

European Working Time Directive

Derogation

Report of the National Scrutiny Panel which met on 4 June 2009

Panel Members

Maggie Blott, Vice President (Education), Royal College of Obstetrics and Gynaecology
Ian Gilmore, President, Royal College of Physicians
David Grantham, Head of Programmes, NHS Employers
Judith Hulf, President, Royal College of Anaesthetists (Chair)
Paul Holmes, Deputy Director for Workforce, East of England SHA
Debbie Mellor, Deputy Director, Workforce Capacity, DH
Janet Monkman, Director of Workforce, East Midlands SHA
Wendy Reid, National Clinical Director for the Working Time Directive, DH
Andrew Thornley, Chair, BMA Junior Doctors Committee
Ian Wilson, Deputy Chair of BMA Central Consultants & Specialists Committee

Secretariat

Steve Buggle, MMC Operations Manager, DH
Kelly Freeman, MMC Team, DH
Shahzad Zamurrud, EWTD Project Manager, DH

Role of the Scrutiny Panel

The Panel considered its role was to:

- Provide the Secretary of State with a list of recommended derogations.
- Ensure that applications adhered to the agreed process with sign off at SHA and Trust level and that the information requested to support the applications had been provided.
- Assess whether a consistent level of quality assurance had been applied to all applications.
- Take a national view of some specialties to identify whether national action was required.

Process

Derogation requests were received from SHAs on 29th May following scrutiny and sign off at Trust and SHA level prior to being considered by the Scrutiny Panel.

The Panel reviewed derogation requests from 61 Trusts covering 202 rotas. These were circulated in paper format to the Panel members with a request that complete confidentiality be observed. Panel members were reminded that Parliamentary etiquette also requires that the list of derogations is not made public before the Statutory Instrument is laid before Parliament.

In the time available it was considered that it may not be possible for Panel members to read all the requests; the Panel was therefore divided into three teams of three and asked to consider the requests in the following groupings

Group 1	Ian Gilmore	}	East Midlands
	Paul Holmes		London
	Andy Thornley		South East Coast

Group 2 Maggie Blott } East of England
 Ian Wilson } South Central
 Debbie Mellor West } Midlands

Group 3 Wendy Reid } North West
 Janet Monkman } North East
 David Grantham } South West
 } Yorkshire & the Humber

The chairman and some Panel members reviewed all the derogation requests and the group as a whole discussed all the requests, with the discussion led by the lead for each group

The Panel was advised that if there were serious concerns over any application an opportunity should be given for further information to be provided.

The Panel agreed the following categorisation of applications:

- Category A Recommended, clear plan including timeframe.
- Category B Recommended, credible plan described. Early follow up to take place to assess progress and performance manage implementation of plan.
- Category C Recommended, serious concerns identified, other further action required with immediate follow up. Performance management with active intervention and ongoing support.
- Category D Unable to recommend based on the information provided. Urgent information required before application can be reconsidered.

The Panel agreed that SHAs should be asked to confirm the scrutiny process used and the number of derogation requests that had not been forwarded to DH.

Outcome of the review

The Panel reviewed a total of 202 derogation applications. Of these 41 were categorised as A, 42 as B, 105 as C and 14 as D.

Of the 14 applications categorised as D one application was considered inappropriate as it applied to non training posts, which are not covered by derogation. For the remaining 13 applications categorised as D, additional information was requested from SHAs. Following consideration of the additional information 12 applications were re-categorised C. One application remained category D because the speciality concerned will not have training grade doctors from the 1st August.

Category A	Category B	Category C	Category D
41	42	117	2

Issues highlighted based on the submissions

- 202 Acute rota applications represent approximately 3% of the acute rotas in England. This is fewer than might have been expected based on the April SHA Quality Assurance submissions reviewed by the EWTD National Reference Group.
- There is substantial variation in the number of submissions from each SHA.
- Derogation requests reliant on recruitment to middle grade non-recognised training posts or non training posts, despite repeated unsuccessful attempts, demonstrate this is not a deliverable, sustainable solution.
- Where international recruitment is successful, employers need to ensure that there are robust processes in place to support and induct these doctors into the NHS.
- Some EWTD compliant solutions proposed have implications for training. A variety of factors need to be assessed including the cell size of rotas, the over reliance on training grades to provide out of hours cover and therefore lack of access to training opportunities. The Panel welcomed the Secretary of State's request for a review of the impact of EWTD on postgraduate medical training.
- The Panel considered the most robust sustainable solutions are those that involved the development of consultant-based solutions. These offered the best quality patient care and often utilised the additional funding made available.
- Services requiring national review:
 - Transplant Surgery, especially Paediatric Transplant Surgery, offered no long term sustainable solutions and in the view of the Panel requires national review.
 - Neurosurgery. Recruitment into this specialty is of particular concern, probably related to the work/life balance of the specialty. This is unsustainable if the service is to be maintained and quality of training assured.
 - Cardiothoracic surgery. The reduction in training numbers because of the changing nature of the clinical service has led to particular difficulties maintaining safe patient care without significant service redesign.

Recommendations

- The Panel recommends that 200 out of the 202 derogation applications considered be granted derogation.
- The Panel strongly recommend that a robust follow up review process is set up immediately for all services relying on derogation. We suggest that the EWTD National Reference Group is well placed to advise on the review process building on the Royal College/SHA liaison team model of work.

- We recognise the strict timetable, to which we have adhered, as being necessary to comply with the legal process. The Scrutiny Panel has concluded that there is a need for ongoing support and performance management for those Trusts recommended for derogation. The Panel considered that in order to make certain best practice is implemented the Royal College/SHA liaison team review process, already established, is essential.
- The quality assurance work conducted by SHAs this year indicates that there are Trusts who have not made applications for derogation that may subsequently need the same support. The Panel recognises there may be Trusts currently compliant who at some time in the future may require further support to maintain safe patient care and quality of training. We therefore recommend the performance assurance framework remains in place to support Trusts to maintain sustainable solutions.
- We ask that there is clarity provided about the legal process after 1st August with scope to review access to derogation. We suggest that there may be instances where the application of derogation becomes necessary after 1st August 2009 to maintain safe patient care and we urge that access to the process is facilitated at that time.
- The Panel asks that PCTs/commissioners of services ensure that compliance with Working Time Regulations is factored into service reviews and built into business development/continuity plans by providers, and considered within all service level agreements.
- The impact of the implementation of the EWTD on the quality and outcomes of training must continue to be monitored and considered by the forthcoming review.

Summary

The Scrutiny Panel suggests that the work undertaken by organisations and leaders in a spirit of co-operation in order to ensure the best possible patient safety, delivery of service and high quality training, is acknowledged.

The Panel considers that the most robust sustainable solutions were those that involved the development of consultant-based delivery of service. These offered the best quality patient care and often utilised the additional funding that has been made available.

Judith Hulf

President, Royal College of Anaesthetists on behalf of the National Scrutiny Panel

8th June 2009

<i>Column 1 Employer</i>	<i>Column 2 Place</i>	<i>Column 3 Specialist Services</i>	<i>Column 4 Grade and, where applicable, Rota</i>
<i>England</i>			
East Midlands Strategic Health Authority area			
Derby Hospitals NHS Foundation Trust	Derby City General Hospital	Acute Medicine – Medical Assessment Unit Anaesthetics Anaesthetics – Obstetrics Anaesthetics – Intensive Care Anaesthetics – Theatres Clinical Oncology/ Haematology/ Palliative Medicine General Medicine General Surgery General Surgery/ ENT/ Urology Obstetrics and Gynaecology Paediatrics Urology	F2, CT1 and CT2 F2, ST3 to ST7 CT2, ST3 to ST7 CT1, CT2, ST3 to ST7 ST3 to ST7 F2, CT1 and CT2 F2, CT1, CT2, ST3 to ST7 ST3 to ST8 F2, CT1 and CT2 ST3 to ST7 ST3 to ST8 CT2, ST3 to ST7
Nottingham University Hospitals National Health Service Trust	Nottingham City Hospital Queens Medical Centre, Nottingham	Neonatology General Surgery and Vascular Surgery Neonatology	ST4 to ST8 ST4 to ST8 ST4 to ST8
Sherwood Forest Hospitals NHS Foundation Trust	Kings Mill Hospital	Anaesthetics Obstetrics and Gynaecology Paediatrics	F2, CT1, CT2, ST3 to ST7 F2, ST1 to ST7 F2, ST1 to ST8
United Lincolnshire Hospitals National Health Service Trust	Grantham and District Hospital Lincoln County Hospital Pilgrim Hospital	General Medicine Anaesthetics General Medicine General Medicine	F2, CT1 and CT2 F2, CT1 and CT2 ST3 to ST7 ST3 to ST7
University Hospitals of Leicester National Health Service Trust	Leicester Royal Infirmary Leicester Royal Infirmary and Leicester General Hospital	Emergency Medicine Paediatrics Neonatology	ST3 to ST7 F2, ST1 to ST8 ST4 to ST8
East of England Strategic Health Authority area			
Bedford Hospital National Health Service Trust	Bedford Hospital	Cardiology Care of the Elderly Endocrinology and Diabetes Respiratory	ST3 to ST7 ST3 to ST7 ST3 to ST7 ST3 to ST7
Cambridge University Hospitals NHS Foundation Trust	Addenbrookes Hospital	Adult Intensive Care Transplantation	F2, CT1, CT2 and ST3 ST3 to ST8

Cambridgeshire Primary Care Trust	Hinchingbrooke Hospital	Paediatrics	ST3 to ST8
Hinchingbrooke Health Care National Health Service Trust	Hinchingbrooke Hospital	General Surgery	ST3 to ST7
Ipswich Hospital National Health Service Trust	The Ipswich Hospital	Paediatrics	ST3 to ST8
James Paget University Hospitals NHS Foundation Trust	James Paget University Hospital	Anaesthetics (Obstetrics, Pain, ITU and Theatres) Obstetrics and Gynaecology Paediatrics	CT1, CT2, ST3 to ST8 ST3 to ST8 ST3 to ST8 – on call
Norfolk and Norwich University Hospitals NHS Foundation Trust	Norfolk and Norwich University Hospital	Anaesthetics Emergency Medicine Trauma and Orthopaedics	CT1, CT2 and ST3 ST3 to ST8 – Tier 2 (full shift rota – 24 hour service) CST1 and CST2 – Tier 2 (full shift)
Papworth Hospital NHS Foundation Trust	Papworth Hospital	Acute Specialties (Chest Medicine) Cardiothoracic Surgery Cardiothoracic Transplant Surgery	F2, CT1, CT2, ST3 to ST8 F2, CT1 and CT2 ST3 to ST8
Peterborough and Stamford Hospitals NHS Foundation Trust	Peterborough District Hospital and Edith Cavell Hospital	Urology	ST3 to ST7
West Hertfordshire Hospitals National Health Service Trust	Hemel Hempstead Hospital	Obstetrics and Gynaecology	ST3 to ST7
	St Albans City Hospital	Obstetrics and Gynaecology	ST3 to ST7
	Watford General Hospital	Obstetrics and Gynaecology	ST3 to ST7
London Strategic Health Authority area			
Barking, Havering and Redbridge University Hospitals National Health Service Trust	Queen's Hospital	Ear Nose and Throat Maxillo Facial Neurosciences (Neurology and Neurosurgery)	F2, CT1 and CT2 F2, CT1 and CT2 F2, ST1 and ST2
Great Ormond Street Hospital for Children National Health Service Trust	Great Ormond Street Hospital for Children	Cardiothoracic Surgery	ST4 to ST6
Hillingdon Hospital National Health Service Trust	Hillingdon Hospital	General Surgery (elective and non-elective) including Colorectal, Breast and Vascular	F2, CT1, CT2 and ST3
Imperial College Healthcare National Health Service Trust	Charing Cross Hospital	Neurosurgery	ST3 to ST7
	Hammersmith Hospital	Cardiothoracic Surgery	ST3 to ST7
	St Mary's Hospital	Cardiothoracic Surgery	F2, CT1, CT2, ST3 to ST7
Kingston Hospital National Health Service Trust	Kingston Hospital	Anaesthesia and Intensive Care, ACCS	CT1, CT2, ST3 to ST7
Whittington Hospital	Whittington	Anaesthetics/ ITU	ST3 to ST7

National Health Service Trust	Hospital	Obstetrics and Gynaecology Paediatrics Paediatrics – Neonates	ST3 to ST7 ST4 to ST8 ST1 to ST3
North East Strategic Health Authority area			
The Newcastle Upon Tyne Hospitals NHS Foundation Trust	Newcastle General Hospital	Anaesthetics Critical Care (ITU) Paediatrics Paediatrics Intensive Care	ST3 to ST7 – 1st on call ST3 to ST7 – 2nd on call ST3 to ST6 F2, ST1 to ST3 – 1st on call ST4 to ST8 – 2nd on call ST4 to ST8
North West Strategic Health Authority area			
Alder Hey Children's NHS Foundation Trust	Alder Hey Children's Hospital	Paediatric Cardiothoracic Surgery	ST3 to ST8, SpR
East Lancashire Hospitals National Health Service Trust	Royal Blackburn Hospital	Otorhinolaryngology (ENT)	F2, ST1, ST2, CT1 and CT2 – 1st on call ST3 to ST7, SpR
	Royal Blackburn Hospital and Burnley General Hospital, Blackburn and Burnley Urgent Care Centres Royal Blackburn Hospital and Burnley General Hospital	Emergency Medicine Trauma and Orthopaedics	F2, ST1 and ST2 – 1st on call
Lancashire Teaching Hospitals NHS Foundation Trust	Royal Preston Hospital	Neurosurgery	F2, CT1 and CT2 – 1st on call ST3 to ST7, SpR – 2nd on call
North Cumbria University Hospitals National Health Service Trust	Cumberland Infirmary	ENT/ Trauma and Orthopaedics/ OMFS General Medicine and medical specialties General Surgery	F2, ST1, ST2, CT1 and CT2 F1 – Acute 1st on call F2, CT1 and CT2 – Acute 2nd on call ST3 to ST7, SpR – Acute 3rd on call F1 – 1st on call F2, CT1 and CT2 - 2nd on call ST3 to ST7, SpR - 3rd on call
	West Cumberland Hospital	Obstetrics and Gynaecology Trauma and Orthopaedics General Medicine and medical specialties	F2, ST1 and ST2 – 1st on call ST3 to ST7, SpR – 2nd on call F1 – Acute 1st on call F2, CT1, CT2, ST3 to ST7, SpR – Acute 2nd on call

		General Surgery Obstetrics and Gynaecology Paediatrics Trauma and Orthopaedics	F1 – 1st on call F2, CT1 and CT2 – 2nd on call ST3 to ST7, SpR – 2nd on call F2, ST1 and ST2 – 1st on call ST3 to ST7, SpR – 2nd on call
Royal Liverpool and Broadgreen University Hospitals National Health Service Trust	Royal Liverpool University Hospital	Renal Transplant Surgery	ST3 to ST7, SpR
Trafford Healthcare National Health Service Trust	Trafford General Hospital	Anaesthesia	F2, CT1 and CT2 – 1st on call
University Hospitals of Morecambe Bay National Health Service Trust	Furness General Hospital	Paediatrics	F2, ST1 and ST2
Walton Centre for Neurology and Neurosurgery National Health Service Trust	Walton Centre for Neurology and Neurosurgery	Neurosciences Neurosurgery	F2, CT1 and CT2 ST3 to ST7, SpR
South Central Strategic Health Authority area			
Buckinghamshire Hospitals National Health Service Trust	Wycombe Hospital and Stoke Mandeville Hospital	Obstetrics and Gynaecology Paediatrics	F2, ST1 to ST7, FTSTA1 and FTSTA2 ST3 to ST8
Milton Keynes Hospital NHS Foundation Trust	Milton Keynes General Hospital	Anaesthetics Anaesthetics – ITU Anaesthetics – Theatres Emergency Medicine General Medicine Paediatrics Surgery Trauma and Orthopaedics	ST3 to ST7 FT2, CT1 and CT2 CT2, ST3 to ST7 ST3 to ST7 ST3 to ST7 F2, ST1 to ST8 CT1, CT2, ST3 to ST7 F2, CT1, CT2, ST3 to ST8
Portsmouth Hospitals National Health Service Trust	Queen Alexandra Hospital	General Paediatrics Obstetrics and Gynaecology	ST3 to ST8 ST3 to ST7
Southampton University Hospitals National Health Service Trust	Princess Anne Hospital Southampton General Hospital	Obstetrics and Gynaecology Anaesthetics – Critical Care	ST3 to ST7 F2, CT1, CT2, ST3 to ST7
South East Coast Strategic Health Authority area			
Brighton and Sussex University Hospitals National Health Service Trust	Royal Sussex County Hospital Princess Royal Hospital	Anaesthetics Anaesthetics	CT1, CT2, ST3 to ST7 CT1, CT2, ST3 to ST7
East Sussex Hospitals National Health Service Trust	Conquest Hospital and Eastbourne District General Hospital	Emergency Medicine Paediatrics	ST4 to ST7 ST4 to ST8

Frimley Park Hospital NHS Foundation Trust	Frimley Park Hospital	Anaesthetics and Intensive Care (obstetric anaesthesia and critical care medicine) Clinical Haematology	ST3 to ST7 ST3 to ST7
Maidstone and Tunbridge Wells National Health Service Trust	Kent and Sussex Hospital Pembury Hospital	ENT Obstetrics and Gynaecology	F2, CT1 and CT2 ST4 to ST7
Royal Surrey County Hospital National Health Service Trust	Royal Surrey County Hospital	Haematology Trauma and Orthopaedics Urology	ST3 to ST7 ST3 to ST8 ST3 to ST7
Surrey and Sussex Healthcare National Health Service Trust	East Surrey Hospital	Anaesthetics and Intensive Care (obstetric anaesthesia and critical care medicine)	CT1, CT2, ST3 to ST7
Western Sussex Hospitals National Health Service Trust	St Richard's Hospital	General Medicine Obstetrics and Gynaecology Paediatrics Surgery Trauma and Orthopaedics Urology	F2, CT1 and CT2 ST3 to ST7 ST4 to ST8 F1, F2, CT1, CT2, ST3 to ST7 F1, F2, CT1, CT2, ST3 to ST7 ST3 to ST7
South West Strategic Health Authority area			
Gloucestershire Hospitals NHS Foundation Trust	Gloucestershire Royal Hospital and Cheltenham General Hospital	Anaesthetics and Critical Care Services	F2, CT1, CT2, ST3 to ST7
North Bristol National Health Service Trust	Frenchay Hospital Southmead Hospital	Anaesthetics Trauma and Orthopaedics Anaesthetics Trauma and Orthopaedics	CT1, CT2, ST3 to ST7 – 1st on call CT1, CT2, ST3 to ST7 – 2nd on call CT1 and CT2 – 1st on call CT1, CT2, ST3 to ST7 – 1st on call CT1, CT2, ST3 to ST7 – 2nd on call CT1 and CT2 – 1st on call
Poole Hospital NHS Foundation Trust	Poole Hospital	Anaesthetics: Theatre Anaesthetics: Critical Care Anaesthetics Emergency Medicine Obstetrics Paediatrics Trauma and Orthopaedics	CT1 and CT2 (16 hour full shift) ST3 to ST5 (24 hour full shift) ST3 to ST5 (full shift 24 hours cover for theatres, back up for Obstetrics and Critical Care) ST3 to ST7 ST2 to ST4 (24 hour full shift) ST3 to ST8 CT1 and CT2
University Hospitals Bristol NHS Foundation Trust	Bristol Heart Institute Bristol Royal Infirmary	Cardiothoracic Surgery Services Cardiothoracic Surgery Services	ST3 to ST7 CT1 and CT2

West Midlands Strategic Health Authority area			
Birmingham Children's Hospital NHS Foundation Trust	Birmingham Children's Hospital	General Paediatrics Paediatric Endocrinology Paediatric Gastroenterology Paediatric Haematology/ Oncology Paediatric Hepatology Paediatric Inherited Metabolic Diseases Paediatric Nephrology Paediatric Neurology Paediatric Neurosurgery Paediatric Respiratory Medicine Paediatric Rheumatology	ST4 to ST8 ST4 to ST8 ST4 to ST8 ST4 to ST8 ST4 to ST8 ST4 to ST8 ST4 to ST8 ST4 to ST8 ST4 to ST9 ST4 to ST8 ST4 to ST8
Burton Hospitals NHS Foundation Trust	Queen's Hospital	Critical Care Anaesthesia General Anaesthesia Obstetrics Anaesthesia	ST3 to ST7 F2, CT1 and CT2 ST3 to ST7
George Eliot Hospital National Health Service Trust	George Eliot Hospital	Paediatrics	ST4 to ST8
Heart of England NHS Foundation Trust	Birmingham Heartlands Hospital Solihull Hospital	General Medicine Trauma and Orthopaedics Trauma and Orthopaedics	ST3 to ST7 ST3 to ST8 F2, CT1, CT2, ST1 to ST6
Mid Staffordshire NHS Foundation Trust	Stafford Hospital and Cannock Chase Hospital	Acute Medical Specialties and Medical Specialties	CT1, CT2 and ST3
Shrewsbury and Telford Hospital National Health Service Trust	Royal Shrewsbury Hospital The Princess Royal Hospital	General Surgery Trauma and Orthopaedics General Surgery Trauma and Orthopaedics	ST3 to ST8 F2, CT1, CT2, ST1 to ST3 ST3 to ST8 F2, CT1, CT2, ST1 to ST3
The Royal Wolverhampton Hospitals National Health Service Trust	New Cross Hospital	Paediatrics including Neonatal Services	ST4 to ST8
University Hospital of North Staffordshire National Health Service Trust	City General Hospital and Royal Infirmary	Acute Medicine Diabetes Elderly Care Gastroenterology General Medicine Infectious Diseases Respiratory	ST3 to ST7 ST3 to ST7 ST3 to ST7 ST3 to ST7 ST3 to ST7 ST3 to ST7 ST3 to ST7
University Hospital Birmingham NHS Foundation Trust	Queen Elizabeth Hospital	Anaesthetics and Critical Care – supporting Surgical Specialties and Obstetrics Cardiothoracic Surgery	CT1, CT2, ST3 to ST7 ST3 to ST8
Yorkshire and the Humber Strategic Health Authority area			
Barnsley Hospital NHS Foundation Trust	Barnsley Hospital	Acute and Medical Specialties – Combined MAU Paediatrics	F2, CT1, CT2, ST3 to ST8 ST1 to ST8
Sheffield Children's NHS Foundation Trust	Sheffield Children's Hospital	Paediatric Surgery	F1, CT1, CT2, ST3 to ST8, SpR

The Rotherham NHS Foundation Trust	Rotherham General Hospital	Anaesthetics General Surgery/ Urology Oral Maxillo Facial Surgery Paediatrics Trauma and Orthopaedics	CT1, CT2, ST3 to ST7 CT1 and CT2 CT1 and CT2 ST1 to ST8 CT1, CT2, ST1 and ST2
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