

Honorary Contracts: IG Issues

An honorary contract does not in itself provide a legal basis for sharing or permitting access to confidential personal information. The legal basis for access to such information must be either:

- the consent of the individual concerned;
- where an individual lacks capacity to consent, the best interests of that individual; or
- a statutory provision such as support under the NHS (Control of Patient Information) Regulations 2002.

Individuals engaged in an honorary capacity to provide and support direct care are able to access information about those they care for on the basis of implied consent in the same way as other care staff. Individuals seeking access to such information for purposes other than care, e.g. researchers, analysts or commissioners, must obtain explicit consent from the patient concerned or have statutory support, regardless of whether they have been issued with an honorary contract. Details of which staff groups should and should not be provided with an honorary contract are provided below.

Honorary Contracts: Background

Introduction

1. Honorary engagement can be described as performing work for the benefit of an organisation (i.e. to meet its role and purpose) without remuneration. Where an individual is conducting activities under an honorary engagement that will have a direct impact on the care of patients or involve direct contact with them, the individual will be accountable to the NHS organisation concerned for this work. Accountability means there needs to be clear statements about the individual's reporting arrangements, and about the procedures, codes of practice and other rules and regulations that apply to the work in question. An honorary contract can clarify and confirm this accountability and ensure an individual understands that they are subject to the organisations policies and procedures.

Who might have an honorary contract?

2. Honorary contracts can be used for the following categories of staff:
 - Volunteers, whether clinical or non-clinical, who work for no remuneration to provide and/or support care
 - Clinical academics, whether self-employed or employed by a non-NHS body, who may have honorary contracts for their clinical work
 - Researchers, not substantially employed¹ by an NHS body, when their research could have a foreseeable and direct impact on patient care and the researcher therefore needs to be brought within an organisation's accountability arrangements.

Who should not have an honorary contract?

3. Honorary contracts are not appropriate and risk confusing accountability for:

¹ Employment can be described as performing work for the benefit of an employer (i.e. to fulfil its role and purpose) for remuneration. This arrangement is formalised through a legal contract in which the employer and employee agree on roles and responsibilities. This employer is described as the substantive employer.

- Staff with a substantive contract with an NHS organisation who are delivering work or conducting research in a different organisation - an NHS to NHS letter of Authorisation or Access (see appendix 1) should cover this work
- Staff with a substantive clinical contract who are conducting research in their employing NHS organisation - the substantive contract should suffice
- Clinical academics who have an existing honorary contract with an NHS organisation for clinical work who are undertaking additional work in a different organisation - the existing honorary contract should be shared and updated to cover the new work but there is no need to redo all the employment checks associated with new honorary contracts.
- Individuals with a substantive contract with a non-NHS organisation who are undertaking work or research that does not have a foreseeable and direct impact on patient care e.g. records based research - the substantive employer should retain the vicarious liability for the individual concerned.

NHS Indemnity

4. NHS Indemnity covers negligent harm to patients and volunteers receiving care (or taking part in research) that has been authorised by an NHS organisation. NHS Indemnity covers the actions of staff in the course of their employment and can be extended to volunteers, clinical academic staff (who have honorary contracts for clinical work) and those conducting clinical research; when the NHS organisation owes a duty of care to the person harmed. As noted above these groups of staff should have an honorary contract where they do not have an existing NHS contract that would cover their activities.
5. NHS organisations which extend NHS indemnity to staff who are not substantially employed by them should inform the individual's substantive employer of this and ensure that this body is supportive. Where the substantive employer is not an NHS body consideration should be given, in any contract or agreement between the NHS organisation and the substantive employer, to the NHS having the right to recover losses should they arise.
6. NHS Indemnity for clinical negligence can also provide cover in the event of negligence by staff undertaking work or conducting research with NHS permission but who do not require honorary contracts because there is no foreseeable or direct impact on patient care, if the NHS organisation has a duty of care to the person harmed. Again, where the individual has a substantive employer that is not an NHS body, consideration should be given in any contract or agreement between the NHS organisation and the substantive employer, to the NHS having the right to recover losses should they arise.

Short term or Urgent Activity

7. NHS Employers and the Academy of Medical Royal Colleges (AoMRC) have agreed a means by which consultants who are substantially employed by an NHS body, can carry out short-term, ad hoc or urgent activity in another NHS organisation, without the need for time consuming employment checks. The Certificate of Fitness for Honorary Practice has been developed in response to concerns about the obstacles that make it impractical for consultants to carry out this type of work.
8. Current practice for the short-term visit of a consultant involves verifying that the necessary employment checks, such as occupational health and Criminal Record Bureau (CRB) checks have been made. This often takes several weeks, by which time the opportunity to visit is lost. The certificate is not intended to remove the need for letters of authorisation or formal agreements between organisations, but aims to support Trusts when covering absences and responding to emergencies where there is no time to carry out employment checks. At the same time, it will allow consultants to provide training or maintain their own skills by visiting another hospital.

9. The certificate may be requested at appraisal by the consultant and contains all relevant information to show that a consultant is fit to carry out clinical work on a short-term basis. The certificate is then held on the consultant's file, to be produced when invited to assist in patient care at another organisation. A record of attendance would be completed by the host organisation, to record the honorary practice carried out.

Appendix 1

Example letter of authority (contents will vary according to circumstance)

Human Resources Department

[Authorising Body details]

[Date]

TO WHOM IT MAY CONCERN

This letter authorises [name of individual], a visiting [professional role] from [the individual's employing body] to have right of access to the theatres, wards and ancillary departments at [name of authorising body] on the following dates to [fully describe what the worker will be doing e.g. clinical observer, shadowing, seeing patients in x clinic, undertaking particular procedures, training etc.]

Dates [commencement date] to [end date] inclusive

This has been organised by [name and role of senior sponsor in the authorising body] at [name of authorising body].

Yours faithfully

[name of HR staff member issuing the letter]

[HR role]