

Short Life Working Group on GP Out of Hours Terms and Conditions - Report to National Out of Hours Review

1. Short Life Working Group - Composition and Remit

1.1 A Short Life Working Group was set up in August 2015 comprising representatives from MSG, NHS Greater Glasgow and Clyde, NHS Lothian, NHS Lanarkshire, NHS Borders and BMA Scotland. The Group was chaired by Ian Reid, MSG Secretary. The Group was established as part of the National Review of Out of Hours, chaired by Sir Lewis Ritchie. Details of the membership are set out in Appendix 1

1.2 The group's remit was to consider good practice in terms and conditions for GPs working out of hours, with a particular emphasis on the extent to which terms and conditions could be used to make working in this service more attractive. The group was not tasked with discussing pay rates.

1.3 This is within the context of recent Her Majesty's Tax and Revenue requiring GPs working out of hours to be considered as workers for tax purposes.

2. Areas for Discussion

2.1. Discussion at the Group focussed on 4 main areas:

- Models of Engagement
- Terms and Conditions
- Performers List
- Superannuation

2.2 Having reviewed the contractual arrangements in place for both sessional and salaried doctors, the Group was of the view that in order to enhance out of hours services and their sustainability, efforts should be made to streamline and standardise these arrangements. In addition the group thought that employers should take the opportunity in implementing the overall recommendations of the national review to seek to introduce greater commonality in contractual arrangements with a view to making out of hours services more attractive and thus enabling better recruitment and retention. This would be conducted in partnership with GP representatives, and might include further consideration on a pan Scotland basis. The Group recognised that although rates of pay were not within its remit, the differentials in pay lead to some competition for GP services within geographical areas between NHS Boards in relation to services provided on a sessional basis. Some consideration may be required to look at ways of harmonising arrangements within the resources available for out of hours services.

3. Board Survey

3.1 In relation to the first two areas a survey of NHS Boards in Scotland was undertaken to establish:

- a) what models Boards use in engaging GPs for the Out of Hours service
- b) what terms and conditions are in force for both salaried and sessional GPs across Scotland

3.2 In addition to the four Boards on the Short Life Group, returns were received Ayrshire and Arran, Highland and Tayside.

3.3 In relation to models of engagement, in Scotland doctors are engaged to provide Out of Hours Services under a variety of arrangements, including:

- **Independent Practitioners** under a contract for the provisions of Services – treated as employees for tax purposes only, with Tax, NI, and superannuation deducted at source. No rights to annual or other leave or any other rights associated with employed status.
- **Bank workers** - engaged on an as and when basis, with associated rights to annual and other leave. May also have access to other beneficial contractual provisions. Tax, NI, and superannuation are deducted at source.
- Engaged as **Private Limited Companies** (can be as individual or through consortia). In this case doctors are effectively treated as self employed contractors, with no rights to annual or other leave or any other rights associated with employed status. Tax, NI and superannuation are not deducted at source and the full agreed hourly fee is paid direct to doctors through PLCs. They are then responsible for their own arrangements vis a vis Tax.
- **Agencies** – Contract is between Boards and agencies, not individual doctors. Doctors have no rights to annual or other leave or any other rights associated with employed status. Fees are paid direct to agency gross of tax, NI and superannuation. Doctors and agencies then have their own arrangement.

3.4 From those Boards who provided returns the most common form of engagement with sessional GPs is as Independent Contractors under a contract for the provision of service treated as employees for tax purposes. Only NHS Greater Glasgow & Clyde has engaged doctors on bank arrangements. Ayrshire and Arran and Highland engage with doctors using Private Limited companies as a vehicle for service provision.

4. Differences in Terms and conditions – Sessional GPs

4.1 Information was requested on terms and conditions for both sessional and salaried GPs. In particular three areas discussed by the Group in the context of making out of hours work more attractive to GPs working on a sessional basis were looked at in terms of TCS. These were:

- Granting statutory annual leave as a contractual entitlement

- Providing CNORIS Indemnity cover to GPs working on the out of hours service
- Providing Study Leave/SPA time as part of the terms and conditions

4.2 In relation to **annual leave**, only Greater Glasgow and Clyde provide this as a contractual entitlement, linked to the fact that they are the only Board of those providing returns to operate a bank arrangement. In terms of **Indemnity**, Glasgow, Borders and Fife cover this, while Lothian and Lanarkshire do not. In relation to **study leave or SPA time**, there was no evidence of this being provided to sessional GPs in any of the contracts.

4.3 While there is a good deal of commonality in the terms of conditions (as opposed to pay) for GPs working in Out of Hours across Scotland. There is clearly potential for some standardisation in these contractual provisions.

4.4 If creating common terms and conditions for Out of Hours GP services across Scotland were to be an objective then there are a number of areas that could be standardised across the various contracts. The primary area of variance is however in pay rates and the Group was not tasked with looking at the position across Scotland in relation to these. Unless there is some discussion on pay, looking at terms and conditions on their own may not be of benefit to boards. The risk is that additional benefits are provided to doctors without any quid pro for Boards in terms of increasing the attractiveness of working out of hours and filling shifts.

4.5 Rather than pursuing good practice by standardising terms and conditions across all boards, another way of looking at this might be that Boards should consider what good practice looks like in relation to the models of engagement they use.

4.6 Thus, if Boards were to use the bank model, granting statutory annual leave might be considered good practice on the basis that other bank workers receive such an entitlement. This would not however necessarily be the case for Boards whose model of engagement is based on independent contractors who are treated as employees for tax purposes only. Standardising the contractual arrangements in line with the Glasgow bank arrangements in relation to leave entitlements, would have clear benefits to doctors but would result in additional costs for Boards.

4.7 There was less of a relationship between models of engagement and the provision of indemnity cover, with some boards providing cover whether they use bank or independent contractor models.

4.8 On creating additional provision for study leave and SPA time for GPs working out of hours, the issue would be the extent to which this would increase the attractiveness of working in out of hours compared to the potential loss of service delivery associated with it.

4.9 It is accepted that there is a potential debate to be had on the link between models of engagement, terms and conditions and employment status and although there was some discussion on this, the Group did not take a position.

5. Private Limited Companies

5.1 There was some discussion within the Group, about the policy position regarding NHS Boards contracting directly with Private Limited Companies. In August, 2012, guidance was circulated by the Cabinet Secretary for Finance, Employment, and Sustainable Growth on the tax arrangements of Scottish Public Sector Workers. The purpose of the guidance was to remind employing authorities that everyone employed or appointed by the Government or who work on public sector business must do so within the tax system, whether that is through the Payroll having tax deducted at source, or in the case of consultants, contractors or temporary workers, through arrangements which ensure that tax liabilities are paid in full.

5.2 This guidance is attached at Appendix 2. In the case of contracting with GPs through their own limited company, the worker must consider the intermediaries legislation, known as IR35. This legislation prevents people who would be classed as an employee if the company was not in place from paying less tax by operating through a "personal service company" than by being engaged directly by the organisation itself. In these circumstances the worker must treat the money from that contract as earnings and pay PAYE tax and national insurance contributions on the money. The guidance sets out the steps required by Scottish Public Bodies to seek assurance on this.

5.3 Therefore it would seem provided this guidance is followed it is possible for NHS Boards to contract with GPs providing out of hours services in this way.

6. Terms and Conditions - Salaried GPs

6.1 All Boards who made a return employ salaried GPs to a greater or lesser extent, with the exception of Ayrshire and Arran, who do not have any salaried GPs providing this service.

6.2 Unlike almost all other main groups of staff in NHS Scotland, there is no nationally agreed set of terms and conditions for salaried GPs across Scotland.

6.3 From the returns provided, the most detailed and recently updated contractual arrangements seem to be those in Lanarkshire. The Lanarkshire contract contains both Contracts of Employment and Terms and Conditions. Glasgow has drafted a revised set of salaried arrangements which are based almost entirely on the Lanarkshire arrangements. The revised Glasgow contract has not been agreed or signed off and does not have pay rates attached to it.

6.4 Both of these contracts are heavily based on the UK level model contract and if it were decided that a national set of terms and conditions for salaried GPs should

be created these could form the basis for any discussion. However, given that these doctors are employees, moving to standardised terms and conditions implies moving towards standardised pay rates. This would require careful consideration, financial modelling and negotiation.

7. Performers List

7.1 As things stand doctors providing Out of Hours services are required to be on Performers Lists held by the Board in whose area that service is being provided. Only doctors who have qualified as General Practitioners are permitted to go on these Lists. Two areas discussed by the Group were:

- The possibility of moving from locally held Performers Lists to one national list
- The possibility of allowing doctors who, although qualified, are not qualified as General Practitioners to be included on the List and to therefore provide Out of Hours services.

7.2 In relation to the former, there was broad agreement within the Group that moving to one national list would be beneficial, as this would avoid duplication of effort and unnecessary expense for doctors who wish to provide services to more than one Board. To some extent a national list already exists, held by NHS National Services. It was also acknowledged that work is ongoing in other areas in relation to standardising various aspects of the GP OOH service across Boards and this issue has a clear fit with that work.

7.3 The Group concluded that the creation and implementation of a National Performers List should be the subject of further investigation with a view to establishing what regulatory or legislative changes would be required in pursuit of this objective.

7.4 In relation to allowing doctors who are not GP qualified on to the Performers List, feelings on the Group were more mixed. Clearly there are potential attractions in increasing the pool of doctors who are available to provide this service, particularly in the context of stressed services and workforce trends which indicate that it will be increasingly difficult to provide safe and effective levels of service cover in the future.

7.5 The group were however mindful of the potential impact that pulling doctors away from other service areas, such as hospital out of hours services, might have on those services, which have their own stresses to contend with,. In particular, the rates of pay associated with the GP Out of Hours service are in many areas significantly higher than those paid to doctors covering hospitals, particularly at peak demand periods throughout the year, when premium rates and in payment across the GP out of hours service. Although the group was not tasked with looking at pay this is a consideration which would need to be taken into account.

7.6 Another area discussed was the absolute necessity of ensuring that any doctors admitted to the Performers List would be in possession of the requisite skills, abilities, and experience to provide the Primary Care Out of Hours service safely and effectively.

7.7 In relation to the matters discussed on the Performers List the Group broadly concluded opening up the performers list would increase flexibility and should be further considered given what future models of care for out of hours services might look like.

8. Superannuation

8.1 Current Superannuation regulations were also discussed by the Group. It was thought that there have been a number of changes to the superannuation arrangements over recent years which have disincentivised GPs from working out of hours, particularly relating to the changes in the annual and lifetime tax allowance arrangements.

8.2 One way of improving the situation would be to allow GPs to classify themselves as officers rather than practitioners, while working out of hours. Thus allowing them the option of opting out of the superannuation scheme for the proportion of their work which relates to out of hours.

8.3 The Group felt that allowing flexibility in this area should be the subject of further consideration, accepting that any measure that impacts on pensions schemes as a whole, particularly on the quantum of such schemes is a complex and difficult matter.

9. Conclusions.

9.1 The Group was conscious that there are a variety of arrangements which are now in existence to engage GPs in out of hours work since the impact of the HMRC rulings. The Group recognised the importance of these arrangements to reflect local circumstances, which suit both employers and GPs.

9.2 However the Group did feel that this variation was impacting on services to attract and retain GPs to work out of hours. Employment or engagement packages which make out of hours more attractive should be the aim. In relation to engagement packages for sessional GPs, some on the group felt that these should include employment rights which are in place for other staff, such as annual leave and study leave, while others did not agree that this should be the case. It is recognised that including such rights would come with a cost in both financial and human resources, but should be considered as part of future implementation of the recommendations of the national review.

9.3 The Scottish Government, employers and GP representatives should engage in a discussion about the balance between local determination of pay and conditions of service for this group of staff, vis a vis a national approach which is now in place for all other staff groups.

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Appendix 1

Short Life Working Group on GP Out of Hours Terms and Conditions - Membership

Ian Reid (MSG) – Chair
Colin McGowan (MSG)
Norrie Gaw (NHS Greater Glasgow and Clyde)
Sian Tucker (NHS Lothian)
June Smyth (NHS Borders)
Craig Cunningham (NHS Lanarkshire)
Scott Anderson (BMA)
Andrew Buist (BMA SGPC)
Lorimer McKenzie (SGHSCD Workforce)
Frank McGregor (SGHSCD Primary Care)

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Appendix 2

See attached to covering email

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