

Response from Central Manchester University Hospitals NHS Foundation Trust

24 July 2009

Dear Ms Abou-Rizk

I write further to the release of the discussion papers on the Cooperation and Competition Panel study on NHS Consultants non-contracted hours and welcome the opportunity to reply to the notice of possible recommendations. I do have to first express my concern at the way that the documents have been presented, it could be interpreted that the panel has already formulated its conclusions and that the outcome has been predetermined. There appears to be an overarching conclusion that the "principle and rules" must prevail over any other general principles no matter how enshrined these are in general legal principles. This is highlighted in discussion paper 1 page 4 Para 10 when the panel is effectively acknowledging that it cannot overcome the principles of fidelity in employment contracts so the solution is to order NHS Trusts not to invoke their rights in this regard.

I would however state that for the avoidance of all doubt that the Trust acknowledges that we are here to provide care to patients and to provide value for money services. However the prohibitions and the possible recommendations in paragraph 7 of the notice of possible recommendations paper directly impacts on the autonomy of the Trust to ensure that we meet our own objectives and that we can offer services to our local patient community that they require. If a consultant is completely free to work wherever and whenever outside of their contracted hours with impunity they will be at liberty to damage the legitimate business interests of their main employer and this sets a dangerous precedent.

In Paragraph 7b the recommendation is attempting to prevent the Trust consulting with its own staff. Consultants could genuinely believe that their actions would be neutral or not damaging to their main employer when in fact they could be putting their own livelihoods at risk and it is an employer's duty of care in these circumstances to bring this to the consultant's attention. The Trust also has a duty of care to its other employees whose livelihoods are exposed to risk and it is unreasonable to place the Trust in a situation where our hands are tied and is discriminatory towards other employees who are exposed to risk of loss of employment because of a gagging order imposed on Trusts.

I would be interested to know from the panel whether there has been any consultation with patient groups as there is no evidence of research on the impact to the main provider of NHS care if services were to put at risk. There is equally no evidence in any of the papers that the panel has defined or assessed the costs or benefits and yet it is stated in the recommendations that the key factors are cost effectiveness and proportionality. The paper does recognise the input in the training etc by Trusts to NHS consultants but does not reflect the generous secure package offered to consultants including sick leave benefits, pension schemes etc which should be considered and reflected in any recommendations.

If I can now turn attention to discussion paper No 1, there appears to be an assumption that by insisting on the employer's right to restrict consultants working for a competitor this is adversely impacting on patients choice. I would be interested to know if the panel instigated a study or considered the impact on Trust's losing contracts thereby having to give up services that are not sustainable so effectively choice is denied to patients. If I could refer to paragraph 3 of Paper 1 that says the relevant ruling Principle 4 - commissioners and providers should foster patient choice. There appears to be an underlying assumption that this issue (i.e. the use of non contracted hours) is in all cases relating to increasing plurality in choice when in fact it is related to tendering for services generally. There is evidence that in a number of cases commissioners tender for services in order to restrict the number of providers and in this case one provider is simply replaced by another with overall choice being the same or being reduced. This Trust would not accept the assertion that the simplistic model proposed by the panel (remove all barriers to consultant working for competitors subject to certain exceptions) will avoid restriction on patients' choice.

The issue of working time restriction commencing on page 8 para 31 is highly relevant and is not true to state that this was not being used as justification by Trusts to restrict consultants working practices. In respect to the duty of fidelity from paragraph 35 I have already commented on this in early sections of the letter. I would however say that the situation in which a consultant works in a private practice on his own accord and not part of a wider scheme is very different from a consultant who works for a competing provider. The remaining paragraphs whilst outlining the position between Trusts and the Independent Sector gives no objective analysis of the two competing arguments which is surely a requirement before the panel can give an opinion on what is required.

I do hope that you find these comments useful.

Yours sincerely

Derek Welsh
Director of Human and Corporate Resources