Lincolnshire Partnership
NHS Foundation Trust

LINCOLNSHIRE PARTNERSHIP NHS FOUNDATION TRUST (LPFT)

Code of Conduct for Private Practice by Medical Staff

DOCUMENT VERSION CONTROL	
Document Type and Title:	**Code of Conduct for Private Practice by Medical Staff Policy**
Authorised Document Folder:	**Human Resources**
New or Replacing:	**Replacing**
Document Reference:	**3b**
Version No:	**2**
Date Policy First Written:	**January 2008**
Date Policy First Implemented:	**January 2008**
Date Policy Last Reviewed and Updated:	**June 2018**
Implementation Date:	**January 2008**
Author:	**Director of HR**
Approving Body:	**Quality Committee**
Approval Date:	**24 September 2018**
Ratifying Body:	**Local Negotiating Committee (LNC)**
Ratified Date:	
Committee, Group or Individual Monitoring the Document:	**LNC**
Review Date:	**September 2020**

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EQUALITY STATEMENT

Lincolnshire Partnership NHS Foundation Trust (LPFT) will develop and implement business plans, project initiation documents, service change, service delivery and provision and policies and other corporate documents that meet the needs of the local community. They will take account of the provisions outlined in the Equality Act 2010, to eliminate discrimination, harassment and victimisation, promote equality of opportunity and build on good relations between the diverse communities.

The aim is to ensure no individual receives less favourable treatment on the grounds of age, disability (learning disabilities), sex (gender), race, gender reassignment, sexual orientation, religion and belief, marriage and civil partnership and pregnancy and maternity.

LPFT will have due regard to the different needs of those listed as the 'protected characteristics' and those not listed to ensure dignity and respect, leading to a fair and equitable service for all.

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 sets out recommended standards of best practice for NHS consultants in England about their conduct in relation to private practice (Schedule 9) (Appendix 2). 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 3) and defines fee paying services and private professional services (private practice).

This document sets out Lincolnshire Partnership NHS Foundation Trust (LPFT) (The Trust) policy for all medical Consultant employees of the Trust including temporary staff, staff on secondments and on honorary contracts undertaking private practice and fee paying work in NHS time. It is based on:

1. The Terms and Conditions – Consultants (England) 2003
2. A Code of Conduct for Private Practice Recommended Standards of Practice for NHS Consultants, Department of Health, January 2004
3. Guidance on NHS patients who wish to pay for additional private care, Department of Health, March 2009

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 and the terms will be used inter-changeably in the policy, with the understanding that the underlying principle remains the same.

All Consultants (including those remaining on old contracts) 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.

Grades of medical staff, other than Consultants, are not permitted to do private work unless they have explicit permission from the Medical Director and it is recorded in the job plan and does not conflict with their contracted NHS work. The principles of this policy would apply.

It is an established principle that NHS bodies must be impartial and honest in the conduct of their business and, in order to ensure that strict ethical standards are maintained it is essential that conflict does not arise between the private interests of staff and their NHS duties.

There are three crucial public service values that must underpin the work of the health service:

Accountability – everything done by those who work in the NHS must be able to stand the test of parliamentary scrutiny, public judgements on propriety and professional codes of conduct.

Probity – there should be an absolute standard of honesty in dealing with the assets of the NHS: integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of NHS duties.

Openness – there should be sufficient transparency about NHS activities to promote confidence between the NHS body and its staff, patients and the public.

2. PURPOSE

This policy is intended to make clear the Trust's requirements on the part of Doctors in achieving this aim.

Doctors are expected to:

- Ensure that the interests of patients remain paramount at all times
- Be impartial and honest in the conduct of their official business
- Use the public funds entrusted to them to the best advantage of the service always ensuring value for money

It is also the responsibility of Doctors to ensure that they do **not**:

- Abuse their official position for personal gain or to benefit their family or friends
- Seed to advantage or further private business or other interests, in the course of their official duties

3. DUTIES

The Board of Directors (the board) has a legal responsibility and

- Commitment through endorsement of this policy

The Chief Executive is accountable for:

- Ensuring the proper application of this policy through the appropriate management arrangements

Line Managers are responsible for:

- Ensuring that the guidelines/procedures laid down within this policy are stringently adhered to
- Ensuring that staff are conversant with Policy

Staff are responsible for:

- Ensuring they understand this policy
- Ensuring they adhere to guidelines/procedures laid down within this policy.

4. DEFINITIONS

The Terms and Conditions – Consultants (England) 2003 define ***Fee Paying Services*** as any paid professional activity, 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 3).

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 service users 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 (Appendix 3).

For the purpose of this policy the term 'private work' includes private professional services and any fee paying services which a medical doctor 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 and medico-legal reports;
- receiving and sending faxes and letters.

The above list is non-exhaustive.

Conflict of Interest - A set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold.

A conflict of interest may be:

- Actual - there is a material conflict between one or more interests
- Potential – there is the possibility of a material conflict between one or more interests in the future

Staff may hold interests for which they cannot see potential conflict. However, caution is always advisable because others may see it differently and perceived conflicts of interest can be damaging. All interests should be declared where there is a risk of perceived improper conduct.

Interests - Interests fall into the following categories:

- Financial interests: Where an individual may get direct financial benefit* from the consequences of a decision they are involved in making.
- Non-financial professional interests: Where an individual may obtain a non-financial professional benefit from the consequences of a decision they are involved in making, such as increasing their professional reputation or promoting their professional career.
- Non-financial personal interests: Where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit, because of decisions they are involved in making in their professional career.
- Indirect interests: Where an individual has a close association† with another individual who has a financial interest, a non-financial professional interest or a non-financial personal interest and could stand to benefit from a decision they are involved in making.

5. DEVELOPMENT OF POLICIES AND PROCEDURES

5.1 INTRODUCTION AND GENERAL PRINCIPLES

It is absolutely paramount for the Doctor wishing to undertake private practice to notify their line manager immediately to discuss in order to seek permission from the Medical Director.

If approval is gained to undertake private practice this must be reflected within the yearly appraisal and the scope of work clearly declared, assessed and competencies in these areas confirmed.

There should be no real or perceived conflict of interest between private work and Trust work.

Trust commitments should take precedence over private work.

Schedule 9 (Appendix 2) of the Terms and Conditions 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.

The Trust has no provisions to run a private practice in any of its premises, this is therefore, not permitted by the Trust. However, in exceptional circumstances, and with the prior approval of the Medical Director, a practitioner may be allowed some work in relation to private practice when there is minimal disruption to their NHS work, e.g. 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.

Doctors should not use letterheads or business cards, Trust addresses, telephone, fax number or e-mail addresses or advertise their services using these.

5.2DISCLOSURE OF INFORMATION ABOUT PRIVATE COMMITMENTS

In accordance with Schedule 9 of the Terms and Conditions (Appendix 2), 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 review process.

The Doctor will provide all necessary information in advance of the job plan review and submit further information thereafter where any changes occur to the originally submitted information.

In line with the requirements of revalidation a Doctor will submit evidence of private practice to their appraiser. It should be noted that for private practice, the appraiser may be different from the Trust appraiser and the appraisal policy allows for this.

It should be noted that Doctors who undertake private practice can only have one responsible officer and one appraisal per year. The Doctor may however wish to bring supporting documentation i.e. performance review to their appraisal in relation to their private practice.

5.3 SCHEDULING OF WORK AND JOB PLANNING

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

Consultants 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. They must not be on call for private practice during contracted hours. Private work cannot be done during on call duties (Appendix 4).

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.

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.

5.3.1 Category 1 and 2 work

Category 1 and 2 work is work undertaken by medical staff, which is reasonably incidental to contractual duties and for which charges may/may not be made.

Doctors will be permitted to time shift up to 2 hours per week in order to undertake category 2 work however, if this becomes a regular occurrence this should be declared in the Drs job plan and for the relevant Clinical Director to notified. A review of these commitments should then be undertaken to ensure the category 2 and time shifting is not impacting on the drs contractual duties.

Detailed below are links to BMA outlining examples of when applying fees to private work is appropriate and examples of category 1 and 2 work:

- **https://www.bma.org.uk/advice/employment/fees/check-your-fee/fee-finder-consultant-contract/items-of-service-for-doctors (see appendix 6)**
- **https://www.bma.org.uk/advice/employment/fees/mental-health**

5.4PATIENT ENQUIRIES ABOUT PRIVATE TREATMENT

Where in the course of their duties a Doctor is approached by a patient and asked about the provision of private services, the practitioner may provide only such standard advice as has been agreed by the Trust for such circumstances.

The consultant will not during the course of their Programmed Activities make arrangements to provide Private Professional Services, nor ask any other member of staff to make such arrangements on their behalf.

In the course of their 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.

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 provided is accurate and up to date.

5.5PROMOTING IMPROVED PATIENT ACCESS TO NHS CARE

Subject to clinical considerations, Doctors will be expected to contribute as fully as possible to reducing waiting times and improving access and choice for Trust patients. This should include ensuring that patients are given the opportunity to be treated by other Trust colleagues or by other providers

where this will reduce their waiting times and facilitating the transfer of such patients.

5.6 IDENTIFICATION OF PRIVATE PATIENTS

Doctors practicing privately within Trust's facilities must comply with the Trust's policies and procedures for private practice. This includes a personal obligation by any Doctor responsible for admitting a private patient to Trust facilities to ensure, in accordance with local procedures, that they identify that patient as private and that the responsible manager is aware of that patient's status.

5.7 USE OF LPFT DATA FOR PRIVATE WORK

Doctors must not access LPFT data relating to private or potential private patients without gaining authorisation through the current IG procedures. If in any doubt Doctors should raise the matter via senior manager or clinical director and seek IG guidance on appropriate access. Non-approved access to patient information for private work purposes will be seen as a matter for disciplinary action.

5.8 USE OF TRUST FACILITIES

Except with the LPFT 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. LPFT 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.

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 their private patient.

6. CONSULTATION AND APPROVAL PROCESS

The policy will be consulted upon, approved by LNC and ratified in accordance with the Trusts Corporate Documents and Policies Procedure.

7. REVIEW AND REVISION ARRANGEMENTS INCLUDING VERSION CONTROL

This policy will be reviewed every 2 years by the policy author in accordance with the Corporate Documents and Policies Procedure. Revision may occur earlier if relevant new legislation or guidance is issued.

The Executive Committee monitoring the effectiveness of the policy may also call for an early review on the basis of the reports it receives.

The Trust Secretarys Office will maintain a version control sheet, as per the Corporate Documents and Policies Procedure.

8. DISSEMINATION AND IMPLEMENTATION OF A POLICY

This policy will be disseminated in accordance with the Corporate Documents and Policies Procedure. This policy will be implemented

9. POLICY CONTROL INCLUDING ARCHIVING ARRANGEMENTS

Corporate and Legal Services will retain a copy of each policy for a minimum of 10 years in line with the recommendations contained within 'Records Management NHS Code of Practice' (2006)

Individuals wishing to obtain previous versions of this policy should contact Corporate & Legal Services.

10. MONITORING COMPLIANCE WITH AND EFFECTIVENESS OF POLICIES AND PROCEDURES

Systems	**Monitoring and/or Audit**				
Criteria	Measurables	Lead Officer	Frequency	Reporting to	Action Plan / Monitoring
Systems in place to ensure that Medical staff adhere to code of conduct	Confirmation of private practice via annual Job plan review and reaffirm policy	Director of HR	Annually	LNC	Director of HR

11. REFERENCES

- A Code of Conduct for Private Practice, Recommended Standards of Practice for NHS Consultants (DoH, January 2004)
- Category 1 and 2 items of service for doctors (BMA, 2017)
- Commissioning Policy: Defining the boundaries between NHS and Private Healthcare (NHS Commissioning Board, April 2013)
- Conflicts of Interests Policy (LPFT, 2018)
- Good Medical Practice (GMC, July 2013)
- Guidance for Standards of Business Conduct for Staff (LPFT, 2015)
- Guidance on NHS patients who wish to pay for additional private care (DoH, 2009)
- The interface between NHS and private treatment: a practical guide for doctors in England, Wales and Northern Ireland (Guidance from the BMA Medical Ethics Department May 2009)
- The Terms and Conditions – Consultants (England) 2003

12. ASSOCIATED DOCUMENTATION

The following documents have either been used and/or should be read alongside this policy:

- A Code of Conduct for Private Practice, Recommended Standards of Practice for NHS Consultants (DoH, January 2004)
- All staff should adhere to their own terms and conditions with regard to private practice.
- Commissioning Policy: Defining the boundaries between NHS and Private Healthcare (NHS Commissioning Board, April 2013)
- Conflicts of Interests Policy (LPFT, 2018)
- Good Medical Practice (GMC, July 2013)
- Guidance for Standards of Business Conduct for Staff (LPFT, 2015)
- Guidance on NHS patients who wish to pay for additional private care (DoH, 2009)

- The interface between NHS and private treatment: a practical guide for doctors in England, Wales and Northern Ireland (Guidance from the BMA Medical Ethics Department May 2009)

13. APPENDIX 1: TERMS AND CONDITIONS

The Terms and Conditions can be accessed from:

http://www.nhsemployers.org/~/media/Employers/Documents/Pay%20and%20reward/Consultant_Contract_V9_Revised_Terms_and_Conditions_300813_bt.pdf

APPENDIX 2 - 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.

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.

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.

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

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 3 - SCHEDULE 10 FEE PAYING SERVICES

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;

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;

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;

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

APPENDIX 4: 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 5: 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.
7. Ensuring that they have adequate professional indemnity in place as the NHS indemnity scheme will not apply.
8. Ensure that secretarial staff are aware of their responsibilities under the Date Protection Act.
9. **On no account should any records of non-contractual work be left on Trust premises.**

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

APPENDIX 6 – BMA SUMMARY OF CATEGORY 1 AND 2 ITEMS OF SERVICE FOR DOCTORS

https://www.bma.org.uk/advice/employment/fees/check-your-fee/fee-finder-consultant-contract/items-of-service-for-doctors

Consultants may charge fees for some aspects of work.

What is Category 1 and 2 work?

Work which is undertaken by hospital medical and dental staff, which is reasonably incidental to contractual duties and for which charges may not be made. This work has been divided into five sub-sections, which are set out below (Categories 1a-1e), with accompanying illustrative examples.

The categories 1 and 2 relate to Hospital terms and conditions of service, for doctors under contracts before 1 April 2004 (paragraphs 36 and 37, July 1994)

Paragraph 36. Category 1 work

Category 1a :

The examination, diagnosis and provision of related reports on a person referred to the health services from a medical source for a second opinion.

For this purpose, reference 'from a medical source' means reference from a medical or dental practitioner (including, for example, a medical board) who, having clinically examined a person, requires a second opinion in connection with the prevention, diagnosis or treatment of illness. It does not include reference for examination included in Category 2 or reference from an administrative medical officer who has not clinically examined the person referred.

Examples of Category 1a examinations and reports :

i) a person referred by a general practitioner

ii) members of HM Armed Forces (including members of overseas forces serving on duty in the UK) and their families, referred by medical officers who are treating them

iii) persons referred in connection with diagnosis or treatment by a medical practitioner in the Community Health Service

(**But** examinations of and reports required on employees or prospective employees for the purpose of, for example, superannuation schemes fall within **Category 2**.)

iv) a person referred by an occupational health physician or employment medical adviser following an accident or incident which may give rise to occupational disease or where an employment medical adviser, following a clinical examination of a person or persons, suspects the possibility of occupational disease and seeks an investigation and a second medical opinion.

v) a person referred by a medical officer of a Medical Boarding Centre (Respiratory Diseases) of the Department of Social Security for the purposes of diagnosis and treatment. (But when the second opinion is required solely in connection with a compensation or social security claim, this falls within **Category 2a**.)

vi) a person referred by a medical interviewing committee set up by the Department of Social Security to advise disability employment advisers of the Employment Service on the working capacity of disabled persons.

Category 1b :
The provision of a medical or dental report **either** to a patient currently under hospital observation or treatment **or**, with his or her consent, to an interested third party, when the information required is reasonably incidental to such observation and treatment, and can be given readily from knowledge of the case, without a separate examination or without an appreciable amount of work in extracting information from case notes.
But if a special examination of the patient is required, **or** the information requested cannot be given readily from knowledge of the case, **or** an appreciable amount of work is required to extract medically correct information from case notes, the work falls within **Category 2,** unless it is specifically included in the practitioner's contractual duties as provided by paragraph 30 above.

Examples of Category 1b services:
Category 1c:
Examinations and reports on persons for the purposes of the prevention of illness, under arrangements approved by the Secretary of State after consultation with the profession.

(**But** examinations and reports required by a person or third party primarily to serve the interests of the person, his or her employer or other third party, in such non-clinical contexts as insurance, superannuation, foreign travel, or emigration, fall within **Category 2.**)

Examples of Category 1c examinations and reports include those:

i) where it is necessary, as a preventative measure, to investigate the contacts of a patient with a transmissible or epidemic disease, such as typhoid or a sexually transmitted disease

ii) in respect of transmissible disease on entrants to teacher training colleges, applicants for teaching posts, teachers, and any other persons whose course of training, prospective occupation or occupation brings them into close or prolonged contact with children

iii) on employees or prospective employees (not otherwise covered by sub-paragraph 1c.ii above) of health authorities or NHS trusts, and of local authority education, social services and environmental health departments who may be at particular risk of acquiring or spreading transmissible diseases by reason of the nature of their employment or prospective employment. This includes voluntary workers and employees of voluntary bodies similarly at risk

iv) in connection with individual screening measures (eg cervical cytology) for the benefit of particular people who, by reason of age, sex, constitutional or other factors not related to the nature of their employment, are particularly at risk of developing specific diseases. (**But** routine screening of workers, including screening made necessary by the nature of the working environment, is covered **either** by sub-paragraph 1c.vi below **or** Category 2k or 2m.)

v) where the defined duties of the practitioner specifically includes such work, examinations and reports on prospective employees of health authorities, NHS Trusts and local authorities (other than those covered in sub-paragraph 1c.ii and 1c.iii above)

vi) where the defined duties of the practitioner specifically includes such work, examinations and reports in connection with the routine screening of employees of health authorities, NHS trusts and local authorities, to such extent as may be approved by the Secretary of State after consultation with the profession. (**But** this excludes work under sub-paragraph 1c.iii and 1c.iv above; see also paragraph 32.)

Category 1d:

Recommendations under Part II of the Mental Health Act 1983:

- i) if given by a doctor on the staff of the hospital where the patient is an in-patient
- ii) if given following examination at an out-patient clinic
- iii) if given as a result of a domiciliary consultation carried out at the request of a general practitioner

Attendance at court hearings as a witness as to fact by a practitioner giving evidence on his or her own behalf or on behalf of his or her employing authority in connection with a case with which the practitioner is professionally concerned. (**But** attendance at coroners' courts is normally work falling within Category 2)

Paragraph 37. Category 2 work

When work undertaken by hospital medical and dental staff on examinations, reports etc does not fulfill any of the qualifying conditions for Category 1 as set out in paragraph 36 above, it falls within Category 2 and **charges may be made**.

Examples of Category 2 examinations and/or reports include those:

a) on a patient not under observation or treatment at the hospital at the time the report is requested, or a report which involves a special examination of the patient, or an appreciable amount of work in making extracts from case notes - other than in circumstances referred to in Category 1

b) on a person referred by a Medical Adviser of the Department of Social Security, or by an Adjudicating Medical Authority or a Medical Appeal Tribunal, in connection with any benefits administered by the Department of Social Security

c) 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

d) 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, superannuation, 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)

e) required for life insurance purposes

f) on prospective emigrants including X-ray examinations and blood tests

g) on persons in connection with legal actions other than reports which can be given under Category 1b and reports associated with cases referred to in Category 1b

h) for coroners, as well as attendance at coroners' courts as medical witnesses

i) 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 in Category 1e

j) on a person referred by a medical examiner of HM Armed Forces Recruiting Organisation

k) 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 employer by specific regulation or a voluntary undertaking by the employer in pursuance of the employer's general liability to protect the health of its workforce

l) 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) on prospective students of universities or other institutions of further education, provided that they are not covered by category 1c.ii. Such examinations may include chest radiographs

n) examinations and recommendations under Part II of the Mental Health Act 1983 (except where this falls within Category 1d)

i) if given by a doctor who is not on the staff of the hospital where the patient is examined or

ii) 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 hospital authority

Where fees are payable under i or ii above, they will be paid where the practitioner has carried out a special examination whether or not, as a result, he or she completes a recommendation

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, ie 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 Category 1a.iv)

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 with in Category 1 and which are not covered by separate contractual arrangements between the practitioner and the Prison Service

s) examination on blind or partially-sighted persons for the completion of form BD8 (except where this falls within **Category 1b**)

t) in respect of sub paragraph (s) above, when payment is due in connection with registration with a local authority this will be made by the health authority under the collaboration arrangements in accordance with the appropriate schedule of fees.

Equality Analysis Form

Name of Policy/ project/ service: **Code of Conduct for Private Practice by Medical Staff**

Aims of policy/ project/ service: **Updating existing policy to manage private practice undertaken by employed medical staff**

Is this new or existing? New □ Existing ☑

Person(s) responsible: **Medical Director / Director of HR**

Key people involved: **Medical Staff, Managers, Human Resources**

Who does it affect? Service users ☑ Staff ☑ Wider Community □

What data has been considered in identifying if there are any potential impacts? e.g. Patient demographic information/ workforce demographics/ population data/ JSNA data see Equality Analysis page on Sharon for guidance and links to data sources http://sharon/lpft/HumanRights/Pages/EqualityAnalysis.aspx

Is the policy/ project/ service likely to have an effect on any of the protected characteristic groups? (please explain why there is likely to be an impact or not (refer to data where appropriate)			
	Positive	Negative	None
Age			This function will be consistently applied to all
Disability			This function will be consistently applied to all
Sex			This function will be consistently applied to all
Gender Reassignment			This function will be consistently applied to all
Sexual			This function will be consistently

Orientation			applied to all
Race			This function will be consistently applied to all
Religion and Belief			This function will be consistently applied to all
Marriage and Civil Partnership			This function will be consistently applied to all
Pregnancy and Maternity			This function will be consistently applied to all
Carers			This function will be consistently applied to all

Is action possible to mitigate any negative impact?	Details of action planned (including dates or why action is not possible)
None detailed	

Any other information that is relevant to the equality impact of the policy/ project/ service?

Result of Equality Analysis

Based on the information above- what is the outcome of the Equality analysis?

a) No change ☑	b) Adjust the activity □	c) Stop/remove the activity □
Detail any adjustments that are to be made and how these will be monitored		

Person who carried out this assessment	**Rachel Shiels**
Date assessment completed	**12.03.18**
Name of responsible Director/General Manager	**Director of HR**
Date assessment was signed	**24.09.18**
Date of next review	**24.09.20 (or sooner if changes are required)**