Introduction
The amended Consultant Contract in Wales introduced a new way of working for the consultant body, providing a working week for full-time Consultants consisting of 10 sessions (typically 7 sessions of direct clinical care and 3 sessions for supporting professional activity) with a timetabled value of three to four hours each. After discussions with Trust management, these sessions will be programmed in appropriate blocks of time to average a 37.5 hour week.

It introduced concepts in outcome measures, and provided for flexible working, particularly for the part-time contracts. Emergency and on-call work was recognised and remunerated in time and payments. Additional sessions of work, either as in existing work patterns, as new requests or as waiting list initiatives, was also included.

The basis of the contract is a job plan, which is to be agreed between the consultant and employer. This is meant to be delivered in the spirit of partnership, but it is recognised, as in all partnerships, that disagreements will occur from time to time.

The method of resolution of these disagreements is detailed in the Medical and Dental Staff (Wales) Handbook, but in general terms. This policy documents the precise local arrangements.

The General Principles (from the Handbook)

1.34 If it is not possible to agree a job plan, either initially or at an annual review, this matter will be referred to the Medical Director (or an appropriate other person if the Medical Director is one of the parties to the initial discussion).

1.35 The Medical Director will, either personally, or with the Chief Executive, seek to resolve any outstanding issues informally with the parties involved. This is expected to be the way in which the vast majority of such issues will be resolved.
1.36 In the exceptional circumstances when any outstanding issue cannot be resolved informally, the Medical Director will consult with the Chief Executive prior to confirming in writing to the Consultant and their Clinical Director (or equivalent) that this is the case, and instigate a local appeals panel to reach a final resolution of the matter.

1.37 The local appeals panel will comprise:

One representative nominated by the Consultant, and one representative nominated by the Trust Chief Executive. These representatives shall be from a panel nominated by BMA Cymru Wales and Trust HR Directors who have been approved as trained in conciliation techniques.

1.38 The panel will be expected to hear the appeal following the format of the employer’s normal grievance procedure, and reach a decision which will be binding on both parties.

Representatives will not act in a legal capacity.

1.39 In exceptional circumstances where a decision cannot be agreed, a second panel would be constituted with alternative representatives as set out in Paragraph 1.37.

Section 1.39 has been slightly amended since this copy, indicating that any decision to constitute a second panel would be made by the two representatives comprising the first panel.

Definitions of terms used throughout this document:

**Arbitration:**
This involves two arbitrators who hear both sides of a dispute and make a decision, which resolves it. Both sides agree in advance to accept the Arbitrators’ decision. The two arbitrators will be appointed from the joint panel maintained by BMA Cymru Wales and the Welsh Assembly Government.

**The Parties:**
The Clinician in dispute and a representative
The Medical Director (or his/her nominee) and a Manager
The joint BMA/NHS Panel:

This is an all-Wales nationally based panel, composed of doctors and managers, who have been trained in arbitration techniques. Within this role these professionals will remain independent and unbiased to facilitate the process.

The membership of this Panel will be maintained by the two Assembly/BMA members (“the Guardians”) nominated by the FTCC (Forum Terms and Conditions Committee). Arrangements for the hearings will then be made locally in accordance with this Procedure under the direction of the arbitrator nominated as Chair for these purposes.

THE PROCESS

Stage 1 : Informal Resolution

The arbitrators will assume that prior to the instigation of the formal procedure, set out below in Stage 2, informal resolution of outstanding issues as described in section 1.35 above has taken place.

1.1 If it is not possible to agree a job plan, either initially or at an annual review, this matter will be referred to the Medical Director (or an appropriate other person if the Medical Director is one of the parties to the initial discussion).

1.2 The Medical Director will, either personally, or with the Chief Executive, seek to resolve any outstanding issues informally with the parties involved. This is expected to be the way in which the vast majority of such issues will be resolved.

1.3 Following the initial disagreement the above meeting to resolve the dispute must take place within two weeks.

1.4 If resolution of the dispute fails at the above, then the formal resolution process of arbitration will be arranged.

Stage 2: Arbitration Procedure

2.1 Arbitration: First Panel

(a) The Medical Director will advise the Guardians by email that informal resolution has failed
(b) The Guardians will randomly choose two arbitrators, one BMA appeals panel member and one Service appeals panel member not previously connected with the dispute, and will confirm (on an alternating BMA/service basis) which arbitrator will act as Chair for practical organisational purposes. They will advise the employer accordingly.

(c) The employer will inform both parties of the identity of the arbitrators.

(d) The employer will then liaise with all parties on a convenient date for the meeting within 14 days of receiving the advice in (b) above.

(e) The employer will ask both parties to sign the arbitration agreement.

(f) Both parties will exchange their written submissions/statements of case, including any documentation they may wish to refer to during the meeting, at least 14 days beforehand.

2.1.1 **Introductions / Terms of Reference**

(a) The arbitrators will introduce themselves and ask the parties to introduce all those present at the meeting.

(b) They will explain the way in which the arbitration will be conducted and any domestic arrangements applicable to the location. While both of the arbitrators will have equal standing, one of them will have been nominated by the Guardians to chair the meeting for practical organisational purposes.

(c) They will also confirm that both parties agree to the standard terms of reference, which will be;

“To consider an appeal by Dr X against the terms of the ABC Trust’s proposed job plan; To determine whether the proposed job plan is fair and reasonable and should be confirmed; or alternatively whether it should be varied. The parties agree that they will accept and abide by the Arbitrators’ decision which will be final and binding.”

2.1.2 **Oral Presentations**

(a) Each party will make an opening statement that draws attention to the main points of their respective cases, and which may include comments on the other party’s written submission.
(b) The employer will make their statement first. These statements will usually be made without interruption unless the Doctor or the other party, through the chair, wishes to clarify any factual information.

2.1.3 Discussion of the Issues

(a) The Arbitrators will discuss the issues with the parties. This normally starts with the Arbitrators asking questions of the parties.

(b) One party may also suggest questions, which the chair might put to the other party.

(c) The party to whom the question is directed may respond themselves or call upon anyone accompanying them to respond.

(d) The person answering the question may call upon another member of their team to make a supporting statement.

(e) If one party responds to a question, the other party will be given the opportunity to comment on the response.

(f) Again, the party may comment themselves or invite someone accompanying them to do so instead or as well.

(g) Finally, the chair will ask the parties if they feel that they have had an opportunity to say everything that they wished to say and sufficient opportunity to respond to what the other party had to say.

(h) The Arbitrators may suggest a short adjournment to allow the parties to prepare for their final submissions.

2.1.4 Closing Statements

(a) The parties will be offered the opportunity to make a final statement to the arbitrators; the employer would usually make their statement first.

(b) The final statements should be a summary of the main points the parties wish the arbitrators to take into account in reaching their decision and should contain no new material.

(c) In closing the hearing the arbitrators will seek a final confirmation from each party that they have nothing further to add.
2.2 Arbitration Result

2.2.1 (a) The Arbitrators may announce the decision at the hearing, and will confirm their decision, in writing, to both parties usually within two weeks of the hearing.

(b) A copy of the decision will be sent to the Guardians

2.2.2 Nature of the Arbitration Result

(a) The Arbitrators’ Panel decision will be binding on both parties.

(b) Since all cases will be individual they will not be considered or used in other appeal disputes.

2.2.3 Failure to come to a decision

(a) If the arbitrators are unable to come to a decision, they will advise both parties and the Guardians (by email) in writing within two weeks of the hearing.

2.3 Arbitration: Second Panel

(g) (a) The Guardians will then randomly chose two new arbitrators, one BMA appeals panel member and one Service appeals panel member both independent of the employer concerned and not previously connected with the dispute, and will confirm (on an alternating BMA/service basis) which arbitrator will act as Chair for practical organisational purposes. They will advise the employer accordingly.

(b) The employer will inform both parties of the identity of the arbitrators

(c) The employer will then liaise with all parties on a convenient date for the meeting within 14 days of receiving the advice in (b) above.

(d) The employer will again ask both parties sign the arbitration agreement.

(e) Both parties will confirm or amend their previous written submissions/statements of case, including any documentation they may wish to refer to, and exchange these at least 14 days before arbitration.

The arbitration procedure will follow that described in 2.1 above.
2.4 Arbitration Result of 2nd Panel

2.4.1 (a) The Arbitrators may announce the decision at the hearing, and will confirm their decision, in writing, to both parties usually within two weeks of the hearing. This panel must come to a decision

(b) A copy of the decision will be sent to the the Guardians

2.4.2 Nature of the Arbitration Result

(a) The Arbitrators’ Panel decision will be binding on both parties.

(b) Since all cases will be individual they will not be considered or used in other appeal disputes.

Time Frame

Informal Resolution: Completed 14 days from initial referral
Arbitration Phase: Completed 28 days from notification by Medical Director: i.e. arrangements for the meeting confirmed within 14 days, the meeting then to be held within a further 14 days.
The Welsh Assembly Government
The British Medical Association Cymru/Wales
and NHS Employers in Wales

ARBITRATION AGREEMENT FOR CONSULTANT JOB PLAN DISPUTES

We
(a) The [ABC] NHS Trust (The Employer)

and
(b) Dr [Michael X] ("Dr X")

Agree to appoint two independent Arbitrators from the National Appeals Panel [Dr A] and [Mr B] to arbitrate between us on the following terms of reference and in accordance with the Welsh Consultant Contract Job Planning Appeals process:

(1) The terms of reference are as follows:

To consider an appeal by [Dr X] against the terms of the [ABC] Trust’s proposed job plan. To determine whether the proposed job plan is fair and reasonable and should be confirmed, or alternatively whether it should be varied. The parties agree that they will accept and abide by the Arbitrator panel members’ decision, which will be final and binding.

(2) The parties agree that they will in good faith attempt with the panel members to settle

(3) The parties agree that the Arbitrator panel members will arbitrate the case and reach a decision, which will be binding on both parties.

(4) The procedure to be adopted in the arbitration will be that set out in the Welsh Consultant Contract Job Planning Appeals.

(5) All the proceedings shall be confidential to the parties. The panel will not disclose to one party information provided in confidence by the other party without the consent of that party.

(6) The Arbitrator’s employer agrees to pay the expenses of the panel members at the mileage and subsistence rate set out in the Medical and Dental Staff (Wales) Handbook, or under the NHS Terms and Conditions of Service Handbook.

(7) The Arbitration Act 1996 does not apply to this mediation or arbitration and in particular the parties agree to exclude any right to apply or appeal to any court concerning either any question of law arising in the course of the arbitration or mediation or relating to any award by virtue of sections 45 or 69 of the Arbitration Act 1996.
(8) Neither of the parties will call any member of the panel as a witness in any litigation or arbitration relating to or resulting from these proceedings.

(9) All information (whether oral, written or in any other form) will be 'without prejudice', privileged and not admissible as evidence, or subject to disclosure in any other proceedings. This does not apply to any information, which would in any event have been admissible or disclosable in any such proceedings.

(10) The parties agree that the members of the panel shall not be liable to either of them for any act or omission of any kind whatsoever relating to these proceedings at any time.

(11) It is agreed that the panel members act in a personal capacity only and not as agent or employee of any other person or body.

Signed .............................................. Signed ..............................................

On behalf of the Employer On behalf of [Dr X]

Date .............................................. Date ..............................................