

Response from NHS East of England Strategic Health Authority

15 July 2009

Dear aisling

Having reviewed the summary of the proposed recommendations of the CCP regarding consultant's non contracted hours, I would offer the following thoughts:

It seems clear that the CCP is likely to report that trusts may not place restrictions on a consultant's freedom to undertake work with another contractor during non contracted periods and the three options for clarifying the position vary in the scope and quantum of that freedom.

However it does not address an employers' responsibility to ensure that all its employees are fit for work. It seems to me that reviewing an employee's overall hours and intensity of work and wishing to restrict hours of practice on that basis would be seen as indirectly restricting the individual's freedom to practice elsewhere. However, such Health and Safety concerns are valid and legitimate and should be taken into account by an employer.

Secondly, the commercial sensitivity issues arising from having a consultant working for a competitor should not be understated and some protections should be available in the form of a code of practice setting out the issues and appropriate restrictions.

My view is that any proposal which suggests that employers cannot control the quantum and type of work undertaken by their employees for other parties should be resisted. Whilst some work can be undertaken, it should be of a type and quantity which does not affect either the employee's fitness to practice under his/her main contract nor the commercial interests of the employer to whom the employee owes a duty of fidelity.

Finally my view is that any changes in this regard should not be reflected in the consultant contract but in a code of practice, similar to that governing private practice.

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