

HEE/NHSEI Joint Position Statement: Ensuring Education and Training in the Independent Sector

Jointly agreed by IHPN, NHSEI and HEE

September 2020

Background

Training in many specialties was suspended as trainees were redeployed to support the NHS during the pandemic.

Now that the first acute surge of COVID 19 appears to be settling, the focus of the NHS has moved to reinstating non COVID healthcare. Local healthcare systems are looking at all and any independent providers to support healthcare delivery.

Education and training should take place wherever NHS provision is situated, so should therefore occur in the independent sector for both service delivery and to ensure the pipeline of future multi-professional workforce supply. Failure to use all training opportunities, including those within the independent sector, will deny trainees the opportunities to catch-up and progress and may increase the financial burden on the NHS as training extensions may be required. The potential delay of trainees completing their training and entering the NHS may increase locum costs, delay service delivery and impact on patient and healthcare outcomes.

The detail in this document concentrates on doctors in training. There may be the requirement to consider student placements of other professional groups in the future.

Introduction

This document relates to surgical and diagnostic services commissioned on behalf of NHS patients and delivered within the independent sector under NHSEI standard contracts.

It sets out a series of high-level principles to ensure trainees do not miss opportunities to train in elective surgery or diagnostic activities while these take place in the independent sector.

The principles reflect the good practice already taking place in some independent providers in England and the fact that many trainees will already work across multiple hospital sites

These principles apply in all specialties, and in any region within England.

Principles

1. Accountability and clinical/educational governance

- The trainee/doctor in training must be employed by an NHS trust.
- This employing trust must approve the movement of doctors in training from NHS sites to work with their consultants when they are undertaking NHS-funded work in independent sector facilities.
- The employing trust must confirm NHS indemnity is in place for the doctor in training to work in the independent sector site for the NHS work undertaken (see page 5).
- Doctors in training are always strongly advised to have additional personal indemnity. If this is in place, then the doctor should advise the indemnity provider of the change in site of working.

Educational Governance

- The Postgraduate Dean (PGD) is responsible to the GMC for the quality of training and confirmation that training has occurred locally to the required standard.
- Clinical and educational supervisors are responsible to trust Directors of Medical Education (DMEs).
- PGDs quality manage NHS trusts for the delivery of postgraduate medical training, and so the DME is required to provide assurance to the PGD.
- Independent provider sites must be recognised as educational providers by the GMC¹. This will be applied for by the PGD once the local need has been identified.
- The PGD is the Responsible Officer for doctors in training and must be made aware of any issues that may give rise to any fitness to practice concerns.
- The DME of the host trust will be responsible for educational governance and reporting to GMC standards. The DME will be responsible for updating the PGD as necessary and providing assurance that training that is occurring in the independent sector meets GMC and HEE standards and requirements
- Training Programme Directors (TPDs) and Heads of School are also accountable to their local PGD.
- It is understood that in some circumstances additional capacity of educational oversight may be required by the independent sector site. In such circumstances it is recommended that there is a discussion with the local Postgraduate dean to agree the need and ensure no other more cost-effective solutions exist. No more than 0.5 PA / week should be agreed in the first instance and can be claimed as 'cost recovery' from within the NHSEI contract.

¹ See GMC website [here](#) for further information on site approval). This can be facilitated by local offices/deaneries via GMC Connect (see [here](#) for further details).

Individual Doctors In Training

- The training provided must be open to trainees in a recognised specialty training programme, regardless of level (including core trainees) with appropriate levels of supervision, tailored to meet the needs of the individual trainee.
- The grade and stage of training should not be a barrier to training in the independent sector.
- The Postgraduate Dean must approve the move. For example, in surgery, the TPD and School of Surgery must agree local arrangements for the delivery of training in the independent sector, ensure that the PGD is kept informed. The other required steps must be in place before doctors in training can work clinically at an independent site.
- Arrangements for the selection of cases for training will be the same as in the host trust.
- Trainees must always be supervised by a consultant who is a recognised clinical or educational supervisor in the NHS and who is currently employed by the host trust. This information should be known prospectively and timetabled as part of the list/session
- The CQC has confirmed that Independent sector providers must ensure that post graduate medical trainees comply with staffing regulations set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. namely as follows:
 - [Regulation 18](#) (staffing),
 - [Regulation 19](#) (fit and proper persons employed) and
 - [Schedule 3](#) (Information required in respect of persons employed or appointed for the purposes of a regulated activity).
- The CQC has confirmed that there are various mechanisms that an independent provider may be able to evidence that the requirements of the Regulations have been complied with. The most recent ARCP² form and form R^{3 4} may be used to provide evidence of some of these requirements.
- These requirements are listed in the Appendix.
- The receipt of the most recent ARCP form as well as form R which can only be issued if the prerequisite employment and other checks have occurred. This should negate the need for any other additional pre employment checks although to fulfil requirements of the CQC Schedule 3 the Independent Healthcare provider will need to obtain this evidence from the NHS employer of the doctor with their consent to do so. The form also defines the training programme, grade as well as full scope of practice.
- The doctor in training must give permission for release of the forms or provide the forms personally. If this is not possible then the doctor in training cannot work/train at the independent sector site.

² <https://www.jcst.org/key-documents/> Trainee assessment form

³ <https://madeinheene.hee.nhs.uk/Portals/42/Form%20R%20Part%20A%20-%20Nov2018.pdf>

⁴ https://madeinheene.hee.nhs.uk/Portals/42/Form%20R%20Part%20B%20Nov2018_1.pdf

- The Postgraduate dean will approve, *prospectively*, those doctors in training who are able to work at the independent site, and provide additional assurance that there are no fitness to practice concerns.
- The Consultant supervisor remains the clinician with overall responsibility for the care of the patient being treated.
- The PGD remains responsible for quality of education and training and can stop the arrangements/withdraw trainees if concerns arise.

2. Contracting

Independent providers may currently be commissioned to provide NHS services under one of three different versions of the NHS Standard Contract, or may be sub-contractors to an NHS or independent provider commissioned under one of those versions (with relevant obligations therefore passed down to the independent provider).

A. NHS Standard Contract 2020/21 – Full Length Version is used for all acute services and other complex/high value services commissioned by CCGs or by NHS England.

General Condition 5.7 states:

The Provider **must** cooperate with the LETB and Health Education England in the manner and to the extent they request in planning the provision of, and in providing, education and training for healthcare workers, and must provide them with whatever information they request for such purposes. The Provider must have regard to the HEE Quality Framework.

B. NHS Standard Contract 2020/21 – Shorter Form Length Version is used (at commissioners' discretion) for less complex/lower value services.

General Condition 5.5 states:

The Provider **must** cooperate with the LETB and Health Education England in the manner and to the extent they request in planning the provision of, and in providing, education and training for healthcare workers, and must provide them with whatever information they request for such purposes. The Provider must have regard to the HEE Quality Framework.

C. NHS Standard Contract 2020/21 – Full Length Version with agreed derogations – used only for commissioning acute services from IS hospital providers by NHS England as part of the Covid-19 response.

General Condition 5.7 above, requiring cooperation with the LETB and HEE, had been intentionally omitted from this contract, but NHSE is seeking to agree its reinstatement for the remainder of the duration of those contracts.

- Variability of contract type between trust/commissioner and independent provider should no longer impact on the ability to undertake training in the independent sector.
- Time for training, reflection, assessment, logbook review etc. should be taken into account by contractors and commissioners when setting up contracts locally.

3. Delivery

- Trainees should be included in the planning for the resumption of diagnostic and surgical services in order to ensure that training opportunities are identified and exploited wherever possible
- Trainees must be given the opportunity to gain a wide range of competencies. This will mean in specialties like surgery, taking part in theatre sessions. Trainees should be involved in the consent process, but responsibility for consent will remain with the consultant.
- Although out of hours cover should normally be provided by the independent provider's RMO/consultant, as per section 1, the NHS Consultant supervisor remains the clinician with overall responsibility for the care of the patient being treated. Trainees are almost always needed to cover unscheduled care in NHS providers so should not normally be considered in this role. Determination of peri- and post- operative care and out of hours cover is a clinical matter between the commissioner and the provider. As such it does not form part of this educational agreement. The doctor in training is not personally or professionally responsible for ensuring the provision of that care.
- Consideration should be given to deploying members of the wider multiprofessional team and consultants to cover gaps in rotas etc., to allow trainees to work in the independent sector if attendance would support progression.
- These are high level principles and the logistics of allowing trainees to participate in activity across multiple sites will necessarily vary depending on local circumstances. Postgraduate deans should be involved in local discussions as needed.
- Legal duty of candour arrangements applies to delivery of supervision of treatment provided by trainees. Both the NHS and independent providers have a duty to make sure legal requirements of this duty are adhered to.

4. Out of hours cover and post treatment complications

- The employing trust and independent provider must have an agreement in place clearly setting out the arrangements of who is responsible for providing specialist post treatment care of complications.
- The arrangement for post treatment care must include arrangements for anaesthetic and surgical care in the event of unplanned return to theatre or an unexpected medical event.
- The arrangement must include clear lines of responsibility and how medical, surgical and anaesthetic cover will be made available within a 30 mins time frame.

5. Indemnity

- NHS staff in the training grades who work in independent hospitals as part of their NHS training, are covered by NHS Indemnity (the CNST membership of the employing Trust), provided that such work is covered by an NHS contract of employment⁵ and the trainee is under the supervision of an NHS consultant.

See also: JCST Guidance on Training Implications and Principles to Consider [here](#)

Acknowledgement to COPSS for their initial development of this document

⁵ Annex A of the NHS Indemnity Arrangements for Clinical Negligence Claims in the NHS

Appendix – Schedule 3 - Information Required in Respect of Persons Employed or Appointed for the Purposes of a Regulated Activity

1. Proof of identity including a recent photograph.
2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997(1), a copy of a criminal record certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 (provision of barring information on request)(2).
3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of an enhanced criminal record certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children or vulnerable adults.
4. Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to—
 - (a) health or social care, or
 - (b) children or vulnerable adults.
5. Where a person (P) has been previously employed in a position whose duties involved work with children or vulnerable adults, satisfactory verification, so far as reasonably practicable, of the reason why P's employment in that position ended.
6. In so far as it is reasonably practicable to obtain, satisfactory documentary evidence of any qualification relevant to the duties for which the person is employed or appointed to perform.
7. A full employment history, together with a satisfactory written explanation of any gaps in employment.
8. Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purposes of the regulated activity.
9. For the purposes of this Schedule—
 - (a) "the appointed day" means the day on which section 30A of the Safeguarding Vulnerable Groups Act 2006 comes into force;
 - (b) "
"satisfactory" means satisfactory in the opinion of the Commission;
 - (c) "
"suitability information relating to children or vulnerable adults" means the information specified in sections 113BA and 113BB respectively of the Police Act 1997.