

Our ref: GWB/ss

23 April 2009

Mr Andrew Taylor
Director
Co-operation and Competition Panel
1 Horse Guards Road
London
SW1A 2HQ

Glen Burley
Chief Executive
Warwick Hospital
Lakin Road
Warwick
CV34 5BW

Dear Mr Taylor

RE: Consultation on Choice and Consultant Employment Restrictions

Thank you for soliciting provider views on this matter. This issue came to the fore in this Trust last year due to the prospect of a new private hospital opening not far from our main site. The new hospital was conceived under a model where both GPs and Consultants were shareholders and received profit shares following the pledging of the majority of their private work to the new facility. This caused a degree of disquiet within our consultant body due to the following factors;

- Some consultants were excluded from the arrangement.
- Concerns were raised by other consultants about the impact on the profitability of the existing private hospital.
- The business plan changed at some point to include a large amount of NHS Choice work which was not agreed or understood by the majority of consultants involved.

It became clear that a large number of consultants were not aware of the potential impact on the Trust of NHS Choice and the potential conflict of interests which might occur whilst working with a profit-sharing organization. A great deal of concern was expressed by those consultants who had chosen not to be aligned with the profit-sharing private organization and, as a consequence, I consulted with all consultants regarding the Trust's position and their preparedness to collaborate. Many took the view that the Trust should take action against any consultant who undermined the financial position of the Trust and raised very valid concerns about the transparency of financial incentives and potential conflicts of interest for both consultants and referring GPs.

Following these discussions, we considered whether it would be possible to introduce contractual restrictions on our consultants to prohibit them working in conflict to the Trust. The vast majority of consultants felt that this was appropriate and should be pursued. We have looked at what has been included in contracts in other Trusts and have reserved the option to introduce it here at a later stage. However, we have not felt this to be necessary as yet as the recession seems to have slowed the development of the new private hospital. However in an open letter to our consultant body we have made it clear that we would see such activity as conflict of interest and would expect any consultants involved to make a declaration through our normal process. It would then be an issue for the Trust to consider what action may be taken. It is unclear what the rules would permit but we would certainly

consider whether any medical management positions were still tenable as well as wanting to ensure that patients were not being influenced to choose their profit-sharing alternative. So far, we have not said that consultants cannot do this, but we have indicated to consultants that the Trust has a legitimate interest and we may have to act to protect our interests.

The whole debate has been most interesting albeit quite bemusing for some of our Non-Executive Directors who, in the private sector simply would not tolerate their senior staff working for competitors in this manner, particularly as our staff are our greatest asset in whom we invest considerable resources to develop.

The suggestion that NHS providers should encourage such activities is quite hard to comprehend. On the one hand we are encouraged to become more entrepreneurial by becoming Foundation Trusts, but on the other we are expected to promote NHS policy which reduces our market share. This is not a case of NHS providers such as us being greedy. Smaller hospitals in particular need to fight their ground as loss of profitable elective work could push us over the tipping point of clinical or financial viability. It may well be that consultants will choose to create their own chambers in order to exploit the current policy. However many still feel a strong commitment to public service and to the hospitals that they work in, and many consultants also recognise that they could only fully maintain their skills through exposure to the varied case-mix presented within the NHS. Similarly Foundation Trusts may seek to move away from national terms and conditions in order to take control of their workforce, although the costs of doing this for just this single objective may be prohibitive. As your briefing points out, such action may also be inconsistent with the Principles and Rules if no changes are made.

Any consideration of conflict would relate to the impact on the Trust and its patients, so working for another provider in a field might be deemed to be acceptable. Similarly new entrants to the market are perfectly capable of directly employing consultants if they so wish, perhaps entering into an agreement with a local NHS partner to bridge any skills maintenance gaps. Many such organizations might also employ doctors from overseas. There are many workforce solutions available other than the rather parasitic relationships with existing non-NHS providers. Indeed such arrangements might mean that patients are faced with very little choice of consultant as the same individuals often dominate local health systems with the private sector feeding off their individual NHS reputations. Surely true choice would involve different consultants rather than different settings and incentives?

I trust that you have found these comments useful and I am grateful for the opportunity to represent my Trust's views.

Yours sincerely

Glen Burley
Chief Executive