

## SECONDARY EMPLOYMENT POLICY

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**CITY HOSPITALS SUNDERLAND NHS FOUNDATION TRUST  
DOCUMENT APPROVAL FORM**

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**Name of Author:** Jan Armstrong, Deputy Director of Human Resources  
**Name of Sponsor:** Kath Griffin, Director of Human Resources

**New Policy:** Yes  No

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**Equality Impact Assessment:** If this policy has a potential discriminatory impact please record below the person who has informed and involved the sponsor:  
**Name:**  
**Title:**  
**Date:**  
**NB:** It is the sponsor's responsibility to submit the policy through the CHS approval route.

**Checklist for the review and approval of the policy**

	Is the policy compliant with:	Yes/No	Comments
	<b>Corporate style</b>	<b>Yes</b>	
	<b>Format including duties</b>	<b>Yes</b>	
	<b>Content;</b> intended outcomes clearly described	<b>Yes</b>	
	<b>Evidence base;</b> key references included and cited in full	<b>Yes</b>	
	<b>Associated documentation</b> recorded	<b>Yes</b>	
	<b>Review/consultation process:</b> List of groups/committees included with the policy	<b>Yes</b>	
	Appropriate stakeholders consulted	<b>Yes</b>	
	<b>Approval:</b> Staff side committee (if appropriate)	<b>Yes</b>	
	<b>Dissemination &amp; implementation:</b> appropriately described	<b>Yes</b>	
	<b>Training:</b> requirements included (where appropriate)	<b>Yes</b>	
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	<b>effectiveness:</b> adequate description and appropriate monitoring		
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	<b>Intranet to be updated:</b> Record the date and person responsible	<b>Yes</b>	Deputy Head of Corporate Affairs – 11 January 2016
	<b>Individual approval;</b> Policy author	<b>Date</b>	<b>Sign</b>
	<b>Director of Corporate Affairs:</b> update version control and approval of the process	<b>Date</b>	<b>Sign</b> 11 January 2016
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**Committee Approval**

**Committee which forms the approval process:** Policy Committee

**Date of approval:** 12 November 2015

**Signature of Chair of Committee, including approval:** Mr Mike Davison

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## 1. **INTRODUCTION**

City Hospitals Sunderland NHS Foundation Trust (hereafter referred to as 'the Trust' or 'CHS') is committed to providing excellent healthcare, as well as being a model employer.

The Trust recognises that staff may engage in secondary employment or self-employment in addition to their primary employment. However, the Trust must be satisfied that there are no conflicts of interest or health and safety implications for the employee, their colleagues or patients and that secondary employment does adversely affect their performance or attendance.

## 2. **PURPOSE AND SCOPE**

The purpose of the policy is to:

- a) Ensure that staff do not engage in secondary employment that may conflict with or adversely affect their performance or attendance under their contract of employment with the Trust.
- b) Prevent staff and/or the Trust breaching the Working Time Regulations on working times/hours, including total hours worked, breaks between shifts and annual leave.
- c) Support managers and staff in complying with legislation on working time/hours, including total hours worked, breaks between shifts and annual leave.

This policy applies to all staff.

Employees will normally be permitted to undertake secondary employment providing the Trust is satisfied that this does not conflict with:

- The interests of the Trust;
- The performance of the employee's duties in their primary employment;
- The requirements of the Working Time Regulations;
- The employee's wellbeing and levels of sickness absence.

Medical staff must also comply with the relevant national terms and conditions, GMC guidance and the Department of Health's Code of Conduct for Private Practice in relation to private practice / fee-paying services.

Failure by an employee to comply with this policy will be considered a serious disciplinary matter, which may result in a disciplinary action up to and including dismissal.

Where an employee is suspected of deliberately failing to work their contracted hours due to secondary employment, their conduct will be considered as potentially fraudulent and may lead to investigation by the Trust's Local Counter Fraud Specialist.

### **3. DUTIES**

#### **3.1 Board of Directors**

The Board of Directors is responsible for monitoring and approving a framework to support this policy, compliant with all relevant legislation and guidelines.

#### **3.2 Chief Executive**

The Chief Executive is responsible for ensuring that a robust secondary employment policy is in place, compliant with all relevant legislation and guidelines.

#### **3.3 Director of Human Resources**

The Director of Human Resources (HR) is the lead Director for and Sponsor of, this policy and is responsible to the Chief Executive for ensuring its implementation, including consultation with trade union representatives. The Director of HR will make sure that:

- All candidates are made aware of the policy during the recruitment process, including in their conditional offer, contract of employment and at induction.
- A record of all secondary employment declarations and any changes to these are maintained.
- Occupational Health records are updated to include information about any secondary employment declarations.
- HR staff provide advice to staff and managers on the operation of this policy.

#### **3.4 Line Managers**

Line managers must make sure that:

- Employees are aware of this policy and complete a Secondary Employment Declaration Form when necessary.
- Before reaching a decision about an employee's request to undertake secondary employment, they meet and discuss with them the following issues:
  - Any potential conflicts of interest;
  - The Working Time Regulations;
  - The employee's current performance / duties/ job plan;
  - The employee's attendance and capability to carry out their primary role with the Trust and the potential impact that secondary employment may have on these and the employee's health and wellbeing;
  - Any additional information needed before making a decision, e.g. the nature / extent of the work and/or where there are issues of concern.
- They confirm the outcome of their discussions/their decision to the employee in writing in line with this policy.
- They notify Human Resources of any secondary employment requests they approve by sending a copy of the Declaration Form to HR.

#### **3.5 Employees**

Employees or prospective employees, who wish to engage in secondary employment within or outside of the Trust, must notify the HR Department

during pre-employment checks (prospective employees) or their line manager (current employees), by completing the Declaration Form at **Appendix 1**.

Employees must obtain prior written approval before they engage in any kind of secondary employment.

Employees must at all times adhere to the Working Time Regulations.

Employees who engage in secondary employment must not exceed the 48-hour limit with regard to their total average weekly working time. Secondary employment includes working for on 'the bank' / for NHS Professionals or through an agency. See **Appendix 2** for more information about this.

Employees with two concurrent posts within the Trust, must have due regard to the needs of both posts and treat them equally, if they plan to engage in any other employment within or outside the Trust

Medical and Dental staff must adhere to the conditions set out in their terms and conditions of employment and the Department of Health's Code of Conduct for Private Practice.

#### **4. DEFINITIONS**

**4.1 Primary Employment** is a contract of employment held with the Trust

**4.2 Secondary Employment**

Is a term used in the policy to describe any additional employment, other work, or services provided for which the individual receives any form of remuneration, expenses and/or benefit in kind.

Secondary employment can include working for another employer, running a business, providing paid consultancy services, or being involved in a family business (though this is not an exhaustive list).

Secondary employment includes casual, part-time, full-time work and shift work, regardless of the duration of the employment.

Secondary employment includes employment already held by a person at the time of their initial employment by the Trust.

Secondary employment does not include volunteer work for charitable organisations, schools, community groups etc.

**4.3 Fraud**

The term Fraud covers the following: -

- False representation;
- Failing to disclose information;
- Abuse of position.

**4.4 Conflict of Interest**

A conflict of interest arises where an employee engages in an outside activity that interferes, or appears to interfere with, their duties as a Trust employee.

The Trust will consider whether a conflict of interest exists by giving due regard to: -

- The nature of the secondary employment and the extent to which it is similar to that which the employee does for the Trust.
- The business of the employer offering the secondary employment and whether that employer competes in any way with the Trust. For example, it is possible that by bidding for work in competition with the Trust, the bidding itself will constitute a conflict of interest, irrespective of whether the individual subsequently wins the bid.
- The proposed hours of work in the second employment and whether these might result in the employee having insufficient rest to work effectively in the Trust.

## **5. LEGISLATION**

This policy has been written in line with the Working Time Regulations, in particular the number of hours worked, the minimum rest periods and secondary employment.

More information on this can be found in Section 27 of the Agenda for Change terms and conditions handbook.

As an employer, the Trust has a responsibility under Health and Safety Regulations to ensure the safety of all employees and it is recognised that controlling hours of work is an integral part of promoting health at work.

## **6. PROCEDURE**

### **6.1 New Appointees**

New appointees will be sent a Secondary Employment Declaration Form with their conditional offer of employment.

Where an individual discloses secondary employment (proposed or current) during their employment checks, the Divisional HR Manager will contact them and obtain more information / seek clarification regarding the nature and extent of the employment as necessary. This information will then be discussed with the recruiting manager to establish if there are any conflict of interest and/or Working Time Regulations issues and to decide whether or not to allow the individual to engage in secondary employment, in addition to their primary employment with the Trust.

HR will notify the individual of the final decision.

Where secondary employment is approved, a copy of the Declaration Form will be retained on the employee's personal file and recorded by HR.

Where secondary employment is refused, the reasons for this will be set out in writing by HR and the individual asked to confirm if they wish to take up employment with the Trust on that basis.

Where the offer (excluding secondary employment) is accepted, the recruitment process will continue.



Where the individual rejects the offer, the recruitment process will cease and the recruiting manager informed accordingly.

## **6.2 Existing Employees**

Employees who wish to engage in secondary employment must seek prior permission from their line manager by completing the Declaration Form at **Appendix 1** and sending it to them for consideration.

The line manager must then meet with the employee within 2 weeks of receiving the form and discuss the proposed secondary employment in relation to the issues outlined in **Section 3.4**.

The line manager must inform the employee of their decision within 1 week of the meeting. Where permission is granted, the line manager will approve the Declaration Form, notify the employee and send a copy of the form to HR, so that the secondary employment can be recorded.

Where permission is refused, the line manager must write to the employee and explaining the reasons for the refusal.

A copy of the Declaration Form and record of the Line Manager's decision should be placed on the employee's personal file.

Line managers should contact their Divisional HR Advisor / Manager to discuss any concerns or queries they have about secondary employment, especially if they think there are possible conflict of interest issues.

## **6.3 Consultants, Associate Specialists and Specialty Doctors (SAS)**

Consultants and SAS Doctors must declare any secondary employment to their Clinical Director (CD) as part of the annual job planning process/discussion. They must include details of the secondary employment in the job plan timetable as well as information about the nature and extent of the work within the job-planning template, even when there is no change from the previous year. They must also complete and submit to their CD the Declaration Form at **Appendix 1**, should they be considering any new secondary employment outside of / in between the job planning process.

Where following receipt of a Declaration Form or job planning meeting with the doctor to discuss their secondary employment, the Clinical Director considers there is a possible conflict of interest, he / she must discuss the matter with the Medical Director in the first instance. This may result in further information being requested and / or another meeting with the doctor, to establish the nature and extent of the secondary employment before a decision is made.

## **6.4 Sickness Absence**

Whilst on sickness absence, employees are regarded as unfit to undertake any work and therefore must not undertake secondary employment anywhere (in any capacity), particularly with a medical certificate, without permission.

If an employee has a dual contract within the Trust or secondary employment and considers they can work in these roles whilst on sickness absence, they

must discuss this with and have written permission before doing so, from their line manager / Clinical Director. This will be following consultation with and advice from HR and Occupational Health.

If an employee engages in other work / secondary employment during sickness absence, without the prior written permission from their line manager / Clinical Director, they may be subject to disciplinary action in accordance with the Trust's Disciplinary Procedure, which may result in the involvement of the Trust's Local Counter Fraud Specialist and may lead to dismissal.

## **6.5 Working Time and Annual Leave**

The Working Time Regulations are designed to ensure that no one works where they are too tired to do so. Employees must ensure that their total working hours do not exceed the 48-hours limit set out in the Working Time Regulations, unless they have signed an opt-out form. (More information about this is provided in **Appendix 2**). The Trust however does not have to accept this opt out if considers that the health and safety of any staff or patients is likely to be adversely affected.

The Trust wishes to encourage a culture where staff do not work while on annual leave, as there is a risk that employees who do so may develop stress.

Employees must therefore not engage in secondary employment while they are on annual leave from their substantive post with the Trust, unless this is considered absolutely essential to service delivery.

**Employees must take and cannot opt out of their Statutory Holiday entitlement as laid out in the Working Time Regulations.**

Substantive employees, who also work for NHS Professionals, will have their working hours monitored, to ensure compliance with the Working Time Regulations.

Employees must comply with the required rest breaks laid out in the Working Time Regulations and any secondary employment should not compromise these under any circumstances (see **Appendix 2**).

Failure to comply with the Working Time Regulations will be regarded by the Trust as potential gross misconduct and investigated under the Trust's Disciplinary Procedure, with a possible outcome of the Trust notifying professional bodies such as NMC if validated.

Contravening this policy could also be considered as fraud and the Trust will refer the matter to the Trust's Local Counter Fraud Specialist.

## **6.6 Attendance / Time Keeping**

Where attendance or time keeping is of concern and is attributable to secondary employment, the Trust reserves the right to retract any permission given to an employee to undertake secondary employment.

Where an employee is suspected of deliberately failing to work their contracted hours on a consistent basis due to secondary employment their conduct will be considered as potentially fraudulent and could lead to investigation by the Trust's Local Counter Fraud Specialist.

### **6.7 Capability / Performance**

As part of their remit all line managers are expected to monitor the performance of all their staff on a regular basis. Therefore if an employee's performance falls below acceptable standards the Capability Policy should be invoked to manage the performance correctly.

The Trust reserves the right to retract any permission given to an employee to undertake secondary employment if this is deemed to contribute to the poor performance.

### **6.8 Conflict of Interest**

There may be times where a new conflict of interest arises that did not previously exist when the employee was appointed or when permission was granted for the employee to undertake secondary employment.

Employees have a duty under this policy to bring to their line manager's attention any new potential conflict of interest that arises or may arise.

The line manager must assess the risk of the potential conflict of interest. If this cannot be avoided and the risk to the Trust and/or service delivery is too high, permission to undertake secondary employment may be retracted.

### **6.9 Confidential information**

In the context of secondary employment, employees are reminded that they must not pass on confidential information that breaches the Data Protection Act. Such action will be regarded as potential gross misconduct and investigated under the Trust's Disciplinary Procedure.

Examples of confidential information may include:

- Any information relating to the Trust's business / customers, including names, addresses, services and any other information relating to its activities.
- Any person identifiable information relating to staff / colleagues or patients.
- Relevant Trust documents.

**Please note that this list is not exhaustive**

### **6.10 Disciplinary Matters**

If an employee is subject to a disciplinary investigation / sanction in either their primary or secondary employment within the Trust, a decision will need to be taken as to the suitability of them continuing to work in either role. In this situation it is expected that information will be shared with the other line manager on a "need to know" basis and decisions taken accordingly on a case-by-case basis with advice from HR.

## **7 APPEAL PROCESS**

- 7.1 Within 10 working days of being notified of a decision not to approve a secondary employment request, an individual may appeal to the Director of HR. Appeals received outside this period will be accepted only at the discretion of the Director of HR.
- 7.2 An appeal may be made on the grounds of process and / or be a substantive appeal against the decision.
- 7.3 An appeal should be submitted in writing and briefly state the reasons.
- 7.4 Where the appeal is a substantive appeal against the decision made by the line / recruiting manager, the Director of HR will consider the case on its merits and reach a decision in the light of all the available evidence.
- 7.5 Where it appears that the individual has provided substantive reasons why he/she should be permitted to engage in secondary employment, which were not considered by the line / recruiting manager or where it appears that the policy has not been followed, the Director of HR may refer the matter back to the line / recruiting manager for reconsideration.
- 7.6 The Director of HR's decision will be given within 21 working days of receipt of the appeal (unless this is extended, in which case the appellant will be given written notice of the reasons for the extension).
- 7.7 There is no further right of appeal.
- 7.8 At all stages of this procedure the appellant may be represented by a trade union representative.

## **8 MONITORING COMPLIANCE / EFFECTIVENESS OF THE POLICY**

<b>Area for monitoring</b>	<b>Method</b>	<b>Frequency</b>	<b>Responsibility</b>	<b>Monitoring Assurance Group</b>	<b>Lead for developing action plan</b>	<b>Group responsible for monitoring action plan</b>
Working hours of substantive staff who are on NHS Professionals bank	Working Time Directive reports	Every 17 weeks	NHS Professionals	NHS Professionals and CHS Quarterly Review Group	Director of HR	Workforce Assurance Group
Number of secondary employment declarations	Workforce Report	Annual	Deputy Director of HR	HR Strategy Group	Director of HR	Executive Committee
Number of policy breaches	Workforce Report	Quarterly	Deputy Director of HR	Executive Committee	Director of HR	Board of Directors

## **9 DISSEMINATION, IMPLEMENTATION AND TRAINING**

### **Dissemination**

- Senior Manager Forum briefing
- Intranet – HR Policies
- HR updates at Directorate Meetings
- E-mail to all staff
- Monthly Team Brief
- Staff Handbook for new starters

### **Implementation and Training**

- Secondary employment checks carried out by HR for new starters
- Information about the policy included in contract packs for new starters
- Secondary employment to be disclosed by medical staff during annual job planning process.
- Staff to be reminded about their duties under the policy via 1:1 and team meetings

## **9 CONSULTATION, APPROVAL, RATIFICATION AND REVIEW**

### **8.1 Consultation**

- Human Resources Strategy Group
- Joint Consultative Group

### **8.2 Approval**

- Executive Committee

### **8.3 Ratification**

- Policy Committee

### **9.4 Review**

- Every 3 years.

## **10 EXTERNAL REFERENCES**

- Working Time Regulations 1998
- Equality Act 2010
- Data Protection Act
- Department of Health Code of Conduct for private practice; recommended standards of practice for NHS Consultants

## **11. ASSOCIATED TRUST POLICIES**

- Attendance Management Policy
- Locum Doctor / Agency Worker Policy
- Counter Fraud, Bribery and Corruption Policy
- Working Time Directive Policy
- Capability Policy and Procedure
- Disciplinary Procedure
- Grievance Policy and Procedure
- Annual Leave Policy
- Special Leave Policy
- Flexible Working Policy
- Employment Checks Policy

**CITY HOSPITALS SUNDERLAND NHS FOUNDATION TRUST**

**SECONDARY EMPLOYMENT DECLARATION FORM**

**PART 1 – EMPLOYEE DETAILS**

<b>Full Name</b>	
<b>Title (Mr/Miss/Mrs/Ms/Dr)</b>	
<b>Job Title</b>	
<b>Department</b>	
<b>Directorate</b>	
<b>Hours of work per week</b>	
<b>Pattern of hours (e.g. 24/7 shifts, 8.30am – 5.00pm)</b>	
<b>Days worked</b>	

**PART 2 – EMPLOYEE NIL DECLARATION**

I declare that I do not have any secondary employment as defined in the Trust’s Secondary Employment Policy.

Signed (Employee): ..... Date:  
 .....

**PART 3 – EMPLOYEE SECONDARY EMPLOYMENT DECLARATION**

I declare that **\*\*I have / \*\*I wish to apply for** secondary employment as defined in the Trust’s Secondary Employment Policy.

I request approval to **\*\*continue to undertake / \*\*apply for** secondary employment, in addition to my main employment with the Trust.  
**\*\* delete as necessary**

<b>Organisation/Company/Agency/Self Employed</b>	
<b>Job Title</b>	
<b>Description of work undertaken / to be undertaken</b>	

Type of work (e.g. paid, home-working, self-employment)	
Hours per week / month / year	
Pattern of work (e.g. occasional, weekly, number of times per month/year)	
Date this work started / would start	
Type of remuneration received (e.g. salary, expenses, commission, benefit in kind)	

<b>DECLARATION</b>
--------------------

I declare that the above information is correct, that my secondary employment as described above, does not / will not have any detrimental impact on my duties, performance or attendance and that there is no conflict of interest between this and my contract of employment with the Trust.

I will inform my line manager of any changes to the above.

I understand that if I give false information, this could be treated as gross misconduct and / or fraudulent and dealt with accordingly under the Disciplinary Procedure. To prevent and detect fraud, I agree to the disclosure of relevant information from this form to and by the Trust's Local Counter Fraud Specialist.

I have read and understood the Trust's Secondary Employment Policy and I agree to comply with all of its requirements.

Signed (Employee): ..... Date: .....

**PART 4 – FOR COMPLETION BY LINE MANAGER**

Manager's Name	
Job Title	
Request approved?	Yes/No <i>Delete as appropriate</i> If No, please set out the reasons for this below.

<b>Date of meeting with employee</b>	
<b>Date employee notified of decision in writing</b>	
<b>Comments</b>	

Signed (Manager):..... Date: .....

**Completed Form to be returned to:  
Human Resources Department, Trust Headquarters, Sunderland Royal Hospital,  
Kayll Road, Sunderland, SR4 7TP**



## PRINCIPLES OF THE WORKING TIME REGULATIONS AND SECONDARY EMPLOYMENT

The Working Time Regulations 1998 are a health and safety measure and covers rest periods, working time limits, night work, secondary employment and annual leave. They control both hours of work and the pattern in which work can be organised.

### **WORKING TIME LIMITS**

An employee must not work more than an average of 48 hours per week, calculated over a 17-week reference period.

Young workers, those over the minimum school leaving age, but under 18, may not work more than 8 hours a day or 40 hours a week. These hours cannot be averaged out and there is no opt-out available

### **REST PERIODS**

Employees are entitled to daily and weekly rest periods and 'in-work' rest breaks.

- A daily rest period of not less than 11 consecutive hours in each 24-hour period during which the employee works.
- A weekly rest period of not less than 35 hours (including the 11 hours of daily rest) in each 7-day period. This may be averaged over 2 weeks i.e. 2 days' rest over a fortnight.
- A minimum uninterrupted break of 20 minutes if the daily working time exceeds 6 hours. The break is unpaid.
- Young workers are entitled to a break of 30 minutes if they work a 4½-hour period. They are entitled to a daily rest period of 12 consecutive hours in each 24-hour period and to 48 hours' uninterrupted rest in any 7-day period.
- Breaks are intended to be taken as rest periods during the working day. They cannot therefore be used at the beginning or end of the working day in order that employees may delay their start or finish early.
- If for business/service reasons, employees cannot take their daily and weekly rest periods and where it is agreed with their line manager, they are entitled to compensatory rest.
- Unless there are exceptional circumstances, equivalent periods of compensatory rest should be given. Exceptional circumstances could include a need to provide security or protect persons or property, a foreseeable surge in activity e.g. winter pressures, or unforeseen circumstances beyond the Trust's control, e.g. unexpected weather, major incident or pandemic, which demand that extra work be carried out.
- Compensatory rest should be taken as soon as is reasonably practicable and normally within 2 weeks.