

Terms and Conditions of Service for NHS Doctors and Dentists in Training (England) 2016 – joint statement on the application of contractual protections during the pandemic

The COVID-19 pandemic, and the immense demands it is placing upon the NHS, represents an unprecedented challenge to this country. The past few weeks have already seen junior doctors alongside other healthcare workers across the country demonstrating extraordinary levels of commitment and willingness to go above and beyond usual expectations. To ensure that these efforts are sustainable in the weeks and months to come, it is of paramount importance that staff are not working in a manner that compromises their health or safety or that of their patients.

The Terms and Conditions of Service for NHS Doctors and Dentists in Training (England) 2016 (TCS) contain a range of safe working hours restrictions and rest requirements, designed to protect trainees from excessive fatigue and burnout. Where it is feasible to do so, these protections should continue to be applied as far as possible during the coming weeks and months spent facing the COVID-19 pandemic.

We do, however, recognise that during this current crisis it may not be realistic to maintain all of the contractual limits and that a more pragmatic approach will be necessary. NHS Employers and the BMA agree that when not possible to implement, relevant working hours restrictions and rest requirements in the TCS will be suspended and that the Working Time Regulations 1998 (WTR) will be the fallback position for the duration of the pandemic.

Initial flexibilities that we have identified for consideration can be found in the appendix below. This is not an exhaustive list and the application of any contractual variations will very much depend on local circumstances. It does however summarise some examples of acceptable first steps whilst maintaining much of the intended safeguards within the current TCS as a whole. Any rota that deviates from the existing contractual safeguards will nevertheless need to adhere to the Working Time Regulations, which set out the absolute minimum standards of safe working for trainees. Such variations should, wherever possible, be agreed in collaboration with the junior doctors affected.

During the exceptional operational challenges of the current pandemic, the health and wellbeing of staff remains a key consideration. In this regard, should an employer need to consider invoking regulation 21 of the WTR, they must first seek to engage with NHS Employers and the BMA (nationally) to discuss whether alternative options to this course of action have been fully considered.

We will be working with NHS England and NHS Improvement to identify 'hot spots' of intensity in the NHS during this crisis, to aid in coordinating measures to provide support and ensure that rotas remain safe for doctors and for patients, in what is undoubtedly the most challenging and pressurised time that our health service has seen since its inception.

Individual doctors may find themselves unable to work a particular rota, for a variety of reasons, or take on certain clinical responsibilities during the COVID-19 pandemic. These individual circumstances should be managed sensitively on a case-by-case basis to identify and address any potential barriers and ensure that they can contribute as they are able.

When a new or amended rota is implemented, less-than-full-time (LTFT) doctors must have their LTFT status protected, unless they agree otherwise. An LTFT trainee may voluntarily agree to increase their usual LTFT percentage temporarily or work additional shifts on an ad-hoc basis where this is more practicable or sustainable. Consideration needs to be given to trainees in category 1 and category 2 LTFT status as to how their hours can be distributed depending on personal circumstances or requirements. If an LTFT trainee is able to offer additional hours by increasing their proportion of full-time equivalent, this should be reflected in a new work schedule or equivalent mechanism, with revised pay arrangements. Where a doctor provides additional hours on an ad hoc basis, this should be paid on a bank locum basis. A decision by a trainee to offer to work additional hours to aid in the national response to the pandemic must not prejudice any application the doctor makes to work less than full time in future.

All new and amended rota patterns require a work schedule or equivalent mechanism for the purposes of correct hours and pay calculation, to ensure that there is appropriate remuneration for all work done. As specified in schedule 2 of the TCS, no individual should suffer financial detriment as a result of changes made to their working pattern that is outside their control.

These are unprecedented times, and all of those working in the NHS are likely to find that they are working harder and in circumstances more challenging than those they have faced before. We know that all staff involved will pull together to support each other. Rest and time to recover both during and between shifts is essential to enable the workforce to face these challenges to the very best of their ability. This guidance is designed to ensure that staff wellbeing remains paramount throughout this difficult period for us all, whilst recognising the need for flexibility and adaptation to an evolving situation.

NHS Employers is grateful for the commitment made by junior doctors and the BMA at this time and will take this into account when preparing for future negotiations once the COVID-19 pandemic is resolved.

This statement does not constitute a permanent contractual variation, and is intended to cover the current emergency situation.

This agreement will be subject to monthly review.

Either the BMA or NHS Employers may unilaterally withdraw from this agreement with one month's notice. Both the BMA and NHS Employers recognise that any such a withdrawal will only be used as a last resort after all reasonable alternatives have been explored. This will have the effect of terminating any agreed contractual changes at local level and reverting the contractual position to that in the TCS.

It is also agreed that any return to normal working arrangements will need to be carefully managed in order to minimise disruption to employers, trainees and care to patients.

	
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Appendix

During the outbreak, where an employer is unable to meet its obligations under the definitions of safe and appropriate levels of cover within the limits of the TCS, they might consider the following areas in discussion with trainees and, where possible, the guardian of safe working hours:

- Removing the limit on the frequency of weekend working, which is currently no more than one in two weekends.
- Up to five consecutive long shifts rostered, where upon conclusion of the fifth shift, 48 hours of rest must be provided.
- Up to eight consecutive days of work, where 48 hours of rest must be provided upon the conclusion of the shift on the eighth day.
- Five consecutive nights could be worked through a junior doctor choosing to undertake additional shifts on top of the normal maximum of four consecutive nights.
- Lifting the limit on consecutive non-resident on-call periods to allow two consecutive 24-hour duties, provided the following shift has no fixed clinical activity the morning after (i.e. theatre list or clinic) which can't be cancelled to allow compensatory rest if required.
- Increasing the maximum average weekly hours from 48 to 56, however, consideration must be given to doctors who may not for many reasons feel able to work to this intensity. As such, this should be a measure of last resort and implemented for only as long as it remains absolutely necessary.

As ever, trusts should continue to work in partnership with trainees and accredited trade union representatives when developing new patterns of working. Trusts should discuss proposed new patterns of work with affected trainees prior to implementation, and for doctors who cannot work to the new rota to be accommodated accordingly.