**Private Practice and Fee Paying Work**

**Policy**

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| 2.0 | 06/01/12 | To incorporate suggestions made at the LNC meeting on 05/12/11. |
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| 4.0 | 01/2015 | Name change from “Undertaking Private Practice And Fee Paying Work  Policy to Private Practice And Fee Paying Work Policy” |
| 5.0 | 05/2016 | Clarifying rules on external earnings while being paid by the Trust  Clarifying the application of the Policy to all members of staff |
| 5.1 | 12/22 | Extended for 6 months by ELFT Unite Branch |
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Introduction

**POLICY ON UNDERTAKING PRIVATE PRACTICE AND**

**FEE PAYING WORK**

**1. INTRODUCTION**

* 1. This policy sets out the policy of East London NHS Foundation Trust’s (hereinafter referred to as “The Trust”) on employees, including Consultants, undertaking private practice and fee paying work in NHS time. It is based on the Terms and Conditions – Consultants (England) 2003, the Code of Conduct for Private Practice, and other provisions of national terms and conditions of service and Trust policy as set out below.
  2. In 2003 the New Consultant Contract was introduced. A new Code of Conduct for Private Practice was developed as part of the contract negotiations and put in place. The Terms & Conditions – Consultants (England) 2003 and the Terms and Conditions of Service for Specialty Doctors in particular set out recommended standards of best practice for NHS doctors in England about their conduct in relation to private practice.

1.3 One of the key principles of the New Consultant Contract is that an individual cannot be paid twice for the same work. In view of this, non-NHS work, Private Practice and Fee Paying Work fall within this rubric and the terms will be used inter-changeably in the policy, with the understanding that the underlying principle remains the same.

1.4 All staff are required to read this document in full and familiarise themselves with the policy.

1.5 All medical practitioners (including those remaining on the Old Consultant Contract are expected to adopt and comply with this policy. Practitioners must be compliant with this policy if they wish to be considered for Clinical Excellence Awards.

# 2. SCOPE

2.1 This policy is applicable to all employees of the Trust including medical staff, temporary staff, staff on secondments and those with honorary contracts with the Trust.

**3. RELEVANT TERMS AND CONDITIONS OF SERVICE**

3.1 The Terms and Conditions of Service relating to private practice and fee paying work for consultants are set out in Appendix A of this policy. All consultants in the Trust are required to adhere to the provisions set down.

3.2 The Terms and Conditions of Service relating to private practice and fee paying work for Specialty Doctors are set out in Schedules 10, 11 and 12 of the Terms and Conditions of Service and are set out in Appendix B. All specialty doctors in the Trust are required to adhere to the provisions laid down.

3.3 The Trust’s Disciplinary Policy and Procedure sets out what constitutes gross misconduct. Paragraph 4 of Appendix 3 of the policy contains the following provision:

***Serious offences – Gross Misconduct***

***4.3 Defrauding the Trust***

*Any deliberate attempt to defraud the Trust or a member of staff or a patient or member of the public. This includes falsification of time records and particularly clocking offences. Please note: all suspected cases of fraud will be communicated to the Counter Fraud Department who may undertake an initial investigation.*

3.4 The Trust’s Standards of Business Conduct Policy sets out the arrangements for Outside/Additional employment in section 13. This is set out in Appendix C.

**4. POLICY**

4.1 In order to ensure that members of staff are not paid twice for the same period of time, they must not receive additional remuneration for work carried out for the Trust or any other organisation in the following circumstances:

a. while registered as sick

b. during any period of time for which they are being paid and when they would normally be considered as working for the Trust. Such periods include:

during the normal working day

during a period in which they are registered as being on-call

during periods of study leave

4.2 The provisions of 4.1 will also apply to Medical Practitioners authorised to carry out work under Section 12 of the Mental Health Act

4.3 The provisions of 4.1 will also apply to work carried out during periods of annual leave if by so carrying out the work, a member of staff fails to achieve the minimum annual leave laid down under the Working Time Regulations 1998 – ELFT rules and the Individual Agreement on Working Hours limits for Doctors in Training.

4.4 Members of staff are also required to adhere to the specific provisions of their staff group as set out in the appendices to this policy and elsewhere.

4.5 If any members of staff, including consultants, are thought to be operating outside of this policy, consideration will be given to making a referral to the Trust’s Local Counter Fraud Specialist (LCFS). Undertaking private practice/fee paying work in NHS time may constitute gross misconduct and will be dealt with in accordance with the Trust’s Counter Fraud Policy and Response Plan and Disciplinary Policy.

**5. PRIVATE PRACTICE**

5.1 For the purpose of this policy the term ‘private work’ includes private professional services and any fee paying services which a member of staff carries out for a third party.

Private work also includes any work undertaken which is incidental to the fee paying and private practice work but may not necessarily attract a fee for the specific task carried out. Such activity includes but is not limited to:

* making and receiving phone calls;
* booking appointments;
* typing reports including medical/legal reports;
* receiving and sending faxes and letters.

The above list is non-exhaustive.

**Consultants**

5.2 Where an individual consultant wishes to undertake private work and is not already committed to at least an 11 PA job plan (and the equivalent for Part-Time job plans with 1 additional PA pro rata), the Trust may offer an extra Direct Clinical Care PA to the appropriate group of specialists. This offer will be required to be accepted by the consultant concerned or somebody else within the group. Where the extra PA is declined, and the consultant continues to undertake the proposed private work, the individual will not be entitled to receive pay progression during the year in question.

5.3 Where the Trust decides not to offer extra PAs it may decide at a later date to do so and the same requirements will apply providing a reasonable period of notice is given consistent with the Terms and Conditions – Consultants (England) 2003 and associated Code of Conduct for Private Practice.

5.4 Where no extra PA is being offered, a consultant may undertake the proposed private practice without jeopardising pay progression.

5.5 Schedule 9 of the Terms and Conditions (Appendix A) states that except with the Trust’s prior agreement, a consultant may not use NHS facilities and staff for the provision of Private Professional Services or Fee Paying Services for another organisation and that this will be agreed as part of the Job Planning process.

**All practitioners**

5.6 The Trust has no provisions to run a private practice for in-patients or out-patients on any office premises. This is, therefore, not permitted by the Trust. However, in exceptional circumstances, and with the prior written approval of the Clinical Director, a practitioner may be allowed some work in relation to private practice when there is minimal disruption to the NHS, eg., an urgent or emergency call about a private patient. As a rule, any cumulative disruption greater than 15 minutes will mean that the Trust must be compensated in time.

5.7 Any work that is undertaken concerning a patient under the care of the Trust or residing within the catchment area that couldattract a fee, may be undertaken using Trust facilities, and can be undertaken within the normal working week. However, if the work could attract a fee and is being carried out at a time when the practitioner carrying it out is already being paid (see 4.1 - 4.3 above), no claim for payment may be made. Such work may be included in a practitioner’s normal duties; this will include participation in a Section 12 rota.

5.8 Any work undertaken for a fee that does not concern a patient under the Trust’s care should not be done in NHS time. Practitioners and other members of staff, such as administrative staff, are not permitted to use Trust premises or resources to carry out this work. A practitioner’s time and any employment of administrative staff must be outside of agreed job plan time and for Trust administrative staff undertaking private work, outside of NHS time. NHS secretarial support staff will not be used to support fee paying activities during the contractual working day.

5.9 Any documentation (letters and reports, etc.) relating to private patients must be held by a practitioner using his/her own equipment. Appointments to see the subjects of the reports must take place away from Trust premises. The position regarding storage of information in respect of non-Trust patient is outlined in Appendix F.

5.10 Should a practitioner, with the Trust’s permission, undertake Private Professional Services or Fee Paying Services in any of the Trust’s facilities, should the Trust decide to provide this in the future, the Practitioner must observe the relevant provisions in the ‘Code of Conduct for Private Practice’.

5.11 Where the Trust has agreed that NHS staff may assist a practitioner in providing Private Professional Services, or provide private services on the practitioner’s behalf, it is the practitioner’s responsibility to ensure that these staff are aware that the patient the work relates to has private status and that the work should not be done in NHS time.

5.12 Staff members have a responsibility to declare any additional income received from undertaking private work to HM Revenue and Customs as this income may be subject to tax deductions.

5.13 ***In the event that unauthorised private work is undertaken on Trust premises, there may be liabilities for which the Trust is not covered.***

**6. DISCLOSURE OF INFORMATION ABOUT PRIVATE COMMITMENTS**

6.1 In accordance with Schedule 9 of the Terms and Conditions, practitioners are required to inform their managers of any regular commitments for Private Professional Services or Fee Paying Services. This should include the planned location, timing and broad type of work involved. This information should be disclosed at least annually as part of the job planning process. Schedule 3 covers the job planning process.

6.2 The system of annual appraisal for all doctors requires an annual record to be made of of all professional external activities, paid or unpaid that are undertaken.

6.3 The terms and conditions of service for Specialty Doctors and Associate Specialists set out a requirement for Specialty Doctors and Associate Specialists to inform their managers of any regular commitments for Private Professional Services or Fee Paying Services.

6.4 The Trust’s Standards of Business Conduct Policy requires that all outside or additional employment must be approved by an individual’s Service Director or equivalent.

**7. SCHEDULING OF PRIVATE WORK OR FEE PAYING WORK.**

7.1 Where there would otherwise be a conflict or potential conflict of interest, NHS commitments must take precedence over private work.

7.2 Practitioners are responsible for ensuring that their non-NHS commitments do not conflict with their Programmed Activities.

7.3 All other members of staff, including administrative staff, are responsible for ensuring that their private commitments do not conflict with their NHS duties, which must take precedence.

7.4 Practitioners must not, during the course of their Programmed Activities, make arrangements to provide Private Professional or Fee Paying Services, nor ask any other member of staff to make such arrangements on their behalf.

7.5 The Code of Practice requires that private practice or fee paying work is only undertaken where the interests of the Trust and its patients are not detrimentally affected. The Trust requires that private practice or fee paying work is not undertaken during scheduled Direct Clinical Care PAs without the prior written agreement of the Clinical Director. The Trust will only agree to this where the private care or fee paying work requires the specialist facilities of the relevant department, and where time-shifting arrangements are formally agreed (see below), or where the income for the work is passed to the Trust.

7.6 Practitioners may undertake private practice or fee paying work in their own time, provided this does not interfere with their ability to discharge their contractual duties. The Trust does not wish to block practitioners from undertaking non-NHS work, as long as it has no or minimal impact on practitioners’ contractual duties.

7.7 Time shifting is crucial to securing the joint desire to retain and maintain the professionalism of practitioners. It will facilitate the accommodation of various non-NHS work carried out by practitioners, which may include the following: Private Professional Services, Fee Paying Work and other External Duties on patients who do not reside within the Trust’s catchment area. Time shifting can allow a practitioner to retain fees and at the same time, fully protect the capacity and effectiveness of the service. Time shifting occurs when non-NHS work is undertaken in place of scheduled activity, with the equivalent amount of scheduled activity built back into the job plan and undertaken without additional payment. Individual practitioners can, by prior written agreement with the Clinical Director, arrange to time shift work of up to one Programmed Activity per week on a regular basis in order to have flexibility to allow non-NHS work. The other principles of this policy will remain in force during this time-shifted period, for example with regard to use of Trust premises and staff. There must be clear and documented arrangement as to how the ‘shifted hours’ will be built back into the job plan, so that there is no detriment to the Trust.

7.8 Where such a time-shifting arrangement is agreed, it will be reviewed regularly and either party may end it, provided a reasonable period of notice is given consistent with the Terms and Conditions of service for the practitioner concerned.

7.9 Where the Trust wishes to schedule a practitioner’s activity to a time when they have a pre-notified non-NHS activity scheduled, the Trust will give a period of notice consistent with the appropriate Terms and Conditions of service to allow the practitioner to make arrangements to re-schedule his or her Private Professional Service activity. The Trust recognises the current limitations in the local private health sector and will endeavour to avoid using this provision.

**8. Information Governance Arrangements for Extra-Contractual Work (including category 2) or Reports and Supervisory Work Undertaken on Behalf of Professional Bodies**

8.1 This section sets out the requirements for assessments and reports whether in written or electronic form undertaken by individuals working for the Trust but not as part of their contractual duties. This includes:

* Court reports and assessments prepared by senior clinical and social care staff.
* Other report and records of supervisory work undertaken on behalf of professional governing bodies
* All other records of non-Trust contractual work

8.2 The aims of these information governance requirements are to safeguard the interests of the Trust, the employee and their clients. The requirements must be implemented systematically and without exception. The person undertaking this work is personally responsible for ensuring these arrangements are in place.

8.3 Under the Data Protection Act any person undertaking extra-contractual work (including Category 2 work) including the work noted in 8.1 above is designated as the “Data Controller” and as such is **personally** responsible for:

1. Ensuring registration with the Data Protection Registrar
2. Ensuring that clients are clear before the work is undertaken that the work is not carried out on behalf of the Trust and that if the client is also or has been a Trust patient that a copy of the report may be retained in their case notes if this is appropriate.
3. Ensuring that Trust notepaper, compliment slips etc are not used for this work
4. Ensuring that they personally have arrangements in place for providing access to relevant records on request from the client (e.g. not only to the reports themselves but also notes taken during their preparation).
5. Ensuring that the information is stored for the required period for health records, then destroyed or archived as necessary.
6. Ensuring that records are suitably and securely stored with due regard to confidentiality. This may be on Trust premises if the person is happy that the information is stored securely and separately from other Trust information.
7. Ensuring that they have adequate professional indemnity in place as the NHS indemnity scheme will not apply.
8. Ensuring that if Trust members of staff are asked to type up reports or other records,, that a written agreement is drawn up with the secretary concerned that confirms acceptance of and compliance with the confidentiality and storage arrangements as described above. This only applies for work carried out in connection with service users who are under the care of the Trust or may be in the future. For work which is not directly related to Trust patients, the consultant must make private secretarial arrangements.
9. Ensuring that when a person carrying out such extra-contractual work leaves the Trust’s employment, he or she continues to be personally responsible for all of the above requirements and must make arrangements either in the own home or with a new employer to store their records. **On no account should any records of non-contractual work be left on Trust premises after employment ceases.**

**9. ADDITIONAL GUIDELINES FOR ADMINISTRATIVE STAFF**

9.1 Administrative staff who are involved in the support of private practice are not permitted to carry out the following activities:

1. Conduct any private work during their contracted working hours while on Trust property (or at home if working from home or on sick leave);
2. Conduct any private work outside their contracted working hours while on Trust property without the prior written agreement of administration management;
3. Use any Trust equipment or services for private work, including computers, telephones, the internet, photocopiers, stationary, etc.;
4. Use any third party devices for private work within Trust property, including USB storage drives, portable hard drives, personal mobile phones (either for storage or data or calls) etc.

9.2 Where members of staff are currently receiving incoming calls for private work, arrangements must be made for these calls to be dealt with in a way that does not conflict with the provisions of 5.1 above.

**10. REFERENCES**

The Terms and Conditions – Consultants (England) 2003

Department of Health: A Code of Conduct for Private Practice, January 2004

<http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4100689>

**Appendix A – Extracts from the Terms and Conditions of Service – Consultants (England)**

**DEFINITIONS**

***Contractual and Consequential Services*** is the work that a consultant carries out by virtue of the duties and responsibilities set out in his or her job plan and any work reasonably incidental or consequential to those duties. These services may include:

* Direct Clinical Care
* Supporting Professional Activities
* Additional NHS Responsibilities
* External Duties

***Fee Paying Services:*** any paid professional, other than those falling within the definition of Private Professional Services, which a consultant carries out for a third party or for the employing organisation and which are not party of, nor reasonably incidental to, Contractual and Consequential Services. A third party for these purposes may be an organisation, corporation or individual, provided that they are acting in a health related professional capacity, or a provider or commissioner of public services. Examples of work that fall within this category can be found in Schedule 10 of the Terms and Conditions.

***Private Professional Services*** (also referred to as ‘private practice’): such services as include:

* The diagnosis or treatment of patients by private arrangement (including such diagnosis or treatment under section 65(2) of the National Health Service Act 1977), excluding fee paying services as described in Schedule 10 of the terms and conditions;
* Work in the general medical, dental or ophthalmic services under Part II of the National Health Service Act 1977 (except in respect of patients for whom a hospital medical officer is allowed a limited ‘list’, e.g. Members of the hospital staff.

**eXTRACT FROM schedule 8, paragraph 5 - Private Professional Services and Fee Paying Services**

Subject to the following provisions, a consultant will not undertake Private Professional Services or Fee Paying Services when on on-call duty. The exceptions to this rule are where:

* the consultant’s rota frequency is 1 in 4 or more frequent, his or her oncall duties have been assessed as falling within the category B described in Schedule 16, and the employing organisation has given prior approval for undertaking specified Private Professional Services or Fee Paying Services;
* the consultant has to provide emergency treatment or essential continuing treatment for a private patient. If the consultant finds that such work regularly impacts on his or her NHS commitments, he or she will make alternative arrangements to provide emergency cover for private patients.

**SCHEDULE 9 – PROVISIONS GOVERNING THE RELATIONSHIP BETWEEN NHS WORK, PRIVATE PRACTICE AND FEE PAYING SERVICES**

1. This Schedule should be read in conjunction with the ‘Code of Conduct for Private Practice’, which sets out standards of best practice governing the relationship between NHS work, private practice and fee paying services.

2. The consultant is responsible for ensuring that the provision of Private Professional Services or Fee Paying Services for other organisations does not:

* result in detriment of NHS patients or services;
* diminish the public resources that are available for the NHS.

**Disclosure of information about private commitments**

3. The consultant will inform his or her clinical manager of any regular commitments in respect of Private Professional Services or Fee Paying Services. This information will include the planned location, timing and broad type of work involved.

4. The consultant will disclose this information at least annually as part of the Job Plan Review. The consultant will provide information in advance about any significant changes to this information.

**Scheduling of work and job planning**

5. Where there would otherwise be a conflict or potential conflict of interest, NHS commitments must take precedence over private work. Subject to paragraphs 10 and 11 below, the consultant is responsible for ensuring that private commitments do not conflict with Programmed Activities.

6. Regular private commitments must be noted in the Job Plan.

7. Circumstances may also arise in which a consultant needs to provide emergency treatment for private patients during time when he or she is scheduled to be undertaking Programmed Activities. The consultant will make alternative arrangements to provide cover if emergency work of this kind regularly impacts on the delivery of Programmed Activities.

8. The consultant should ensure that there are arrangements in place, such that there can be no significant risk of private commitments disrupting NHS commitments, e.g. by causing NHS activities to begin late or to be cancelled. In particular where a consultant is providing private services that are likely to result in the occurrence of emergency work, he or she should ensure that there is sufficient time before the scheduled start of Programmed Activities for such emergency work to be carried out.

9. Where the employing organisation has proposed a change to the scheduling of a consultant’s NHS work, it will allow the consultant a reasonable period in line with Schedule 6, paragraph 2 to rearrange any private commitments. The employing organisation will take into account any binding commitments that the consultant may have entered into (e.g. leases). Should a consultant wish to reschedule private commitments to a time that would conflict with Programmed Activities, he or she should raise the matter with the clinical manager at the earliest opportunity.

**Scheduling private commitments whilst on-call**

10. The consultant will comply with the provisions in Schedule 8, paragraph 5 of these Terms and Conditions.

11. In addition, where a consultant is asked to provide emergency cover for a colleague at short notice and the consultant has previously arranged private commitments at the same time, the consultant should only agree to do so if those commitments would not prevent him or her returning to the relevant NHS site at short notice to attend an emergency. If the consultant is unable to provide cover at short notice it will be the employing organisation’s responsibility to make alternative arrangements.

**Use of NHS facilities and staff**

12. Except with the employing organisation’s prior agreement, a consultant may not use NHS facilities or NHS staff for the provision of Private Professional Services or Fee Paying Services for other organisations.

13. The employing organisation has discretion to allow the use of its facilities and will make it clear which facilities a consultant is permitted to use for private purposes and to what extent.

14. Should a consultant, with the employing organisation’s permission, undertake Private Professional Services or Fee Paying Services in any of the employing organisation’s facilities, the consultant should observe the relevant provisions in the ‘Code of Conduct for Private Practice’.

15. Where a patient pays privately for a procedure that takes place in the employing organisation’s facilities, that procedure should take place at a time that does not impact on normal services for NHS patients. Except in emergencies, such procedures should occur only where the patient has given a signed undertaking to pay any charges (or an undertaking has been given on the patient’s behalf) in accordance with the employing organisation’s procedures.

16. Private patients should normally be seen separately from scheduled NHS patients. Only in unforeseen and clinically justified circumstances should a consultant cancel or delay a NHS patient’s treatment to make way for his or her private patient.

17. Where the employing organisation agrees that NHS staff may assist a consultant in providing Private Professional Services, or provide private services on the consultant’s behalf, it is the consultant’s responsibility to ensure that these staff are aware that the patient has private status.

18. The consultant has an obligation to ensure, in accordance with the employing organisation’s procedures, that any patient whom the consultant admits to the employing organisation’s facilities is identified as private and that the responsible manager is aware of that patient’s status.

19. The consultant will comply with the employing organisation’s policies and procedures for private practice.

**Patient enquiries about private treatment**

20. Where, in the course of his or her duties, a consultant is approached by a patient and asked about the provision of Private Professional Services, the consultant may provide only such standard advice as has been agreed with the employing organisation for such circumstances.

21. The consultant will not during the course of his or her Programmed Activities make arrangements to provide Private Professional Services, nor ask any other member of staff to make such arrangements on his or her behalf, unless the patient is to be treated as a private patient of the employing organisation.

22. In the course of his/her Programmed Activities, a consultant should not initiate discussions about providing Private Professional Services for NHS patients, nor should the consultant ask other staff to initiate such discussions on his or her behalf.

23. Where a NHS patient seeks information about the availability, or waiting times, for NHS services and/or Private Professional Services, the consultant is responsible for ensuring that any information he or she provides, or arranges for other staff to provide on his or her behalf is accurate and up-to-date.

**Promoting improved patient access to NHS care**

24. Subject to clinical considerations, the consultant is expected to contribute as fully as possible to reducing waiting times and improving access and choice for NHS patients. This should include ensuring that patients are given the opportunity to be treated by other NHS colleagues or by other providers where this will reduce their waiting time and facilitating the transfer of such patients.

**Increasing NHS capacity**

25. The consultant will make all reasonable efforts to support initiatives to increase NHS capacity, including appointment of additional medical staff and changes to ways of working.

**SCHEDULE 10 – FEE PAYING SERVICES**

1. Fee Paying Services are services that are not part of Contractual or Consequential Services and not reasonably incidental to them. Fee Paying Services include:

a. work on a person referred by a Medical Adviser of the Department for Work and Pensions, or by an Adjudicating Medical Authority or a Medical Appeal Tribunal, in connection with any benefits administered by an Agency of the Department for Work and Pensions;

b. work for the Criminal Injuries Compensation Board, when a special examination is required or an appreciable amount of work is involved in making extracts from case notes;

c. work required by a patient or interested third party to serve the interests of the person, his or her employer or other third party, in such non-clinical contexts as insurance, pension arrangements, foreign travel, emigration, or sport and recreation.(This includes the issue of certificates confirming that inoculations necessary for foreign travel have been carried out, but excludes the inoculations themselves. It also excludes examinations in respect of the diagnosis and treatment of injuries or accidents);

d. work required for life insurance purposes;

e. work on prospective emigrants including X-ray examinations and blood tests;

f. work on persons in connection with legal actions other than reports which are incidental to the consultant’s Contractual and Consequential Duties, or where the consultant is giving evidence on the consultant’s own behalf oron the employing organisation’s behalf in connection with a case in which the consultant is professionally concerned;

g. work for coroners, as well as attendance at coroners' courts as medical witnesses;

h. work requested by the courts on the medical condition of an offender or defendant and attendance at court hearings as medical witnesses, otherwise than in the circumstances referred to above;

i. work on a person referred by a medical examiner of HM Armed Forces Recruiting Organisation;

j. work in connection with the routine screening of workers to protect them or the public from specific health risks, whether such screening is a statutory obligation laid on the employing organisation by specific regulation ora voluntary undertaking by the employing organisation in pursuance of its general liability to protect the health of its workforce;

k. occupational health services provided under contract to other NHS, independent or public sector employers;

l. work on a person referred by a medical referee appointed under the Workmen's Compensation Act 1925 or under a scheme certified undersection 31 of that Act;

m. work on prospective students of universities or other institutions of further education, provided that they are not covered by Contractual and Consequential Services. Such examinations may include chest radiographs;

n. examinations and recommendations under Part II of the Mental Health Act 1983 (except where the patient is an in-patient), where it follows examination at an out-patient clinic or where given as a result of a domiciliary consultation: if given by a doctor who is not on the staff of the hospital where the patient is examined;

or if the recommendation is given as a result of a special examination carried out at the request of a local authority officer at a place other than a hospital or clinic administered by a NHS organisation;

o. services performed by members of hospital medical staffs for government departments as members of medical boards;

p. work undertaken on behalf of the Employment Medical Advisory Service in connection with research/survey work, i.e. the medical examination of employees intended primarily to increase the understanding of the cause, other than to protect the health of people immediately at risk (except where such work falls within Contractual and Consequential Services);

q. completion of Form B (Certificate of Medical Attendant) and Form C (Confirmatory Medical Certificate) of the cremation certificates;

r. examinations and reports including visits to prison required by the Prison Service which do not fall within the consultant’s Contractual and Consequential Services and which are not covered by separate contractual arrangements with the Prison Service;

s. examination of blind or partially-sighted persons for the completion of form BD8, except where the information is required for social security purposes, or an Agency of the Department for Work and Pensions, or the Employment Service, or the patient's employer, unless a special examination is required, or the information is not readily available from knowledge of the case, or an appreciable amount of work is required to extract medically correct information from case notes

2. Fee Paying Services may also include work undertaken by public health consultants, including services to a local or public authority of a kind not provided by the NHS, such as:

a. work as a medical referee (or deputy) to a cremation authority and signing confirmatory cremation certificates;

b. medical examination in relation to staff health schemes of local authorities and fire and police authorities;

c. lectures to other than NHS staff;

d. medical advice in a specialised field of communicable disease control;

e. work for water authorities, including medical examinations in relation to staff health schemes;

f. attendance as a witness in court;

g. medical examinations and reports for commercial purposes, e.g. certificates of hygiene on goods to be exported or reports for insurance companies;

h. advice to organisations on matters on which the consultant is acknowledged to be an expert;23

i. examinations and recommendations under Part II of the Mental Health Act 1983.

**Appendix B – Extracts from the Terms and COnsitions of Service for Specialty Doctors – England (2008)**

**SCHEDULE 10 – PROVISIONS GOVERNING THE RELATIONSHIP BETWEEN NHS WORK, PRIVATE PRACTICE AND FEE PAYING SERVICES**

1. This Schedule should be read in conjunction with the ‘Code of Conduct for Private Practice’, which sets out standards of best practice governing the relationship between NHS work, private practice and fee paying services.

2. The doctor is responsible for ensuring that the provision of Private Professional Services or Fee Paying Services for other organisations does not:

* result in detriment of NHS patients or services;
* diminish the public resources that are available for the NHS.

**Disclosure of Information about Private Commitments**

3. The doctor will inform his or her clinical manager of any regular commitments in respect of Private Professional Services or Fee Paying Services. This information will include the planned location, timing and broad type of work involved.

4. The doctor will disclose this information at least annually as part of the Job Plan Review. The doctor will provide information in advance about any significant changes to this information.

**Scheduling of Work and Job Planning**

5. Where there would otherwise be a conflict or potential conflict of interest, NHS commitments must take precedence over private work. Subject to paragraphs 10 and 11 below, the doctor is responsible for ensuring that private commitments do not conflict with Programmed Activities.

6. Regular private commitments must be noted in the Job Plan.

7. Circumstances may also arise in which a doctor needs to provide emergency treatment for private patients during time when he or she is scheduled to be undertaking Programmed Activities. The doctor will make alternative arrangements to provide cover if emergency work of this kind regularly impacts on the delivery of Programmed Activities.

8. The doctor should ensure that there are arrangements in place, such that there can be no significant risk of private commitments disrupting NHS commitments, e.g. by causing NHS activities to begin late or to be cancelled. In particular where a doctor is providing private services that are likely to result in the occurrence of emergency work, he or she should ensure that there is sufficient time before the scheduled start of Programmed Activities for such emergency work to be carried out.

9. Where the employing organisation has proposed a change to the scheduling of a doctor’s NHS work, it will allow the doctor a reasonable period in line with Schedule 7, to rearrange any private commitments. The employing organisation will take into account any binding commitments that the doctor may have entered into (e.g. leases). Should a doctor wish to reschedule private commitments to a time that would conflict with Programmed Activities, he or she should raise the matter with the clinical manager at the earliest opportunity.

**Scheduling Private Commitments Whilst On-Call**

10. The doctor will comply with the provisions in Schedule 9 of these Terms and Conditions of Service.

11. In addition, where a doctor is asked to provide emergency cover for a colleague at short notice and the doctor has previously arranged private commitments at the same time, the doctor should only agree to do so if those commitments would not prevent him or her returning to the relevant NHS site at short notice to attend an emergency. If the doctor is unable to provide cover at short notice it will be the employing organisation’s responsibility to make alternative arrangements.

**Use of NHS Facilities and Staff**

12. xcept with the employing organisation’s prior agreement, a doctor may not use NHS facilities or NHS staff for the provision of Private Professional Services or Fee Paying Services for other organisations.

13. The employing organisation has discretion to allow the use of its facilities and will make it clear which facilities, if any, a doctor is permitted to use for private purposes and to what extent.

14. Should a doctor, with the employing organisation’s permission, undertake Private Professional Services or Fee Paying Services in any of the employing organisation’s facilities, the doctor should observe the relevant provisions in the ‘Code of Conduct for Private Practice’.

15. Where a patient pays privately for a procedure that takes place in the employing organisation’s facilities, that procedure should take place at a time that does not impact on normal services for NHS patients. Except in emergencies, such procedures should occur only where the patient has given a signed undertaking to pay any charges (or an undertaking has been given on the patient’s behalf) in accordance with the employing organisation’s procedures.

16. Private patients should normally be seen separately from scheduled NHS patients. Only in unforeseen and clinically justified circumstances should a doctor cancel or delay a NHS patient’s treatment to make way for his or her private patient.

17. Where the employing organisation agrees that NHS staff may assist a doctor in providing Private Professional Services, or provide private services on the doctor’s behalf, it is the doctor’s responsibility to ensure that these staff are aware that the patient has private status.

18. The doctor has an obligation to ensure, in accordance with the employing organisation’s procedures, that any patient whom the doctor admits to the employing organisation’s facilities is identified as private and that the responsible manager is aware of that patient’s status.

19. The doctor will comply with the employing organisation’s policies and procedures for private practice.

**Patient Enquiries about Private Treatment**

20. Where, in the course of his or her duties, a doctor is approached by a patient and asked about the provision of Private Professional Services, the doctor may provide only such standard advice as has been agreed with the employing organisation for such circumstances.

21. The doctor will not during the course of his or her Programmed Activities make arrangements to provide Private Professional Services, nor ask any other member of staff to make such arrangements on his or her behalf, unless the patient is to be treated as a private patient of the employing organisation.

22. In the course of his/her Programmed Activities, a doctor should not initiate discussions about providing Private Professional Services for NHS patients, nor should the doctor ask other staff to initiate such discussions on his or her behalf.

23. Where a NHS patient seeks information about the availability, or waiting times, for NHS services and/or Private Professional Services, the doctor is responsible for ensuring that any information he or she provides, or arranges for other staff to provide on his or her behalf is accurate and up-to-date.

**Promoting Improved Patient Access to NHS Care**

24. Subject to clinical considerations, the doctor is expected to contribute as fully as possible to reducing waiting times and improving access and choice for NHS patients. This should include ensuring that patients are given the opportunity to be treated by other NHS colleagues or by other providers where this will reduce their waiting time and facilitating the transfer of such patients.

**Increasing NHS Capacity**

25. The doctor will make all reasonable efforts to support initiatives to increase NHS capacity, including appointment of additional medical staff and changes to ways of working.

**SCHEDULE 11 – FEE PAYING SERVICES**

1. Fee Paying Services are services that are not part of Contractual or Consequential Services and not reasonably incidental to them. Fee Paying Services include:

a. Work on a person referred by a Medical Adviser of the Department for Work and Pensions, or by an Adjudicating Medical Authority or a Medical Appeal Tribunal, in connection with any benefits administered by an Agency of the Department for Work and Pensions;

b. Work for the Criminal Injuries Compensation Board, when a special examination is required or an appreciable amount of work is involved in making extracts from case notes;

c. Work required by a patient or interested third party to serve the interests of the person, his or her employer or other third party, in such non-clinical contexts as insurance, pension arrangements, foreign travel, emigration, or sport and recreation. (This includes the issue of certificates confirming that inoculations necessary for foreign travel have been carried out, but excludes the inoculations themselves. It also excludes examinations in respect of the diagnosis and treatment of injuries or accidents);

d. Work required for life insurance purposes;

e. Work on prospective emigrants including X-ray examinations and blood tests;

f. Work on persons in connection with legal actions other than reports which are incidental to the consultant’s Contractual and Consequential Duties, or where the consultant is giving evidence on the consultant’s own behalf or on the employing organisation’s behalf in connection with a case in which the consultant is professionally concerned;

g. Work for coroners, as well as attendance at coroners' courts as medical witnesses;

h. Work requested by the courts on the medical condition of an offender or defendant and attendance at court hearings as medical witnesses, otherwise than in the circumstances referred to above;

i. Work on a person referred by a medical examiner of HM Armed Forces Recruiting Organisation;

j. Work in connection with the routine screening of workers to protect them or the public from specific health risks, whether such screening is a statutory obligation laid on the employing organisation by specific regulation or a voluntary undertaking by the employing organisation in pursuance of its general liability to protect the health of its workforce;

k. Occupational health services provided under contract to other NHS, independent or public sector employers;

l. Work on a person referred by a medical referee appointed under the Workmen's Compensation Act 1925 or under a scheme certified under Section 31 of that Act;

m. Work on prospective students of universities or other institutions of further education, provided that they are not covered by Contractual and Consequential Services. Such examinations may include chest radiographs;

2. In examinations and recommendations under Part II of the Mental Health Act 1983 (except where the patient is an in-patient), where it follows examination at an out-patient clinic or where given as a result of a domiciliary consultation:

a. If given by a doctor who is not on the staff of the hospital where the patient is examined; or

b. If the recommendation is given as a result of a special examination carried out at the request of a local authority officer at a place other than a hospital or clinic administered by a NHS organisation;

c. Services performed by members of hospital medical staffs for government departments as members of medical boards;

d. Work undertaken on behalf of the Employment Medical Advisory Service in connection with research/survey work, i.e. the medical examination of employees intended primarily to increase the understanding of the cause, other than to protect the health of people immediately at risk (except where such work falls within Contractual and Consequential Services);

1. Completion of Form B (Certificate of Medical Attendant) and Form C (Confirmatory Medical Certificate) of the cremation certificates;
2. Examinations and reports including visits to prison required by the Prison Service which do not fall within the consultant’s Contractual and Consequential Services and which are not covered by separate contractual arrangements with the Prison Service;

g. Examination of blind or partially-sighted persons for the completion of form BD8, except where the information is required for social security purposes, or an Agency of the Department for Work and Pensions, or the Employment Service, or the patient's employer, unless a special examination is required, or the information is not readily available from knowledge of the case, or an appreciable amount of work is required to extract medically correct information from case notes.

3. Fee Paying Services may also include work undertaken by public health consultants, including services to a local or public authority of a kind not provided by the NHS, such as:

a. Work as a medical referee (or deputy) to a cremation authority and signing confirmatory cremation certificates;

b. Medical examination in relation to staff health schemes of local authorities and fire and police authorities;

c. Lectures to other than NHS staff;

d. Medical advice in a specialised field of communicable disease control;

e. Work for water authorities, including medical examinations in relation to staff health schemes;

f. Attendance as a witness in court;

g. Medical examinations and reports for commercial purposes, eg., certificates of hygiene on goods to be exported or reports for insurance companies;

h. Advice to organisations on matters on which the consultant is acknowledged to be an expert;

i. Examinations and recommendations under Part II of the Mental Health Act 1983.

**SCHEDULE 12 – PRINCIPLES GOVERNING RECEIPT OF ADDITIONAL FEES**

1. In the case of the following services, the doctor will not be paid an additional fee, or - if paid a fee - the doctor must remit the fee to the employing organisation:

* any work in relation to the doctor’s Contractual and Consequential Services;
* duties which are included in the doctor’s Job Plan, including any Additional Programmed Activities which have been agreed with the employing organisation;
* Fee Paying Services for other organisations carried out during the doctor’s Programmed Activities, unless the work involves minimal disruption and the employing organisation agrees that the work can be done in NHS time without the employer collecting the fee;
* domiciliary consultations carried out during the doctor’s Programmed Activities;
* lectures and teaching during the course of the doctor’s clinical duties;
* lectures and teaching that are not part of the doctor’s clinical duties, but are undertaken during the doctor’s Programmed Activities.

This list is not exhaustive and as a general principle (save as set out in paragraph 2 below), work undertaken during Programmed Activities will not attract additional fees.

2. Services for which the doctor can retain any fee that is paid:

* Fee Paying Services carried out in the doctor’s own time, or during annual or unpaid leave;
* Fee Paying Services carried out during the doctor’s Programmed Activities that involve minimal disruption to NHS work and which the employing organisation agrees can be done in NHS time without the employer collecting the fee;
* domiciliary consultations undertaken in the doctor’s own time, though it is expected that such consultations will normally be scheduled as part of Programmed Activities;+
* Private Professional Services undertaken in the employing organisation’s facilities and with the employing organisation’s agreement during the doctor’s own time or during annual or unpaid leave;
* Private Professional Services undertaken in other facilities during the doctor’s own time, or during annual or unpaid leave;
* lectures and teaching that are not part of the doctor’s clinical duties and are undertaken in the doctor’s own time or during annual or unpaid leave.

This list is not exhaustive but as a general principle the doctor is entitled to the fees for work done in his or her own time, or during annual or unpaid leave. **Appendix C – Extract from Standards of Business Conduct Policy**

**13 - OUTSIDE/ADDITIONAL EMPLOYMENT**

13.1 NHS employees are advised not to engage in outside/additional employment which may conflict with their NHS work or be detrimental to it. All staff should complete the declaration of interest form attached to this policy at Appendix G

13.2 In addition, under the Working Time Regulations, the Trust has a responsibility to ensure that staff, including bank staff, are not working in excess of an average of 48 hours a week, in their Trust role or in a combination of their Trust role and any other employment unless they have signed the Individual Working Hours Agreement form. Providing that the Individual Working Hours Agreement form is signed, a member of staff may work up to a maximum of 60 hours per week.

13.3 Staff are required to declare any additional employment, using the form attached at Appendix G. See Appendix J for ELFT’s Working Time Regulations Rules and Individual Agreement on working hours limits for all staff.

13.4 Outside/additional employment must be approved by an individual’s Service Director or equivalent using the declaration of interest form attached to this policy at Appendix G. If it is judged that the interests of service users may be harmed by outside employment, or if the Working Time Regulations would be exceeded, then approval will not be given.

13.5 **Private Practice** – Consultants are permitted to carry out private practice subject to the terms of their contract and job plan. Other staff are permitted to undertake private practice providing that it is not undertaken within their time contracted to the Trust and follows the rules for outside employment. Please refer to the Trust’s Policy on Undertaking Private Practice and Fee Paying Work for more information, which is available on the intranet.

13.6 **Locum Work** – by medical staff in training should not be undertaken if it would result in breach of their contracted work