHS trust, or equivalent body, requested to issue a contract.

Review of and changes to flexible training arrangements

An annual assessment should be made of the requirement for continuing flexible training and of the need for out-of-hours work for training. Trainees who no longer meet the eligibility criteria for flexible training should be advised that they are no longer eligible, and helped to review and, where necessary, modify their working patterns appropriately. The deanery/relevant NES region should ensure that the relevant trusts or equivalent bodies are kept informed of any changes in programme.

Flexible trainees who wish to increase or decrease sessions must contact the postgraduate dean for approval and will have their application subjected to the above process at least three months in advance. If a flexible trainee wishes to move to a different placement other than the planned movement on rotation, a request to continue training on a flexible basis at the new place of work will be needed. This will be subject to the normal application process for a new post as described above. At least three months' clear notice of the requested change will be required.

Flexible trainees who have completed their Certificate of Completion of Specialist Training should have their need for out-of-hours work reassessed.

Six-monthly monitoring of flexible training in each deanery/NES region will be carried out on the basis as described in Annex B to this document, to identify areas of concern and to establish ongoing requirements at local and national level.

Annex A

Appeals procedure for flexible training

The Health Departments recognise that on occasions it may be necessary for a trainee to question, or complain about, decisions made regarding their application for flexible training. They aim to ensure that the deaneries provide a simple, fair and independent system for responding to any complaint and this appeals procedure will help you through the system.

Before beginning the full appeals process you must first attempt to resolve issues of concern informally in discussion with the deanery/NES including, if you wish, your union representative in these discussions. If, after due consideration, the matter can be resolved without recourse to the appeals procedure, then this agreement should be confirmed in writing. If agreement cannot be reached you will then have recourse to the formal appeals process.

1. What is an Appeal?

An Appeal is your opportunity to question a decision, or complain about treatment which you consider to be unfair. An Appeal will allow all sides to have the case heard before an independent panel, and a decision to be reached on the facts that have been presented.

2. What can you lodge an Appeal about?

This procedure can be used to appeal about:

- refusal of access to the deanery/NES flexible training scheme.

3. What the Appeal should NOT be used for:

- issues with the employing trust, or equivalent body, relating to salary calculation or banding
- provision of out of hours in excess of those (if any) required for educational approval
- employers' refusal to employ a flexible trainee on cost grounds (this could be addressed through a lead trust/host health board arrangement where such is in place).

4. Who do I register the Appeal with?

You must:

- submit your appeal in writing, using a copy of the *Notification of appeal* form, available from the deanery/NES region
- send it to the appropriate postgraduate dean within **30 working days** of the decision about which you are appealing being made
- send a copy of your Appeal to the flexible training administrator for information.

5. What happens after I have registered my Appeal?

- You will be invited to attend an appeal hearing, and for this you must provide a Statement of Case. The hearing will be held within eight weeks of the submission of the Appeal.
- You will be given an appeal hearing date within a month of lodging your Appeal which will be confirmed to you in writing. This will allow you at least **15 working days** to prepare your statement of case.
- Your statement of case will need to be submitted to the postgraduate dean at least **10 working days** before the hearing.
- The associate dean (flexible training) will also be required to provide a statement of case, also to be submitted to the postgraduate dean at least ten working days before the hearing.
- The postgraduate dean will ensure that panel members receive the papers as soon as possible, and in any case at least five working days before the hearing.
- Both parties will be given copies of the other's statement of case at least five working days before the hearing.

6. Why do I need a Statement of Case?

- To allow the postgraduate dean to study all written material in advance of the hearing.

7. What should be included in my Statement of Case?

- the reason for the Appeal
- a simple list of events, in date order
- copies of all relevant correspondence and written evidence
- details of any witnesses to be used.

8. Who will hear my Appeal?

- Your Appeal will be heard by an independent appeals panel.
- The appeals panel will comprise five members as follows:
 - one representative from the deanery/NES who will normally chair the Appeal
 - one representative from the NHS employer nominated by the chief executive
 - one doctor in training nominated by the BMA

- one independent external assessor nominated by the RAT or equivalent
- one representative nominated by the appellant.
- An accurate record of the proceedings will be kept by a person other than a panel member.
- You will have the right to be represented by a representative of your professional organisation or trade union. Your representative may also be a work colleague, friend or any other person, other than someone acting in the capacity of a legally qualified practitioner.
- The panel will listen to both sides of the argument and then reach a balanced decision upon the evidence that has been presented.
- The panel members **will not** have been involved in the original decision that gave rise to the Appeal.
- The panel will have the discretion to co-opt external advisors in appropriate circumstances (i.e. NHS Partners).

9. How will the Appeal be carried out?

The Appeal will be a meeting between the panel, the associate dean (flexible training) and you. Any witnesses, representatives or companion may also be invited to the meeting with prior consent.

At the meeting you, or your representative, will be given the opportunity to put forward the reason for the Appeal. Any evidence additional to that included in the statement of case may be presented at this time, subject to sufficient time being allowed for both sides and the panel to consider it fully.

The associate dean (flexible training) will also be given the opportunity to explain why the decision was made. They may also submit any further evidence not included in the statement of case, as long as both sides and the panel are allowed sufficient time to consider it fully.

Each side will have the opportunity to question the other on issues of fact.

At any time during the Appeal a request can be made by either party for an opportunity to meet privately with representatives to consider any matter which may help in clarifying or resolving the Appeal.

10. Decision of Appeal

- The decision of the panel, and the reasons for making that decision, will normally be announced at the end of the Appeal; this decision will be confirmed in writing within ten working days. If, for any reason, a decision cannot be made at that time, a further date may be arranged to hear any further evidence pertaining to the Appeal.

- If the decision is not forthcoming on the day, it will be made known to both parties within a further ten working days unless a further date is to be arranged. If so, the need to arrange a further date will be made known within ten working days and the further hearing will take place within eight weeks of the first hearing.
- In any event, the decision of the panel is final.
- You may seek the advice of your union representative at any stage during this procedure.

Example appeals form

Postgraduate dean's office

Notification of Appeal form

Name:	
Grade:	Year & Level:
Workplace (if any):	
Name of representative:	

Specify the decision against which you are appealing:

You should submit this form to:

The postgraduate dean
[deanery / NES regional address]

A copy of the form should be sent to the flexible training administrator at the same address. You will receive a formal response to this form within seven working days.

Attached to this form is the Appeals Procedure, which you should follow to ensure that your Statement of Case is prepared and sent to the above office to be considered at your Appeal. Please attach your statement of case to this form, including contact details of any witnesses you may wish to bring. You may wish to seek advice from your trade union before submitting your Appeal form.

I have received and read the Appeals Procedure, and can confirm that I will present evidence in support of my appeal against the decision of the associate dean (flexible training).	
Signed:	Date:

Annex B

Monitoring of demand

It would appear from recent discussion that the actual position in respect of the numbers of trainees seeking flexible posts is far from clear, and that considerable benefit would be obtained if a better mechanism for data collection could be devised.

Currently, data is collected annually from English deaneries. Some small modifications to this data collection process in terms of data gathered would significantly improve a general understanding of the situation.

We propose, therefore, to ask all UK deaneries in the next round of data collection to collect enough data to indicate with some certainty the number of trainees seeking flexible training in each of their areas, under the following categories.

- **Enquiries**

Those seeking information on flexible training in the reference period who have not, at the time of data collection, progressed their application.

- **Applications In progress**

- A Those who have made formal application for flexible training, where the approval process is not yet complete and where the time since application is less than that normally accepted as reasonable for full approval (three months).
- B Those who have made formal application but have not yet completed the process, and where the application was made more than three months ago.

- **Applications completed**

Those whose application for flexible training has been completed. This will subdivide into those who have been accepted and those who have been rejected.

- A Accepted

- i) Those who have started in a flexible post during the reference period.
- ii) Those who have not started in post
 - a) for trainee reasons
 - b) for deanery reasons
 - c) for trust reasons.

- B Rejected

- i) Appeal lodged
 - a) appeal date given

- b) appeal process completed
- c) appeal successful.

Annex C

Flexible training and the legislation

The Employment Act 2002 made it a duty for employers to consider seriously requests for flexible working from the parents of young or disabled children. Some relevant extracts from paragraphs of the 2002 Act are reproduced below for information.

Table 1	<u>The Employment Act 2002</u>
Flexible working	
80F Statutory right to request contract variation	
(1) A qualifying employee may apply to his employer for a change in his terms and conditions of employment if:	
(a) the change relates to:	
(i) the hours he is required to work	
(ii) the times when he is required to work	
(iii) where, as between his home and a place of business of his employer, he is required to work, or	
(iv) such other aspect of his terms and conditions of employment as the Secretary of State may specify by regulations, and	
(b) his purpose in applying for the change is to enable him to care for someone who, at the time of application, is a child in respect of whom he satisfies such conditions as to relationship as the Secretary of State may specify by regulations.	
80G Employer's duties in relation to application under section 80F	
(1) An employer to whom an application under section 80F is made:	
(a) shall deal with the application in accordance with regulations made by the Secretary of State, and	
(b) shall only refuse the application because he considers that one or more of the following grounds applies:	
(i) the burden of additional costs	
(ii) detrimental effect on ability to meet customer demand	
(iii) inability to re-organise work among existing staff	
(iv) inability to recruit additional staff	
(v) detrimental impact on quality	
(vi) detrimental impact on performance	
(vii) insufficiency of work during the periods the employee proposes to work	
(viii) planned structural changes, and	
(ix) such other grounds as the Secretary of State may specify by regulations.	

The 2003 Employment Act applies to part-time working. While any doctor can apply to work part-time, there are additional specific requirements for entry to less than full-time medical training, which are set out in European legislation (93/16/EC). The legislation, covering the requirements of medical education and qualifications, allows member states to provide part-time training counting towards qualification as a medical practitioner, if well-founded individual circumstances make this necessary.

The relevant section of the legislation is reproduced in Table 2.

Table 2

EC Directive 93/16/EEC Article 25

1. Without prejudice to the principle of full-time training as set out in Article 24 (1) (c), and until such time as the Council takes decisions in accordance with paragraph 3, member states may permit part-time specialist training, under conditions approved by the competent national authorities, when training on a full-time basis would not be practicable for well-founded individual reasons.
2. Part-time training shall be given in accordance with point 2 of Annex I hereto and at a standard qualitatively equivalent to full-time training. This standard of training shall not be impaired, either by its part-time nature or by the practice of private, remunerated professional activity.

The total duration of specialized training may not be curtailed in those cases where it is organized on a part-time basis.

The EC Directive further states that if member states provide part-time medical training, they must comply with the Directive. Table 3 is a relevant extract from the Directive.

Table 3

EC Directive 93/16/EEC Annex I

2. Part-time training of specialists

This training shall meet the same requirements as full-time training, from which it shall differ only in the possibility of limiting participation in medical activities to a period at least half of that provided for in the second paragraph of point 1.

The competent authorities shall ensure that the total duration and quality of part-time training of specialists are not less than those of full-time trainees.

This is included in the *Guide to specialist registrar training* (the Orange Book) which further explains its application in respect of out-of-hours and on-call in section 6.23.

Table 4

A guide to specialist registrar training Section 6

Changing from full-time to part-time training while in the SpR grade

23. Subject to the availability of funding and appropriate training, a change to flexible training means that educational programmes and the expected award date for CCSTs need to be adjusted. Contracts of employment will have to be extended for the appropriate period. It is important that the calculation for extending the training period reflects the requirements of the EC Directive... The effect of this is that the weekly duty commitment must be at least 50 per cent of the full-time equivalent. Flexible trainees should undertake a pro-rata share of the out-of-hours duties (including on-call and other out-of-hours commitments) required of their full-time colleagues in the same programme and at the equivalent stage. Trainees retain their original Training Numbers in these circumstances.

In addition, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 ensures that part-time workers are not treated less favourably than full-time workers. This applies to all areas including comparable pay, access to leave and maternity rights, but also to access to training opportunities. Relevant extracts are shown in Table 5.

Table 5

**The Part-time Workers
(Prevention of Less Favourable Treatment)
Regulations 2000**

Less favourable treatment of part-time workers

5. (1) A part-time worker has the right not to be treated by his employer less favourably than the employer treats a comparable full-time worker
- (a) as regards the terms of his contract; or
 - (b) by being subjected to any other detriment by any act, or deliberate failure to act, of his employer.