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Information paper

On-Call Negotiation Guidance

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On-Call Negotiation Guidance

Section 1: Overview

This guidance aims to help stewards who are negotiating local on call policies. Negotiating across the UK varies depending on which country you are in, for example in England there are local negotiations for availability rates whilst these elements are agreed country wide for Wales, Scotland and Northern Ireland.

This guidance will not offer an all-encompassing review of on-call v 7-day working and the associated rates of pay between these. For guidance on 7 day working and the difference between on call, overtime and enhancements please refer to the CSP's [Resource Pack for Seven Day and Extended Working](#).

The [IP 02 Overtime, Unsocial Hours and Emergency Duty Working](#) is useful for understanding the difference between overtime, unsocial hours (also known as enhancements) and on call working. If you are unsure if the service is being run a seven-day working basis, overtime or as on-call/emergency duty working, you should review the documents referred to above in conjunction with this guidance.

[Section 2 \(Maintaining round the clock services\) and 3 \(Overtime Payments\) of the NHS Terms and Conditions handbook](#) also has information on overtime and enhanced rates.

[The NHS Staff Council's 12 Principles for harmonised on call arrangements](#) underpins local on-call negotiations and can be found in annex 29 of the NHS T&C's handbook. We strongly recommend you read this prior to negotiating your on call policy and use it as a test to ensure that the policy meets these principles.

What is agreed UK wide

What is agreed UK wide is limited to the definition of on-call, travel expenses and the principles for harmonised on call arrangements. The NHS handbook defines on-call as '*A member of staff is on-call when, as part of an established arrangement with their employer, they are available outside his/her normal working hours – either at the workplace, at home or elsewhere – to work as and when required.*'

Section 17.17 of the NHS T&C's handbook states that reserve rate of mileage should be paid for those working overtime. The CSP would argue that this should also be the case for on call despite it not being explicitly covered in the handbook.

What is to be negotiated on a local basis?

All other elements, which aren't negotiated at a national level (UK and country level), are to be negotiated locally. Elements such as pay, TOIL and compensatory rest are likely to be negotiated and agreed locally with employers. Frequency, rota allocation and backup systems are likely to be subject to service-specific negotiation and agreements.

Section 2: Pay Rates including Country Wide Agreements

England

Rates of pay and availability fees are negotiated on a local basis. Across England the rates of pay differ significantly and may have been agreed or implemented some time ago. Stewards should review current policies to determine when the pay rates and availability fees were last agreed and if there is a review date to renegotiate rates of pay. These rates are likely to be negotiated on an organisation-wide basis and it is important that you are part of the mechanism such as the JNCC to negotiate these rates. We would encourage a payment that is a multiple of their standard rate of pay to achieve equal pay for jobs of equal value.

Important things to consider when negotiating pay

- Equal pay for jobs of equal value
- Including a review date
- Increase in pay rates in line with any agreed national pay rise or inflation
- Consider what the members would be willing to accept prior to negotiation. Consider three scenarios: best case, acceptable and worst case

Northern Ireland

There is a nationally agreed on-call policy in Northern Ireland. The on-call availability allowance is paid for 12 hours of on-call and the rate increases in line with nationally agreed pay rates.

In April 2020 the availability allowance was £25.64, the on-call allowance rate is set in any pay circulars

Staff who are called into work during a period of on-call will receive a minimum payment of 2 hours, including travel time, for the first call out. Subsequent calls will be paid at actual call out time rounded up to the nearest 15 minutes.

Payment for work done is at the post holder's substantive rate and will be paid at time plus a half, with the exception of work done on general public holidays which will be at double time.

Scotland

The [Arrangements for Agenda for Change Staff](#) whom Undertake On-Call duties is a nationally agreed on-call policy for Scotland. There are a maximum of 9 on-call session in the week – Monday to Friday one session per day and Saturday and Sunday 2 sessions per day

As of April 2021 the on-call allowance was £21.03. This increases in line with nationally agreed pay rates and will be detailed in the most recent pay circular

Payment for work done is at the post holder's substantive rate and will be paid at time and half with the exception of work done on general public holidays which will be at double time

Wales

The [NHS Wales Harmonising On Call Arrangements May 2012](#) sets out the overarching national On-Call agreement in Wales. There are a maximum of 9 on-call session in the week – Monday to Friday one session per day and Saturday and Sunday 2 sessions per day. Payment for work done is at the post holder's substantive rate and will be paid at time and half with the exception of work done on general public holidays, which will be at double time

There are nationally agreed rates of pay and availability fees in Wales. These are increased in line with nationally agreed pay rises. For the most up-to-date availability fees please see [AfC Pay Circulars at the Health in Wales: Pay and Conditions website](#).

Section 3: Compensatory Rest and TOIL

The CSP's paper on the [European Working Time Directive](#) (EWTD) and section 27 of the handbook should be read in conjunction with this section. The working time regulations are there to protect the health of workers and the key issue with regards to on-call is the minimum daily rest breaks. Section 27.17 of the handbook states that "*Employees should normally have a rest period of not less than 11 hours in each 24 hour period.*" The normal working pattern in Physiotherapy allows an 11 hour rest in each 24 hour period, however if you are on-call and called in that 11 hours, rest is interrupted. Section 27.17 says that where daily rest is less than 11 hours that records should be kept by the employer and local arrangements should be agreed to ensure that a period of equivalent compensatory rest is provided.

Compensatory rest is a period of rest which is the same length as the rest or part of the rest that the worker has missed. It is about ensuring workers are not fatigued and minimising the risk to them and to clients. The working time regulations does not specify if compensatory rest should be paid. The CSPs paper on EWTD has some of the relevant case studies which will help you in negotiations. As a starter you should try to argue that the rest should be paid and if there are any issues contact your Senior Negotiating Officer for advice.

It is to be determined locally how this would best fit the members and the service, if workers are called out rarely then a more ad hoc system may work. However where people can expect to be called regularly or frequently a more formal arrangement should be in place. If you have been allocated compensatory rest in advance and are not called out there are always non-patient related duties that can be undertaken during that time. For example, many members prefer a system where they are able to leave early after a disturbed night due to on-call, as they may have had to wake up in the morning to handover patients where as elsewhere negotiations have included 11 hours' continuous rest from your last call out. You might concentrate the compensatory rest between midnight and 6 am as this is considered the most

disruptive to rest and sleep. Access to compensatory rest is backed up by the codes of conduct and HCPC standards to ensure individual members are in a fit and competent state to undertake work and that managers ensure a safe service is delivered.

TOIL for bank holiday working

Section 13.4 of the handbook states “*Staff required to work or be on-call on a general public holiday are entitled to equivalent time to be taken off in lieu at plain time rates, in addition to the appropriate payment for the duties undertaken*”. This is further clarified in the frequently asked questions which states that 13.4 preserves the right to eight public holidays it does not provide additional entitlements

The phrase equivalent time can cause some confusion as is the time equivalent to what you work or to the public holiday you have lost. Where your on-call is busy and you work almost a full day, it is easy to argue for a full day back. Difficulty can arise when you are called out infrequently or not at all. In that situation, many employers are reluctant to give TOIL. However, your public holiday has not been yours to do with as you please. You cannot travel as you have to stay local to the hospital so the argument would be that you have given up one day of public holiday and the equivalent time off in lieu (TOIL) should be provided. In many areas, the easiest way to do this is not to deduct the public holiday from your annual leave if you are on-call and then you can utilise that day later.

In Northern Ireland, there is a regional agreement for bank holidays that fall at weekends and how they should be treated. A similar agreement exists in Scotland when Christmas falls at a weekend.

Section4: On Call Systems- Frequency, back-ups, allocation

Contractual Obligation to undertake on-call Collective Agreement Obligation

A requirement to undertake on-call is commonly an obligation set out in the contract of employment. If included in a contract of employment it is a contractual obligation to undertake on-call duties.

Collective Agreement Obligation

In some cases, participation in the On-Call rota can also be covered by a locally negotiated agreement which will specify the staff who fall within the scope of the agreement and as a result are expected to participate on the on-call rota as part of their core duties.

Employment contracts and/or collective agreements at service level may specify in more detail when and what hours the On-call rota will be expected to operate.

All on-call rota arrangements should be fair, equitable and consistent.

Ensuring an individual's participation on the on-call rota is 'fair or equitable' is one of the most difficult aspects of on-call rotas. All rotas need to balance the frequency of rostering full-time, part-time staff and those who may for certain reasons not be able to fully participate on the on-call rota.

There is no national guidance or legal frameworks which set out clearly the frequency of participation that should be expected of individuals on an on-call rota. This will need to be negotiated at local level.

Aspects to consider when negotiating frequency are:

- **Commitment on other rotas**

The commitment of individuals on other compulsory rotas, such as weekend rotas/5+2 rotas. While voluntary rotas are optional commitment to these rotas should also be taken into account when scheduling on-call rota slots.

- **Working flexible hours/part-time hours**

There is no direct legislation or collective agreement in Agenda for Change that specifies how on-call arrangements are to be allocated between part time and full-time staff or those working different patterns of work such as extended days. But to overly burden part-time staff with on-call rota demands may be potentially discriminatory and so a clear understanding of expectation on the on-call rota should be made for staff working part-time or different working patterns.

- **Establishing expected commitments to the on-call rota**

Establishing a maximum number of on-call slots/commitments is the best way of ensuring that staff are not expected to cover a limitless number of on-call slots. Expectations of weekend slots should also be set.

- **Bank Holidays**

There should also be a fair system for deciding who covers bank holidays. Most commonly this is done by a voluntary system first and then a ladder system whereby staff are not rostered onto more than one bank holiday a year.

- **Exemption from or limiting Participation on the Rota**

Some staff will be removed from the rota either on a temporary or longer-term basis. Examples of where this may apply are those

- who fall under the equality act or
- who have a risk assessment identifying exception from on-call duties.
- Who have been deemed as exempt from Occupational Health or it has been deemed as a reasonable adjustment

All staff should be able to request either long term or limited term exemption from the On-Call rota or for a reduction in obligations/frequency on the rota.

- **Flexible Working Applications/Requests for Exemptions**

Obligations to cover the on-call rota can be requested via a flexible working request and/or via a request directly to management. Where individuals feel the response from management is unfair or they have not had their concerns addressed there is an option to take out a grievance. The updated Section 33: Balancing work and personal life is the section of the NHS handbook relevant for issues relating to flexible working.

- **How on-call slots are allocated**

Ideally staff roster themselves onto an on-call slot using a self-rostering system but it is likely that there will also need to be management oversight as it is common for people to not roster themselves properly and so management oversight will be needed. Where there is a service level need a

designated manager may be needed to roster staff in lieu of a self roster system.

Rostering timeframes should be no shorter than giving 17 weeks advance notice. The length of notice should be agreed with staff.

Publishing of the rota in advance and before the end of the current rota should be standard in all on-call rota systems.

It is essential that the rota is published in good time to allow staff to plan and arrange their person lives and commitments so they can meet their roster slots.

Staff should have the option to change/swop their slots where possible to meet unexpected annual leave/personal needs.

An overview of the allocations of on-call rota slots should be undertaken by management.

- **Sickness/unplanned absence**

If a member of staff is unable to fulfil their rota slot because they are off sick then they should not be forced to do an extra slot on the rota to make up this up.

- **Back up rotas/Hit Lists**

Most organisations will have a back up rota that requires a member to be available when there is an unplanned absence on the rota or if there is need to call in an extra member of staff due to demand.

Parameters need to be set for the back up rota:

- There should be a fair allocation of expectation to be on the back up rota and it should be set in the on-call agreement.
- A standing by payment should be negotiated, especially if the member of staff on the back up rota will be expected to remain available for that rota period.
- What the expectations will be of the person on the back up rota i.e. will they be available to give advice to junior members of staff

- **Access to senior advice/managers for staff on the on-call rota**

It needs to be identified as part of the risk assessment how and if access to senior support or management support should be in place to support staff on the on-call call rota.

Section 5: Seven Day Working/extended working hours and On-call

With the introduction of seven day services, voluntary rotas and extended working days will impact on the timing, availability and operation of on-call rotas.

- **Working Time Directive**

The working time directive applies to staff who work on-call and the rostering of on-call should not breach these regulations.

The working arrangements of employees who are on-call or called to work comply with the Working Time Regulations and that compensatory rest is arranged where appropriate to comply with the daily and weekly rest provisions set out in the Regulations. The regulations includes the following:

- A limit of an average of 48 hours work a week over a 17-week period
- A daily rest period of 11 uninterrupted hours between each working day [See compensatory rest arrangements when this is not complied with]
- A weekly rest period of one whole day a week or 2 days a fortnight
- A rest break of at least 20 minutes for a working day of more than 6 hours

- **Working extended hours/days**

In some services where there is extended working there may be an overlap with on-call rotas. To ensure staff are given adequate rest breaks, staff working on extended days should not be rostered to work on-call on the same days, or be rostered as part of the back up on-call rota.

- **Monitoring the number of rotas a member of staff is on**

If a member of staff is on several rotas then their commitments should be reviewed as part of their 1-1 with their line manager so they do not find themselves facing an unfair number of weekend, extended hours and evening slots as well as expectation to cover on-call.

The advice outlined in the [Seven Day Working resource pack](#) should be considered. Attention should also be paid to flexible working. [The Building a Better Balance: Flexible Working Information pack](#) sets out what stewards can do to enable flexible working.

- **Risk Assessments**

On-call services need to be risk assessed for the following aspects:

- **Individuals risk assessment need to be completed.** For example health, age, pregnancy, temporary and long term conditions will all require the individual to be risk assessed for their ability to undertake on-call duties safely.
- **Environmental.** Managers should risk assess the environment that Physiotherapists will be working. It will be impossible to individually risk assess all the different locations individuals will be working on-call. But environmental risks such as lone working, night time travelling, exposure to pathogens and entry and exits into hospitals should be assessed and managed. The CSP has more information on [Lone working](#).
- **Safe Staffing Levels.** Risk assessment in terms of safer staffing levels for the on-call rota. There is no guidance or national minimum requirements set for on-call staffing rations. This depends on the risks of the service and how complex patients are, how often staff are being called in etc. However a risk assessment taking these and other service specific issues should be done.
- **Burn out.** There should be an assessment of what can be expected of existing staff in terms of providing cover for on-call without causing individual burnout, high levels of stress and team attrition. The Health and Safety Executive has some excellent information on workplace risk assessments, [available here](#).

Level of competency and Scope of practice for physio's on the on-call rota

A plan for ensuring the level of competency and maintenance of competency for the staff on the rota must be in place. Included in this should be an assessment of the scope that would be expected of physio's in the community covering on-call rotas for other staff e.g. nursing

<https://www.csp.org.uk/professional-clinical/professional-guidance/scope-practice>.

Section 6: Checklist for Negotiation

- Know what is negotiated nationally, organisation-wide or within local physiotherapy services
- Aim to achieve enhanced pay rates for all staff
- Aim to achieve a bank holiday premium
- Ensure a review date is set for reviewing rates of pay in line with newly agreed pay rates
- Any change or update to the on call systems, frequency and back-up systems should be consulted on with members
- Competency training should be carried out regularly for all staff on on-call rotas
- Individual members should have regular reviews of the number of rotas they are on
- On-call rotas and working hours should be compliant with the European Working Time Directive
- Does the locally negotiated on-call arrangements meet the Principles for Harmonised on-call Arrangements set out in Table 22 of Annex 29 of the NHS Terms and Conditions handbook
- Is there a clear policy in place for the administration of on-call arrangements that has been developed in partnership?