Annex B

MANAGEMENT STEERING GROUP

MEDICAL STAFF WORKING DURING INDUSTRIAL ACTION BY RESIDENT DOCTORS FAQ - JUNE

Introduction

The purpose of this FAQ is to provide guidance to Boards in relation to pay for Career Grade Doctors in the context of potential industrial action by Resident doctors and the BMA Scotland rate cards issued for Consultants and SAS Doctors in Scotland.

Q1. What is the position in relation to the rate cards issued by BMA Scotland?

Previous industrial action advice referred to rate cards issued by BMA Scotland. These rate cards were withdrawn as part of the 24/25 pay deal agreed between the Scottish Government and BMA Scotland. BMA Scotland did however reserve the right to re-introduce the rate card in the event that no agreement is reached in respect of short term cover or in the event of a future industrial dispute. Should they decide to do so MSG's position remains that the rate cards were neither discussed nor agreed with NHS Scotland employers and are **not** supported by MSG. NHS Boards should maintain an approach consistent with MSG's position in the event that they are asked to adopt the BMA's suggested rates locally. MSG's overall position remains that Boards should adhere to national terms and conditions, local agreements and the published bank rates.

For the purpose of this guidance local agreements are defined as extant agreements i.e. those already in place prior to BMA members voting to undertake industrial action, normally agreed through the Local Negotiating Committee.

Q2. What rates should be paid for career grade doctors working Resident on call to cover gaps resulting from Resident doctors' industrial action?

There are no nationally agreed rates for Resident on call. The 2004 Consultant Contract advises that where it is agreed between the Consultant and employer that he/she will undertake Resident on call duty, arrangements agreed locally with the LNC will apply.

Boards should therefore have their own locally agreed Resident On Call Agreement and should adhere to this. In the context of industrial action by Resident doctors where absence resulting from this occurs the only way to maintain a critical/emergency clinical service may be by asking a Consultant to undertake Resident work in place of the non-Consultant doctor. This will normally be the Consultant already scheduled to be on duty (on call) over the period

in question and they will then undertake the missing Resident Doctor's work in addition to any senior contribution that they might have made anyway.

The rate of pay should be as per Boards' local RoC agreement, with these rates of pay also being applied to SAS Doctors (based on SAS pay scales in the new 2022 contract) in the event that they provide cover.

In the event that there is no local Resident On call agreement it is open to Boards to utilise the agreement in place within their Regional Lead Employer.

Remuneration applies only to the duration of the on-call period. The payments will not be superannuable and will be in addition to any remuneration that the Clinician would otherwise receive for being on duty.

Q3. What rates should be paid to a Consultant acting down to cover a Resident Doctor gap?

If the Consultant is already on duty during normal working hours and has been asked to provide cover for a Resident Doctor in addition to or by replacement of their own work no additional payment will be due. In the event that activity planned for core hours is displaced to non-core hours they should be paid rates in accordance with local practice i.e. medical staff bank rate or premium rates as outlined in the 2004 consultant contract (time and a third).

During the period of strike action any Consultant or SAS doctor who has agreed to be Resident overnight (5pm to 8am) to cover a Resident doctor gap will be remunerated at triple time. This includes circumstances where there is already a Consultant on-call and another consultant steps in to cover a Resident doctor rota gap. This fairly reflects the principles set out in the Resident on-call agreements and will protect safe patient care for critical and emergencies services during these extenuating circumstances.

Q4. What rate should be paid to a Consultant who is asked to undertake an additional non Resident on call shift either to cover a colleague who is "acting down" into a Resident Doctor gap or to cover a Resident Doctor on call gap?

During the period of strike action any Consultant or SAS doctor who has agreed to be Resident overnight (5pm to 8am) to cover a Resident doctor gap will be remunerated at triple time. We believe that this fairly reflects the principles set out in the Resident on-call agreements and will protect safe patient care for critical and emergencies services during these extenuating circumstances.

Q5. What rates should doctors working on Medical Banks be paid during the Resident Doctor's industrial action?

In relation to work carried out on the Medical Staff Banks the position remains that Boards should adhere to the national rates set by MSG. These are:

Grade	Rate per Hour
Consultant (based on Point 20 of the pay scale)	£102.23

Grade	Rate
New Specialist Doctor Grade (based on point 3 of the pay scale in 2022 contract)	£75.52
Specialty Doctor on 2022 contract (based on Point 5 of the pay scale in 2022 contract)	£67.75

Grade	Rate
Specialty Doctor on 2008 contract (based on Point 10 of the existing pay scale under 2008 contract)	£66.71

Grade	Rate
Associate Specialist (based on Point 10 of the existing pay scale under 2008 contract)	£81.62

- **2025/6 rates based on PCS (DD) 2025 01**

The only exception to this are the enhanced rates currently being paid in some Boards for Consultants and Specialty Doctors working in Emergency Medicine Departments and these should continue locally. **These enhanced rates only apply to work carried out in Emergency Departments and should not be extended to work conducted in other areas of activity.**

Q6. Can Boards use Time off in Lieu as a means of recompensing career grade staff for cover during the industrial action?

TOIL is an alternative way of compensating for additional work undertaken and should only be used as an alternative to payment if the work is not already factored within the Job Plan.

At this time we are not endorsing TOIL as an alternative to payment as this will undoubtedly cause issues to Services in the future, however if Clinicians do not wish to be paid for additional Ad-hoc hours they should discuss with Management the option of receiving time off in lieu. (TOIL).

TOIL would be based on the number of additional hours worked. If the additional hours are worked in premium time (Time + 1/3) Premium time applies to work undertaken at weekends, public holidays, between 8pm and 8am Mon - Fri for consultants and 7pm – 7am for Specialty doctors) e.g. this would mean that for every 3 hours worked in premium time this will attract 4 hours TOIL.

Q7. What rate of pay should be made for work deemed as extra – contractual?

BMA Scotland have issued guidance in relation to a number of activities which are in their view extra contractual. In these cases BMA Scotland are recommending doctors should utilise the BMA rate card as a basis for remuneration. BMA Scotland's argument is that these works are outside the agreed job plan, are therefore extra contractual, and that pay needs to be negotiated and agreed between the employer and the doctor.

The activities in question include:

- Catch-up work such as waiting list initiatives (WLIs) and similar
- Weekend clinics
- Extra lists at the weekend (including trauma lists)
- Additional shifts (e.g., in emergency departments)
- ward rounds (including post-on call ward rounds) in premium time (time outside of 7am-7pm Monday to Friday)
- providing cover for foreseeable Resident doctor colleague absences
- periods of on-call in premium time which necessitate a consultant in practice to be Resident whilst 'on call'.

It seems likely that a number of these areas of activity will come into play in the context of industrial action. Some of these e.g. WLI work are clearly covered by National Terms and Conditions. Others, e.g. Resident On Call will be the subject of local agreements with Local Negotiating Committees or in the case of Bank work in Emergency Departments, already covered by enhanced Bank rates.

There are however a multiplicity of potential circumstances in which cover will be required in the context of industrial action. Providing this cover will sometimes require career grade doctors to carry out additional work, whilst in other cases the work required will not be additional but will be different to that agreed in their job plan.

The general principles to be followed are:

- If the work is additional, whether within or outside core working hours it should attract additional pay at the rates outlined above depending on the circumstances of the additional work
- Where the work is not additional but is replacing Resident Doctor's work during core working hours this should be undertaken at normal salary rates.

As previously advised MSG's overall position remains that Boards should adhere to national terms and conditions, the relevant extant local agreements and the published bank rates.

Q8. If a Resident Doctor who has chosen not to strike is asked to work an additional shift to cover a gap what will they be paid?

In these circumstances, payment will be made in accordance with the arrangements locally i.e. bank rates or as per terms and conditions.

Q9. In the event that Advanced Nurse Practitioners are asked to cover gaps in Resident doctors rotas, how should they be recompensed?

All Agenda for Change staff are eligible for overtime payments for excess hours worked over full time hours. Part time staff will receive payments for the additional hours at plain time rates until their hours exceed standard hours of 37.5 hours per week. An additional on call would be subject to the normal on call payments.