

BARNSTABLE CLINICAL COMMISSIONING GROUP'S WORKING TIME
REGULATIONS POLICY INCLUDING SECONDARY EMPLOYMENT



**BARNSTABLE CLINICAL COMMISSIONING
GROUP**
WORKING TIME REGULATIONS POLICY
INCLUDING SECONDARY EMPLOYMENT

Version:	1.2
Approved By:	Governing Body initially, then review by E&E Committee
Date Approved:	12 June 2014, then reviewed February 2016 & February 2018
Name of originator / author:	Head of HR
Name of responsible committee/ individual:	Equality & Engagement Committee
Name of executive lead:	Head of Governance & Assurance
Date issued:	12 June 2014 (reviewed February 2016, February 2018)
Review Date:	2 years from date of implementation
Target Audience:	All employees.

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**THIS POLICY HAS BEEN SUBJECT TO A FULL EQUALITY IMPACT
ASSESSMENT**

WORKING TIME REGULATIONS POLICY INCLUDING SECONDARY EMPLOYMENT

DOCUMENT CONTROL

Version No	Type of Change	Date	Description of change
V.1		March 2014	Will need to be signed off by the CCG
V.1.1	Review	February 2016	Minor changes following review by Head of Assurance, HR Lead, and LCFS
V.1.2	Review	February 2018	<ul style="list-style-type: none">• Added the role of Trade Unions to Section 6 (Responsibilities)• Clarified that secondary employment cannot be undertaken whilst on sick leave and that doing so may lead to criminal proceedings.

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1. PURPOSE

This document sets out the CCG's standard Working Time Regulations and Secondary Employment policy and procedures. It has been drafted to comply with statutory requirements. This should be read together with other relevant CCG policies, procedures and local guidance. The policy and procedures may be reviewed at the request of management or staff side by giving four weeks' written notice with reasons for the review.

2. SCOPE

This policy applies to all employees at the organisation. The Working Time Regulations also covers workers whilst they are working at the CCG, for example agency workers and some contractors. This policy supersedes all previous policies on the Working Time Regulations.

3. EQUALITY STATEMENT

In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

4. ACCOUNTABILITY

The Chief Officer is accountable for this policy.

5. IMPLEMENTATION & MONITORING

- 5.1 The Governing Body is responsible for formal approval and monitoring compliance with this policy. Following approval the policy will be disseminated to staff via the organisation's intranet.
- 5.2 The policy and procedure will be reviewed periodically by Human Resources in conjunction with managers, Local Counter Fraud and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately. Following review, minor changes can be approved by Equality & Engagement Committee but major revisions must be approved by the Governing Body.

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6. RESPONSIBILITIES

6.1 JOINT RESPONSIBILITY

Good working relations are vital for the CCG to operate successfully and provide its essential services. Management, trade unions and employees accept the responsibility of working together on issues in good faith and with goodwill with the shared intention of facilitating good working relations. Both the CCG and staff side would wish to discourage any individual from exceeding the 48 hours per week maximum average.

6.2 MANAGEMENT RESPONSIBILITY

Management is required to manage and to act fairly and consistently and is responsible for ensuring that the policies and procedures are disseminated effectively and observed by all employees.

Working Hours

Managers have responsibility to ensure that the service, including patient care is not affected because someone is working above the maximum average weekly limit. If a manager is concerned it must be discussed with the member of staff and advice sought from the HR team, where appropriate.

The line manager must be satisfied that the safety of the individual, colleagues or patients is not put at additional risk by the individual's request to opt out. Advice may be sought from the HR team and an appropriate risk assessment undertaken.

Managers are responsible for monitoring hours worked internally. If an employee also works in secondary employment they should only work a maximum of 48 hours per week in both jobs.

Secondary Employment

On receipt of a Secondary Employment Declaration Form (Appendix 3) managers must meet the employee to discuss the Secondary Employment. Before granting permission to undertake secondary employment the Manager should consider the following:

- Potential conflicts of interest.
- The Working Time Regulations.
- The employee's current performance.
- The employee's attendance and capability in their role with the CCG and the potential impact secondary employment may have on attendance and performance.
- Health and Safety of individuals, colleagues and service users.

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It is the manager's responsibility to deal with any declarations in a timely manner.

6.3 EMPLOYEES' RESPONSIBILITY

Employees have a duty to comply with the policies and procedures. If an employee has any questions or concerns about these they should raise these with their line manager or the HR team.

Any employee who wishes to undertake secondary employment elsewhere is required to seek permission from the CCG via use of the form found at Appendix 3. (See Appendix 2 for definitions of Secondary Employment).

All employees will be required to sign a declaration form and an opt out form if appropriate as part of the appointment documentation or the form at Appendix 3 and 4 for existing employees.

Any individual who wishes to "opt out" because of secondary employment must seek permission from their line manager. This must be done by completing the form in Appendix 4 as appropriate, and making a declaration of their secondary employment in writing, stating whether it is for a specific period or indefinitely. They must specify that they will give 7 days' written notice if they wish to end the agreement to opt out.

Employees must complete a new Secondary Employment Declaration Form if the details of their secondary employment change.

Employees must adhere to the Working Time Regulations and take responsibility for the health and safety themselves and others.

Employees must ensure that their total working hours do not exceed the limit as set out in the Working Time Regulations unless an opt out form has been signed. Employees must comply with the required rest periods as set out in the Working Time Regulations and any secondary employment should not compromise this under any circumstances.

6.4 HR RESPONSIBILITIES

The CCG's HR Team will:

- Work in partnership with managers and employee representatives to ensure employees are treated fairly and consistently within the framework of the policy.
- Advise managers of options available should an employee be managed under this policy.
- Record on the personnel file any individual who have opted out of the maximum working week due to secondary employment and the expiry date of the opt-out agreement.

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6.5 Staff Side Responsibilities

To provide support and advice to Trade Union members in relation to the Policy.

7. PRINCIPLES OF THE WORKING TIME REGULATIONS AND SECONDARY EMPLOYMENT

The Working Time Regulations came into force in the United Kingdom on 1st October 1998. They were introduced as a health and safety measure and cover rest periods, working time limits, night work, secondary employment and annual leave. They control both hours of work, and the pattern in which work can be organised. (See Appendix 1 for definitions of Working time).

7.1 WORKING TIME LIMITS

A member of staff must not work more than an average of 48 hours per week, calculated over a 17-week reference period. In exceptional circumstances for those health professionals providing continuous care relating to reception, treatment or care of patients, the reference period may be extended to a maximum of 26 weeks with the agreement of the relevant Trade Union and management representative. The CCG has agreed that the reference period will be a rolling one, for all employees.

Young workers, those over the minimum school leaving age but under 18, may not work more than 8 hours a day or 40 hours a week. These hours cannot be averaged out, and there is no opt-out available

7.2 REST PERIODS

Staff are entitled to daily and weekly rest periods and in work rest breaks.

- A daily rest period of not less than 11 consecutive hours in each 24-hour period during which the employee works.
- A weekly rest period of not less than 35 hours (including the 11 hours of daily rest) in each 7-day period. This may be averaged over 2 weeks i.e. 2 days' rest over a fortnight.
- A minimum uninterrupted break of 20 minutes if your daily working time exceeds 6 hours. The break is unpaid.
- Young workers are entitled to a break of 30 minutes if they work a 4½-hour period. They are entitled to a daily rest period of 12 consecutive hours in each 24-hour period and 48 hours' uninterrupted rest in any 7-day period.

Please note that breaks are intended to be taken as rest periods during the working day. They cannot therefore be used at the beginning or end of the working day in order that employees may delay their start or finish early.

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If employees cannot take their daily and weekly rest periods, for business reasons and agreed with their line manager, they are entitled to compensatory rest.

Unless there are exceptional circumstances, equivalent periods of compensatory rest should be given. Exceptional circumstances would include a need to provide security or protect persons or property, a foreseeable surge in activity e.g. winter pressures, or unforeseen circumstances beyond the employers control, e.g. unexpected weather, majax or pandemic which demand extra work to be carried out.

Compensatory rest should be taken as soon as is reasonably practicable, and normally within 2 weeks.

7.3 SECONDARY EMPLOYMENT

When an employee declares interest in secondary employment a meeting will take place to discuss the implications on the service and working time regulations before an agreement is made.

7.3.1 CURRENT EMPLOYEES

Before granting permission to undertake secondary employment the Manager should consider the following:

- Potential conflicts of interest.
- The Working Time Regulations.
- The employee's current performance.
- The employee's attendance and capability in their role with the CCG and the potential impact secondary employment may have on attendance and performance.
- Health and Safety of individuals, colleagues and service users.

7.3.2 NEW STARTERS

During the recruitment process the manager must establish if candidates intend to continue with any secondary employment both inside and outside of the CCG. If the successful candidate does intend to continue with any secondary employment the appointing manager should discuss with the candidate the nature of the secondary employment and consider the following points before agreeing that the secondary work to continue should the candidate wish to take up the post with the CCG:

- Potential conflicts of interest.
- The Working Time Regulations.

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- Health and Safety of individuals, colleagues and service users.

7.3.3 **SECONDARY EMPLOYMENT WHILST ON SICK LEAVE**

Employees must not undertake any secondary employment whilst on sick leave from the CCG. This includes any work during “off peak” periods, e.g. weekends and evenings unless a GP certificate / note states otherwise. In any event, employees must have sought permission from the CCG.

If an employee wishes to continue with voluntary work whilst off sick they must request permission in writing from their manager. The employee should outline in the request the nature of the work they wish to undertake, the number of hours they intend to work and confirm that no payment will be received for this work (excluding expenses). The manager must seek advice from the HR team in this situation and advice from occupational health services. Permission may be granted based on the fact that it is beneficial to the employee’s recovery and wellbeing to undertake the voluntary work.

Failure to adhere to this policy whilst on sick leave may result in disciplinary action which could lead to dismissal. Contravening this policy could also be considered as fraud, in which case the matter would be referred to the Counter Fraud Specialist for further investigation which may result in criminal proceedings

7.3.3 **RETRACTION OF PERMISSION TO UNDERTAKE SECONDARY EMPLOYMENT**

There may be circumstances where it is necessary for the CCG to retract its agreement for a member of staff to undertake secondary employment. Examples of these are outlined below.

Attendance / Time keeping

Where attendance or time-keeping is of concern and is attributable to secondary employment the CCG reserves the right to retract any permission given to an employee to undertake secondary employment.

Capability / Performance

Managers must monitor the performance of their staff. If performance falls below acceptable standards and the poor performance procedure has been invoked the CCG reserves the right to retract any permission given to an employee to undertake secondary employment if the secondary employment is deemed

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to contribute to the poor performance.

A new Conflict of Interest

There may be times where a new conflict of interest has arisen that did not previously exist when a new member of staff was appointed or when permission was given by the CCG for a member of staff to undertake secondary employment. Employees have a responsibility to highlight any new potential conflicts of interest that arise or may arise with their manager. The manager must assess the risk of the potential conflict of interest and if anything can be put in place to prevent the conflict of interest (i.e. removing staff member from a certain project etc.). If this cannot be avoided and the risk to the CCG and service delivery is too high, permission to undertake secondary employment may be retracted.

7.4 ON CALL

For the purpose of the Working Time Regulations working time will not start until the employee on call receives a call to go to work immediately, or responds to a call to deal with an incident over the phone and continues for the period they are working.

7.5 ANNUAL LEAVE

Under the WTR a worker is entitled to a minimum of 28 days paid leave per annum, including bank holidays.

7.6 NIGHT WORK

Night-time is defined by the period from 11.00 p.m. - 6.00 a.m. In the unlikely event that a CCG employee is engaged on night work the following paragraphs will apply.

It has been agreed that those staff who work on a 24-hour rotation which results in working regularly during night-time may be classed as night workers.

A night worker is someone who normally works at least three hours during night-time on a nightly basis.

Time worked as overtime on a night-shift is not normal work and therefore the employee would not be classed as a night-worker. A night worker should not exceed an average of 8 hours in 24 hours over a 17-week period.

Where night workers are identified by a medical practitioner to suffer from health and safety problems relating to the performance of night work the

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CCG should consider transferring them to suitable available day work.

A night worker is entitled to a free regular and confidential health-check by occupational health services to check that they are fit to carry out night work. Paid time off will be given to employees to attend occupational health assessments.

8. APPEAL

The Employee may invoke the grievance procedure if they feel that a decision to retract permissions under this policy is not justified or considers they have been unfairly treated in relation to their working time.

9. RECORDS

Management is responsible for ensuring records of secondary employment, any changes which may affect this and documented reasons if permission is retracted are kept on personnel files as well as other documentation regarding working time limits.

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APPENDIX 1

DEFINITIONS OF WORKING TIME (NOT EXHAUSTIVE)

Working time is defined as when someone is: "Working at their employer's disposal and carrying out their activity or duties."

It has been agreed that the following constitutes working time:

- **On-call:** Classed as working time from the point at which you are required to start work (e.g. called out or time spent on telephone) until the point you are required to stop.
- **Travel to allocated base:** Not classed as working time, however travel between bases during the working day would be classed as working time, unless your terms and conditions specify otherwise. Any travel in connection with business would be classed as working time.
- **Breaks:** Not classed as working time, except where individuals are required to work during meals.
- **Civic and Public duties:** If staff receive paid time off these would be classed as working time.
- **Trade Union duties:** If staff receive paid time off it would be classed as working time. Representatives should take some personal responsibility for ensuring that their contracted hours and trade union duties do not exceed an average of 48 hours per week.
- **Work related Study Leave:** Any period during which staff are receiving relevant training. This includes work experience provided pursuant to a training course or programme, and training for employment. It does not include non-job-related evening classes or day release courses. For further information please refer to the Learning and Development policy.

Working time for the CCG does not include:

- Travelling between home and work.
- Lunch or rest breaks when no work is done.
- Evening classes or day-release courses (non-job related).
- Time spent at home whilst "on call", during which non-work related leisure activities can be pursued.
- Additional hours staff choose to do without being required by or without the agreement of their manager.

Please seek advice from your manager or HR team if you are unsure if this exception applies to you.

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APPENDIX 2

DEFINITIONS OF SECONDARY EMPLOYMENT (NOT EXHAUSTIVE)

The term 'Secondary Employment' in this policy covers:

- Any paid employment..
- Paid employment within the CCG in a different service.
- Voluntary work outside of the CCG.
- Self-employment.
- Bank / Locum / Agency Work.
- Reservist Occupations.

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APPENDIX 3

NHS BARNSLEY CCG DECLARATION OF SECONDARY EMPLOYMENT

PERSONAL DETAILS

Full Name:

Title:

Job Title:

Department:

Hours of work per week:

Pattern of work (e.g. 24/7 shifts, 8:30am – 5:00pm):

Days worked:

OTHER EMPLOYMENT / WORK DETAILS

I have other employment/work or I am considering other employment/self-employment / Bank/Locum/Agency work. The details of which are below:

Organisation/Company/Agency:

Job Title:

Description of work undertaken:

Type of work: (please circle)	Paid	Unpaid	Voluntary	Casual

Hours per week:

Pattern of work (e.g. 24/7 shifts, 8:30am – 5:00pm):

Annual Leave Entitlement:

Date Commence (if already in secondary employment):

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DECLARATION

I declare that the above information is correct and that secondary employment in this instance will not have a detrimental effect on my work at the CCG. I have no undeclared interests that may affect my employment with the CCG. I will inform my line manager if there are any changes to the above.

I understand that if I knowingly provide false information this may result in disciplinary action and I may be liable for prosecution and civil proceedings. I consent to the disclosure of information from this form to and by the Counter Fraud Specialist and the NHS Counter Fraud Authority for the purpose of verification and the investigation, prevention, detection and prosecution of fraud.

I have read and understand the CCG's Working Time regulations Policy and I agree to comply with its requirements to declare secondary employment.

Employee Signature:

Print Name:

Date:

Authorising Manager Signature:

Print Name:

Date:

If the application is not approved please state the reason for refusal:

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APPENDIX 4

OPT OUT AGREEMENT

The Working Time Regulations define working time as when someone is “working, at his/her employer’s disposal and carrying out his/her activity or duties.”

This incorporates:

- Working lunches i.e. business lunches.
- If you have to travel as part of your work during working time.
- If you are engaged in job-related training.

You may agree to work more than 48 hours a week but cannot be forced or expected to work more than this limit. You cannot be dismissed or discriminated against for refusing to sign an opt out statement.

Should you wish to work more than the 48 hour week average, please sign the following opt-out agreement and return it to your manager. Your manager will then forward a copy of this to the workforce department.

Employee's Name:

Job Title:

Work Telephone No:

Managers Name:

I agree that I may work for more than an average of 48 hours a week. If I change my mind, I will inform NHS Barnsley CCG, in writing, to end this agreement giving 7 days notice.

Signed:

Print Name:

Date:

If you will be working more than 48 hours a week because of a second job please give details below:

Job Title in Second Job:

Name & Address of second employer:

Employees should be aware that the CCG reserves the right to not accept an Opt Out Form (Appendix 4) if it believes the health and safety of any staff or patients are likely to be affected.

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APPENDIX 5

Equality Impact Assessment

Title of policy or service	Working Time Regulations Policy	
Name and role of officers completing the assessment	Head of HR	
Date assessment started/completed	February 2018	
Type of EIA completed:	Initial EIA 'Screening' <input checked="" type="checkbox"/> or 'Full' EIA process <input type="checkbox"/>	(select one option)

1. Outline	
Give a brief summary of your policy or service <ul style="list-style-type: none">• Including partners national or regional	This document sets out the CCG standard Working Time Regulations and Secondary Employment policy and procedures. It has been drafted to comply with statutory requirements. This should be read together with other relevant CCG policies, procedures and local guidance. The policy to comply with statutory requirements and complies with NHS Litigation Authority Standards and best practice.

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What outcomes do you want to achieve	
Give details of evidence, data or research used to inform the analysis or impact	<p>A draft of this policy has been circulated for review by the following:-</p> <ul style="list-style-type: none"> • BCCGs Information Governance Manager, • BCCGs Equality and Diversity Lead, • Staff Side Union Representative, • Local Counter Fraud Officer • BCCG staff. <p>The final policy has been signed off by BCCGs Chief Nurse and the Equality and Engagement Committee.</p>
Give details of all consultation and engagement activities used to inform the analysis of impact	As above

Identifying impact:

- **Positive Impact:** will actively promote the standards and values of the CCG;
- **Neutral Impact:** where there are no notable consequences for any group;
- **Negative Impact:** negative or adverse impact: causes or fails to mitigate unacceptable behaviour. If such an impact is identified, the EIA should ensure, that as far as possible, it is eliminated, minimised or counter balanced by other measures. This may result in a 'full' EIA process.

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2. Gathering of Information

This is the core of the analysis; what information do you have that might *impact on protected groups, with consideration of the General Equality Duty*.

(Please complete each area)	What key impact have you identified?			For impact identified (either positive or negative) give details below:	
	Positive Impact	Neutral impact	Negative impact	How does this impact and what action, if any, do you need to take to address these issues?	What difference will this make?
Human rights	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Age	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Carers	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Disability	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Sex	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Race	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Religion or belief	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Sexual orientation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Gender reassignment	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Pregnancy and maternity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

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Marriage and civil partnership (only eliminating discrimination)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
Other relevant groups	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
HR Policies only:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

IMPORTANT NOTE: If any of the above results in '**negative**' impact, a 'full' EIA which covers a more in depth analysis on areas/groups impacted must be considered and may need to be carried out.

Having detailed the actions you need to take please transfer them to the action plan below.

3. Action plan				
Issues identified	Actions required	How will you measure impact/progress	Timescale	Officer responsible
No anticipated detrimental impact on any equality group. The policy is applicable to all employees and adheres to the NHS Litigation Authority Standards, statutory requirements and best practice. Makes all reasonable provision				HR Manager

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to ensure equity of access to all employees. There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic				
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4. Monitoring, Review and Publication

When will the proposal be reviewed and by whom?	Lead / Reviewing Officers:	HR Manager	Date of next Review:	March 2020
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Once complete please forward to your Equality lead via email barnsleyccg.equality@nhs.net

Equality Lead signature: Date: 08.03.2018	
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