

**Joint Policy for Cumbria Partnership Foundation Trust & North Cumbria
University Hospital NHS Trust**

Time Off In Lieu (TOIL)

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Accountable Director	Executive Director of Workforce and OD
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Data Protection Legislation

The Trust(s) are committed fully to compliance with the requirements of the General Data Protection Regulations (GDPR) 2016 and the Data Protection Act (DPA) 2018. The GDPR and DPA legislation aims to balance the requirements of organisations to collect, store and manage various types of personal data in order to provide their services, with the privacy rights of the individual about whom the data is held.

The GDPR and DPA legislation covers both manual and computerised records in any format, where the record contains details that can identify, directly or indirectly data on a natural person or persons. The DPA sets out principles which must be followed by those who process data; it gives rights to those whose data is being processed

Policy On A Page

SUMMARY & AIM

This Policy enables both Trusts to have a degree of Flexibility in the hours that staff work to deal with unexpected situations which may arise or short term fluctuations in workload.

It provides guidance to and a proactive management framework which allows staff to work additional time and a process for staff to claim that time back In Lieu, with Limits on accrual, processes for agreement and timeframes to reclaiming.

TARGET AUDIENCE:

This policy applies to all staff in North Cumbria University Hospitals NHS Trust and Cumbria Partnership NHS Foundation Trust employed on Agenda for Change pay bands 1 – 7, except staff in either Trust who are managed under flexitime arrangements.

TRAINING:

Training will be provided as part of The People Management Training Programme.

KEY REQUIREMENTS

Staff are expected to adhere to the Working Time Regulations 1998.

Longer term changes to work plan should be managed under the Flexible Working Policy,

Full time staff should not accrue more than 15 hours TOIL per month. Pro-rated for part time staff, Accrual will commence when 15 minutes excess work has taken place.

TOIL should be pre agreed with your manager except in exceptional circumstances where advance notice is not possible.

TOIL should be recorded on the TOIL record (Appendix 1), or other departmental recording system, except for E Roster Staff, where TOIL will automatically be recorded, E roster Creators will update

TOIL must not be accrued when an employee refuses to take a rest break, as a result of poor time management, or to accrue annual leave.

The TOIL record should be held securely in the department. TOIL of less than 15 minutes should be arranged through informal agreement.

Taking back time should be agreed with your Line Manager. Where managers cannot approve taking back TOIL, suitable alternatives should be identified and suggested. TOIL cannot be taken in advance of accrual.

Where possible, accrued time should be taken back in one calendar month from accrual.

If it is not possible to take back in 3 months from accrual, TOIL should be paid at appropriate overtime rate. TOIL will not be paid when reasonable offers have been made to take the time back.

TABLE OF CONTENTS

1.	INTRODUCTION	5
2.	PURPOSE	5
3.	POLICY DETAILS – GENERAL PRINCIPALS:	5
3.1	Working Hours.....	6
3.2	Accrual of TOIL	6
3.3	Recording Additional Hours.....	7
Staff using E-Roster.....		7
3.4	Taking of Time Owing	7
3.5	The TOIL Accounting Period	7
4.	TRAINING AND SUPPORT	8
5.	PROCESS FOR MONITORING COMPLIANCE	8
6.	REFERENCES:	8
7.	ASSOCIATED DOCUMENTATION:	9
8.	DUTIES (ROLES & RESPONSIBILITIES):	9
8.1	Chief Executive / Trust Board Responsibilities:	9
8.2	Executive Director Responsibilities:	9
8.3	Managers Responsibilities:.....	9
8.4	Human Resources Department.....	9
8.5	Staff Responsibilities:	9
8.6	Approving Committee Responsibilities:	9
9.	ABBREVIATIONS / DEFINITION OF TERMS USED	9
	APPENDIX 1	10
	DOCUMENT CONTROL.....	11

1. INTRODUCTION

The Trusts recognise their duty to protect the health and safety of its staff by ensuring that they do not work too many hours and that they are recompensed by taking time off in lieu (TOIL) for any extra time that they are requested to work.

Time off in Lieu (TOIL) is defined as time taken off to compensate for planned (or occasionally unplanned) time worked in addition to contracted hours.

This policy applies to all staff employed on Agenda for Change pay bands 1 – 7 except staff in either Trust who are managed under flexitime arrangements.

Line Managers of staff on Agenda for Change pay bands 8a and above, who are not entitled to overtime payments under NHS National Terms and Conditions of Employment, should agree appropriate arrangements with their employees for taking time off in lieu for any extra time they are requested to work.

It is not applicable to medical and dental staff for whom separate provisions apply under the terms and conditions of their employment.

2. PURPOSE

Although the priority of the Trusts must be to ensure service delivery at all times, the Trusts will try to offer all staff the opportunity to work flexibly.

The Trusts also confirm its commitment to fair and equitable treatment of all members of staff irrespective of age, gender, marital status, disability, race, colour, national/ethnic origins, religion or sexual orientation in the utilisation of this policy.

For the Trusts' responsibilities and commitments under the Equality and Human Rights legislation, please refer to the Trusts' Single Equality Schemes.

3. POLICY DETAILS – GENERAL PRINCIPALS:

It is recognised that staff may be required to work extra time over their contracted hours to support service delivery objectives.

In the interest of enabling staff to have a healthy balance between home and work life, the Trusts also support and promote flexible working. This policy addresses the informal daily working arrangements of staff in terms of Time off in Lieu (TOIL) rather than long term alterations to work patterns. Staff interested in permanent / long term working pattern alterations should consult the Flexible Working Policy for guidance.

Managers need to be reasonable in their expectations of staff and where a manager has requested and agreed for an individual to work over their standard hours this must be recorded and authorised at the time the decision is made using the Time off in Lieu (TOIL) Record (Appendix 1), on the e-rostering system, or other departmental recording system.

If a situation arises in which members of staff are continuously accruing time owing, the pattern of working within the team should be reviewed by the manager to determine whether there is an alternative method of delivering the service.

3.1 Working Hours

The Working Time Regulations 1998 state that staff must not work in excess of 13 hours per day (including rest breaks) and that staff should not work in excess of an average of 48 hours per week unless they have agreed with their line manager and signed an opt out agreement to the Working Time Regulations.

3.2 Accrual of TOIL

It is expected that staff are able to complete their job in their contracted hours. However, whilst not encouraged, it is recognised that on occasion and when agreed with the manager and individual staff member, that staff may need to work additional time, thereby accruing TOIL.

The amount of time owing accrued by staff however needs to be limited and therefore for full time staff should not exceed 15 hours per month and for part time staff a pro rata of 15 hours per month. The accruing of TOIL will commence once a member of staff has worked 15 minutes after their scheduled finish time or on a day where they are not scheduled to work.

Working additional hours (i.e. accruing TOIL) should always be agreed in advance with the line manager, who has responsibility for authorising the Time off in Lieu Record (appendix 1). Taking time off in lieu should also be agreed with your manager.

It is recognised that there will be exceptional circumstances, for example when an employee is delayed whilst working with clients in the community, or other clinical setting, and is not able to access a phone or contact their manager, in which case authorisation in advance may not be possible. In such cases the manager should be informed as soon as possible (within 48 hours) and the Time off in Lieu Record should be completed retrospectively.

It is anticipated that where an employee works under the principles of the Trusts' flexi-time systems, this will be the mechanism by which additional hours worked will be managed. The details of the flexi-time system are detailed in the Trusts 'Policy to Promote Flexible Working'.

There are examples where time owing should not be accrued. These guidelines do not seek to be exhaustive however lieu time should not be accrued:

- Where an employee chooses not to take a rest break
- As a result of poor time management
- As a means of accruing extra leave

3.3 Recording Additional Hours

When a member of staff undertakes duties outside of their contracted hours, a record must be kept and authorised by the employee's manager on a Time off in Lieu Record (appendix 1). This must be held securely within the department. The record should be reviewed by the employee and the manager at the end of each month and signed to confirm that it is an accurate reflection of additional hours worked and taken off work during the month.

Care Group Management teams may choose to develop additional assurance processes around the monitoring of TOIL with their Managers. These arrangements will be determined locally.

Additional hours should be recorded in no less than 15 minute blocks. The reason for any additional hours should be clearly stated. To avoid excessive paperwork, if the extra time worked is less than 15 minutes, this does not need to be documented on the TOIL Record and should be dealt with locally and informally by agreement with the manager.

Staff using E-Roster

E-Roster keeps an ongoing record of TOIL which is displayed on the Roster. Roster creators and roster approvers are responsible for approving and maintaining the TOIL on E-Roster for the departments within their responsibilities. Staff working within the unit who have accrued TOIL must discuss with the unit manager who must then update the roster with the accrued time.

3.4 Taking of Time Owing

Taking back any time worked in lieu must be agreed by the manager according to service needs and should be recorded on a TOIL Record (appendix 1) or departmental recording system, with the exception of those on E rostering as in 3.3. Where managers do not approve the requested TOIL, suitable alternative dates (earlier or later) should be identified and suggested.

Managers must not approve requests which will require a member of bank staff or agency worker to cover a shift or where overtime will be required to provide cover.

An employee may not take time off in lieu in advance of accruing the time and on the basis that they are due to work extra time in the future, unless there are exceptional circumstances and the employee's line manager has authorised this.

3.5 The TOIL Accounting Period

In managing their service managers should encourage and enable employees who have accrued lieu time to take the time back as quickly as possible and within one calendar month where possible. For instance, if time is accrued on 15th January then the manager and employee should arrange for the time owing to be taken before 15th February.

Where, for service delivery reasons, it is not possible for the time to be taken back within one calendar month, managers should work with their staff to plan when the lieu time can be taken within 3 months of its accrual.

In accordance with Agenda for Change Terms and Conditions of Service employees who, for operational reasons, are unable to take time off in lieu within 3 months must be paid at the overtime rate. Payment in lieu of TOIL will not be made where the Trust has made a reasonable offer for the employee to take the time in lieu, which has been refused.

Lieu time may not be carried over from one post to another. Managers must ensure all accrued TOIL is taken prior to staff transferring internally within the Trust. For staff leaving the Trusts, Managers and Employees should make every effort to ensure that accrued TOIL is taken before employment terminates. Where this is not possible, payment will be made in lieu.

4. TRAINING AND SUPPORT

Advice on application of the this policy may be obtained from HR Advisors. Training will also be provided as part of the People Management Training Programme.

5. PROCESS FOR MONITORING COMPLIANCE

The process for monitoring compliance with the effectiveness of this policy is as follows:

Aspect being monitored	Monitoring Methodology	Reporting		
		Presented by	Committee	Frequency
The equal opportunity of staff in the use of TOIL	Analysis of the equality profile of applicants for TOIL	Human Resource Business Partner	Workforce and OD Group	Annual form 1 st April to 31 st March
Compliance with policy when managing TOIL	HR Advisors to review 15 TOIL cards across both Trusts	Human Resource Business Partner	Workforce and OD Group	Annual form 1 st April to 31 st March

Wherever the above monitoring has identified deficiencies, the following must be in place:

- Action plan
- Progress of action plan monitored by the *name of relevant committee* minutes
- Risks will be considered for inclusion in the appropriate risk registers

6. REFERENCES:

NHS Terms and Conditions Handbook at:

http://www.nhsemployers.org/employershandbook/afc_tc_of_service_handbook_fb.pdf

1998 European Working Time Regulations at:

<http://www.legislation.gov.uk/ukSI/1998/1833/contents/made>

7. ASSOCIATED DOCUMENTATION:

CPFT Flexible Working Policy POL/004/029
 NCUH Flexible Working Policy (including Flexi Time) HR29

8. DUTIES (ROLES & RESPONSIBILITIES):**8.1 Chief Executive / Trust Board Responsibilities:**

The Chief Executive and Trust Board jointly have overall responsibility for the strategic and operational management of the Trust, including ensuring that Trust policies comply with all legal, statutory and good practice requirements.

8.2 Executive Director of Workforce and OD Responsibilities:

All policies have a designated Executive Director and it is their responsibility to be involved in the development and sign off of the policies, this should ensure that Trust policies meet statutory legislation and guidance where appropriate. They must ensure the policies are kept up to date by the relevant author and approved at the appropriate committee.

8.3 Managers Responsibilities:

Are responsible for ensuring effective and consistent application of this policy and ensure that employees are aware of this policy.

8.4 Human Resources Department

HR will provide advice and support on the application of this policy.

8.5 Staff Responsibilities:

All staff should be aware of this Policy and its provisions.

Staff who are authorised to work additional hours will have read and understood the TOIL policy and follow the correct procedure.

8.6 Joint Partnership Forum Responsibilities:

The Chair of the Joint Partnership Forum will ensure the policy approval is documented in the final section of the Checklist for Policy Changes. The committee will agree the approval of the final draft of the policy.

9. ABBREVIATIONS / DEFINITION OF TERMS USED

ABBREVIATION	DEFINITION
CPFT	Cumbria Partnership NHS Foundation Trust
NCUH	North Cumbria University Hospitals
TOIL	Time off In Lieu

DOCUMENT CONTROL

Equality Impact Assessment Date	November 2018
Sub-Committee & Approval Date	Joint Partnership 19/12/2018

History of previous published versions of this document:

Trust	Version	Ratified Date	Review Date	Date Published
CPFT	POL/004/ 036	April 2016	April 2018	April 2016

Statement of changes made from previous version: April 2016

Version	Date	Section & Description of change
0.2		<ul style="list-style-type: none"> There are no operational changes to the policy for CPFT. NCUHT Does not currently have a TOIL Policy so this is a new document and the changes are designed to complement E rostering. Format Changed in Line with Joint Policy Template Policy on a page – new Page 2 - GDPR Guidance included Section 3.3 E Roster Guidance - New Section 3.4 Altered for staff on E roster Section 1 para 3 – updated. Section 3.5 Final Line Altered Section 3.6 Added but deleted on reflection Section 5 – Change of Reporting
0.3	22/11/2018	<ul style="list-style-type: none"> Section 3 - TOIL to be accrued after 15 minutes of working over normal finish time. TOIL to be recorded in no less than 15 minute blocks. Informal arrangements to be made for taking TOIL of less than 15 minutes. TOIL to be recorded on TOIL record card (Appendix 1), e-rostering system, or departmental recording system, whichever is appropriate.

List of Stakeholders who have reviewed the document

Name	Job Title	Date
Care Group Senior Management Teams		
Staff-side Representatives		09/01/2019
Joint HR Policy Sub Group		22/11/2018