

NHS Wales

COVID – 19 (Coronavirus)

Mutual Aid – Supporting Information

1 The Aim of the Mutual Aid

The aim is to ensure that where possible NHS Wales staff can remain in their substantive employment and contribute to the national efforts in ensuring service delivery across organisations during the COVID19 outbreak.

By taking this approach, we can ensure that the deployment of the NHS workforce across Wales is prioritised wherever possible to the areas of greatest need.

This document focusses on the potential deployment of staff employed on 'Agenda for Change' Terms and Conditions. The same principles could apply for Medical and Dental staff. However, these principles do not supersede the 2008 Welsh Health Circular which indicates that when Consultants work in other NHS Wales organisations outside the organisation in which they are employed, there should be a Service Level Agreement and the Consultants should be issued with an Honorary Contract by the receiving organisation.

This supporting information uses two terms to describe the parties:

Receiving Organisation: The health body in which the member of staff is undertaking duties as part of the mutual aid process;

Employing Organisation: The health body that has a contract of employment with the member of staff who is being redeployed.

2 Key Principles

- All Health Boards and Trusts in Wales are responsible for providing indemnity in relation to the activities of their workers. The principles of NHS indemnity apply to the deployment of staff between health bodies for mutual aid. All Trusts and Health Boards are members of the Welsh Risk Pool Scheme.
- A member of NHS staff will be covered, from an indemnity and insurance perspective, by the **receiving organisation** as they will be responsible for day to day instruction and direction of the individual member of staff.
- Any excess payment (usually the first £25,000) in relation to a request for reimbursement of any compensation or payment in respect of claims for negligence will be borne by the **receiving organisation**.
- The Welsh Risk Pool Reimbursement Procedures and Welsh Risk Pooling Arrangements will continue to apply to all parties in the normal way.

- All NHS employing organisations in Wales comply with the NHS standards on recruitment. Accordingly, those NHS employees who would be deployed in accordance with this process have already been subject to such checks. Receiving organisations will work on the basis that such checks have been completed satisfactorily. Employees will be required to continue to wear NHS ID badges when working in receiving organisations. Depending on the type of role, it may be necessary to undertake additional Occupational Health checks.
- From a corporate governance perspective, it would be usual practice to complete a Memorandum of Understanding (MoU) to cover the period of the mutual aid provision. A clear understanding between both employers and the individual is important. A template MoU has been prepared to assist this.
- Each member of staff will remain on the payroll of the employing organisation and there will be no transfer of cost to the receiving organisation.
- An NHS staff member deployed to another area or organisation will continue to be paid on their Agenda for Change Pay Band and Incremental point, during the temporary deployment period (unless the member of staff is being asked to operate at a higher pay band).
- Where possible staff will be assigned to roles on their substantive pay band. However, depending on business need, staff may be deployed into roles which are on a lower pay band than that of their substantive post, although efforts will be made to appropriately match skills and experience. In such circumstances they will continue to be paid on their substantive pay band.
- If an NHS staff member is deployed to another area or organisation on a higher pay band, the difference in pay will be the responsibility of the receiving organisation.
- If additional expenses are incurred as a result of a change in base location, 'business' mileage (not 'excess' mileage) should be claimed.

3 Criteria and considerations when deploying staff

The following criteria will be used to identify staff to be deployed into temporary roles:

- Nature of the job, including job content (including similarity to existing role);
- Does the staff member have the skills, qualifications and competency to fulfil the role / undertake the work on a temporary basis?
- Would the staff member need on the job training prior to being deployed? How much training would be required and is training available?
- Hours of Work and Days of work;
- Workplace (Base) (including potential travel distance / time / modes of transport etc.);

- Staff members' personal and/or domestic circumstances will be taken into consideration when matching staff to temporary deployment roles.
- Any Occupational Health advice or health issues that would make the member of staff unsuitable for the temporary role.

4 Local contacts

The contacts below are to be used in respect of matching roles to individuals and for placing requests for support of our operations:

| Organisation | Contact name(s) | Contact information |
|-----------------------|---|--|
| Aneurin Bevan UHB | Sarah Simmonds | Sarah.simmonds@wales.nhs.uk 01633 623971 |
| Cardiff and Vale UHB | Lianne Morse | Lianne.morse@wales.nhs.uk 02921836288 |
| Swansea Bay UHB | Guy Holt Kim Clee | Guy.holt@wales.nhs.uk Kim.clee@wales.nhs.uk |
| Hywel Dda UHB | Tracy Walmsley | Tracy.walmsley@wales.nhs.uk 01267239744 |
| Powys THB | Mark McIntyre | Mark.mcintyre@wales.nhs.uk 01874 712579 |
| Cwm Taf Morgannwg UHB | Donna Hill | Donna.hill2@wales.nhs.uk 01443 443443 x 5371 |
| Betsi Cadwaladr UHB | Lawrence Osgood | Lawrence.osgood@wales.nhs.uk 01745 448586 x5796 |
| WAST | Julie Stokes Anna Stein | Julie.stokes@wales.nhs.uk Anna.stein@wales.nhs.uk 01792 562940 |
| Velindre | Karen Wright Ceri Ann Lawless Jane Williams | Karen.wright2@wales.nhs.uk Ceri-ann.lawless@wales.nhs.uk Jane.williams16@wales.nhs.uk |
| NWSSP | Zoe Grainger Sarah Evans | Zoe.grainger@wales.nhs.uk SarahM.Evans@wales.nhs.uk |
| HEIW | Foula Evans | Foula.evans@wales.nhs.uk |
| Public Health Wales | Rupinder Dogra | Rupinder.dogra@wales.nhs.uk |

APPENDIX 1

Memorandum of Understanding

COVID-19 Staff Deployment Collaboration

1. The Parties

- a. Aneurin Bevan University Local Health Board (“a party”);
- b. Cardiff & Vale University Local Health Board (“a party”);
- c. Cwm Taf Morgannwg University Local Health Board (“a party”);
- d. Hywel Dda University Local Health Board (“a party”);
- e. Swansea Bay University Local Health Board (“a party”);
- f. Public Health Wales NHS Trust (“a party”);
- g. Betsi Cadwaladr University Local Health Board (“a party”);
- h. Powys Teaching Local Health Board (“a party”);
- i. Welsh Ambulance Service NHS Trust (“a party”);
- j. Velindre University NHS Trust (“a party”);
- k. Health Education and Improvement Wales (“a party”);

Collectively referred to as “the parties”.

2. Background

2.1 The parties have agreed to work together to establish an operational collaboration to facilitate the most effective use of their workforce, to promote the maintenance of services and to best maximise the attendance of staff employed by the parties during the COVID-19 pandemic (“the collaboration”).

2.2 Accordingly, the parties recognise that the collaboration will be of mutual benefit and support in order to enable each of the parties to best utilise the available workforce across the parties’ combined areas of operation.

2.3 The parties wish to enter into the Memorandum of Understanding (“the MoU”) in order to record the basis upon which they will collaborate and the basic principles that they have agreed to.

2.4 The parties are entering into the MoU pursuant to their general powers set out under clause 13(1) of Schedule 2 or clause 14(1) of Schedule 3 of the National Health Services (Wales) Act 2006 and all existing powers.

3 Principles of Collaboration

3.1 The parties agree to adopt the following principles when carrying out the collaboration:

- a) collaborate and co-operate. Establish and adhere to the governance structure set out in this MoU to ensure that activities are delivered and actions taken as required;

- b) be accountable. Take on, manage and account to each other for performance of the respective roles and responsibilities set out in this MoU;
- c) be open. Communicate openly about major concerns, issues or opportunities relating to the collaboration;
- d) learn, develop and seek to achieve full potential. Share information, experience, materials and skills to learn from each other and develop effective working practices, work collaboratively to identify solutions, eliminate duplication of effort, mitigate risk and reduce cost;
- e) adopt a positive outlook. Behave in a positive, proactive manner;
- f) adhere to statutory requirements and best practice. Comply with applicable laws and standards including data protection and freedom of information legislation, and equalities legislation;
- g) act in a timely manner. Recognise the time-critical nature of the collaboration and respond accordingly to requests for support;
- h) manage stakeholders effectively;
- i) deploy appropriate resources. Ensure sufficient and appropriately qualified resources are available and authorised to fulfil the responsibilities set out in this MoU;
- j) act in good faith to support achievement of the objectives (as set out under clause 2 above) and compliance with these principles.

4 Roles and Responsibilities

4.1

- a) The parties agree to each undertake the roles and responsibilities as detailed in this clause 4;
- b) Subject to compliance with the provisions of this clause 4, a party to this MoU may use members of staff from one of the other parties with a view to ensuring the continued provision of a service to patients in accordance with its statutory duties.

4.2 The provisions of this clause shall only apply where the employing party has approved the release of the employee from their usual duties and the employee is willing to be redeployed.

4.3 Each party shall establish procedures to ensure that only a member of staff who:

- (i) is able to work within the area in which they are to be redeployed is utilised within the context of this collaboration;
- (ii) has received approval from the employing party that he/she may be deployed;
- (iii) has undergone the requisite identity and competence checks to the satisfaction of the other party;
- (iv) is not otherwise prevented from undertaking work for the other party due to current government and/or public health restrictions (e.g. is symptomatic of COVID-19 and should self isolate)

4.4

- (a) Each party shall maintain records of staff deployment during the COVID19 pandemic for audit and governance purposes.
- (b) The employing party shall pay their employees in the usual way. The employing party will bear all costs associated with redeployment of their staff and there will be no recharge to the host party. Where employee pay varies depending on the timing and type of duties undertaken (e.g. weekend premium rates), arrangements will be made between the employer and the host to ensure that employees are paid appropriately.
- (c) The employing party shall make payment to the relevant member of staff in respect of any expenses reasonably incurred, in accordance with the employee's contract.

5 Indemnity arrangements

- 5.1 It will remain the responsibility of the employing party to carry out all checks in relation to the employment of appropriately qualified staff. This includes visa and work permit verification Occupational Health approvals, vaccinations and DBS checks. The extent and format of these checks may differ from standard processes where mutual aid is not in place.
- 5.2 Control and direction of the duties of the redeployed member of staff will be exercised by the host party whilst that member of staff is performing duties on its behalf pursuant to this collaboration.
- 5.3 Disciplinary and grievance processes arising from any duties undertaken by a member of staff in accordance with this collaboration will be carried out by the employing party. The host party must give such reasonable assistance (by way of enabling the employing party to investigate) as the employing party may require. Any costs, claims, damages, losses and expenses in relation to managing any grievance, disciplinary and employment tribunal claims will remain the responsibility of the employing party;
- 5.4 Investigations in relation to service delivery or patient care will be led by the host party (where the service has been delivered), with support from employing party as required,

5.5 Each party to this MoU is responsible for providing indemnity in relation to the activities of their workers. The Parties are able to apply NHS Indemnity to the activities covered by this MOU. The Parties are also members of the Welsh Risk Pool Scheme.

5.6 A member of NHS staff will be covered, from an indemnity and insurance perspective, by the receiving organisation as they will be responsible for day to day instruction and direction of the individual member of staff.

5.7 Any excess payment (usually the first £25,000) in relation to a request for reimbursement from the Welsh Risk Pool of any compensation or payment in respect of claims for negligence will be borne by the receiving organisation.

5.8 In the event of any confusion or disagreement between the parties in relation to the liability arrangements of a claim arising from the redeployment of NHS staff as part of this collaboration, the matter must be referred to NHS Wales Shared Services Partnership Legal and Risk Services who will liaise with the Welsh Risk Pool as appropriate and make a determination on liability or apportionment of liability on a case-by-case basis.

6 Dispute Resolution

6.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to the collaboration promptly through negotiation. Where possible, dispute resolution will be managed across the relevant service leads involved in the arrangement.

6.2 In the event that the dispute remains unresolved having followed the procedure in clause 6.1, the matter shall be escalated in writing by either/any of those parties to the respective Chief Executives of the parties to resolve the dispute between them.

6.3 If the discussion(s) referred to in clause 6.2 does not resolve the matter in question then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the parties. To initiate a mediation the parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the parties asking them to nominate a mediator. The mediation shall commence within 28 days of the Mediation Notice being served. Neither party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the parties). The parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

7 Equality, Freedom of Information, Data Protection

The parties will discharge their duties with regard to their equality, freedom of information and data protection obligations in respect of any member of staff employed by another party undertaking duties on behalf of that party in accordance with this collaboration, as if that member of staff was employed by them and all parties shall provide all necessary assistance and cooperation as reasonably requested by the employing party to enable that party to comply with its obligations in this regard.

The General Data Protection Regulation (GDPR) requires that staff who are included in any workforce sharing agreement model which requires the transfer of their personal data from an employing party to a host party must be told the way in which their data will be processed and the legal basis for processing this data. The employing party will share the personal data of staff in accordance with its Privacy Notice for staff. The host party will process any data received in accordance with its Privacy Notice for staff. The parties acknowledge that they are obliged to comply with the GDPR.

8 Costs and Expenses

Except as otherwise provided, the parties shall each bear their own costs and expenses incurred in complying with their responsibilities under this MoU.

9 Status

9.1 The purpose of this document is to establish an agreed position as to the roles and responsibilities of those involved in the collaboration and to give clarity to all parties involved therein.

9.2 This MoU is not intended to be legally binding and no legal obligations or rights shall arise between the parties from this MoU. However, the parties enter into the MoU intending to honour all their obligations thereunder.

9.3 Nothing in this MoU is intended to, or shall be deemed to establish any partnership or joint venture between the parties, establish either party as the agent of another party nor authorise any of the parties to make or enter into any commitments for or on behalf of another party (save as may otherwise be set out in this MoU).

10 Review and Reporting

10.1 The arrangements under this MoU shall be subject to review on 6 April 2021 by the Directors of Workforce and OD or nominated representative of the parties and thereafter every 12 months.

10.2 Each party should provide all reasonable assistance and co-operation as reasonably requested by another party to maintain the operation of this MoU.

11 Term and Termination

11.1 This MOU shall commence on the date of signature of all parties and shall expire on 6 May 2021 unless terminated earlier in accordance with clause 11.2 below.

11.2 Any party may terminate this MoU by giving three months' notice in writing to the other party or parties at any time, such notice to be given by the Chief Executive of that party.

12 Governing Law and Jurisdiction

This MoU shall be governed by and construed in accordance with English and Welsh law and, without affecting the escalation procedure set out in clause 6 and the status of this MoU as indicated in clause 9 each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

13 Signatories

The signatories to this MoU are:

On behalf of Aneurin Bevan University Local Health Board:

Name:

Role:

Signature:

Date:

On behalf of the Cardiff & Vale University Local Health Board:

Name:

Role:

Signature:

Date:

On behalf of Cwm Taf Morgannwg University Local Health Board:

Name:

Role:

Signature:

Date:

On behalf of Hwyl Dda University Local Health Board:

Name:

Role:

Signature:

Date:

On behalf of Swansea Bay University Local Health Board:

Name:

Role:

Signature:

Date:

On behalf of Public Health Wales NHS Trust:

Name:

Role:

Signature:

Date:

On behalf of Betsi Cadwaladr University Local Health Board:

Name:

Role:

Signature:

Date:

On behalf of Powys Teaching Local Health Board:

Name:

Role:

Signature:

Date:

On behalf of Welsh Ambulance Service NHS Trust:

Name:

Role:

Signature:

Date:

On behalf of Velindre University NHS Trust:

Name:

Role:

Signature:

Date:

On behalf of Health Education and Improvement Wales:

Name:

Role:

Signature:

Date:

On behalf of NHS Shared Services Partnership:

Name:

Role:

Signature:

Date: