

Dear Colleague

**MEMORANDUM OF UNDERSTANDING:
JOINT STAFF OF UNIVERSITIES AND NHS
ORGANISATIONS**

Summary

1. Attached is a Memorandum of Understanding which has been agreed by all relevant parties in Scotland and clarifies that the supply of teaching and research staff employed by Universities to the NHS for patient care is outside the scope of VAT. Such arrangements should be treated as joint employment between the University and NHS bodies involved.

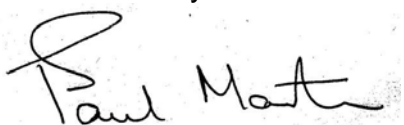
2. A Memorandum of Understanding has already been adopted in England and the attached version is substantially the same wording with only minor amendments to make it relevant to a Scottish context. Glasgow University have made their own arrangement with HMRC which will have the same effect in clarifying that, where "joint working" exists, these services are outwith the scope of VAT.

Action

3. NHS organisations are asked to note that this Memorandum of Understanding is now in place. This Chief Executive Letter (CEL) can be viewed on line at:

www.show.scot.nhs.sehd/publications.asp.

Yours sincerely



PAUL MARTIN
Chief Nursing Officer
and Interim Director for Health Workforce

CEL 22 (2008)

7 May 2008

Addresses

For action

Chief Executives, NHS Boards and
Special Health Boards
Directors of Human Resources, NHS
Boards and Special Health Boards
Directors of Finance, NHS Boards and
Special Health Boards

Enquires to:

Colin Cowie
Scottish Government
Health Workforce Directorate
Workforce Employment and
Retention Division
St Andrew's House
Regent Road
Edinburgh EH1 3DG

Tel: 0131-244 3778

Fax: 0131-244 2837

Colin.Cowie@scotland.gsi.gov.uk

<http://www.scotland.gov.uk>

MEMORANDUM OF UNDERSTANDING: JOINT STAFF¹ OF UNIVERSITIES AND NHS ORGANISATIONS

1. Background

1.1 This document has been developed in response to the *University of Glasgow – v – HM Revenue and Customs* VAT tribunal ruling (EDN/03/109) released on 29th April 2005.

1.2 In this case the VAT Tribunal found that there had been a supply of staff from the university to the NHS, where University employed clinical academic staff provided patient care in NHS organisations. Such supplies are liable to VAT at the standard rate. However, the Tribunal did not fully consider the question of the precise contractual arrangements and whether “joint working”² arrangements existed.

1.3 This document outlines the employment and joint working arrangements that usually apply in the case of staff engaged in both teaching and/or research as well as the delivery of patient care.³

2. Purpose

2.1 The purpose of this Memorandum of Understanding is to:

- set out the NHS and University understanding of the role of joint staff⁴ of NHS organisations and Universities who are engaged in both teaching and/or research as well as the delivery of patient care.
- clarify selected duties and responsibilities of their employers.
- document established practice in respect of those staff.
- confirm that such arrangements are outside the scope of VAT.

3. HM Revenue and Customs Position

3.1 “Where an employee’s contracts of employment with a University and one or more NHS organisations are shown to operate within the context of the established practices described in the Memorandum and the documents listed

¹ For the avoidance of doubt “joint staff”, “joint working” or “joint management” is not intended to imply or mean that a joint contract of employment exists between the relevant NHS organisation /University and the employee but that cooperation exists between the NHS organisation and the University in managing the various aspects of the individual’s employment

² As above

³ The document does not cover all staff who hold both substantive and honorary contracts with universities and NHS organisations. It covers only those staff with honorary contracts engaged in both teaching and/or research as well as the delivery of patient care. The formal agreements currently in place are likely to cover only medical and dental practitioners. However this situation is changing for other professions . The document therefore deliberately encompasses any health care professional engaged in both teaching and/or research as well as the delivery of patient care

⁴ As 1 above

in Annex A, or alternatives having like effect, HM Revenue and Customs would normally regard those arrangements as falling outside the scope of VAT”.

4. Parties to this Memorandum

4.1 The parties to this Memorandum of Understanding, which is applicable in Scotland are Scottish Universities⁵ the Scottish Government Health Directorates, NHS Scotland employers, the Universities and Colleges Employers Association, the University and Colleges Union, the British Medical Association (Scotland) and the British Dental Association (Scotland).

5. Scope

5.1 This document should be read in conjunction with existing substantive and honorary contracts of employment, held by staff of any discipline who are engaged in both teaching and/or research as well as the delivery of patient care. Such arrangements are usually covered by honorary and substantive contracts of employment.

5.2 For the avoidance of doubt, this document in no way changes or modifies the above contracts of employment or terms and conditions of service.

5.3 The principles of joint working cited in this document reflect established practice within the NHS and academia in the UK.

6. Joint Decision Making by Employers

6.1 It is acknowledged that Universities and NHS organisations have a history of effective partnership working and joint decision making in respect of joint staff who are engaged in teaching and/or research as well as the delivery of patient care.

6.2 This Memorandum of Understanding recognises the joint working arrangements including joint job planning and appraisal systems in place and identifies the employer responsibilities that underpin these and other shared processes.

6.3 Joint working arrangements including job planning and appraisal provide for individual employers to take decisions on matters concerning, amongst other things, pay progression, annual and other leave and disciplinary matters.

6.4 Attached, as **Annex A** is an illustrative list of documentation relating to joint management of staff by Universities and their NHS partner organisations. It is acknowledged that individual Universities and NHS organisations may

⁵ Other than Glasgow University.

(where permissible) have modified documents within the list, or may be using alternatives with like effect.

7. Contracts of Employment

7.1 It is the shared understanding of Universities and NHS organisations that:-

7.1.1 A joint integrated job plan will encompass both NHS and University commitments covering amongst other things relevant aspects of teaching, research and patient care.

7.1.2 Such arrangements are usually covered by honorary and substantive contracts of employment. This Memorandum of Understanding clarifies that:-

- The substantive and honorary contracts, or their equivalent, in the University and NHS organisation(s) constitute two or more separate contracts of employment.
- Each employer should itself discharge its duties and responsibilities as an employer.
- Employees should be made aware of their duties and responsibilities to both/all their employers.
- Each employer should follow its own procedures regardless of any decisions/action taken by the other(s) (e.g. dismissal by one employer does not automatically result in dismissal by the other(s)).

8. Remuneration

8.1 Where an employee has two or more University and NHS employers under a single job plan, the total remuneration is expected to comprise payment from each employer in agreed proportions. It is usual for one employer to pay the total remuneration to an employee (i.e. on a paymaster basis) for the other employer's/employers' share, including the employer pension contribution.

8.2 There is no requirement, for this purpose, to calculate on a detailed basis the actual amount of time spent in each employment and the actual recharge between organisations may operate at the level of net cost in the context of the joint working arrangements between the University and the NHS.

9. Disciplinary Procedures

9.1 The Follett report made a number of recommendations about disciplinary procedures. In particular it said:

“...we are quite clear that here too robust working must be the norm. However, we believe that joint working must extend to the prior phase

of managing and helping poor performance and seeking remedial measures. It is only when these have run their course without success that formal disciplinary procedures come into play.”

9.2 Each employer (University or NHS organisation) should make a decision to discipline or dismiss a member of staff under its own procedures and according to a protocol which would need to be agreed between an individual University and its partner NHS organisation(s) to permit the joint working necessary to manage a range of issues, including disciplinary matters. The key elements of such a protocol are outlined below. (The Department of Health Document ‘Maintaining High Professional Standards in the Modern NHS’ sets out a framework for disciplinary matters within NHS organisations in England and includes the same model protocol referred to below).

10. Protocol for Joint Working

10.1 Although each University is governed by its own Model Statute (or equivalent) and by local procedures, a model protocol has been provided by UCEA to Universities which provides a basis for co-operative working between Universities and NHS organisations in relation to a number of issues.

10.2 Four key elements of such a protocol should be:

- Appraisals are normally jointly undertaken by the University and the partner NHS organisation.
- The express written permission of the member of staff involved is obtained for the exchange of both personal data and sensitive personal data between University and partner NHS organisation.
- Honorary contracts should have an “interdependency clause” triggering a review if a substantive contract is terminated and vice-versa.
- The partner NHS organisation and University develop strong, co-partnership relations with each other and ensure jointly agreed procedures are in place for dealing with any concerns.

Employment of Clinical Academic Staff

Documents relating to joint management of staff by Universities and their NHS partner organisations

TITLE OF DOCUMENT	DOCUMENT <u>SOURCE/REFERENCE</u>
Follett Report [NB not all of the recommendations could be implemented. UCEA has prepared a commentary on which recommendations in the report could/could not be implemented]	UCEA Update 01/35 A copy of the UCEA commentary is available from UCEA on request
Joint University and NHS Appraisal Scheme for Clinical Academic Staff	UCEA Update 02/27 SEHD Letter 28 October 2002 on annual appraisal for clinical academic consultants: the Follett Review
Maintaining High Professional Standards in the Modern NHS; a framework for the initial handling of concerns about doctors and dentists in the NHS (not applicable in Scotland).	<u>HSC 2003/012</u> - http://www.dh.gov.uk/assetRoot/04/06/64/13/04066413.PDF and Maintaining High Professional Standards in the Modern NHS - http://www.dh.gov.uk/assetRoot/04/10/33/44/04103344.pdf
Legal Advice on Follett Report	UCEA Update 03/64
An outline Protocol intended to provide a framework for co-operation between Universities and NHS Trusts as employers of clinical academic staff. This Protocol was appended to the above legal advice circulated to Universities with Update 03/64. It forms part of the Maintaining High Professional Standards in the Modern NHS framework (see above).	UCEA Update 03/64 Maintaining High Professional Standards in the Modern NHS - http://www.dh.gov.uk/assetRoot/04/10/33/44/04103344.pdf
Revised guidance on joint NHS and university procedures for the appointment of senior staff with academic and clinical duties	UCEA Update 05/28

<p>New Consultant Clinical Academic Contract (England): Revised Documentation comprising:-</p> <ol style="list-style-type: none"> 1. Guidance Notes for the employment of Consultant Clinical Academics (England) 2. Consultant Clinical Academic Substantive Contract Suggested Clauses (England) 3. Honorary Consultant Contract (England) <p>The parties involved in the development of the documentation were UCEA, DH/NHS Employers, BMA, BDA and UCU</p>	UCEA Update 06/114A
New Consultant Clinical Academic Contract (Scotland)	Contact UCEA for documentation
New Consultant Clinical Academic Contract, including Senior Academic GPs (Wales)	Contact UCEA for documentation
New Consultant Clinical Academic Contract (Northern Ireland)	Contact UCEA for documentation
<p>Recommended new arrangements for Senior Academic GPs (England) comprising :-</p> <ol style="list-style-type: none"> 1. Guidance Notes for the employment of Senior Academic GPs (England) 2. Senior Academic GP Substantive Contract Suggested Clauses (England) 3. Honorary Contract for Senior Academic GPs (England) 	UCEA Update 06/127
Recommended new arrangements for Senior Academic GPs (Scotland)	Contact UCEA for documentation.
Recommended new arrangements for Senior Academic GPs (Northern Ireland)	Documentation still under development. Contact UCEA for further information.

<p>Consultant Job Planning Toolkit (England) comprising:-</p> <ol style="list-style-type: none"> 1. Job planning handbook 2. Training package 3. Evaluation framework 4. Reference manual 	<p>NHS Modernisation Agency, January 2005. May be found at www.wise.nhs.uk</p>
<p>Effective Job Planning – A concise guide for consultants (England)</p>	<p>NHS Modernisation Agency, February 2005. May be found at www.wise.nhs.uk</p>

Contact details

NHS Employers	www.nhsemployers.org	doctorsanddentists@nhsemployers.org
UCEA	www.ucea.ac.uk	info@ucea.ac.uk
DH	www.dh.gov.uk	victoria.cave@dh.gsi.gov.uk
SG	www.scotland.gov.uk	colin.cowie@scotland.gsi.gov.uk
BMA	www.bma.org.uk	Info.masc@bma.org.uk
BDA	www.bda.org	s.martin@bda.org
UCU	ucu.org.uk	mkeight@ucu.org.uk
HMRC (NHS Queries)	For VAT queries ring NHS Compliance Team on 020 8929 2695	or e: mail nhsvatteam@hmrc.gsi.gov.uk
HMRC (HEI Queries)	HEIs should direct any technical VAT queries to their local VAT office or, if they are unable to contact their local office, to the HMRC	Contact details for advisers at the HMRC Education Unit of Expertise are:- christopher.allen@hmrc.gsi.gov.uk Tel: 01223 442690 melanie.smith@hmrc.gsi.gov.uk Tel: 01223 442691 Richard.Riley@hmrc.gsi.gov.uk Tel: 01223 442461