Guidance for doctors undertaking the guardian of safe working hours role

During negotiations on the junior doctor contract, agreement was reached on the introduction of a ‘guardian of safe working hours’ in organisations that employ or host NHS trainee doctors to oversee the process of ensuring safe working hours for junior doctors.

All organisations employing or hosting 10 or more trainees are required to appoint a guardian. Organisations with fewer than 10 trainees must make one available through another NHS organisation.

If you are appointed to the role of guardian of safe working hours (hereafter referred to as the guardian), or are thinking of applying for this role, you will occupy a unique position within your organisation. The role sits independently from the management structure, with a primary aim to represent and resolve issues related to working hours for the junior doctors employed by it. You will be reporting to different management structures, including the local negotiating committee (LNC) and the trust board, but will also have a regular input into junior doctor forums. Regular liaison with your director of medical education (DME), educational supervisors and the champion of flexible working will be required. The job is truly innovative, with considerable challenges – we hope this guidance will answer some of the questions you may have.

The role of the guardian

The guardian is responsible for overseeing compliance with the safeguards outlined in the 2016 terms and conditions of service (TCS) for doctors and dentists in training. You will identify and either resolve or escalate problems, and act as a champion of safe working hours for junior doctors.

The guardian provides assurance to the employer or host organisation, that issues of compliance with safe working hours will be addressed, as they arise. The BMA argues that in order to fulfil this obligation the guardian must have oversight of the working hours of all trainees in the organisation or organisations for which they are responsible, and not just those on the 2016 contract. This includes academic trainees, and others, with honorary contracts with the organisation.

The guardian is accountable to the board and should not hold any other role within the management structure of the employer. The line management arrangements for the guardian are for local determination but this should be independent of the medical director and other medical managers to ensure appropriate independence. The 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.

The post holder will have regular contact with doctors and dentists in training, the champion of flexible training, the DME and any associate DMEs, educational, clinical and academic supervisors, the postgraduate dean, other senior staff within the HEE area office/deanery, the LNC, the junior doctors forum, and both executive and non-executive Board members. In some locations the guardian may need to liaise with colleagues undertaking similar roles for other local organisations which employ fewer than 10 trainees.
The role and responsibilities of the guardian are set out in detail in schedule 6 of the final Terms and Conditions of Service:

Guardian role and responsibilities (NHS Employers)

A sample job description for the guardian role is also available online:

Guardian job description (NHS Employers)

Your skills

The BMA considers the role of guardian is best filled by a senior doctor, either consultant, staff grade or associate specialist doctor or an equivalent clinical academic. The following skills and characteristics will be useful in order to undertake the role successfully, but are not all essential:

- Experience of high-quality rota design
- Track record of understanding and supporting junior doctors
- Familiarity with the relevant IT systems
- Prepared to resign or forego all other management responsibilities at the organisation (this is essential and required by the contract)
- Familiarity with the doctors in question - for example, GP trainees or hospice doctors
- Experience in medical education
- Interest in patient safety and quality improvement

The appointment process

The guardian will be appointed by a panel of at least four, which should include the trust medical director, HR director and two junior doctor representatives. It is a contractual requirement that 50% of the panel is made up of junior doctors and that consensus on the appointment of the guardian is reached.

Contract implementation timetable

The key dates for the implementation of the new TCS are:

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<tr>
<th>Date</th>
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<tbody>
<tr>
<td>July 2016</td>
<td>Appoint guardians of safe working hours</td>
</tr>
<tr>
<td>26 July 2016</td>
<td>Guardian of safe working hours conference, London</td>
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<tr>
<td>3 August 2016</td>
<td>Contract is live</td>
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<tr>
<td>October 2016</td>
<td>Transition to the new terms and conditions of service (TCS) for:</td>
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<td></td>
<td>- Obstetrics ST3 and above</td>
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<td>Transition to the new TCS for:</td>
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<td></td>
<td>- F1 doctors taking up new appointments</td>
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<td>- F2 doctors taking up new appointments and sharing rotas with F1 doctors</td>
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<tr>
<td>February – April 2017</td>
<td>Transition to the new TCS for:</td>
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<td>- Psychiatry trainees taking up next appointments (all grades)</td>
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<td>- Pathology trainees (lab based) (all grades)</td>
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<td>- Paediatrics trainees taking up new appointments (all grades)</td>
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<td>- Surgical trainees (all disciplines) taking up next appointments</td>
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<td>(all grades)</td>
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<td>- F2 doctors and GP trainees (ST1/2) taking up next appointments and sharing rotas with any of the above</td>
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<tr>
<td>August – October 2017</td>
<td>All remaining trainees taking up next appointments (all grades)</td>
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<td>- All new starters (all grades)</td>
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FAQs

Who can apply for the guardian role?
The guardian must be able to command the respect of both junior doctors and management. The TCS do not define who should undertake the guardian role, but the BMA recommends that this should be an appropriate, qualified senior doctor and could be a consultant, a SAS doctor or an equivalent clinical academic.

What are the contractual arrangements for the guardian role?
Guardians should be offered dedicated Professional Activity (PA) sessions to undertake the role. The BMA believes that for most trusts, one PA session will be inadequate to fulfil this role effectively and that specific funding should be given to trusts to support this role. However, at present some trusts are asking clinicians to use their Supporting Professional Activity time for this role. This should be formally discussed at job planning, as guardians should be offered dedicated PAs to undertake the role to avoid it impacting on their time for appraisal and revalidation.

The number of PAs will vary from employer to employer and will be dependent on factors such as the number of rotas and the number of junior doctors the guardian is responsible for, and the level of administrative support available. Newly appointed guardians should complete a comprehensive job planning diary for the first three months followed by a job plan review with their clinical director and medical director.

Guardians should be given adequate support and resources to undertake the role. This should include secretarial support, appropriate IT systems and access to information and data to undertake the role. They should also be able to liaise with the organisation’s flexible training champion where this is relevant. In larger organisations, it may be valuable for a deputy guardian to be appointed.

What is the guardian’s role in exception reporting?
The purpose of exception reporting is to ensure prompt action is taken to maintain safe working hours. Exception reporting allows junior doctors to flag up quickly and easily if their actual work has varied significantly or regularly from their work schedule.

It can be used to address issues as they arise, such as hours worked, breaks not taken or training opportunities missed, and to make timely adjustments to working patterns where needed, as well as getting sign off for either time off in lieu or additional pay if required to work beyond scheduled hours.

All exception reports are sent to the educational supervisor and copied to the guardian (or the DME if it is an issue with training), and as guardian, you will ensure the problem is dealt with in a timely way, acting as an independent arbitrator in any disagreements between junior doctors and their educational or clinical supervisors.

The TCS describe what you should do when you receive an exception report. In summary, the guardian is expected to:
– Escalate issues in relation to working hours raised in exception reports;
– Require intervention to mitigate any identified risk to doctor or patient safety;
– Require a work schedule review to be undertaken, where necessary;
– Have the authority to intervene in any instance where safety is compromised;
– Distribute monies received as a result of financial penalties to improve the training and service experience of doctors.

As guardian, you will also be expected to report to the board and produce a quarterly Guardian of Safe Working report. This will include data on all rota gaps on all shifts, and will also be provided to the LNC.

An important part of the guardian’s role as the champion of safe working hours is to facilitate an environment where junior doctors feel able to submit exception reports whenever appropriate. Attendance at junior doctors forums will help you see if juniors are avoiding exception reporting for fear of jeopardising their relationship with their educational supervisor and their subsequent career. If junior doctors feel intimidated and as though they should not file an exception report as a result of actions by any colleague, including their educational or clinical supervisor, this should be raised with the guardian for resolution.
You should be alert to juniors being offered time off in lieu in their training time, and liaise with the DME where necessary to ensure that any time off in lieu taken does not then result in a further exception report for a missed training opportunity.

Guardians are also encouraged to talk to their colleagues about exception reporting and explain how junior doctors should be supported to make use of this important new contractual process. Your aim is to create a culture of openness about reporting when the service is under pressure rather than individual blame.

**Will I be expected to support trainees on the 2002 junior doctor contract during the implementation phase?**

Yes. Although the guardian of safe working hours role is part of the 2016 TCS, and there are no contractual requirements for the guardian to support trainees on any other contract, the BMA believes that as part of the guardian’s general responsibility to oversee the safe working hours of trainees at their workplace, they can and should, where possible and appropriate, support trainees on the 2002 TCS.

There will be a potentially lengthy period during which some trainees will be working on the 2016 terms and conditions while others will remain on the 2002 terms and conditions, during the phased transitional year but also beyond this, as trainees on long term lead employer contracts under the 2002 terms will have the right to remain on these contracts until they expire (up to 7 years or more). Similarly some trainees will be working under the new terms but paid under the pay system of the 2002 TCS, as part of section 2 transitional pay protection.

Monitoring and re-banding will not be used under these new TCS, and doctors continuing to be paid under the 2002 TCS payscale (as part of section 2 transitional pay protection) will otherwise be subject to all other terms and provisions of the 2016 TCS. If such a doctor experiences significant and/or regular variation between their day-to-day work and their work schedule, they should submit an exception report and follow the process as set out in the new contract. A work schedule review should be used to determine whether or not the banding supplement being paid is correct for the doctor’s working pattern, and Annex B can be used to pay a different banding supplement to the individual doctor if necessary. Any disagreement between the doctor and their supervisor will be overseen by the guardian of safe working hours as set out in schedule 6.

For those trainees remaining working under the 2002 TCS, the terms of that contract must be met in full – i.e. monitoring must continue to take place with differences between actual working patterns and the rota addressed through re-banding where necessary. This process will continue completely as normal, but ideally with the oversight of the new guardian of safe working to assist in arbitrating any disputes between trainees and their employer.

**Will I be expected to support trainees who are not on an NHS contract, such as academic trainees?**

Yes. While there are no specific provisions which require a guardian to support those not on an NHS contract, we would strongly encourage guardians to consider and robustly represent the interests of trainees not on a substantive NHS contract but who are working in their organisation or an organisation for they are responsible. A guardian will not be able to enforce a change to their work schedule, as they would for a trainee on an NHS contract, but where safe-working concerns are raised we would still expect a guardian to highlight these to the employer and recommend appropriate changes. The guardian should also include feedback on safe trainee working issues for the whole trust, including those experienced by trainees not on an NHS contract, in their regular reports to the board.

Regarding academic trainees it is critical, both for NHS service provision and for the future of medical research, that they be afforded the same level of protection as their NHS colleagues. Without this, there is considerable risk that trainees on integrated academic training pathways would be used to plug gaps in rotas, regardless of the impact on their research and the rest of their working lives. The NHS has as much ‘ownership’ of these trainees as their academic partners and it is vital that they are not seen as an easy fix to workforce problems because they are on a different contract to their colleagues.

**How will the guardian role apply to public health trainees?**

The BMA has engaged with PHE (Public Health England) to explore how the guardian role can be effectively implemented within a public health employment context. The vast majority of public health trainees have a relationship with PHE as their host employer for on-call work and all public health trainees in England
pass through PHE during their training. PHE has, therefore, agreed to appoint a guardian to have oversight of junior doctors working under a substantive or honorary PHE contract.

Concerns remain about those trainees working for or at employers with relatively small numbers of trainees such as local authorities, charities and non-governmental organisations. The BMA is seeking clarification on how these junior doctors will be covered by the guardian arrangements. The contract states that where a host employer employs fewer than 10 trainees, the host employer must contract a neighbouring NHS trust to take on this role for their trainees. The BMA has suggested that PHE consider undertaking the guardian role for smaller organisations employing or hosting public health trainees.

Can I still be a member of the LNC (local negotiating committee)?

Yes, the guardian can still be a member of the LNC, however we advise that they should be a non-voting member, to avoid any conflict of interest between the two roles. Every local situation is different and the best way to deal with any potential conflicts of interest is to discuss the issue with the LNC and the trust junior doctor forum in advance of the appointment to the guardian role or election as LNC chair.

Where a guardian is a member of an LNC they should declare this in any relevant discussion and abstain from any discussion or decision that might present a conflict of interest i.e. where they are financially or managerially responsible for the matter under discussion.

Can I be a guardian and an educational supervisor?

No, we advise that it would be a conflict of interest to be an educational supervisor, due to the pivotal role of educational supervisors in managing exception reports.

Can I be a clinical director (or hold another management role) and be a guardian?

No. The TCS are very clear that a guardian should not hold any other role within the management structure of the employer.

Does this guidance mean that the BMA is no longer fighting imposition of the contract?

No. The BMA JDC (junior doctors committee) has still not accepted the 2016 TCS. Whilst the BMA is currently (December 2016) still in dispute over the new junior doctors contract, the need for guidance for our members on the guardian role is pressing. Employers are continuing to implement the contract and have recruited doctors to the guardian role. This guidance is to ensure that guardians are supported to appropriately undertake the role and that trainees are not disadvantaged. The situation is still evolving, and this guidance will be updated as necessary.