Good Practice Monitoring Guidance

1 Mutual obligation to monitor hours

1.1 It is recognised that employers have an obligation to ensure compliance with the contractual Terms and Conditions of Service (TCS) of Doctors in Training (referred to as the New Deal) and with the requirements of the European Working Time Directive (EWTD), as implemented in the UK Working Time Regulations 1998 (and subsequent amendments). This agreement has been reached in order to provide an equitable, transparent and effective process for the establishment of rotas and the monitoring of junior doctors hours, which has the confidence of junior doctors.

1.2 Employers are contractually obliged to monitor junior doctors' New Deal compliance and the application of the banding system, through local monitoring arrangements supported by national guidance.

1.3 Junior doctors are contractually obliged to co-operate with these monitoring arrangements. Persistent failure by junior doctors to comply with monitoring arrangements represents a breach of contract and may result in disciplinary action.

1.4 It is good practice for the employer to identify a nominated lead with responsibility for a particular rota and at least one rota representative from amongst the junior doctors.

1.5 The employer will consult and involve the rota representative in all aspects of the management and monitoring of that particular rota and where necessary identify training and time needed for the representatives to contribute effectively. The employer retains responsibility for the overall management and staffing of rotas.

1.6 For on-going monitoring, formal monitoring should occur at a minimum of twice a year. Non typical periods should be avoided wherever possible: e.g. change of post holders, public holidays, examination periods, etc. The monitoring period will normally be two weeks' duration but in some cases a longer monitoring period may be required, such as where there is a complex rota pattern, a small number of doctors on the rota such that a shorter period would not be representative, or previous dispute over whether monitoring was representative.

1.7 Monitoring at 12 monthly intervals may be considered in circumstances where all parties agree:

- Posts have been shown to be consistently and clearly compliant with the New Deal.
- The rota and therefore pay banding is unlikely to change within the next 12 months.
- The pay band has been shown to be stable over at least two consecutive periods of valid, monitoring within the last 12 months.
In such circumstances the junior doctors must be informed in writing. This does not preclude the right for juniors or employers to request subsequent monitoring within the 12 month period.

1.8 Where a new rota/change of banding has been introduced monitoring should take place within six weeks of the date of implementation.

1.9 Junior doctors or the employer may request monitoring at any time, and certainly if a dispute should arise. This should be put in writing by the junior doctors and the employer should not unduly delay in getting this organised.

1.10 There should be clear details of a named contact within the Workforce & Organisational Development Department (or equivalent) who is responsible for junior doctor monitoring.

2 Prior to monitoring taking place

2.1 Junior doctors should be notified at least two weeks in advance of the agreed monitoring period.

2.2 Best practice would be a meeting between the members of staff responsible for carrying out the monitoring, the nominated lead with responsibility for the rota and the junior doctors. If requested by junior doctors, a trade union representative (including accredited junior doctor representatives) may be present if appropriate. This meeting should be held at a suitable time so that as many junior doctors as possible can attend and the rota representative should also be present and in order to:

• provide clear guidance/directions on what information is required for effective monitoring
• advise how annual/study/sick leave are to be provided for in the monitoring
• clarify that the rota to be used as the template is the actual rota being worked by the juniors
• outline the importance of accurate monitoring
• provide an opportunity for questions to be asked about the process

2.3 The employer should ensure that the correct contact details are available for the junior doctors who will be taking part in monitoring.

2.4 Junior doctors should be reminded that monitoring is a contractual requirement and it is advised that they may want keep records of their own activity during a monitoring period for their own reference.

3 During monitoring

3.1 Data should be collected by the employer from all doctors in training, including less than full time trainees and locum doctors in training, during the whole monitoring period. Other non-training doctors will be covered by their own TCS and do not need to be monitored under these arrangements for doctors in training, although they may be encouraged to monitor, where appropriate, to give a fuller picture of the rota. It should be recorded if non-training grade
doctors are working on the same rotas as junior doctors to aid monitoring analysis.

3.2 All hours should be recorded using the agreed system. Data input should preferably be done contemporaneously during the duty period worked or shortly after. All monitoring data should be logged on to the Junior Doctor Portal no later than three days after the last day of the monitoring period. Any difficulties should be notified to medical personnel, or the relevant department, and looked at on an individual basis.

3.3 Monitoring should look at normal working patterns. There should not be any arrangements specific for the monitoring period that are different to the rest of the year.

3.4 There should be no additional requirement for junior doctors to have excess hours worked signed off during a monitoring period unless specifically agreed on a local basis. Detailed explanations of why any work was undertaken above the contracted period should still be noted as part of the monitoring return within the Junior Doctor Portal.

3.5 Any difficulties during a monitoring period should be brought to the attention of the named contact within the Workforce & Organisational Development Department (or equivalent) who is responsible for junior doctor monitoring.

4 Analysis of monitoring

4.1 The minimum return rate is 75% of all doctors in training in each rota or shift (irrespective of grade) participating in the monitoring round, and 75% of all duty periods worked over the monitoring period, provided this is deemed to be a representative figure in both cases. This threshold is important for making a valid and accurate assessment of hours worked and rest attained. Junior doctors need to have clear guidance on how this can be achieved. See paragraph 2.2 for clarification.

4.2 If a monitoring period is considered to be invalid by the employer the junior doctors should be informed via the Junior Doctor Portal.

4.3 If the return rate(s) has not reached 75% then further monitoring should take place within six weeks. This will provide sufficient opportunity for the junior doctors to be informed that a further monitoring exercise will take place. The reasons why monitoring was deemed to be invalid should be looked at so that they can be addressed in the next set of monitoring.

4.4 The processing of data should take place immediately after the monitoring exercise allowing adequate time to chase up "non returns" via the Junior Doctor Portal or follow up individual queries. The employer will then publish a summary report within 15 working days of receipt of an adequate sample of monitoring data. This should be published regardless of the return rate(s), even if this is less than 75%.
4.5 Junior Doctors should not be asked to alter data inputs once submitted to make rota\ns appear compliant or for any other purpose, unless a genuine mistake has been made.

4.6 Employers should not alter data inputs once submitted to make rota\ns appear compliant or for any other purpose unless specifically agreed between the junior doctor and the employer.

4.7 Junior doctors may be asked to provide further information to help clarify monitoring data which appears to be completed incorrectly or contain anomalous information.

4.8 If a junior doctor is on annual or study leave for part of the monitoring period this needs to be recorded on the Junior Doctor Portal. If the junior doctor is absent throughout the whole monitoring period then this needs to be recorded rather than listed as a non-return.

5 Feedback and dispute resolution

5.1 The banding of each rota and any monitoring results should be available on the employer's intranet, where possible, to allow junior doctors to access this information at any time and in an open, timely and transparent manner. Appropriate system should be put in place to ensure that junior doctors are made aware if this.

5.2 Further monitoring may be requested by the employer or junior doctors at any time and must normally be undertaken no later than 4-6 weeks of such a request being made. Re-monitoring may arise where, for example:-

- An individual doctor can evidence that their working practices during the monitoring period were not reflective of their normal working practices outside of the monitoring period
- From an employers perspective where the results unexpectedly vary substantially from the anticipated outcome
- Following a major organisational change
- In cases of contractual dispute.

Re-monitoring should usually involve the same set of doctors.

5.3 In the event of monitoring being declared invalid, the Local Negotiating Committee (LNC) chair and the junior doctor rota representative should be given detailed information regarding why this is. Further detailed information should be provided by the named contact within the Workforce & Organisational Development Department (or equivalent), on request.

5.4 If, after two formal attempts, a valid monitoring period has not been achieved then the employer may be able to determine what it regards as the correct pay band on the basis of available information and re-monitor as part of the regular monitoring cycle and usually within six months. A detailed review of the reasons why consecutive monitoring has failed to achieve validity should also be completed and details fed back to juniors and the LNC.

5.5 Junior doctors' hours, monitoring and banding should be a standing item on the agenda for all meetings of the LNC with management and will include reviewing any monitoring data.
5.6 A Working Time Regulations and New Deal Compliance Report should be produced at least every six months and should feature on the agenda of the LNC meetings with management immediately following such publication. If monitoring is not completed for any reason that fact and the explanation should also be reported to LNC.

6. Appeals

A banding appeal is a formal process under the TCS (paragraph 22I) for use where there is dispute between the junior doctors and their employer over the correct band of a rota (theoretical and/or monitored). An appeal should only be convened if informal discussions between the junior doctors, (their representatives), the employer and the Welsh Government have not resolved the issue to the satisfaction of either the junior doctors or the employer.

Usually but not exclusively these disputes fall into the following categories: Monitoring data, theoretical compliance and pay protection issues.

As a general rule the management of appeals will be contained within the employing authority.

Process once an appeal has formally been requested

Under the TCS, an appeal must be convened as soon as possible and preferable whilst the doctors concerned are still in post. It is the responsibility of the employer to convene the appeal and to run the process fairly and transparently.

Membership of the panel

The TCS lists the five members of the appeal panel:

- two representatives of the employing authority nominated by the chief executive of the employing authority (one of whom shall chair the panel);
- a representative from the StR, SpR, SHO or FHO (or equivalent) grades from the same employing authority conversant with the working arrangement applicable to the case;
- a representative from the regional list supplied by the relevant BMA Junior Doctors Committee;
- an independent external assessor nominated by the Welsh Government.

It is the employer’s responsibility to nominate two representatives, the BMA’s responsibility to supply a JDC representative and the Welsh Government’ to nominate an independent external assessor.

(Where the junior doctors have involved the BMA, local BMA staff will contact the relevant Junior Doctors Committee to nominate a representative for the panel. In cases where the BMA is not involved, the employer should contact the relevant JDC office to nominate the representative).
The local junior doctor representative should be appointed by mutual agreement between the parties.

Documentation
Both parties should have adequate time to prepare statements of case which set out their supporting arguments. These should be exchanged at the same time and circulated to all panel members at least 10 working days before the date of the appeal panel.

Duration of appeal hearing
A minimum of four hours should be set aside for the whole process, though employers should allow a whole day if the case is particularly complex.

Status of previous appeal decisions
Individual appeal outcomes do not set legal precedent and the panel must assess each case on its particular merits.

What Decisions can the appeals panel make?

The TCS allows for the appeal panel to make one of the following decisions:

- to confirm the junior doctors’ position and recommend reimbursement of salary backdated to the date of the disputed re-banding
- to confirm the employer’s position
- to replace either position with a new decision which, in the opinion of the appeals panel, is in strict accordance with the TCS?

The panel should strive to make a decision on the day based on the information presented to them and on the TCS.

Follow up to appeals panels
Both sides must abide by the decision of the appeals panel. Where this decision finds in favour of the junior doctors, back payment of salary shall take place within one calendar month following the appeals panel date. Where the panel finds in favour of the employer, full repayment shall be sought of any overpayment of salary under such policies as are already in place with the employer or as shall be agreed between the parties in the absence of an explicit policy, by a date to be agreed within one calendar month of the panel's decision.