

Shift and Resident Working Guidance for Consultants

Key messages

- Consultants are core to the provision, continuity and maintenance of high quality patient care
- Consultants are not obliged to provide a resident on-call service
- Traditional resident on-call for consultants is unlikely to be a realistic option under the European Working Time Directive
- Taking on work resulting from short term unavailability or the removal of a trainee rota should be considered as a form of out of hours shift working
- Job plans may need to be substantially re-modelled following any agreement to carry out this work
- Check with your Local Negotiating Committee (LNC) as to whether an understanding has been reached with the Health Board/ Trust over what the terms for such work should be. Welsh Consultants Committee (WCC) strongly recommends that where consultants take on such responsibilities, the relevant LNC in consultation with the BMA should negotiate an agreement
- WCC strongly suggests that all consultants consider the personal and professional impact of taking on such work before agreeing to it
- If a consultant is recruited specifically to undertake such work then they have agreed to do so and it may be very difficult to later withdraw from such work.

Introduction and background

Most consultants work for employers whose core business is to provide 24 hour specialist health care for their local populations, and consultants have a contractual responsibility to make certain that mechanisms exist to diagnose and manage new patients, and continue care for existing patients, during the entire 24 hour period. Most consultants take part in on-call rotas. Consultants typically work from home while on call, with other grades of doctor being resident in the hospital. This guidance gives advice on the contractual and

pragmatic position when you or your employers propose that you work as a resident consultant.

Click [here](#) for The Amendment to the National Consultant Contract in Wales 2003 which confirms the following;

Work in evenings or weekends will only be undertaken with the voluntary agreement of the consultant and employer (para 2.4)

Consultants will not normally be resident on call. (para 3.7)

Availability and Emergency Work

All emergency work that takes place at regular and predictable times (e.g. post-take ward rounds) will be programmed into the working week on a prospective basis and count towards a Consultant's sessions. Less predictable emergency work will be handled, as now, through on-call arrangements. The arrangements for recognising work arising from on-call duties are described below (para 3.1)

In cases where there is a very rare need for a Consultant to be called outside the time-tabled working week, employers and Consultants will review the need for on-call arrangements. (para 3.2)

Consultants will be required to be contactable throughout the on-call period. (para 3.3)

As a principle work actually carried out when a Consultant is on call and required to work will be recognised and remunerated. (para 3.4)

The first three hours of work done during on call periods per week – averaged over a six -month period – unless specifically agreed otherwise will attract one direct clinical care session of time within the working week. Where this averages less than three hours, this will attract the appropriate proportion of a session of time. (para 3.5)

The out of hours intensity supplement banding payments will continue to apply (para 3.6)

Resident work should only be performed by mutual agreement. However, increasing numbers of consultants are working on shifts, part or all of which may fall outside normal working hours. There is an expectation that consultants will work on emergencies, whilst they may not be scheduled for non-emergency work

The concept of consultant resident on-call may not be a helpful one. This is because, with the application of the Working Time Regulations to consultants since 1998, consultants are entitled to eleven hours continuous rest in any twenty-four. While compensatory rest can be used, recent legal judgments have emphasised that compensatory rest should not be planned for some point in the future but should be delivered as soon as practicable following the period of work.

Shift or resident working in an emergency

To avoid last minute uncertainty on the terms for consultants undertaking unplanned resident work and where the terms have not been agreed explicitly, some LNCs may have negotiated specific arrangements with remuneration to do this. It is appropriate to do this because a consultant working in such a way is clearly working beyond the specific terms of their contract.

The Amendment to the National Consultant Contract in Wales provides for the following;

In exceptional circumstances where the consultant is requested and agrees to be immediately available, i.e. 'resident on call', this will be remunerated at three times the sessional payment at Point 6 of the Consultant salary scale, excluding commitment awards and Clinical Excellence awards. In such circumstances, there will be an agreed compensatory rest period the following day. For these purposes, a session will comprise four hours and apply between 5pm and 9am weekdays and across weekends. (para 3.8)

If such situations occur persistently, the employer will need to review options, with the appropriate clinicians, to find an alternative arrangement. (para 3.9)

Consultants not on an on-call rota may be asked to return to site occasionally for emergencies but are not required to be available for such eventualities. Emergency work arising in this way should be compensated through a reduction in other sessional activities on an ad hoc basis.

Where emergency recalls of this kind become frequent (eg more than 6 times per year), employers should review the need to introduce an on-call rota. (para 3.10)

If you agree to take on this responsibility, a written agreement is essential prior to commencement of any resident work: it ensures that all those involved know what is expected of them. For very short-term arrangements an email request and statement of recognition could be acceptable.

Where a consultant agrees to be resident, consideration should be given as to whether it would be appropriate for a colleague to be on-call at the same time. It should not be assumed that having one consultant covering the work is adequate to cope with the potential workload. Consultants should consider whether they have sufficiently recent experience in all aspects of the work they may be required to do for example a subspecialist in gynaecology who has not done obstetrics for a decade to act as a middle grade in O&G.

Consultants should also consider what impact resident on-call working might have on their daytime working – depending on the work intensity, it may be appropriate for daytime commitments to be cancelled. Unless the consultant has opted out in writing, their working time should not exceed the Working Time Directive limits and consultants should be aware that all of a resident on-call period counts as working time in the context of the Directive.

WCC recommends that LNCs should consider negotiating such an agreement with their Health Boards and Trusts and share good practice with other LNCs

Acting down

A consultant who is covering the work of a junior colleague is not 'acting down', they are acting appropriately in response to the unusual circumstances in which they find themselves. In addition, 'acting down' to fill a vacant junior doctor post will usually be paid at the remuneration level of the respective grade of the junior doctor. It is therefore not appropriate for the consultant to be considered as working as a junior and being paid as such. Instead consultants should act as consultants, so that remuneration is appropriate – after all they are providing consultant level care to patients.

Shift or resident working as a planned arrangement

Some consultants undertake shift work, for example, paediatrics, emergency departments, intensive care, obstetrics it is likely more will be faced with the need to reform emergency services in this way in the future.

WCC believes that, where there is a need for a re-arrangement of responsibilities because of these pressures, the best way forward is to seek agreement on job planning arrangements that can ensure that consultants who take on such work are properly supported by acceptable standards of accommodation, facilities and staff.

WCC are also aware that some Health Boards and Trusts may attempt to recruit new consultants to posts which include this work in their job plans.

From an employer's perspective this may well be easier than trying to persuade or induce its existing consultant staff to take on these responsibilities. However, it is WCC's view that this is not a helpful way of addressing workforce requirements because it will divide the consultant body and create potential tensions if and when those appointed to take up this work decide that they no longer wish to do it and are aware that their more established colleagues are not contractually required to carry out that work.

Where a consultant is considering accepting a consultant post which includes resident on-call cover in the job plan, they should very carefully consider the nature of the long-term commitment they are making. Any changes made cannot be varied at a later date without mutual agreement. One option to safeguard against difficulties of withdrawing from such long-term commitments may be to negotiate a time limitation and/or a review of the resident arrangements. Members are strongly advised to seek BMA advice before going ahead.

Costs of resident on call

It is relatively expensive to use a consultant for round-the-clock cover as not only can resident on call duties consume large parts of contractual DCC time, it is also expensive, as provided for in Paragraph 3.8 of the Amendment to the National Consultant Contract in Wales, which states;

In exceptional circumstances where the consultant is requested and agrees to be immediately available, i.e. 'resident on call', this will be remunerated at three times the sessional payment at Point 6 of the Consultant salary scale,

excluding commitment awards and Clinical Excellence awards. In such circumstances, there will be an agreed compensatory rest period the following day. For these purposes, a session will comprise four hours and apply between 5pm and 9am weekdays and across weekends. (para 3.8)

Further considerations

Whether a consultant is willing to carry out shift and resident on call work is largely a personal decision based on a number of factors – those already mentioned but also taking into account family and other commitments. The key to making this work is proper consideration of what any agreement might mean in terms of its impact on the consultant's work-life balance, how necessary it is to the service and whether the terms reached are agreeable.