Guardian of safe working and exception reporting FAQs

The 2016 contract came into effect on 3 August 2016. The 2016 contract will start to be introduced in England for GP trainees and trainees in hospital posts approved for postgraduate medical/dental education in line with a phased implementation timetable from October 2016.

This web page will feature the most frequently asked questions about the role of the guardian of safe working and the exception reporting process and will be updated regularly.

Q1. What safeguards does the contract offer to ensure that doctors are working in line with their work schedule?

The system of exception reporting outlined in the 2016 contract will ensure that departures from planned working hours, working pattern or access to planned training opportunities are recorded. Work schedule reviews should take place where this happens consistently and can be requested by the employer or the doctor.

The role of the guardian of safe working hours is designed to reassure junior doctors and employers that rotas and working conditions are safe for doctors and patients. Employers will need to ensure that the guardian of safe working hours role is appointed jointly with junior doctors, and in line with a national person specification before 3 August 2016. Where this has not been possible, the employer must ensure interim arrangements are in place until such time as the guardian takes up office.

The guardian will oversee the work schedule review process and will seek to address concerns relating to hours worked and access to training opportunities. They will support safe care for patients through protection and prevention measures to stop doctors working excessive hours and will have the power to levy financial penalties where safe working hours are breached.

Fines will be levied when working hours breach one or more of the following provisions:
a) The 48 hour average weekly working limit
b) Contractual limit on maximum of 72 hours worked within any consecutive 7-day period
c) Minimum 11-hour rest has been reduced to less than 8 hours
d) Where meal breaks are missed on more than 25 per cent of occasions.

Where the guardian can validate such exception reports, penalties will be levied against the department where the doctor works; the fine will be set at four times the basic or enhanced rate of pay applicable at the time of the breach. The doctor will receive 1.5 times the applicable locum rate, the guardian will retain the remainder of the penalty amount.

The guardian will convene a junior doctors' forum at regular intervals to provide advice on the role and to scrutinise the disbursement of penalty fines. The guardian will provide regular and timely reports on the safety of doctors' working hours, rota gaps and annually on improvement plans to resolve rota gaps to the trust board. This information will be incorporated into the trust's quality account and made available to the Local Negotiating Committee (LNC), Care Quality Commission (CQC), Health Education England (HEE), General Medical Council (GMC) and the General Dental Council (GDC). The doctors and dentists review body may also ask for annual reports on the outcome of work schedule reviews.

Q2. How will exception reporting work and how quickly will issues be resolved?

The process for reviewing work schedules based on exception reports is designed to be more agile and reactive than the old contract system of hours monitoring and banding appeals. Employers will need to have an electronic system in place to manage exception reports by October 2016 when the first doctors transition to the 2016 contract. Existing rota software providers are working to create such a system for their customers.

Doctors should report exceptions where day-to-day work varies from that set out in the work schedule either in hours of work (including rest breaks) or the agreed working pattern, including the educational opportunities made available. Reports should be submitted, and copied to the guardian of safe working hours, as soon as possible, and in any case within 14 days (7 days if payment is requested and within 24 hours where there are immediate safety concerns).

Upon receipt of an exception report, the educational supervisor will discuss with the doctor what action is necessary to address the exception and to ensure that it remains an exception. Where exceptions become more regular or frequent, a work schedule review will usually be required.

The process is designed to address issues as they arise within a training programme, so that any subsequent changes put in place as a result of discussion or more formal review can benefit the doctor in post as well as doctors moving into that placement in the future.

Employers should agree local policies or processes for exception reporting that provide a local framework and process for the submission and review of exception reports.

Q3. What process should we follow for the appointment of the guardian of safe working hours? UPDATED August 2016

The following principles should be taken into account in appointing to the role:

- It is the employer's responsibility to appoint the guardian.
- The appointment panel for the guardian should comprise 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). In exceptional circumstances, where an employer deems it desirable that additional panel members are involved in the interview and decision to appoint, then this should be discussed and agreed with the LNC.
- The panel must reach consensus on the appointment.
- The recruitment process for the appointment of the guardian should otherwise follow local recruitment processes.
- The employer (and/or host organisation, if appropriate) will have discretion to set and allocate 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. Such allocations should be sensible, appropriate, realistic and in keeping with normal job planning guidelines for managerial appointments. In most circumstances, one would expect the time allocation to be similar to that allocated to clinical/service line lead roles in the same organisation, although this might be increased or decreased depending on the number of doctors in training, rotas and/or the amount of administrative support available to the guardian.
- Employers / host organisations can choose to act collaboratively to make and share the appointment across a number of employers.

Q4. Who will be the guardian of safe working for GP trainees for the period that they are in their general practice placement and not in a hospital?

Where lead employer arrangements exist, the lead employer will be responsible for ensuring that there is a guardian appointed for all trainees, including GP trainees. GP practices and the lead employer should work in partnership to ensure arrangements are in place which facilitate this arrangement. Where no such lead employer arrangements are in place, it will be for the employer (the GP surgery) to identify and appoint an appropriate person to act as the guardian, in line with the requirements of the 2016 contract. The TCS sets out provisions for the appointment of guardians where an employing organisation has fewer than 20 trainees.

Q5. What systems can we use for the exception reports for the guardian?

Skills for Health and Allocate have informed us that they are both working on exception reporting tools. They shared mock-ups of their proposed systems at the guardian conference in July 2016, and gathered feedback to inform further design work before they launch their tools in September. There is no requirement on employers to use either system; the only requirement is that the system be electronic. Employers who wish to create their own system are free to do so, and those who do not use either system will need to make their own arrangements.

Q6. How did the ACAS agreement change the duties, responsibilities and accountability of the guardian of safe working hours?

The core role for the guardian is the same following the agreement reached with the BMA leadership at ACAS on the 2016 contract, although some things have changed and some additional aspects of the role have been agreed.

- The guardian will now report at least quarterly to the trust board, rather than annually.
- A consolidated annual report will be included in the trust's quality account, and details of the disbursement of fines included in the organisation's annual report.
- The guardian and director of medical education (DME) will jointly establish a junior doctors forum (or fora) to provide advise on and support the work of the guardian.
- The guardian will oversee the imposition of fines where doctors miss 25 per cent or more of their breaks.
- New arrangements have been put in place to ensure that doctors in GP practice placements or in organisations with few trainees have access to a suitable guardian.
- Doctors will have the right to involve a representative from the BMA or other relevant trade union in any work schedule appeal process.
- The guardian will be subject to a performance management framework that includes feedback from doctors in training, and doctors will be able to raise any concerns they might have about the performance of guardian through the medical director.
- The guardian's oversight of safe working hours will also include monitoring associated equality and diversity issues.

The model job description and person specification for the guardian of safe working hours has now been updated to reflect these changes to the duties, responsibilities and accountability and is available to download from the NHS Employers website.

Q7. What support will be offered to the guardians of safe working hours prior to them starting in their role?

NHS Employers hosted a training event for guardians in central London on 26 July 2016. All appointed guardians were encouraged to attend and organisations who had not have appointed by that date were asked to enable their director of medical education (DME) or medical director to attend the event to ensure that the learning can be then shared with the successful applicant locally. Following the training event, NHS Employers has agreed to provide the following support:

- Webinar for guardians on the rota rules of the contract
- Webinar for on the detail of the role of the guardian
- A dedicated web page for resources for the guardian
- Guidance (including flow charts and other infographics) on exception reporting and the role of the education supervisor

- Updated FAQs on the role of the guardian and process for exception reporting and work schedule reviews
- A national networking event in the spring 2017.

In addition to the national support being developed, regional networks are being established with support from NHS Improvement, NHS Employers and Health Education England (HEE) and will provide peer support for appointed guardians tailored to local need.

Q8. What happens if a trust has not appointed a guardian by the date set (3 August 2016), or if the post becomes temporarily vacant in the future. UPDATED August 2016

In some circumstances, employers have not been able to agree an appointment to the guardian role and at points in the future it is likely that they may be short periods of time when the guardian role is vacant. In such cases, employers / host organisations will need to put an interim arrangement in place to ensure that the role of the guardian can be temporarily covered until a substantive appointment can be made. These temporary arrangements should be agreed with the local negotiating committee (LNC).

Where trusts are finding it difficult to attract applicants to the role, they may want to consider contacting their neighbouring trusts for advice, widening the role to other staff groups, and / or reviewing the remuneration package and time allocation on offer and /or ensuring that there is appropriate administration support for the role.

Q9. How much time should be allocated for the role of guardian of safe working? ADDED August 2016

As with other supporting professional functions, there is no national standard tariff for the time that should be allocated to perform the guardian of safe working role. Such allocations should be sensible, appropriate, realistic and in keeping with normal job planning guidelines for managerial appointments. In most circumstances, one would expect the time allocation to be *the same as* that allocated to departmental head of service or clinical director in the same organisation, although this might be *higher or lower* depending on the number of doctors in training, the number of and stability of rotas and the amount of administrative support available to the guardian. It is important that these arrangements are regularly reviewed, particularly during the period to October 2017 while the new contract is being implemented. All guardians should include the issue of time allocation and support for their role in their first quarterly board report, which will be presented following the first doctors moving on to the contract in October 2016.

Q10. What admin support allocation should be made available for the guardian in terms of hours?

The decision for the allocation of administration support for the guardian needs to be agreed locally. Employers need to consider the number of doctors in training, the number and variety of rotas, and the degree of stability in existing working patterns when assessing how much time and support will be needed to carry out the role effectively. We would suggest that arrangements put in place now are reviewed regularly, and certainly no later than the first quarterly report, to maintain the right level of support.

Q11. Could the guardian also be a SAS doctor?

The job description and person specification is only a template and neither the BMA nor NHS Employers have been prescriptive about what grade the guardian can be. If employers have SAS doctors, or other members of staff, in their trust who can demonstrate that they will be able to effectively fulfil the requirements of the role, including appropriately challenging more senior colleagues when required, and who can gain the confidence and approval of doctors in training, then the answer is yes and there is no reason why an SAS doctor or other staff member cannot apply for and undertake this role.

Q12. When did the guardian role commence?

The guardian role commenced from the 3 August 2016, this is to help the employer prepare for contract for implementation in October 2016.

Q13. Guardian of safe working hours - whom can we appoint?

The guardian is not an educational role, it is not there as part of the educational structure and should be completely separate to avoid conflicts of interest. The guardian should not under any circumstances be the director of medical education (DME) or hold any other role in the organisation's management structure. When considering someone for the guardian role the employer should consider the time necessary to do the role as well as any issues of duality or possible conflicts of interest. The aim is to recruit someone in whom the junior doctors can have confidence and who will be able and willing to stand up against the organisation's management team if necessary.

Q14. Is the guardian responsible in the first instance for all hours and safety issues?

No, the guardian is the champion of safe working hours, and they are a backstop if normal processes haven't resolved an issue. The guardian is copied in to all exception reports so they can fulfil their oversight role and escalate things as necessary, but they are not expected to be involved in every issue. Employers will need to consider what system they have in place for the guardian in order to support the administration of the role and the management of exception reports. Ideally all issues should be sorted at a local departmental level, by the doctor's clinical or educational supervisor.