

**POLICY ON UNDERTAKING PRIVATE PRACTICE AND FEE PAYING
WORK**

Version 3

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Introduction

POLICY ON UNDERTAKING PRIVATE PRACTICE AND FEE PAYING WORK

1. INTRODUCTION

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 (Appendix A), set out recommended standards of best practice for NHS consultants in England about their conduct in relation to private practice (Schedule 9) (Appendix B). The Terms and Conditions – Consultants (England) 2003 includes the provisions governing the relationship between NHS work, private practice and fee paying services (Schedule 10) (Appendix C) and defines fee paying services and private professional services (private practice).

This document sets out East London NHS Foundation Trust's (herein after referred to as "The Trust") policy 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 and the Code of Conduct for Private Practice.

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.

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

All practitioners (including those remaining on the old contract) are expected to adopt and comply with the Code of Practice. Practitioners will need to be compliant with the Code if they wish to be considered for Clinical Excellence awards.

2. SCOPE

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

3. DEFINITIONS

The Terms and Conditions – Consultants (England) 2003 define **Fee Paying Services** as 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 (Appendix C).

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.

Private Professional Services (also referred to as 'private practice') includes services such as:

- 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).

For the purpose of this policy the term 'private work' includes private professional services and any fee paying services which a consultant 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.

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.

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.

Whilst there is no extra PA being offered the consultant may undertake the proposed private practice without jeopardising pay progression.

4. THE POLICY

Schedule 9 of the Terms and Conditions (Appendix B) 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.

The Trust has no provisions to run a private practice for both in-patients and out-patients on any office premises. This is, therefore, not permitted by the Trust. However, in exceptional circumstances, and with the prior 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.

Any work that is undertaken concerning a patient under the care of the Trust or residing within the catchment area, and attracting a fee, may be undertaken using Trust facilities, and can be undertaken within the normal working week. There is no obligation for a Consultant to undertake fee paying work on patients under the care of the Trust, or those living in the catchment area of the Trust, but not under the care of the Trust. So, a Consultant may choose not to do it and pass such a case onto another Consultant. Again, a Consultant who does such work, can do it using Trust facilities, and can be undertaken within normal working hours. The Trust reserves the right to request details of the time taken to do such work and the income generated from this fee paying work for which permission has been granted.

Any work undertaken for a fee that does not concern a patient under the Trust's care should not be done in NHS time. Consultants and other members of staff, such as administrative staff, are not permitted to use Trust premises or resources to carry out this work. The consultant's time and any employment of administrative staff must be outside of agreed job plan time and in respect of 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.

Any documentation (letters and reports, etc.) relating to private patients must be held by the consultant 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.

Should a consultant, 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 Consultant must observe the relevant provisions in the 'Code of Conduct for Private Practice'.

Where the Trust has agreed 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 the work relates to have private status and should not be done in NHS time.

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

There may be liabilities for which the Trust is not covered, in the event unauthorised private work is undertaken on Trust premises.

5. DISCLOSURE OF INFORMATION ABOUT PRIVATE COMMITMENTS

In accordance with Schedule 9 of the Terms and Conditions, consultants are required to inform his or her clinical manager of any regular commitments in respect of 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. SCHEDULING OF PRIVATE WORK OR FEE PAYING WORK.

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

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

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

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

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. As part of this the Trust will insist that private practice or fee paying work is not undertaken during scheduled Direct Clinical Care PAs without the prior 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.

Consultants 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 consultants from undertaking non-NHS work, as long as it has no or minimal impact on consultants' contractual duties.

Time shifting is crucial to securing the joint desire to retain and maintain the professionalism of consultants. It will facilitate the accommodation of various non-NHS work carried out by consultants, which 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, for consultants on the new contract, and where applicable, allow the consultant to retain the fees and fully protect the capacity and effectiveness of the service. It 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 consultants can, by prior agreement with the Clinical Director, arrange to time shift work 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 arrangement as to how the 'shifted hours' will be built back into the job plan, so that there is no detriment to the Trust.

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 – Consultants (England) 2003 and the associated Code of Conduct for Private Practice.

Where the Trust wishes to schedule a consultant'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 Terms and Conditions – Consultants (England) 2003 and Code of Conduct for Private Practice to allow the consultant to make arrangements to re-schedule their Private Professional Service activity. The Trust recognises the current limitations in the local private health sector and will endeavour to avoid using this provision.

Any member of staff, including consultants, operating outside of this policy, consideration will be given to being referred 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.

7. GUIDELINES FOR ADMINISTRATIVE STAFF

Administration staff are not permitted to do the following:

- a) Conduct any private work during their contracted working hours while on Trust property (or at home if working from home or on sick leave);
- b) Conduct any private work outside their contracted working hours while on Trust property without prior agreement of administration management;
- c) Use any Trust equipment or services for private work, including computers, telephones, the internet, photocopiers, stationary, etc.;
- d) 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.

Note. Where 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 above 4 rules.

8. 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 - TERMS & CONDITIONS

Please refer to the following link to access the Terms & Conditions: <..\National Documents\Consultants Terms and Conditions January2004.pdf>

APPENDIX B – 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, eg., 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 (Appendix C) 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 (Appendix E).
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.

APPENDIX C - 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 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;

- I. 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);
 - e. Completion of Form B (Certificate of Medical Attendant) and Form C (Confirmatory Medical Certificate) of the cremation certificates;
 - f. 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.

APPENDIX D - SCHEDULE 6 – PARAGRAPH 2 - ASSOCIATED DUTIES AND RESPONSIBILITIES

A consultant is responsible for carrying out any work related to and reasonably incidental to the duties set out in their Job Plan such as:

- the keeping of records and the provision of reports
- the proper delegation of tasks
- maintaining skills and knowledge.

APPENDIX E – 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.

APPENDIX F - INFORMATION GOVERNANCE ARRANGEMENTS FOR EXTRA-CONTRACTUAL WORK (INCLUDING CATEGORY 2) OR REPORTS AND SUPERVISORY WORK UNDERTAKEN ON BEHALF OF PROFESSIONAL BODIES

Introduction

This document refers to 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 refers to:

- 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

The information governance requirements for this work to date have been somewhat ad hoc and there is a need to clarify the position in order to safeguard the interests of the Trust, the employee and their clients.

The requirements are straightforward but must be implemented systematically and without exception. The key point is that the person undertaking this work is personally responsible for ensuring these arrangements are in place, not the Trust.

Requirements

Under the Data Protection Act any person undertaking extra-contractual work (including Category 2 work) as listed above is 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 they are not carrying out this work on behalf of the Trust and/or 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 **never** used for this work
4. Ensuring that they personally have arrangements in place for providing access to relevant records on request (e.g. not only the reports themselves but also notes taken during preparation for example) from the client.
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. Where secretarial staff are asked to type up reports or other records, the person should draw up a written agreement with the secretary concerned that they accept and will comply with the confidentiality and storage arrangements as described above. This only applies for 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. When a person leaves the Trust's employ he/she continues to be personally responsible for all of the above requirements and must make arrangements either in their own home or with their new employer to store their records. **On no account should any records of non-contractual work be left on Trust premises after employment ceases.**

To register as a Data Controller, go to www.ico.gov.uk