

# SCHEDULE 04

## WORK SCHEDULING

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### Principles

1. These terms and conditions of service provide a framework for the safety of doctors in the training and service delivery domains of the working experience.
2. The employer or host organisation shall design schedules of work that are safe for patients and safe for doctors, and shall ensure that work schedules are adhered to in the delivery of services.
3. Work scheduling for doctors allows employers to plan and deliver clinical services while delivering appropriate training.
4. Educational planning and clinical work scheduling are interlinked, reflecting the interdependence of training and service commitments of doctors. Where the doctor is on an integrated academic pathway, the academic components of the placement also need to be reflected in the work schedule, in accordance with Follett principles<sup>9</sup>.
5. The employer / host organisation will be responsible for ensuring that a generic work schedule is prepared for the post, which takes into account:
  - a. the expected service commitments, and
  - b. the parts of the relevant training curriculum that can be achieved in the post.  
This latter element must be consistent with the post's Application for Approval of a Training Post, which will be agreed with the postgraduate dean.
6. The generic work schedule will form the basis for a personalised work schedule.
7. A work schedule shall normally apply for the duration of a training placement, and will identify the number and distribution of hours for which the doctor is contracted.
8. A work schedule may be subject to review from time to time.
9. Work schedules should be designed to meet the service delivery needs of the organisation and the education and training needs of the doctor. The employer/host organisation should refer to jointly agreed national guidance on good rostering practice, including the appropriate use of technology, in designing the work schedule.

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<sup>9</sup> A Review of Appraisal, Disciplinary and Reporting Arrangements for Senior NHS and University Staff with Academic and Clinical Duties,  
<http://webarchive.nationalarchives.gov.uk/20060715145349/dfes.gov.uk/follettreview/>

## Generic work schedule

10. The generic work schedule must be provided to a doctor prior to starting a placement to ensure that the doctor is informed of the work and range of duties that are expected to be undertaken during the placement.
11. The generic work schedule will list and identify the intended learning outcomes (mapped to the educational curriculum), the scheduled duties of the doctor, time for quality improvement and patient safety activities, periods of formal study (other than study leave), and the number and distribution of hours for which the doctor is contracted.
12. A standard full-time generic work schedule shall be for a minimum of 40 hours and a maximum of 48 hours per week, averaged over a reference period defined as being the length of the rota cycle, the length of the placement or 26 weeks, whichever is the shorter. A less than full time generic work schedule shall not exceed 40 hours, averaged over this same reference period. When calculating the average total hours, the number of days' leave that would be taken by a doctor, on average, across the length of the rota cycle will be deducted from the rota and the remaining hours will be divided by the remaining weeks (including part-weeks) in the cycle. For example, in an eight-week cycle with six days' leave deducted, the total remaining hours would be divided by 6.8 weeks.
13. The generic work schedule will include a description of the hours to be worked, any shift working or on-call arrangements for any and all employers, including any service commitment to unscheduled urgent or emergency care, and will set out in general terms when and where the doctor's duties and responsibilities will be delivered.
14. The duties and responsibilities set out in the generic work schedule will include, as appropriate:
  - a. clinical care and service duties
  - b. specific training
  - c. work in or for other organisations (if required by the employer / host organisation).
15. Where the doctor is required to participate in a service commitment to unscheduled, urgent or emergency care, the work schedule shall set out the expected requirements to contribute to a duty roster and/or on-call rota for the safe provision of service. The work schedule may include duties throughout the 24-hour day and the seven-day week, including work on statutory and public holidays. This will include a prospective estimation of anticipated actual work (as defined in schedule 3 paragraph 34) during the on-call period, which will be defined as working time for the purposes of these TCS.

16. The work schedule for a doctor on a general practice training programme working in a general practice setting shall reflect the 2012 COGPED guidance<sup>10</sup> or any successor document on the session split during the average 40-hour week that comprise a minimum full-time contract. Any additional hours of work above 40 must be included in the doctor's work schedule and linked through to the curriculum, as per those for doctors in hospital settings.
17. The work schedule must be designed to facilitate access to the full leave allowance, as outlined in Schedule 9, as well as appropriate training.

## Personalised work schedule

18. The generic work schedule shall form the basis for a personalised work schedule which will be agreed between the educational supervisor and the doctor, in accordance with the *Gold Guide*<sup>11</sup> and/or other relevant documents, as amended from time to time. This will be agreed before or as soon as possible after the commencement of the placement.
19. The doctor and the educational supervisor are jointly responsible for personalising the work schedule, according to the doctor's learning needs and the opportunities within the post. Should a doctor have a significant caring responsibility, the doctor may raise it as part of the discussion of the personalised work schedule review. Where possible within the constraints of service delivery, adequate account should be taken of reasonable requests when agreeing the personalised work schedule.
20. The educational review with the educational supervisor will include a discussion of the work schedule to ensure that their workplace experience delivers the anticipated learning opportunities.
21. The employer may need to make changes to a work schedule during the placement if there are significant changes in the facilities, resources or services. Every effort should be made to anticipate such changes in the work schedule and reach agreement on such changes.

## Work schedule objectives

22. The generic work schedule shall describe the training opportunities and the service commitments required to achieve the objectives of the placement.
23. The personalised work schedule shall add to the generic schedule the doctor's personal objectives in:

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<sup>10</sup> Guide to a session for GP trainees and trainers, July 2012,  
<http://www.wessexdeanery.nhs.uk/pdf/BMAsessions.pdf>

<sup>11</sup> A Reference Guide for Postgraduate Specialty Training in the UK, The Gold Guide, Sixth Edition,  
<http://specialtytraining.hee.nhs.uk/files/2013/10/Gold-Guide-6th-Edition-February-2016.pdf>

- a. training (consistent with the education/training contract between the Deanery function and the doctor, and
  - b. service delivery, both to align the doctor's service commitments to the employer's objectives and to recognise not only that competencies can be achieved through service delivery but that some can only be achieved in this way.
24. The training objectives will set out a mutual understanding of the training needs of the doctor over the period of the work schedule, and of how, in working to achieve these objectives, the doctor will contribute to the objectives of the employer.
25. A doctor's individual objectives will depend in part on the specialty and the level of competencies achieved, and may on occasion differ from the objectives set out in the generic work schedule.

## **Setting and maintaining the work schedule**

26. The work schedule brings together activities to achieve service and learning objectives.
27. As a minimum, there should be an educational review and work schedule discussion at the start and finish of the placement for which the work schedule applies.
28. The personalised work schedule will be discussed and agreed at the first formal meeting between the educational supervisor for the placement and the doctor.
29. The doctor and educational supervisor will regularly consider progress against agreed learning objectives determined by the curriculum, and the doctor's service objectives.
30. Work schedule discussions should establish whether any changes in support or resources, or in planned service duties, are needed to enable the doctor to achieve the objectives within rostered working hours.
31. Discussions shall take place if either the employer or the doctor consider that the training opportunities, duties, responsibilities, accountability arrangements or objectives have changed significantly, or need to change significantly, or that the agreed objectives may not be achieved for reasons outside the doctor's control.

## **Resolving disagreements over the work schedule**

32. The educational supervisor will make every effort to agree with the doctor appropriate changes to the work schedule, and to implement the changes within a reasonable time, taking into account the remaining duration of the post/placement. If it is not possible to reach agreement or achieve the agreed outcome the doctor may invoke the provisions of Schedule 5.



# SCHEDULE 05

## EXCEPTION REPORTING AND WORK SCHEDULE REVIEWS

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### Purpose

1. The purpose of exception reports is to ensure prompt resolution and / or remedial action to ensure that safe working hours are maintained. The purpose of work schedule reviews is to ensure that a work schedule for a doctor remains fit for purpose, in circumstances where earlier discussions have failed to resolve concerns.

### Exception reporting

2. Exception reporting is the mechanism used by doctors to inform the employer when their day-to-day work varies significantly and/or regularly from the agreed work schedule. Primarily these variations will be:
  - a. differences in the total hours of work (including opportunities for rest breaks)
  - b. differences in the pattern of hours worked
  - c. differences in the educational opportunities and support available to the doctor, and/or
  - d. differences in the support available to the doctor during service commitments.
3. Exception reports allow the employer the opportunity to address issues as they arise, and to make timely adjustments to work schedules.
4. Exception reports should include:
  - a. the name, specialty and grade of the doctor involved
  - b. the identity of the educational supervisor
  - c. the dates, times and durations of exceptions
  - d. the nature of the variance from the work schedule, and
  - e. an outline of the steps the doctor has taken to resolve matters before escalation (if any).
5. The doctor will send exception reports electronically to the educational supervisor. This should be as soon as possible after the exception takes place, and in any event within 14 days (or 7 days when making a claim for additional pay, as per schedule 2 paragraph 62-68).
6. The doctor will copy the exception report to the director of medical education (DME) in relation to training issues, and to the guardian of safe working hours in relation to safe working practices. In some cases, the doctor may copy the report to both.
7. Upon receipt of an exception report, the educational supervisor will discuss with the doctor what action is necessary to address the reported variation or concern. The supervisor will set out the agreed outcome of the exception report, including any

agreed actions, in an electronic response to the doctor, copying the response to the DME or guardian of safe working hours as appropriately identified in paragraph 6 above.

8. The DME will review the outcome of the exception report to identify whether further improvements to the doctor's training experience are required.
9. The guardian of safe working hours will review the outcome of the exception report to identify whether further improvements to the doctor's working hours are required to ensure that the limits on working hours outlined in these TCS are being met.

## **Breaches incurring a financial penalty**

10. The guardian of safe working hours will review all exception reports copied to them by doctors to identify whether a breach has occurred which incurs a financial penalty, as set out in paragraphs 11-12 below.

11. Where such concerns are validated and shown to be correct in relation to:
  - a. a breach of the 48-hour average working week (across the reference period agreed for that placement in the work schedule); or
  - b. a breach of the maximum 72-hour limit in any seven days; or
  - c. that the minimum 11 hours' rest requirement between shifts has been reduced to fewer than eight hours

The doctor will be paid for the additional hours at the penalty rates set out in Schedule 2, paragraph 68 of these TCS, and the guardian of safe working hours will levy a fine on the department employing the doctor for those additional hours worked, at the rates set out in Schedule 2, paragraph 68 of these TCS.

12. Where a concern is raised that breaks have been missed on at least 25% of occasions across a four week reference period, and the concern is validated and shown to be correct, the guardian of safe working hours will levy a fine at the rate of twice the relevant hourly rate for the time in which the break was not taken.
13. Additionally, to ensure that no further breaches occur, a work schedule review may be required as set out below.

## **Disbursement of fines**

14. The money raised through fines must be used to benefit the education, training and working environment of trainees. The guardian of safe working hours should devise the allocation of funds in collaboration with the employer/host organisation junior doctors' forum, or equivalent. These funds must not be used to supplement the facilities, study leave, IT provision and other resources that are defined by HEE as fundamental requirements for doctors in training and which should be provided by the employer/host organisation as standard.

15. The details of the guardian fines will be published in the organisation's annual financial report (accounts), which are subject to independent audit. The guardian's annual report will include clear detail on how the money has been spent.

## **Immediate safety concerns**

16. Where an exception report indicates concern that there is an immediate and substantive risk to the safety of patients or of the doctor making the report, this should be raised immediately (orally) by the doctor with the clinician responsible for the service in which the risk is thought to be present (typically, this would be the head of service or the consultant on-call). The doctor must confirm such reports electronically to the educational supervisor (via an exception report) within 24 hours.
17. The employer has a duty to respond as follows:
  - a. Where the clinician receiving the report considers that there are serious concerns and agrees that there is an immediate risk to patient and/or doctor safety, the consultant on call shall, where appropriate, grant the doctor immediate time off from their agreed work schedule and/or (depending on the nature of the reported variation) ensure the immediate provision of support to the doctor. The clinician shall notify the educational supervisor and the guardian of safe working hours within 24 hours. The educational supervisor will undertake an immediate work schedule review, and will ensure appropriate (and where necessary, ongoing) remedial action is taken.
  - b. Where the clinician receiving the report considers that there are serious but not immediate concerns, the clinician shall ask the doctor to submit an exception report to the educational supervisor, describing the concern raised and requesting a work schedule review.
  - c. Where the clinician receiving the report considers that the single concern raised is significant but not serious, or understands that there are persistent or regular similar concerns being raised, the clinician shall ask the doctor to raise an exception report to the educational supervisor within 48 hours.

## **Work schedule review process**

18. Where a doctor, an educational supervisor, a manager, or the guardian of safe working hours has requested a work schedule review, the process set out in paragraphs 19-33 below will apply.
19. The educational supervisor shall meet or correspond with the doctor as soon as is practicable, ideally no later than seven working days after receipt of a written request for a review. Where this is in response to a serious concern that there was an immediate risk to patient and/or doctor safety as described in paragraphs 16-17 above, this must be followed up within seven working days.

20. The conversation between the doctor and the educational supervisor will lead to one or more of the following outcomes:
- a. No change to the work schedule is required.
  - b. Prospective documented changes are made to the work schedule.
  - c. Compensation or time off in lieu is required.
  - d. Organisational changes, such as a review of the timing of ward rounds, handovers and clinics, are needed.
21. Organisational changes may take a reasonable time to be enacted. Where this is the case, temporary alternative arrangements, including amendments to pay, may be necessary.
22. The outcome of the conversation will be communicated in writing.
23. If dissatisfied with the outcome, the doctor may formally request a level 2 work review within 14 days of notification of the decision. The request must set out the areas of disagreement about the work schedule, and the outcome that the doctor is seeking.
24. A level 2 review discussion shall take place no more than 21 working days after receipt of the doctor's formal written request. A level 2 review requires a meeting between the educational supervisor, the doctor, a service representative and a nominee either of the director of postgraduate medical education (where the request pertains to training concerns) or of the guardian of safe working hours (where the request pertains to safe working concerns). Where the doctor is on an integrated academic training pathway, the academic supervisor should also be involved.
25. The discussion will first consider the outcome of the level 1 conversation and will result in one or more of the following outcomes:
- a. The level 1 outcome is upheld.
  - b. Compensation or time off in lieu is required.
  - c. No change to the work schedule is required.
  - d. Prospective documented changes are made to the work schedule.
  - e. Organisational changes, such as a review of the timing of ward rounds, handovers and clinics, are needed.
26. The outcome shall be communicated in writing.
27. If dissatisfied with the outcome, the doctor may request a final stage work review within 14 days of notification of the decision. The request must set out the areas of disagreement about the work schedule, and the outcome that the doctor is seeking.
28. The final stage for a work schedule review is a formal hearing under the final stage of the employer's local grievance procedure, with the proviso that the DME or

nominated deputy must be present as a member of the panel.

29. This shall take place in accordance with the ACAS Code of Practice on Discipline and Grievance in the workplace, and the hearing will take place within the timeframe specified in the local grievance procedure.
30. Where the doctor is appealing a decision previously taken by the guardian of safe working hours, the hearing panel will include a representative from the BMA or other recognised trade union nominated from outside the employer/host organisation, and provided by the trade union within one calendar month.
31. The panel hearing will result in one or more of the following outcomes:
  - a. The level 2 outcome is upheld.
  - b. Compensation or time off in lieu is required.
  - c. No change to the work schedule is required.
  - d. Prospective documented changes are made to the work schedule.
  - e. Organisational changes, such as a review of the timing of ward rounds, handovers and clinics, are needed.
32. The outcome shall be communicated in writing and a copy provided to the guardian of safe working hours.
33. The decision of the panel shall be final.
34. Where at any point in the process of a work schedule review, either the doctor or the reviewer identifies issues or concerns that may affect more than one doctor working on a particular rota, it may be appropriate to review other schedules forming part of that rota. In this case, such reviews should be carried out jointly with all affected doctors and, where appropriate, changes may be agreed to the working pattern for all affected doctors working on that rota, following the same processes as described in paragraphs 18-33 above.

## **Reporting**

35. The guardian of safe working hours shall report no less than once per quarter to the Board on all work schedule reviews relating to safe working hours. This report will also include data on all rota gaps on all shifts. The report will also be provided to the LNC, or equivalent.
36. The guardian of safe working hours is also responsible for the reporting arrangements identified in Schedule 6, paragraphs 11-12 of these terms and conditions.
37. The DME shall report annually to the Board on all work schedule reviews relating to education and training.

38. The Board is responsible for providing a copy of these annual reports to external bodies as defined in these terms and conditions, including the local offices of Health Education England, the Care Quality Commission, the General Medical Council and the General Dental Council.
  
39. Employers must retain copies of all reviews for a period of two years from the date that an outcome is reached. Where remuneration is approved as part of this process, records shall be retained in line with the organisation's Standing Financial Instructions.

## **SCHEDULE 06**

### **GUARDIAN OF SAFE WORKING HOURS**

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1. The safety of patients is a paramount concern for the NHS. Significant staff fatigue is a hazard both to patients and to the staff themselves. The safeguards around doctors' working hours in these terms and conditions are designed to ensure that this risk is effectively mitigated and that this mitigation is assured.
2. There are three functions which oversee the safety of doctors in the training and service delivery domains of their working experience:
  - a. The employer or host organisation designs schedules of work that are safe for patients and safe for doctors, and ensures that work schedules are adhered to in the delivery of services.
  - b. The director of medical education (DME) oversees the quality of the educational experience.
  - c. The guardian of safe working hours (hereafter referred to as the guardian) provides assurance to the employer, and host organisation if appropriate, on compliance with safe working hours by the employer and the doctor.
3. Doctors are also responsible for ensuring that both their pattern of work and their total hours of work, including any and all work undertaken for any employer, whether directly or indirectly (for example through an agency or limited company), comply with the limits set out in schedule 3, and that they remain safe to carry out clinical duties.

### **The role of the guardian of safe working hours**

4. The guardian is a senior appointment and the appointee will not hold any other role within the management structure of the employer / host organisation. The guardian shall ensure that issues of compliance with safe working hours are addressed by the doctor and/or employer/host organisation, as appropriate. The guardian shall provide assurance to the Board that doctors' working hours are safe. (This assurance is in addition to the provisions and safeguards as set out in schedules 3, 4 and 5).

### **Appointment of the role of guardian of safe working hours**

5. The employer and/or host organisation must appoint a guardian of safe working hours to assure the safety of doctors. Appointment would normally be for a minimum of three years, subject to annual performance review.
6. Where a lead employer arrangement exists, the guardian role will be established in host employers, and the arrangements made clear in the memorandum of understanding between the lead and host organisations. The host guardian shall ensure information is available to the host organisation board, and the lead employer guardian must see guardian reports for all of the doctors under their employment.

7. Where lead employer arrangements exist for GP trainees, the lead employer is responsible for appointing the guardian, who must either be familiar with the issues faced by GPs working in a practice setting or have access to support and advice on such issues. Where lead employer arrangements are not in place and GP trainees are directly employed by practices, the responsibility for appointing the independent guardian rests with the employing practices. Employing practices with fewer than 10 GP trainees must either (a) jointly appoint an independent guardian with another similar employer or employers with fewer than 10 GP trainees such that an appointed guardian has responsibility for a minimum of ten trainees or (b) must enter into a contract with a neighbouring trust or foundation trust to provide the guardian function for the employer.
8. Other non-hospital employers with fewer than 10 trainees (this could include but is not limited to public health, occupational health medicine and palliative care) must contract with the guardian of safe working at a neighbouring NHS trust to oversee the safe working of their trainees.
9. The following principles shall be taken into account in appointing to the role:
  - a) It is the employer's responsibility to appoint the guardian.
  - b) The appointment panel for the guardian shall include the medical director or a nominated deputy, the director of HR/workforce or a nominated deputy, and two doctors in training, nominated by the local negotiating committee (LNC) or equivalent. At least one and if at all possible both of the doctors in training must be based in the appointing employer (or host organisation, if appropriate).
  - c) The panel should reach consensus on the appointment.
  - d) The recruitment process for the appointment of the guardian should otherwise follow local recruitment processes.
  - e) The employer (and/or host organisation, if appropriate) will have discretion to set the guardian's time commitment, taking into consideration the number of rotas and the number of doctors in training for whom the guardian will have responsibility.
  - f) Employers / host organisations can choose to act collaboratively to make and share the appointment across a number of employers.

## **Responsibilities of guardian of safe working hours**

10. The guardian shall:
  - a. act as the champion of safe working hours for doctors in approved training programmes
  - b. provide assurance to doctors and employers that doctors are safely rostered and enabled to work hours that are safe and in compliance with Schedules 3, 4 and 5 of these terms and conditions of service
  - c. receive copies of all exception reports in respect of safe working hours. This will allow the guardian to record and monitor compliance with the terms and conditions of service

- d. escalate issues in relation to working hours, raised in exception reports, to the relevant executive director, or equivalent, for decision and action, where these have not been addressed at departmental level
- e. require intervention to mitigate any identified risk to doctor or patient safety in a timescale commensurate with the severity of the risk
- f. require a work schedule review to be undertaken, where there are regular or persistent breaches in safe working hours, which have not been addressed
- g. have the authority to intervene in any instance where the guardian considers the safety of patients and/or doctors is compromised, or that issues are not being resolved satisfactorily; and
- h. distribute monies received as a consequence of financial penalties to improve the training and service experience of doctors.

## Reporting

11. The guardian reports to the Board of the employer (and host organisation, if appropriate), directly or through a committee of the Board, as follows:
  - a. The Board must receive a *Guardian of Safe Working Report* no less than once per quarter. This report shall also be provided to the LNC, or equivalent. It will include data on all rota gaps on all shifts.
  - b. A consolidated annual report on rota gaps and the plan for improvement to reduce these gaps shall be included in a statement in the Trust's Quality Account, which must be signed off by the trust chief executive. This report shall also be provided to the LNC, or equivalent.
  - c. Where the guardian has escalated a serious issue in line with paragraph 10(d) above and the issue remains unresolved, the guardian must submit an exceptional report to the next meeting of the Board.
  - d. The Board is responsible for providing annual reports to external bodies as defined in these terms and conditions, including Health Education England (Local office), Care Quality Commission, General Medical Council and General Dental Council.
  
12. There may be circumstances where the guardian identifies that certain posts have issues that cannot be remedied locally, and require a system-wide solution. Where such issues are identified, the guardian shall inform the Board. The Board will raise the system-wide issue with partner organisations (e.g. Health Education England, NHS England, NHS Improvement) to find a solution.

## Liaison with doctors

13. Each Guardian and Director of Medical Education shall jointly establish a Junior Doctors Forum (or fora) to advise them. This shall include junior doctor colleagues from the organisation and must include the relevant junior doctor representatives from the LNC (or equivalent) as well as the Chair of the LNC. Doctors on the fora will be elected from amongst the trainees. Where the guardian for safe working covers specialties that are small or have specific employment requirements, the fora shall

include representatives of these groups. The group shall also include relevant educational and HR colleagues as agreed with the group. The junior doctors forum or a sub-group it establishes will take part in the scrutiny of the distribution of income drawn from fines.

## **Accountability**

14. The guardian is accountable to the Board.
15. The line management arrangements for the guardian are for local determination but this reporting line should be to the appropriate executive director or equivalent, who will contribute to the annual appraisal of the guardian, in line with appraisal policy, to support medical revalidation.
16. There will be a system of performance management which will include the opportunity for representatives of the doctors in training to contribute to the assessment, for example, through a system of 360° appraisal. Where there are concerns regarding the performance of the guardian, the BMA or other recognised trade union, or the Junior Doctors Forum should raise those concerns with the Trust Medical Director or the relevant director with responsibility for managing the guardian. These concerns can be escalated to the senior independent director on the Board of Directors where they are not properly addressed or resolved.