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Clinical and Language Competency of Overseas Doctors Working in the UK

Contents

1 Context

The Committee for Health, Social Services and Public Safety expressed concern that it had come to its attention that some medical professionals from overseas working in Northern Ireland may not have a high enough level of competency in the English

language to work effectively in clinical settings. The public engagement exercise for the recently published GP Out-of-Hours review by the Northern Ireland Regulation and Quality Improvement Authority[1] generally reported positive experiences, however, in some instances it was reported there were communication difficulties with a doctor for whom English was not their first language.

This briefing sets out the background to the language competency issue within the UK and extends the consideration also to clinical competency, particularly in the GP out-of-hours setting where the most serious problems appear to have arisen within the UK in this regard. The briefing highlights the current legislation that applies to the issues of clinical and language competency in this context. The clinical competence of doctors who qualified and trained within the UK is outside the scope of this briefing and is not considered.

2 Background and Introduction

Concern over language and clinical competence of overseas doctors (and other healthcare workers) employed in the UK has arisen particularly in recent years due to high profile cases and media reports, including:

- In a case involving hip surgery on a female patient, the GMC determined at a Fitness to Practise Panel (June 2010) that Dr. W. Kolb's (a surgeon brought in from Germany by the NHS as holiday cover) fitness to practice was impaired by reason of misconduct and that although the misconduct related to a single clinical incident it was "*particularly grave*" and thus the Panel directed that Dr. Kolb should be erased from the GMC Register with immediate effect;[2]
- In a Fitness to Practise case (June 2010) involving conduct of an out-of-hours doctor (Dr. Ubani, a German GP) over three patient consultations, the Panel determined that his fitness to practise was impaired by reason of his misconduct in the three consultations and his subsequent conviction of causing death by negligence in one of these patients. The panel concluded that Dr. Ubani's registration with the GMC be suspended with immediate effect;[3] and
- It has been reported in the press that the Oxford Radcliffe Hospital, with staff from 70 countries on its payroll, has sent many on a ten-week English course to teach them basic medical phrases and common slang expressions.[4]

Dr Hamish Meldrum, Chairman of the British Medical Association, speaking at the BMA's annual conference in June 2010, said that

[1] The Regulation and Quality Improvement Authority (RQIA), Review of GP Out-of-Hours Services, September 2010, page 42, http://www.rqia.org.uk/cms_resources/GP%20OOH%20Report%20Sept%2010.pdf

[2] Fitness to Practice Panel, GMC, 14-23 June 2010, Publishable Minutes, http://www.gmc-uk.org/concerns/hearings_and_decisions/data/7476.asp

[3] Fitness to Practice Panel, GMC, 2-18 June 2010, Publishable Minutes, http://www.gmc-uk.org/static/documents/content/Ubani_publishable_minutes.pdf

[4] *Revealed: Hospital has staff from 70 countries, Nurses who don't even understand 'nil by mouth' forced to take English lessons*, 6 April, 2010, Daily Mail

> *"the UK seemed powerless to ensure overseas doctors met standards rightly demanded of home-grown doctors…medical authorities here seemed to be able to do little or nothing to check that doctors from overseas – especially from Europe – meet the proper standards of language and competence".*[5]

Niall Dickinson, the Chief Executive of the General Medical Council (GMC), informed the Health Select Committee that it was prevented from testing the qualifications of European locums and was forced to accept competency certificates and qualifications 'at face value'.[6]

The current situation and requirements regarding clinical and language competency of overseas doctors wishing to work in the UK is briefly summarised now below and described in further detail in Section 3 of this briefing.

All doctors who wish to work in the UK must register with the GMC with the appropriate documentary evidence to support their application, including primary medical qualification, licence to practice medicine, certificate of good standing from a regulatory body of their country, and an International Language Testing System (IELTS) certificate if applicable (i.e. non-EEA applicants only). Full registration enables doctors to work in any form of professional medical practice in the UK, specialist registration is needed to take up a consultant post and GPs must be on the GP register. NHS Trusts who recruit staff from abroad should carry out the necessary pre-appointment checks in accordance with NHS employers safer recruitment guidance.[7]

Directive 2005/36/EC, adopted on 7 September 2005, is the relevant EU legislation. It consolidated and modernised the rules currently regulating the recognition of professional qualifications. On 20 October 2007, at the end of the transposition period, this Directive replaced fifteen existing Directives in the field of the recognition of professional qualifications. A number of changes were introduced by this Directive, including greater liberalisation of the provision of services, more automatic recognition of qualifications and increased flexibility in the procedures for updating the Directive.[8] This Directive is currently under review and this is considered in more detail in Section 4 of this briefing.

The response to Parliamentary Question PQ 1667 stated that the European Directive 2005/36/EC on the recognition of professional qualifications prevents healthcare regulators in the UK from systematically testing language knowledge of European Economic migrants at the point of registration.[9] The UK has transposed the provisions in the directive that migrants,

[5] *Make all foreign doctors take an English test, demands BMA*, 29 June 2010, Daily Mail
[6] Vetting loophole puts patients at risk, 12 March 2010, The Daily Telegraph
[7] Parliamentary Questions, PQ 119011, 06/03/2007
[8] Directive 2005/36/EC, http://ec.europa.eu/internal_market/qualifications/future_en.htm
[9] Parliamentary Questions, Session 2010-11, PQ 1667, 28/07/2010

> *"shall have a knowledge of languages necessary for practising the profession in the host member state"*

not at the point of registration, but at the point where a doctor seeks to provide services in a community; through the Performers List Regulations 2004 and through obligations on employers. Health Service Circular 1999/137 makes it clear to all NHS employers that they are responsible for ensuring that the staff they employ have the necessary language and communication skills needed to do the job safely and effectively.[10]

3 Current Situation Regarding Clinical and Language Competency of Overseas Doctors

3.1 Introduction

The distinction that is important in this context for the GMC in terms of language and competency testing is whether or not the doctor is a national of an EEA country. The European Economic Area (EEA) is a free trade zone between countries of the European Union (EU), Iceland, Norway and Liechtenstein.[11] A full list of EEA countries is attached at Appendix 1.

From 16th November 2009 all doctors in the UK must have a licence to legally practise medicine and undertake the activities restricted by law to doctors, such as writing prescriptions, and signing death certificates. This licence to practise is issued by the GMC and applies to all doctors working in the UK and to all levels of registration with the GMC – full, provisional, or whether on the specialist or GP register (see Section 3.4). All doctors intending to practise in the UK are required to be registered with the GMC and those who hold registration but not a licence are more likely to be, for example, working as academics and cannot undertake any of the activities for which the law requires a licence to practise.[12]

3.2 Employment of European Economic Area (EEA) Nationals - Health Service Circular HSC 1999/137[13]

The Health Service Circular (HSC) notes in paragraph 3 that EEA Nationals (and others with enforceable Community rights) do not have to prove to the healthcare registration authority (for doctors this is the GMC) that they have a knowledge of

[10] Parliamentary Questions, Session 2009-10, PQ 2854, 29/03/2010

[11] Travelling in the European Economic Area and Switzerland, NHS Choices, http://www.nhs.uk/NHSEngland/Healthcareabroad/countryguide/Pages/EEAcountries.aspx

[12] Information for Overseas Doctors, NHS Careers, www.nhscareers.nhs.uk/exploreoversea_registration-for-doctors-and-general-practioners

[13] HSC 1999/37, 14th June 1999, Employment of EEA Nationals, Ensuring Language Competency, www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Haelthservicecirculars/DH_4004699

English in order to have their qualifications recognised in the UK. This is the situation for EEA Nationals with EEA qualifications; EEA nationals with qualifications from outside the EEA; and people who are entitled to be treated no less favourably than an EEA national by virtue of a right conferred by article 11 of a Council Regulation.[14]

However, the HSC, in paragraphs 4-7, also makes it clear that employers are responsible for ensuring that any job applicant has the necessary language and professional skills to carry out the duties of their employment and advertisements should make it clear that all applicants (no matter what their nationality or country of origin) will be expected to supply evidence of their competence to communicate in English to the standard required by the post.

With regard to temporary vacancies, the HSC makes it clear, in paragraph 9, that employers are responsible for ensuring that locums or other temporary staff in these professions are competent to carry out the duties for which they were taken on. However agencies are responsible for ensuring the staff they supply are competent to undertake the duties they are contracted to carry out.

3.3 Employment of Non-European Economic Area (Non-EEA) Nationals

Non-EEA applicants applying for registration must satisfy the GMC that they have the necessary knowledge of English, communication skills and clinical competence to practise in the UK. The GMC uses the Professional and Linguistic Assessments Board (PLAB) Test as the main route by which International Medical Graduates (IMGs) demonstrate they have the necessary skills and knowledge to practise medicine in the UK.[15] In order to take the PLAB test, doctors must have already completed the International English Language Testing System (IELTS) and attained certain minimum scores in the four areas of speaking, listening, reading and writing.[16]

3.4 Registration With the GMC

The following information is extracted from the NHS Careers webpage *Information for Overseas Doctors*[17] and applies to all doctors working in the UK.

Provisional Registration

Provisional Registration (alongside a licence to practise) allows newly qualified doctors to undertake general clinical training required for full registration and allows doctors to

[14] (EEC) No 1612/68 (OJ No L 257,19.10.68, p1)
[15] Guidance for PLAB Test Candidates, GMC, www.gmc-uk.org/doctors/plab.asp
[16] Information for Overseas Doctors, NHS Careers, www.nhscareers.nhs.uk/exploreoversea_registration-for-doctors-and-general-practioners
[17] Information for Overseas Doctors, NHS Careers, www.nhscareers.nhs.uk/exploreoversea_registration-for-doctors-and-general-practioners

work in Foundation Year 1 posts. It is available to doctors meeting the following criteria:

- UK medical graduates graduating from a university recognised by the Medical Act 1983;
- IMGs who have an acceptable primary medical qualification and who have passed the PLAB test but have not completed an internship;
- Nationals from the EEA, Switzerland and other countries with EC rights who qualified outside the EEA and Switzerland;
- Nationals from the EEA, Switzerland and doctors who have EC rights who qualified at EEA or Swiss medical schools; and
- Doctors who have qualified in an EEA member state can apply to do their internship in the UK if the practical training counts towards a medical degree which requires this for compliance with Directive 2005/36/EC.

Full Registration

Full Registration enables doctors to work in any form of professional medical practice in the UK, provided they hold a licence to practise. Doctors must also hold Specialist Registration to take up a consultant post (other than a locum consultant post); and those wishing to work as GPs must be on the GP Register (this extends to locums). Doctors qualifying from outside the UK may be eligible for full registration if they hold an acceptable primary medical qualification and have completed a period of post-graduate clinical experience (internship).

UK graduates and IMGs who are new to full registration or restoring their names to the register after a prolonged absence are required to work within an Approved Practice Setting (APS) as assessed by the GMC. The GMC recommends that EEA graduates also do this when they first take up employment in the UK. The purpose of the APS system is to provide public protection by requiring new or returning doctors to work within a system with appropriate supervision and appraisal arrangements.

4 Current Problems and Future Directions

In April 2009, the House of Commons Health Committee Published its report *The Use of Overseas Doctors in Providing Out-of-Hours Services: Fifth Report of Session 2009-10* which covered the issues and problems of assessing clinical and language competence of overseas doctors who wish to work in the UK. The report noted the current situation, already outlined above, for EEA doctors - they must be registered with the UK's independent regulator of medical professionals, the GMC, according to

European legislation and national law (the Medical Act 1983[18]) and their registration depends on the country where the doctor obtained their primary medical qualification, their nationality and the nature and extent of their postgraduate experience. However, IMGs from non-EEA countries must undergo a

> *"rigorous assessment of their clinical and language skills by the GMC before they can be registered, the GMC is obliged to accept certificates issued by European authorities at face value, and cannot go behind them to investigate further. Thus in practice in can do nothing to vet the clinical competence or language skills of EEA qualified doctors".*[19]

It further noted that the GMC had insufficient powers as regards EEA doctors so the task of vetting EEA doctors falls on the Trusts, or contractors (including commercial bodies) employing doctors. In England, each Primary Care Trust (PCT) maintains a medical Performers List and in order to practise in NHS Primary Care a doctor must have been admitted onto one of these lists as per the NHS (Performers List) Regulations 2004[20] and the NHS (Performers List) Directions 2010, which came into effect on 1st April 2010.[21] Primary Care Trusts have a legal responsibility to undertake various checks on applicants, including an assessment of language and general practice skills.[22]

In Northern Ireland, the HSC Board Business Services Organisation holds the HSC Board Performers List.[23] All GPs working in the out-of-hours services in Northern Ireland are required to be on the performers list held by the HSC Board. To remain on the list they must take part in annual appraisal. The Northern Ireland Medical and Dental Training Agency (NIMDTA) manages the GP appraisal system for Northern Ireland. This includes appraisal arrangements for doctors working solely in out-of-hours and for locum doctors.[24]

The Health Committee Report, referred to above, expressed the frustration of the GMC as regards the fact that EU law forbids the GMC to test for clinical competence or the systematic testing of language skills (i.e. it can test in individual cases if required). The GMC argued to the Committee for a change in the law in the UK to the 1983 Medical Act which in the view of the GMC "*goldplates the European Directive and actually makes it more difficult in relation to language*" and a change to the European Directive

[18] The Medical Act 1983, http://www.gmc-uk.org/about/legislation/medical_act.asp

[19] The use of overseas doctors in providing out-of-hours services, House of Commons, Health Committee, Fifth Report of Session 2009-10, 8th April 2010, paragraph 9

[20] NHS (Performers List) Regulations 2004 http://www.pcc.nhs.uk/uploads/Optometry/May%2008/consolodated_performers_list_regs_may08.pdf

[21] NHS (Performers List) Directions 2010 http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Directionsfromthesecretaryofstate/DH_114482

[22] The use of overseas doctors in providing out-of-hours services, House of Commons, Health Committee, Fifth Report of Session 2009-10, 8th April 2010, paragraphs 10-11

[23] BSO HSC Board Performers List http://www.centralservicesagency.com/display/current_performers_lists

[24] The Regulation and Quality Improvement Authority (RQIA), Review of GP Out-of-Hours Services, September 2010, page 20, http://www.rqia.org.uk/cms_resources/GP%20OOH%20Report%20Sept%2010.pdf

to allow the GMC to check the competency of doctors coming from the EEA to work in the UK.[25]

GMC Chief Executive, Niall Dickinson advocates that the regulator needs more powers to be able to properly check the competence of European doctors,

> *"What we can do is check who they are; we can get from the competent European authority a certificate saying they are somebody of good standing, and thirdly we get the qualifications they produce. What we cannot do is look behind these things. We cannot say well that qualification doesn't mean very much. If it is approved, and it is on the European list, then we simply have to accept them".*[26]

The House of Commons Health Committee were advised by the Health Minister that it was not possible to amend the Medical Act 1983 without contravening EU law and the relevant EU Directive "*will be revised in 2012*".[27] The Committee report noted that a difference of legal opinion exists between the Department of Health and the GMC regarding amending the Medical Act 1983 and recommended they shared their legal advice. It further recommended 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".*[28]

In responding to the House of Commons Health Committee, the Secretary of State for Health advised that the review into Directive 2005/36/EC had begun with proposals to be put forward in 2012, however, noted that there was no guarantee that the review would lead to changes and only the European Commission can propose amendments to EU law in this area.[29] With regards to checks on clinical competence, the Government's response noted that as the Directive is concerned with mutual recognition of qualifications "*it is therefore extremely unlikely that further checks on competence could be provided for …checks on professional competence at the point of*

[25] The use of overseas doctors in providing out-of-hours services, House of Commons, Health Committee, Fifth Report of Session 2009-10, 8th April 2010, paragraph 17-20

[26] GMC wants new powers to test European docs, Mike Broad, 19th March 2010, Hospital Dr 'News', www.hospitaldr.co.uk/blogs/tag/overseas-doctors

[27] The use of overseas doctors in providing out-of-hours services, House of Commons, Health Committee, Fifth Report of Session 2009-10, 8th April 2010, paragraphs 19-20

[28] The use of overseas doctors in providing out-of-hours services, House of Commons, Health Committee, Fifth Report of Session 2009-10, 8th April 2010, paragraphs 22-23

[29] 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, July 2010, paragraph 7

initial registration should be handled under the automatic recognition regime and be attested to by qualifications issued by another EU competent authority".[30]

Further to the progress of the review of the Directive, since May 2010, the '*informal network of competent authorities for the recognition of professional qualifications for doctors'*, consisting of 28 competent authorities from 23 member states has held a series of meetings to discuss their experiences with the implementation of Directive 2005/36/EC on the mutual recognition of professional qualifications. The network sees the Commission's current evaluation of the Directive as an opportunity to ensure that professional mobility is maintained and to enhance patient safety.

The network has noted that the system of automatic recognition provided by the Directive has proven successful in facilitating the recognition of medical qualifications within the European Economic Area; and therefore with a high level of doctor mobility around Europe it is necessary to enhance transparency around the recognition of professional qualifications. Competent authorities intend to work together to create a repository of detailed information on the content of medical training for each specialty[31].

The following information extracts from the network's Berlin Statement (September 2010) noted that the network has called on the Commission to[32]:

- Continue to facilitate the identification of competent authorities responsible for the recognition of qualifications for doctors; require competent authorities to be listed on the Internal Market Information system (IMI);and develop and improve IMI to allow competent authorities to carry out primary source verification of documents;
- Examine, in cooperation with the Competent Authorities, appropriate competence assurance mechanisms for doctors;
- Explore mechanisms that will improve the exchange of information about doctors regarding patient safety in Europe and on professional competence;
- Facilitate the identification of competent authorities responsible for taking regulatory action against doctors to ensure that only those doctors that are fit and safe to practise avail themselves of the benefits of freedom of movement within the EEA.
- Ensure that there is legal clarity about regulatory responsibility in instances of cross-border provision of services;
- Provide clarification about the term 'temporary and occasional'; support competent authorities in developing a framework to assist them in dealing with recognition in cases of subsequent applications for temporary and occasional provision of services;

[30] The use of overseas doctors in providing out-of-hours services, House of Commons, Health Committee, Fifth Report of Session 2009-10, 8th April 2010, paragraph 9

[31] Berlin Statement, 13/09/10, European Commission evaluation of Directive 2005/36/EC on the mutual recognition of professional qualifications, http://www.gmc-uk.org/Joint_Berlin_statement_15_Oct_2010_36136790.pdf

[32] Berlin Statement, 13/09/10, European Commission evaluation of Directive 2005/36/EC on the mutual recognition of professional qualifications, http://www.gmc-uk.org/Joint_Berlin_statement_15_Oct_2010_36136790.pdf

- Address the concerns of competent authorities in relation to language proficiency of migrant doctors in the interest of patient safety; and
- Examine the increasing occurrences of false documents and fraud and find means to combating these.

To conclude, in advance of the review of the Directive, the Westminster Government did highlight in its response to the Health Committee that the automatic recognition of professional qualifications is about access to the profession as a whole and not suitability for a particular role and the suitability of individuals for specific roles still remained the responsibility of those employing or contracting with them.[33]

The Government response concluded that it believed there is scope for strengthening language checks within the current law and it plans to explore *"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*".[34]

[33] The use of overseas doctors in providing out-of-hours services, House of Commons, Health Committee, Fifth Report of Session 2009-10, 8th April 2010, paragraph 10

[34] The use of overseas doctors in providing out-of-hours services, House of Commons, Health Committee, Fifth Report of Session 2009-10, 8th April 2010, paragraph 8

Appendix 1 – EEA Countries[35]

- Austria
- Belgium
- Bulgaria
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Gibraltar
- Greece
- Hungary
- Iceland
- Ireland
- Italy
- Latvia
- Liechtenstein
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain (including Canaries and the Balearics, which are provinces of Spain)
- Sweden

NB: Switzerland is not a member of the EEA and Swiss nationals are not citizens of the EU. However since 1 June 2002, under the terms of a bilateral agreement, Swiss nationals have had rights, which are similar to those of nationals of EEA countries.

[35] Home Office, Identity and Passport Service, http://www.ips.gov.uk/cps/rde/xchg/ips_live/hs.xsl/1214.htm