

JUNIOR DOCTORS' HOURS – MONITORING GUIDANCE

PART A: INTRODUCTION

Background

1. The New Deal has required, since 1991, an hours' monitoring system capable of recording and checking hours worked by doctors in training against a set of hours limits and controls. This was further refined in 1998 under HSC/1998/240, which introduced new guidelines and controls on rest periods, to make sure that the *quality* of rest as well as its quantity was properly defined. This was in line with our continued commitment to improve the working lives of junior doctors.

Requirement for change

2. During recent years it had become increasingly apparent that, without apportioning blame or criticism, there were shortcomings in local monitoring arrangements, both in terms of coverage and accuracy. This is no longer sustainable, and for three reasons:
 - new **pay structure**: from 1 December 2000 juniors' working hours will need to be monitored for duration and intensity, as this will be key to determining individual pay bandings;
 - the future **contractual requirement** (agreed as a fundamental part of the new contractual and pay structures) that no junior, regardless of working pattern, will be expected to work more than **56 actual hours a week** on average. This will be introduced in two phases, from August 2001 for PRHOs and from August 2003 for SHOs and SpR grades;
 - the extension of the **Working Time Directive** to doctors in training, over a series of target dates agreed by the European Community, and shortly to be introduced into UK law. This will introduce legal limits on the working week and provide for rest periods within and between duty periods.
3. These developments broadly herald a move away from considerations of simple percentages in or out of New Deal targets and towards a more refined assessment of contractual working hours and work intensity.

Mutual obligation to monitor hours

4. From 1 December 2000 there will be a contractual obligation on employers to monitor junior doctors' New Deal compliance and the application of the banding system, through robust local monitoring arrangements supported by national guidance, and on individual junior doctors to cooperate with those monitoring arrangements.
5. These arrangements will be subject to:
 - review by regional task forces (or their equivalent); and
 - for employers, the performance management systems.

6. In practice, if either the employer or the employee is not fulfilling their obligations, this could affect the means of determining pay banding and lead to financial and contractual uncertainty. Paragraphs 22 and 23 at Part C below cover the circumstances in which sanctions may apply.

National framework

7. To ensure consistency across the eight English regions in implementing the new contract, the paragraphs below provide a ***national framework, containing an agreed set of key principles and standards, together with detailed operational guidance***. The guidance outlines what should be monitored, and when, so that information can be properly aggregated in trusts and regions and supplied centrally for strategic purposes. The guidance also covers the respective responsibilities of the key parties involved in monitoring.
8. A national framework will endorse and develop those systems which are tried and tested, which meet the principles and standards below, which command confidence, and which are achievable and affordable. Trust-funded New Deal project officers have often been used successfully to work alongside HR staff or medical staffing officers in supporting hours' monitoring and improving local awareness. Currently there are a number of monitoring systems in use, and many trusts and regional task forces have successfully monitored using different approaches. We are, however, giving central backing to moves to investigate future technological support capable of producing an affordable, workable, accurate and standardised approach to monitoring in the longer term.

PART B: KEY PRINCIPLES FOR A NATIONAL MONITORING FRAMEWORK

9. The **eight** key principles listed below are supported by detailed guidance on responsibilities, methodology, timing, data requirements etc in Part C below.
 - ***Agreed national set of standards and guidance***
 - ***Simple to use and easy to understand***
 - ***Targeted and comprehensive: a framework which covers juniors' posts to the extent necessary to provide sufficient information to determine New Deal compliance and pay banding allocations***
 - ***Accurate and transparent: a framework which is accurate and reliable, open to scrutiny, and which commands the confidence of key parties at all levels***
 - ***Clear performance management lines of accountability within trusts and externally***
 - ***Audit trail: full data records must be kept locally for a minimum of 6 years and available on reasonable request to inform decisions and allow for review or appeal where appropriate***

- ***Properly resourced locally, with the ultimate contractual responsibility for providing and overseeing monitoring processes resting with NHS Trusts as the employers of junior doctors***
- ***Monitoring systems must be capable of adaptation to take into account any future changes in contractual or legal requirements and the extent of the data required, on an ongoing basis, at local level to reassess hours' compliance and/or to resolve disputes.***

PART C: OPERATIONAL GUIDANCE FOR INTRODUCING A NATIONAL MONITORING FRAMEWORK

10. Trusts will need to ensure they collect and analyse data sufficient to implement the new pay bandings and juniors' contract from 1 December 2000, and to build on this for the future for reassessing hours' compliance and/or resolving pay or contractual disputes. Junior doctors, in turn, will be responsible for recording data on hours worked, and forwarding that data, at the employer's request. This annex therefore outlines (a) pay banding monitoring requirements and (b) ongoing requirements for monitoring hours, in accordance with current New Deal targets and, subsequently, with agreed new transitional hours limits through the Working Time Directive.

What data should be collected?

11. Trust medical data systems must record
 - **Grade and specialty**
 - **Contracted working arrangement (shift, on-call rota, etc)**
 - **Contracted duty hours**
 - **Information on the frequency and pattern of on-call or shift working, including the number of posts in the rota/shift and prospective cover arrangements**
 - **Information on work intensity (the work/rest ratio)**
12. For measuring compliance against New Deal targets the following controls or limits must be assessed:
 - contracted hours***
 - hours of duty, and when those hours occur***
 - hours of actual work, and when those hours occur***
 - total and continuous rest periods***
 - maximum continuous duty***
 - gaps between shifts***
 - number of consecutive days worked***
 - gaps between periods of time off duty***
 - natural breaks***
 - leave and cover arrangements.***

13. The New Deal criteria for hours limits and rest requirements for each working pattern are detailed in HSC/1998/240 (as modified by changes to weekend rest requirements - **see Banding Guidance**
14. In addition, for pay banding purposes, information will be required as outlined in the banding criteria on:
residency status when on-call
frequency of weekend working
rest attained.

Who should be monitored?

15. Data should be collected by the trust from all PRHOs, Dental HOs, SHOs, and SpR/Reg/SRs - including flexible trainees and locum doctors in training employed by the trust during the whole monitoring period. Career grade doctors and other non-training grade medical staff will be covered by their own pay, hours and WTD contractual arrangements, so should not be monitored under this guidance.
16. Doctors who have identical duties and responsibilities when working on a shift or an out-of-hours portion of an on-call rota should be assessed as working on the same rota or shift. Where this is not the case, those with different duties and responsibilities should be assessed separately. This will enable trusts to ensure that banding decisions can be made which accord with the core principle that ***all doctors working on the same rota or shift are allocated to the same pay band.***
17. Each duty period must be assessed individually to determine whether the New Deal requirements have been met on the required proportion of occasions as defined in HSC/1998/240 (as amended for assessing weekend rest in pay banding guidance).

When should the data be collected?

18. For pay banding purposes to take effect from 1 December 2000, all doctors in training must have completed a banding questionnaire.
19. Re-monitoring at the request of either party must be undertaken within a reasonable period of time. This may arise where, for example, an individual doctor can produce well founded reasons why their hours of work or work intensity are not adequately reflected in the results of the monitoring, or where the results vary substantially from the anticipated outcome, or following a major organisational change, or in cases of contractual dispute. Re-monitoring should usually involve the same set of doctors.
20. For ongoing monitoring, ie for both pay and New Deal purposes, hours should normally be recorded and checked at a minimum of twice a year. Non-typical periods should be avoided: eg change of house, bank holidays, examination periods. A monitoring period of two weeks is recommended. Twelve-monthly

monitoring may be considered in cases where all parties including the regional task force (or equivalent) agree:

- That posts have clearly been shown to be compliant with the New Deal, and
- Which pay band the post should be in, and
- That the pay banding is unlikely to change within the next twelve months.

21. Alternatively, monitoring may be agreed more frequently

- where posts are substantially non-compliant
- in cases of contractual dispute
- where there is a demonstrable and substantial change in working pattern or working practices in the post(s) during the training period; or
- following an agreed change in working pattern or practice.

Sanctions in the event of non-monitoring

22. If the trust does not implement monitoring after 1 December 2000 which meets the key principles set out above in Part B, the Regional Office will serve an improvement notice. If the trust subsequently fails to implement an appropriate monitoring system within six months, it must pay the junior doctors concerned as if they were in New Deal non-compliant posts (in terms of hours controls) ie at Band 3 pay rates. These rates will apply until such time as the Regional Office confirms that the trust now meets its contractual requirement to monitor.

23. Where an individual junior or group of junior doctors in a rota or rotational placement fails, without good reason, to meet their contractual responsibility to supply monitoring data, they shall receive a written notice of their contractual obligation to cooperate, and be required to participate in a further round of monitoring. Persistent failure to comply with monitoring arrangements will represent a breach of contract and may result in disciplinary procedures. In such circumstances, the trust will determine what it regards as the correct pay band, on the basis of the available information.

24. Hours' information must use agreed local recording methods, (eg diary cards, Yorkshire Monitor optical mark readers, barcode readers) which accord with the national framework principles listed at Section B. Hours should be recorded during the agreed monitoring period, preferably during or at the end of the duty period worked, rather than through potentially less reliable retrospective questionnaires or telephone surveys. This process is particularly recommended in the busier acute specialties.

What needs to be done locally?

25. Junior doctors and relevant working colleagues (eg. medical and other clinical staff, medical staffing officers etc) must be notified adequately in advance of the agreed monitoring period. Those being monitored must have received at

their induction or soon thereafter local guidance and instructions on the purposes of monitoring and what is entailed. Job descriptions, letters of appointment and individual contracts should remind all juniors of their contractual obligation to monitor hours on request. In turn, every effort should be made by trusts to assist and encourage full participation in the exercise. Juniors should know where to send the information recorded, adequate collection points on-site shall be established, and they should know how to get feedback on the outcome of their participation.

How should the data be collected?

26. Much of the data needed for assessing banding criteria or New Deal compliance as listed above will already be available in trusts' Medical Staffing sections, eg contracts of employment, contracted duty periods, calculations for prospective cover within the team, weekly shift/rota timetables. This data will need to be supplemented by accurately *recorded* data; eg actual length of working week, including early starts/late finishes, rest achieved during the day and overnight, natural breaks, actual working times as opposed to rostered duty periods. Monitoring may throw up situations where the working reality is very different from the expected working patterns, and could indicate the likely source of non-compliance.
27. Under this national framework a minimum return rate for monitoring data should be set at 75% of all doctors in training in each rota or shift (irrespective of grade) participating in the monitoring round, **and at 75% of all duty periods worked over the monitoring period**, provided this is deemed to be a representative figure in both cases. This threshold is important for making a valid and accurate assessment of hours worked and rest attained.

How should the hours data be processed and analysed?

28. There should be clear local arrangements for the designation of staff who will process, record and analyse data collected, together with robust performance management structures at all levels in the NHS to ensure that national framework guidance is observed in all trusts employing junior doctors.
29. The system selected for the processing of data should comply with the key principles at Part B. It should be consistent across trusts within the region, compatible with other data and capable of determining New Deal compliance and pay banding. Original data and summary documents should be kept by trusts for a minimum of six years in case of future dispute. The requirements of the Data Protection Act regarding access to individual records and maintaining confidentiality must be followed at all stages.
30. The processing of data should take place immediately after the exercise, allowing adequate time to chase up 'non-returns' or follow up individual queries. The trust should then publish a summary report **within 15 working days** of receipt of an adequate sample of monitoring data. The report should be set out in a simple, easy to understand format through which duty and working hours can be clearly assessed against New Deal requirements and

pay banding criteria. The summary should serve as helpful feedback to individual juniors thereafter. In addition, results on the monitoring exercise should be published locally, broken down by grade and by specialty, and giving response rates in each case. Publication will provide information on problem areas and allow for subsequent discussion by trusts, juniors and others on action plans for the future. This will encourage greater joint ownership of problems raised in the drive for workable, sustainable solutions.

31. For pay banding purposes the mechanisms for agreeing whether monitoring results are valid are laid down in the accompanying guidance. For ongoing compliance purposes, results should be made available to the local New Deal implementation group and/or the BMA junior doctors representative(s) nominated as monitoring validation officer(s). The implementation group or nominated junior can then check to see if monitoring procedures were properly applied, and can test current data against previous monitoring outcomes and any subsequent known changes in working practices, working arrangements or workload pressures. The opportunity for re-monitoring should be given where formally requested either by the trust or junior(s):

- in cases of contractual dispute over the results
- where there is a demonstrable and substantial change in working pattern or working practices in the post(s) during the training period; or
- in the circumstances outlined in paragraph 19

and where reference to the regional task force (or future equivalent) for advice or independent arbitration is unlikely to result in early local resolution without further hours' information.

Who else needs monitoring information?

32. Hours' monitoring must become a familiar aspect of local and regional performance management requirements. Data publication should include
- dissemination to the New Deal Implementation Group and local negotiating group (LNC)
 - individual feedback to juniors participating in monitoring
 - a summary report sent to the regional task force (or its equivalent)
 - information for other local/regional bodies eg postgraduate deans, workforce planning/development groups, commissioning health authorities, PCG/Ts,
 - data may also be used as a quality indicator and made more openly available, eg for prospective juniors, patient groups.

33. Regional task forces (or their equivalent) will be responsible for checking the summary data provided to them for consistency and for their analysis of regional compliance trends. They will also be available to arbitrate on banding disputes, to assist appeals panels where appropriate and to provide advice and support where requested on working patterns, working practices and their impact on patient care..
34. Information may also be requested by appropriate bodies nationally for strategic purposes, eg for Ministerial accountability, or to consider new systems of incentives and sanctions, repercussions for workforce planning, education and training, and particularly to check for consistent and comprehensive regional and local performance management arrangements and performance development plans or outcomes.