

8th January 2018

Dear Colleague

OPTIONS PAPER: NHS WALES PERFORMERS LIST

I attach for your attention a Welsh Government options paper on the “Performers List” arrangements. I would like the comments of your organisation on this paper. My letter of explanation is long, but it is a complex subject. GP recruitment is in crisis across Wales with unprecedented numbers of practice closures due to recruitment difficulties.

The Performers List provides an extra layer of reassurance for the public that GPs practicing in the Welsh NHS are suitably qualified, have up to date training, have appropriate English language skills and have passed other relevant checks such as with the Disclosure and Barring Service (DBS) and the NHS Litigation Authority. Any GP wishing to work in Wales must apply for inclusion on the Welsh Performers List. Registration on a Performers List in England, Scotland or Northern Ireland is not transferable and does not qualify a GP to work in Wales.

In January 2014 North Wales Community Health Council began a campaign for changes to the Welsh Performers List regulations. This culminated in a joint letter from the CHC, North Wales LMC (Local Medical Committee) and Betsi Cadwaladr UHB (BCUHB) suggesting that NHS Wales and NHS England develop a reciprocal agreement to accept a current Performers List Registration that would allow doctors registered in England to take up posts in Wales and start work immediately *i.e. that English registration should be accepted as equivalent to Welsh registration*. Registration on the local Performers List could then follow if necessary. The CHC, the LMC and BCUHB believed that this arrangement would satisfy the need to allow easy transfer between the services, enhance recruitment in Wales and still maintain standards.

Initially the response from civil servants was that it would be “*unsafe*” to allow doctors registered in England to work in Wales – although they were unable to state where the risk might lie.

We continued to lobby the Minister and on 26th January 2015 the CHC, the North Wales LMC and BCUHB were pleased to hear the Minister’s announcement in the Senedd that



the regulations relating to the Practitioners List would be amended to allow General Practitioners based primarily in England to work in Wales.

Unfortunately, there was then a considerable amount of foot-dragging by those responsible for implementing the Minister's announcement and what was eventually proposed did not deliver what the Minister announced in January i.e. the free flow of registered GPs between Wales, England, Scotland and Northern Ireland. Instead, the proposal was for "fast tracking" of completed registration forms. I have discussed this with my colleagues at North Wales LMC and they agree that "Fast tracking" has failed to deliver the promised changes and the delays and the barriers presented by the need for separate registration to work in Wales continues to affect recruitment.

This current situation is well illustrated in this article (*see link and attached map*);

<http://www.dailypost.co.uk/news/north-wales-news/map-shows-risk-north-wales-13175682>

There are continuing difficulties with recruiting GPs to North Wales. In the past twelve months the CHC has been consulted on six occasions where entire practices have given notice that they are surrendering their contracts. There are many more changes that involve the closure of branch surgeries, closure of lists and/or reduction of practice boundaries as practices struggle to cope with the retirement of GP Principals and the inability to recruit young doctors.

In all of these cases BCUHB has set up directly managed practices using salaried GPs. However, this still requires the recruitment of a significant number of new GPs and it can cause further recruitment problems because there is strong interest in these posts from GP Principals who would like to take 24 hour retirement and then work part time as a salaried GP.

I am sure that I do not need to remind you that one of the key reasons for taking BCUHB into Special Measures was the difficulty of providing a fully staffed Out of Hours Service. The bottom line is that BCUHB was unable to find enough locum GPs in North Wales to maintain a rota and many shifts went uncovered. Ideally, they should be able to bring doctors in from across the English border as and when they need to and "Fast tracking" applications to be on the Performers List is not meeting this need.

The "*Streamlined Application Form*" does not deliver the certainty that potential applicants are seeking. North Wales CHC shares the view of the North Wales Local Medical Committee that requiring all doctors to make a formal application to be on the Welsh Performers List, *even if they are already on a UK Performer List*, makes applying for a post in Wales less attractive. It may not be a huge barrier to recruitment but it is an additional hurdle presented to a group of people whose skills are sought after by employers all over the UK.

There is a large pool of potential locums in the North West of England and it is the LMC's view that they are discouraged from working in North Wales, in part, by the registration process. Taking the example of a GP living in Chester who might be choosing between locum posts in Blacon and Saltney (*both about 2,000 yards from the centre of Chester*); such a GP is likely to choose the Blacon job rather than go through a further bureaucratic form filling exercise.

There is no other profession in the UK that has similar rules enforced upon it. If teachers, lawyers or architects from Wales were not allowed to work freely in England then there would be an outcry on both sides of the border – especially if those professionals were desperately needed. *You should also be aware that Welsh doctors who qualified in Welsh Medical Schools, but who are currently registered in England, are also prevented from practicing in Wales until they apply to be on the Welsh Performers List. If they do not work in Wales during that year then registration lapses.*

There is no substantial difference between the criteria and checks contained in the English, Welsh or Scottish Performer Lists – key criteria are;

- Current Annual registration certificate with the General Medical Council
- Licence to Practise status with the GMC
- Postgraduate Certificate of Prescribed Experience and/or Certificate of Completion of Training
- Current Medical Indemnity Insurance.
- Current DBS Check

Given that the process is so similar, it is difficult to understand what advantage is achieved by refusing to recognise the registration of a doctor on other UK Performers Lists.

North Wales CHC believes that the Welsh Performers List application process should be amended to allow GPs currently listed on a Performers List in England, Scotland or Northern Ireland the ***automatic right*** to work in Wales. This was proposed in the consultation on Performers List Regulations Amendments by the Primary Care Division of the Department of Health in 2004 when English PCTs adopted the same level of checks as Welsh LHBs. For reasons that remain unclear, this proposal was never adopted. We strongly recommend that the current barriers to free movement be abandoned and that GPs listed on a Performers List in England, Scotland or Northern Ireland be given the automatic right to work in Wales for as long as their registration is current.

In the attached options paper, we recommend Option 3 - i.e.; amend the Regulations to allow a GP to be automatically listed on a Welsh Health Board's List if they are already on a primary care organisation (PCO) performer list elsewhere in the UK with no need to submit an application or provide relevant information and documentation. As has already been pointed out, if a GP is deemed fit to work in England then they should be fit to work in Wales.

The “pros” are set out as follows; *a performer could automatically and immediately work in Wales which would cut out the administrative burden and assist with recruitment issues, especially on the border. We fully agree with this assessment.*

The “cons” are said to be; *this would put patients at increased risk as there would be no checks or balances done in Wales on the Performer. For example, although the Performer would be listed on a PCO list, that Performer maybe under investigation, have conditions imposed on their inclusion in the PCO list or may have a criminal conviction which could have been committed since their last DBS enhanced criminal certificate was submitted to NHS England.* This is also the case for all existing performers in Wales. The problem can be resolved by regular DBS checks as well as DBS checks on appointment to a new post. It is the case that the NHS normally requires references on appointment – regardless of the practitioner being on the performers list. Posts are normally awarded subject to satisfactory references and qualifications checks. As a result we believe that the risks of Option 3 are overstated and do not outweigh the recruitment benefits.

Options 1, 4 and 5 are also workable, provided that every effort is taken to address the perception that registration is slow, cumbersome and presents a barrier to working in Wales. Options 2, 6 and 7 would not be workable or appropriate.

I should be grateful if your organisation could respond to the consultation before the closing date of 8th February. The email address for responses is GMScontract@gov.wales.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'G.A. Ryall-Harvey'. The signature is fluid and cursive, with a large initial 'G' and 'R'.

Geoff Ryall-Harvey
Prif Swyddog / Chief Officer

Cyngor Iechyd Cymuned Gogledd Cymru / North Wales Community Health Council

Health and Social Services Group
Y Grwp Iechyd a Gwasanaethau Cymdeithasol



Llywodraeth Cymru
Welsh Government

Associate Medical Directors of Health Boards
Medical Directors of Health Boards
The Royal College of General Practitioners
Prof Malcolm Lewis, Director of General Practice and Revalidation at the Wales Deanery
Directors of Primary Care of Health Boards
Chair, General Practitioners Committee Wales
Chair, Welsh General Dental Practitioners Committee
British Dental Association Wales National Director
Director, Primary Care Services, NHS Wales Shared Services Partnership
Local Community Health Councils
Local Medical Committees

Eich Cyf/Your Ref:
Ein Cyf/Our Ref:

29 November 2017

Dear Colleagues

OPTIONS PAPER: NHS WALES PERFORMERS LIST

Issue

1. To identify measures to simplify the process for performers in the UK (specifically English performers) to perform primary medical and dental services in Wales.

Background

[NHS \(Performers List\) \(Wales\) Regulations recent changes, including a streamlined application process](#)

2. As part of the post Shipman reforms, the performers list was introduced in 2004 for GPs, and 2006 for General Dental Practitioners (GDPs), to ensure that performers are fit for purpose and suitable to undertake NHS primary care services. This raised the issue of availability of locums in border areas of Wales. GP practices were experiencing difficulty in arranging locum cover. To address this, in 2006, the NHS (Performers List) (Wales) Regulations were amended to allow a performer listed with a primary care organisation (PCO) to work for 2 months (after initial checks) whilst their application was being

processed. In further amendments to the 2004 Regulations this grace period was increased to 3 months.

3. In March 2016, further amendments to the NHS (Performers List) (Wales) Regulations were put in place to reduce further the administrative burden in applying to be included in a Local Health Boards (LHB) Performers List in Wales. The regulatory changes allow a GP or GDP to be listed immediately with the LHB on receipt and consideration of their application and supporting documents for up to 3 months whilst further checks were undertaken. These amendments supported a new streamlined application form which was introduced in October 2015 for those GPs or GDPs already on an English, Scottish or Northern Ireland performers list.

4. The effect of this streamlined and improved Performers' List application process, we believe, has been to reduce substantially the bureaucratic administrative process for GPs/GDPs who are already on the Performer's List in England (and/or the other home nations). For example, a GP applying for Performer Listing under regulation 4A will only need to provide the details of their General Medical Council registration number; a copy of their England, or other country, performers list inclusion letter; a list of their medical certificates; a copy of their enhanced criminal record certificate (if less than 6 months old), together with consent for NHS Wales Shared Services Partnership to undertake validation checks with their primary care organisation. In addition, NHS Wales Shared Services Partnership aim to undertake their initial checks and to inform the GP/GDP of their decision as to whether the performer may perform primary services within five working days of receipt of the application. The changes to the NHS (Performers List) (Wales) Regulations and the streamlined and improved Performers' List application process has been welcomed by the General Practitioners Committee (GPC Wales).

Calls have been made for more radical change to make it easier for performers to work in Wales

5. Notwithstanding the amendments made to the Regulations in March 2016 and the streamlined application process, there have been calls for more radical change, for example, a UK Performers List or an England and Wales Performers List or a Wales Performers List in order to further reduce bureaucracy. There have also been calls to consider whether doctors currently listed on a performers list in England, Scotland or Northern Ireland may be given the automatic right to work in Wales.

Options to consider

6. A number of options are available – **annex A** refers.

- Option 1 – Establish a UK or England/Wales Joint Performers List
- Option 2 – Establish a Single Wales Performers List
- Option 3 – Amend the current Regulations to allow a GP or GDP Performer to be automatically listed on a LHB's List if they are already on a PCO performer list, with no requirement to submit an application or provide relevant information and documentation
- Option 4 - Amend the current regulations to allow a GP or GDP already listed on a PCO list who completes the current streamlined application form to be immediately listed on the LHB list after consideration by the LHB of the information provided in that application (within 5 working days) without the need for further information being requested from England i.e. references, professional experience and a DBS enhanced criminal records certificate.

- Option 5 – Amend the current regulations to extend the 3 month grace period to 6 months for a GP or GDP to be listed immediately with the LHB on receipt and consideration of their application whilst further checks are undertaken.
- Option 6 - Do nothing and continue with the current arrangements.
- Option 7 – Continue with the current arrangements but amend the Regulations to allow a GP or GDP Performer to provide their own clinical references, professional experience and medical qualifications with their application to the Welsh Performers List if they so wish.

Conclusion

7. Your views would be welcome on these options by e-mailing the GMScontract@gov.wales mailbox by 8 February 2017

A handwritten signature in black ink that reads "Claire Cullen". The signature is written in a cursive style with a large initial 'C'.

Claire Cullen
General Medical Services Branch
Primary Care Division

Consideration

Option 1 - To establish a UK or England/Wales Joint Performers List

1. This was a recommendation of the Welsh Affairs Select Committee (WASC) in September 2015. The Department of Health response to the WASC was –

“The Department of Health has discussed the Committee’s recommendation with the Welsh Government and with the devolved administrations responsible for health services in Scotland and in Northern Ireland. It believes that the right course of action at this stage is for the Welsh Government to continue with the consultation it is planning.

If difficulties persist after the action planned by the Welsh Government, the case for a UK-wide performers list could be considered further. However, it needs to be recognised that this would not be a quick fix. There is currently no power to make UK-wide regulations on performers lists, so new primary legislation would be needed to create one.

There would also be a number of policy and practical issues raised by creating a single UK-wide list: Performers lists are not ends in themselves. The requirement to be on a performers list was introduced in each part of the UK in 2004, in the wake of the Harold Shipman case, as a way of helping to ensure patient safety. Accordingly, admission to a list is not a once-for-all process. Once on a list, the GP’s performance is regularly reviewed by the NHS body responsible for commissioning primary medical services in the area where the GP is providing them. The system is designed to ensure practitioners are fit for the specific role they undertake. Local intelligence about the nature of the job and services is required to assess a GP’s suitability. (This is why GPs who are already on NHS England’s performers list for England need to notify NHS England if they propose to practise in a different area within England). On the face of it, a UK-wide list would reduce the ability of each NHS to decide what it thinks best for its part of the UK. Nor is it clear who would be responsible for assessing a GP’s suitability for work in a local area if the approach of a UK-wide list were to be adopted. These considerations lead the Department of Health to have significant reservations about the suggestion of a UK-wide list.”

2. We support the Department of Health response and recognise the policy and practical difficulties of establishing a UK wide performers list. Patient safety must be prioritised over allowing a GP/GDP to work in Wales without any checks or balances. We are currently the only home nation who has relaxed the rules for performers already on a performers list in the UK to apply to be included in an LHB list without the tighter controls and checks being in place. To relax this any further leaves Welsh Ministers open to criticism if patient safety is compromised or if an incident should occur. This would also be the case with options 2, 3, 4 and 5.

Practical Difficulties

3. Although there is one national performers list in England, it is the Area Teams (ATs) who govern the inclusion, movement and maintenance of medical, dental and ophthalmic performers in their area. It is not just a question of a performer being included and then being able to move around England freely performing primary medical and dental services. Stringent procedures are in place in England for tracking and monitoring performers to ensure patient safety.

4. In England, once a performer has been included in the national performers lists and the performer changes the area or practice where he or she carries out the majority of his or her work, the performer is responsible for notifying the AT where they will be working, as soon as practical. NHS England requires the performer to complete a performer's list change notification form.

5. This is to ensure the 'movement and transfer' of governance arrangements. The assignment of the responsible officer/medical director is a key factor, for example, for appraisal, revalidation (medical only), performance concerns and accountability for that performer can be transferred between the old and new AT responsible officer/medical director.

6. ATs review inherited cases, to ensure that review dates for conditions, action plans, suspensions/exclusions etc are not missed. ATs then implement a process for on-going monitoring of review dates to reduce a potential risk to patient safety and a risk of legal challenge, especially if a review date "slips".

7. Responsible officers/medical directors note the transfer of responsibility of performers and the information is particularly important if a performer is included with conditions and/or are under investigation.

8. Responsible officers/medical directors cannot refuse the movement of the performer between ATs, but where there is a cause for concern or a performer is under investigation (fraud, performance or efficiency) the responsible officer/medical director may agree that it is appropriate to defer the transfer of responsibility of an individual performer, on a case by case basis. When these arrangements are put in place it is important that the responsible officer/medical director of the receiving AT is provided with sufficient information to ensure patient safety but any information provided must not prejudice the cause for concern or investigation.

9. ATs ensure effective and regular communication with any performer who is under investigation or being managed under the policy for managing performers whose practice gives rise to concern. Performers should be informed of names and contact details of case investigators and case managers in the new AT who will be responsible for the effective handover and ongoing management of performance issues.

10. **Pro** – This would allow free movement of performers across the UK subject to a simplified form being completed to change area/country, but this is not guaranteed.

11. **Con** - In the case of a UK list, similar if not more stringent "change of area/country forms" would have to be implemented and there would be a need to ensure there were clear communication channels in place between the four

countries. Administering a UK list could become unwieldy and could open up the potential for mistakes to be made putting patient safety at risk.

12. There would also not be a significant benefit as performers would still have to complete change of area forms.

13. In addition, consideration would also need to be given to what Committees would need to be put in place to review decisions taken about performers being admitted/managed on the Performers List. For example, England has a Performers List Decision Panel which makes decisions on performers when there are adverse findings in their application for inclusion. Similar panels will be in operation in the other home nations.

14. The UK government is also against a UK performers list.

Option 2 - A Single Wales Performers List

15. **Pro** – A performer would not have to be removed from a LHB’s performers list if they had not worked in that LHB area in a 12 month period.

16. **Con** - A single list for Wales will require a change to Primary Legislation i.e. the NHS (Wales) Act 2006 (“2006 Act”) together with organisational changes e.g. a body or host LHB being responsible for monitoring and managing the performers list along with the constitution of reference panels.

17. As the 2006 Act currently stands, performers need only be on one LHB list to work in any LHB area in Wales. Performers are removed from a LHB’s performers list if they have not worked in an LHB area in 12 months. The performer would then need to apply to the LHB area in which they are working. This ensures the correct Responsible Officer is assigned to the Performer. Even if we moved to a single Wales performers list, a new registration process would need to be established and completed by the performer if they moved to a new LHB area to ensure the correct Responsible Officer was assigned.

Option 3 – Amend the Regulations to allow a GP or GDP Performer to be automatically listed on a LHBs List if they are already on a PCO performer list in the UK with no need to submit an application or provide relevant information and documentation. As has already been pointed out, if a GP or GDP is deemed fit to work in England then they should be fit to work in Wales.

18. **Pro** – A performer could automatically and immediately work in Wales which would cut out the administrative burden and assist with recruitment issues, especially on the border.

19. **Con** – This would put patients at increased risk as there would be no checks or balances done in Wales on the Performer. For example, although the Performer would be listed on a PCO list, that Performer maybe under investigation, have conditions imposed on their inclusion in the PCO list or may have a criminal conviction which could have been committed since their last DBS enhanced criminal certificate was submitted to NHS England. A Responsible Officer would need to be

assigned to the Performer, and whilst England, for example may have included that Performer with conditions attached, the Medical Director/Responsible Officer of a LHB may have refused inclusion in the Performers List or if already included, removed the Performer from the Performers List.

Option 4 – Amend the current Regulations to allow a GP or GDP performer already listed on a PCO list who completes the current streamlined application form to be immediately listed on the LHB list after consideration by the LHB of the information provided in that application (within 5 working days) without the need for further information being requested from England i.e. references, professional experience and a DBS enhanced criminal records certificate.

20. **Pro** – This would provide the LHB with some reassurance as the performer would have to provide some information. Again the performer could more or less be listed immediately if the LHB found no adverse findings with the Performer's application.

21. **Con** – The LHB would have to rely on the Performer providing the correct information on the application form and disclosing any investigations ongoing or conditions imposed on them which could mean the Performer working under supervision. In addition the performer may have a criminal conviction which could have been committed since their last DBS enhanced criminal certificate was submitted to NHS England.

Option 5 – Amend the current regulations to extend the 3 month grace period to 6 months for a GP or GDP performer to be listed immediately with the LHB on receipt and consideration of their application whilst further checks are undertaken. Consideration could be given to amending the regulations to extend the 3 month grace period to 6 months.

22. **Pro** – Although there would be some risk allowing the performer to work in Wales for up to 6 months before the LHB received all the necessary documentation and information from England, at least after 6 months the LHB would have all the information to hand to make an informed decision on that Performer's application.

23. **Con** – We are currently taking a measured risk to patient safety by allowing a Performer to work for 3 months without the LHB having all the information to hand about that Performer. There could be an increased risk to patient safety by extending this timeframe to 6 months. The LHBs would have to place trust in performers that they have been truthful in their application form and place reliance on the fact that they are performing already in a PCO area so should be suitable to work in Wales.

24. NWSSP has also reported occasions whereby LHBs have had to provisionally list performers from England who have had conditions imposed, whilst waiting for the full information. LHBs have said if the decision had been made in Wales rather than England those Performers may have either not been included in the list in Wales, removed from the Performers list or different more stringent conditions imposed. However the LHBs are not able to undertake any of these decisions until all the

information is to hand. LHBs may not therefore be happy with it being extended to six months before all the information is available about a performer.

Option 6 - Do nothing and continue with the current arrangements.

25. **Pro** – LHBs, after some initial resistance due to patient safety, have accepted the current arrangements and are processing applications in line with the Regulations. GPC Wales report that they are happy with the arrangements.

26. **Con** – We have to rely on the Area Teams in England and Capita to ensure they provide the information to LHBs about the relevant performer within the time constraints in the Regulations. If this information isn't received and considered within the 3 months time limit, the performer would have to be removed from the LHBs performers list.

Option 7 – Continue with the current arrangements but amend the Regulations to allow a GP or GDP Performer to provide their own clinical references, professional experience and medical qualifications with their application to the Welsh Performers List if they so wish.

27. **Pro** - This may speed up the process if there are delays with receiving this information from NHS England.

28. **Con** – The purpose of the original amendments to the 2004 Regulations was to streamline the application process and cut down the administrative burden for those GPs/GDPs who are already on a Performers List elsewhere in the UK wanting to apply for inclusion in the Welsh Performers List. It could be seen that we are doing a U-turn on our policy and come in line for some criticism if we are now saying that GPs and GDPs can provide this information. However, if this should happen, it can be defended by saying this is what the majority of applicants want and that it is optional. Applicants could still choose to give their consent for NWSSP to seek their clinical references, professional experience and medical qualifications from NHS England.