



CCP STUDY: NHS CONSULTANTS' NON-CONTRACTED HOURS

Notice of possible recommendations

Introduction

1. On 8 April 2009, the Department of Health and Monitor requested that the Cooperation and Competition Panel (CCP) carry out a study of restrictions placed on consultants in relation to the non-contracted hours that they can work for other healthcare service providers. The focus of the CCP's study, in line with its remit, is restrictions placed on the non-contracted hours NHS consultants can work for other providers of NHS-funded healthcare services.
2. The CCP is currently in the process of conducting its study and is yet to reach any conclusions as to the effect of such restrictions. In the event that the CCP concludes that restrictions on consultants' use of their non-contracted hours are inconsistent with the Principles and Rules of Cooperation and Competition (Principles and Rules), it will make recommendations to the Department of Health and Monitor as to how these issues should be addressed.
3. The CCP believes it is important to engage early on with stakeholders in order to seek comments and suggestions as to appropriate recommendations, if required.

Possible recommendations on which views are sought

4. The CCP is considering various options in the event that it concludes that restrictions on consultants' use of their non-contracted hours are inconsistent with the Principles and Rules. In making appropriate recommendations, the CCP will aim to achieve as comprehensive a solution as is reasonable and practicable. When deciding on an appropriate recommendation, the CCP will have regard to its effectiveness, the associated cost and the principle of proportionality¹.
5. In considering proposed recommendations, the CCP will, where relevant, take into consideration any benefits arising from the restrictions (for example, patient safety).

Option 1: CCP Guidance document

6. In accordance with the Terms of Reference² provided by the Department of Health and Monitor for this study, the CCP may publish a guidance document to assist consultants, Trusts, Foundation Trusts and other providers of NHS-funded services to comply with the Principles and Rules in relation to restrictions on non-contracted hours.
7. The CCP invites comments from interested parties as to the content of the potential guidance document. Options include one of the following recommendations or a combination of these:
 - a. A prohibition of any action by a Trust to restrict directly its consultants from providing any fee paying services or private professional services³ during non-contracted hours for other NHS-funded service providers (for example, a Trust refusing permission to a consultant to work non-contracted hours for a competing provider of NHS-funded services);
 - b. A prohibition of any action by a Trust to restrict indirectly its consultants from providing any fee paying services or private professional services during non-contracted hours for other

¹ Between two recommendations that the CCP considers equally effective, it will choose that which imposes the least cost or is least restrictive.

² <http://www.ccp-panel.org.uk/content/cases/nhs-consultants-non-contracted-hours/terms-of-reference.pdf>

³ As defined in the terms and conditions for consultants (England) 2003.



NHS-funded service providers (for example, a Trust urging consultants to consider the redundancies that would be associated with falling volumes of work if they were to work non-contracted hours for competing providers of NHS-funded work); and/or

- c. A prohibition on any action by a Trust that directly or indirectly restricts consultants from diagnosing or treating patients of other NHS-funded service providers, during non-contracted hours. Exceptions to this prohibition would include limitations on consultants having:
 - (i) any strategic management roles within other providers of NHS-funded services which compete with their employing Trust. Such strategic management would include business development, financial management, corporate planning or any other involvement in business strategy;
 - (ii) any involvement in the preparation of tender bids for the provision of NHS-funded work for competitors of their employing NHS Trust; and
 - (iii) any financial or equitable interest in other providers of NHS-funded services in competition with their employing trust (for example, a shareholding in a competing other provider of NHS-funded services).
8. The CCP welcomes input in relation to these recommendations in addition to suggestions for alternative recommendations that could be included in the potential guidance document.

Option 2: Amendments to the NHS Consultants' Contract

9. The CCP is also considering whether any of the recommendations outlined above should be incorporated into the NHS Consultants' Contract.
10. The CCP welcomes input in relation to this suggestion in addition to suggestions for alternative recommendations that could be included as amendments to the NHS Consultants' Contract.

Other measures

11. The CCP will consider any other recommendations that are proposed in order to address inconsistencies between restrictions placed on consultants' non-contracted hours and the Principles and Rules and welcomes suggestions from interested stakeholders.

Next Steps

12. Parties are requested to provide views in writing on the suggested recommendations in addition to any other alternative recommendations they wish the CCP to consider by Friday 10 July 2009. Please send all submissions by email to: nch@ccpanel.gsi.gov.uk or by mail to 1 Horse Guards Road, London SW1A 2HQ.