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|---------------------------------|-------------------------------------|
| <b>Policy Number</b>            | 23.0                                |
| <b>Policy Name</b>              | <b>Shifts, Time Owing and Leave</b> |
| <b>Policy Type</b>              | Divisional                          |
| <b>Accountable Director</b>     | Amanda Oates                        |
| <b>Author</b>                   | TBC                                 |
| <b>Recommending Committee</b>   | N/A                                 |
| <b>Approving Committee</b>      | N/A                                 |
| <b>Date Originally Approved</b> | TBC                                 |
| <b>Next Review Date</b>         | May 2019                            |

This document is a valid document, however due to organisation change some references to organisations, organisational structures and roles have now been superseded. The table below provides a list of the terminology used in this document and what it has been replaced with. When reading this document please take account of the terminology changes on this front cover

| <b>Terminology used in this Document</b>      | <b>New terminology when reading this Document</b> |
|---|---|
| Calderstones Partnership NHS Foundation Trust | Mersey Care NHS Foundation Trust                  |

**SUPPORTING STATEMENTS** – this document should be read in conjunction with the following statements:

### **SAFEGUARDING IS EVERYBODY'S BUSINESS**

All Mersey Care NHS Foundation Trust employees have a statutory duty to safeguard and promote the welfare of children and vulnerable adults, including:

- being alert to the possibility of child/vulnerable adult abuse and neglect through their observation of abuse, or by professional judgement made as a result of information gathered about the child/vulnerable adult;
- knowing how to deal with a disclosure or allegation of child/adult abuse;
- undertaking training as appropriate for their role and keeping themselves updated;
- being aware of and following the local policies and procedures they need to follow if they have a child/vulnerable adult concern;
- ensuring appropriate advice and support is accessed either from managers, *Safeguarding Ambassadors* or the trust's safeguarding team;
- participating in multi-agency working to safeguard the child or vulnerable adult (if appropriate to your role);
- ensuring contemporaneous records are kept at all times and record keeping is in strict adherence to Mersey Care NHS Foundation Trust policy and procedures and professional guidelines. Roles, responsibilities and accountabilities, will differ depending on the post you hold within the organisation;
- ensuring that all staff and their managers discuss and record any safeguarding issues that arise at each supervision session

### **EQUALITY AND HUMAN RIGHTS**

Mersey Care NHS Foundation Trust recognises that some sections of society experience prejudice and discrimination. The Equality Act 2010 specifically recognises the *protected characteristics* of age, disability, gender, race, religion or belief, sexual orientation and transgender. The Equality Act also requires regard to socio-economic factors including pregnancy /maternity and marriage/civil partnership.

The trust is committed to equality of opportunity and anti-discriminatory practice both in the provision of services and in our role as a major employer. The trust believes that all people have the right to be treated with dignity and respect and is committed to the elimination of unfair and unlawful discriminatory practices.

Mersey Care NHS Foundation Trust also is aware of its legal duties under the Human Rights Act 1998. Section 6 of the Human Rights Act requires all public authorities to uphold and promote Human Rights in everything they do. It is unlawful for a public authority to perform any act which contravenes the Human Rights Act.

Mersey Care NHS Foundation Trust is committed to carrying out its functions and service delivery in line the with a Human Rights based approach and the FREDA principles of **F**airness, **R**espect, **E**quality **D**ignity, and **A**utonomy



TRUST POLICY/PROCEDURE  
COMMITTEE

PROCEDURE NO:

**23.0** v4.1

DATE OF ISSUE: 1 May 2016

This procedure **replaces** No. 23.0 dated 1.3.15 which should be **removed** and **destroyed**

### MEMORANDUM

**SUBJECT: Shifts, Time Owing (TOIL) and Leave  
(Secure Services)**

**DISTRIBUTION: Procedure Manual Holders/Trust Intranet**

1. This memorandum introduces the procedure for guidance to managers and support staff in respect of rota management and takes account of Agenda for Change and Working Time Directives.
2. The procedure should be filed in numerical order in the Yellow Procedure Manual with the following entry in the index under "S", "T" and "L" – Shifts, Time Owing and Leave, cross referenced under "R" Rota Management – 23.0".

#### References

9.34 Rostering Policy  
 13.3 Clients'/Patients' Holidays  
 19.1 Special Leave and Flexible Working Policies  
 23.1 Holiday Arrangements for all Nursing Staff  
 27.8 Recognition and Management of Burnout and the Potential for Abusive Practice within the Workplace  
 H & S 13 Lone Worker

*The Trust aims to design and implement services, policies and clinical/non clinical procedures with measures that meet the diverse needs of our services, population and workforce, ensuring that none are placed at a disadvantage over others.*

*This procedure has been assessed using the Equality Impact Assessment. The outcome of the Initial Screening Assessment was that the procedure would not adversely affect any protected characteristics.*

|                                |                                      |
|--------------------------------|--------------------------------------|
| Version:                       | 4.1                                  |
| Ratified by:                   | Policy & Procedure Committee         |
| Date Ratified:                 | 29/4/16                              |
| Name of Originator/Author:     | Fiona Gibson, Clinical Nurse Manager |
| Name of Responsible Committee: | Policy & Procedure Committee         |
| Date Issued:                   | 1/5/16                               |
| Review Date:                   | 1/5/19                               |
| Target Audience:               | Secure Services                      |

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## SUMMARY OF AMENDMENTS

### Section 4.3 amended to:

Generally ward managers may work office hours, Monday to Friday, however, early morning, evenings, weekends and Bank Holiday may be worked to provide appropriate clinical cover and also facilitate their commitments as service coordinator. Deputy Ward Managers (Clinical Leaders) work flexibly to the requirements of the service. They also undertake the role of service coordinator which includes working Weekends, Bank Holidays and nights as identified by the service coordinator rota

### Section 5.4 - updated

Section 7.9 paragraph added - TOIL is only to be given for a missed break due to staffing issues once the Service Coordinator has been contacted and they agree that the break cannot be facilitated. A red flag must be inputted in these circumstances.

TRUST  
POLICY/PROCEDURE

PROCEDURE NO:

**23.0** v4.1

DATE OF ISSUE: 1 May 2016

**SUBJECT: Shifts, Time Owing and Leave  
(Secure Services)**

## 1. PURPOSE

This procedure gives guidance to managers and support staff which includes PTS (Psychological Treatment Service) and OT (Occupational Therapy) staff in respect of rota management and takes into account Agenda for Change and Working Time Directives. All staff are responsible for complying with the procedure.

## 2. ANNUAL LEAVE AND BANK HOLIDAY – ENTITLEMENT AND REQUESTS

- 2.1 Staff will follow the Trust Procedure 23.1 Holiday Arrangements for all Nursing Staff and Trust Statement of Particulars of Employment and Agenda for Change Terms and Conditions of Service and the National Terms and Conditions of Service where appropriate.
- 2.2 Annual leave is now managed electronically via the e-rostering system. Managers can now access reports showing the leave balances for members of staff in their areas.
- 2.3 All annual leave weeks will be projected at the beginning of the year, in accordance with Procedure 23.1 and 9.34 e-Rostering Policy.

## 3. SHIFT/ROTA PATTERNS

- 3.1 Shift patterns and working hours will be determined by the needs of the service users/patients, and guided by the Working Time Regulations/flexible working and will follow the Rota Management Protocol and the e-Rostering Policy 9.34 when utilising the Electronic Rostering System.
- 3.2 In helping to determine shift lengths managers will consider /patients needs, agreed contracted hours, including requests from the Commissioner, health and safety assessments, including the Burnout Assessment (*Procedure No.27.8*), Lone Worker (*Procedure No. H & S 13*) and any legislative directives.

Shifts will be no longer than 11.5 hours duration and there will be no more than 3 consecutive long day shifts together (11 hours and over).

In addition to this you will not be expected to work more than 48 hours per week averaged over a 17 week rolling period.

- 3.3 In consultation with the home or ward staff, the Ward Manager/Deputy Ward Manager will have the responsibility of completing electronic rotas. Electronic rotas will be published for staff at least 3 weeks in advance of the new roster period and this will show the 6 week roster. The following time periods are identified for the year on the e-roster:

- The 'picking period'
- The freeze period
- Publish period
- Roster period

For management purposes – all electronic rotas will include any absences including holidays, sickness, special leave or training.

- 3.4 Rosters may need to be changed with reasonable notice given (*48 hours*) because of sickness or changes to the wards requirements therefore staff are required to be flexible. An individual's duty hours **must not** be changed unless they have been consulted. The NHS Terms and Conditions of Service allows that, if staff are asked to change a shift rostered during unsocial hours within 24 hours of the scheduled work period, they may receive an unforeseen change payment. Unsocial hours are defined as time worked after 8pm and before 6am, weekends and public holidays. The unforeseen change payment will need to be recorded in the e-rostering system.

- 3.5 Support staff will not be able to make alterations to the roster this will only be done following approval by the Ward/Deputy Ward Manager (*or in their absence the Clinical Nurse Manager*). In **exceptional and urgent circumstances** the Clinical Lead Nurse may give approval.

### 3.6 Off Duty Hours

The Ward/Deputy Ward Manager will endeavour to give at least 1 full weekend off duty in 4 (*Saturday and Sunday*).

**Weekly Rest Period (*days off duty*)** – For each 7 day period, every worker is entitled to a minimum uninterrupted rest period of 24 hours or 2 consecutive days off per week. Staff must have an 11 hour rest period between working shifts built in to their roster.

**NB: It is recognised by the service that staff benefit from having their off duty days together. Wherever possible the Ward/Deputy Ward Manager will endeavour to facilitate this.**

### 3.7 Sleep In Shifts

- 3.7.1 Staff will not generally be expected to do more than 1 sleep in shift per week on average over the 17 week reference period, unless individual employees have signed an opt out agreement (*see Section 3.6 and Appendix A*) to waive the 48 hour limit.



- 3.7.2 Where 2 shifts are linked by a sleep in staff are entitled to at least 11 hours from the end of one shift and beginning of another.
  - 3.7.3 Where 2 shifts are linked by a sleep in there will not be more than 1 attendance in any day. This may differ for part time staff as agreed by the employee and the Ward Manager.
  - 3.7.4 Where 2 shifts are linked by a sleep in, total working hours as defined by the Working Time Regulations will be limited to 24 hours (e.g. *shift 12.00 – 23.00, sleep in 23.00-7.00, shift 7.00-12.00*).
  - 3.7.5 Where an employee attends work starting with a sleep in, their total working hours as defined by the Working Time Regulations will be limited to 24 hours (*sleep in 11pm-7am, shift 7am-11pm*).
  - 3.7.6 Staff disturbed during the night should note in the 24 Hour Report Book how long they were disturbed for and for what reason. They must also report this to the Clinical Lead Nurse.
  - 3.7.7 Significant\* disturbances after midnight will mean that the staff can seek approval from their Manager or Clinical Lead Nurse to go home when the day staff appear for duty or they will be given equivalent compensatory rest as soon as reasonably possible.
- \*Significant disturbances are defined as any disturbance lasting over 1 hour or frequent short periods over several hours during the night.**
- 3.7.8 Where sleep in shifts are frequently disturbed over a prolonged period, i.e. due to change of service users/patients needs, Senior Managers will consider whether it is necessary to temporarily move from sleep in shifts to a long night shift.

### 3.8 Opt Out Agreements

- 3.8.1 Staff are entitled to 11 hours uninterrupted rest between each working day as per Working Time Directive. Should staff wish to opt out of the working time directive then an agreement needs to be signed and forwarded to the HR Department. This can be for a specified or indeterminate period of time.
- 3.8.2 The opt out agreement can be cancelled at any time but the worker must give the employer 2 months notice so that the necessary amendments can be made to the roster to finalise and implement. Opt out agreements will be reviewed by the Ward Manager at supervision.
- 3.8.3 If the support staff want to work longer than the 48 hour limit over a 17 week period (*the working week being classed as Monday to Sunday*) then a written opt out agreement signed by

the worker should be completed. This can be done for a definite period or an indefinite period.

This does not mean that staff can work more hours in a week than what is agreed as acceptable by the Trust Board.

This opt out agreement will be forwarded to HR and kept on the individual's HR file.

### 3.9 **Sleep In Shift (*in homes/wards where a sleep in shift are in operation*)**

3.9.1 Shifts/roster will be discussed and agreed with the staff team.

3.9.2 Flexible working requests will be considered in accordance with service need and by using the flexible working policy.

- Where an individual is working nights for an extended period they must have a period of no less than 3 weeks working day shift hours before returning to night duty, unless agreed otherwise with the individual employee. This could be altered to allow cover for an absent colleague on nights.
- Will work no more than 4 nights in any 7 day period.
- A Health Assessment is to be offered for staff that are commencing working sleep in shift. If the offer is accepted a referral should be made to Occupational Health from the Ward Manager.

### 3.10 **Off Duty Requests/Strong Preferences**

Staff will have the option to use strong preferences to request days off or days to work if they prefer. Full time employees are entitled to 6 strong preference requests over a 6 week roster. Strong preferences will only be allocated if there is no detriment to service provision (*pro rata e.g. 37.5 hrs = 6 18.75 hrs = 3*).

All staff must be aware that requests will be considered but not necessarily approved.

Staff who have an agreed part fixed working pattern will need to consult with their Clinical Nurse Manager in regards to the number of allocated strong preferences. Part fixed working patterns are subject to review by the Clinical Nurse Manager.

3.11 Once the rota has been agreed and circulated off duty requests will only be considered in special/emergency cases. The staff requesting the off duty must put their request in writing to the Ward/Deputy Manager for consideration.

3.12 Staff may swap shifts to accommodate personal needs so long as both parties seek the prior approval of the Ward/Deputy Ward Manager. Approval of the swap will be at the discretion of the Ward/Deputy Ward

Manager who will consider in their decision the demands of the service, (e.g. skill mix, gender mix etc.).

#### **4. MANAGEMENT OF SENIOR MANAGERS HOURS**

4.1 Contracted hours of managers are in accordance with Agenda for Change or locally agreed terms and conditions.

##### **4.2 Clinical Nurse Manager**

Generally work office hours Monday to Friday, however, early morning, evenings, weekends and Bank Holiday may be worked with agreement from the Service Director, Forensic and High Support Services.

##### **4.3 Ward Managers/Deputy Ward Managers**

Generally ward managers may work office hours, Monday to Friday, however, early morning, evenings, weekends and Bank Holiday may be worked to provide appropriate clinical cover and also facilitate their commitments as service coordinator. Deputy Ward Managers (Clinical Leaders) work flexibly to the requirements of the service. They also undertake the role of service coordinator which includes working Weekends, Bank Holidays and nights as identified by the service coordinator rota.

##### **4.4 Electronic Diary**

Ward Managers and Clinical Nurse Managers and other Senior Managers are required to keep their electronic diary up to date providing details of appointments and work activities (*including start and finish times of appointments and any leave*).

**NB: As Clinical Nurse Managers can work outside of office hours they will also be required to enter within their electronic diary the start and finish times of their shifts.**

##### **4.5 Paper Diary**

Where managers choose to also keep a paper diary appointments and activities (*including start and finish times of appointments*) and any leave taken must be written clearly in their diary. Shift start and finish times must also be recorded within this page.

#### **5. STAFF WORKING BANK HOURS**

5.1 Staff are limited to working no more than 15 hours extra in a standard working week. Exceptions to this rule must be discussed and agreed with the Deputy Director of Operations and Nursing.

**NB: Where staff are on annual leave they should not be routinely encouraged to work extra hours, however, where staff do work extra hours during annual leave the same 15 hour rule applies.**

- 5.2 Staff working a bank shift must enter on the 24 Hour Report the time the shift starts and finishes entering (B) after their name to differentiate between contracted shifts and bank shifts.
- 5.3 Ward/Deputy Ward Manager bank hours, unless agreed otherwise with the Head of Operations, will only be paid at the appropriate banding for the support that is required.

When on a bank shift Ward/Deputy Ward Managers will undertake duties in accordance with the rate at which they are being paid. Should an emergency situation arise the Registered Nurse should act in accordance with their registration to deal with the situation.

- 5.4 Staff (*including part time contracts*) who work extra hours requested and booked via the bank staffing system, if clinical shifts the hours worked and payment must be confirmed by management on the bank staffing system. Domestic or administrative shifts worked must complete a timesheet, have this signed off by the appropriate manager and submit to HR.

**Staff may be temporarily removed from the bank by the Clinical Nurse Manager in consultation with HR.**

## 6. REST BREAKS

Breaks should be taken where possible within the duration of the shift. Please see the Trust's Shift Standardisation for shift and break durations.

- Over 6 up to and including 8 hours – 30 minute break
- Over 8 hours and up to and including 9 hours – 45 minute break
- Over 9 hours and up to and including 10 hours – 60 minute break
- Over 10 hours and up to and including 11.5 hours – 90 minute break
- 07:00-20:00 shift used as part of LD 3/4/3 or LD 4/3/4 pattern – 120 minute break
- Night Shift – 55 minutes

**NB: Reasons where it is considered that a short break is necessary and where staff would not have to pay back hours taken would include where staff are having to deal with challenging service users/patients and where staff have become stressed or fatigued.**

## 7. TIME OWING (TOIL)

- 7.1 This procedure provides guidance for nursing staff and managers on the management of time owing (TOIL).

### 7.2 Roles and Responsibilities

Clinical Nurse Managers, Ward Managers and Clinical Lead Nurses are responsible for implementing the procedure at local level and for ensuring compliance.

- 7.3 TOIL can be accrued in agreement with the Clinical Lead Nurse or the Ward/Deputy Ward Manager and is now electronically logged on the e-rostering system. Hours **must not** exceed **20 hours**, unless approved by the Clinical Nurse Manager.

If a member of staff accrues over 20 hours, an exception will be created on the e-rostering system to notify their manager that they have reached the time owing in lieu limit.

- 7.4 Staff have the primary responsibility to reduce TOIL as soon as practically possible to 0 hours. In circumstances where TOIL has risen above the agreed limit and/or where there is a failure to reduce accrued hours, the Ward Manager or Clinical Nurse Manager will allocate hours off duty accordingly.

- 7.5 Ward Managers or Clinical Nurse Managers may allocate the reduction of TOIL hours at any time, in order to prevent TOIL exceeding agreed limits or to meet service or service user's needs.

- 7.6 Time owed and taking time owing back must be approved by the Clinical Lead Nurse or Ward/Deputy Ward Manager, however, if the appropriate staffing levels for the ward/home do not meet requirements at the time the TOIL is due to be taken, approval will be withdrawn. Managers will update the staff's records on the e-rostering system. If TOIL has been granted by the Clinical Lead Nurse then this will automatically create an exception for their Line Manager to manage on their return to duty. This also creates an auditable trail.

- 7.7 If a member of staff moves ward then it is up to the Ward Manager to notify the e-rostering team of the relevant changes to ESR. The electronic TOIL balance will be unaffected by this change. Ward/Deputy Managers must agree between themselves an acceptable TOIL balance that will be taken to the new location before the transfer takes place.

- 7.8 TOIL **MUST** not be transferred onto a +/- hours balance that is in a positive. TOIL may be transferred onto a +/- hours balance if they are in a minus, however, this must be done by the Clinical Nurse Manager.

- 7.9 On occasion it may not be possible for an individual to take a part or full unpaid break during the shift and they may be required to work through their break due to exceptional circumstances, e.g.

- Escorting service users/patients to Hospital
- Home visits
- Social activities

- Staying late at work to cover for staff lateness/sickness/unforeseen circumstances or other unforeseen circumstances
- Being flexible with their shifts and commencing early due to ward cover, appointments, outings, referrals, liaison with other disciplines etc.
- To attend extraordinary meetings, training, capabilities, disciplinarys etc.

If TOIL is given for the missed break it will need to be authorised by the Ward/Deputy Manager.

TOIL is only to be given for a missed break due to staffing issues once the Service Coordinator has been contacted and they agree that the break cannot be facilitated. A red flag must be inputted in these circumstances.

The TOIL balance in e-rostering must be updated with a comment to explain why the balance has changed, i.e. "individuals escorting service users/patients for the full duration of the shift".

7.10 TOIL will not be given if an individual decides:-

- To arrive before the shift begins with no prior authorisation.
- To stay after the shift finishes with no prior authorisation.
- To voluntarily miss a break during the shift.

7.11 TOIL is subject to audit checks by the Ward Managers and the Clinical Nurse Managers.

**NB: TOIL allocation can only be authorised by an individual's Line Manager or delegated person. Individuals are not authorised to input/manage their own TOIL debits/credits.**

## **8. STAFF ENTITLEMENT WHILST ON SERVICE USER/PATIENT HOLIDAYS**

For staff entitlement on service user/patient holidays (*see Procedure 13.3*).

## **9. SPECIAL LEAVE AND FLEXIBLE WORKING**

Applications for special leave and flexible working will follow the Trust Procedure 19.1.

**TRUST  
POLICY/PROCEDURE**

**PROCEDURE NO: 9.35  
APPENDIX A**

Please write clearly, in black ink, initial amendment and do not use tippex

**WORKING TIME REGULATIONS  
OPT OUT AGREEMENT**

**To: HR Department**

This is an agreement between Calderstones Partnership NHS Foundation Trust and *(employee's full name)* as allowed under Regulation 5 (1) of the Working Time Regulations.

I *(full name)* \_\_\_\_\_ agreed that the maximum weekly Working Time Regulation 4 should not apply to my post as *(job title)* \_\_\_\_\_ with the proviso that the hours worked over the 48 hour limit are undertaken on a voluntary basis. The need for signing this agreement is *(state reason, i.e. overtime, second job – specify details)* \_\_\_\_\_

This opt out agreement will apply from *(date)* \_\_\_\_\_  
to *(a specified date or indefinitely)* \_\_\_\_\_

I *(full name)* \_\_\_\_\_ giving 3 months notice in writing can terminate this agreement.

**SIGNED:** \_\_\_\_\_

**WORK LOCATION:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**PAYROLL NUMBER:** \_\_\_\_\_

## VERSION CONTROL SHEET

| Version | Date     | Author       | Status   | Comment  |
|---------|----------|--------------|----------|--|
| 1.0     | 7.6.11   | C. Shillitoe | Draft    | Circulated for comments  |
| 1.1     | 29.6.11  |              | Draft    | Comments incorporated via Policy/Procedure Committee                       |
| 1.2     | 12.9.11  |              | Draft    | To Policy/Procedure Committee for approval and issue                       |
| 1.3     | 16.12.11 |              | Final    | Approved at Policy/Procedure Committee – issued via Core Brief/Intranet    |
| 2.0     | 1.10.12  | C. Shillitoe | Draft    | Circulated for comments  |
| 2.1     | 15.10.12 |              | Draft    | Comments incorporated via Policy/Procedure Committee                       |
| 2.2     | 26.10.12 |              | Approved | Policy/Procedure Committee approval. Issued at Team Brief/Intranet updated |
| 3.0     | 6.2.13   | C. Leatherd  | Draft    | Amended  |
| 3.1     | 22.2.13  |              | Approved | Policy/Procedure Committee approval. Issued at Team Brief/Intranet updated |
| 3.2     | 30/7/14  |              |          | Slight amendment – re-issued   |
| 3.3     | 18/9/14  | L Seed       |          | Slight amendment – re-issued   |
| 3.4     | 18/3/15  | L Seed       |          | Slight amended - reissued  |
| 4.0     | 15/4/16  | F Gibson     | Draft    | Reviewed   |
| 4.1     | 1/5/16   |              | Approved | Policy/Procedure Committee approval. Issued at Team Brief/Intranet updated |