

CCP study into restrictions on consultants' non- contracted hours

Comments from the Association of Anaesthetists on Discussion Papers No.1 and No.2

Both papers are seriously flawed in that they fail to mention the most significant restrictions currently affecting consultants' use of their non contracted hours to do this type of work in Independent Providers Hospitals. If these are not removed consultants will still be restricted in using their non contracted hours in this way.

The panel will be aware that the majority of this NHS work performed in Independent Providers Hospitals is elective surgery, mainly orthopaedics, requiring the services of consultant surgeons and consultant anaesthetists. It was a founding principle of the NHS in 1948 that all consultants should be rewarded equally. For 60 years this has underpinned the development of all specialties so serving NHS patients well with equity of access specialty services and patient safety. This founding principle continues in Principles and Rules for Co-operation and Competition number 3, 6, 7 and 8.

Please see our previous evidence for more detail on this.

Discussion Paper No.1

Paragraph 1: This fails to mention the restrictions that consultant anaesthetists place upon themselves not to do this work in their non-contracted hours because of the unequal pay offered by many of the independent providers.

It also fails to mention the restriction that consultants of all specialties place upon themselves not to work in non-contracted hours because the NHS patients involved are not receiving NHSLA indemnity cover in hospitals operated by Independent Providers.

If all the other possible legal and contractual restraints discussed are removed these two very significant restrictions will still remain and need to be removed.

These two restrictions are particularly important because since 2003 they have prevented far more consultants from doing of this NHS work in non-contracted hours for Independent Providers than any other reason.

NHS consultant contract

Paragraph 11 this refers to the English NHS 2003 consultant contract. The Scottish 2003 consultant contract drawn up under the same framework specifically mentions this type of work.

The Scottish Consultant Contract 2003 is quite formal about equal pay for this type of NHS work in non contracted hours. There is only one ISTC in Scotland and the NHS consultants working there get equal pay.

2.5 Equal Pay

2.5.1 The salary scales in Appendix 3 and all terms and conditions of service will apply equally to all consultants irrespective of age, gender, marital status, race, religion, creed, sexual orientation, colour or disability.

4.4 Waiting Times Initiative Payments

- 4.5.1 In circumstances where, as a direct result of published national or local waiting times targets, the employer requires increased ad hoc activity not previously identified within the job plan, the employer and consultant may agree a separate contract for this purpose. Such work will be voluntary.
- 4.5.2 Such work will be paid at three times the hourly rate appropriate to point 20 of the seniority scale set out in Appendix 3, or alternatively and by agreement with the employer:
- paid at twice the hourly rate appropriate to point 20 of the seniority scale set out in Appendix 3 and equivalent time off in lieu; or
 - paid at the hourly rate appropriate to point 20 of the seniority scale set out in Appendix 3 and twice the equivalent time off in lieu.

Similar arrangements for equal rates of pay for this NHS work in non-contracted hours exist in the BMA negotiated Welsh 2003 consultant contract.

What type of work is this?

Paragraph 12. Consider the arrangements surrounding the care of NHS and Private Patients – they are utterly different.

An NHS patient is defined as: **“A person receiving care or treatment under the NHS Act”**

NHS patients

- **NHS Act responsibility**
- **NHS ‘Patient led’ target**
- **NHS PCT arranges contract, 6 + choices**
- **NHS standards of care**
- **NHS indemnity cover – CNST Standards**
- **NHS logo**
- **NHS funded**
- **NHS care, late post op and post episode**

Private patients

- **Private responsibility**
- **Patient themselves initiate**
- **Patient arranges contract, any consultant**
- **Private standards of care**
- **MPS and commercial indemnity cover**
- **Commercial logo**
- **Patient funded**
- **Private care post op**

From this comparison it can be seen that this type of work in non-contracted hours is certainly not Private Professional Services which are instigated and paid for by patients making their own private arrangements (see table giving the distinctions above)

This type of work is also not traditional Fee Paying Services but from the contrast above it can be seen that it is clearly **NHS work being performed in non-contracted hours (NHS work in NCH)**

When it first began and it was called NHS waiting list work like the Scottish 2003 contract but the majority of consultants now call this **NHS work in non-contracted hours**

Discussion Paper No.2

Elephant in the room

This assessment of the presence and effect of restrictions on consultants' use of their non contracted hours again misses the "elephant in the room." By not taking into account or even mentioning the restriction and disincentive for consultants to use their non-contracted hours to care for NHS patients in Independent Providers Hospitals not offering equal pay discussion paper no 2 is also incomplete and fundamentally flawed.

Each consultant must make up their own mind but the Association of Anaesthetists and other organisations recommend that no one volunteers for any of this NHS work where equal rates of pay are not being offered and already hundreds of consultant anaesthetists have refused to take part in this NHS work in Independent Providers Hospitals. From a national survey in 2006 this principle is supported by over 93% of anaesthetists and hundreds of consultants feel so strongly about this that they have forgone earning many thousands of pounds by refusing to do this unequally paid work. At the time of writing consultant anaesthetists in a number of areas around England are refusing to take part. By failing to offer equal pay Independent Providers are in contravention of the Principles and Rules for Co-operation and Competition number 3, 6 and 7. The failure by the commissioning PCT to enforce equal pay and follow the procedures described in the NHS Guide to Equality (Gateway 7559) is also against Principle and Rule numbers 2,3 6,7, and 8. We are surprised that NHS commissioners allow it to continue.

Patients NHSLA Indemnity cover

Another restriction which discussion paper 2 fails to mention is the lack of NHSLA indemnity cover for NHS patients being treated in the independent sector and many consultant anaesthetists and surgeons have refused to volunteer to care for NHS patients when this is not provided, a principle fully supported by the Patients Association. This lack of NHS indemnity cover is unsatisfactory for several reasons given in our previous evidence and is against Principal and Rule number 2 where providers and commissioners must ensure that the patient experiences a seamless health service regardless of organisational boundaries and to ensure service continuity and sustainability. This should be corrected as soon as possible.

CCP recommendations

We note from the CCP NCH Study terms of reference that if restrictions are found to be problematic, which these two mentioned above demonstrably are, then the CCP is tasked with making recommendations to NHS organisations to address such challenges posed by consultants doing NHS work in their non contracted hours in both the NHS and Independent Sectors. The NHS Commissioners have a key role here and may possibly be unaware of the issues but we believe they should be informed and **PCTs specifically instructed not to fund any NHS work that does not provide equal hourly rates of pay for the consultants involved** for all the reasons given in our previous evidence and not least to provide an equal playing field for fair competition.

Also **NHSLA cover should be provided for all NHS patients wherever they are cared for**, NHS Hospitals or the Independent Sector.

Both these would be fully in accordance with the Guiding Principles and Rules for Cooperation and Competition that the CCP have set out in their establishment.

End of comments, 26 June 2009.