

ARE YOU BEING PAID CORRECTLY?

BMA PAY GUIDANCE FOR JUNIOR DOCTORS

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Junior doctors in the United Kingdom have been employed under a contract based on pay bands since December 2000. This contract was designed to reduce the previously excessive number of hours that junior doctors worked in the NHS, and in this context it has been very successful. However, working patterns for junior doctors have become increasingly complex, and it can be difficult to know if you are being paid correctly. This guide will tell you how to determine your correct pay, what to do if your current band does not reflect your working pattern and what your rights are with respect to rota monitoring.¹

THE PAY BANDING SYSTEM²

Full time junior doctors' pay consists of a basic salary for the standard 40 hours worked in a week, plus a variable supplement to reflect how many more hours are being worked on average, the type of working pattern, the frequency of extra duty and the antisocial nature of the working arrangements.

All contracted hours should be set out in a job description attached to the contract and agreed in advance between yourself and the employer.

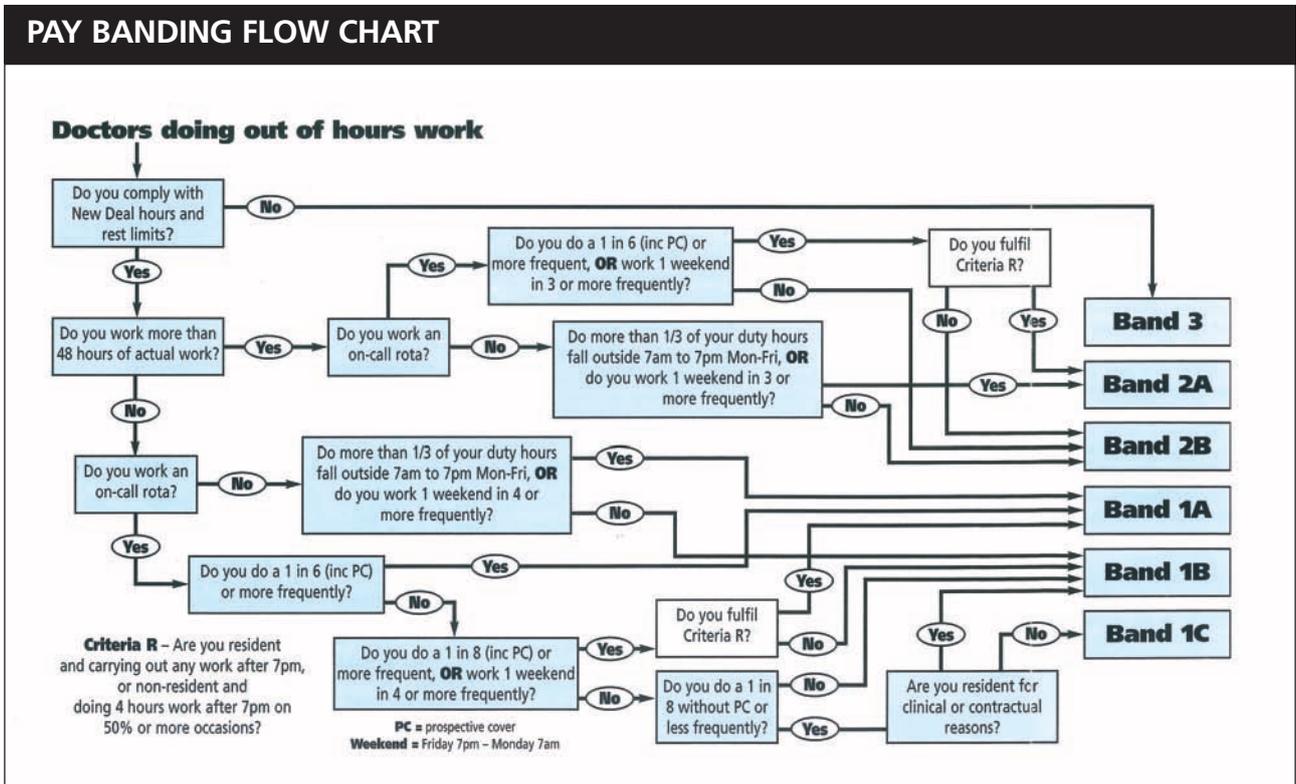
The basic salary for each grade is set on an incremental scale and under normal circumstances you will be paid at the minimum incremental point on appointment to a new grade. However, if you have previous experience at an equivalent level, or if special arrangements apply e.g. transfer from SHO to the new StR grade,³ employers should appoint you to an incremental point beyond the minimum on the scale.

For most junior doctors, the date of appointment will become your incremental date – the annual date at which you move up the incremental scale by one point (except under certain circumstances).⁴

The pay bands can be summarised as such:

Band	Definition	Salary supplement as a percentage of basic salary
Band 3	For those working more than 56 hours per week on average or not achieving the required rest. ⁵	100%
Band 2A	For those working between 48 and 56 hours per week on average, most antisocially	80%
Band 2B	For those working between 48 and 56 hours per week on average, least antisocially	50%
Band 1A	For those working between 40 and 48 hours per week on average, most antisocially	50%
Band 1B	For those working between 40 and 48 hours per week on average, moderately antisocially	40%
Band 1C	For those working between 40 and 48 hours per week on average, least antisocially	20%
No band	For those working no more than 40 hours per week on average, between 7am and 7pm	0%

To establish which pay band your working pattern should attract, follow the flow chart below:



WHAT TO DO IF YOU THINK YOU ARE INCORRECTLY BANDED

If, having looked at the information on pay banding, you believe that the pay band supplement that you are currently receiving does not reflect the duration or intensity of your work and that your working pattern in fact attracts a different banding, you should raise this formally and in writing with your HR department/medical staffing. This should be done as soon as possible; all juniors affected by this should sign a letter requesting that your trust monitors your working pattern.

Employers are contractually obliged to monitor junior doctors’ hours and the application of the pay band system at least once every 6 months and/or at the request, in writing, of a doctor on the rota. Your employer should comply with any request.

If you are a member of the BMA, please contact **askBMA** on either **0870 60 60 828** or **askbma@bma.org.uk** for dedicated employment advice.

MONITORING EXPLAINED⁶

Monitoring of the actual hours you work and the actual rest you receive is crucial to ensure that you are being paid properly and are working in a safe and sensible manner. Monitoring requires the collection of a variety of different data, including actual hours worked, when those hours occur and total and continuous rest periods.

A monitoring period should generally occur under representative conditions of work intensity (i.e. not at exceptionally quiet or busy periods, nor when many or no doctors are away on leave), and should take place over a two week period or across the whole rota pattern if this is more representative.

You must be notified adequately in advance of the monitoring period. Before monitoring starts, you should receive a documentation pack providing details of the dates of the monitoring period, a copy of the template rota which should match the rota you normally work, details of the rest break requirements and sample monitoring forms. Hours information must be recorded using the agreed local recording methods (e.g. diary cards, barcode readers). If the recording of hours will take place on-line, then this process should be explained. Hours should preferably be recorded during or at the end of each duty period, rather than by less reliable methods (e.g. recording all your data at the end of the monitoring period).

Key query: natural breaks

A natural break is a '30 minute continuous break after approximately four hours duty'⁷. This time is counted as actual work. Natural breaks are required during the normal day and at all times on full shifts. If you have not consistently been able to take your full 30 minutes break every four hours, you may have a claim for band 3.

Key query: European Working Time Directive (EWTD)

Many trusts monitor for EWTD compliance at the same time as they monitor for banding purposes, which can cause some confusion. The EWTD is health and safety legislation, relating to how long you work, and how much rest you receive during and between episodes of work. Although it is important that your working pattern is compliant with the EWTD, whether it is or not has no bearing on your pay banding.

Key query: staff interference

It is completely inappropriate for another member of staff to try to persuade you to alter your monitoring returns to record fewer or less intense hours worked, or to change your working pattern (for example by leaving earlier than you normally would) during a monitoring period. Such actions should not be tolerated and in many circumstances can constitute bullying and harassment. If you experience such problems, contact askBMA for support.

Both junior doctors and employers are contractually obliged to monitor working patterns. You should be aware that persistent failure by junior doctors to comply with monitoring arrangements represents a breach of contract and may result in disciplinary procedures. Furthermore, if juniors consistently do not supply monitoring data, the trust is able to determine what it regards as the correct pay band on the basis of available information, which may be disadvantageous for the juniors involved.

It is a requirement that a minimum of 75% of those being monitored return their monitoring data for analysis, and that this covers a minimum of 75% of all duty periods worked over the monitoring period. If less than 75% of returns or 75% of duty periods are received by the trust, the monitoring exercise is invalid. The trust is required to write to all junior doctors who have not supplied data, remind them of their contractual obligation and require them to participate in another round of monitoring within a reasonable period of time. Once monitoring has been completed, the trust has **15 working days** to analyse the data and provide feedback to the doctors working the rota. If there is a notable delay in receiving the analysis of the monitoring period, please contact askBMA on **0870 60 60 828** or **askbma@bma.org.uk**

Key query: non-training grades on the rota

Custom and practice is that all participants on a rota will be asked to monitor, including non-training grades. However, the 75% return rate will only be based on the percentage of returns and of shifts monitored by training grade doctors.

It is in the interest of all doctors on a rota to monitor their working pattern to ensure it is an accurate reflection of practice.

If the monitoring indicates that you are working more hours or at a greater intensity than your theoretical working pattern, then the trust must pay you at the band multiplier indicated by the monitoring. If you have difficulty in getting your employer to do this, you will need to appeal the current pay band formally with the trust and request that you are paid according to the results of the monitoring analysis. askBMA will be able to advise you on this.

If monitoring is consistent with a lower band, then pay protection arrangements will apply (see below).

If you are not confident that the monitoring period or analysis accurately reflects your average working pattern, then you must seek re-monitoring from your employer. The trust should listen to your concerns, and re-monitor within a reasonable period of time.

Please be aware that errors in the monitoring analysis are not uncommon, and that the BMA does not necessarily agree with the results that may be arrived at by computer programmes such as *DRS* and *Rotaworks*. If you are at all concerned with the accuracy of the trust's analysis following a monitoring period, contact askBMA who will be able to advise you further.

PAY PROTECTION

In-post pay protection

Under the direction of the European Working Time Directive, employers have been tasked with reducing the number of hours that junior doctors work. The push to reduce hours will intensify, as from August 2009 the full regulations of the EWTD will take effect, and employers will only be able to ask junior doctors to work up to an average of 48 hours in a week. For many doctors, the reduction in hours that will be necessary to comply with the European legislation will see them move into a lower pay band and change working patterns.

There is a strict protocol for the rebanding of posts that employers must follow, and working patterns should not change at short notice. If a post is down-banded while you are working that rota, then you will receive pay protection for the duration of your post. Although the banding supplement that the post attracts will have changed, and future post holders may be paid according to this new banding, your pay will be protected at the pay band you received before the post was rebanded. This in-post pay protection will apply for the duration of the post, or for as long as it is more favourable than the true banding of the rota.

Pay protection on return to training

You are also eligible to claim pay protection if you take an appointment in a lower grade (as determined by the maximum incremental point on the basic pay scale) for the purposes of obtaining approved training. This even applies if the training would enable you to follow a career path in another speciality. The BMA, NHS Employers and the Departments of Health from England, Scotland, Wales and Northern Ireland, have recently renegotiated the provisions for pay protection on return to training. As such, the current provisions will remain in force for those who have applied for pay protection on return to training up to August 2007, while the new provisions will apply from then onwards. Both are explained in this document.

Contracts entered into before 31 July 2007

Where you take an appointment in a lower grade for the purpose of obtaining approved training, while in the lower grade, you should continue to be paid on the incremental point you reached in your previous appointment. Pay band supplements are paid as a proportion of the protected salary, even if the protected salary is that of a career grade, e.g. staff grade. A doctor in this position working an on-call rota would thus be paid a pay band supplement according to the post in the lower grade calculated as a proportion of the protected staff grade salary provided this was higher than the appropriate junior doctor pay. On re-appointment to the higher grade, the starting salary should be assessed as if the period spent in the approved training grade had been continuous service in the previous higher grade. A junior doctor seeking to retain their higher grade salary should make an application to do so to the new employer prior to taking up the new post.

You need to prove to your new employer that the appointment in the lower grade has been taken in order to further a postgraduate training programme. Written evidence to this effect should be obtained from the former employer and/or regional postgraduate tutor or dean.

Contracts entered into from 1 August 2007

Where you take an appointment in a lower grade for the purpose of obtaining approved training, while in the lower grade, you should continue to be paid on the incremental point you reached in your previous appointment. Total pay would be calculated as if their contracted training duties had been carried out under the terms of the contract of the previous appointment. A doctor who had returned to training in a lower grade would therefore be paid the protected basic salary and out-of hours or intensity supplements that applied to their old contract, whilst in the lower grade provided this was higher than the appropriate junior doctor pay. You would receive all general pay awards while in the lower grade for the purposes of training, but would not move up the incremental scale applicable to their previous appointment during this period. On re-appointment to the career grade post, the doctors' basic salary should be assessed as if the period spent in the training post had been continuous service in the previous career grade post.

Pay protection on return to training will not apply to those doctors who have continuous service of fewer than 13 months duration in a substantive career post immediately prior to re-entering training.

Pay protection on rotations

In the past, pay protection has also been available for junior doctors on a training rotation of a series of known placements. Previous guidance on this matter has changed in the light of recent court cases. If you believe you may be eligible for rotational pay protection – the protection of the pay bands of future rotation placements at an established point in time – then please contact *askBMA* on 0870 60 60 828 or askbma@bma.org.uk for further information.

FLEXIBLE TRAINEES⁸

Flexible trainees work between 20 and 40 hours per week, and are paid on a slightly different basis to full time junior doctors. Flexible trainees pay is based on a proportional basic salary recognising the total number of actual hours worked in a week, and a pay band supplement recognising the type of working pattern, the frequency of extra duty and the antisocial nature of the working arrangements. Rest requirements apply equally to flexible trainees and full time junior doctors.

The basic salary band is based on the actual number of hours that you work, and is proportional to the full time basic salary.

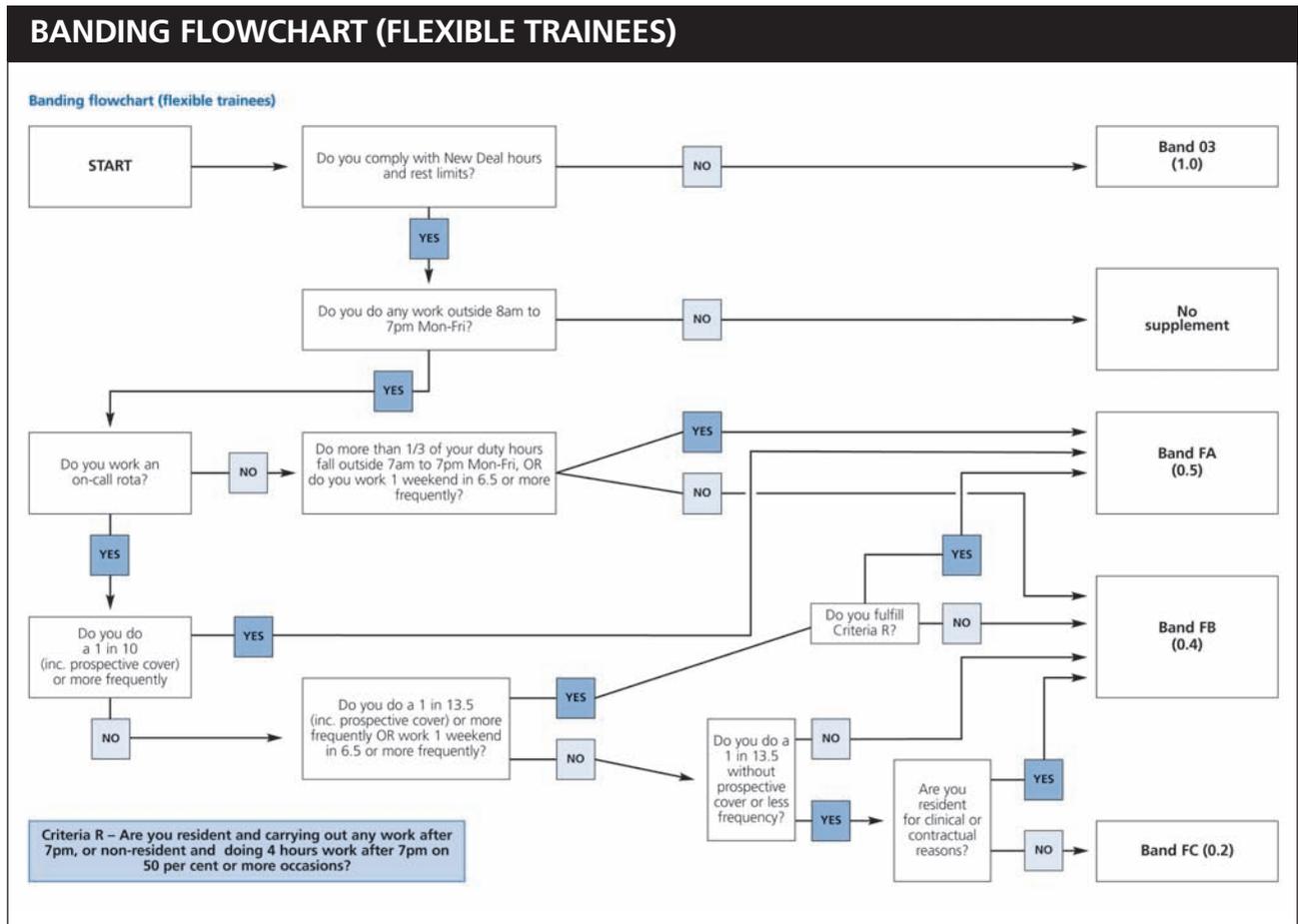
Basic salary band	Hours of actual work (including out-of-hours)		Band value	
	Equal to	Less than		
F5	20	24	50%	of
F6	24	28	60%	full time
F7	28	32	70%	basic salary
F8	32	36	80%	
F9	36	40	90%	

The pay band supplement takes the following form:

Pay band	Value	
FA	50 %	Supplement payable as a proportion of the calculated basic salary
FB	40 %	
FC	20 %	

Band FA is for trainees working at the highest frequency and at the most antisocial times, with Band FB and FC representing gradually reducing frequency and out of hours commitments. If you work less than 40 hours per week on average and all between 7am and 7pm then you are not eligible for a pay band supplement.

To establish which pay band your working pattern should attract, follow the flow chart below:



Monitoring of your working pattern is very important as a flexible trainee, and should occur as soon as is feasible after starting your post, to ensure that the hours and intensity of your theoretical rota are accurate.

LOCUM DOCTORS⁹

Junior doctors employed on a locum basis in the NHS are subject to the same terms and conditions as junior doctors in training posts, unless they are employed directly by a locum agency. Junior doctors may only be employed on a locum basis by their own employers provided that such employment does not cause their average weekly hours to exceed the 56 hour limit, except in circumstances where they are acting up as a consultant. Nor should junior doctors undertake locum work with another employer if such work would lead them to breach these limits.

External locums engaged through an agency are paid according to the rate negotiated by the agency. External locums engaged directly by employers for a week or less are paid at a minimum in accordance with the locum rates agreed under the locum pay banding system. In all cases, the rate is that appropriate to the grade of the doctor being covered (e.g. not the locum's substantive grade).

Under internal locum arrangements, trusts pay junior doctors providing locum cover in their own hospitals at locum rates agreed under the locum pay banding system for the whole time they are on duty, provided that such work is undertaken when the doctor would otherwise have been off duty. If cover is being provided outside the doctor's main hospital, external locum arrangements apply. Internal locum arrangements, unlike prospective cover arrangements, allow doctors to be paid at the locum rate of the grade of the doctor being covered. The hours can be claimed at the locum rate, or if the doctor wishes, leave may be taken in lieu.

Under the locum pay banding system, locum appointments for service (LAS) are paid on the following basis:

Band LA

Locums employed to cover a shift working pattern, hours outside Monday to Friday, 9am to 5pm, are paid at the following rate: **1.8 x basic hourly rate***

Band LB

Locums employed to cover an on-call rota, hours outside Monday to Friday, 9am to 5pm, are paid at the following rate: **1.5 x basic hourly rate***

Band LC

Locums employed on any working pattern, all hours within Monday to Friday, 9am to 5pm, are paid at the following rate: **1.4 x basic hourly rate***

*** Mid-point of the grade salary scale**

Band LL

Locums employed to cover a post for one week or more are paid at the weekly rate determined by the following formula:

$((\text{mid point of the current salary scale of the post being covered} \times 1.2) / 365) \times 7) + \text{banding supplement}$

Locum appointments for training (LAT) are paid in the same way as for a substantive post – the incremental point is determined by your previous experience, on the salary scale appropriate for the grade at which you are working.

References

- 1 The full Terms and Conditions of Service for junior hospital doctors can be found here:
<http://www.nhsemployers.org/pay-conditions/pay-conditions-467.cfm>
The Junior Doctors' Handbook provides an easy-to-understand digest of the main contractual and employment issues faced by junior doctors. It can be found here:
<http://www.bma.org.uk/ap.nsf/Content/jdhandbook>
- 2 For full details please refer to the Junior Doctors' Handbook, pages 40-42. Alternatively, visit the BMA website for further guidance at the following pages:
<http://www.bma.org.uk/ap.nsf/Content/Finalagreementspayband>
<http://www.bma.org.uk/ap.nsf/Content/paybandglossary>
- 3 Full details of the transition arrangements for SHOs moving onto the new StR grade can be found in Pay Circular (MD) 4/2007, which can be found here:
<http://www.nhsemployers.org/pay-conditions/pay-conditions-2339.cfm>
- 4 See pages 65-67 of the Junior Doctors' Handbook for further information on incremental points.
- 5 See pages 24-29 of the Junior Doctors' Handbook for information on the required rest periods. The BMA website also contains useful information here:
<http://www.bma.org.uk/ap.nsf/Content/hoursworkrest>
- 6 See pages 33-35 of the Junior Doctors' Handbook for further information on monitoring. Detailed BMA guidance can be found on our website here:
<http://www.bma.org.uk/ap.nsf/Content/rotamonitoringguidance>
[http://www.bma.org.uk/ap.nsf/AttachmentsByTitle/PDFrotamonitoring/\\$FILE/rotamonitoring.pdf](http://www.bma.org.uk/ap.nsf/AttachmentsByTitle/PDFrotamonitoring/$FILE/rotamonitoring.pdf)
- 7 See pages 24-29 of the Junior Doctors' Handbook for information on the required rest periods. The BMA website also contains useful information here:
<http://www.bma.org.uk/ap.nsf/Content/hoursworkrest>
- 8 See pages 42-43 of the Junior Doctors Handbook for further information. The JDC has produced a detailed guide to the new flexible training arrangements that is available here:
<http://www.bma.org.uk/ap.nsf/content/flexibletrainingguide>
- 9 See pages 91 – 95 of the Junior Doctor's Handbook for further information about locum work in the NHS.

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