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To: SHA CEs  
Cc: David Nicholson  
David Flory  
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SHA Finance Directors  
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Postgraduate Deans  
Monitor

18 December 2008

Dear Colleague

### **NHS MANAGEMENT BOARD: EUROPEAN WORKING TIME DIRECTIVE**

Following the discussion on the European Working Time Directive (WTD) at the Management Board on 10 December, I should be grateful for your help with taking forward the agreed actions. These were that you would

- (a) produce clear plans to support successful WTD implementation by 1 August;
- (b) develop plans for how you might use the £50m funding to support WTD implementation in 24:7 specialties; and
- (c) provide evidence for exceptional cases for derogation from the WTD by 16<sup>th</sup> January 2009.

### **Progress towards WTD implementation**

To support the NHS improve WTD planning and ensure that the risk to patients and service delivery is mitigated SHAs will want to be clear about their initial position by the end of January. This may comprise of SHAs/Trusts, in liaison with PCTs, completing a RAG assessment against current WTD 2009 readiness and the expected 1<sup>st</sup> August position for each trust and specialty.

You will also want to consider what action needs to be taken to help those specialties where doctors in training are working more than an average of 48-hours per week.

Given that there are challenges from professional bodies about our understanding of the progress that trusts are making, we have commissioned additional research to establish a wider evidence base for the state of readiness in Trusts. This information will be available to support SHA plans. Royal Colleges have also been asked to provide feedback that can be shared with SHAs to support triangulation of information about preparedness.

SHAs will want to consider how they locally manage those specialties identified as high risk, this may include sharing learning and best practice regularly at SHA Director of Workforce meetings. We shall support SHA Workforce and NHS Medical Directors in developing an approach that meets local needs and helps us all better understand where the difficulties are support all Trusts to achieve sustainable compliance.

### **Additional funding**

In 2008/09, £110m was included in PCT allocations to support WTD compliance. This will increase to £310m in 2009/10. To direct funds to support WTD in trusts, the tariff uplift for 2009/10 will reflect £150m funding for WTD.

We know that some specialties face particular challenges and SHAs will be able to target £50m to support changes needed in the 24:7 specialties, if they are to be fully compliant without compromising training. The funding is intended for trained doctor solutions particularly in paediatrics and obstetrics services.

In preparing your funding plans outlining how the additional investment would support WTD implementation, please take into account the following principles:

- focused on the 24/7 specialties;
- supporting sustainable solutions;
- supporting solutions that are clinically led and locally driven; and
- supporting solutions that are based on robust business cases.

The central financial plan is for the extra £200million available to the NHS in 2009/10 to be available again in 2010/11 to sustain WTD solutions.

### **Derogation**

In very exceptional circumstances, the European Commission may allow implementation of the 48-hour week to be delayed.

Given that organisations have known the implementation timetable for the past 10 years, there can be no assumption that a derogation will be agreed. The maximum possible delay in the Directive is for an extra four hours per week – a 52-hour maximum - for two to three years.

If there are exceptional cases where the WTD cannot be achieved by 1<sup>st</sup> August 2009, we need you to provide evidence setting out:

- a clear case for delaying compliance
- a plan to meet compliance
- a date for being compliant

I must stress that robust evidence is required to justify any delay and there is no derogation from the WTD rest break requirements.

The evidence has to be provided to the Department of Health by no later than the 16<sup>th</sup> January as it needs to be collated and sent (via the Department) to the European Commission before the end of January. The European Commission has until 1 May to 2009 to confirm its decision.

Thank for your support in delivering this challenging commitment, which is essential to ensure the provision of safe patient care and to support the training and work/life balance of our doctors.

Yours faithfully

A handwritten signature in black ink that reads "Flora Goldhill". The signature is written in a cursive style with a small dot above the 'i' in "Goldhill".

FLORA GOLDHILL  
Director, Workforce Capacity, Analysis & HR

**Advice on Quality Assurance WTD Monitoring Returns**

The MMC Programme team have offered to co-ordinate WTD quality assurance processes. The contact is Steve Buggle, MMC Operations Manager. As part of this, SHAs may wish to develop global position statements on Working Time Directive 2009 readiness for doctors in training for all Trusts, including Foundation Trusts.

This may comprise of WTD 2009 readiness information by specialty for each Trust, with a RAG assessment against the expected 1<sup>st</sup> August position for each specialty; and action being taken for those specialties where doctors in training are not yet working a 48-hour week.

For the specialties that the targeted £50m is being provided for, e.g. Obstetrics, Anaesthetics and Paediatrics, plans for using this funding can be developed alongside the quality assurance global position statement and subsequent exception reports.

To aid in the completion of the global WTD position statement and exception reports, a template will be sent to you shortly by the MMC Programme Team. The draft proforma is on the DH website.

SHA Workforce Directors have indicated that they would like to share their completed templates with the People Matters Executive Group which comprises of SHA and DH Workforce Directors. It would be helpful for the completed position statement templates to be sent to Steve Buggle by 28<sup>th</sup> January 2009 to enable summary reports to be circulated in advance of PMEG meeting.

PMEG also wish to have bi-monthly discussions on the specialties identified as high risk, so it would be very helpful if the first exception reports could be shared with Steve by 18<sup>th</sup> March 2009.

Monitor is supportive of the approach being taken and is likely to confirm this in writing to Foundation Trusts in the New Year.