Healthier Communities, Outstanding Care

NHS Sherwood Forest Hospitals NHS Foundation Trust

UNDERTAKING PRIVATE PRACTICE AND FEE PAYING WORK POLICY

			POLICY
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1.0 INTRODUCTION

This policy and procedure is issued and maintained by the Executive Director of Human Resources on behalf of the Trust, at the issue date defined on the front sheet, which supersedes and replaces all previous versions.

This policy applies to Consultants, Specialists, Associate Specialists and Specialty Doctors.

2.0 POLICY STATEMENT

This document sets out Sherwood Forest Hospitals NHS Foundation Trust policy on employees, undertaking private practice and fee paying work in NHS time. This policy is based on the Terms and Conditions – Consultants (England) 2003 the Terms and Conditions for Associate Specialists and Specialty Doctors 2008, the Terms and Conditions for Specialists and Specialty Doctors (England) 2021 and the Code of Conduct for Private Practice.

In 2003 the New Consultant Contract was introduced. A new Code of Conduct for Private Practice was developed as part of the contract negotiations. The Terms & Conditions – Consultants (England) 2003 set out recommended standards of best practice for NHS consultants in England about their conduct in relation to private practice (schedule 9). The Terms and Conditions – Consultants (England) 2003 includes the provisions governing the relationship between NHS work, private practice and fee paying services (schedule 10) and defines fee paying services and private professional services (private practice).

One of the key principles of these terms and conditions of employment is that an individual cannot be paid twice for the same work.

All practitioners are required to read this document and familiarise themselves with the requirements of this policy. All practitioners are also expected to adopt and comply with the Code of Conduct for Private Practice.

3.0 DEFINITIONS/ ABBREVIATIONS

The Terms and Conditions – Consultants (England) 2003 define Fee Paying Services as any paid professional service, 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 or 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 & 11 of the Terms and Conditions – Consultants, Schedule 10 & 11 of the Terms and Conditions for Associate Specialists and Specialty Doctors (2008) or Schedule 10 & 11 of the Terms and Conditions for Specialists and Specialty Doctors (2021).

Contractual and Consequential Services is the work that an individual 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 (often 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 11 of the National Health Service Act 1977.

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 email, faxes and letters

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 the consultant an extra Direct Clinical Care PA.

This offer will be required to be accepted by the consultant concerned or someone else within that group of Consultants. 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 PA’s 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 the 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.

4.0 ROLES AND RESPONSIBILITIES

All employees have a responsibility to ensure they comply with this policy.

Staff whose behaviour breaches this policy may be subject to disciplinary action.

Managers have a specific duty to ensure that all staff comply with this policy.

This policy is applicable to all Consultants on the new 2003 Consultant Contract, Associate Specialists, and Specialty Doctors on the 2008 contracts and Specialists and Specialty Doctors on the 2021 contracts. The policy also applies to temporary staff, staff on secondments and on honorary contracts with the Trust

5.0 APPROVAL

The policy is approved by the Local Negotiating Committee.

6.0 DOCUMENT REQUIREMENTS

Schedule 10 & 11 of the Terms and Conditions – Consultants (England) 2003, schedule 10 & 11 of the Terms and Conditions for Associate Specialists and Specialty Doctors 2008 and Schedule 10 & 11 of the Terms and Conditions for Specialist and Specialty Doctors 2021 states that except with the Trust'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.

The clinician 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 NHS.

Except for emergency care any work undertaken for a fee that does not concern a patient under the Trust's care should not be done in NHS time. Except with the Trust's prior approval Clinicians and other members of staff, such as administrative staff, are not permitted to use Trust premises or resources to carry out this work. The clinicians time and any employment of administrative staff must be outside of the 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 clinician using his/her own equipment. Appointments to see the subjects of the reports must take place away from Trust premises. All documents must be stored in line with the requirements of the information commissioner.

Where the Trust has agreed that NHS staff may assist a clinician in providing private Professional Services, or provide private services on the clinicians behalf, it is the clinicians responsibility to ensure that these staff are aware that the patient the work relates to have private status and any work undertaken involving these patients 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.

Disclosure of Information about Private Commitments

In accordance with Schedule 10 & 11 of the Terms and Conditions, consultants (2003) and schedule 10 & 11 of the Terms and Conditions for Associate Specialists and Specialty Doctors (2008) and Schedule 10 & 11 of the Terms and Conditions for Specialists and Specialty Doctors (2021) individuals are required to inform their Head of Service/Service Director 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 **declaration of interest** and the job planning process. Private Practice should also be declared in the scope of work for a clinicians appraisal and information relating to complaints, compliments, serious incidents or any fitness to practice investigations involving the private organisation disclosed.

Scheduling of Private Work or Fee Paying Work

The clinician 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 clinician is providing private services that are likely to result in the occurrence of emergency work, there is a need to ensure that there is sufficient time before the scheduled start of programmed activities for such emergency work to be carried out.

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

The Code of Practice requires that private practice or fee paying work is only undertaken where this does not result in the detriment of NHS patients and services. With the exception of the need to provide emergency care the Trust will insist that private practice or fee paying work is not undertaken during scheduled Direct Clinical Care Programmed Activities without the prior agreement of the Head of Service/Service 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, or where the income for the work is passed to the Trust.

Time shifting is crucial to securing the joint desire to retain and maintain professionalism. 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 Service Director/Head of Service arrange to time shift activity in order to have flexibility to allow for 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 the Trust premises and staff.

There must be arrangements clearly described in the job plan 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 relevant Terms and Conditions and the associated Code of Conduct for Private Practice.

Scheduling Private Commitments whilst on-call

Where a clinician is asked to provide emergency cover for a colleague at short notice and the clinician has previously arranged private commitments at the same time, the clinician should only agree to do so if those commitments would not prevent them from 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.

Patient Enquiries about Private Treatment

Where in the course of their duties, a clinician is approached by a patient and asked about the provision of Private Professional Services, the clinician may provide only such standard advice as detailed in the code of conduct. The clinician must include in the letter to the patients GP details of the discussion about private professional services.

An individual must not during the course of their undertaking their NHS duties make arrangements to provide Private Professional Services, nor ask any other member of staff to make such arrangements on their behalf unless the patient is to be treated as a private patient of the Trust.

During the course of undertaking their NHS duties a clinician must not initiate discussions about providing Private Professional Services for NHS patients, nor should the clinician ask other staff to do so on their behalf.

Where a NHS patient seeks information about the availability or waiting times for NHS service and/or Private Professional Services, the clinician is responsible for ensuring that any information provided or arranges for other staff to provide on their behalf is accurate and up to date.

Transferring from Private to NHS Care

Patients who choose to be treated privately are entitled to NHS services on exactly the same basis of clinical need as any other patient. Where a patient wishes to change from private to NHS status, the following principles apply:

A patient cannot be both a private and an NHS patient for the treatment of any one condition during a single visit to the Trust.

Any patient seen privately is entitled to subsequently change their status and seek treatment as an NHS patient. However, the patient is still liable for the cost of treatment already received privately.

When a patient is seen privately and they make a request for their care to be transferred to the NHS, a new referral to the NHS must be arranged by the patient's GP. This allows the patient to choose their NHS provider and allows the Trust to recover the full cost of their care.

Patients referred for an NHS service following a private consultation or private treatment should join any NHS waiting list at the same point as if the consultation or treatment were an NHS service. Their priority on the waiting list should be determined by the same criteria applied to other NHS patients; and

An individual may not refer a patient directly to the NHS for investigation, treatment or follow up unless the patient is in need of immediate care.

Professional Liability Cover

Clinicians who are personally taking a fee for service are recommended to have up to date indemnity insurance from a recognised defence organisation and should be able to provide evidence of this if required.

Clinicians are likely to be personally responsible for the care they give to patients when they are paid a fee, even if they opt to place that fee in a Sherwood Forest Hospitals Account.

Promoting Improved Patient Access to NHS Care

Subject to clinical considerations, the clinician 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 facilitate the transfer of such patients.

Increased NHS Capacity

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

7.0 MONITORING COMPLIANCE AND EFFECTIVENESS

Minimum Requirement to be Monitored (WHAT – element of compliance or effectiveness within the document will be monitored)	Responsible Individual (WHO – is going to monitor this element)	Process for Monitoring e.g. Audit (HOW – will this element be monitored (method used))	Frequency of Monitoring (WHEN – will this element be monitored (frequency/ how often))	Responsible Individual or Committee/ Group for Review of Results (WHERE – Which individual/ committee or group will this be reported to, in what format (eg verbal, formal report etc) and by who)
Monitoring of the policy would be carried out on an annual basis.	The LNC is responsible for approving and reviewing the policy.	Heads of Service and Service Directors are responsible for the monitoring of the application of the policy.	Monitoring would be carried out on a regular basis and appropriate job plan changes made but as a minimum on an annual basis during the job planning process	Divisional Chairs and Divisional General Managers would be responsible for reviewing the application of the policy. The Executive Medical Director or a nominated deputy would be responsible for monitoring the action plan.

8.0 TRAINING AND IMPLEMENTATION

This policy will be monitored and reviewed biannually or more often should there be a change to the Terms and Conditions of employment.

Training will be provided to all medical managers to promote awareness of the policy. This policy will also be covered in the induction for new clinicians to the Trust.

9.0 IMPACT ASSESSMENTS

- This document is not subject to an Environmental Impact Assessment

10.0 EVIDENCE BASE (Relevant Legislation/ National Guidance) AND RELATED SFHFT DOCUMENTS

Evidence Base:

Schedule 10 & 11 of the Terms and Conditions - Consultants (England) 2003
Schedule 10 & 11 of the Terms and Conditions for Associate Specialists and Specialty Doctors 2008
Schedule 10 & 11 of the Terms & Conditions for Specialists and Specialty Doctors (2021)
Code of conduct for Private Practice

11.0 KEYWORDS

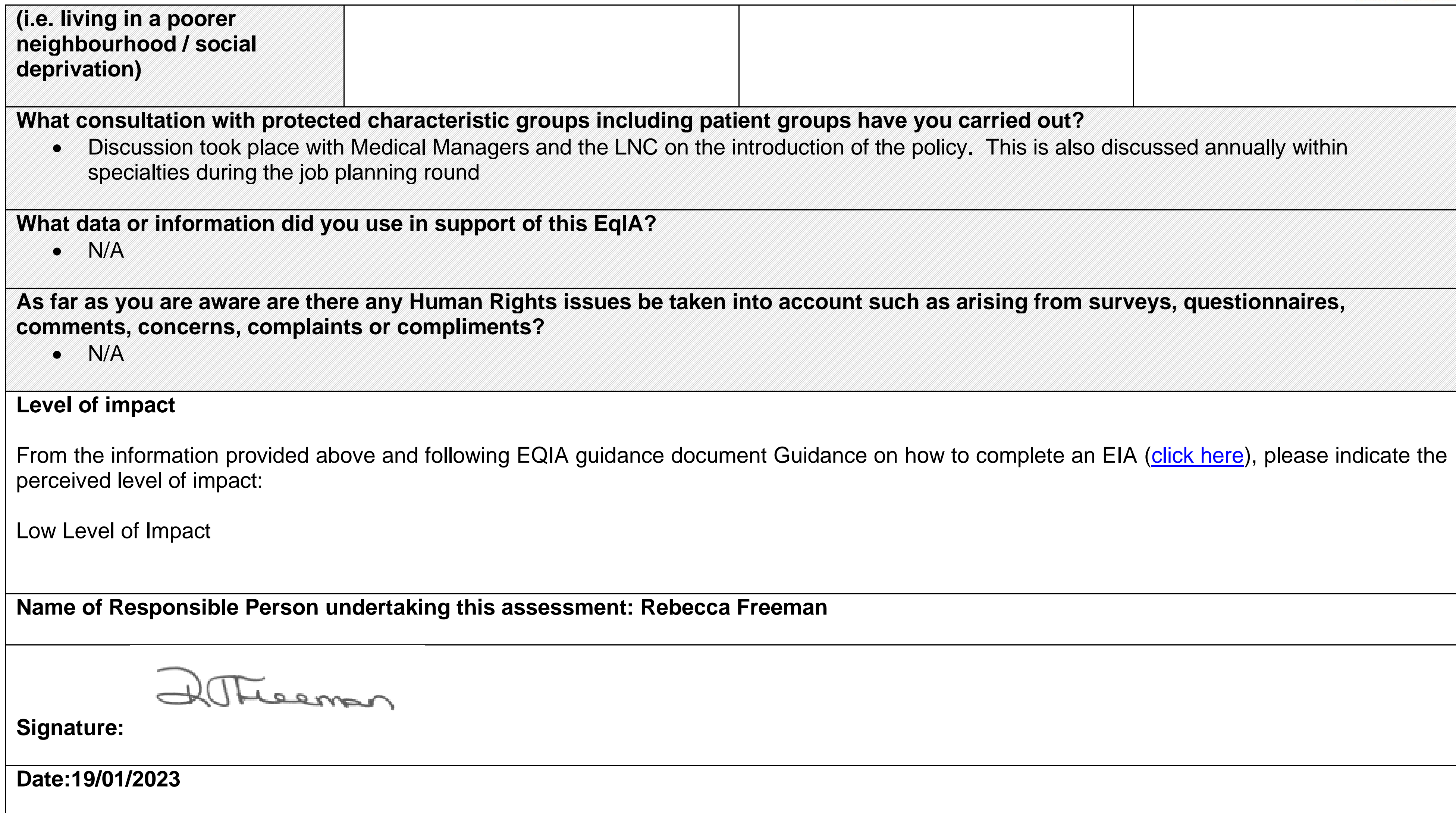
- Private practice
- Fee paying work

12.0 APPENDICES

- refer to list in contents table

APPENDIX 1 - EQUALITY IMPACT ASSESSMENT FORM (EQIA)

Name of service/policy/procedure being reviewed: Undertaking Private Practice and Fee Paying Work Policy			
New or existing service/policy/procedure: Existing			
Date of Assessment:16.01.23			
For the service/policy/procedure and its implementation answer the questions a – c below against each characteristic (if relevant consider breaking the policy or implementation down into areas)			
Protected Characteristic	a) Using data and supporting information, what issues, needs or barriers could the protected characteristic groups' experience? For example, are there any known health inequality or access issues to consider?	b) What is already in place in the policy or its implementation to address any inequalities or barriers to access including under representation at clinics, screening?	c) Please state any barriers that still need to be addressed and any proposed actions to eliminate inequality
The area of policy or its implementation being assessed:			
Race and Ethnicity	None	N/A	
Gender	None	N/A	
Age	None	N/A	
Religion	None	N/A	
Disability	None	N/A	
Sexuality	None	N/A	
Pregnancy and Maternity	None	N/A	
Gender Reassignment	None	N/A	
Marriage and Civil Partnership	None	N/A	
Socio-Economic Factors	None	N/A	



(i.e. living in a poorer neighbourhood / social deprivation)			

What consultation with protected characteristic groups including patient groups have you carried out?

- Discussion took place with Medical Managers and the LNC on the introduction of the policy. This is also discussed annually within specialties during the job planning round

What data or information did you use in support of this EqIA?

- N/A

As far as you are aware are there any Human Rights issues be taken into account such as arising from surveys, questionnaires, comments, concerns, complaints or compliments?

- N/A

Level of impact

From the information provided above and following EQIA guidance document Guidance on how to complete an EIA (click here), please indicate the perceived level of impact:

Low Level of Impact

Name of Responsible Person undertaking this assessment: Rebecca Freeman

Signature:

Date:19/01/2023