Response to the House of Commons Health Committee report The use of overseas doctors in providing out–of–hours services: Fifth Report of Session 2009–10

Presented to Parliament
by the Secretary of State for Health
by Command of Her Majesty

July 2010

Cm 7904 £5.75

© Crown Copyright 2010

The text in this document (excluding the Royal Arms and other departmental or agency logos) may be reproduced free of charge in any format or medium providing it is reproduced accurately and not used in a misleading context. The material must be acknowledged as Crown copyright and the title of the document specified. Where we have identified any third party copyright material you will need to obtain permission from the copyright holders concerned.

ISBN: 9780101790420

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID P002379590 07/10

Printed on paper containing 75% recycled fibre content minimum.

Introduction

1. On 8th April 2010 the House of Commons Health Committee published 'The use of overseas doctors in providing out–of–hours services: Fifth Report of Session 2009–10'. The report followed an inquiry by the Health Committee which sought evidence from the then Minister of State for Health, Mike O'Brien MP on 5 March 2010 along with other witnesses, including the General Medical Council and the Royal College of General Practitioners.

2. Since the Health Committee's inquiry there has been a change of administration following a general election in May 2010. The following paper therefore sets out the present Coalition Government's response to the Health Committee's fifth report of the session 2009/10.

3. We have carefully considered the Committee's report and the issues that it raises. The death of David Gray following his treatment by Dr Daniel Ubani on 16 February 2008 was a tragic case resulting from a failing out-of-hours system and the Government offers the Gray family its most sincere condolences.

Responses to the Report's Recommendations

[References to paragraph numbers after the recommendations (bold, in italics) refer to the Health Committee's report.]

Language Testing of EEA Doctors

> ***There is a difference of legal opinion between the Department of Health and the GMC. We recommend that, without delay, the Department and the Council share their legal advice about the legality of amending the Medical Act 1983 (paragraph 22).***
>
> ***We further recommend that, as a matter of extreme urgency, the Government seek to make the necessary changes to the Directive 2005/36/EC before it is due to be revised in 2012, to enable the GMC to test the clinical competence of doctors and undertake systematic testing of language skills so that everything possible is done to lessen, as soon as possible, the risks of employing another unsuitably trained or inexperienced doctor in out-of-hours services (paragraph 23).***

4. This Government has committed to ensure that, as far as possible, foreign healthcare professionals are not allowed to work in the NHS unless they have proven their competence and language skills, and we are currently exploring a number of options to put a stop to foreign doctors slipping through the net.

5. The law in this area is governed by the European Directive 2005/36/EC concerning the mutual recognition of professional qualifications. Since the Coalition Government came to power we have been looking into the issue of language competency of EEA migrants seeking employment as a doctor in the UK as a matter of urgency and we have carefully considered the Health Committee's Fifth Report.

6. The Government accepts the recommendation in paragraph 22 in full. Officials met with the GMC on 26th May and we have agreed to jointly explore options for developing a strengthened system of language checks.

7. The Government supports the recommendation in paragraph 23 in respect of the need for doctors to be able to communicate effectively with patients. The European Commission has begun its review of the implementation of the Directive which is due for completion in 2011 with any new proposals to be put forward in 2012. However, there is no guarantee that the review would lead to any changes to the Directive and it is worth noting that only the European Commission can propose amendments to EU law in this area.

8. Any amendment to the Directive would be likely to take several years to be fully implemented and therefore we believe that the priority should be to concentrate on strengthening language checks under the current scope of the law. My officials had a constructive meeting with Commission counterparts in June. Subsequently we concluded that there is scope for strengthening the current arrangements irrespective of whether there is ultimately change to the Directive itself. In particular we plan to explore how the NHS Commissioning Board, which we intend to bring forward legislation to establish, could oversee a more effective system for undertaking checks on language knowledge of primary care practitioners to address the historic lack of consistency in the application of checks by primary care trusts.

9. With regards to checks on clinical competence, the Directive is concerned with the mutual recognition of qualifications and it is therefore extremely unlikely that further checks on competence could be provided for. This is because checks on professional competence at the point of initial registration should be handled under the automatic recognition regime and be attested to by qualifications issued by another EU competent authority.

10. It is important to note that automatic recognition is about access to the profession as a whole, not suitability to undertake any given role. The suitability of individuals within the profession to take up specific roles must remain the responsibility of those employing or contracting with them. We will ensure, through local health commissioning and contracting arrangements that those employing or contracting with doctors properly discharge their obligation to ensure that the doctor is fit for the specific role that they are being

appointed to and that there is appropriate clinical input into decision making.

Out-of-Hours and Urgent Care Services – Contractual Arrangements and Quality Assurance

SHAs and the healthcare regulator, the Care Quality Commission, must ensure that all PCTs are carrying out language tests on EEA doctors and assessing their fitness to practise before they are admitted to Performers Lists (paragraph 35).

The Department must ensure that all PCTs' contracts with out-of-hours service providers detail the standards for quality of care, clinical governance and risk management in out-of-hours services. SHAs should play a stronger role in examining how PCTs are meeting these requirements (paragraph 42).

It is imperative that PCTs should ensure that contracts with out-of-hours providers detail rigorous standards in respect of the recruitment, induction and training that doctors should receive. Furthermore, PCTs must be satisfied that these are delivered by any sub-contractor or agency which providers may use (paragraph 44).

11. There is no doubt that out-of-hours care needs urgent reform. The report into out-of-hours care commissioned by the previous administration and the coroner's report into the death of David Gray revealed that, while good out-of-hours care is being provided in other parts of the country, there are significant failings in the provision of out-of-hours care in some parts of England.

12. We agree with the Committee that the previous administration showed insufficient regard to securing value for money for taxpayers when they negotiated the out-of-hours GP service reforms in 2004. As described in the National Audit Office 2006 report, it is clear that providing out-of-hours services has cost some PCTs more than the Department of Health anticipated at the time.

13. We are also concerned that since 2004 there have been failures on the part of some primary care trusts to monitor the quality of care and to assess and review contracts with out-of-hours care providers and failures on the part of some strategic health authorities to monitor PCT performance effectively. This situation has been compounded by a lack of clarity on responsibility between

commissioners and providers and little or no integration of out-of-hours care with urgent care.

14. The Government is committed to providing universal access to high quality urgent care services 24 hours a day, 7 days a week, including out-of-hours services. Our vision for urgent care will be to replace the ad-hoc, uncoordinated system that has developed in England over the last 13 years, and which has been characterised by several examples of poor quality and unacceptable variation.

15. We will also help the public to better understand what urgent care services are available to them by improving information to support choice and accountability and removing the confusion surrounding various services and what they provide, so that they can make more informed decisions about which services to access.

16. We will introduce a new single telephone number to provide consistent clinical assessment at point of contact, and will direct patients to the right service, first time. This number - 111 - will be free to call and available 24/7. The first site will be launched in County Durham and Darlington this summer, with further sites in Nottingham City, Lincolnshire and Luton before the end of the year.

17. We agree with the Committee that all contracts with out-of-hours service providers should detail the standards for quality of care, clinical governance and risk management in out-of-hours services, and that this should apply to contracts issued by any future commissioners of out-of-hours GP services. As set out in *Equity and Excellence: Liberating the NHS*[1] we plan to address the failures of the previous administration by giving responsibility for commissioning and budgets to groups (or consortia) of GP practices in order to shift decision-making as close as possible to individual practices.

18. There are already National Quality Requirements (NQRs) for out-of-hours services which providers are contractually obliged to meet. These are currently being reviewed with a wide range of stakeholders in order to develop a stronger set of national, minimum standards with which all out-of-hours providers will be required to

---

[1] Equity and Excellence: Liberating the NHS, Published by the Stationery Office Limited, July 2010

comply. It will remain the responsibility of those commissioning GP out-of-hours services to ensure that these NQRs are being met.

19. The February 2010 report on GP out-of-hours services by Dr David Colin-Thome and Professor Steve Field contained several recommendations for commissioners and providers in respect of the recruitment, induction and training of out-of-hours doctors, which are in the process of being implemented locally. Furthermore, the previous government announced the development of a national model contract to be held between commissioners and providers of out-of-hours services, to standardise and strengthen the standards required in provision of such services.

20. The NHS Commissioning Board will be tasked with designing model NHS contracts for local commissioners to adapt and use with providers and this will include the contractual arrangements for out-of-hours services.

21. We believe that GPs are best placed to ensure that patients get the care they need, when they need it. Empowering GPs in this way will achieve better services for patients and more control of local services for GPs.

22. We will ensure commissioners of local health services, through an improved evidence base, focus on rationalising and strengthening integration of urgent care services so that gaps and overlaps are reduced, efficiencies realised and patient access is improved. In future the NHS Commissioning Board will be responsible for holding consortia to account for stewardship of NHS resources and for the outcomes they achieve as commissioners.

23. We agree with the Committee that those commissioning out-of-hours services should ensure that contracts with out-of-hours providers detail rigorous standards in respect of the recruitment, induction and training that doctors should receive. Commissioners must be satisfied that these standards are delivered by any sub-contractor or agency which providers may use, and this should apply to future commissioners of out-of-hours services, including GP commissioning consortia.

24. Currently PCTs are not bound to carry out testing themselves but must refuse to enter a candidate's name on the performers list if they are not satisfied that he or she has sufficient knowledge of English language. PCTs need to be diligent in performing their statutory duties in this respect, and strategic health authorities will be held to account for ensuring that PCTs discharge all of their responsibilities, including their obligations under the Performers List Regulations 2004, through the performance management function of the NHS Operations Board. Our intention is that these functions will transfer to the NHS Commissioning Board once established. As I have previously stated we intend to explore scope for the NHS Commissioning Board to take over responsibility for ensuring there is a more effective process for undertaking language knowledge checks on primary care practitioners in future.

25. The Care Quality Commission (CQC) registers providers against their compliance with specific registration requirements set out in regulations (including 16 key requirements relating to safety and quality) and the requirements of other relevant enactments. It can only take action where a provider breaches these requirements or breaches a condition attached to their registration or commits another offence relating to the registration system.

26. Responsibility for providing ongoing assurance that PCTs are carrying out their functions appropriately, on a day to day basis, sits with the strategic health authority, rather than with the CQC. In future this responsibility will lie with the NHS Commissioning Board.

Performers Lists

The Department must implement the recommendations of the 2009 Performers List Review without delay. We also recommend that the Department of Health review the merits of a national database for doctors working in general practice (paragraph 36).

27. The Department agrees with the Committee that the Performers List Review contained many important recommendations for improvements to the working of the system and we remain committed to strengthening the performers list system. Work on implementing the Performers List Review recommendations will be taken forward in light of the proposed changes to the system in which it will operate including the development of proposals for a new NHS Commissioning Board. Consideration of a national database of doctors working in general practice and the need for greater clinical involvement in decision making will be considered in that context.

Cornwall and Isles of Scilly PCT

The Minister told us that Cornwall and Isles of Scilly PCT had acted illegally in admitting Dr Ubani to their Performers List but subsequently the Department informed us that no disciplinary action had been taken by the PCT although the SHA were monitoring the situation and the PCT had reviewed its procedures. Moreover, no action had been taken against the PCT (paragraph 37).

28. We have received assurances from the South West Strategic Health Authority that Cornwall and Isles of Scilly PCT suspended Dr Ubani from its performers list on 27 February 2008, the day after they became aware of the tragic incident involving David Gray. The PCT notified the South West SHA on 29 February 2008.

29. Following the Care Quality Commission's Interim Statement in October 2009, the SHA carried out the following actions, in that month:

i. it required Cornwall and Isles of Scilly PCT to provide it with assurance of action taken in a written statement;

ii. it wrote to all local PCT primary care leads asking for a review and assurance of key issues relating to out-of-hours and performers list management; and

iii. it wrote to all local PCT chief executives and workforce leads detailing action required with regard to out-of-hours and performers list monitoring.

30. Meetings were then held during October and November to look at the role of primary care commissioners in assuring the quality and safety of the workforce delivering commissioned services. The SHA also held a seminar session for PCT primary care leads to review the interim statement and any actions required to assure patient safety and conducted a review by local urgent and emergency care regional leads.

31. An internal inquiry by Cornwall and Isles of Scilly PCT reported that no action against any member of staff was required, as staff were following the PCT's policy at the time and this finding was communicated to the SHA.

32. In March 2010 the South West Strategic Health Authority sought assurance that all local primary care trusts had reviewed arrangements and taken any necessary action in the light of the findings relating to the coroner's inquest and the review of out-of-hours care by Professor Field and Dr Colin-Thome. It continues to work with local primary care trusts to develop best practice guidance for local adoption.

Role of the Care Quality Commission

In addition, we recommend that the Care Quality Commission (CQC) address PCTs' competence in this area [quality assurance of quality of care, clinical governance and risk management in out-of-hours services] under the new regulatory system. The Care Quality Commission must also use its powers under the new registration system to deal with commercial providers that endanger patient safety by failing in their obligation to check the clinical and language skills of overseas locums (paragraph 42.)

33. The Government fully supports the principle behind the Committee's suggestion and will look into ways through which this can best be achieved. Out-of-hours providers (including commercial providers) will be required to register with CQC from April 2012. Until out-of-hours providers are registered with CQC, it will be unable to take any formal action against their registration although it is currently able to investigate them and make recommendations, as was the case with Take Care Now.

34. When out-of-hours providers do come within the registration system, they will need to meet the 16 registration requirements, including the one on "staffing" - which requires that providers "must take appropriate steps to ensure that, at all times, there are sufficient numbers of suitably qualified, skilled and experienced persons employed for the purpose of carrying on the regulated activity". In its guidance about compliance CQC makes it clear that this means that staff should be "able to communicate effectively with people who use services and other staff, to ensure that the care, treatment and support of people who use services is not compromised".

Published by TSO (The Stationery Office) and available from:

Online
www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail
TSO
PO Box 29, Norwich, NR3 1GN
Telephone orders/General enquiries: 0870 600 5522
Order through the Parliamentary Hotline Lo-Call 0845 7 023474
Fax orders: 0870 600 5533
E-mail: customer.services@tso.co.uk
Textphone: 0870 240 3701

The Parliamentary Bookshop
12 Bridge Street, Parliament Square
London SW1A 2JX
Telephone orders/General enquiries: 020 7219 3890
Fax orders: 020 7219 3866
Email: bookshop@parliament.uk
Internet: http://www.bookshop.parliament.uk

TSO@Blackwell and other Accredited Agents

Customers can also order publications from:
TSO Ireland
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401