Lancashire County Council

Health Scrutiny Committee

Tuesday, 24th May, 2016 at 10.30 am in Cabinet Room 'C' - The Duke of Lancaster Room, County Hall, Preston

Agenda

Part I (Open to Press and Public)

No. Item

1. Apologies

2. Disclosure of Pecuniary and Non-Pecuniary Interests

Members are asked to consider any Pecuniary and Non-Pecuniary Interests they may have to disclose to the meeting in relation to matters under consideration on the Agenda.

3. Minutes of the Meeting Held on 26th April 2016 (Pages 1 - 6)

4. Recruitment Issues - Lancashire Teaching Hospitals Trust (Pages 7 - 26)

Follow on from the temporary closure of Chorley A&E

5. Urgent Business

An item of urgent business may only be considered under this heading where, by reason of special circumstances to be recorded in the Minutes, the Chair of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency. Wherever possible, the Chief Executive should be given advance warning of any Member's intention to raise a matter under this heading.

6. Date of Next Meeting

The next meeting of the Health Scrutiny Committee will be held on 14th June 2016 at 10.30am in The Duke of Lancaster Room (Cabinet Room C), County Hall.

I Young
Director of Governance,
Finance and Public Services

County Hall
Preston

Lancashire County Council

Lancashire County Council

Health Scrutiny Committee

Minutes of the Meeting held on Tuesday, 26th April, 2016 at 10.30 am in Cabinet Room 'C' - The Duke of Lancaster Room, County Hall, Preston

Present:

County Councillor Steven Holgate (Chair)

County Councillors

M Brindle	M Otter
Mrs F Craig-Wilson	N Penney
G Dowding	A Schofield
A James	C Dereli
Y Motala	D Stansfield
B Murray	K Snape

Co-opted members

Councillor Barbara Ashworth, (Rossendale Borough Council)
Councillor Trish Ellis, (Burnley Borough Council)
Councillor Shirley Green, (Fylde Borough Council)
Councillor Colin Hartley, (Lancaster City Council)
Councillor Bridget Hilton, (Ribble Valley Borough Council)
Councillor Roy Leeming, (Preston City Council)
Councillor Julie Robinson, (Wyre Borough Council)
Councillor E Savage, (West Lancashire Borough Council)
Councillor M J Titherington, (South Ribble Borough Council)
Councillor P Wilson, Chorley Borough Council

1. Apologies

Apologies for absence were presented on behalf of District Councillors A Mahmood (Pendle) and K Molineaux (Hyndburn)

County Councillor Alan Schofield replaced County Councillor David Smith, County Councillor Cynthia Dereli replaced County Councillor Nicki Hennessey, County Councillor Kim Snape replaced County Councillor Mohammed Iqbal, and Councillor Peter Wilson replaced Councillor Hasina Khan.

2. Disclosure of Pecuniary and Non-Pecuniary Interests

None disclosed.

3. Minutes of the Meeting Held on 15th March 2016

The minutes of the Health Scrutiny Committee meeting held on the 15th March 2016 were presented and agreed.

Resolved: That the minutes of the Health Scrutiny Committee held on the 15th March 2016 be confirmed and signed by the Chair.

4. Lancashire Teaching Hospitals Trust - Chorley A&E update

Chair welcomed Karen Partington, Chief Executive, Lancashire Teaching Hospitals NHS Foundation Trust, Jan Ledward, Chief Officer, Chorley and South Ribble and Greater Preston Clinical Commissioning Group (CCG) and Dr Dinesh Patel, Greater Preston CCG to the meeting to provide the Committee with the rationale for the decision to temporarily close the A&E department at Chorley Hospital and explain what the new temporary arrangements would be.

A PowerPoint presentation was delivered by Karen, a copy of which is appended to the minutes

A summary of the main points are outlined below.

Background:
- Lancashire Teaching Hospitals Trust originally supported the application of the locum cap which was to encourage locums to apply to substantive posts
- The cap was reported to be not in place in Scotland, Wales and Ireland
- Recruitment into emergency medicine has begun to improve but were finding that nationally, 50% of doctors by year 4 were choosing not to continue in their roles
- There continues to be a reliance on locums to support services and locums were reported to occasionally only provide 24 hours' notice to leave

Recruitment:
- Now advertising vacancies through non-framework agencies as well as framework agencies. (Framework agencies would complete all of the compliance checks prior to recruitment but for non-framework agencies, checks were required to be completed by the Trust)
- North West Deanery have received a request from the Trust for evidence around allocation numbers of trainees to ensure the Trust are not being disproportionately disadvantaged

Service impact:
- There was no reported impact on NWAS to date

- An ambulance handover nurse was in place to alleviate previous challenges recognised on the timely transference of patients from the ambulances
- Monitoring of Wigan, Bolton and East Lancs hospitals indicated minimal additional activity so far. NWAS have confirmed that there were no patients taken to Southport and Ormskirk Hospital but would look to confirm status of their walk in patients
- Emergency admissions have been equalised across the two sites with GP's referrals to Chorley, and emergencies through Emergency Department to Preston
- So far there have been no significant fluctuations in attendance at RPH

Current position on recruitment:

- Six gaps currently in the staff rota for Chorley Hospital A&E
- Three locums have been booked for a period of supervision and trial before offering substantive posts
- An additional two more locums booked and awaiting start dates
- One long term locum had already advised they were not available to work in May and June
- There have been 37 CV's reviewed and rejected as they did not meet the essential criteria with a further 17 CV's in the pipeline

Members were invited to make comments and raise questions and a summary of the main points arising from the discussion is set out below:

Members raised strong concerns around the staffing issues highlighted in the presentation and sought reassurances on what Lancashire Teaching Hospitals Trust were planning to do differently in the future and what the timescales to reopen were. Members were advised that there was no information currently on timescales but were assured that they were working very hard to address the staffing gaps to reopen Chorley Hospital A&E. Further discussions would be taking place at the next System Resilience Group (SRG) meeting to identify staffing levels required.

In addition to the work outlined in the presentation, Karen confirmed that they were also looking at how they could attract doctors from overseas and working closely with other organisations to respond to the recruitment issues. The locum situation was also looking more positive since the removal of the cap as it was reported that no CV's had been received for three months when the agency cap was in place. Members were informed that the Trust worked together with partner agencies to hold the cap and initially were able to secure the level of staff required. Two long term sicknesses tipped the balance and prompted the decision to break the cap.

Jan Ledward confirmed that the CCG was looking at care models and currently out to procurement for an urgent care service. This procurement exercise was due to close shortly and would be looking to mobilise this service towards the end of the year.

Karen advised members that RPH was a unique centre with all the specialist services in one place and they were building on that. In addition, a Health Academy has been launched and education plans were in place to assist with future recruitment.

Members were assured that the Trust did acknowledge that there was additional travelling time to RPH from the Chorley area. Feedback was reported to be obtained from patients, family and friends on a daily basis around their experience of the service which could be published.

It was highlighted that numbers accessing Urgent Care in Chorley were increasing and indicated a positive picture as it showed that more patients were accessing the right level of service. The Urgent Care service at Chorley was confirmed to be open from 8am until 8pm. This was agreed in line with current staffing levels which were insufficient to support longer hours.

Members requested reassurances that the temporary closure of Chorley Hospital A&E had nothing to do with the £14m overspend and that RPH had the capacity to support the additional patients as a result of this temporary closure. Karen confirmed that the closure was a direct result of the inability to recruit the right level of doctors and was in no way connected to the reported overspend.
In relation to capacity at RPH, it was acknowledged that some patients would have to wait longer or maybe required to go elsewhere for treatment if there were more urgent cases. Assessments were in place to ensure the right level of service was achieved for all patients attending RPH. In addition, they worked with Lancashire Care Foundation Trust to determine a new model of urgent care to ensure patients were dealt with appropriately to free up capacity for the emergency doctors.

Members requested information on outcomes and whether the Trust felt that communication could have been handled more successfully.
Karen confirmed that Healthier Lancashire were looking at outcomes across Lancashire and South Cumbria and more locally, mortality statistics were available to flag up any issues of which the SRG have requested a review. Data was also being produced around the impact and quality of care.
Communication has been ongoing through the SRG which included members from many partner agencies and NHS Improvement. Karen conceded that communication could have been organised sooner but briefings had been completed with MPs and Leaders outlining issues as they arose.

Members were assured that as well as communication with partners, conversations have been held regularly with Trust Chief Executives across the county and were briefed on the situation in Chorley. They have also commenced a Chairs and Chief Executive meeting.

Resolved: The Committee:

i. Noted the current position provided by the Lancashire Teaching Hospitals Trust
ii. To receive regular updates from the Trust with information on outcomes, impact and timed action plan with an indication of the date to reopen of Chorley Hospital A&E
iii. To proactively seek the views from a range of partners and other sources to continue to scrutinise the current and future provision.
iv. To receive minutes from the SRG meetings
v. To receive data showing the average number patients per hour at both Chorley and Preston

5. Report of the Health Scrutiny Committee Steering Group

On 8 February the Steering Group met with officers from Lancashire County Council regarding mental health services and officers from East Lancashire CCG to discuss changes to services for adults with learning disabilities. A summary of the meeting can be found at Appendix A.

Resolved: That the report of the Steering Group be received

6. Work Plan

Appendix A to the report now presented set out a draft work plan for both the Health Scrutiny Committee and its Steering Group, including current Task Group reviews.

Committee Members were reminded that a planning session has been organised for the 9th May 2016 to determine the work plan for the next 12 months.

Resolved: That the work plan be noted

7. Recent and Forthcoming Decisions

The Committee's attention was drawn to forthcoming decisions and decisions recently made by the Cabinet and individual Cabinet Members in areas relevant to the remit of the Committee, in order that this could inform possible future areas of work.

Recent and forthcoming decisions taken by Cabinet Members or the Cabinet can be accessed here:

http://council.lancashire.gov.uk/mgDelegatedDecisions.aspx?bcr=1

Resolved: That the report be received

8. Urgent Business

There was no urgent business.

9. Date of Next Meeting

It was noted that the next meeting of the Committee would be held on Tuesday 14th June 2016 at 10.30am, Cabinet Room C, County Hall, Preston

I Young
Director of Governance, Finance and Public Services

County Hall
Preston

Health Scrutiny Committee
Meeting to be held on Tuesday, 24 May 2016

Electoral Division affected:
Burnley South West; Chorley East; Chorley North; Chorley Rural East; Chorley Rural North; Chorley Rural West; Chorley South; Chorley West; Farington; Leyland Central; Leyland South West; Penwortham North; Penwortham South; Preston Central North; Preston Central South; Preston City; Preston East; Preston North; Preston North East; Preston North West; Preston Rural; Preston South East; Preston West; South Ribble Rural East; South Ribble Rural West;

Recruitment issues of Lancashire Teaching Hospitals Trust - follow on from the temporary closure of Chorley A&E
(Appendices A & B refer)

Contact for further information:
Wendy Broadley, Principal Overview & Scrutiny Officer, 07825 584684
wendy.broadley@lancashire.gov.uk

Executive Summary

The Health Scrutiny Committee met on 26 April to discuss the temporary closure of the Emergency Department at Chorley Hospital. The meeting was attended by the Chief Executive of Lancashire Teaching Hospitals Trust and representatives from the local Clinical Commissioning Group. At that meeting it was suggested that further scrutiny of the key issues should take place and therefore it was agreed that the challenges around recruitment would to be discussed in further detail at a special meeting of the Committee on 24 May. A number of partner organisations and individuals have been invited to contribute to the discussion and that their contribution would be either in the form of a written submission and/or attendance at the meeting. The invitees are:

- Local MPs
- NHS Improvement
- NHS Employers
- Health Education North West

Lancashire County Council

- Medacs

The written submissions received are attached as appendices to the report.

Recommendation

The Health Scrutiny Committee is asked to consider the submissions and to discuss and determine the future course of action.

Background and Advice

The Health Scrutiny Committee met on 26 April to discuss the temporary closure of the Emergency Department at Chorley Hospital. The meeting was attended by the Chief Executive of Lancashire Teaching Hospitals Trust and representatives from the local Clinical Commissioning Group. A presentation provided by the Trust identified a number of key factors that influenced the decision to temporarily close the A&E at Chorley. One of these key factors was the current challenges around recruitment of middle grade doctors.

To better understand this issue it was agreed that further scrutiny was required of the external factors that impact on recruitment processes. Therefore a number of key organisations and individuals have been invited to either express their concerns or explain the role and responsibilities of the organisations they represent, they are:

- NHS Improvement – they are responsible for overseeing Foundation Trusts and NHS trusts, as well as independent providers that provide NHS-funded care. By holding providers to account and, where necessary, intervening, they help the NHS to meet its short-term challenges and secure its future

- NHS Employers - their vision is to be the authoritative voice of workforce leaders, experts in HR, negotiating fairly to get the best deal for patients. They help employers make sense of current and emerging healthcare issues to ensure that their voice is front and centre of health policy and practice. They keep them up to date with the latest workforce thinking and expert opinion, providing practical advice and information, and generating opportunities to network and share knowledge and best practice. A copy of the Guidance on the Appointment and Employment of Locum Doctors is attached at Appendix A.

- Medacs Healthcare – They are a leading healthcare staffing company providing healthcare recruitment expertise to both the public and private sectors. They are the managed service provider for Lancashire Teaching Hospitals Trust.

- Health Education North West – part of Health Education England. Working across the North West, they are responsible for the education, training and workforce planning for all NHS staff. They provide the Trust with an allocation of trainee doctors.

- Mark Hendrick MP for Preston – Mr Hendrick has provided the Committee with a written submission which is attached at Appendix B.

- Seema Kennedy MP for South Ribble.

- Lindsay Hoyle MP for Chorley.

Consultations

N/A

Implications:

This item has the following implications, as indicated:

Risk management

There are no significant risk implications in the report

Local Government (Access to Information) Act 1985
List of Background Papers

Paper	Date	Contact/Tel
n/a	n/a	n/a

Reason for inclusion in Part II, if appropriate

NA

August 2013

Guidance on the appointment and employment of NHS locum doctors

NHS Employers

1. Purpose of this document

The purpose of this document is to provide guidelines and set standards for the appointment and assessment of NHS locum doctors in order to safeguard the quality of patient care. This guidance applies both to locums employed directly, those employed through an agency and those working as locums through their own limited company.

This document does not cover terms and conditions of employment for locum doctors; these are set out in the relevant medical contracts.

2. Definition of a locum

A doctor in locum tenens is one who is standing in for an absent doctor, or temporarily covering a vacancy, in an established post or position. The principles in this guidance also apply to other short-term or fixed-term medical contracts.

3. Principles for appointment and employment of locum doctors

- Long-term locum doctor appointments should be made with the same care as a substantive appointment. All locum doctors should meet the entry criteria for the post.
- Locum doctors must be properly qualified and experienced for the work they will be required to undertake, including having satisfactory communication skills, including English language. This should also include an understanding and experience of the legal context for medical practice appropriate to the post.
- Locum doctors should not be appointed if they are currently the subject of an investigation or if there are concerns about standards or competence of previous performance (as set out in their end of placement report or appraisal documentation or by an alert letter). If they are unwilling to provide their most recent report, or if they have not engaged with appraisal or revalidation, employers should check if the General Medical Council has placed any restrictions on the doctor's practice.
- Locum doctors should not be engaged for employment until all the necessary employment checks have been conducted satisfactorily, either by the trust or by a locum agency that subscribes to this guidance and applies its requirements. This provision applies equally to locums who are already well known to the employer, for example, through having recently been permanent members of staff. Care should be taken when relying on word-of-mouth recommendations from other doctors.
- Locum service should not normally be recognised for training purposes, except when a Locum Appointment for Training (LAT) post is appropriate. Where educational approval is given for training in a locum post, this should always be secured prospectively and never retrospectively. Educational approval should not be sought for appointments of less than three months' duration in a single post.

4. Introduction

This guidance sets out guidelines on the appointment and employment of NHS locum doctors. It consolidates existing rules, including those set out in the 1997 Department of Health *Code of Practice in the appointment and employment of hospital and community staff (HCHS) locum doctors*.

The quality, competence and communications skills of locum doctors, and the checks made upon them before engagement by organisations providing NHS care, are an important concern. Ensuring patient safety requires that all doctors, including locum doctors, are appropriately trained and qualified for the work they undertake. This guidance is intended to summarise the current standards governing the appointment and use of locum doctors. All employers of locum appointments, whether made directly or through NHS or private locum agencies or limited companies, should comply with this guidance.

Employers should subscribe to this guidance because they have the ultimate responsibility for ensuring that a locum doctor is a suitable appointee for the role, whether or not the locum doctor has been supplied

by an agency or limited company.

Employers may wish to only use locum agencies that subscribe to this guidance. Clinical commissioning groups should include in contracts with providers a requirement for assurance that any locum doctor appointments will comply with this guidance. Wherever possible, employers should also contract solely with locum agencies who subscribe to a negotiated framework agreement that is audited on an ongoing basis. For more information on these agreements see Section 7 ('Framework agreements').

The Department of Health has commissioned a project to review the quality assurance arrangements for secondary care locum doctors. The project will gather evidence and information to provide a better understanding of the issues associated with this group of doctors and evaluate the options for strengthening assurance and governance arrangements. In view of this, the guidance in this document is subject to change when the report and recommendations are published towards the end of 2013.

5. Use and duration of locum appointments

Reducing the cost of locum appointments

Locum doctors are an important asset to the NHS and make a valuable contribution to healthcare. However, the appointment of a locum doctor should be a temporary measure of limited duration for unforeseen absences such as sick leave. Planned absences, such as maternity leave, can often be covered more effectively by better use of the substantive workforce and ensuring that work patterns are more effectively aligned to the needs of patients.

Careful workforce planning and early recruitment to known vacancies can help avoid the use of locum staff. Employers should consider the relative cost-effectiveness of engaging permanent and locum staff. Ideally, there should be sufficient substantive posts within the unit to meet foreseen service demands, including planned absences.

Employers will wish to have in place a system to identify the career intentions of their medical staff. Where it is known that a post is to become vacant, steps to make a substantive appointment should be taken sufficiently early to avoid unnecessary locum appointments.

NHS Employers has produced tools, resources and good practice guides to help employers reduce agency spend. In addition, the document *Managing gaps in medical staff cover - an operational framework for employers* is designed to assist employers in making appropriate arrangements to ensure adequate medical cover where there are medical vacancies.

Locum consultant appointments

The NHS Appointment of Consultant Regulations 1996 (Statutory Instrument no 1996/701) set out the rules for appointing consultant doctors. They do not apply to locum consultants appointed for an initial period of less than six months, or where the appointment is extended for a further six months. Once a single appointment extends to more than 12 months the procedures set out in the Regulations apply and a doctor can only be employed as a locum consultant if they are entered on the specialist register with the GMC.

The Regulations require locum appointments to be reviewed no later than six months in post. Although locum consultant appointments are not initially subject to the full procedure set out in the Regulations, it is considered good practice to appoint, wherever possible, locum consultants who hold, or have held, posts of consultant status, or else who have completed specialty training (or who hold accreditation) in the appropriate specialty. Where possible there should be careful assessment of the candidates by an appointments committee with at least two professional members, one from the specialty concerned.

Locum doctor appointments for other grades

Although the NHS Appointment of Consultant Regulations only apply to consultants, it is good practice to appoint locum specialty doctors, associate specialists and junior doctors (excluding LAT appointments) for an initial period of six months only, or where the appointment is extended for a further six months. The argument against employing locums for a long period is that 12 months should be sufficient time for an employer to advertise and interview for the permanent post which the

locum practitioner would be free to apply for (subject to meeting the entry criteria).

Locum doctors in training grades

The *guide to postgraduate specialty training* (known as the 'Gold Guide') provides advice on using locums in training grade vacancies at paragraphs 5.32 to 5.43.

Locum Appointments for Training (LATs) offer training through the placement, whereas Locum Appointments for Service (LASs) are solely for service purposes.

LATs must be appointed through a national competitive process using the national person specification. A specialty representative nominated by the Local Education and Training Board must be a member of the appointment panel.

LAT doctors must have:

- appropriate clinical supervision
- a named educational supervisor
- appropriate and regular assessment of clinical performance
- a structured report at the end of their appointment
- registration with the appropriate Royal College/Faculty
- registration and a licence to practise with the General Medical Council (GMC).

Health Education England now tightly controls the availability of LAT posts to encourage trainees to take up substantive training posts.

LAS doctors may be appointed by employers in consultation with the Deanery or Local Education and Training Board. Since LAS appointments are for service delivery and will not usually enable appointees to be assessed for competences required by an approved specialty CCT curriculum, employers may use local person specifications.

Doctors undertaking a LAS must have appropriate clinical supervision but do not require an educational supervisor, since they will not normally be able to gain recognised and documented relevant specialty training competences through the appointment.

Provisionally registered doctors **cannot** be appointed to LAS posts. This is because the GMC grants provisional registration for the purposes of completing an acceptable programme for provisionally registered doctors only – i.e. Foundation Year 1.

The Gold Guide also sets out that trainees awarded a National Training Number (NTN) should not undertake locum
activities which compromise their training.

6. NHS Employment Check Standards

The NHS Employment Check Standards outline the employment checks that employers must carry out for the appointment and ongoing employment of all NHS staff in England. The six standards are published by NHS Employers:

i. The verification of identity checks standard outlines the requirements to verify the identity of all prospective NHS employees. The standard sets out the combinations of personal identification documents that are acceptable for verification of identity. The standard also gives advice on how to check documentation for authenticity.
ii. The right to work checks standard outlines the requirements for NHS organisations to verify a prospective employee's legal right to work in the UK. Employers and commissioners risk breaking the law if they fail to check the entitlement to work in the UK of any prospective employees before they start work. The standard provides information about the points-based immigration system and sets out the documents that employers must see to verify an applicant's right to work.

iii. The professional registration and qualification checks standard ensures that a prospective employee is recognised by the appropriate regulatory body, has the right qualifications to do the job and, in the case of doctors, has a current licence to practise in the UK. Employers can check a doctor's registration status online at http://www.gmc-uk.org/doctors/register/LRMP.asp. As doctors are regulated by the GMC, it should not be necessary to verify primary medical qualifications or specialist qualifications separately. The standard outlines what employers should ask for when checking registration with the GMC.

iv. The employment history and reference checks standard outlines the requirements for seeking references and verifying employment history and/or training in the NHS. The standard sets out the minimum requirements for checks and what to do if a prospective employee has spent time overseas or if an employer has doubts about the authenticity of information.

v. The criminal record and barring checks standard outlines the requirements that NHS organisations must follow when appointing staff into positions which involve contact with children and/or adults.

vi. The occupational health checks standard outlines the mandated occupational health checks NHS organisations are required to carry out before the appointment of prospective employees.

These standards apply to all staff in the NHS including locum doctors. The standards also apply in primary care and to admissions to the GP performers list held by NHS England (admission to a performers list is necessary, in addition to GMC registration and licensing, to perform primary medical services in the UK).

NHS providers must provide evidence of their compliance with these six standards as part of the Care Quality Commission's annual regulatory framework. When employing or engaging locum doctors via an agency, organisations must provide evidence to the Care Quality Commission that the agency is satisfying the same level of employment check standard for each individual doctor as an NHS organisation would apply. Ultimate responsibility for the competence of locum doctors rests with the employer. If the employment checks are delegated to an agency, there must be a clear understanding between the two parties so that no checks are overlooked for any individual doctor. For details of what employing organisations should specify in the agency contract agreement around employment checks, see NHS Employers' guide understanding employment checks for agency staff.

Visa holders

Employers should check the conditions of stay for individuals holding visas. If a person has a restriction on the type of work they can do and/or, the amount of hours they can work, then employers should make sure that they do not appoint them in breach of these work conditions to avoid the risk of a civil penalty.

7. Framework agreements

Several negotiated framework agreements exist, which aim to maximise the value for money obtained through the procurement and supply of goods and services. Temporary staffing agencies that are engaged under framework agreements to supply locum doctors to the NHS are contractually obliged to meet the NHS Employment Check Standards, and their compliance is audited on an ongoing basis. However, employers must still gain their own assurance that all agencies engaged under framework agreements have carried out all of the appropriate registration, language and employment checks.

'Off framework' agencies are not covered by this audit and any organisation using them must make its own arrangements for ensuring compliance.

When using locum doctors, NHS bodies should engage with their local counter-fraud specialists to prevent fraud in relation to invoices and timesheets and to ensure that contract prices are transparent and agreed.

8. Tax assurance of off-payroll workers

Sir David Nicholson's letter of 20 August 2012 (Gateway reference 17993) introduced measures the Treasury now requires employers to take where workers are engaged off-payroll for continuous engagements of more than six months and for a daily rate of at least £220 (or £58,200 per annum). These measures apply to locum doctors, including those supplied by agencies, where these criteria are met.

Where the contract with the agency is via a Government Procurement Service agreement, clauses will be included allowing employers to seek assurance with regard to the income tax and national insurance obligations of the worker. In all other cases, relevant contractual provisions should be included as set out in the letter.

9. Language and communication skills

Employers and the GMC play different roles in language and communication testing. It is the responsibility of employing organisations to ensure that prospective employees have the right level of language and communication skills to perform a particular role. It is the responsibility of the GMC to assess the suitability of individual doctors in order for them to become eligible to practise within the medical profession.

Role of the employer

Organisations engaging locum doctors need to establish for themselves that appointees have appropriate communication and language skills, bearing in mind the level of communication skills required for the specific role. Assessing the suitability of language skills can be done using a range of evidence as part of the recruitment process. A doctor's language ability may be self-evident by way of an interview, or through evidence of previous periods of work in the UK. Where there are doubts about a doctor's language ability further assessments may be made through the use of tests. Such tests should only be used where necessary to determine a doctor's language competence and should not be undertaken on a systematic basis.

Employers should also be aware of the different registration and licensing arrangements for EEA and international medical graduates, as set out below.

Role of the GMC

The GMC assesses the suitability of individual doctors in order for them to become eligible to practise within the medical profession. As a result of Directive 2005/36/EC on the recognition of professional qualifications, there are differences in the language controls applied by the GMC, when registering and licensing doctors who are nationals of the European Economic Area (EEA) and registering doctors who are international medical graduates.

Within the EEA, doctors are entitled to registration with the GMC, providing they meet the minimum recognised standard provided in the Directive. The regulator cannot currently assess the level of language competency or communication skills before registering a doctor for UK practice if they are:

- nationals of member states of the EEA
- Swiss nationals who since 1 June 2002 benefit under European law
- UK nationals who are exercising their European Community (EC) rights of free movement within the EEA. Generally speaking, this means someone who has worked as a doctor in another EEA member state and is returning to the UK to work
- UK nationals and non-EEA nationals who are married to EEA nationals who are exercising their EC rights of free movement within the EEA. Generally speaking, this means someone accompanying a spouse coming to the UK to work.

For all other international medical graduates (IMGs) seeking registration and a licence to practise from the GMC, they must provide evidence of a satisfactory standard of English, usually through the International English Language Testing System (IELTs) and Professional and Linguistic Assessments Board (PLAB) tests.

For more information see our pages on the mobility of health professionals across Europe.

Role of the responsible officer

In April 2013, new regulations came into force establishing language competency testing as part of the responsible officer's (RO) role. ROs are required to assure themselves that the doctors they are responsible for, have the appropriate level of language competency to enable them to practice safely.

GP performers list

All international and EEA doctors wishing to practise as a GP in the UK must also be able to provide evidence that they have adequate written and oral communication skills before they can be admitted to the performers list held by NHS England (admission to the performers list is necessary, in addition to GMC registration and licensing, to work in general practice in the UK).

For more details on language competency see our guidance document *Language competency: good practice guidance for employers*. This guidance outlines the responsibility for NHS organisations to seek assurances that any individual involved in the delivery of NHS services has the required level of linguistic skills to enable them to undertake their role effectively and to assure the delivery of safe care to patients.

10. Hours

Working Time Regulations

Doctors are under a professional obligation not to work when their ability or competence is impaired through working excessive hours.

Agencies and employing organisations must ensure that the Working Time Regulations on hours and rest breaks are applied to the locum doctors working for them. To do this they should make clear to potential locum doctors the restrictions on hours of work and convey to the doctor that it is their professional responsibility as a locum doctor to ensure that they do not breach those restrictions.

The main features of the regulations are:

- an average of 48 hours working time each week, measured over a reference period of 26 weeks for doctors (unless an individual chooses to 'opt out' of this requirement)
- 11 hours continuous rest in 24 hours
- 24 hours continuous rest in seven days (or 48 hrs in 14 days)
- a 20 minute break if the work period is over six hours long
- 5.6 weeks' annual leave (pro-rata for part-time staff)
- (for night workers) an average of no more than eight hours' work in 24 over the reference period.

Some doctors may well have a number of locum contracts which collectively take them above the 48 hour limit which would apply to a single employment contract. This is a clinical governance matter and employers should be aware of the extent to which other commitments may potentially affect a locum doctor's ability to fulfil their role safely and effectively.

New Deal contract on junior doctors' hours

Employers must also comply with the provisions of the terms and conditions of service for doctors in training – the 'New Deal contract' - on junior doctors' hours for any doctors currently working in training grades who seek to undertake locum work.

The New Deal was introduced in 1991 to improve the working lives of doctors in training and has been incorporated into junior doctors' terms and conditions of service. The current contract, known as the "New Deal contract", introduced in 2000 restricts trainee doctors' average hours of work to a maximum of 56 hours per week (largely superseded by the 48 hour requirement of the Working Time Regulations as above) and details hours and rest restrictions under the four different work patterns:

- On-call: Maximum continuous duty period of 32 hours (56 at weekends). Average duty hours per week should not exceed 72 hours and average hours of actual work per week should not exceed 56. Rest requirement: eight hours of rest in total (12 per weekend day), of which five should be continuous between 10pm and 8am.
- Full shift: Maximum continuous duty period of 14 hours. Average hours per week should not exceed 56. On a full shift, doctors are expected to be working throughout. The only rest

requirement is natural breaks of 30 minutes' uninterrupted rest after every four hours on average.

- 24-hour partial shift: Maximum continuous duty period of 24 hours. Average duty hours per week should not exceed 64 hours. Rest requirement: one half of the out-of-hours duty period, of which four hours should be continuous between 10pm and 8am.
- Partial shift: Maximum duty period of 16 hours. Average duty hours per week should not exceed 64. Rest requirement: one quarter of the out-of-hours duty period.

On all working patterns, doctors are entitled to natural breaks after every four hours on average.

Doctors in the training grades, on contracts which incorporate the national terms and conditions of service, receive a pay banding supplement which relates to the number of hours they work and the frequency of out-of-hours availability.

11. Pay

Locum tenens pay rates are set out in the Medical and Dental pay circulars. Longer-term (up to six months) locums should be paid on the appropriate substantive pay scale for the grade they are covering.

12. Disclosure of concerns about colleagues' professional practice

In February 2012, the GMC published guidance on raising concerns, which sets out a doctor's responsibilities around raising concerns about colleagues. These include the duty to protect patients from risk of harm posed by another colleague's conduct, performance or health. These responsibilities apply equally to locums.

Concerns about colleagues are best handled locally and early. NHS Employers has published the document *Staying on course – supporting doctors in difficulty through early and effective action*. This document highlights the importance of early intervention when concerns first arise about an individual doctor.

NHS Employers has also published advice and guidance to support the development of policies and procedures around raising concerns at work. This includes a staff communication toolkit and guidance on how to implement and review whistleblowing arrangements.

13. Induction

Locum doctors must be offered appropriate induction for their role and appropriate supervision, including induction into local clinical protocols. The Skills for Health Core Skills Training Framework standardises the interpretation of statutory and mandatory training across the health sector. Organisations will also have their own induction policies and procedures appropriate for their services.

Useful e-learning support programmes for staff new to the organisation are available from the NHS Core Learning Unit. Examples include health and safety training, equality and diversity awareness, and an introduction to patient safety. Locums may need an NHS email address to access these.

14. Revalidation

Medical revalidation is a system for regularly checking and assuring patients and colleagues that every UK doctor is up to date and fit to practise, not only on initial registration and licensing but regularly throughout their careers.

Since November 2009 all doctors who wish to practise medicine in the UK, including locum doctors, have been required to hold a GMC licence to practise. Revalidation started on 3 December 2012 and the GMC expects to revalidate the majority of licensed doctors by March 2016.

Revalidation is based on regular evaluation of all practising doctors (using a structured annual appraisal) against agreed professional standards in the workplace. The GMC takes a decision, normally every five years, as to whether a doctor's licence to practise should be renewed. The revalidation process requires

evidence of patient and colleague feedback to be brought to appraisal discussions.
Doctors revalidate by having regular appraisals that are based on the core guidance for the medical profession, Good medical practice, and by collecting supporting information from their day-to-day work to discuss at appraisal. The supporting information that all doctors, including locum doctors, will need to collect is set out in the GMC's guidance Supporting information for revalidation.

Designated bodies are the organisations recognised as employing or contracting with medical practitioners, and as such are designated under the Medical Profession (Responsible Officers) Regulations 2010 (Statutory Instrument 2010/2841). Designated bodies have to nominate or appoint a responsible officer (RO) to carry out statutory functions.

It is good practice for organisations using locums to ensure they know the identity of the locum's RO prior to engaging the locum doctor. The RO's identity, and that the doctor is engaging with the requirements of revalidation, should be established during the employment checks. Locum doctors who work for, or directly contract with, an NHS organisation are likely to have an RO through this organisation and will need to liaise with that RO to organise their annual appraisal. Locum agencies which are part of a negotiated framework agreement for the supply of locum doctors are required to appoint an RO who must provide annual appraisals for the locum doctors who are connected with them. Doctors engaged through all other locum agencies, who have no other connection as set out in the Regulations, will be appraised by an RO at the Local Area Team at NHS England. The GMC has produced an online tool to help doctors find the type of organisation that is their designated body.

A 'suitable person' can make revalidation recommendations for doctors who cannot make a connection to a designated body. The GMC has issued guidance on this.

Supported by the outcomes from a doctor's appraisals, the RO will make a recommendation to the GMC that the doctor is up to date and fit to practise, and should be revalidated. This will normally happen every five years. After the GMC has received the recommendation, it will carry out a series of checks to ensure there are no other concerns about that doctor. If there aren't any such concerns, the GMC will revalidate the doctor. This will mean that the doctor can continue to hold their licence to practise. In order for locum doctors to revalidate, appropriate evidence from the employer must be provided to the locum doctor and the RO. Employers should provide a report on each locum doctor episode to the locum doctor's RO.

15. Feedback on performance

Employing organisations need to ensure that the appropriate doctor (usually the supervising consultant) completes and returns feedback on a locum doctor's appointment when this appointment is concluded. The provision of feedback will be increasingly important, as it will be part of the evidence base that a locum doctor will need to provide for their annual appraisal as part of the revalidation process.

If the locum doctor has been engaged through an agency, the employer must always send a copy of the report to the agency. For doctors currently in training (whether or not the locum appointment is a training post), postgraduate deans should receive copies of any report where significant shortcomings are identified. LAT doctors must receive a structured report at the end of their appointment. Employers should retain all reports for seven years. Where feedback is sent to a third party, it is good practice to ensure that a copy is also provided to the locum doctor.

In addition, employing organisations should report any serious issue or concern to the GMC and, where appropriate, use the alert notice system.

The GMC publication Good medical practice says:

> "If you have concerns that a colleague may not be fit to practise and may be putting patients at risk, you must ask for advice from a colleague, your defence body or us. If you are still concerned you must report this, in line with our guidance and your workplace policy, and make a record of the steps you have taken."
>
> Extract from *Good medical practice, guidance for doctors*, 2013

Longer-term appointment locum doctors should be incorporated into employing organisation's appraisal, objective setting, job planning and review processes.

16. Redundancy

Where a doctor has two years or more continuously employed service with one (or several) NHS employers, without a break of a 'statutory week', they can be eligible for redundancy payments. This applies equally to locums and is set out in the relevant terms and conditions for each grade. For more information about qualification for redundancy payments see:

http://www.nhsemployers.org/PayAndContracts/AgendaForChange/Nhs-redundancy/Pages/NHS-redundancy.aspx

17. Fixed-term employees regulations

Employing doctors on fixed-term contracts has implications under employment law. Under the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, any employee who has been employed continuously on a series of successive fixed-term contracts for four or more years (excluding any period before 10 July 2002) will usually be classed in law as a permanent employee.

The only exemptions to this are when employment on a further fixed-term contract is objectively justified to achieve a legitimate aim, for example a genuine business aim that can be objectively justified, and is also a necessary and an appropriate way to achieve that aim, or the period of four years has been lengthened under a collective or workplace agreement.

Under the Regulations, locum doctors on fixed-term contracts are entitled to receive no less favourable treatment than doctors in permanent posts. Employers will therefore need to consider the doctor's position with regard to aspects such as annual or study leave, and access to training.

18. Agency Workers Regulations 2010

Under the *Agency Workers Regulations*, locum doctors who are appointed through agencies are entitled to "equal treatment" compared to directly recruited staff after being employed in the same role with the same hirer for 12 continuous weeks. After 12 weeks they are entitled to the same pay, holidays, working time, overtime, breaks and rest periods as comparable to permanent doctors.

From day one, agency workers are entitled to:

- equal access to collective facilities (for example, canteen, childcare facilities and transport services)
- access to information about permanent employment opportunities and access to training.

Under the Regulations, 'pay' does not include all pay-related rights. For example, it does not include occupational social security schemes, sick pay, pensions or financial participation schemes. This is not an exhaustive list of excluded pay matters.

19. Checklist of responsibilities

Employers should:

a. ensure that any agencies they use subscribe to this guidance and, where possible, have signed up to a negotiated framework agreement that is audited on an ongoing basis

b. manage their workforce planning effectively so that locum doctor appointments are limited to a maximum of six months initially, with possibility for extension up to 12 months maximum

c. ensure the doctor's identity is checked under the verification of identity checks standard

d. ensure the doctor's eligibility to work in the UK is checked under the right to work checks standard

e. ensure the doctor's GMC registration, licence to practise and medical qualifications are checked by following the professional registration and qualification checks standard

f. ensure the doctor's previous employment and training history are checked under the employment history and reference checks standard

g. ensure any convictions or other relevant information are checked through the criminal record and barring checks standard

h. ensure a pre-appointment health check is done under the occupational health checks standard

i. ensure that educational approval for the appointment is secured in advance if the locum posting is to be recognised for training purposes

j. ensure the doctor has the appropriate language skills to practise safely

k. ensure the doctor has the appropriate communications skills

l. ensure that the locum placement will not cause the doctor to breach the Working Time Regulations or any visa requirements about hours

m. ensure that the locum placement will not cause the doctor in a training grade to breach the controls on hours set out in the New Deal on junior doctors' hours

n. ensure that all doctors know how to raise concerns at work

o. provide induction for the locum doctor, appropriate to the post and the length of the appointment

p. ensure the locum doctor is participating in the requirements of revalidation and the identity of the doctor's RO is recorded

q. ensure that a structured report form is completed by the appropriate doctor

r. send a copy of the report to the agency for any agency locums

s. send a copy of the report to the RO, which in the case of doctors in training, will be the Postgraduate Medical Dean

t. report any serious issues or concerns to the GMC and, where appropriate, under the alert notice system

u. retain all reports for seven years

v. comply with relevant legislation including the Fixed-Term Employees Regulations 2002, the Agency Workers Regulations 2010, the Data Protection Act 1998, the Safeguarding Vulnerable Groups Act 2006 and the Equality Act 2010

w. check that, where necessary, the doctor holds current membership of a medical defence organisation (this applies equally to doctors working through a limited company)

x. review the appointment if, exceptionally, the locum doctor is still in post after six months.

Checklist of responsibilities *continued*

Clinical commissioning groups in England, health boards in Scotland, Wales and Northern Ireland may wish to:

a. consider the extent of locum usage by providers, and processes for locum doctor appointments, when setting local quality standards and monitoring requirements in contracts with providers

b. tell providers of any problems of which they become aware arising from locum usage, so that they can take appropriate action

Checklist of responsibilities *continued*

Both NHS and independent employment agencies should:

a. meet the standards set out in this guidance

b. comply with the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and the Agency Workers Regulations 2010

c. ensure that, on first registering with the agency, all doctors are checked under the six employment checks standards

d. undertake the six employment checks where the agency is acting on the employer's behalf. There must be a clear understanding and agreement between the two parties so that no checks are overlooked

e. secure copies of assessment reports on locum doctors they have placed, retaining these for as long as good business practice dictates

f. consider whether a doctor who has been the subject of poor reports should remain on the agency's books and/or should be referred to the GMC in line with the fitness to practise guidance

g. where questions arise about a series of reports from one unit (whether concerning the same or several different doctors), take the matter up with the senior management of that unit.

Checklist of responsibilities *continued*

Locum doctors should:

a. produce their original identity documents and educational certificates for the employer or locum agency to see to confirm the details of their identity, registration, medical qualifications and membership of a medical defence organisation where necessary, and produce work permits where applicable

b. provide their most recent reference of employment and sign a statement that the most recent employer is correctly identified. The statement should also disclose any GMC proceedings which are pending. Where the doctor is also in substantive employment, a reference from the substantive employer should also be provided. If a locum doctor is due to arrive outside normal working hours, the doctor should hand these references to the person who receives him or her, for transmission to the relevant clinical director the following day

c. ensure that any locum work undertaken does not entail exceeding the Working Time Regulation limits on contracted hours or actual hours of work set out in the Terms and Conditions of Service NHS Medical and Dental Staff (England) 2002

d. provide dated documentary evidence of their health assessment and of the immunisations and tests that they have had

e. complete a Health Declaration and Statement of Criminal Convictions at the start of each locum appointment episode

f. co-operate with the medical staffing officer and the senior clinician reporting on him or her to ensure that the end of placement report is completed in a timely manner

g. countersign the completed report at the end of the locum appointment, making written comments if desired

h. if he or she disagrees with the contents of a report, contact the medical director.

i. carry out their responsibilities under *Good Medical Practice* and the supplementary guidance on raising concerns

NHS Employers

The NHS Employers organisation is the voice of employers in the NHS, supporting them to put patients first. Our vision is to be the authoritative voice of workforce leaders, experts in HR, negotiating fairly to get the best deal for patients.

We work with employers in the NHS to reflect their views and act on their behalf in four priority areas:

- pay and negotiations
- recruitment and planning the workforce
- healthy and productive workplaces
- employment policy and practice.

The NHS Employers organisation is part of the NHS Confederation.

Contact us

For more information on how to become involved in our work, email getinvolved@nhsemployers.org

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Statement to be read at LCC Health Scrutiny Committee – 24.5.16

I, along with my Labour colleagues are rightly proud of our NHS however, the current situation at Lancashire Teaching Hospitals is causing much concern amongst the people of Chorley, South Ribble and in my constituency of Preston.

I am dismayed at the situation and have communicated with Lancashire Teaching Hospitals about my concerns, particularly around the impact of the closure of A&E at Chorley on the Royal Preston Hospital. Chief Executive, Karen Partington has responded outlining the effect on RPH and the measures put in place to deal with the additional patients being treated there.

Lancashire Teaching Hospitals are keeping stakeholders informed on a regular basis about the actions being undertaken to ensure that Chorley is re-opened and this has raised important questions around the allocation of doctors in training throughout the NHS. I too have written to Ian Cummings, Chief Executive of Health Education England and Graham Urwin, Director of Commissioning Operations NHS England to push for support in finding suitable doctors in training for Lancashire Teaching Hospitals at this worrying time.

I hope very much that Lancashire Teaching Hospitals are doing everything in their power to provide services and treatment to maintain the health and wellbeing of the people of Lancashire; and to recruit the staff needed to re-open Chorley A&E as a matter of urgency.

Mark Hendrick
Member of Parliament for Preston