Proposals of the Labour Relations Commission to address maximum 24 hour shift working and achieve EWTD compliance

Table of contents

1. Context

This document sets out proposals to reduce long working hours for Non-Consultant Hospital Doctors (NCHDs) and achieve EWTD compliance.

2. Commitment to reduce NCHD working hours

Health service management (HSE, Department of Health and Department of Public Expenditure and Reform) and the IMO agree, in accordance with the arrangements set out in the entirety of this document, to eliminate shifts in excess of 24-hours, to further progress EWTD compliance during the period September – December 2013 and to the achievement of full compliance through 2014.

3. IMO / HSE work to progress maximum 24-hour shift in Galway and Roscommon

A joint HSE / IMO process to progress verification of NCHD working hours and implementation of actions to reduce hours began with a site visit to Galway University Hospital and Roscommon County Hospital on 19th September 2013. The purpose of the visit was to assess the extent of the hospitals' engagement with NCHDs regarding rostering, payment, overtime and other issues; verify whether rostering requirements and hours worked were compliant with maximum 24-hour shift and EWTD requirements and then discuss with each hospital the direct actions to improve performance and achieve necessary compliance.

The meetings were attended by senior NCHD representatives, IMO representative, Clinical Directors, hospital management and senior officials from the HSE and Department of Health.

Following the meetings, a series of actions were agreed by the IMO, HSE and Department of Health to achieve full compliance for NCHDs in Galway and Roscommon with a maximum 24 hour shift. It was agreed that each hospital would commence implementation of these actions in October 2013 and that these would be verified by the HSE and IMO in November 2013.

The IMO acknowledge the positive outcome of the verification process in Galway and Roscommon and have indicated that it forms an agreed basis for a national process.

4. Joint national verification and implementation process

Firstly, health service management and the IMO are agreed that a national group will be established to oversee verification and implementation of measures to reduce NCHD hours, eliminate shifts in excess of 24 hours and achieve EWTD compliance. The National EWTD Verification and Implementation Group will include:

- IMO:
  - IMO Industrial relations staff,
  - IMO NCHD Committee members;

- Corporate health service management including:
  - National Director of Acute Hospitals, HSE
  - National Director of Human Resources, HSE
  - Lead Clinical Director;
  - Director of Medical Education and Training;
  - Assistant Secretary, Department of Health;
  - Medical Manpower / other expertise as required.

Secondly, a joint IMO / HSE verification and implementation process identical to that undertaken in Galway and Roscommon will commence immediately (Monday 30th

September) for each acute hospital to conclude by Friday 1st November. The following sets out arrangements to apply during the verification process:

a) The process will take into account all NCHD hours worked as per NCHD Contract 2010;

b) Meetings will include:

- NCHDs
  - Nominated by the IMO and other NCHDs as appropriate;

- Hospital:
  - Hospital CEO / General Manager,
  - Clinical Director (Clinical Directors where more than one is in place),
  - Specialty leads where no Clinical Director is in place,
  - Director of Nursing,
  - Medical Manpower Manager / HR Manager;

- IMO:
  - IMO Industrial relations staff;

- Corporate health service management including:
  - National Director / senior official from Acute Hospitals Division,
  - National Director / senior official from Human Resources Division,
  - Senior clinician;
  - Medical Manpower Manager / other relevant expertise,
  - Department of Health official.

c) Health service management and the IMO are agreed on the creation of an NCHD Committee and a consequent Lead NCHD role aligned with the Clinical Directorate structure to provide for a formal link between NCHDs and hospital management. The Lead NCHD role is to be the subject of further discussion between the IMO and health service management. Key areas of work for the NCHD Committee will include NCHD welfare, training, EWTD (responsibility for which is detailed at g) below) and executive decisions affecting NCHDs. The employer will make available resources to support the Committee and Lead NCHD in their role. This will include ensuring that NCHDs are able to attend meetings as required.

d) Actions to change rosters and revise work practices identified during this process will be commenced during November. Hospital level actions regarding elimination of shifts in excess of 24 hours should commence at the earliest opportunity after the initial verification visit / engagement has taken place. Actions may include reconfiguration, redeployment and recruitment. Where actions are confined to internal reorganisation / redeployment, these will be implemented by 30th November.

e) Where an agreed action has been identified as achieving 24-hour compliance by the NCHD rotation on 14th January 2014 or earlier, resource availability will not be a constraint. Taking this into account, health service management will prioritise resource allocation to achieve full EWTD compliance in 2014. The parties agree as part of the review in March 2014 set out in section 7 of this document, to examine all resource related considerations in the context of achieving full EWTD compliance against the background of this commitment.

f) Implementation and achievement of a maximum 24-hour shift will be verified jointly by the HSE and IMO with the involvement of the LRC as appropriate.

g) To support the process, health service management and the IMO will agree guidance on measures to promote EWTD compliance, implementation of a maximum 24 hour shift and associated best practice. Each Hospital CEO / Manager will formally establish a Hospital-level EWTD Implementation Group to include the Hospital CEO / Manager, Clinical Director, NCHDs (nominated by IMO and others), lead Consultants, Director of Nursing and others as appropriate – meeting on a fortnightly basis. The Hospital EWTD

Implementation Group will be subject to direction and guidance from the National Group and report progress and information as required.

h) Health service management are committed to transparent reporting of progress in relation to implementation of a maximum 24 hour shift and EWTD implementation and appropriate payment of all hours worked including those worked in excess of 24 or 48 hour limits. In this regard the HSE will arrange for:

- publication of NCHD rosters incorporating all required service hours (including hours currently unrostered) a month in advance, regular review / verification of compliance with and payment of same - led by the Clinical Director (under direction of the Hospital CEO / Manager and with support from the Medical Manpower Manager);

- local documentation of compliance with the EWTD requirement for a 30 minute rest break for every 6 hours worked (within the existing contracted working day and working week) and of protected training time;

- national publication of current and cumulative compliance with a maximum 24 hour shift and EWTD compliance as part of the existing HSE performance indicator suite in relationship to overall hospital performance.

- rapid introduction of time and attendance systems in each acute hospital. In the interim, hospitals will act immediately – where technologically feasible - to ensure NCHDs are covered by existing electronic time and attendance systems by 1st November 2013. A listing of hospitals where time and attendance systems can be implemented has been provided to the IMO. In cases where time and attendance systems are not in place or there are technical difficulties a time frame for implementation of a time and attendance system will be agreed with the IMO.

Health service management and the IMO are committed to ensuring that no NCHD works a shift in excess of 24 hours after 30th November 2013 other than in exceptional circumstances as determined by the joint verification process. In such circumstances, a maximum 24-hour shift will be implemented by 14th January 2014.

5. An agreed basis for reducing NCHD hours and eliminating long shifts

Health service management and the IMO believe that the measures described above will further reduce the number of NCHDs working long hours and eliminate the requirement to work shifts in excess of 24 hours.

Implementation will significantly improve working conditions for doctors within a framework that maintains the delivery of safe patient care over the 24/7 period. Health service management and the IMO are committed to implementing any agreement reached by the parties proactively and in a positive way at local and national levels to deliver better services for patients.

6. Accountability for NCHD rostering / working hours

At hospital level, accountability for rostering NCHDs ultimately lies with the Hospital CEO / General Manager. Currently, NCHD rosters are developed either by a Medical Manpower / HR Manager in consultation with relevant NCHDs, Consultants and the Clinical Director or, in some settings by NCHDs and / or Consultants themselves.

Accountability for how NCHDs are rostered to respond to service needs, can participate in training as appropriate, have access to leave and the working hours arising from such rostering must involve the relevant Consultant – as per the NCHD's reporting relationship – the Clinical Director and the Hospital CEO / General Manager. Taking the above into account, in future:

a) rosters will be developed in conjunction with the local hospital EWTD Implementation Group. The Hospital CEO / General Manager and Clinical Director will thereafter be responsible for progressing and maintaining amended rosters;

b) it is agreed that the Hospital CEO / General Manager will identify a senior manager to liaise directly with NCHDs in relation to issues as they arise across the 24/7 period;

c) for those hospitals demonstrating full compliance with a maximum 24-hour shift and EWTD requirements it will be the responsibility of the CEO / General Manager and Clinical Director to ensure ongoing compliance;

d) for those hospitals or specialty services within hospitals currently not demonstrating compliance, but with existing capacity to implement change, it will be the responsibility of the CEO / General Manager and Clinical Director to progress the required changes, subject to the joint IMO / health service management verification process and decisions emerging from same;

e) for those hospitals or specialty services within hospitals currently not demonstrating compliance and without the existing necessary capacity to implement change, it will be the responsibility of the CEO / General Manager and Clinical Director to progress a plan for the required changes subject to the joint IMO / health service management verification process and decisions emerging from same.

7. Sanctions

Health service management are committed to ensuring full compliance with the timeframes already agreed between the parties for implementation of actions to reduce NCHD hours, implement a maximum shift of 24 hours and progress EWTD compliance.

It is noted that the parties are agreed that a joint IMO / health service management National Group will be established to oversee verification and implementation of measures to reduce NCHD hours, eliminate shifts in excess of 24 hours and achieve EWTD compliance.

The Group will have agreed a set of actions to achieve implementation of a maximum 24-hour shift with each hospital.

The Group will verify implementation of these actions in November 2013. Subsequent non-compliance with the agreed deadline for implementation will immediately be reported via the Local EWTD Implementation Group to the National Director of Acute Hospitals.

The National Director will take remedial or corrective action to ensure implementation, including imposition of sanctions or other measures. A priority is to ensure that sanctions, where implemented cannot reduce the resources available for patient care. The parties recognise that a commitment contained in this agreement is to prioritise resources where recruitment is seen as an element of the agreed plan to achieve maximum 24 hour shift working. Nothing in this agreement will constrain the ability of HSE to apply funds withheld as a sanction to any actions as verified by the National Group required to achieve maximum 24 hour working or full EWTD compliance.

Taking that into account, where it has been agreed as part of the joint HSE / IMO verification process to introduce a maximum 24-hour shift and the timescale for implementation of associated actions has not been achieved, the National Director will activate the following financial sanctions:

a) Financial sanction - as a pro-active provision to ensure hospitals move rapidly to compliance, the National Director of Acute Hospitals will withhold an annual sum of €15m from the budgetary allocation to the public acute hospitals.

b) Sanctions will be applied on the basis of performance assessment undertaken by designated local Management / local EWTD working group within each hospital on a monthly basis and as reported monthly to the National Director, Acute Hospitals.

c) Sanctions will relate to the numbers of NCHDs required to work in excess of a maximum 24 hour shift, as follows

- where up to 2% of NCHDs in a hospital are required to work in excess of a maximum 24-hour shift 10% of the relevant financial sanction will be applied. In cases where more than 50% of those NCHDs working in excess of 24 hours are exceeding 28 hours, a 20% sanction will apply instead of the 10% sanction;

- where 3-7% of NCHDs in a hospital are required to work in excess of a maximum 24-hour shift, 20% of the relevant financial sanction will be applied. In cases where more than 50% of those NCHDs working in excess of 24 hours are exceeding 28 hours, a 50% sanction will apply instead of the 20% sanction;

- where 8-11% of NCHDs in a hospital are required to work in excess of a maximum 24-hour shift, 50% of the relevant financial sanction will be applied. In cases where more than 50% of those NCHDs working in excess of 24 hours are exceeding 28 hours, a 75% sanction will apply instead of the 50% sanction;

- where 12-14% of NCHDs in a hospital are required to work in excess of a maximum 24-hour shift, 75% of the relevant financial sanction will be applied. In cases where more than 50% of those NCHDs working in excess of 24 hours are exceeding 28 hours, a 100% sanction will apply instead of the 75% sanction;

- where 15% or more of NCHDs in a hospital are required to work in excess of a maximum 24-hour shift, 100% of the relevant financial sanction will be applied.

This will ensure that sanctions take account of the extent of the hours worked in excess of the target, the number of NCHDs involved and the duration and nature of non-compliance with the agreed action. The parties are agreed that the effectiveness of this sanctions regime will be jointly reviewed by the parties in March 2014 under the auspices of the Labour Relations Commission. Effectiveness in this context refers to the intention that sanctions will be an incentive and driver towards delivery of agreed actions to ensure maximum 24 hour shift working [Note : as part of the review process in March 2014 the parties will jointly examine the role that sanctions might play on the pathway to full EWTD compliance by end-2014 and this review will also critically examine resource issues associated with achievement of the end 2014 outcome].

Hospitals will be divided into 3 bands with an annual applicable financial maximum sanction, as follows:

Financial sanctions to apply by hospital		
Band 1 – sanction up to €650,000	**Band 2 – sanction up to €350,000**	**Band 3 – sanction up to €225,000**
1. St James's Hospital 2. Tallaght Hospital 3. St Vincent's University Hospital (incl St Michael's Dun Laoghaire) 4. Beaumont Hospital 5. Mater Misericordiae Hospital 6. Galway University Hospital (incl Merlin Park) 7. Mid-Western Hospital (incl Croom, Regional Maternity) 8. Cork University Hospital (incl CUMH)	1. Mercy University Hospital 2. Waterford Regional Hospital (incl Kilcreene) 3. Kerry General Hospital 4. Mayo General Hospital 5. Sligo General Hospital 6. Letterkenny General Hospital 7. MRH Mullingar, 8. MRH Tullamore, 9. MRH Portlaoise 10. Coombe Women's Hospital 11. Connolly Hospital 12. OLCH Crumlin 13. Naas Hospital 14. Louth Meath Hospital Group (incl OLOL Drogheda, Dundalk, Navan) 15. Cavan / Monaghan Hospital 16. St Columcille's Hospital 17. Wexford General Hospital 18. St Luke's Kilkenny	1. South Tipperary General Hospital 2. Bantry Hospital 3. South Infirmary Victoria Hospital 4. Portiuncula Hospital 5. Cappagh Hospital 6. MWRH Ennis 7. MWRH Nenagh 8. St John's Hospital 9. St Luke's Rathgar 10. National Maternity Hospital 11. RVE&E 12. CUH Temple Street 13. Mallow Hospital 14. Rotunda 15. Roscommon County Hospital

d) Sanctions would be applied with effect from December 2013 arising from performance in November 2013.

e) Where sanctions fall to be applied to a hospital both parties will regard that as an emergency situation. The parties agree to respond to any such situation involving over 7% of NCHD's on a site by convening a meeting of the local validation group within ten days under the Chair of the LRC. The purpose of such an urgent meeting will be to immediately secure the delivery of the previously agreed steps for implementation of the maximum 24-hour shift commitment. Any such meeting will be chaired at Director or Deputy Director level by the Commission. The Commission will be free to require representation at the level it considers appropriate by the parties. The parties agree that only one such meeting will be required at any site and the Hospital CEO / General Manager will report to the National Director Acute Hospitals HSE regarding delivery of the already agreed measures.

f) The funding level will be restored, as determined by performance report for each hospital, will be undertaken by the National Director, Acute Hospitals on a monthly basis. The allocation of funds arising for distribution where sanctions have been imposed will be reported on a three monthly basis to the National Group and the LRC.

This means that prospective funding will be restored to hospitals on a pro-rata basis when they demonstrate compliance with a maximum 24-hour shift and / or implement agreed actions arising from the joint IMO / health service management verification process. This is to ensure that each hospital is appropriately incentivised to achieve compliance.

Hospitals that do not demonstrate compliance or fail to report performance in a timely and comprehensive manner will therefore have been subject to a financial sanction arising from their failure to implement or report on agreed targets.

g) There will be no option for hospitals to continue to fail to be compliant with agreed measures to secure a maximum 24-hour shift. However, the full range of sanctions will

remain available to be implemented by the National Director, Acute Hospitals. These may include:

- reassigning management authority to a different staff member;
- formal recording of poor performance as part of the performance management process;
- formal consideration of the extent to which an individual manager / clinician should be held accountable in instances of non-compliance.

8. Protected Training Time

Health service management and the IMO are agreed on the need to ensure NCHD access to protected time as appropriate to their participation in a specialist training or professional competence scheme.

In that regard the parties will jointly engage with the postgraduate training bodies by 31st December 2013 regarding the extent to which protected training time is required in each specialty and grade.

9. NCHD recruitment and retention

The objective of the retention of graduates of Irish Medical Schools within the public health system and the attraction back to Ireland of such graduates - where they have left previously - continues to be a high priority for health service management and the IMO. Successful graduate recruitment and retention is key to achieving 24 hour maximum shifts and EWTD compliance.

Under the Haddington Road Agreement (Public Service Stability Agreement or HRA), health service management and the IMO have committed to review the current NCHD career structure with the aim of further developing career and training pathways from Intern to Consultant / Specialist level. This process has commenced. Agreed outcomes which support the achievement of EWTD compliance will be prioritised for implementation in the course of 2014, or earlier where possible.

10. Health and safety

Health service management are committed to ensuring that all staff including NCHDs are provided with a safe working environment.

Where a hospital is not compliant with the requirement for a maximum 24-hour shift by January 14th 2014, a formal reporting system will be introduced with a view to enhancing health and safety and accelerating progress in reducing NCHD working hours.

From 1st December 2013 NCHDs who work a shift in excess of 24 hours will be required to complete a form (see Appendix A). This will apply to every specialty and sub-specialty area / service in each hospital. The form is to be submitted to the Hospital CEO / General Manager and will be reviewed by the hospital EWTD Implementation Group on a monthly basis.

The Hospital must pursue all options to achieve a maximum 24-hour shift in accordance with section 4 h) above, including implementation of good practice in roster design (e.g. cross cover, on-call and deployment of medical, nursing and other staff). Management will also review the service and staffing changes needed to achieve compliance.

Issues will be escalated to the National Group as appropriate. The National Group will address issues as part of ongoing verification and compliance process. Wherever the

National Group considers it appropriate the Group will secure external advice or support in order to assess any matter of Health and Safety either as regards staff or delivery of patient care.

11. Other issues

A number of separate issues relating to NCHD terms and conditions were raised during discussions with the IMO. Management advised that these matters would have to be dealt with under the appropriate processes provided for by the HRA. These included the issue of the 'two-tier' work force - which was discussed at the meeting of the Health Service National Joint Council on 7th October and will now be considered at a conciliation conference on 20th November in the Labour relations Commission. In addition, the LRC has confirmed with both parties that a conciliation conference will take place on 17th October 2013 regarding the definition of new entrants as it applies to Consultants.

12. Achieving full EWTD compliance

In a limited number of settings, large-scale changes are required to achieve full EWTD compliance and prior to that, implement a maximum 24-hour shift. Some actions may therefore require a longer timescale. These will be subject to national discussion under the auspices of the LRC to ensure progress in achieving full EWTD compliance no later than 31st December 2014. This will ensure IMO engagement in the planning and implementation process for achievement of full EWTD compliance.

Appendix A

Form for recording health and safety issues arising from breach of maximum 24-hour shift			
This form should be returned to Medical Manpower / Human Resources for submission to the local Hospital EWTD Implementation Group			
Hospital:			
Specialty:		**Grade:**	
Sub-specialty:		**Name:**	
Time and date of hours worked:		**Number of hours worked in excess of 24:**	
Reason for hours worked in excess of 24 hour maximum:			
Issues arising:			
Signature:		**Date:**	