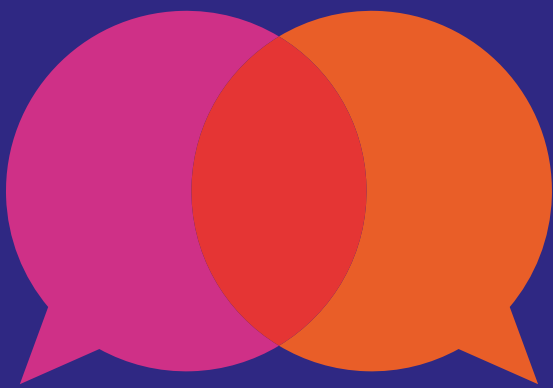


MCoC What if...? series



what if

**I am a midwife working in MCoC
wondering about pay and pensions?**



Royal College
of Midwives



MCoC What if...? series

This document of the “What if...?” series has been designed for those identifying with any of the following groups:

- ▶ I am a midwife or MSW working or considering working in MCoC wondering about pay and pensions
- ▶ I am an RCM Workplace Representative supporting members through a consultation process
- ▶ I am a service manager and need to know what pay models are available for MCoC midwives and MSWs?

This document aims to explore different models of remunerating those working in continuity models, with a focus on principles to be considered before implementing changes and models of pay available within Agenda for Change in the NHS. Different models may affect pensionable pay hence the inclusion of pensionable pay guidance.

The RCM supports the aim that midwifery continuity of carer across the maternity journey should be the central model of maternity care for women, providing the key conditions are in place as outlined in our **position statement**. That is that there is proper investment, safe staffing levels and staff are engaged and supported.

In developing services that deliver continuity of carer a small number of midwives and managers have considered a move to an inclusive pay arrangement, in those circumstances the principles outlined in this document must be followed. A change to the way in which staff working in MCoC are paid is not mandatory and it is the RCM's understanding that in the majority of teams there is no change to existing pay arrangements. An inclusive salary approach is sometimes used as a way to support the development of more flexible working arrangements and reduce the need to evidence working hours for individual staff and managers. This document seeks to support members, RCM Workplace Representatives and service managers to ensure that any proposed changes to pay, terms and conditions are fair and not to the detriment of midwives and MSWs seeking to improve the quality of services delivered.

The RCM as an Executive member of the NHS Staff Council have negotiated a set of **ten principles** for when an inclusive salary arrangement is being considered, those principles are set out below. NHS Trusts are able to agree local variations to standard NHS terms and conditions with respect to payment systems for hours worked, e.g., annualised hours, prospective payments of unsocial hours, local on-call payments. While it is recognised that NHS Foundation Trusts have additional freedoms as set out in Annex 11 of the NHS Terms and Conditions of Service Handbook (Agenda for Change), the principles set out in this document would still apply.



Principles

1. The overarching principle for this type of local variation is that employees should not be at a disadvantage, i.e., paid less than their actual hours worked, through locally agreed arrangements. Policies for monitoring employee hours should be in place to ensure that employees are paid fairly for the work that they undertake.
2. It is imperative that any variation to terms and conditions are negotiated and approved by the local partnership group of recognised trade unions.
3. When an employer is looking to develop a continuity care team and implement local pay arrangements which deviate from the standard arrangements set out in the NHS TCS handbook then they should engage with the relevant trade unions via their local negotiation committee.
4. Detailed modelling of the options should be undertaken in advance of any proposals and shared with trade unions and staff as part of the engagement and negotiation process.
5. A risk assessment and benefits analysis of proposals should be carried out in partnership with the locally recognised trade unions.
6. In the case of the midwifery continuity of care model, this has the potential to improve a range of outcomes for maternity service users, as evidenced by research. Any such improved outcomes are also of benefit to the organisations providing care. Organisations may therefore consider recognising this potential through developing payment and uplift proposals that could incentivise staff to work in this way.
7. Proposals should be clear and transparent as to what is included, for example, whether an uplift is inclusive of on-calls alone or on-call plus unsocial hours.
8. A fundamental change to terms and conditions must be subject to both individual and collective consultation with affected members of staff.
9. Employers and local trade unions will need to agree how regularly a review of the pay arrangements is undertaken to ensure staff do not suffer a detriment. This review will need to:
 - agree a methodology to identify any underpayments or equal pay risks which may arise, and consider any other remuneration and pension implications;
 - determine whether any corrective action to the payment arrangements is needed.
10. Any change that is agreed and implemented must be subject to a joint review process and equality impact assessment (EqIA). Employers should undertake an EqIA and share the results with trade unions as part of policy development and update the EqIA in light of the review.

Things to think about when considering making changes to how staff are paid in continuity teams:

Unlawful deduction of wages

As outlined above NHS Trusts (subject to the mechanism for agreement outlined above), are able to agree locally, variations to standard NHS terms and conditions, however employees must not be at a disadvantage (paid less than their actual hours worked) through these arrangements. Underpaying staff by paying them less than they would have earned under the standard Agenda for Change model may constitute unlawful deduction of wages. The Employment Rights Act 1996 covers the right of workers not to suffer unauthorised deductions.

Equality Assessment (EA)

An EA should be carried out when any new policy or process is introduced. The purpose of an EA is to assess whether there are any unintended consequences for some groups and whether the policy will be fully effective for all target groups. It is good practice to begin the EA process as part of the policy development stage rather than once the policy is finalised, this is to ensure policies are designed to be inclusive. In the case of an EA on the development of a new team the assessment should also include equivalent midwives and Maternity Support Workers (MSWs) who will not be working in the new team. This is to ensure the new ways of working do not create an inequality between staff. Whilst it is the responsibility of employers to carry out an EA RCM Workplace Representatives can request a copy of the results. All new and updated policies should be developed and monitored in partnership with local recognised trade unions and the EA results shared. An EA is a live document that needs to be kept updated, it should include a commitment to continual analysis and periodic formal review in partnership.

Equal pay

Equal pay is enshrined in law and means that men and women must get equal pay for doing 'equal work' (work that equal pay law classes as the same is similar, equivalent or of equal value). The NHS Job Evaluation Scheme (JES) underpins the Agenda for Change (AfC) pay structure, it ensures equal pay for work of equal value. It is a way of ranking jobs by knowledge and skills, responsibility and effort. Every job description that is created for AfC staff must go through a process of either job matching or job evaluation. In developing new ways of working and paying staff it is important to ensure that the principle of equal pay for work of equal value is not undermined. The Agenda for Change Handbook Annex 29 sets out the principles which outline that local on-call agreements need to be consistent with harmonised on-call arrangements. Payments for on-call must be agreed locally through Joint Negotiating



Committees (JNC) and consistent with the principles of equal pay for work of equal value. Schemes agreed by local partnerships should provide consistent payments to staff at the same pay band available at the same on-call frequency. RCM Workplace Representatives should ensure staff-side colleagues from other unions are kept up to date with any proposed changes in maternity services to ensure proper processes are followed.

Keeping staff safe at work

Midwifery Continuity of carer teams are likely to be caring for women within community based clinical settings and in the woman's home. The NHS as an employer has a duty to ensure the health and safety of staff; community based care often means practitioners will be working in isolation, and employers need to ensure there is a lone working policy which has been negotiated and agreed at JNC.

The policy should set out arrangements to protect employees and include a process to ensure the responsible person knows where staff working out in the community/ making home visits are. RCM Health and Safety representatives can conduct joint workplace inspections and become a member of local health and safety committees.

Organisational change

An employer has a duty to 'meaningful' consultation when embarking on organisational change, meaning employees views should be taken account of not just listened to. ACAS guidance states that employees should be involved in change at the earliest stage, communication should be clear, accessible and honest, training and support should be provided.

The Social Partnership Forum (SPF) has developed guidance stating that staff and their unions should be involved in the development and implementation of system transformation that impacts on them. Messages related to system change should be clear and transparent and developed in partnership. Guidance and procedures relating to the impact on staff should continue to ensure transparency, equitability, fairness and equality. Wherever possible organisations should work together to manage the impact of organisational change on staff. The process should be monitored and reviewed in partnership with local recognised trade unions.

NHS pensionable pay

As the number of continuity teams being set up increases the RCM has received several queries about pensionable pay, for example around on-call payments and unsocial hours.

So what is pensionable pay? Pensionable pay is the amount of pay pension contributions are based and paid on. Pay that is pensionable is your basic salary

excluding overtime (in excess of whole time hours), one off bonuses, and expenses. Not everything that you earn is pensionable

The key to pensionable pay is 'regular payments'. Pensionable pay should include regular payments such as unsocial hours allowance, London weighting and on-call availability allowance payments. There is no minimum number of hours that can be pensionable in the NHS Pension Scheme. The maximum number of hours that can be pensionable are the normal (standard) whole time hours for the relevant job.

If I work overtime is that pensionable? Overtime, in relation to the NHS Pension Scheme, is hours worked in excess of the whole time standard working week. If you work part time any additional hours you work up to the whole-time working week are pensionable. Hours worked over the whole-time working week (e.g. 37.5 hours) are not normally pensionable.

What about if I work on-call? Midwives and Maternity Support Workers (MSWs) working in continuity teams are likely to be undertaking on-calls. The RCM would not expect working on-call to equal enforced overtime, therefore midwives and MSWs may be doing on-calls as part of standard hours. Where a midwife or MSW is performing additional on-call hours their on-call income is pensionable up to the whole time working week; (e.g. 37.5 hours). Where on call hours exceed whole-time the income is not pensionable.

A midwife working in this way might part roster a **percentage** of their hours for routine antenatal and postnatal care leaving a surplus to off-set against call out hours when on call. A **short reference period** such as four weeks should be used to ensure that excess overtime or contracted hours are not accrued. Staff would still have set periods of on-call and be paid the allowance for this, however when called out these hours could be offset against the non-rostered surplus. In this instance work done on-call as part of standard hours is not classed as overtime (up to whole time hours) therefore would be pensionable. Note that the Agenda for Change terms and conditions of service handbook states 'staff cannot receive unsocial hours payments and payments for on-call and other extended service cover for the same hours of work'.

What if my team has agreed to move to an inclusive pay arrangement, is this pensionable? In developing services that deliver continuity of carer midwives and managers may consider a move to an inclusive pay arrangement, this covers on-call payments or on call and unsocial hours payments. As this payment is regular and covers standard hours it should be pensionable up to full time hours.

The RCM recommends that each organisation should seek clarification regarding their individual inclusive salary offer direct with the NHS Business Services Authority.

Tiered contribution rates are broadly based on the previous year's whole time equivalent pensionable pay. Contributions paid are based on actual pay during that



pay period (month) therefore when applying rosters staff should be aware that these may not match pay periods. This could impact pensionable pay and how payroll apply superannuation, for example if the number of on-calls and unsocial hours worked vary week by week.

The RCM has produced detailed guidance covering employment rights and regulations relating to continuity. You can access all the relevant resources on the **RCM website**.

NHS Business Services Authority have produced a factsheet on pensionable pay which can be accessed through the 'Member Hub'.

Staff who are subject to a pay protection arrangement should refer to their individual agreement and clarify with their payroll department whether there would be any impact on pensionable pay. Further information on protection of pay following a reduction in pensionable pay is available on the **NHS Business Services Authority website**.



The pros and cons of the different models

There are three main models of remunerating midwives working in continuity teams. The advantages and disadvantages of each model are described in detail in the below tables:

- As per the Agenda for Change Terms and Conditions of Service Handbook Section 2 which covers maintaining 24 hour services plus local agreement on harmonised payments for on-call and other extended service cover consistent with the 12 principles set out in annex 29.

✓	✗
This is the standard arrangement in the majority of NHS trusts therefore it would not be necessary to apply the RCM principles as outlined in this document if this wouldn't result in a change to terms and conditions.	The nature of working in a MCoC team means that there may be a fluctuation in demand for services and for staff paid in this way a fluctuation in levels of pay.
As the majority of midwives and MSWs are already paid in this way it is not likely to create a disparity between different teams/groups of staff and the risk of equality impact and pay discrimination is reduced.	Members of MCoC teams may be tempted to work overtime to increase pay, potentially leading to a negative impact on health and wellbeing and staff burnout.
It is a known and understood way of being paid for staff.	Increased complexity for managers in budget-planning due to unpredictability of hours worked, and pay.
Section 2: Maintaining round the clock services (England) can be applied retrospectively or prospectively.	

- Pay enhancements for on-call cover consistent with annex 29 + unsocial hours paid as per Agenda for Change Terms and Conditions of Service Handbook: Section 2.

✓	✗
Annex 29 of the Agenda for Change Handbook includes pay enhancements for on-call cover. This national framework means a reduced risk of equality impact and pay discrimination.	A move to this model is likely to be a change to staff terms and conditions so there is a requirement to engage and consult staff, the RCM and wider recognised trade unions including through JNCs. Annex 29 should not be undermined.
This model is likely to mean less fluctuation in income when compared to option 1.	The NHS Staff Council principles outlined in this document should be followed meaning increased administrative time to undertake a review of the pay arrangements to ensure staff do not suffer a detriment.



3. Inclusive pay arrangement including on-call and unsocial hours payments.

✓	✗
<p>An inclusive salary/annualised hours arrangement can enable MCoC teams to achieve an improved work/life balance if combined with good rostering practice, self-directed and managed teams with flexible working patterns. Teams should be able to vary hours across the day, week, month or year without impacting on pay.</p>	<p>The likely fluctuation in demand for services in MCoC teams means that it is difficult to find a blue - print % and ensure that staff do not suffer a detriment working in this way, risking an equality impact and pay discrimination.</p>
<p>Consistency in levels of pay can make financial budgeting easier for staff and incentive to work extra hours for increased pay is removed.</p>	<p>It is necessary to follow the NHS Staff Council principles outlined in this document leading to increased workload as time is needed to undertake modelling, record hours worked and keep an audit trail to ensure staff do not suffer a financial detriment, risking an equality impact and pay discrimination.</p>
<p>Administration time is substantially reduced as midwives and team leaders do not have to fill in time sheets and/or approve hours on roster/e-rosters.</p>	<p>A move to this model is likely to be a change to staff terms and conditions so there is a requirement to engage and consult staff, the RCM and wider recognised trade unions including through JNCs.</p>

Reference and resource list:

Pay and Agenda for Change: <https://www.rcm.org.uk/supporting/pay>

RCM 'Nuts and Bolts' publication which describes some of the key guidance that relates to terms and conditions that are of relevance in introducing continuity models of care: <https://www.rcm.org.uk/publications/?query=continuity+models%3a+the+%27nuts+and+bolts%27+-+england+and+wales&page=1>

RCM Position Statement: Midwifery Continuity of Carer <https://www.rcm.org.uk/media/2946/midwifery-continuity-of-carer-mcoc.pdf>

RCM MCoC What if? Series. What if- My midwifery continuity team is organising how we work https://www.rcm.org.uk/media/3559/what-if-my-midwifery-continuity-team-is-organising-how-we-work-a4-4pp_6.pdf

NSW Ministry of Health. Midwifery continuity of carer toolkit (2012) <https://www.health.nsw.gov.au/nursing/practice/Publications/midwifery-cont-carer-tk.pdf>

NHS Employers. NHS Staff Council Principles for Inclusive Pay Arrangements. Accessible at <https://www.nhsemployers.org/engagement-and-networks/nhs-staff-council/joint-statements-and-papers>





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