

Response from Spire Healthcare

9 July 2009

Cooperation & Competition Panel: Inquiry on NHS consultants working non-contracted hours for other providers of NHS-funded services

Third Submission of Spire Healthcare Group Response to Notice of Possible Recommendations

1 Background

- 1.1 The Co-operation & Competition Panel ("CCP") has been commissioned by the Department of Health ("DH") and Monitor to carry out a study of the restrictions placed on consultants in relation to the non-contracted hours they can work for other healthcare service providers in the provision of NHS-funded services. Accordingly, it asked respondents, including Spire, for submissions and evidence on which the CCP might base its recommendations.
- 1.2 Spire submitted a paper on 8 May 2009 setting out its views in detail, attaching evidence to support its submissions and on 26 June 2009, Spire submitted a further paper and evidence in response to the two discussion papers published by the CCP.
- 1.3 The CCP have asked respondents for submissions in respect of its *Notice of Possible Recommendations* (the "Notice") and to provide any alternative recommendations. This paper Spire constitutes Spire's submissions in this regard.

2 Response to Notice

- 2.1 Consultants are key inputs required by Spire to compete for NHS funded work and, in most markets, NHS consultants are the only source of supply of this specialist manpower. The effect of restrictions placed on consultants from treating patients of other NHS-funded service providers would restrict or distort this competition and thus reduce the prospect of the government policy of patient Choice and a plural market.
- 2.2 For this reason, and those set out in detail in Spire's previous submissions, Spire would support the CCP publishing a guidance document in the terms set out in paragraph 7(a) and (b) of the Notice, prohibiting any action by a Trust to directly or indirectly restrict its consultants from providing any fee paying services or private professional services during non-contracted hours for other NHS-funded service providers.
- 2.3 As discussed in our second submission, there are clear advantages to patients and the NHS in maximising consultant involvement in the delivery of private healthcare to NHS patients. Spire considers that consultant involvement in clinical *and* operational management aspects of service delivery are critically important. Further, we see no justification for drawing an arbitrary line between "pure clinical" activity and "ancillary" activities since there is no apparent justification of this in the consultant contact itself and in any event any such distinction would be impossible to define and police in practice.
- 2.4 We note that consultant involvement in the activities outlined in paragraph 2.3 might well fall outside of the definitions of both "Fee Paying Services" (since the activity could well be unpaid) and "Private Professional Services" (since the activity is not itself the provision of medical services). We consider it important that the CCP clarifies that such activities are permitted, and would therefore request that the CCP includes in its guidance a statement that:
 - (a) a consultant is free to provide support and advice to other providers of NHS-funded services, including involvement in the clinical or operational aspects of a service or bid to

provide NHS funded services; and

- (b) a consultant is entitled to provide details (including personal details and details of clinical expertise and outcomes) for inclusion bid by another provider of NHS-funded services to provide NHS services.

2.5 Further, in light of the discrimination referred to in paragraphs 2.5 – 2.19 of Spire’s second submission, Spire requests that the CCP clarifies that, in a tender process, commissioners are prohibited from discriminating against private sector providers because they engage consultants in their non-contracted hours rather than employing them. The logical consequence of allowing such discrimination would be that private providers could never win tenders for NHS-funded work. Expressly prohibiting such discrimination would go some way towards levelling the playing field between NHS and private providers of NHS-funded services, thus achieving a fairer and more robust tender process.

2.6 In respect of amendments to the consultant contract, it is Spire’s view that public policy in relation to plurality of providers for NHS-funded services was clearly in the contemplation of those negotiating the 2003 contract and that the consultants contract already permits consultants to provide services during non-contracted hours for other NHS-funded service providers. However, to the extent that there is confusion in the market (particularly within employing Trusts) with respect to this, then clarification by way of a specific amendment to the contract would be useful.

Spire Healthcare
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