

## Terms of Reference

### **REQUEST FOR GUIDANCE: RESTRICTIONS ON CONSULTANTS WORKING NON CONTRACTED HOURS FOR COMPETNG PROVIDERS**

The Department of Health and Monitor requests 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 CCP will do this with a view to producing guidance for all NHS providers on the application of the Principles and Rules for Cooperation and Competition (PRCC) to such restrictions. Any guidance should include generic examples of instances in which those restrictions would be inconsistent with the PRCC if the CCP finds this to be the case.

Attached to the terms of reference is a background note describing the consultant contract and its policy context.

The study that the CCP carries out should be published as well as any guidance that the CCP produces.

We would ask the CCP to provide its study and any guidance to the Department of Health and Monitor no later than 28 August 2009. The Department of Health and Monitor would appreciate efforts by the CCP to provide a draft response in advance of this deadline.

The Department of Health and Monitor will not consider any organisation specific conduct cases related to non contracted hours before the CCP's guidance is published. Consistent with this, this study itself should not seek to assess the compliance of individual organisations with the PRCC but should focus on the general issues related to such practices.

**Memo**

**Subject: Background note on non-contracted hours**

**Date: 8 April 2009**

**To: CCP**

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**History**

A new consultant contract was agreed between the Department of Health and the British Medical Association in October 2003. The consultant contract is optional for both NHS trusts and NHS foundation trusts, but most have adopted the contract.

Existing consultants were incentivised to transfer to the new contract by the offer of backdated pay rises. By October 2005, 87% of consultants were on the new contract.

**Consultant contract overview and documentation**

Prior to 2003, there had been dissatisfaction with the old consultant contract for some time:

- NHS employers believed that the contract did not allow for the proper management of consultants' time and performance. Inadequate use was made of job plans, and there was a concern that many consultants employed on a full-time basis were exceeding the "maximum 10% earnings from private practice" rule.
- Consultants believed that the contract provided no limitation to the quantity of work expected from them, and failed to reward their commitment to the NHS.

The new contract, which took several years to agree, has the following objectives:

- Introduce mandatory job planning.
- Link pay progression to performance against job plan.
- Improve organisation of consultants' time: each week to have ten programmed activities ("PAs") of four hours each.
- Relationship between private practice and NHS work governed by *Code of Conduct for Private Practice* (adherence required in order to qualify for clinical excellence awards).
- One extra PA (four hours) to be offered to NHS prior to undertaking private practice (adherence required in order to qualify for pay progression).

A copy of the *Code of Conduct for Private Practice* is available here:

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_085197](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085197)

## **ATTACHMENT: Background note on non-contracted hours**

A copy of the consultant contract's terms and conditions, which set out additional requirements around undertaking private practice (including the requirement to offer one extra PA to the NHS first) is available here:

[http://www.nhsemployers.org/SiteCollectionDocuments/Consultant\\_terms-conditions\\_version7\\_280308\\_aw.pdf](http://www.nhsemployers.org/SiteCollectionDocuments/Consultant_terms-conditions_version7_280308_aw.pdf)

Finally, guidance issued by the Department of Health in relation to the HR Framework for Independent Sector Treatment Centres is available here:

<http://www.nhsemployers.org/EmploymentPolicyAndPractice/ISTC/HR%20Frameworks/Pages/HR-frameworks-ISTCs.aspx>

### **Potential issues**

Under the Principles and Rules of Cooperation and Competition, all providers are expected to support, not impede patient choice, and compete fairly. If an NHS trust or an NHS foundation trust would place certain restrictions on consultants in relation to their private practice (e.g. prevent consultants from working for competitors), this may be seen as inconsistent with the Principles and Rules of Cooperation and Competition.