

Scottish Terms and Conditions Committee

Ref: STAC(TCS06)2016

23 November 2016

To: Chief Executives,
Directors of Finance,
Directors of Human Resources -
NHS Boards and Special Health Boards,
NHS National Services Scotland (Common Services Agency) and
Healthcare Improvement Scotland

CC: Members, Scottish Partnership Forum
Members, Scottish Terms and Conditions Committee
Members, Scottish Workforce and Governance Committee

Dear Colleague

FURTHER REVISION TO STAC(TCS01)2013 – TECHNICAL PAYROLL ISSUES

The Scottish Terms and Conditions Committee published guidance in 2013 under the above reference covering various pay and on-call agreement implementation issues.

Two further questions were addressed in STAC(TCS01a)2013, and a number minor revisions and corrections to the original list were published as STAC(TCS03)2016. A further point of clarification in relation to Question 5 has now been agreed between Employers and the Staff Side.

For simplicity sake, all previous versions of, and additions to, the guidance are being deleted. The points dealt with in STAC(TCS01a)2013 are now picked up in Questions 12 and 13, and this letter should be used as the single point of reference on all these issues. To avoid confusion, please destroy any paper copies of STAC(TCS01)2013, STAC(TCS01a)2013 and STAC(TCS03)2016 which you hold.

Yours sincerely



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SCOTTISH TERMS AND CONDITIONS COMMITTEE

Payroll Technical Issues – Agenda for Change Terms and Conditions of Service

Issue	Solution	Rationale
(1) What payment is made to staff who work Public Holidays (PHs)?	As per AfC Handbook	To pay otherwise would require a Variation Order
(2) What payment is made to staff who are rostered to work a PH but then take a day off?	Underlying shift enhancements	Provides the normal level of pay for each individual
(3a) What payment is made if staff are not rostered to work a public holiday?	No enhancements should be paid.	Complies with the AfC Handbook recommendations.
(3b) What payment is made when that public holiday is subsequently taken?	Underlying shift enhancements	Complies with the AfC Handbook recommendations.
(4) If rostered to work a shift that did not attract enhancements but took leave or were off sick is it just plain time that is paid?	Yes – plain time only.	Complies with the AfC Handbook recommendations.
(5) When an employee takes TOIL after having worked a PH is the TOIL given as plain time?	TOIL is at plain time, but employees who work on a shift would be entitled to their contracted underlying shift enhancements.	Complies with para 13.4 of the AfC Handbook

Issue	Solution	Rationale
(6) How is level of pay during sick leave determined?	Staff should be rostered as if at work and where appropriate any enhancements paid according to the shift that would have been at work.	Section 14.4 of the AfC Handbook states “Sick pay is calculated on the basis of what the individual would have received had he/she been at work”. It also states “Local partnerships can use virtual rotas showing what hours the employee would have worked in a reference period had he/she been at work”.
(7) If an employee has been at top of pay band for some time does their incremental date remain “live” for future use if temporarily promoted?	Where temporary movement into a higher pay band results in only one extra pay point, the original incremental date needs to be reactivated and applied. Where temporary movement results in more than one extra pay point, the incremental date for the period of temporary movement becomes the date the movement began.	Complies with paragraph 6.34 of the AfC Handbook.
(8) If there are pay changes after the reference period but before maternity leave starts , are these taken into account and the level of Occupational Maternity Pay (OMP) changed?	In the event of a pay award or incremental increase which occurs after the reference period but before maternity leave starts, the level of pay should be adjusted accordingly.	Complies with AfC Handbook and medical terms and conditions.
(9) Should NIC’able expenses and any arrears relating to an earlier period be removed when assessing level of OMP?	Such payments should be removed when assessing level of OMP.	Whilst SMP calculation would need to include all payments within the assessment period, it is proposed that for OMP purposes these are removed as they could reflect an unusually high level of pay.

Issue	Solution	Rationale
(10) How is OMP assessed where the period includes reduced pay which has occurred during previous maternity leave period? Is it actual earnings or notional pay that is used?	This should be actual earnings.	Complies with the AfC TCS Handbook.
(11) How is OMP calculated for a trainee returning from approved training overseas and with previous NHS Service but who was not employed in NHS during the period used to calculate OMP?	If approved training then it should be seen as continuous service and pay based on notional pay on return to NHS. If voluntary career break, OMP not applicable	There should be no difference between a trainee undertaking approved training overseas and a trainee continuing training in the UK.
(12) What level of pay should a staff member receive if they are rostered to work on a public holiday but call in sick?	Staff should be paid public holiday rates in line with Table 2 in Section 2 of the AfC Handbook if they are rostered to work but unable to do so because of sickness.	Agreed in partnership.
(13) How should staff be paid during periods of special leave?	When special leave is required for short term emergency situations, eg bereavement or compassionate leave, staff should be paid “as if at work” receiving any enhancements that would normally be paid. However, staff requiring special leave for other purposes should discuss their needs with employers and this discussion would include agreement on whether this is unpaid or paid and, if paid, the appropriate level.	Agreed in partnership.

NEW ON-CALL SYSTEM

IMPLEMENTATION QUERIES

Following the publication of PCS(AFC)2012/4 which outlined the new system for staff working on an on-call basis, several implementation enquiries were received. These are listed below together with the responses agreed in partnership through the Scottish Terms and Conditions Committee on-call sub-group.

Issue	Response
1. If a VO is in place for staff doing on-call is that included in protection?	A VO is a temporary payment and should not be included in protection. Boards are advised to assimilate staff onto the new system and then request a new VO if still required.
2. A group of Pathologists felt that the protection as outlined in Annex 2 – footnote 4 – should still apply to them.	Annex 2 covered protection for the interim regime and does not apply.
3. Does the supervision of Midwives allowance stop when new system is introduced?	No – this is a separate allowance which appropriate midwives will continue to receive. When they are on-call for purposes of supervision or other duties they will be paid the new on-call payment.
4. Are Senior Managers covered by the new system?	Remuneration Committees are responsible for agreeing whether or not on-call undertaken by SMs is paid. If a new on-call system is being considered then payment should be the nationally agreed new system and if SMs are currently on AfC interim then they should move to the new system
5. Staff work for 2 hours whilst on-call on a Saturday morning get pay and TOIL. Will this stop under the new system.	No, this should continue if the staff are required to be at work. These should be treated as additional hours, paid and given TOIL.
6. Bank staff currently get locally agreed rates and will not work for the new on-call rate. Can we maintain the local rate.	The new rate must be paid to bank workers. If different rate required then a VO needs to be sought.
7. Can we have confirmation of how on-call groups are determined	This needs to be locally agreed according to work area and service requirements
8. What is meant by equivalent time off – is it 7.5 hours? If part-time staff or staff on long-shifts do on call how is this recorded?	It is 7.5 hours for normal day. Part-time staff and staff on long-shifts should not be disadvantaged and how this is recorded needs to be locally agreed.

Issue	Response
9. How is payment made for staff, mainly Senior Managers, who are on-call and provide advice by text?	Same principles as telephone advice
10. If staff are in receipt of RRP are these included in any protection?	RRPs are temporary payments and should not be included in protection. Staff should be assimilated onto the new system and the RRP re-applied after that. To include the RRP in protection will prolong the duration of protection for these staff which would be unfair to others.
11. Should any earnings received as a result of doing additional on-call before assimilation to the new system be reclaimed?	No – we did not seek to reclaim any back when assimilation to AfC pay rates or on the introduction of the new unsocial hours.
12. Can the sessional payment be pro rata for staff who are on-call for less than the full duration ?	No – a session is a session and the same payment applied to all
13. Can we agree to pay more than the actual duration of time when giving phone advice which can be as little as 5 minutes?	No – the agreement is that this the actual duration of the call.
14. Staff member holds two part-time posts in same department but at different pay bands. When on-call it can be duties up to the higher band – how is this paid?	If staff are expected to do all duties when on-call then the higher level should be paid.
15. Staff groups who receive an increase in pay as a result of the new system are claiming that this can be backdated beyond 1.10.2012.	No – the circular is applicable from 1.10.2012 and Boards have no authority to pay the new system before that date.
16. Are Boards required to abide by the list of protection elements that are referred to as part of the FAQ and taken from TCS Handbook	Agreed that paragraph 46.19 including Table 8 of the TCS Handbook must be used to calculate protected earnings.
17. Is there written agreement on TOIL when on call on a PH and how does it impact on part-time staff and staff on long shifts?	See Number 8 above

Issue	Response
18. Are staff on zero hours contracts treated the same way as bank workers for purposes of agreeing protection?	Agreed that they are and that protection is not appropriate as staff on this type of contract have no guaranteed hours or earnings.
19. Can Boards make changes to any of the principles in the agreed system?	There is no scope for employers to do this and the agreement should not be used to introduce new on-call systems.
20. Issues with remote and rural areas including the Air Ambulance Service in that it was felt that the new rate for undertaking an on-call session would not encourage staff to undertaken on-call.	There could be no deviation from the rate payable unless a VO was obtained.