Secondary Employment Policy

<table>
<thead>
<tr>
<th>Reference Number:</th>
<th>166</th>
</tr>
</thead>
</table>
| Author & Title:   | Katy Coulam  
HR Business Partner |
| Responsible Director: | Director of Human Resources |
| Review Date:      | 05 January 2020 |
| Ratified by (committee): | Strategic Workforce Committee |
| Date Ratified:    | 05 January 2017 |
| Version:          | 2.0 |

Related Policies:
- Working Time Regulations
- Managing Conduct
- Managing Performance
- Supporting Attendance
- Grievance Policy
- Code of Expectations
- Appeals Policy
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Amendment History

<table>
<thead>
<tr>
<th>Issue</th>
<th>Status</th>
<th>Date</th>
<th>Reason for Change</th>
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<tr>
<td>1.0</td>
<td>Approved</td>
<td>04 April 2013</td>
<td>New policy</td>
<td>Lynn Vaughan – Director of Human Resources</td>
</tr>
<tr>
<td>2.0</td>
<td>Approved</td>
<td>05 Jan 2017</td>
<td>Planned Review</td>
<td>Strategic Workforce Committee</td>
</tr>
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</table>
1. **Policy Summary**

This policy has been produced and agreed in partnership between management and Trade Union Representatives of the Trust to ensure the needs of the service are achieved when staff and prospective employees take on secondary employment, recognizing the importance that such other work does not adversely affect any employee’s performance or attendance, or breach the terms of the European Working Time Regulations.

2. **Policy Statements**

The purpose of this policy is to ensure staff are able to maintain a high quality professional service with this Trust, whilst having the opportunity, if they wish, to take on other employment in addition to their primary job.

Ensure that employees do not engage in other paid or unpaid work that may conflict with the interests of, or affect their performance or attendance under their Contract of Employment with the Trust.

Prevent employees and/or Trust contravening legislation on working times/hours including the total hours worked and breaks between work periods and annual leave.

This policy applies to all employees and prospective employees of the Trust, including those who have transferred to the trust under the Transfer of Undertaking Regulations (TUPE) with comparable terms and conditions of employment and medical staff who have specific terms in place with regard to additional employment contains within their terms and conditions of employment.

In this policy the term “Secondary Employment” covers:

- Any additional employment within the Trust which is over and above the employee’s contracted hours;
- Internal bank/locum/agency work;
- Paid employment outside of the Trust including private practice;
- Work the employee may undertake as a self-employed person or as the business partner of a self-employed person.

**Medical staff should refer to the terms and conditions set out in the terms and conditions of employment for Consultants and Associate Specialists and the Code of Private Practice.**

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 organisation we have 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 and well-being at work.

3. Definition of Terms Used

Primary Employment refers to the post where the majority of the employee’s hours are worked.

All references to days in this policy refer to calendar days, not working days. For example a staff member who works 5 days a week with 2 days off who calls in sick for the week will assume to have been unwell for 7 days, not 5, unless they contact their manager to confirm they are fit to return after 5 days.

4. Duties and Responsibilities

4.1 Employee

Employees are permitted to undertake additional work providing the Trust is satisfied that this does not conflict with the following:

- 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.

Some employees will have Contracts of Employment which may contain more specific provisions about secondary employment – in such cases these will apply in addition to the provisions of this policy.

If the employee holds two concurrent posts within the Trust they will be expected to have due regard to the needs of both posts and to treat them equally if they plan to undertake further work either within or outside the Trust. If performance is affected due to their additional work, both posts will be considered when reviewing performance.

Employees are required to comply with the Working Time Regulations, including declaration of hours worked and breaks taken, taking of annual leave, completing written records such as time sheets if required. Employees also have a duty to report any instances where their working pattern may result in a health and safety risk, either to themselves or others. For example an employee working a night shift with the Trust who then goes on to work a day shift with another employer. Employees have the right not to be subjected to any unlawful detriment by reporting any concerns under the regulations.
Failure to comply with the procedures set out in this policy may result in disciplinary action under the Trust’s Conduct Policy.

It is the employee’s responsibility to notify their line manager immediately if the secondary employment ceases or changes i.e. the number of hours worked or pattern of shifts.

4.2 Line Managers
Line Managers are responsible for ensuring staff are made aware of this policy, and the process to notify the Trust of secondary employment.

Staff have the right to be accompanied by a work colleague or Trade Union representative at any meetings associated with this policy – this does not extend to being accompanied by partners, family members or legal representation.

Appropriate support should be offered to employees who have a disability or those whom English is not their first language.

Any queries about disclosure or advice on the application of the Policy can be addressed by the HR Team or Trade Union Representative.

4.3 Human Resources
The HR Business Partner/Deputy HR Business Department for the Division or area the appointee or employee works for will notify the relevant Line Manager of any such disclosures, who will consider whether the secondary employment needs to be discussed with the appointee, and whether any parameters need to be established to ensure there is no adverse impact on/implications for their primary job. If so, these will need to be discussed between the Line Manager and appointee prior to their offer being processed further.

Human Resources will retain a copy of the Secondary Employment Notification Form on the personal file.
5. Implementation of the Secondary Employment Policy

5.1 Pre-Employment

There is nothing in this policy which prevents recruiting managers from highlighting and discussing the Secondary Employment Policy at interview if they choose to do so providing their approach is consistent. For instance, a manager may wish to discuss the working pattern of the job.

When a job offer is made the offer letter will inform potential employees of the Secondary Employment Policy and the requirement to ensure that any other employment (paid/unpaid/voluntary) does not interfere with their role with the Trust.

Appointees prior to employment will be asked to disclose any secondary employment which they intend to continue with after commencing employment with the Trust, using the attached Secondary Employment Notification Form (Appendix 2).

Human Resources will notify the relevant Line Manager of any such disclosures, who will consider whether the secondary employment needs to be discussed with the appointee, and whether any parameters need to be established to ensure there is no adverse impact on/implications for their primary job. If so, these will need to be discussed between the Line Manager and appointee prior to their offer being processed further.

It is at this point that the manager has the opportunity to clarify the requirements of the post, and the appointee then makes the decision as to whether to accept such terms.

5.2 Post Employment

All employees considering taking up secondary employment must request permission to do so from their Line Manager first by completing the Secondary Notification Form. Where employees are joining the internal Trust Bank, the existing Bank Application form should be used instead of the Secondary Notification Form.

On receipt of the Notification or Bank Application form the Line Manager should meet with the employee to discuss the proposed secondary employment and potential impact on their current primary job, paying particular attention to performance, attendance and Working Time Regulations. Ideally this meeting should take place within 14 days of receiving the request.

The Line Manager should consider all the factors and decide whether the secondary employment would be detrimental or not – if it is deemed that the secondary employment is against the interests of the Trust then agreement is likely to be refused. A decision should be made, seeking advice from Human Resources as appropriate, and communicated to the employee within 14 days of the meeting.
The form should be completed with the decision by the Line Manager and retained on the personal file.

If a request is rejected the employee can appeal, which must be in writing to the next line manager, clearly stating the reasons, within 14 days of the date of the outcome being communicated – the appeal will be heard in line with the Trust’s Appeals Policy.

5.3 Sickness
Employees must seek guidance initially from their Line Manager, regarding the prospect of continuing their secondary employment where they are unfit for work with the Trust. Working elsewhere whilst on paid sick leave from the Trust, without having obtained permission from the Trust beforehand, could be regarded as fraud, and/or a disciplinary matter and dealt with accordingly. Employees would normally be required to refrain from their secondary employment if they are on sick leave from the Trust and the secondary work is of:

- The same nature
- A similar nature; or
- Where attending their secondary employment would be detrimental to their recovery.

Not foregoing the above, if employees have two different types of work with the Trust enabling an employee to work in one post whilst sick in another, the employee will not be entitled to Statutory Sick pay, but will receive any Occupational sick pay for the post they are sick within in line with HMRC regulations. Payroll MUST be notified if an employee has two employments to avoid overpayments of sick entitlements or any other implications.

If the second employment is with another employer, then, when sick with the Trust Statutory Sick pay will be payable upon the production of the original Statement of Fitness to return to work or Doctors note.

If an employee’s absence is being managed under the Trust’s Supporting Attendance Policy, a review of the secondary employment arrangements would be undertaken and advice sought from Occupational Health as to whether the secondary employment should continue under the circumstances.

5.4 Capability and Performance
Where an employee undertakes secondary employment, it is their responsibility to ensure that their performance in their primary post is not affected. Any adverse impact on performance will be managed under the Trust’s Managing Performance Policy.

If an employee’s performance is being managed under the Trust’s Managing Performance policy, a review of the secondary employment arrangements would be undertaken. Where the secondary employment is with the Trust, this would be reviewed and a decision taken as to whether it could be continued.
Where the secondary employment is outside the Trust the employee may be asked to consider reducing their hours or ceasing the additional employment to protect their primary post.

5.5 Working Time Directive
Employees must ensure their total working hours do not exceed the limits and that they comply with the required rest periods within the Working Time Directive Regulations. Employees should complete a working time directive opt out form if they are wishing to work in excess of 48 hours per week. The opt out form is attached as Appendix 3.

5.6 Disciplinary Matters
Any adverse impact on time keeping attributable to secondary employment will be investigated under the Trust’s Conduct Policy.

If an employee is subject to a disciplinary investigation/sanction in either their primary or secondary employment within the Trust, a decision would need to be taken as to the suitability of them continuing to work in either role. It would be expected that information would be shared with the other line manager on a “need to know” basis.

6. Monitoring Compliance
The HR Department will be responsible for monitoring that this procedure is followed and may be consulted at any stage through the process to offer advice to those involved.

Should the monitoring uncover any shortfalls in the implementation of the policy, the HR team will work with the relevant management team to draw up an action plan for improvement. This action plan may include:

- Additional training for line managers and/or employees;
- A risk assessment;
- An action plan in support of the risk assessment.

7. Review
This policy will be subject to a planned review every three years as part of the Trust’s Policy Review Process. It is recognised however that there may be updates required in the interim arising from amendments or release of new regulations, Codes of Practice or statutory provisions or guidance from the Department of Health or professional bodies. These updates will be made as soon as practicable to reflect and inform the Trust’s revised policy and practise.
8. References

Agenda for Change Terms and Conditions Handbook

Consultant and Associate Specialist Terms and Conditions of Employment and Code of Private Practice.

Working Time Regulations (1998)
Appendix 1: Secondary Employment Notification Form

Please complete in full and pass to your Line Manager/Head of Department.

The information will be kept in your personal file.

### Personal Information:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Contact Number:</th>
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<table>
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<th>Job Title:</th>
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<th>Hours of Work and Pattern:</th>
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### Secondary Employment Information:

<table>
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<th>Name of Employer:</th>
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<table>
<thead>
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<th>Line Manager:</th>
<th>Contact Number:</th>
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**Nature of Work:** (Brief Description of Duties and Responsibilities)

**Type of Contact:** (full/part-time/honorary/voluntary/other)

**Hours of Work, including pattern and days:**

Additional Information

Have you any reason to believe that there will be instances where your Secondary Employment will conflict with your primary job at the Trust? (Conflict in this instance is taken to mean a conflict in time and a conflict where the performance of your duties at the Trust may be affected)

Please circle as appropriate YES NO

If yes please give details:

I state that the information provided is correct and that Secondary Employment in this instance will not have a detrimental effect on my primary work at the Trust. I will inform my line manager if there are any changes to the above. I understand that false information given with regard to this policy may be treated as Gross Misconduct (or fraudulent) and dealt with accordingly under the Conduct/Counter Fraud Policy.

Signed by Employee: ___________________________ Date: ______________

Print Name: ____________________________________________

For Completion by Line Manager

Name of Line Manager: ___________________________

Date Received: ___________________________

Date Discussed with Employee: ___________________________

Decision (please tick)

Request Approved: ___________________________

Request Rejected: ___________________________

Date Employee informed of decision: ___________________________

Comments/Rationale for decision:

Signed by Line Manager: ___________________________ Date: ______________

Print Name: ____________________________________________
Appendix 2: Working Time Directive Opt Out Form

Royal United Hospitals Bath NHS Foundation Trust

Working Time Regulations Summary Guidance

The Working Time Regulations became law in the UK on 1 October 1998. Their purpose is to protect your health and safety placing limits on your hours of work and making sure that you have breaks and holidays.

Your general rights under the Working Time Regulations

- not to be required to work more than 48 hours per week on average - averaged over 26 weeks (this has been varied by collective agreement with Trust’s staff-side representatives)*.
- to have a break of at least 20 minutes if your working day is longer than six hours
- to have at least 10 consecutive hours off between each working day (this has been varied by collective agreement with Trust’s staff-side representatives)*.
- to have at least one whole day off every week, or two days a fortnight
- to have at least four weeks’ paid annual leave (pro rata)
- if you are a regular “night worker”:
  - that your night shift should not to be longer than 8 hours* on average - averaged over 26 weeks, (this has been varied by collective agreement with Trust’s staff-side representatives)* including days/nights off.
  - that your night shift should never to be longer than 8 hours if the work involves special hazards or heavy physical or mental strain
  - to have a free health assessment before starting night work and at regular intervals while doing night work
  - a transfer from nights to days if possible if you are suffering from problems recognised as being due to the night work
  - all these Regulations apply to bank and agency workers as well as all staff on contracts of employment with the Trust

Special rules for 16 and 17 year olds

- to have a break of at least 30 minutes if your working day is more than four and a half hours
- to have at least 12 consecutive hours off between each working day
- to have at least two whole days off every week
- to have a free a health and capacities assessment if you work during the period 10 pm to 6 am
Are there any exclusions?

- Doctors in training are excluded from these Regulations.
- Individual members of staff may choose to work more than an average of 48 hours per week but will need to sign the declaration overleaf if they want to do this.
- It has been agreed nationally that career grade doctors are exempt from the rules on the length of night work, and on the rest between working days and weeks, and the rest within the working day. As soon as possible afterwards, an equivalent period of rest must be given instead. Under this agreement the averaging period has been extended from 17 weeks to 26 weeks for career grade doctors. Career grade doctors are consultants, associate specialists, staff grades, clinical assistants, hospitals practitioners and locums on those grades.

*Employers and Trade Union representatives can make collective agreements which vary from the Regulations on the length of night work, and on the rest between working days and weeks, and the rest within the working day, so long as compensatory rest breaks are given. If your current pattern of work does not comply with the Regulations, your manager will want to talk to you and your Trade Union representatives about this.

- Security staff are exempt from the hourly limits placed upon regular “night workers”
- Unforeseeable emergencies: The Regulations do not have to be kept to in such circumstances, but if you missed any rest you should be given it later on.

What you need to do

Having read this summary guidance, if you wish, on a voluntary basis, to be able to work an average of up to and beyond 48 hours per week you will need to sign the declaration overleaf and return it to your manager. If you have more than one job, the 48 hour limit applies to the total hours you work. You should therefore make sure that your manager knows if you have any employment/paid work other than your job for the Trust. This includes any irregular bank or agency work you might do.

The Regulations are designed to protect your health and safety and, if you do have other work, you should make sure you still have your day off each week and your 10 hours off between working days.

You should make sure that you take your break during the working day as it is not allowed to take the daily rest break at the beginning or end of the day.

Keep a copy of these notes in case your circumstances change in the future. If you want to start working more than an average of 48 hours a week, you will need to sign the declaration then.

If you have any other questions about the Regulations, then please speak to a member of the HR (Personnel) Department.

**NB: The Working Time Regulations are long and complex. This summary is therefore not a complete guide to the law and should not be regarded as legally binding.**
Working Time Regulations

**Agreement to work (on average) more than 48 hours per week**

After reading the accompanying summary guidance, if you chose to complete this form, please return it to your manager.

**Declaration:**

*I wish, on a voluntary basis, to be able to work an average of up to and beyond 48 hours per week (including ALL paid employment/work, with the average calculated over 26 weeks, including days/nights off). I understand that I should give the Trust four weeks’ notice if I wish to cancel this declaration and that, regardless of whether I have signed this declaration, the Working Time Regulations dictate an absolute maximum number of working hours during ANY week of 78 (as a total of ALL employment/paid work).*

Other than the job(s) for which I hold a contract with the Trust, any other paid work/employment I undertake is listed below (including bank or agency work) with details of the job title, the employer and any contracted hours of work:

……………………………………………………………………………………………………………
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Regardless of whether I have signed this declaration, I understand that, if I do not inform my manager of other paid work/employment that I do now or obtain in the future, then I may be in breach of the Trust's Code of Expectations of Employees.

I agree to the above & confirm their accuracy to my best knowledge

Signed: ………………………… Dated: ………………………

Name: ………………………… Department: …………………

**Copy to be retained by Line Manager and HR Department**
Ratification Assurance Statement

Dear Claire Buchanan

Please review the following information to support the ratification of the below named document.

Name of document: Secondary Employment Policy

Name of author: Katy Coulam

Job Title: HR Business Partner

I, the above named author confirm that:

- The Policy presented for ratification meets all legislative, best practice and other guidance issued and known to me at the time of development of the Policy;
- I am not aware of any omissions to the Policy, and I will bring to the attention of the Executive Director any information which may affect the validity of the Policy presented as soon as this becomes known;
- The Policy meets the requirements as outlined in the document entitled Trust-wide Policy for the Development and Management of Policies (v4.0);
- The Policy meets the requirements of the NHSLA Risk Management Standards to achieve as a minimum level 2 compliance, where applicable;
- I have undertaken appropriate and thorough consultation on this Policy and I have documented the names of those individuals who responded as part of the consultation within the document. I have also fed back to responders to the consultation on the changes made to the Policy following consultation;
- I will send the Policy and signed ratification checklist to the Policy Coordinator for publication at my earliest opportunity following ratification;
- I will keep this Policy under review and ensure that it is reviewed prior to the review date.

Signature of Author: Katy Coulam Date: 05 Jan 2017

Name of Person Ratifying this policy: Claire Buchanan

Job Title: Director of HR

Signature: ___________________________ Date: 05 Jan 2017

To the person approving this policy:

Please ensure this page has been completed correctly, then print, sign and post this page only to: The Policy Coordinator, Apley House, (E5), Royal United Hospital

The whole policy must be sent electronically to: ruh-tr.policies@nhs.net
### Consultation Schedule

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<thead>
<tr>
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<th>Date Consulted</th>
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<td>Staff Side representatives</td>
<td>27/09/2016</td>
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<tr>
<td>Policy sub-group members</td>
<td>27/09/2016</td>
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<tr>
<td>All members of the operational HR team</td>
<td>27/09/2016</td>
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The following people have submitted responses to the consultation process:

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<thead>
<tr>
<th>Name and Title of Individual</th>
<th>Date Responded</th>
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<tbody>
<tr>
<td>Deb Bond, Staff Side representative</td>
<td>05/10/2016</td>
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<tr>
<td>Robyn Jackson, Deputy HR Business Partner</td>
<td>07/10/2016</td>
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<table>
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<tr>
<th>Name of Committee/s (if applicable)</th>
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<tr>
<td>TCNC Policy Sub-Group</td>
<td>27/10/2016</td>
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### Equality Impact: (A) Assessment Screening

| 1. Title of document/service for assessment | Secondary Employment Policy |
| 2. Date of assessment                      | 17 October 2016 |
| 3. Date for review                         | 05 January 2020 |
| 4. Directorate/Service                     | Human Resources |
| 5. Approval Committee                      | Strategic Workforce Committee |

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<td>Sex</td>
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</tr>
<tr>
<td>Marriage and civil partnership</td>
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6. Does the document/service affect one group less or more favourably than another on the basis of:

7. If you have identified potential discrimination, are the exceptions valid, legal and/or justified? N/A

8. If the answers to the above question is ‘no’ then adjust the element of the document / service to remove the disadvantage identified.

9. If neither of the above is possible, take no further action until you have contacted your EIA Divisional / Directorate link for review and support

**Signature of person completing the Equality Impact Assessment**

- **Name**: Katy Coulam
- **Time**: 10.00 am
- **Date**: 17 October 2016

**Chair of decision making Board / Group / Committee approval and sign off**

- **Name**: Strategic Workforce Committee
- **Time**:  
- **Date**: October 2016