

SUBMISSION TO THE CORPORATE MANAGEMENT TEAM

Date: 15 January 2009

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Director Responsible: Lorraine Langham

Issue: Working Time Directive

1. Ofsted employment contracts for employees at Band A / HMI and SCS state the requirement to work 36 hrs per week and 'such additional hours as may from time to time be necessary in order to meet the requirements of the business and for the proper performance of your duties'. [REDACTED]
[REDACTED] For those below Band A the position is that time off in lieu or overtime is payable.
2. There is a perception amongst some employees that additional hours result in employees exceeding the maximum hours permitted under the Working Time Regulations (which is 48 hours), [REDACTED]
[REDACTED]
3. The issue of excessive working hours particularly in relation to HMI has been raised at both the Health and Safety Committee and the Employee Relations Committee in 2008. HR undertook to review the working arrangements in response.
4. The FDA is encouraging its membership within Ofsted to record working hours for a 17 week period from January 2009.

Summary

5. This paper deals with Ofsted's compliance with the regulations concerning the length of the working week. It seeks to:
 - Highlight the perceptions of HMI in relation to the current working arrangements at Ofsted
 - Explain the legislative requirements of the Working Time Directive
 - Provide recommendations to proactively address concern areas and minimise risk.

Recommendations:

6. CMT is asked to:
[REDACTED]

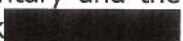
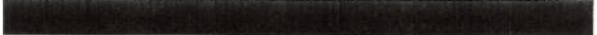


Implications for performance, strategy and the organisational review



Background

The Working Time Directive (WTR) Legislation

8. The EU Working Time Directive, a health and safety measure was incorporated into English law in 1998 via the Working Times Regulations (WTR). The WTR protect the employee by setting minimum standards in respect of the length of the working week, daily and weekly rest breaks, in – work rest breaks and holiday entitlement. There are also special provisions in respect of those under 18 and night workers.
9. Employees cannot be required to work more than an average of 48 hr per week in any 17 week reference period unless they have opted out of the protection of the WTR. This opting out must be entirely voluntary and the employee must have complete control over the hours they work 


Communication of the Working Time Directive

10. It is required that working hours, and the legal restrictions upon working hours are communicated to employees through a number of methods including contracts of employment and policies as detailed below:
11. Ofsted's current contract of employment.
 - Contracts of employment state normal working hours and whether compensatory time off in lieu (TOIL) or payment can be taken in respect of additional hours worked.
 - Ofsted contracts contain standard paragraphs that relate to holiday entitlement and the requirement of all employees to take a lunch break of not less than 30 minutes which is in excess of the WTR minimum requirement. The contracts differ at Band A and above whereby there is no entitlement to TOIL or overtime, unlike the contracts for grades B and C which clearly state that time off in lieu or overtime is payable.

12. Ofsted's current H&S policy.
- A 'Working hours manual of guidance' (March 2005) is on the Ofsted intranet for all employees to access. This manual details the responsibilities of employees and managers in respect of working hours.
13. Ofsted's current Working Times Regulations Policy
- The Working Times Regulations Policy provides employees, especially those at Band A and above and those with secondary employment, with the opportunity to 'opt out'. [REDACTED]
[REDACTED] In addition, the Conflicts of Interest policy also provides a prompt to employees as part of the application process regarding secondary employment exceeding the average 48 hrs/wk limit in their combined employment.

Recording of working time

14. The Working Time Regulations require employers to monitor the hours being worked by its employees. Employers are required to make occasional checks on employees who have the potential to be at risk of exceeding the average of 48 hours per week limit.

[REDACTED]

Staff concerns and perceptions

16. At meetings of the H&S committee in January and April 2008 an HMI has expressed her personal concern and that of her colleagues about the long working hours required of them. This has also been raised as a matter of concern at a recent meeting of the Employee Relations Committee.

[REDACTED] Inspectors who transferred from the Adult Learning Inspectorate (ALI) to Ofsted in April 2007 enjoyed an entitlement to time off in lieu (TOIL) whilst they remained on ALI contracts. These employees mainly transferred to Ofsted contracts after the August 2008 pay increases as there was a pay advantage. In the ALI working hours were recorded. [REDACTED]

18. [REDACTED]

[REDACTED]

19. Inspectors are not as a matter of course programmed on full inspections on two or more consecutive weeks. Where this has occurred in the past this has been in respect of the joint area review programme which had on-site inspection on two consecutive weeks. [REDACTED]
20. The normal pattern is for one full inspection over one week (the tariff of days will vary) which might result in a longer working day depending on the nature of the provision being inspected, distances travelled and pattern of meetings required. In the following week the lead inspector would have a writing day or days to complete the inspection report and may have other activities some of which may include a personal management day. Inspectors are not normally programmed in the following week to be away from home on inspection for more than two nights, for example on a survey, monitoring visit or a two-day school inspection. Programming also includes days which are not fixed and can be moved around the programme overall if required. This allows for a level of flexibility in some areas.
21. HMI have several opportunities to examine the draft programme before this is finalised and it is expected that discussion with their ADM would highlight any significant concerns with the overall work pattern and potential working hours. Any such concerns are then raised with the scheduling teams, either by the HMI or the ADM on their behalf.

Consideration and proposals

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Finance, efficiency and risk implications

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

Human resources including home based working implications

[REDACTED]

Equalities implications

[REDACTED]

Presentation and communication implications

[REDACTED]

[REDACTED]

Consultation

40. The following were consulted in the development of this paper;

[REDACTED]

41. Director Melanie Hunt, Deputy Director David Ansell
Change team, Sean Harford, Sean Hannan, Kathryn Kirby
HMI Margaret Swift, BES Team
Health and Safety and HR Policy.

42. Comments on working time were gathered from HMI Brian Blake, Tony
Gallagher and Paul Brooker in the context of the equal pay claim.

43. This paper has been cleared by Cara Davani.