



Hospital Consultants & Specialists Association

Number One, Kingsclere Road, Overton, Basingstoke, Hampshire, RG25 3JA

Tel: 01256 771777 Fax: 01256 770999

e-mail: conspec@hcsa.com www.hcsa.com

RESTRICTIONS ON NHS CONSULTANTS WORKING NON-CONTRACTED HOURS FOR OTHER PROVIDERS OF NHS-FUNDED CONTRACTS

The Hospital Consultants and Specialists Association responded to the first round of consultation in April 2009 and in doing so confirmed that the Federation of Independent Practitioners (FIPO) was associated with those views. The HCSA submission was acknowledged in the CCP interim report. It is a matter of regret that the interim reports were not sent directly by the CCP to the HCSA which found them only through fortuitous access to the CCP web-site. To conduct consultation in this way threatens the credibility of the exercise, the more so because the time frame for submission in respect to the interim reports is wholly insufficient to provide effective internal discussion leading to a considered view for consideration by the Panel.

The HCSA invites the Co-operation and Competition to send copies of their reports to those who have responded to its call for evidence and provide adequate notice of any further submission it may invite.

Nevertheless nothing in the interim reports changes the submissions we made in April. We stand by those views. The interim reports cite, extensively, the 2003 Consultant Contract and its predecessor contract. Both provide that consultants may engage in fee paying services. An issue highlighted by these interim reports (paragraph 35 et seq) is whether such contractual entitlement may lead to a breach in the duty of fidelity owed by a consultant to his or her employer. This has to be considered in the context of the provision of NHS services today.

We strongly support the views of the Independent Healthcare Provider (paragraph 38) that a consultant's choice to provide services to independent providers does not diminish the resources available to the employing Trust.

The NHS reforms have focused on patient choice. Government policy in recent years has required the NHS to move away from a monopoly to one where competition inevitably introduces a plurality of providers to offer NHS diagnosis and treatment. Government policy offers patients the choice as to where such NHS care can be provided. It is clear that some NHS Trusts might, as a consequence, feel vulnerable. But that is no argument for reverting to the monopolistic model of the past. All NHS providers rely on the commissioning intentions and decisions of Primary Care Trusts; that is the reality of NHS provision today.

Hospital Consultants do of course owe a duty of fidelity to their employers but equally have a duty to support Government policy. There can therefore be no justification for removing the right of consultants to provide treatment and diagnosis during their non-contracted time to NHS patients when invited to do so by independent providers.

Consultants accepting such an invitation therefore do not compromise their relationship with their employers – decisions about commissioning NHS healthcare are made not by consultants but by the PCT. It is for the PCT to determine in negotiation with all providers the location, volumes, quality and costs of services to be provided. So long as consultants do not influence those decisions it is difficult to see how there can be any breach of fidelity owed to their employers.

It is of course right that any such work should be declared, but it is also for NHS Trusts to develop their business strategies to meet the commissioning agendas of the PCT's, where plurality of providers is a central part of NHS provision.

The interim report questions whether commissioners might discriminate in favour of those organisations able to secure the clinical services of consultants. In our view commissioners must procure services from those organisations best able to meet the specification; and in that it is not unreasonable for commissioners to be satisfied that providers do have suitably qualified consultants necessary to deliver the service required. We do not consider it discriminatory that PCT determine procurement policies having regard, in part, to the availability of hospital consultants.

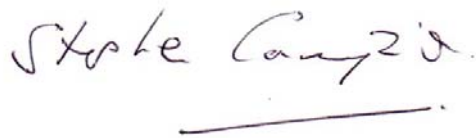
We feel that reference to the Working Time Directive (paragraph 34) is a separate issue to what consultants may do outside their contracted hours. The WTD applies to contracts of employment only and determines the maximum number of hours that may be worked in that employment. It does not apply to secondary activities. There will be many activities, not all or necessarily work related, that may impact upon consultants' fitness to practice for an NHS employer.

Even though the WTD does not apply to consultants work outside contracted hours, we submit that there are many other factors which influence consultants' fitness. This is a management issue and not one that should be prescribed through the WTD.

We note that some NHS Trusts (paragraph 44) seek to argue that the costs of training doctors to be consultants should be a factor in determining whether they might use those acquired skills and knowledge to the benefit of organisations other than NHS Trusts. This is considered to be "red herring" and of no relevance to whether consultants should continue to be entitled to use those skills and knowledge elsewhere. It ignores the inescapable fact that consultants have been trained (at both their own and taxpayers expense) to provide diagnosis and treatment within the NHS.

That such NHS diagnosis and treatment now takes place within a plurality of providers serves only to reinforce our view that it is right for those skills acquired through public funding to be used to the benefit of NHS patients. It is a matter of concern that given the financial pressures many NHS Trusts are in any event cutting, or in some cases withdrawing, funds for the essential maintenance of continuing medical education for consultants. Ironically such funding is sometimes provided from within the independent sector.

In summary, whilst disappointed with the consultation process and the limited time available to prepare a comprehensive response to the interim report, we find nothing within it to modify our original submission. We do however hope that this further response is helpful to the Panel.

A handwritten signature in cursive script that reads "Stephen Campion". Below the signature is a horizontal line.

Stephen Campion
Chief Executive
Hospital Consultants and Specialists Association

June 2009