

The Newcastle upon Tyne Hospitals NHS Trust

Local Working Time Agreement – Career Grade Doctors

1 Introduction

- 1.1 This paper sets out the agreement reached within the Newcastle upon Tyne Hospitals NHS Trust concerning the local implementation of the Working Time Regulations with regard to senior medical and dental staff. For the purposes of this agreement, the term ‘doctor’ shall be taken to include dentists.
- 1.2 Underpinning the implementation of this agreement is the need for the Trust, and all employees of the Trust, to observe and carry out their obligations in respect of working time. All employees have a legal obligation to take reasonable care for the health and safety of themselves and others at work and to co-operate with the requirements of this agreement.
- 1.3 This agreement applies to all career grade doctors who undertake work for the Trust.
- 1.4 The implementation of this agreement shall be undertaken in such a way as to ensure that members of staff with family or other carer responsibilities are not subjected to unreasonable discrimination.
- 1.5 Due to the wide range of working arrangements, practices and demands within the Trust it is recognised that department or directorate-specific working time agreements may be appropriate. Such agreements must follow the same overall approach to governing the issue of working time as laid down in this agreement.

2 Definitions

- 2.1 **Working Time** is defined as any time that a doctor is ‘working, at the Trust’s disposal and carrying out his/her activities or duties’.

All three elements of this definition must be satisfied in order that time may be classed as working time. For the purposes of this agreement, working time need not equate to paid time.

- 2.2 A doctor who is required to be on-call/stand-by shall be regarded as working from the time that he/she is contacted and asked to attend work to the time that he/she returns home directly from work. Provided that a doctor is otherwise able to pursue time as his/her own, the remaining time spent on-call/stand-by shall not be classed as working time. A doctor who is rostered to be on-call/stand-by shall be expected to remain fit for work as a condition of his/her participation in any on-call/stand-by arrangement.
- 2.3 A doctor required to sleep-in on Trust premises for a specified period shall be regarded as working for the purposes of this Agreement.
- 2.4 Where a doctor is contacted at home (e.g. by telephone) regarding a work-related matter, but there is no requirement for him/her to attend work, he/she shall be classed as working for the duration of the contact (e.g. telephone call(s)) and may be entitled to equivalent compensatory rest as detailed in section 8.

- 2.5 Non-residential, approved leave shall be classed as working time including directly associated travelling time between a doctor's home and the work location when this is not within fifteen miles of the doctor's normal place of work. Residential, approved study leave shall be classed as working time for the purposes of this Agreement only with regard to time spent actually attending lectures, seminars etc., and not periods between attendance.
- 2.6 Time that a doctor may spend at home carrying out work that would otherwise be performed in the workplace, shall be regarded as working time for the purposes of this Agreement, subject to the following:
- (i) that the activities undertaken must be consistent with these defined in Appendix B of this agreement.
 - (ii) that the activities undertaken must be sufficiently specific as to be amenable to audit.
 - (iii) that these activities are to be discussed as part of the doctor's annual appraisal.
- 2.7 **Public duties** undertaken by a doctor, as defined in Section 50, Part VI of the Employment Rights Act 1996, shall be classed as working time. Public duties arise when a doctor is a member of:
- (a) a local authority
 - (b) a statutory tribunal
 - (c) a public authority
 - (d) a board of prison visitors or a prison visiting committee
 - (e) a relevant health body
 - (f) a relevant education body
 - (g) the Environment Agency
- 2.8 **Night-time** is identified as the hours of 11.00 pm to 6.00 am inclusive.
- 2.9 **A night worker** is a doctor whose contract of employment requires him/her to work at least three hours of nighttime, and/or he/she works these hours regularly (over a 26 week period) as opposed to on an infrequent or ad hoc basis.
- 2.10 For the purpose of this agreement, a doctor is an individual who has entered into or works under either a contract of employment, or any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client, or customer of any profession or business undertaking carried on by the individual.
- 2.11 **The leave year** for the purposes of this agreement is the period 1 April to 31 March inclusive each year.
- 2.12 **A normal week** commences at 00.01 am Monday and ends at 11.59 pm on the following Sunday.
- 2.13 **A day** means a period of 24 hours beginning at midnight.
- 2.14 **Equivalent compensatory rest** is defined as the difference between the amount of rest actually taken and the amount of rest that ought to be taken to ensure compliance with the Working Time Regulations.

- 2.15 **Regulation 21** of the Working Time Regulations applies where activities involve the need for continuity of service e.g. in hospitals. Under these circumstances, limitations placed upon the length of a doctor's night work, minimum daily rest, minimum weekly rest and daily rest breaks by the Working Time Regulations do not apply on condition that equivalent compensatory rest is provided.

3 Reference Periods

- 3.1 For the purposes of this agreement, reference periods shall commence on 1 April and 1 October each year.
- 3.2 All Career Grade doctors shall, as a minimum requirement, keep diaries of their hours worked over a period of four weeks. The actual length of the period that diaries are to be kept shall be determined by the identification of a representative working cycle/pattern for each doctor or within each department that is agreed by the Clinical Director. The average figure for the four-week monitoring period will apply over the 26-week reference period. Should a doctor determine not to participate in diary keeping, for the purposes of this agreement, he/she will be exempted from the scope of this agreement and as such be unable to benefit from the prescribed entitlements to associated rest periods, rest breaks and compensatory rest. Written confirmation that a Career Grade doctor does not wish to complete a diary will be required.
- 3.3 Where variations between doctors' working time is insignificant, it is agreed that the hours worked on-call will be calculated on a Departmental basis. This figure will then be used to calculate the average number of hours worked by doctors on the same on-call rota in the same Department/Unit. A decision on whether to implement this averaging will be taken by the doctors concerned at Directorate/Departmental level.

4 Protection

- 4.1 Conditions currently in place which are more favourable than the entitlements under the Regulations will not be changed to a lower standard simply to comply with the minimum laid down by the Regulations.
- 4.2 It is confirmed that doctors will not suffer any detriment as a consequence of them having exercised any of their entitlements under the Regulations.

5 Calculation of Hours Worked

- 5.1 Certain periods of leave (e.g. annual leave, sick leave and maternity leave) are excluded from the calculation of hours worked and therefore any monitoring period that includes such leave shall be extended by a period of time that is equal to the period(s) of leave referred to.
- 5.2 Appendix A provides information concerning the method of calculation to be used that shall identify the number of average weekly hours worked. Information concerning the number of hours worked should be recorded on the form found in Appendix C.

6 Duties included and excluded in the definition of work

- 6.1 In assessing weekly working hours, a doctor's normal contractual commitment is outlined in his/her job plan. Any additional duties performed as a result of the needs of the service (e.g. management and other non-clinical duties), and work undertaken while on-call and work undertaken where a doctor is not on-call but has been contacted by the hospital will be taken into account. Private practice is excluded from the calculation of hours worked.

- 6.2 Appendix B provides a list of examples of duties that fall within the definition of work. This list may not be exhaustive.
- 6.3 Under the definition of 'work' in the Regulations, some duties will not be counted even though they will be undertaken for legitimate purposes. These duties will be treated in the same way as annual leave and excluded from the overall calculation of hours worked, except where it is agreed that these duties will be calculated as 'work' e.g.. Waiting List Initiative duties or other separately remunerated activities.

7 On-Call

- 7.1 Working time will be assessed on the basis that work begins when the doctor is called and commences work related activities (e.g. giving advice over the telephone or leaving home to visit a patient). Work during on-call will be calculated in 30-minute blocks, however long the activity takes to complete. However, multiple phone calls within the same 30-minute block are not counted as 30 minutes each.
- 7.2 For the purposes of calculating time worked on-call, travelling time is included in working time.
- 7.3 The calculation of working time ends when the task is complete (e.g. when a doctor arrives back at home).
- 7.4 Where doctors are compulsory resident on-call the whole of the time spent in residence is classed as work for the purposes of this agreement.
- 7.5 When, in the interests of patient care, a doctor needs to be resident on-call, the whole of the time spent in residence is classed as work for the purposes of this agreement.
- 7.6 If the doctor concerned and the person responsible for job plans cannot agree whether residence in hospital is clinically necessary, the matter shall be referred to the Medical Director.
- 7.7 Where a doctor has been contacted by the hospital and is not formally on-call, the application of compensatory rest should be consistent with paragraphs 8.1, 8.2 and 8.3.

8 Compensatory Rest

- 8.1 When work 'significantly' infringes upon each prescribed rest period as set out in the regulations, a normal working day will be granted as compensatory rest. Agreement as to when compensatory rest is to be taken must be reached with the appropriate Head of Department or Clinical Director.
- 8.2 For the purposes of this agreement an example of a 'significant interruption' would be a recall to hospital, when non-resident on-call, or continuous working which prevents the doctor from receiving 11 consecutive hours of rest
- 8.3 Where, as a consequence of a work-related telephone call(s), a doctor is unable to take 11 consecutive hours of rest, the amount of compensatory rest to be taken should be agreed between the consultant and his/her Head of Department or Clinical Director.
- 8.4 If a doctor is non-resident on-call during daytime periods and believes that his/her rest entitlement has been encroached upon they must discuss with their Head of Department or Clinical Director whether equivalent compensatory rest is to be accrued.

- 8.5 In circumstances where a doctor experiences a non-significant interruption which nonetheless infringes upon a prescribed rest period, it may be agreed at department/directorate level for work to commence at a later time the following day. Alternatively periods of equivalent compensatory rest (i.e. the number of hours worked during a rest period) may, by agreement, be accrued and taken at a later date as a notional half-day or a full day's leave where appropriate.
- 8.6 Doctors on part-time contracts are entitled to the same compensatory rest breaks as doctors on whole time contracts.
- 8.7 When taken compensatory rest must be uninterrupted.
- 8.8 Where staffing levels permit, any compensatory rest will normally be built into the rota commitments i.e. taken every 4-8 weeks. In any event, compensatory rest will be taken in the same 26-week reference period that it is accrued.
- 8.9 Rest entitlements will be reviewed in each Directorate every 26 weeks.
- 8.10 When monitoring compensatory rest entitlements, doctors will calculate encroachment on prescribed rest breaks in relation to 24 hours rest per week/48 hours rest per fortnight.
- 8.11 In order to calculate entitlements to compensatory rest, doctors will monitor the total hours worked (including hours worked on-call) over a minimum of four weeks using the diary in Appendix C
- or
- 8.12 Because of the difficulties involved in evaluating compensatory rest entitlements on an individual day-to-day basis, a system of aggregates (over a minimum four week period) may be determined and applied at Directorate level. It is recognised that it may be necessary to undertake different calculations for doctors on different grades depending upon the rota arrangements in force.
- 8.13 There should be review of each doctors rest entitlement and job plan undertaken every 52 weeks by the doctor and the clinician to whom he/she is responsible.

9 Exceeding the 48 hour limit on Working Time

- 9.1 Where a doctor has not decided to opt out of the average 48 hours per week limit and it becomes clear that the doctor will exceed the 48-hour average working week, the person responsible for the job plan will commence consultation with the doctor to vary the job plan to reduce the work commitment of the doctor.
- 9.2 This re-negotiation of the job plan must be completed and the revised job plan implemented as part of the doctor's annual appraisal.

10 Locum Career Grade Doctors

- 10.1 This agreement applies to Locum Career Grade doctors employed by the Trust.
- 10.2 Where the appointment is short term the reference period shall reflect the entire period of employment.

- 10.3 Where rest breaks are encroached upon, the contract of employment will be extended accordingly.
- 10.4 Where the doctor is employed through an agency, the agency will be responsible for enforcing the regulations.
- 10.5 Where locums are employed directly or indirectly by the NHS, it is agreed that the Trust will remain within the spirit of this agreement.

11 Doctors with more than one NHS employer

- 11.1 Where a doctor holds a contract of employment with more than one NHS employer, this agreement will apply across all NHS Posts. A lead employer (responsible for monitoring the hours worked, keeping records and ensuring this agreement is correctly implemented) will be identified and the doctor will be notified accordingly. It is a requirement of this agreement that doctors employed by the Trust shall notify the relevant Clinical Director, or if appropriate, the Medical Director, of the hours of work that they are contracted to perform with other employers.

12 Clinical academics

- 12.1 Where a doctor holds a contract of employment with an NHS employer and a university, this agreement shall apply only to the NHS component of the contract.
- 12.2 The Trust will liaise with the university employer and develop an agreed monitoring system to ensure that these doctors receive their entitlements under the Regulations.

13 Opting out of the Average 48 hour Working Week and Rest Periods

- 13.1 If a doctor does not wish to be bound by the terms of the agreement regarding the average 48 hour working week he/she should complete the opt out form found in Appendix D and return a signed copy of the form to his/her Clinical Director. Under these circumstances there will be no requirement for the doctor to maintain a Working Time diary.
- 13.2 The Trust will produce a list of all doctors who have decided to opt out of the average 48-hour working week limit.

14 Health Assessments

- 14.1 A health assessment without cost to the doctor will be provided by the Trust's Occupational Health Department to any doctor who meets the definition of a night worker under the Regulations. Any doctor requesting a health assessment will not suffer any loss of pay or incur any expenses in connection with the assessment.

15 Unresolved Differences

- 15.1 Any differences over the implementation of the agreement arising between individual doctors and the person responsible for job plans should be referred to a panel comprising the Medical Director, the relevant Clinical Director and Medical Staff Committee Chairman.

16 Duration of the Agreement

- 16.1 This agreement reviewed February 2005 and will be reviewed in February 2006.

17 Agreement and Implementation

17.1 This paper sets out the terms of the agreement between the Trust and the Medical Staffs Committees which will be implemented with effect from.....

Signed on behalf of the Newcastle upon Tyne Hospitals NHS Trust

..... Date

Signed on behalf of the Freeman Hospital Medical Staff Committee

..... Date

Signed on behalf of the Royal Victoria Infirmary and Newcastle General Hospital Medical Staff Committee.

..... Date

Calculation of Average Weekly Working Hours

Average weekly working hours can be determined by the following process:

- (i) identify the total number of hours worked during the monitoring reference period (Please refer to the form in Appendix C).
- (ii) divide the total number of hours worked by the number of weeks within the monitoring reference period.
- (ii) remember to exclude periods of sick leave, annual leave, maternity leave and or non CME approved study leave by extending the reference period used by an amount of time equal to the periods of leave referred to.

$$\frac{\text{total hours worked}}{\text{number of weeks in reference period}} = \text{average weekly working hours}$$

The duties listed below should be consistent with the doctor's job plan.

Outpatient clinics:	Duties undertaken in respect of clinical
Ward rounds:	Governance (internal and external to
Operating procedures:	employers):
Investigative work:	Management commitments:
Participation in medical audit:	Emergency visits:
Approved study leave:	Attendance at hospital committees:
Administration:	Place of Work Accredited Representative
Teaching/training duties:	(POWAR) duties:
Domiciliary visits:	Representation on ACDA/RAC:
Work for postgraduate deans:	Category I activities:
Official travel on duties listed	Research:
above (including on-call work):	Work for regional/national NHS offices:
Work for LMWAGS	Participation in disciplinary procedures as
employment of staff duties i.e.	internal or external assessor.
interviewing committees (internal and external):	

The duties referred to above may not constitute an exhaustive list for the purposes of this agreement. Any other activities (e.g. attendance at meetings in connection with Royal College work) to be included will require the formal agreement of the relevant Clinical Director and Medical Director.

Diary of Hours Worked

Name

Directorate

Week Beginning

	Mon		Tues		Wed		Thurs		Fri		Sat		Sun	
Hours On-Call	0-30	30-60	0-30	30-60	0-30	30-60	0-30	30-60	0-30	30-60	0-30	30-60	0-30	30-60
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1.00														
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18.00														
19.00														
20.00														
21.00														
22.00														
23.00														
24.00														
Total														
Routine														
On-call Worked														

Legend

Routine duties	R	On-call duties	✓	Annual leave	-A/L	Total Hours	
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Please note that in order to confirm non-resident on-call duties that are recorded by a doctor, the Trust shall undertake any relevant checks that are necessary.

The Newcastle upon Tyne Hospitals NHS Trust

AGREEMENT TO OPT OUT OF MAXIMUM WEEKLY WORKING TIME LIMIT

I(*insert your name*) agree with the Newcastle upon Tyne Hospitals NHS Trust to disapply the limit on average weekly working hours set out in regulation 4(1) of the Working Time Regulations 1998. I agree therefore that my working time may exceed 48 hours for each seven-day period as defined in the 1998 Regulations. I understand that my decision to exercise this option is an individual voluntary one and that no pressure is placed on a worker to take this option.

This agreement shall apply from(*insert date*). It can be terminated by my giving one month's notice in writing to my employer, The Newcastle upon Tyne Hospitals NHS Trust.

Signed Date
(*worker*)

Name Job title

Dept Base

Signed Date
(*for employer*)

Name Job title

Dept Base

1 copy of completed form to be retained by employee

1 copy to be retained by the Clinical Director

1 copy to be forwarded to the Personnel Manager