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**TO: ALL RADIOLOGY AND RADIOTHERAPY MANAGERS IN ENGLAND
AND N. IRELAND**

Dear Colleague

AGENDA FOR CHANGE: PROTECTION OF HOURS

You will remember that I wrote to you on 4th January 05 regarding the protection of working hours included as part of the Agenda for Change Agreement.

Although satisfactory arrangements have been agreed in Scotland and Wales as part of the partnership process, a significant number of trusts in England and N. Ireland are not honouring the agreement in full. It is becoming clear that there is reluctance on the part of Department of Health to issue national advice; SoR is therefore issuing advice to both reps and managers to enable them to ensure that the interests of members and the service are protected in line with the national agreement.

- i) If your Trust is honouring protection in full, i.e. for new entrants to NHS, new appointments from another NHS trust and internal promotions – please contact Susan Henry on susanh@sor.org so that we can compile an accurate picture and also give your trust positive publicity. Please also inform your Regional Officer.
- ii) If your trust is honouring protection for any new appointment from within NHS or internal promotion, but not for new entrants to NHS – please consider the SoR advice contained below and discuss it with the local SoR rep. Contact should be made with the Chief Executive or the Director of Human Resources to ask why they are not protecting new starters, to explain the SoR view and to explain the effect the trust's policy will have on the service. The local rep will also be able to seek support from the local staff side. NB no staff should be appointed on 371/2 in any event until the staff group have been assimilated (Para 46.5)
- iii) If your trust is failing to honour protection for new appointments from within NHS and/or for internal promotions, SoR advice is as follows:
 - a) Discuss this with the local SoR rep. They will be able to pursue a number of routes via staff side locally as all decision re AFC must be made in partnership.
 - b) Ask for a meeting with the Director of Human Resources and /or the Chief Executive to explain the detrimental effects a failure to honour protection will have on service delivery (see below).
 - c) If the matter cannot be resolved, SoR has advised that individual or collective grievances should be lodged. In most cases these should be progressed outside the department as the grievance will not lie with your self as the manager responsible for the decision.

- d) SoR has further advised that as a last resort, SoR reps will suspend their participation in the trust's matching panels which will in many cases have a detrimental effect on the trust's ability to meet targets but only if the trust cannot put together sufficient matching panels. You are advised to contact other unions and try to reach agreement with them that their reps will not step in to replace SoR reps on matching panels.
 - e) The trust will be included on a SoR 'protection of hour's shame list' which will affect recruitment and retention.
- iv) Some trusts have agreed with staff to move immediately to 37_ hours as a way of ensuring that all staff are employed on the same hours, with an increase in pay to compensate. This is an acceptable solution provided that it is on a voluntary basis.

NB. Some trusts, in order to meet their targets for implementation, are attempting to assimilate radiographers before they have been matched. This is unacceptable practice and should not be agreed to, not even in partnership.

Negotiating Advice

SoR Policy

Existing Staff

The AfC agreement provides for a protection period during which the 37.5-hour working week is phased in. This protection commenced on 1/12/04 and finishes on 1/12/11 as per **paragraph 46.32, table 9** of the Terms and Conditions Hand-book (Jan 05). Protection arrangements for staff who remain in their current job until 1/12/11 are therefore clear.

Promotion or Job Change

The SoR is of the view that those staff who;

- (i) Move jobs within the same trust to a job which under Whitley would have had conditioned hours of 35 per week; or
- (ii) Are promoted within the same trust to a job which under Whitley would have had conditioned hours of 35 per week; or
- (iii) New staff who have worked for another NHS employer who are appointed to a job which would have had conditioned hours of 35 per week under Whitley should be afforded protection under their pre-existing Whitley contract.

The basis for this view is contained in **paragraph 46.31:**

"Staff currently working less than 37.5 hours, excluding meal breaks, will have their hours protected for a phased protection period as set out in table 9 below. These protection arrangements will continue to apply where staff move to a post with the same hours under the old pay system during the protection period".

New Entrants to the NHS

The SoR is clear that new entrants to the NHS should be appointed on the same protection arrangements as those of existing staff i.e. those laid out in **table 9**

of the NHS Terms and Conditions of Service Handbook. This is supported by paragraph 46.5, which makes it clear that in any event new starts who are appointed after 1st October 2004 but prior to assimilation should be recruited on pre-agenda for change terms and conditions and protection arrangements should therefore apply. Jobs should not be advertised on 37.5 hours prior to assimilation.

The reasoning behind this policy is threefold,

- (i) It is a sensible approach to service delivery, particularly where complex rota for the provision of out of hours services are involved.
- (ii) If new staff are appointed directly on to 37.5 hours this will mean that some staff are working longer hours for the same amount of money i.e. at a lower hourly rate. This is bound to affect the morale and retention of existing staff and the recruitment of new staff and is fundamentally opposed to the principle of equal pay for work of equal value embodied in AfC.
- (iii) Newly qualified staff need direct clinical supervision from more senior staff and yet they are the staff most likely to be working longer hours. This causes a practical problem in providing essential supervision.
- (iv) The trust will be included on an SoR 'protection of hours shame list' which will affect recruitment and retention.

Partnership Working

The whole ethos underpinning the AfC agreement is meant to be partnership. This means open and full consultation and discussion followed by agreement on a mutually acceptable way forward. There can be no imposition by management but registration of a failure to agree, referral through the appropriate procedure and maintenance of the status quo (i.e. recruitment on 35 hours). A policy cannot be said to have been agreed in partnership if organisations that represent those most affected (SoR) have not been involved in development of that policy.

Solutions

There are two solutions to this problem:

- (i) The hours protection is honoured; or
- (ii) The trust offers to move all staff on to 37.5 hours with commensurate increase in pay for those extra 2.5 hours. This would be a win-win solution for both the trust (increase in hours immediately, decreased agency/overtime costs, resolution of supervision problem) and for members (increased pay for increased hours).

I hope you find this advice helpful. SoR's Regional Officers are available for advice and support if required.

Yours sincerely

Warren Town
DIRECTOR OF INDUSTRIAL RELATIONS