TALKING POINT

What price the new consultant contract?

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Consultants face many dilemmas in their pursuit of a better contract. The existing contractual arrangements have sufficient defects to beg improvement and have led to a consistent deterioration in consultant remuneration.[1] But the proposed new contract, too, has many deficiencies,[2] and the principles of pricing and the actual pricing promised by the Review Body are unacceptable in my view.[2 3] To salvage the contract it is likely that consultants would have to leave the Review Body system,[4] yet many prefer this method of settling their pay as it obviates the need for direct confrontation with the DHSS.

Though the style of contract sought by the Central Committee for Hospital Medical Services is clear, its expression in both the contract document[2] and the recently distributed draft implementation circular[5] is imperfect. In seeking flexibility, the CCHMS has ended up with an imprecise and poorly drafted circular. As a result, employing authorities will have great scope to introduce variations on the contract—should consultants finally decide to accept it.

Faults in implementation circular

Can the contract be saved and made worthwhile, both professionally and financially? It can but I think that the prospects are poor. Of prime importance is the task of making the implementation circulars ensure that all contracts accord with the original agreement. A few examples will demonstrate the inadequacy of the draft circular. The unit of work in the new contract is the notional half day (NHD). The CCHMS defines this as three-and-a-half hours of professional time, worked flexibly. This last phrase is vital, yet no definition of the NHD appears in the contract document or draft circular. As the latter contains a recommended form of job description which includes a "weekly timetable of duties, including the location(s) at which they are performed"—an inevitable sequel to the contract document, which said that consultants' duties would be "set out in a schedule"[6]—it will be open to an employing authority to regard a consultant as being in breach of contract if he is not at all times at the location specified in the timetable. To put such a weapon in the hands of employing authorities is astonishing: it reflects the good faith of the CCHMS that employing authorities will respect the spirit of the agreement in perpetuity, without the compulsion afforded by adequate circulars.

If a consultant finds that the NHDs allowed in his contract are insufficient for the work expected of him he may dispute this with his employing authority. If the employing authority agrees it may decide not to alter the NHDs but instead to reduce the work of the consultant. The circular states that the employing authority "should" notify the consultant of its decision. As the consultant not only needs to know but may require the decision in writing in order to dispute it further "should" is too weak. There are numerous similar examples which reflect indifferent drafting.

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When a consultant is on leave the extra on-call work performed by his colleagues will be paid for by those doing the extra work moving "up a band" and receiving the fee associated with that band. The circular allows for "the consultant assuming the additional duty in any particular week" being paid an additional fee. This is sensible for a 10-man rota, so that not all of the remaining nine move into a higher band for the duration of one colleague's absence. It is inappropriate for a three-man rota, where each week's absence means an average of two and a third extra duties. In many cases these will obviously be most conveniently worked by being shared by the two who remain rather than being worked by one individual as implied by the circular. Many other examples show that the draft circular requires extensive rewriting.

Importance of pricing 10 NHDs

With the contract and implementation circulars improved so far as is possible (and even then areas of dispute will appear in practice), the principles of pricing must be defined. The Hospital Junior Staff Committee has pointed the way, resolving to oppose the introduction of the contract unless the salary for the whole-time contract at the time of implementation is applied to the basic 10-NHD contract alone.[7] No group negotiates salaries for the totality of work done; the basic commitment must first be priced, then additional components. This is particularly apposite for consultants, as the basic 10-NHDs are a full-time commitment and all others equate with "overtime" for other groups. While this principle is important for the present it is vital for the future. Any pricing based on the total package will be eroded in time, as has happened to the existing contract. Negotiating remuneration on several fronts with a variety of fees for different aspects of their work will allow some prospect of maintaining reasonable levels of income.[8] As present staff structures are under strain and may lead to alterations in consultants' work it is essential that the alterations are adequately remunerated.[9]

So important is this principle of the basic 10-NHDs being priced as a whole-time commitment that if consultants decide to take the new contract—without extra funds being available—it should be introduced with existing salaries paid for the basic 10-NHDs alone. All other items should be left unpaid, with the proviso that they will be paid in the future at a realistic rate, when financial constraints are eased. In this way the vital principle would be safeguarded and consultants could negotiate from a sensible base in the future.

References

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