

# Guardian fines factsheet

## Introduction and principles

While it is important that guardians understand when fines will apply, how much they amount to, how to levy them and how to use any money generated, the most important thing to remember is that fines should rarely, if ever, be applied at all. The BMA negotiators agreed during the Acas process that fines should never happen if the system of work scheduling and exception reporting is working correctly.

The whole point of the exception reporting system is to allow employers to address issues and concerns as they arise, in real time, and to keep doctors' working hours, both rostered and actual, within safe working limits. In anything other than truly exceptional circumstances, the levying of a fine indicates that the system has failed and that someone has failed to discharge his or her responsibilities appropriately.

Any levying of a fine should therefore be followed by an investigation into why it was necessary, and remedial action to ensure that it does not happen again.

## How is the payment to the doctor calculated when there has been a guardian fine?

As above, it is important to note that guardian fines should not occur if work schedules reflect the reality of the post, and any exception reports are dealt with appropriately as they arise.

Where the guardian of safe working hours levies a fine for a breach of the 48 hour average week, a breach of the maximum 72 hour week, or where the 11 hour rest requirement has been reduced to fewer than 8 hours, the terms and conditions of service (TCS) say that the doctor will be paid for the additional hours at penalty rates. It is important to note that where a guardian fine is levied for missing breaks, the doctor receives no additional payment, as they are already paid for breaks.

The first thing that will need to be determined is the number of additional hours that breached the TCS limits, and whether these hours occurred at normal time, or time plus 37 per cent for 'night' hours.

Where the 48 hour limit is breached, the hours that cause the breach will be the final hours worked in the cycle that take the average hours over 48. This is because, right up until this time, average hours could have been brought below 48 by giving time off in lieu. The same logic applies to where the maximum 72 hour limit in 7 days is breached, the breach hours would be the final hours in those 7 days that take hours over 72, because up until that point time off in lieu could have been given to rectify the issue. Where the 11 hours rest requirement is reduced to fewer than 8 hours, the breach hours should be clear.

Once the breached additional hours are known (and the time these hours took place), the payment to the doctor can be calculated. The TCS state that the doctor will be paid at the penalty rate, so if the doctor has already been paid for these hours at the normal rate, then an additional payment will have to be made to the doctor to uplift the normal rate to the penalty rate.

#### Example

The guardian levies a fine because a doctor has worked 73 hours in 7 days, breaching the 72 hour limit by 1 hour. The breach took place on a Monday afternoon following additional hours worked that tripped the total hours that week over the limit.

Giving time off in lieu when the doctor initially sent in exception reports earlier in the week for working additional hours would have prevented the doctor from working more than 72 hours, but on this occasion this has not happened. The guardian will want to investigate why this was the case.

The doctor is on nodal point 4, so they are paid their hourly rate for the additional hours worked. This includes payment for the 73<sup>rd</sup> hour at their normal hourly rate - £21.93.

However the TCS says that the doctor should be paid at the penalty rate for this 1 hour, as it is a breach. The pay circular identifies the penalty amount at nodal point 4 for this breach as £40.16.

Therefore, the doctor will need to be paid an additional £18.23 (£40.16 - £21.93) in order to uplift what they are paid for the breached hour to the penalty rate.

Of course, if the doctor hadn't already been paid for the additional hours worked, then the hours up to 72 could have been paid at the normal rate, and the 1 breach hour paid at the penalty rate, without having to calculate what uplift was needed.

### Distribution of guardian fines

It is important to remember that a proportion of the overall fine (or in the case of breaks, 100 per cent of any fine) is paid to the guardian of safe working hours, as specified in the TCS. The TCS also specify how the guardian should distribute any income from fines, and what such monies may be spent on. Any income from guardian fines should be nominal in value, and ideally will not exist at all.

#### Example

Using the earlier example, there is a 1 hour breach which took place during the day, by a doctor on nodal point 4. The Pay and Conditions Circular identifies that the penalty rate paid to the doctor is £40.16. It also identifies that the guardian fine amount is **£47.58**.

Where a guardian fine is levied for breaks, there is no split of money between the doctor and the guardian, the guardian receives all of the money. The TCS specify that the fine for missing breaks should be “twice the relevant hourly rate for the time in which the break was not taken”.

In order to assess if a fine for missed breaks needs to be levied, all of the exception reports confirming a break has been missed would need to be looked at over a four week reference period. You would need to know the total number of breaks in that period, and what percentage have been missed. If at least 25 per cent of breaks have been missed, the guardian may levy a fine for each break missed.

This fine for each break missed would equal the hourly rate at the time of the break (for instance either the hourly rate or the hourly rate plus 37 per cent) x 2.

The total fine figure is all of the fines from all of the missed breaks added together.

### Example

Over the four week reference period there are 20 breaks in total in a doctors work schedule. Over the four week period, exception reports show that six breaks were missed, or 30 per cent of breaks. Therefore a guardian fine will apply. Note that if breaks are missed less than 25 per cent of the time, no fine applies. It may be advisable to look into issues meaning breaks are consistently missed even if they do not reach the 25 per cent threshold.

In this example, three of the missed breaks took place during the day, and 3 at night. The fine for each break is the hourly rate x 2. If the doctor was on nodal point 4, this would be  $£21.93 \times 2 = £43.86$  for the breaks missed during the day, and  $£30.04 \times 2 = £60.08$  for the breaks missed at night.

The total fine to the guardian will therefore be  $(£43.86 \times 3) + (£60.08 \times 3) = £311.82$ .

The learning and development agreement (LDA) between your organisation and the local office of Health Education England (HEE) will specify the fundamental requirements for doctors in training your organisation should provide. Guardian fines should not be spent on anything which HEE defines in the LDA between themselves and the training organisation. Monies may be spent on things which may supplement or improve existing provisions, but it cannot be spent on providing what is specified as a fundamental requirement in the LDA.