Monitoring of the actual hours you work and the actual rest you receive is crucial to ensure that you are being paid properly and are working in a safe and sensible manner. Monitoring requires the collection of a variety of different data, including actual hours worked, when they are worked and the total and continuous rest periods. Health Boards as employers have a contractual responsibility to monitor regularly the hours of work of junior doctors. Junior doctors are also contractually obliged to take part in monitoring as designated by their employer.

Here is a guide to the monitoring process, as well as some practical tips. Hopefully you’ll find it helpful.

This guide contains information on:
- the monitoring process
- monitoring tips
- what counts as work
- monitoring results
- failure to monitor
- rebanding
- in-post pay protection
- diary card declaration
- references

Monitoring Process
- Employers are contractually obliged to monitor junior doctors’ New Deal compliance and the application of the pay banding system at least once every six months and/or at the request, in writing, of a doctor on the rota. Your employer should comply with any request for additional monitoring. Your contract should also state that you have an obligation to cooperate with those monitoring arrangements.
- A monitoring period should generally occur under representative conditions of work intensity (i.e. not at exceptionally quiet or busy periods, nor when many doctors are away on leave) and should take place over a two week period or across the whole rota pattern if this is more representative. You must be notified adequately in advance of the monitoring period.
- If you believe monitoring has taken place during an abnormal and unrepresentative period, you should request that your employer carry out a further round of monitoring.
- Hours information must be recorded using the agreed local recording methods (e.g. diary cards, barcode readers). You should be informed where to send the information recorded and how to get feedback on the outcome of your participation. Employers are obliged to publish the results of monitoring within 15 working days of the last day of the monitoring period and make this available locally to the junior doctors concerned in order to provide clear feedback as to the outcome of monitoring.
- If you believe that the pay band supplement that you are currently receiving does not reflect the duration or intensity of your work, and that your working pattern in fact attracts a different banding, you should raise this formally and in writing with your HR department/medical staffing. This should be done as soon as possible; all juniors affected by this should sign a letter requesting that your employer monitors your working pattern.
• You should be aware that persistent failure by junior doctors to comply with monitoring arrangements represents a breach of contract and may result in disciplinary action. It is a requirement that a minimum of 75% of those being monitored return their monitoring data for analysis, and that this covers a minimum of 75% of all duty periods worked over the monitoring period. If less than 75% of returns or 75% of duty periods are received by the employer, the monitoring exercise is invalid. The employer is required to write to all junior doctors who have not supplied data, remind them of their contractual obligation and require them to participate in another round of monitoring within a reasonable period of time. If possible, you should still submit a monitoring form even when you have been on annual leave for all or part of the monitoring period.

Monitoring tips
• Cooperate with monitoring and record your hours and rest accurately.
• Encourage colleagues to also complete and return forms.
• Fully explain instances where you breach your shift length or are unable to take your breaks, ideally on your diary card, in case an explanation is required at a later date.
• Monitoring results can go missing: therefore photocopy your monitoring form and keep this for your own records.
• Make copies of any documentation you receive by post or by e-mail with instructions to falsify monitoring or under-report hours – send this straight to your BMA local representative and contact askBMA.
• If you have not received your monitoring results within 15 working days of completion, follow this up and if it is still not provided contact askBMA.

What counts as work?
We are concerned that some junior doctors are being misinformed about what is included as work when recording hours worked as part of monitoring. The New Deal definitions of work and rest are as follows:

• **Actual work:** the definition of hours of actual work is the definition used in the New Deal (i.e. includes all time carrying out tasks for the employer, including periods of formal study/teaching; hospital teaching/lunchtime meetings; multi-disciplinary meetings; travel to and from other hospitals in the Health Board whilst on duty, but does not include rest while on call). For the purposes of defining work after 7pm, work begins when a doctor is disturbed from rest and ends when that rest is resumed. This includes, for example, time spent waiting to perform a clinical duty and time spent giving advice on the telephone.
• **Rest:** All time on duty when not performing or waiting to perform a clinical or administrative task, and not undertaking a formal educational activity; but including time spent sleeping.
• Natural breaks (of at least 30 minutes every four hours) do not count as rest.
• If you arrive at work earlier than you are required to or stay later than required to without good clinical/administrative reason this extra time at your place of work does not count as work and should not be recorded on your monitoring form. However, if you are required to be present at work before your official start time according to the rota e.g. for handover or a ward round or for any other clinical need, you should record this as work and raise this issue with medical staffing. The rota may need to be redesigned or working practices adjusted.
Monitoring results

- If the monitoring indicates that you are working more hours or at a greater intensity than your theoretical working pattern, then your employer must pay you at the band multiplier indicated by the monitoring. You will be entitled to backpay in line with paragraph 21 of the Terms and Conditions of Service. If you have difficulty in getting your employer to do this, you will need to appeal the current pay band formally with the employer and request that you are paid according to the results of the monitoring analysis. askBMA should be your first point of contact for advice and support.

- If monitoring is consistent with a lower band, then pay protection arrangements may apply (see below).

- If you are not confident that the monitoring period or analysis accurately reflects your average working pattern, then you must seek re-monitoring from your employer. The employer should listen to your concerns, and re-monitor within a reasonable period of time.

Failure to monitor

If monitoring does not occur, or is felt to be unrepresentative, this should be brought to the attention of the employer’s HR department, askBMA and the Regional New Deal Support Team. An employer failing to meet its contractual requirement to monitor can be served with an improvement notice by the Scottish Government. If it fails to implement an appropriate monitoring system to the Regional New Deal Support Team’s satisfaction within six months, it will be required to pay the junior doctors concerned at Band 3 rates until such time as there is monitoring evidence to change the band.

If a junior or a group of juniors fails, without good reason, to supply monitoring data, they will receive written notice reminding them of their contractual obligation to cooperate, and be required to participate in a further round of monitoring. You should be aware that persistent failure to comply with monitoring arrangements represents a breach of contract and may result in disciplinary action. If juniors consistently do not supply monitoring data, the employer is able to determine what it regards as the correct pay band on the basis of available information, which may be disadvantageous for the juniors involved.

Rebanding

There is a strict protocol for the rebanding of posts that employers must follow, and working patterns should not change at short notice. The rebanding proforma which outlines the approval mechanism to change band is contained in circular HDL 2002 (33). The full proforma must be signed off by all parties to indicate all steps have been followed. If not, then the post has not been rebanded properly and the salary should remain at the previous level.

By August 2009 Working Time (EWTD) regulations will be fully implemented for junior doctors which means all doctors must be working no more than 48 hours per week on average, which means the majority of posts will be in Band 1. Over the coming months many junior doctors across the country will find their working patterns are being changed, posts rebanded, and a whole raft of measures to reduce hours implemented. It is vital you are aware of the correct process that employers must follow in order to reband rotas. JDC has produced useful guidance on the implementation of the EWTD and the rebanding of junior doctors’ posts, ‘The Final Countdown’:

http://www.bma.org.uk/ap.nsf/Content/Finalcountdown
In-post pay protection
Pay protection applies to existing post-holders if their rota is down-banded. If a post is
downbanded while you are working that rota, then you will receive pay protection for the
duration of your post. Although the banding supplement that the post attracts will have changed,
and future postholders may be paid according to this new banding, your pay will be protected at
the pay band you received before the post was rebanded. This in-post pay protection will apply
for the duration of the post, or for as long as it is more favourable than the actual banding of the
rota. No one should find that their pay goes down when bandings change.

Diary Card Declaration
Junior doctors are required to sign a declaration/counter fraud statement that the information
provided on their monitoring form/diary card is correct and complete. No one should be
pressurised into changing monitoring data to ensure compliance or to reduce the rota's proper
banding. Monitoring forms should be completed accurately to reflect the hours worked and rest
achieved. You may, however, be asked to provide details of why you were unable to take your
breaks or breached your shift length, and we would recommend that you keep a record of these
instances, if possible, on your diary card. This information must not be used to alter the outcome
of your monitoring results. If you feel you are being pressurised or if you do not think your
employer is monitoring appropriately, talk to your BMA representative or ask BMA on
0870 60 60 828 or askbma@bma.org.uk

Concerns can also be raised with your BMA Regional Junior Doctors’ Committee. For details go
to http://www.bma.org.uk/rjdc

References
• The full Terms and Conditions of Service for junior hospital doctors:
• The Junior Doctors’ Handbook provides an easy-to-understand digest of the main
  contractual and employment issues faced by junior doctors:
• BMA pay guidance for junior doctors, ‘Are you being paid correctly?’:
• Contract implementation guidance (HDL (2000) 17):
• Contract implementation guidance (Corrigendum HDL (2000) 17):
• Rebanding junior doctors’ posts (HDL (2002) 33):
• Natural Breaks (HDL (2003) 10):
• Banding Appeal Guidance (CEL 17(2008)):
• New Deal Support:
  http://www.newdealsupport.scot.nhs.uk/