

BMA SAS Committee guidance on working during COVID-19 for SAS doctors working in England

The COVID-19 pandemic and the demands it has placed on the NHS have brought unprecedented demands on SAS doctors. As highly skilled and valued NHS staff, SAS doctors have had to work not only differently but have had to work above and beyond their contracted hours under intense pressure. As well as going above and beyond in delivering direct clinical care to patients, SAS doctors have demonstrated extraordinary leadership over the last 6 months, transforming clinical services to ensure that they could operate under the restrictions resulting from the COVID-19 pandemic.

During the first phase, SAS doctors prioritised this extra work without question, often putting patients' needs before their own when responding to a national emergency. The hours worked were often excessive, particularly in out-of-hours periods. In the majority of cases annual and study leave was cancelled. The toll that this has taken on the workforce has been stark. Sadly, this additional work has rarely been recognised nor properly remunerated.

It is clear that infection rates are rising once again and that a second wave is coming. For many regions it has already arrived. The BMA are concerned about the impact that dealing with a second wave will have on an already stretched and fatigued workforce. In addition, there are some important differences that mean the second wave may be more difficult to manage than the first.

Firstly, during the first wave, all non-urgent elective activity was cancelled. Not only did this free up staff capacity that allowed different working patterns to be implemented, it also freed up a significant number of beds that could be used to support patients with COVID-19. Given the very significant backlog in elective work that has built over the last 6 months, the government has insisted that elective activity continues and there are no indications that this will be cancelled on a scale seen in phase 1. This will significantly limit the ability for SAS doctors to redirect their focus to caring for those patients with COVID-19 and is likely to result in SAS doctors being asked to work an even greater number of hours.

Secondly, we are heading into winter. The pressure on beds is always greater at this time of the year and while many hospitals were at 50% of capacity during phase 1, our hospitals are now already full, often with patients once again waiting in ED corridors. In addition, the combination of COVID-19 with the influenza and other 'winter viruses' in circulation, will make it extremely difficult to manage patients with suspected COVID-19, particularly given the poor access to testing.



Finally, as noted above, the first phase has taken a significant toll on the workforce with many SAS doctors not having had a break or period of leave for 6 months and in some cases even longer. It is essential to protect staff and the patients that they care for; to ensure this, the health and wellbeing of SAS doctors must be prioritised. We have therefore produced this guidance on developing new working patterns, incorporating many of the lessons learned from the first wave of COVID-19.

Changes to working patterns

Contractual protections

It is of course natural that you will want to do as much as you can to support patients during this period. However, it is important to be aware that not only should you ensure that you look after your own health, but that you have contractual protections that ensure you cannot be forced to undertake additional work without your agreement. The key contractual provisions relating to this are summarised below:

1. **Job planning:** You have an agreed job plan with your employer detailing your clinical commitments. Any changes to this must be reached by mutual agreement with the individual SAS doctor.

“Job planning will be based on a partnership approach. The clinical manager will prepare a draft job plan, which will then be discussed and agreed with the SAS doctor.”

Consequently, any new ways of working must first be discussed with you and agreed before any variation can take place. If agreement cannot be reached, there is a clear mediation and appeals process.

2. **Out of hours work:** You have the right to refuse to undertake any non-emergency work outside the hours of Monday to Friday 7am to 7pm. For these purposes, “non - emergency work” includes any regular programmed work for SAS doctors whose speciality involves dealing routinely with emergency cases. In practice, this would include all regular programmed work in specialities that regularly admit and care for patients who present on an emergency basis. This means that you could refuse to do work such as planned ward rounds, planned theatre/procedure lists, and planned radiology lists if it is not part of an existing on-call arrangement or already agreed within your job plan. If you choose to do this work, you are entitled to agree for this to be paid at extra-contractual rates.

Temporary Changes to Job Plan

If, however, after discussion between you and your clinical manager, you wish to agree a temporary change in your job plan in order to prioritise work towards COVID-19, you can do so. It is important to emphasise that this is only by mutual agreement and cannot be unilaterally imposed. Such a change might include swapping a planned clinic, theatre session or procedure list for an alternative DCC session to directly support your employing organisation’s COVID-19 response. We would recommend that if you agree to such a change that you clearly state and confirm in writing that you agree to do so on a temporary time

limited basis and that this does not constitute a permanent change to your job plan. We would also recommend that you retain the right to return to your pre-existing job plan at a time of your choosing and this should be stated in the temporary job plan. It is advisable in agreeing temporary change that you do not increase your overall PA allocation in order to reduce the risk of burnout. Where work is required to be done on top of your contracted PAs this should be remunerated via extra contractual payments or time off in lieu.

A sample letter can be found in Appendix A.

Part time workers

If you work part-time you will also have an agreed job plan with your employer. You are not compelled to increase your hours or move to full-time working. If you choose to agree to increase your hours during the COVID pandemic, the same guidance applies as for full time workers. You should make it clear in writing that the change to your working hours is temporary and that you have the right to revert to your pre-existing job plan. If you choose to do additional hours, these are extra-contractual and as such you should be offered extra-contractual rates for this work.

Remuneration for Extra- contractual work

As outlined above, you may be asked by your employer to work outside your existing contract of employment or agreed job plan. You have the right to decline such work and it is important for your health and well-being that you avoid working too many hours. If you, however, agree to work additional and/or extra-contractual hours, these should be properly remunerated with additional payment for these additional hours, with the rates negotiated locally and in advance, confirmed in writing.

During the first phase, the BMA approached the Department of Health and Social Care (DHSC) and NHS Employer's (NHSE) in order to try and agree national rates for COVID related additional work. Our view was that this would be helpful in terms of providing both employers and SAS doctors with clarity on how this work should be scheduled and remunerated. Unfortunately, however, despite our best efforts NHSE and DHSE, were not given a mandate by government to agree rates for extra-contractual work and instead suggested that this was left to local agreements. This led to a variety of different rates being agreed and on occasion even different rates were agreed by different SAS doctors working at the same Trust. Clearly this is not equitable and consumed unnecessary amounts of discussion time, that could have been better utilised caring for patients. As we are now entering the second wave, we have once again approached NHSE and DHSC to discuss nationally agreed rates for extra-contractual work, but indications are that they will not agree national rates of pay for this additional work.

To support SAS doctors and Trusts, the BMA have produced some recommended rates for different types of work that SAS doctors may be required to do on top of their existing job plan. We stress that rather than simply offering additional payment, the option of time off in lieu should always be made available.

Twilight/ Night working (including resident on call)

Increasingly SAS doctors have been asked to do resident on call night shifts or twilight shifts. These working patterns were not envisaged when the 2008 contract was agreed, and the out of hours rates specified in the contract relate where essentially designed for on call working at a time when call back to the hospital was a rare event. Consequently, the BMA do not believe that standard contractual rates are appropriate for frequent twilight shifts or resident on-call/night shifts work patterns. In particular, it is recognised that shift patterns such as this have an enormous adverse impact on health and wellbeing and can be particularly difficult as SAS doctors become older.

This pattern of working is more common in specialities such as emergency medicine and the Royal College of Emergency Medicine have done a significant amount of work in this regard.¹ They have recognised the difficulties of high intensity shifts performed in the most antisocial hours. The BMA support their recommendations of 1.5 hours per PA for work done after 11pm and it is entirely appropriate that this rate, which is adopted in a number of Emergency Departments in the UK, is the minimum standard rate for all SAS doctors undertaking work on site after 11pm. The RCEM also suggest an enhanced rate of 2 hours per PA after 7pm given the high intensity nature of work in Emergency Medicine. Many specialities will be working at a similar intensity to support patients during the COVID-19 pandemic and if working at a similar intensity, the BMA believe that this rate should be made available to all SAS doctors.

Table 1. Suggested rates by PA if agreeing a temporary change in job plan

| Day | 7 am to 7pm | 7pm-11pm | 11pm-7am |
|------------------------------------|----------------|----------------|------------------|
| Monday to Friday | 3 hours per PA | 2 hours per PA | 1.5 hours per PA |
| Saturday, Sunday and Bank Holidays | 2 hours per PA | 2 hours per PA | 1.5 hours per PA |

¹ [https://www.rcem.ac.uk/docs/Workforce/RCEM_Consultant_Workforce_Document_\(revised_Feb_2019\).pdf](https://www.rcem.ac.uk/docs/Workforce/RCEM_Consultant_Workforce_Document_(revised_Feb_2019).pdf)

- The BMA consider that almost all COVID-19 related work and ‘catch up work’ will be of high intensity and as such recommend that a fewer number of hours constitute a PA for COVID work in line with RCEM guidance. This will help protect against fatigue and burnout.

It is also important to note that all time spent at the workplace is considered work and should be paid and therefore contribute to your PA allocation.

Shadow On-call/Second on call rotas

A number of organisations have implemented shadow on call rotas to cover periods of sickness absence or “second on” on call rotas to come in if people are busy. Again, this is a change to your job plan and can only be implemented by mutual agreement. If agreeing to this change, it is again essential that you make clear to your employer in writing that this is a temporary change and that you reserve the right to revert to your pre-existing job plan. Some trusts have refused to remunerate these shadow rotas and second on-call rotas beyond the existing frequency and PA rates for predictable emergency and emergency work within the contract. This is not appropriate and indeed in some cases, simply altering the on-call frequency may result in only a modest increase in remuneration (e.g. changing from 4% to 6% supplement, despite the impact on the working life of the SAS doctor being very significant. It needs to be acknowledged that by undertaking a shadow or second on-call rota, the SAS doctor needs to remain available and that this causes significant restriction on their time.

The BMA recommends that these rotas are paid at a standby rate and that any time spent undertaking predictable or unpredictable emergency work is remunerated in terms of time off in lieu (based on the PA rates in Table 1) or by additional remuneration as outlined in Table 2. The BMA recommended standby rate (when not working but available) is £50 per hour.

BMA recommended rates for Extra-Contractual Work

The BMA believes that adequate rest and recuperation is essential and therefore recommends that wherever possible, SAS doctors who adopt different working patterns are supported by the ability to take time off in lieu. The recommendations above are designed to ensure work patterns are safe and consequently those with the highest intensity work patterns and those working a higher proportion in the most antisocial hours will have a shorter working week to compensate for this.

What If you can't agree a change in your working pattern or your trust does not agree to these rates of pay?

You may find yourself unable to agree to work a temporarily requested work pattern or roster, or to take on certain clinical responsibilities during the pandemic, for a variety of reasons.

Declining to accept temporary changes to your working patterns or additional work must be without detriment. It is important to remember that:

- You do not have to agree to change your normal hours.
- If you have already changed your hours and wish to revert back, you have a right to do so.

Job planning process

The process of job planning has not been abandoned. The job planning process is part of your contract. Changes to your job plans can occur only prospectively, by mutual consent **and** as part of the formal job-planning process associated with your contract. Changes to your job plan cannot be unilaterally imposed by your employer. You can see the latest job planning guidance which remains in place during the COVID-19 pandemic [here](#).

If you are not happy with a proposed change to your job plan, you have the right to mediation locally, and then appeal. During this period of mediation and appeal your current job plan remains unchanged, irrespective of agreement to temporarily alter patterns of work. If you need help with this please [contact us](#).

SPA (supporting professional activities) time

SPA time is essential in ensuring that SAS doctors continue to deliver high quality clinical care. Indeed, SPA time has never been more important than it is now as SAS doctors have rapidly learned how to treat patients with a new serious disease, while also trying to reorganise clinical services on an unprecedented scale to ensure patients can be treated during this pandemic.

It is essential that SPA time continues to be recognised and remunerated. Given the pressures in these difficult times, it is appropriate that SPA time is reprioritised towards supporting the COVID-19 pandemic but it should not be suspended or simply converted to direct clinical care sessions. Suspending SPA time or converting it to DCC time will not only vastly limit the ability for SAS doctors to further reconfigure services to ensure that as many patients as possible can access clinical care, but very high proportions of direct clinical care session within job plans, particularly when these are at very high intensity are simply likely to lead to burn out of senior staff.

If SPA time is reapportioned to COVID -19 related SPA then other commitments that would normally be undertaken in SPA time should be removed with no expectation for these to be repaid at a later date.

Undertaking clinical activity within SPA time

As noted, SPA time should continue to be supported, but in an emergency it may be necessary to undertake DCC activity within an SPA or other sessions (e.g. administration time). The BMA is aware of some trusts that have refused to remunerate SAS doctors on such occasions as they claim the SAS doctor is already being paid and “cannot be paid twice”. This is not the case as in the vast majority of instances, the SPA or administration time has not been cancelled by the trust and they expect that the work that would normally be done in these sessions still to be completed. In reality, this work is in effect time shifted to outside of your normal working hours and as such it is appropriate to be paid for this time at the rates above or to have a subsequent DCC session cancelled to allow time for the displaced work to be completed.

If it becomes a regular occurrence that you are being asked to perform DCC work in SPA time, then the trust should make appropriate changes to the service to prevent this happening in the future.

Annual, study and professional leave

During the first spike of COVID-19 infection many SAS doctors worked extraordinary hours under stressful and exacting conditions; fatigue became a serious issue, exacerbated for some by the cancellation of leave bookings. The second spike suggests that our response to COVID-19 may well be longer-term. In that case appropriate provisions for rest and taking of annual leave must be part of any working patterns; SAS doctors **must be allowed to take planned leave**. It is not acceptable to have to work for extended periods without being able to take proper leave, as was the case for many in the first peak, and as we know has proven to be unsustainable.

Whilst employers can lawfully cancel pre-booked days of annual leave, they have to act reasonably. For example, if it is an important family event then it might not be lawful to cancel your holiday.

You have a good argument for asking for reimbursement of any reasonable losses you suffer (unless already covered by insurance).

Your employer is obliged to offer at least one day notice for each day of leave. In the first instance, employers should do this on a voluntary basis rather than enforcing cancellations.

[NHS Employers](#) have stated where employees cannot use their full entitlement of annual leave because of the pandemic, employers should consider revising their local policies to exercise maximum flexibilities in relation to carrying over of leave to the next leave year.

New temporary statutory rules introduced by the government to deal with COVID-19 pressures mean that employees who are unable to take their annual leave entitlement due to COVID-19, can carry over up to 20 days (pro-rated for part-time staff) of annual leave over a two year period. However:

- if employees cannot take bank holidays off due to COVID-19, they should use the annual leave at a later date in their leave year
- if this is not possible, bank holidays can be included in the 20 days' annual leave that can be carried over. This holiday can be taken at any time over a two-year period.

As study and professional leave operate across a three-year cycle, they can be bound so that that you should not lose your entitlement because of the pandemic. It follows that agreed local study leave budgets should similarly roll over.

What if I am asked to provide cover for an absent colleague?

There must be clear and understood limits to the level of cover that any individual can be expected to provide.

There is generally an expectation that individuals will cooperate with their employer to provide cover for colleagues at an equivalent level where they are sufficiently competent to do so and, crucially, where providing such cover is 'practicable'.

There is no strict definition of 'practicable' but in general terms it means something close to 'able to be done' or 'able to be put into practice'.

Whether something is practicable or not in a given situation will depend on the circumstances, including your personal circumstances.

An example

If, for example, you have caring responsibilities towards family members, you may be justified in saying that it is not practicable for you to provide unforeseen, short notice cover that conflicts with these responsibilities.

Alternatively, if providing the cover requested would compromise patient care or safety because it's above your competency, then it would not be practicable to provide the cover.

Coming to an agreement with your employer

Unless there are local or national arrangements already in place, you are encouraged to come to agreement locally with your employer on:

- what is deemed to be practicable
- what the proposed cover entails
- that the work is of a suitable nature to be covered by you
- that the right clinical need has been prioritised in a situation where clinical personnel are limited in number.

In establishing suitability, due regard must be given to your duty to recognise and work within the limits of your professional competence, as well as your assessment of the likely impact on your wellbeing.

It may be necessary to agree to re-arrange other duties (e.g. cancelling a clinic) for you in the short term in order to provide adequate cover for the prioritised work.

Generally, it is only expected to cover absent colleagues for a short period e.g. up to 72 hours. This allows internal cover to be provided where practicable to cover a Weekend (Friday evening to Monday). This additional activity should be remunerated in line with the BMA recommended rates above. Beyond 72 hours, if colleagues remain absent then it is the trust's responsibility to arrange cover including securing the services of a locum.

Being asked to move to a different specialty

During the first wave of the corona virus pandemic many SAS doctors were asked to move from their customary area of specialty practice to another clinical role, outside of their usual areas of practice, so as to offer additional personnel to those other clinical services. This was as a consequence of the reduction in activity in their usual clinical specialty combined with a large increase in the clinical workload of another specialty, for instance that of Intensive Therapy Units.

The decision to move to another clinical specialty is similar to other job planning decisions, a matter best approached by individual discussion and agreement. Those moves were made possible during the first wave by a general reduction in activity in all other areas of clinical activity with the exception of urgent and emergency care and activity related to the pandemic. During subsequent peaks there is an expectation that standard, including elective, clinical activity will be preserved. However, it is difficult to see how such activity could, in reality, be preserved should SAS doctors be moved into other clinical areas. If you require further advice about redeployment you can see our guidance [here](#).

Appendix A

Sample letter for temporary change to job plan

Dear clinical director,

Following our helpful meeting on [DATE], I agree to temporarily change my job plan to support the trust's COVID-19 response. As discussed, I wish to clarify that this change is temporary, and I retain the right to revert to my pre-existing job plan (Attached) at any stage subject to giving 2 weeks' notice.

The changes we have agreed are listed below:

- Substituting 1PA Clinic (4 hours of DCC) normally occurring Monday pm to 1PA of ward cover on Monday pm
- Substituting 2 PA Theatre list (8 hours of DCC) Friday to 2 high intensity PAs (4 hours DCC) on Saturday at the BMA recommended 2 hours per PA rate.

Yours sincerely,

Appendix B

Sample letter for agreeing additional shifts.

Dear clinical director,

Thank you for asking me to undertake additional work to help support the trust during the pandemic. I am of course happy to do this but as you are aware this work is in addition to my normal job plan. I think it is appropriate that the rates of pay for this work are comparable to that which the trust are already paying other SAS doctors and as such I expect that I will be paid at least the minimum rate recommended by the BMA.

For clarity these rates are £xxxx per hour in plain time and £xxx per hour in premium time (outside of the hours of Monday to Friday 7am to 7pm).

I would be grateful if you could confirm your acceptance of these rates prior to me undertaking the additional work.

Yours sincerely,