

## Board of Directors Meeting in Public - Cover Sheet

<b>Subject:</b>	Guardian of Safe Working Report		<b>Date:</b> 7 <sup>th</sup> December 2023		
<b>Prepared By:</b>	Rebecca Freeman - Head of Medical Workforce, Jayne Cresswell – Medical Workforce Specialist				
<b>Approved By:</b>	Dr David Selwyn				
<b>Presented By:</b>	Dr David Selwyn – Medical Director				
<b>Purpose</b>					
To provide the Board of Directors with an update on the exception reports received from Postgraduate Trainees and Clinical Fellows between 1 <sup>st</sup> August 2023 and 31 <sup>st</sup> October 2023.				<b>Approval</b>	
				<b>Assurance</b>	<b>X</b>
				<b>Update</b>	
				<b>Consider</b>	
<b>Strategic Objectives</b>					
Provide outstanding care in the best place at the right time	Improve health and well-being within our communities	Empower and support our people to be the best they can be	To continuously learn and improve	Sustainable use of resources and estate	Work collaboratively with partners in the community
<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>		
<b>Principal Risk</b>					
PR1	Significant deterioration in standards of safety and care				<b>X</b>
PR2	Demand that overwhelms capacity				<b>X</b>
PR3	Critical shortage of workforce capacity and capability				<b>X</b>
PR4	Failure to achieve the Trust's financial strategy				
PR5	Inability to initiate and implement evidence-based Improvement and innovation				
PR6	Working more closely with local health and care partners does not fully deliver the required benefits				
PR7	Major disruptive incident				
PR8	Failure to deliver sustainable reductions in the Trust's impact on climate change				
<b>Committees/groups where this item has been presented before</b>					
Joint Local Negotiating Committee					
<b>Acronyms</b>					
TCS – Terms and Conditions of Service WTE - Whole Time Equivalent NHSE – National Health Service England LTFT – Less than Full time ED - Emergency Department PA – Programmed Activity TOIL – Time Off in Lieu IMT – Internal Medicine Trainee Ct – Core trainee St – Specialty trainee EAU – Emergency Assessment Unit GMC – General Medical Council W&C – Women's and Childrens U&EC – Urgent and Emergency Care SAC – Surgery, Anaesthetics and Critical Care DME – Director of Medical Education TOIL – Time off in lieu					

## Executive Summary

The paper provides the Committee with an update on the exception reports received from Postgraduate Trainees and Clinical Fellows between 1<sup>st</sup> August 2023 and 31<sup>st</sup> October 2023.

The Board of Directors is asked to note the following:

- The reduction in Exception reports from this time last year across all grades.
- The largest number of exception reports have been received from the Women & Childrens Division. It is the first time since the reporting began that the largest number of exception reports have been received from this Division.
- The number of exception reports from F1 doctors is high as would be expected with this being their first post as a doctor.
- There are still small numbers of exception reports being received from St3+ doctors.
- The progress relating to the new junior doctors' mess has been slightly delayed.
- The fine that has been levied by the Guardian of Safe Working due to the non-compliant rota in Anaesthetics.

## Guardian of Safe Working Report covering the period from 1<sup>st</sup> August 2023 to 31<sup>st</sup> October 2023

### Introduction

This report provides an update on exception reporting data, from 1<sup>st</sup> August 2023 to 31<sup>st</sup> October 2023. It outlines the exception reports that have been received during the last three months, the actions and developments that have taken place during this time and work that is ongoing to provide assurance that there is safe working as per TCS of the 2016 junior doctors' contract.

As can be seen from the below, 240 (228.9 WTE) postgraduate doctors in training have been allocated to the Trust by NHSE. The Trust has an establishment of 252 trainee posts, so this rotation, the first rotation of the year, there are 21 vacant trainee posts. This is due to NHSE not being able to fill these posts for a number of reasons, including doctors being on maternity leave (2 doctors), unanticipated lack of training progress (not passing their exams), doctors leaving the training programme early, or there not being enough trainees following a particular training pathway to fill the posts across the country. The Trust isn't always informed of the reasons for the vacant posts and as can be seen from previous reports, these vacancy numbers fluctuate for each rotation. Further information is included in the vacancies section.

### High level data as of 31st October 2023

Established doctor in training posts:	252		
Established non-training doctor posts:	109		
	<b>Posts</b>	<b>Heads</b>	<b>WTE</b>
Number of doctors in training in post:	231	240	228.9
Number of vacant training posts:	21	-	23.1
Number of unfilled training posts filled by a non-training doctor:	7	-	6.6
Number of non-training doctors in post:	101	108	106.2
Number of vacant non-training posts:	8	-	2.8

**Please note** the above table shows that there are 240 doctors in training (228.9wte) covering 231 training posts, this is due to more than 1 LTFT doctor occupying a post.

### High level data from previous quarter (as of 31<sup>st</sup> July 2023)

Established doctor in training posts:	224		
Established non-training doctor posts:	97		
	<b>Posts</b>	<b>Heads</b>	<b>WTE</b>
Number of doctors in training in post:	201	204	196.6
Number of vacant training posts:	23	-	27.4
Number of unfilled training posts filled by a non-training doctor:	5	-	4.8
Number of non-training doctors in post:	90	90	89.6
Number of vacant non-training posts:	7	-	7.4

The doctor in training posts have increased by 28 due to an increase of 16 x Foundation Programme Doctors and 12 x St3+ trainees in the August 2023 rotation.

The non-training doctor posts have increased by 12 due to:

- A Chief Registrar being appointed
- 6 additional Clinical Fellow posts to cover Ward 31/32 and Ward 41
- 2 additional Clinical Fellow posts in Acute Medicine funded by an approved business case

- 2 Senior Clinical Fellow posts established to cover Trust Funded NHSE posts at IMT3 level which were withdrawn (in Acute Medicine and Gastroenterology)
- A vacant Advanced Care Practitioner post in ED replaced by a Clinical Fellow post

Amount of time available in the job plan for the guardian:	1 PA
Administrative support provided to the guardian:	0.1 WTE
Amount of job planned time for Educational Supervisors:	0.25 PA per trainee

### Exception reports From August 2023 (with regard to working hours)

The data from 1st August 2023 to 31st October 2023 shows there have been 55 exception reports in total, 47 related specifically to safe working hours while 4 were related to educational issues, 1 related to service support and 3 related to the rota pattern.

Three of the exception reports were categorised by the postgraduate trainees as immediate safety concerns. Further details of the immediate safety concerns can be found in Table 1.

By month there were 14 exception reports in August 2023, 26 in September 2023 and 15 in October 2023.

Of the 47 exception reports relating to safe working hours 39 were due to working additional hours, 6 were due to inability to take natural breaks and 2 related to rest.

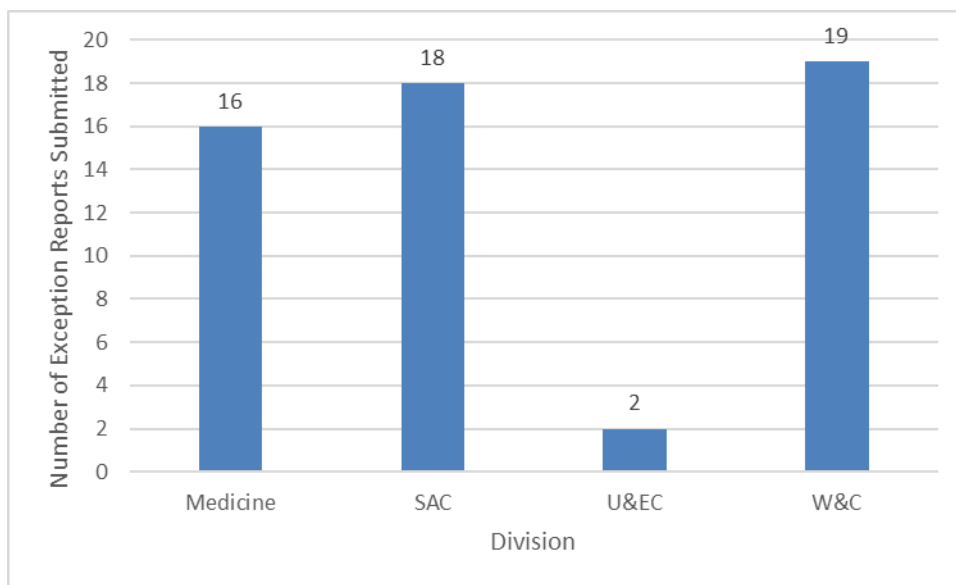
Of the total 55 exception reports, 52 have been closed, with 1 being unresolved due to the doctor in training needing to accept the outcome and 1 where the supervisor has requested further information. 1 report is still pending which was submitted on 27<sup>th</sup> October 2023.

For the exception reports where there has been an initial meeting with the supervisor the median time to first meeting is 8 days. The time to the first meeting is a significant improvement from previous reports. However, recommendations are that the initial meeting with the supervisor should be within 7 days of the exception report. In total 29 (53%) of all exception reports either had an initial meeting beyond 7 days or have not had an initial meeting. Reminders are now sent automatically to the Educational Supervisors listed by the Trainee to respond to the exception report. These reminders are sent regularly until the reports are responded to. For the more straight forward exception reports,

the Medical Workforce Team will respond, however, often further information is needed from the Educational Supervisor to complete the response.

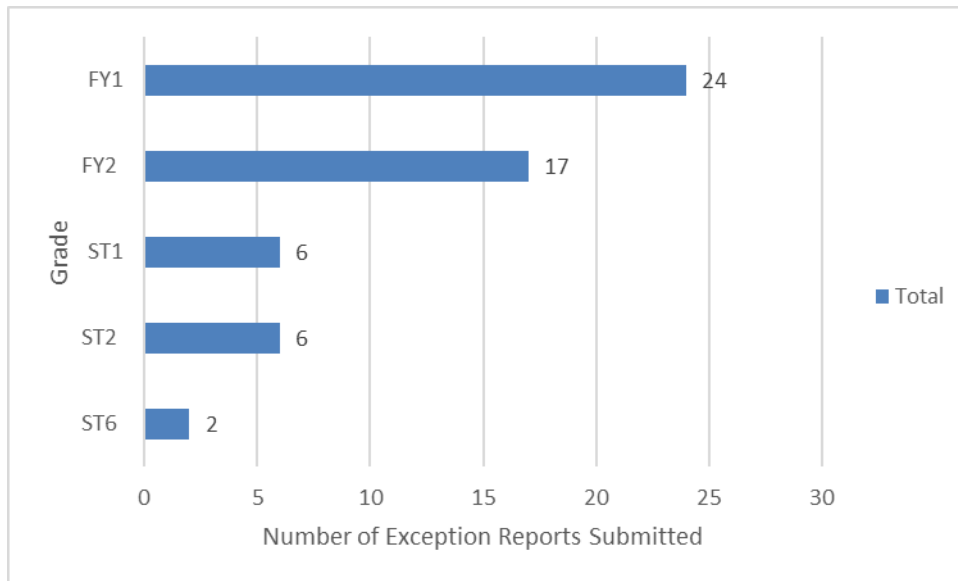
Where an outcome has been suggested there are 34 (64%) with time off in lieu (TOIL) totaling 32 hours and 40 minutes, 13 (25%) with additional payment totaling 12 hours and 43 minutes at normal hourly rate and 2 hours 30 minutes at premium rate and 6 (11%) with no further action.

The Allocate software used to raise exception reports and document the outcome does not currently have the facility to be able to link to the eRota system to confirm TOIL has been taken or additional payment received, therefore this is actioned manually by the Medical Workforce Team, a report is completed for the rota coordinators to ensure that time off in lieu is added to the doctor’s record or any payment is made.



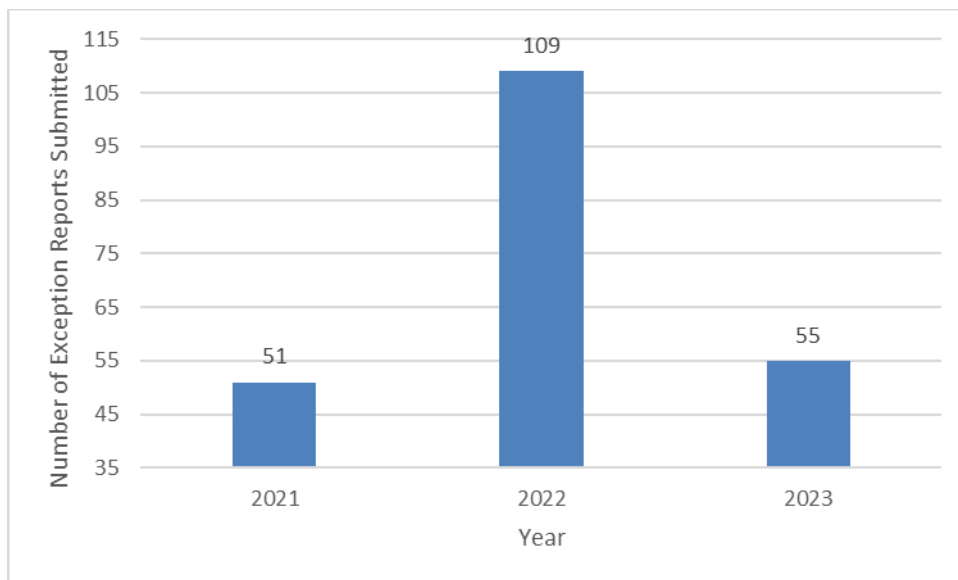
**Figure 1. Exception reports by Division for Trainees**

Figure 1 shows that the majority of the exception reports received during this period - 19 (35%) in total - are from postgraduate doctors working in the **Women’s and Childrens Division**.



**Figure 2. Exception reports by Grade for Trainees**

Figure 2 shows a high number of exception reports were submitted by the Foundation Year 1 and Foundation Year 2 Doctors. In total 24 (44%) of the exception reports have come from the Foundation Year 1 Doctors, 17 (31%) from the Foundation Year 2 Doctors, 12 (22%) ST1/2 doctors and 2 (3%) from ST3+ doctors.

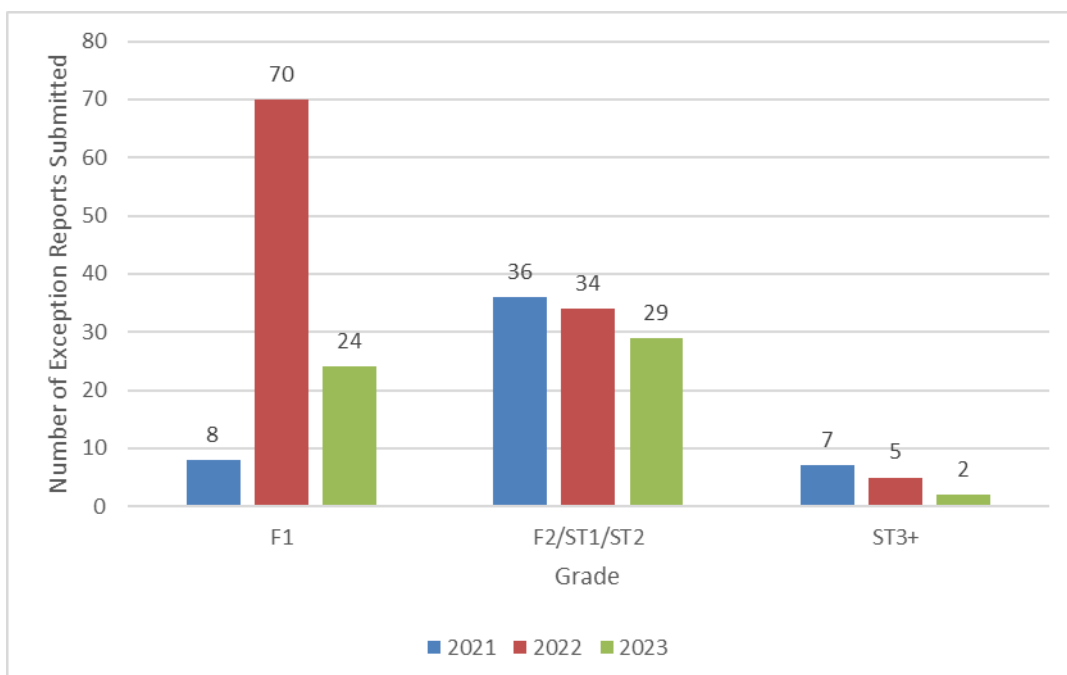


**Figure 3. Comparison of number of exception reports for the same period between 2021, 2022 and 2023**

Date	Grade and Specialty of Doctor	Details of Immediate Safety Concern reported by the Trainee	Action Taken	Status of the Concern
01.08.23	Clinical Fellow in Acute Medicine	The Clinical Fellow said they felt there were too many patients to see and minimum senior support was available during weekends, making it very unsafe for the patients.	Mr Akhtar the Clinical Fellow Programme Director has met with the trainee and agreed some actions. This concern was also raised with the DME and the Specialty as there have been a number of similar concerns raised previously relating to Acute Medicine.	The report has been responded to and has been closed. However, this forms part of the ongoing work in Acute Medicine regarding the availability of staff at weekends particularly.
02.10.23	F1 in General Surgery	On call F1 left at 5pm, no on-call F1's present in the hospital from 5pm-8pm.	The Trainee raised a concern about the lack of cover for a 3.5 hour period during strike action. This was discussed with the HoS and it was agreed that generally the twilight role would include both ward cover and SAU. It was agreed with the rota team to inform ward staff of rota gaps in the event locum cover was not available in advance of the shift and to ensure handover is robust particularly on strike days and to escalate to	The report has been closed and the reorganisation of cover in the future and the communication with the rota team should ensure this will not happen in future. This was a particularly difficult period with it being during a strike.

			middle-grade/consultant if handover is not in the usual place/time.	
04.10.23	F1 in General Surgery	From 17:00-20:00 I was the only non-registrar junior doctor in the department. There was no SHO on call, and no other F1/equivalent on call in the department. This is below Christmas day (minimum) staffing and is an immediate safety concern.	Discussed lack of cover for 3.5h period during strike action. All regular ward F1s unaware whether any locum/other cover arranged. It was discussed with HoS and agreed generally the twilight role would include both ward cover and SAU. It was agreed to inform ward staff of rota gaps in the event locum cover was not available in advance of a shift and to ensure handover is robust particularly on strike days.	The report has been closed and the reorganisation of cover in the future and the communication with the rota team should ensure this will not happen in future. This was a particularly difficult period with it being during a strike.

**Table 1. Immediate Safety Concern Concerns Raised**





**Figure 4. Number of Exception reports by doctors by grade for the same quarter between 2021, 2022 and 2023.**

Figure 4 shows that this year there have been less exception reports from all grades than in the previous year but more exception reports from the F1 doctors this year than in 2021. This is typical and it is expected that there would be more exception reports from F1 doctors during their first post as a doctor.

**Work Schedule Reviews**

There has been a work schedule review undertaken in Anesthetics this was following a concern that was raised by a trainee. On investigating the concern, it became clear that the rota from August 2022 until August 2023 was non-compliant for the doctors entitled to 32 days leave as the leave setting in the allocate system had been set at 27 days. This has meant that the doctors entitled to 32 days leave have worked 15 minutes extra each week for the duration of the rotation. This has been addressed and has resulted in a payment being made to the doctors for this additional time.

**Fines**

The above has therefore resulted in a fine being levied by the Guardian of Safe Working. The total fine equates to £4612.79. This is the second fine that has been levied by the Guardian since the implementation of this junior doctors' contract in 2016.

**Vacancies**

The Trust currently has 240 doctors in training. As mentioned in the introduction, there are 21 vacancies currently where the Trust has not been allocated trainees by NHSE, the reasons for these posts not being filled were also mentioned in the introduction, 7 of the vacancies are currently filled by Trust Grade Doctors. Clinical Fellow recruitment is ongoing with the aim of filling as many training vacancies as possible particularly in Medicine, Urgent & Emergency Care and some specialties within Surgery, Anaesthetics and Critical Care.

The gaps will be filled by doctors on the bank where needed to support the rotas, which represents a cost pressure to the Trust.

The numbers of clinical fellows that have been recruited for the August changeover have been increased to allow more flexibility to cover trainee vacancies in August and to support the Trust over the winter period.

This will negate the need for as many agency doctors and bank doctors as have been used in previous years at a junior and middle grade level. The additional numbers recruited have been based on the need in previous years.

3 Clinical Fellows covering ward 31/32 and 3 doctors covering ward 41 from the over-recruitment.

The high-level data shows that the Clinical Fellows are currently over recruited in Medicine by 5, one of these is covering the Maternity Leave of another Clinical Fellow.

### Qualitative information

Table 3 below indicates the number and percentage of exception reports that were not responded to within the required time frame of 7 days over the last year. Although the number of reports that have not been responded to has reduced, this number still remains high. This is an ongoing theme and there is an action plan to address this.

<b>Date of the Guardian Report</b>	<b>Number and Percentage of reports <u>not</u> responded to within 7 days</b>
August 2023 – October 2023	53% of all reports received 29 reports
May 2023 – July 2023	54% of all reports received 20 reports
February 2023 – April 2023	58% of all reports received 54 reports
November 2022 - January 2023	75% of all reports received 65 reports

**Table 3 Exception Reports not responded to within 7 days**

As previously reported, a Task and Finish Group has been established to manage the relocation of the doctors’ mess. This work is progressing however, the completion date has now been put back until February 2024. The Trust was asked to present this development at the recent national Medical Directors meeting as an exemplar project of investing in the trainee workforce. The mess when completed will be an excellent facility for the junior doctors.

Several periods of industrial action have taken place during this period, some of which has involved joint industrial action with consultants. It is understood that talks are currently taking place between the British Medical Association and the Government. There are no further strikes planned at this stage.

As can be seen from the above, the Trust has bid for additional posts and from August there are an additional 28 training posts. This number comprises of 16 foundation doctors and 12 St3+ trainees. These additional posts at St3+ level will considerably improve the support at senior trainee level.

Although meetings have taken place with representatives from Acute Medicine, concerns are still being raised by trainees about the Medical Staff availability at night and over the weekend, it is understood that the department is undertaking an options appraisal in relation to the rotas that are being worked together with the patient flow through the department with the aim of ensuring that

there are consistently the right number of doctors needed to be able to see the patients coming to the department and there is also senior support on hand.

This is the first time that the Women & Childrens Division has had the most exception reports. Most of these reports are due to doctors staying late. In Paediatrics particularly it is due to the handover taking longer than the scheduled time.

A concern was raised by the junior doctors in Anaesthetics in March 2023 with the rota that the Anaesthetics Specialty Registrars were working. The night shift on the rota commences at 7.30pm and where a night shift commences at this time, according to the rules of the junior doctors' terms and conditions of service 2016 – Schedule 2 it does not attract the 37% enhancement for all of the hours on the shift. Whereas if the shift commenced at 8pm instead of 7.30pm and finishes later the following morning, the shift would attract the enhancement for the full duration of the shift.

This issue was discussed at the Trust Joint Local Negotiating Committee at the end of March 2023. It was confirmed at the meeting that whilst the shift did meet all the rules of the junior doctors contract and as such is a compliant rota in terms of the working time regulations, with regard to the rostering guidance, it was not a shift that met with best practice due to the enhancement not being paid for the full duration of the shift, however, it was also explained by a consultant colleague in the Anaesthetics team that this particular rota in Anaesthetics has been in place since 2009. At the time of the rota being introduced, it was discussed and agreed with the Specialty Registrars in post at that time as was required in accordance with the previous junior doctors' terms and conditions of service. It also met with the Terms and conditions of the Junior doctors' contract 2001.

After the issue was raised, the rota was reviewed to change the timings of the night shift to commence at 8pm, this shift therefore now attracts the 37% enhancement for the full duration of the shift and satisfies the best practice guidance in terms of Rostering. This change took place in August when the new cohort of Specialty Registrars commenced in post. The junior doctors in Anaesthetics rotate in February and August each year, hence the reason for the new rota commencing in August.

The Anaesthetics trainees that were in post prior to August 2023 are wanting to be paid the enhancements for the full duration of the nightshift from when they commenced in post in August 2022.

It is important to note that the Trust did not break any rostering rules, this shift has been in place for a considerable number of years and has met the needs of previous junior doctors in post and the needs of the service, both pre and post the junior doctors contract change. The shift did not meet

the best practice guidance. When the issue was raised, it was investigated and the shift times changed to ensure the guidance was met.

The Guardian of Safe Working is currently away from the Trust and a temporary cover for the role is currently being sought.

## **Conclusion**

- Note the reduction in Exception reports from this time last year across all grades.
- Note that the largest number of exception reports have been received from the Women & Childrens Division. It is the first time since the reporting began that the largest number of exception reports have been received from this Division.
- The number of exception reports from F1 doctors is quite high as would be expected with this being their first post as a doctor.
- There are still small numbers of exception reports being received from St3+ doctors.
- The progress relating to the new junior doctor's mess has been slightly delayed.
- Note the fine that has been levied by the Guardian of Safe Working due to the non-compliant rota in Anaesthetics.

## Appendix 1

### Issues/Actions arising from the Guardian of Safe Working Report to be taken forward.

Action/Issue	Action Taken (to be taken)	Date of completion
Junior Doctors mess to be relocated to the Deli Marche	Task and Finish Group in place involving key stakeholders to manage this transition	December 2023 (now delayed to February 2024)
Trainees to be informed of the email address for the Guardian of Safe Working inbox.	Communication to be sent to trainees	December 2023
Concerns have been raised by trainees relating to Acute Medicine	A meeting has been held with the specialty, an action plan has been developed and several actions are being taken by the specialty.	Updates on progress to be provided in future reports.
Exception reports in Women & Childrens Handover is lasting longer than the allotted time.	Consideration to be given to how this can be managed differently going forward.	Update on progress to address this issue to be provided in future reports.