



Sustainable future for diagnostic radiology: working for alternative and/or multiple providers

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Key points

- Provision of radiology services in the UK is becoming a complex market with multiple providers.
- This produces opportunities for radiologists to work outside the NHS and/or for multiple providers or in self employment.
- There are a number of risks inherent in this, including:
 - Contract(s) of employment
 - Conflict of interest
 - Clinical governance
 - Appraisal and revalidation.

Introduction

Until recently, the great majority of radiologists in the UK were employed as consultants within the National Health Service (NHS) under the terms of the consultant contract 2003. Although separate versions of this exist in each of the four nations of the UK, each carries similar terms, restrictions and benefits.¹⁻⁵ These include access to:

- A standard pay scale
- Employment protection under the NHS terms and conditions of service
- The NHS pension scheme
- Clinical excellence awards (in England).

The 2003 contract is a time based contract, with the job plan and associated pay set out around four-hour 'programmed activities' (PAs), a standard full-time contract is 10 PAs.

The Consultant Contract 2003 permits consultants to undertake private practice, as set out in the *Code of conduct for private practice: recommended standards of practice for NHS consultants*.^{6,7} This permission also includes freedom to undertake NHS work in private hospitals where contracts have been awarded by commissioners, including where such hospitals gain work under the Choose and Book arrangements in England.

Restrictions include the standard contractual requirements not to undertake work for alternative employers during contracted time and the specific requirement to offer to undertake an additional contracted session for the employing trust if regular private practice is being undertaken, if the consultant is not yet at the maximum point in the salary scale (footnote 1).

With the rapid development of teleradiology and the requirements under the Health and Social Care Act 2013 for commissioners to seek competitive tenders for elective services, an increasing number of providers are entering the healthcare market to provide radiology services and there is a matching increase in potential employment relationships for radiologists.⁸

These include:

- Working within an established private hospital organisation
- Working for a teleradiology agency within the UK
- Working for a teleradiology company outside the UK providing services for UK resident patients.

Footnote 1: Full-time consultants wishing to undertake private practice in non-NHS time are expected to offer an additional PA to their NHS employers before taking up such work; full-time consultants who are currently working the equivalent of 11 or more programmed activities and agree with their clinical manager that the same level of activity should form part of their job plan under the new contract will not be expected to offer any additional work on top of this. Part-time consultants who wish to use some of their non-NHS time to do private practice will not be expected to offer any more than one extra programmed activity on top of their normal working week. Failure to do so would be considered grounds to deny pay progression; since no other sanction exists, consultants at the maximum of the salary scale are, in practice, exempted from this requirement.

Setting up as a service provider either independently or within a group

All of these options may potentially be taken up in addition to employment as an NHS consultant or instead of employment within the NHS. In either case, there are a number of issues that individuals would need to consider, but these will vary depending on whether an NHS contract is also held.

Another option that has already been implemented by at least one NHS employer is for consultant sessions to be hired to an alternative provider, that is, taking or being asked to undertake sessions outside the employing trust within one's job plan. One benefit for the consultant is that they remain employed on a single contract and retain the contractual rights inherent to this. This does, however, require careful job planning and mutual

agreement between the employee and employer. This may be the model adopted if a radiological network is being developed.

There is also increasing interest in using teleradiology to permit more flexible working away from the employers' premises, for example, through home working. This may be undertaken as a sessional commitment within the NHS contract or as a subcontractor. If undertaken within the contract, there is a potential issue around the valuing of these sessions; as commented earlier, the 2003 contract assumes work being undertaken in four-hour PAs, but flexible home working may be better reimbursed on the basis of volume of work performed rather than time.

Employment issues

As stated previously, a consultant radiologist working within the NHS would expect to be employed under the 2003 contract, with an agreed payscale and negotiated employment terms and protections.⁶ When The Royal College of Radiologists (RCR) provided guidance on independent sector treatment centres (ISTC) employment in 2007, it was expected that private providers would use the 2003 consultant contract, but this is no longer a realistic expectation.^{6,9} Radiologists entering into an employment contract with an alternative provider would therefore be encouraged to check the terms carefully, for example, length and/or security of tenure, employment rights such as access to compensatory rest or annual leave and pay scales, to compare these, where appropriate, with the NHS consultant contract. We would also advise that they take advice from a representative organisation such as the British Medical Association (BMA). Particular care is needed where the employer is based outside the UK, where employment law may be different. These outside providers may have different employment requirements, for example, a requirement to have held an NHS consultant contract for at least two years in addition to a Certificate of Completion of Training (CCT).

Care is also required where radiologists are intending to enter into multiple employments, to ensure that these are not incompatible. As an example, the NHS consultant contract does not prevent a consultant working for an

additional employer, but would prevent such additional work being undertaken during time contracted to and paid for by the NHS and, as noted previously, does require consultants to offer an additional PA to their NHS employer before undertaking paid work elsewhere. Other employers may include binding clauses in contracts of employment.

An additional issue relates to maximum working hours. Employers within the UK/European Union (EU) are expected to abide by the *Working Time Directive (WTD)* (there are some derogations specifically applying to on-call working by NHS consultants), but the WTD applies to work for an individual employer, thus an individual working for multiple employers in and outside the NHS can, in aggregate, legally exceed WTD limits applying to each of their employers – though the WTD would probably still apply if one is working for multiple employers solely within the NHS.^{10,11} Furthermore, private practice or self-employed work as an independent service provider is not directly subject to the terms of the WTD and is covered by the 'autonomous worker' provisions.⁶ However, an individual does carry personal liability for being fit to work, particularly in terms of adequate sleep, and would be personally liable for errors caused by excessive hours of work or lack of sleep if this occurred due to work for multiple employers. Potential employees of non-NHS agencies should seek assurance from the provider that their contract would conform to the WTD.

Conflict of interest

Specific guidance exists on conflict of interest where a consultant is working for employers who are in direct competition.^{12,13} General employment law would normally prevent an individual from working for two competing employers; current advice, however, would permit a radiologist to report studies for competing organisations, for example, for a private hospital competing for elective work with the consultant's primary NHS trust. However,

conflict of interest rules would mean that a consultant acting in a managerial role for an organisation bidding for work against their prime employer may be in breach of their contract of employment. This would be a particular concern for radiologists setting up their own imaging services who may then be bidding for commissioned work in competition with their NHS employer.

Clinical governance

NHS consultants are expected to participate in clinical governance activities, including audit at individual and departmental levels, though the standard and quantity of these processes is known to vary across NHS organisations. Some specific services have been subjected to external audit, for example, the national positron emission tomography-computed tomography (PET-CT) contract, which audited reporting performance across NHS and independent sector providers. Currently,

all the established teleradiology providers undertake similar reporting performance audits and radiologists agreeing to work for one of these agencies need to be aware of and accept the level of audit undertaken, which may be more rigorous than in an equivalent NHS employer. It is likely that any new entrant organisation would have to implement similar governance structures and commissioners may expect this of radiologists setting up as independent providers

Revalidation

All radiologists working in the UK or for the NHS from outside the UK are required to be registered with the General Medical Council (GMC) and to have a Licence to Practice (LtP); to work as a substantive consultant they also need to be on the Specialist Register. To retain an LtP, individuals have to participate in annual appraisal and undergo revalidation at five-yearly intervals. This is normally managed by the responsible officer (RO) of the individual's designated body (DB); for NHS consultants this prescribed relationship will be the medical director of their employing NHS trust (or health board in Scotland or Wales), but radiologists working purely for alternative providers will need to establish who their DB and RO are and ensure that annual appraisal is undertaken. Individuals working as completely independent practitioners or for non-UK

employers may need to follow the GMC alternative pathway, which involves a five-yearly competence assessment.¹¹ Irrespective of the individual's DB, the annual appraisal must cover all of their clinical practice, including work for any/all alternative employers and/or private practice, and would also need to include any non-radiological medical work (for example, voluntary work). (Failure to do so would risk GMC sanction.)

Advice on how to establish a prescribed relationship and on appropriate activities to provide evidence for appraisal and revalidation is available from the RCR and from organisations such as the BMA, as well as directly from the GMC.¹⁴⁻¹⁶

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