

To: Director of Human Resources

Please also forward onto your staff side lead(s)

19 July 2010

Dear Colleague

Consultation on Agenda for Change on-call payment arrangements

We are writing to advise you that the NHS Staff Council's on-call sub group has completed its data collection and analysis, and has prepared a set of draft principles for harmonised on-call arrangements for consultation. Once agreed, they are intended to provide a framework for employer negotiations with local partnerships, to establish local on-call payment arrangements.

We are now writing to you to:

- request an urgent response from your Area Partnership Forum on the proposed draft principles for harmonised on-call arrangements which are attached in Annex A of this letter.
- advise you that the Scottish Terms and Conditions Committee (STAC) has established a sub group to take forward Scottish negotiations on harmonised on-call arrangements.

All the relevant documents are available on the [STAC](#) website, the [MSG](#) website and [NHS Employers](#) website on the on-call review web pages. An on-line form for you to submit your consultation response is available on the NHS Employers website.

Review's key findings

Twenty five organisations from across the UK participated in the data collection exercise and provided details of over 300 on-call schemes. The key findings were accepted by the NHS Staff Council on 8 July 2010 and are attached in Annex B.

Negotiating harmonised arrangements

Once the principles are finalised, the NHS Staff Council has also agreed that local (or country-specific) partnerships should negotiate and reach agreement on revised on-call arrangements. In Scotland, these negotiations will be undertaken by STAC. The negotiations will need to be completed prior to the end of the protection of current on-call arrangements on 31 March 2011.

Your consultation response

We would welcome a response from employers and trade unions - in partnership - to these draft Principles via a response form on [NHS Employers](#) website, on the on call review web pages. We are keen to know whether there are any common elements of on-call work and associated payments that are not covered and, in particular, to know whether these principles will provide a workable framework to support your negotiations.

We recognise that we need to allow adequate time for this consultation and give you enough time for subsequent local negotiations. Therefore the deadline for submitting consultation responses online is **12 noon on 10 September 2010**. Unfortunately, we will be unable to consider any responses that are received after this deadline.

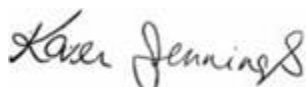
Preparatory work

To support negotiations in Scotland a comprehensive data collection exercise relating to on-call systems and payments in place has been undertaken in three Health Boards – NHS Forth Valley, Highland and Greater Glasgow & Clyde. The data from these sites is being used to develop a Scottish cost model and will also provide detailed information on systems in place and payments currently being made for on-call availability and work done. In addition to this early data collection, a letter has recently been sent to all Boards asking them to supply any additional information relating to on-call working that they would wish to be considered by STAC. This will allow STAC to be in a position to start negotiations when the final principles for harmonised on-call arrangements are published in early September.

If you have any employer queries regarding the consultation please email janismillar@nhs.net.

Any queries from individual members of staff should be directed to their local HR team or their staff side representative.

Yours sincerely



Karen Jennings

Chair, Staff Representatives

NHS Staff Council



Greg Allen

Chair, Employer Representatives

NHS Staff Council

Annex A

Draft principles for harmonised on-call arrangements

The principles outlined in the table below have been agreed in partnership by the NHS Staff Council's on-call sub group and approved in partnership, for consultation, by the NHS Staff Council on 8 July 2010.

Once finalised, they are intended to provide a framework for employer negotiations with local partnerships to ensure that revised on-call arrangements are in place from April 2011, when the current arrangements end. We are now asking employers and the NHS trade unions for their views – in partnership – on the draft principles, using an on-line response form on NHS Employers website, on the on-call web pages at www.nhsemployers.org.

Issue	Principle/s
<p>1. Definition</p>	<ul style="list-style-type: none"> • On-call systems exist as part of arrangements to provide appropriate service cover across the NHS. A member of staff is on-call when, as part of an established arrangement with his/her employer, he/she is available outside his/her standard working hours – either at the workplace, at home or elsewhere – to work as and when required.
<p>2. Equal pay</p>	<ul style="list-style-type: none"> • Guiding principle should be that the harmonised arrangements should be consistent with the principles of equal pay for work of equal value <p>The effect of this should be that schemes agreed by local partnerships should provide consistent payments to staff at the same pay band available on the same on-call pattern</p> <ul style="list-style-type: none"> • We will need to <u>Equality Impact Assess (EIA)</u> our own work

	<ul style="list-style-type: none"> • Will need to include the principle that all employing organisations will need to undertake an EIA of their proposals <p>Implementation guidance will identify areas that local partnerships should consider in undertaking EIAs of their potential arrangements.</p>
<p>3. Commitment or availability payment</p>	<ul style="list-style-type: none"> • There needs to be a payment to reflect the availability for being called. There are three distinct types of on-call availability: <ol style="list-style-type: none"> 1. At home ready to be called out or to undertake work at home 2. At work ready to undertake work 3. Sleeping in at work <p>Payment for these different types of availability – options include:</p> <ul style="list-style-type: none"> • flat rate available for all staff • flat rate by grade • percentage of salary <p>If the partnership decides to use a flat rate they will need to agree arrangements for uprating this payment when pay increases. This payment will vary according to the frequency of commitment – the principle being that higher payments are set for greater commitment.</p> <p>In setting the availability payment, local partnerships will need to take account of the commitment to work weekends and public holidays.</p> <p>Where tiered on-call systems are required, there should be no distinction between levels of commitment when setting the availability/commitment payment.</p>

	Reference paragraph 2.26-7 in the NHS terms and conditions of service handbook, to allow the option of prospective calculation of the payments.
4. Frequency	<ul style="list-style-type: none"> The week should be divided up into appropriate standard periods (outside the hours of the standard working week) for the purposes of calculating the frequency of on-call availability. The nine periods described in paragraph 2.34 of the NHS terms and conditions of service handbook provide a useful model.
5. Work done	<ul style="list-style-type: none"> Payment for work done, including work done at home, should be made at the appropriate hourly rate with reference to Section 2 in the NHS terms and conditions of service handbook. Local partnerships may agree an appropriate minimum payment period for work done.
6. Time of in Lieu (TOIL)	<ul style="list-style-type: none"> Staff should have the option to take TOIL rather than payment for work done in line with paragraph 3.5 in the NHS terms and conditions of service handbook.
7. Compensatory rest	<ul style="list-style-type: none"> Individuals will receive compensatory rest for work done, in accordance with Section 27 of the NHS terms and conditions of service handbook.
8. Travel to work	<ul style="list-style-type: none"> As per current arrangements. Travel time should be paid at the rate agreed for on-call work done and local partnerships will need to identify if there is a minimum and/or maximum time claim identified. Where travelling expenses are reimbursed, Section 17 in the NHS terms and conditions of service handbook will apply.
9. Public holidays (PH)	<ul style="list-style-type: none"> Covering a PH will attract a day in lieu in accordance with paragraph 13.4 of the NHS terms and conditions of service handbook, irrespective of work done. <p>Work done on public holidays would attract payment at the appropriate rates as identified in paragraph 13.4 of the NHS terms and conditions of service handbook.</p>
10. Sleeping in	<ul style="list-style-type: none"> A sleeping-in session will often incorporate the following elements: <ul style="list-style-type: none"> Hours of wakefulness

	<ul style="list-style-type: none"> - Sleep - Work done <ul style="list-style-type: none"> • The term “sleeping-in” does not refer to individuals who are on-call from the workplace and are able to sleep between periods of work. • Legal situation – if required to be at place of work, then it is working time. • If asleep, this working time does not count for the purposes of the minimum wage. • Legally, the availability fee should be at least the same as a calculation for (hours of expected wakefulness x minimum wage). Local partnerships will need to consider if it is more appropriate to base this calculation on the bottom point of the Agenda for Change pay scales, as described in Annex C of the NHS terms and conditions of service handbook. • In those situations where a sleeping-in session includes elements of what the National Minimum Wage (NMWA) would classify as work, or when the individual is woken during a sleeping-in duty, this should be paid as work done at the appropriate hourly rate. • Local partnerships may agree a minimum payment period for work done.
<p>11. Pensions</p>	<p>Local partnerships should always seek advice from the NHS Pensions on any questions relating to the NHS Pensions Scheme and on-call payments. It is the responsibility of the employer to determine which payments are pensionable, according to the criteria provided by NHS Pensions. Guidance on “<i>pensionable pay</i>” can be found on NHS Pensions website at www.nhsbsa.nhs.uk/pensions</p>

<p>12. Section 2</p>	<ul style="list-style-type: none"> • Arrangements agreed under the current Section 2 of the NHS terms and conditions of service handbook are consistent with the framework above.
<p>13. Transition</p>	<ul style="list-style-type: none"> • There are currently a range of payments for on-call, which form a regular part of income for some individuals. Local partnerships will therefore need to agree transitional arrangements for the movement of staff from current to future on-call payment systems. This includes all on-call arrangements within the scope of the review of on-call. • Such transitional arrangements could include one or more of the following elements: <ul style="list-style-type: none"> - introduction of increased payments in one or more stages over a fixed period of time - introduction of reduced payments in one or more stages over a fixed period of time - postponement of increased and/or reduced payments for a fixed period - movement to reduced payments over a period on a “mark time” basis - payment of a one-off lump sum to staff if their on-call payments are reduced. • As an example of some of the above elements in practice, Section 2 and Annex X of the NHS terms and conditions of service handbook set out how transition was approached when new unsocial hours provisions were introduced.

Annex B

Review of on-call – key findings

Section 1 - summary of data requirements

1. The on call sub group's terms of reference were to conduct a review of current on call and standby arrangements, to determine the following:
 - variety and types of national and local payments systems
 - range of healthcare settings in which on call arrangements are used, including sleeping in arrangements
 - arrangements for travel within on call agreements
 - effects of UK Working Time Regulations.
2. A representative sample of NHS organisations across all four United Kingdom countries were asked to provide information on all their current on call schemes. This information was given by completing a detailed questionnaire, with any relevant supporting documentation.
3. Data was collated against a defined set of jointly agreed criteria and organised according to standard occupational codes, as determined in NHS occupation code manual.

Section 2 - broad summary of figures

4. Twenty five organisations participated from all the four United Kingdom countries in the following sectors:
 - Acute
 - Ambulance
 - Learning disability/mental health
 - Special Health Authority
 - Strategic Health Authority
 - Community care

5. The participants identified 302 on call schemes in the following categories:
 - Agenda for Change (section 2) - 47
 - Whitley - 44
 - Locally determined - 85
 - Hybrid (combination of any or all of above) - 108
 - Not known - 18

6. In total the schemes covered around 6,000 staff in all Agenda for Change pay bands in the following staff groups:
 - Administration and estates - 560
 - Healthcare assistants and other support staff - 210
 - Nursing midwifery and health visiting - 1220
 - Scientific therapeutic and technical - 2110
 - Healthcare scientists - 1460
 - Others - 260

7. In this report, all the statistics we refer to only relate to the information received from the organisations which participated in our review, and not to the NHS in the United Kingdom more widely.

8. We noted that although some schemes were used often by the organisations in our sample, these covered relatively few staff. Conversely some schemes which were used less, covered a large number of staff in our sample.

Section 3 - types of on-call working

Key findings

9. For each agreement, we collected information about the type of on-call work undertaken. The agreements fell into three broad types:
 1. On-call from home
 2. On-call from the workplace
 3. Sleeping-in

Section 4 - structure of on-call schemes

Key findings

10. In the information we saw, the majority of on-call schemes are structured so that commitment to provide on-call cover is separate from payment for any work done. The figures showed:

- 76 per cent of schemes are structured so that the commitment to provide on-call cover is separate from payment for the work done
- 6 per cent of schemes are structured so that a singular all inclusive (or 'rolled-up') payment is made for the on-call commitment and the work done
- 18 per cent of schemes provided no information of how their on-call schemes were structured

11. The majority of on-call schemes (68 per cent) where we had sufficient information, provide for the commitment element to increase in line with frequency of on-call cover provided:

Within this 68 per cent :

- 20 per cent are structured so that the commitment element is based on a percentage enhancement
- 12 per cent are structured so that the commitment element is based 'as per Whitley'
- 36 per cent are structured so that the commitment element is based on a 'per session' fee/element.

12. From additional material provided by sites in the form of rotas etc. we are able to establish that the commitment to provide on-call cover is mostly regular and predictable.

13. We have evidence that providing on-call cover on a public holiday attracts time off in lieu (TOIL) in line with the NHS terms and conditions of service handbook.

14. Some schemes require different 'tiers' of on-call cover, where up to three layers of on-call provision are available. This is a particular feature of those services which need to respond to changing levels of service demand eg operating theatres.
15. We did not have enough information to determine whether there were any particular pattern in the way compensatory rest was used for work done in line with the guidance in Section 27 of the NHS terms and conditions of service handbook.
16. There is no apparent link between structure or payment of on-call cover and contractual status. Some schemes were voluntary and some were contractual. The contractual status of schemes was independent of their structure and the payments made under them.
17. There is no consistent link between structure or payment of on-call cover and pensionable status. The pensionable status of schemes was independent of their structure and the payments made under them.

Section 5 – on-call payments

Key findings

18. There is no consistency within sites in the types and levels of payment for the commitment to provide on-call cover among staff groups working similar on-call patterns.
19. In Trust X, a large teaching acute trust in England, we found a total of 31 current on-call arrangements. These covered at least 16 different groups of staff. Some groups of staff had multiple agreements. For example, there were six arrangements for biomedical scientists.
20. These agreements are currently structured in a variety of ways. Five of the 31 agreements paid an annualised fee. Of those, where the commitment element of the on-scheme was structured separately, roughly half based this payment on frequency. Travel to work was paid under some agreements and not others (17 paid travel time, 10 did not); half of those schemes where information is provided on pensionable status said the payment was pensionable, half said it was not pensionable. Only nine out of the schemes allowed staff to opt to take TOIL instead of payment for work done.

21. There are obvious inconsistencies between the structure and payments of on-call arrangements for staff from different occupational groups in the organisation. For example:

	Occupational Therapy	Dietetics
Travel to work time	No	Yes
TOIL	Yes	No
Basis of payment	Based on normal pay	Rolled up fixed payment

22. It was also evident that the structure of the schemes was not consistent within occupational groups. For example, within the biomedical science group, arrangements were structured differently:

	BMS1	BMS2	BMS3
Annualised Fee	No	Yes	Yes
Enhanced public holiday (PH) pay	No	Yes	Yes
TOIL	Yes	No	No

23. The only area of apparent commonality across the 31 schemes is that the vast majority of arrangements provide for payment of work done, based on the normal hourly rate.
24. There is a direct link between the frequency of provision of on-call cover and levels of payment. As outlined in point three above, the majority of on-call schemes where we had sufficient information, provide for the commitment element to increase in line with frequency of on-call cover provided.
25. Other than for agreements in line with Section 2 of the NHS terms and conditions of service handbook, in most of the other schemes, there was evidence that on-call cover is most frequently paid at higher rates for weekend and public holiday working.
26. The payment for commitment to provide on-call cover is made by:
- paying a percentage uplift to salary
 - making a flat rate payment based on the amount per session (or regularly paid multiplier of this)
 - or by making a 'rolled-up' payment (for those resident during their on-call).

27. There were a few schemes that used other mechanisms.
28. In more than half the schemes, where we were provided with information, other than in 'rolled-up' rates, it is most common for work done to be paid the overtime hourly rate.
29. In a majority of the schemes we saw, which were continuing to follow Whitley payment rules, the payment for work done was at double time on public holidays.
30. There was evidence that some schemes provided for a minimum period of time for the 'work done' payment.
31. In 64 per cent of schemes, where we were given information, travelling time is paid at the rate for work done, sometimes subject to minimum and/or maximum periods.