Prospective Cover for Leave Explained

This is relating to a clause in the junior doctor contract which came into effect in Feb 2020. The clause relates to the way average working hours per week and average enhanced hours per week are calculated. You have likely seen on your work schedule something along the lines of “44.5 hours per week” and “9 enhanced hours per week”. You may have also seen something like this (although not all work schedules use this wording):

Average hours (with allowance for leave)	28:30	48:00
Average hours	27:30	48:00

These Average Hours per Week values are how your pay is calculated, we are aware that some trusts may not have calculated this correctly which would result in underpayment.

The “with allowance for leave” calculations relate to a clause in the 2016 contract. Schedule 4, Paragraph 14:

> When calculating the average total hours, the number of days’ leave (including; annual leave, public holidays, and relevant study leave where prospective cover is in operation) that would be taken by a doctor, on average, across the length of the rota cycle will be deducted from the rota, and the remaining hours will be divided by the remaining weeks (including part-weeks) in the cycle. For example, in an eight-week cycle with six days’ leave deducted, the total remaining hours would be divided by 6.8 weeks.

Because your “leave” days are generally the shortest shifts, removing them from the rota and re-calculating your average hours / week means you usually have a higher concentration of longer shifts, and so your average hours usually go up.

To explain this in more detail, here is a visual example:
Below are three rotas. The first is a generic rota over 26 weeks. The second is a rota with annual leave, bank holiday and a 30 day / year study leave allowance added onto it. The final rota is what the new rota looks like after those shifts have been removed, as per the above clause in the contract. This is only a theoretical visual representation but it highlights how when the “remaining hours” are divided by the “remaining weeks”, the concentration of long shifts means your average hours goes up.

Week	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	Short Day	Short Day	Short Day	Short Day	Short Day		
2	Long Day	Long Day	Long Day	Long Day			
3					Long Day	Long Day	Long Day
4			Short Day	Short Day	Short Day		
5	Night Shift	Night Shift	Night Shift	Night Shift			
6	Short Day	Short Day			Night Shift	Night Shift	Night Shift
7			Short Day	Short Day	Short Day		
8	Long Day	Long Day	Long Day	Long Day			
9	Night Shift	Night Shift	Night Shift	Night Shift			
10	Short Day	Short Day			Night Shift	Night Shift	Night Shift
11			Long Day	Long Day	Long Day		
12	Long Day	Long Day	Short Day	Short Day	Short Day		
13	Short Day	Short Day			Long Day	Long Day	Long Day
14	Short Day	Short Day	Short Day	Short Day	Short Day		
15	Long Day	Long Day	Long Day	Long Day			
16					Long Day	Long Day	Long Day
17			Short Day	Short Day	Short Day		
18	Night Shift	Night Shift	Night Shift	Night Shift			
19	Short Day	Short Day			Night Shift	Night Shift	Night Shift
20			Short Day	Short Day	Short Day		
21	Long Day	Long Day	Long Day	Long Day			
22	Night Shift	Night Shift	Night Shift	Night Shift			
23	Short Day	Short Day			Night Shift	Night Shift	Night Shift
24			Long Day	Long Day	Long Day		
25	Long Day	Long Day	Short Day	Short Day	Short Day		
26	Short Day	Short Day			Long Day	Long Day	Long Day

Shift type	No of Shifts	Hours / Shift	Total Hours
Short Day	40	8	320
Long Day	38	13	494
Night Shift	28	13	364

Total Hours	Hours/Week
1178	45.31

Week	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	Annual Leave	Annual Leave	Annual Leave	Annual Leave	Annual Leave		
2	Long Day	Long Day	Long Day	Long Day			
3					Long Day	Long Day	Long Day
4			Annual Leave	Annual Leave	Annual Leave		
5	Night Shift	Night Shift	Night Shift	Night Shift			
6	Annual Leave	Annual Leave			Night Shift	Night Shift	Night Shift
7			Annual Leave	Annual Leave	Annual Leave		
8	Long Day	Long Day	Long Day	Long Day			
9	Night Shift	Night Shift	Night Shift	Night Shift			
10	Annual Leave	Annual Leave			Night Shift	Night Shift	Night Shift
11			Long Day	Long Day	Long Day		
12	Long Day	Long Day	Annual Leave	Bank Holiday	Bank Holiday		
13	Bank Holiday	Bank Holiday			Long Day	Long Day	Long Day
14	Study Leave	Study Leave	Study Leave	Study Leave	Study Leave		
15	Long Day	Long Day	Long Day	Long Day			
16					Long Day	Long Day	Long Day
17			Study Leave	Study Leave	Study Leave		
18	Night Shift	Night Shift	Night Shift	Night Shift			
19	Study Leave	Study Leave			Night Shift	Night Shift	Night Shift
20			Study Leave	Study Leave	Study Leave		
21	Long Day	Long Day	Long Day	Long Day			
22	Night Shift	Night Shift	Night Shift	Night Shift			
23	Study Leave	Study Leave			Night Shift	Night Shift	Night Shift
24			Long Day	Long Day	Long Day		
25	Long Day	Long Day	Short Day	Short Day	Short Day		
26	Short Day	Short Day			Long Day	Long Day	Long Day

Shift type	No of Shifts	Hours / Shift	Total Hours
Study Leave	15		
Annual Leave	16		
Bank Holiday	4		

Week	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
1	Long Day	Long Day	Long Day	Long Day			
2					Long Day	Long Day	Long Day
3	Night Shift	Night Shift	Night Shift	Night Shift			
4					Night Shift	Night Shift	Night Shift
5	Long Day	Long Day	Long Day	Long Day			
6					Long Day	Long Day	Long Day
7	Night Shift	Night Shift	Night Shift	Night Shift			
8					Night Shift	Night Shift	Night Shift
9	Long Day	Long Day	Long Day	Long Day	Long Day		
10	Long Day	Long Day	Long Day	Long Day	Long Day		
11	Long Day	Long Day	Long Day	Long Day			
12					Long Day	Long Day	Long Day
13	Night Shift	Night Shift	Night Shift	Night Shift			
14					Night Shift	Night Shift	Night Shift
15	Long Day	Long Day	Long Day	Long Day			
16					Long Day	Long Day	Long Day
17	Night Shift	Night Shift	Night Shift	Night Shift			
18					Night Shift	Night Shift	Night Shift
19	Short Day	Short Day	Short Day	Short Day	Short Day		
	Study Leave	Study Leave	Study Leave	Study Leave	Study Leave		
	Study Leave	Study Leave	Study Leave	Study Leave	Study Leave		
	Study Leave	Study Leave	Study Leave	Study Leave	Study Leave		
	Annual Leave	Annual Leave	Annual Leave	Annual Leave	Annual Leave		
	Annual Leave	Annual Leave	Annual Leave	Annual Leave	Annual Leave		
	Annual Leave	Annual Leave	Annual Leave	Annual Leave	Annual Leave		
	Annual Leave	Bank Holiday	Bank Holiday	Bank Holiday	Bank Holiday		

Shift type	No of Shifts	Hours / Shift	Total Hours
Short Day	5	8	40
Long Day	38	13	494
Night Shift	28	13	364

Total Hours	Hours/Week
898	47.26

Night Hours	Weeks	Hours/Week
364	26	14.00

Night Hours	Weeks	Hours/Week
364	19	19.16

This calculation is standard and is done automatically by software, however the correct leave allowance values must be inputted.

The Inclusion of Study Leave

The recent issue is including the study leave allowance in these calculations. While "leave" should always have included study leave, its wording was not clearly explicit in the initial 2016 contract. Once recognised that this caused confusion, it was specifically added into the contract in an amendment in November 2019. At this point, a guidance document was published by NHS Employers to end any uncertainty, to be brought into effect from February 2020.

https://www.nhsemployers.org/system/files/2022-08/Presepective-cover-guidance-for-study-leave.pdf

This explains clearly when study leave must be included in this calculation, which is also referred to as “prospective cover” being in use:

> Two simple checks can be undertaken to assess whether prospective cover is in use on a rota. These are:
>
> 1 Are doctors required to provide internal cover for colleagues on the rota when they take study leave?
>
> a Yes – prospective cover is in use
>
> b No - continue to question 2.
>
> 2 Are junior doctors allowed to take study leave against any shift on the rota without arranging a shift swap with a colleague to cover their shift?
>
> a Yes – prospective cover is not in use
>
> b No – prospective cover is in use.

The exact amount of study leave which should be included in the calculation is explained within the guidance document:

*“The default should be to **include the full study leave allowance**, however in certain circumstances, it can be appropriate and justifiable for an employer to adjust the contractual study leave allowances to a lower amount. This is only justifiable where an employer has provided protected rostered time within the rota, for an activity which the doctor would normally be required to take study leave for.*

Accordingly, for FY1 doctors study leave does not typically have to be accounted for within the average weekly hours calculation, as these doctors are usually provided with protected rostered teaching and training time.

For all other grade of junior doctors, below are some examples of the circumstances in which a doctor’s study leave allowance may be reduced in reflection of protected training / educational time within the roster, which would typically require a doctor to use study leave to access.

– Regional teaching programmes/training days (for example, general practice vocational training scheme, when a doctor is working in a general practice setting).
– Mandatory courses for which leave has been pre-allocated, which are required by the trainees training programme, rather than their employer / department.
– Foundation Year 2 mandatory courses, which are required.
– Compulsory trainee conferences / meetings where attendees are taken off the rota.
In order for these days to be deducted from the study leave entitlement for the purposes of prospective cover calculation, they should be included in the doctor’s work schedule and the doctor should be able to attend these sessions with no requirement to swap out of any other clinical commitments.

Where an employer believes such an approach is appropriate, they must clearly set out their justification and share this with the Junior Doctor Forum (JDF). The JDF can review this and challenge the justifications provided if they believe they are not appropriate.

As you can see, in most cases the full allowance should be included. Where it is not, their justification needs to be laid out in advance.

Underpayment

Unfortunately, some trusts failed to include the study leave allowance in these calculations. This leads to an under-calculation of average hours and therefore an underpayment, which can be up to several thousand pounds per year.

Financial Calculations

To work out how this has affected you financially for a given rota, two steps are required.

1) Identify whether you have had study leave included (if appropriate) in these calculations. For simple situations (eg those who should have their full study leave allowance included), you can use this calculator to work out whether you have been affected by comparing the result to your work schedule. NB you need to manually add up all hours on your work schedule.

https://tinyurl.com/AdjustedHoursCalculator

2) If the value differs from your work schedule, you can calculate the underpayment of your annual salary using the below equation:

$$\frac{Nodal\ Pay\ Point\ Pay\ (eg\ basic\ pay)}{40} \times (Difference\ in\ Average\ hours\ /\ week + Difference\ in\ Enhanced\ Hours/Week\ x\ 0.37)$$

I hope this document clarifies the salient points of the issue. There are a few extra points which are beyond the scope of this document. If you require any further information, please contact either the BMA directly or the Working Lives & LTFT subgroup at lspltft@gmail.com, you can also cc' Dominic who has done the most work on this at: dominicarr@gmail.com.

If you would like to be the first to hear about some upcoming software which will automatically check accuracy of your pay for all errors, you can sign up to this mailing list: https://tinyurl.com/JnrDocPayAdvisors