

# Foundation Trust Network

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Lord Carter of Coles  
Chair, Co-operation and Competition Panel  
1 Horseguards Road  
London SW1A

26 June 2009

Dear Patrick,

I am writing in response to the Panel's request for further submissions and in relation to the notice of possible recommendations.

The Foundation Trust Network does not believe that any of the recommendations proposed are sufficient, not least because this is not a matter of competition alone. It is also one of employment law and contract. While explicit guidance on the law and the consultant contract would be useful in clarifying the current position, it should remain the responsibility of employing trusts to decide in consultation with their employees on the lines to draw in relation to any conflicts of interest.

Below we elaborate on the points made in our original response:

As stated previously, foundation trusts accept that the consultant contract allows for consultants to work non-contracted hours for non-NHS providers. Indeed, many foundation trusts view the opportunity for their consultants to be offered additional work as a positive recruitment and retention tool.

However, foundation trusts believe that the contract between an employer and a employee should be paramount and that decisions relating to non-contracted hours should remain with the employer in discussion with the employee around potential conflicts of interest and not be determined by any other external body.

Foundation trusts accept that they need to act reasonably and proportionally but it is nevertheless the responsibility of the employing trust to manage any issues of conflict of interest. In managing this, FTN considers that established legal and regulatory avenues for redress are sufficient. However, guidance clarifying the legal and contractual issues would be helpful for employers, consultants and others to encourage a mature approach for dialogue around these matters.

Foundation Trust Network was encouraged to note that the Panel has recognised the need to differentiate between consultants working in a clinical capacity and working in strategic management roles. It is vital to distinguish between consultant requests to use non-contracted hours (beyond the first four) to work for another employer where they are providing specific patient services and where they would be involved in the direction of the service or have a financial interest that would give rise to conflicts of interest.

For example, particularly in, but not limited to, Service Line Reporting, increasingly consultants will play critical roles in decision making in their employing organisations and have access to strategic and commercially sensitive information. Foundation trusts are concerned that where consultants deliver clinical services to other providers, they may also be party to business planning discussions and decisions and this represents a clear conflict of interest. Again, it is for the employing trust to manage these situations in discussion with their consultants.

Finally, Foundation Trust Network is keen to reiterate that due to the significant work commitment of many consultants, for safety and quality of care considerations, it is essential that the control of this workload is by a single employer. The Panel will need to balance any potential reduction in patient choice from a decision not to allow the consultant to accept non-contracted hours employment elsewhere in a public interest test against the potential impact on the safety and quality of care to NHS patients by a consultant working significantly longer hours than the 48 hours allowed in order to work non-contracted hours.

Yours sincerely,

Sue Slipman  
Director  
Foundation Trust Network