

<b>Reference:</b>	FOI.1612.19
<b>Subject:</b>	Managed GP practices within Hywel Dda University Health Board (UHB)
<b>Date of Request:</b>	30 September 2019

**Requested and response:**

Part 1

1. How many GP practices is the Health Board responsible for directly?

As of October 2019, the UHB had four managed GP practices.

2. For each of the last three financial years (from 1 April 2016 to date) please state:

a) How many GPs have been engaged in any capacity to provide GP services?

b) The capacities in which they have been engaged (i.e. employee or contractor etc.) and the proportions or number of those so engaged (i.e. how many as employees etc.)

c) If not included above how many GPs have been hired as locums in this period.

The UHB has engaged 97 GPs to deliver general medical services within its managed practices during the requested period. The table below provides a breakdown of the capacity in which they were engaged.

Capacity	Number
Salaried	7
Service Level Agreement	2
Locum	88

Financial year	Number of Locum GP's engaged
2016/2017	23
2017/2018	16
2018/2019	47
2019 - date	46

a) For each of the categories please provide a sample or template of the contractual documentation provided to the appointed GPs and/or used to arrange their services.

We do not hold any template documentation in respect of these categories. Each individual engagement is based on contractual terms which are negotiated between the parties to reflect the particular needs of the situation. We do hold contractual documents but we consider that these are exempt from disclosure under section 43 of the FOI Act.

As the document requested relates to terms agreed with individual third parties, the UHB has considered the exemption at Section 43(2) of the Freedom of Information Act 2000. The UHB considers that Section 43 applies to this question, as answering would be prejudicial to the commercial interests of the UHB and its contractors. Section 43(2) exempts information, disclosure of which would or would be likely to prejudice the commercial interests of any person. Commercial interests may be prejudiced where disclosure would, or would be likely to:

- Weaken a company's position in a competitive environment by revealing market sensitive information or information of potential usefulness to its competitors.
- Damage a company's business reputation or the confidence that customers/users, suppliers or investors may have in it.

The UHB considers that the disclosure of the documents requested would be likely to prejudice the commercial interests of both the UHB itself and the individual locums and self-employed GPs. This is because it would reveal the terms and conditions on which those third parties provide services. It may also prevent the UHB from achieving best value when conducting negotiations for future contracts of a similar nature.

This exemption is qualified; therefore, even if information falls within Section 43, public authorities must then apply the public interest test set out in Section 2(2)(b). The information can only be withheld if the public interest in maintaining the exemption outweighs the public interest in disclosure.

The UHB has therefore considered the following:

**In favour of disclosure:** -There is a public interest in transparency and in the accountability of public funds. Furthermore, it is in the public's interest that public funds be used effectively and that public sector bodies obtain the best value for money when contracting for the provision of services. Private sector bodies engaging in commercial activities with the public sector must expect some information about those activities to be disclosed.

**Against disclosure:** - Disclosure of this information would have a direct impact and cause substantial harm to the UHB's ability to negotiate with and engage much needed medical staff. It would be likely that this would damage the parties' ability to negotiate appropriate terms and could impact on the UHB's ability to deliver its services to patients and the public.

It has therefore been decided above that releasing the information under the Freedom of Information Act 2000, to which the UHB is subject, will impede on the UHB's ability to operate effectively.

## Part 2

1. In relation to the Health Board's employed or hired (locums, agency or self-employed etc.) GPs how does it address the provisions of the Working Time Regulations (WTR) in relation to monitoring and enforcing working time and rest and holidays identifying any differences of approach between the different contractual arrangements. Please provide any standard documents used to gather data in this regard. Who is responsible in the Health Board for this role and to whom and how do they account? Please provide and published records of the performance of this role.

The UHB does not hold the requested standardised documents.

2. In relation to GPs as described above at 1. please does the Health Board adopt a practice of paying for holidays by rolled-up pay i.e. an amount of the remuneration paid is ascribed in advance to the entitlement to holiday under the WTR.

The Freedom of Information Act affords members of the public the opportunity to request information that is recorded or held by a public authority. This part of your request is not relating to information held and is therefore not a valid request under the Freedom of Information Act 2000.

3. If the answer to 2. is yes please state how many are treated in that way for each of the last three financial years (from 1 April 2016 to date) and explain how this is arranged.

Not applicable.

4. Please provide examples of any documentation provided to the relevant GP or otherwise held by the Health Board which states, explains or otherwise asserts that holiday pay is rolled-up as described in 2) above.

Information relating to individual GPs is held by the UHB but is exempt from disclosure under section 40(2) of the FOI Act.

This information is classed as personal data and is therefore being withheld in accordance with section 40 (2) of the FOI Act, by virtue of section 40 (3A) (a) of the FOI Act, which permits a public authority to withhold personal data other than the requester's where the disclosure would breach one of the Data Protection Principles.

The General Data Protection Regulation (GDPR) defines 'personal data' as information which relates to an identified or identifiable living individual. As there are only a very small number of GPs are engaged directly by the UHB, it is possible to identify them from the information requested, even if names are removed. The information you have requested therefore constitutes personal data.

The disclosure of the personal data you have requested would contravene the data protection principles. In particular, the UHB does not have a lawful basis for processing the personal data. In reaching this view, the UHB has considered your legitimate interests in receiving the information, together with the interests and rights of the individuals to whom the personal data relates. Whilst we do acknowledge there is a legitimate interest in transparency and accountability for how the Health Board allocates public money, we consider that this is overridden by the privacy rights of individuals, none of whom would have expected that information relating to their employment conditions would be disclosed into the public domain.

### Part 3

1. What are the Health Board's obligations when it hires self-employed or locum GPs to provide primary medical care?

The Freedom of Information Act affords members of the public the opportunity to request information that is recorded or held by a public authority. This part of your request is not relating to information held and is therefore not a valid request under the Freedom of Information Act 2000.

2. What policies or guidance are applied in soliciting, appointing, monitoring and terminating self-employed or locum GPs.

The UHB does not hold any policies or guidance relating to the soliciting, appointing, monitoring or terminating of self-employed or Locum GP's.

3. Who is responsible for providing indemnity or insurance against clinical negligence to self-employed or locum GPs? If it is the responsibility of the GP on any occasions how is this made known and monitored? If it is the role of the Health Board on any occasions what processes should the Health Board apply.

This information is available within the public domain therefore the UHB has applied a Section 21 exemption as the information is accessible by another means.

Welsh Government issued a statement in March 2019, confirming the implementation of an All Wales Locum Register, which includes details of how to access indemnity insurance.

For ease, the UHB has provided a link to the statement below:

<https://gov.wales/written-statement-all-wales-locum-register>

#### Part 4

1. In relation to the changes in the public sector for the hiring of staff under IR35 what steps has the Health Board taken to ensure that it complies with relevant guidance and identify that guidance and any policies or processes that were changed in order to do so.

Following attendance at appropriate training to understand the changes the UHB wrote to all agencies, including Medical Agencies, Nursing Agencies and Allied Health Professional (AHP) Agencies advising that the assignments fell under IR35. As appropriate and necessary, meetings took place to discuss the impact with individuals. The UHB has provided examples of communications sent to agencies and managed practices confirming the changes being applied in Attachments 1 and 2.

2. Who was responsible to the Board to ensure that this was carried out appropriately and when was the Board informed of the necessary changes.

The Director of Workforce and Organisation Development for the UHB was responsible for the implementation of the necessary changes.

3. In relation to all contractors how many were required to change to be paid via payroll as a result of IR35? How many of these were medical staff?

The UHB have identified 58 self-employed individuals who were required to be paid via payroll as part of IR35. The UHB is unable to confirm the number of these that were medical staff as this would require a manual search of records which is exempted under Section 12 of the Freedom of Information Act as is detailed in Part 5 Question 3.

4. What documentary or other steps were taken to alter the status of such contractors moving to be paid via payroll?

Following attendance at appropriate training to understand the changes the UHB wrote to all agencies, including Medical Agencies, Nursing Agencies and Allied Health Professional (AHP)

Agencies advising that the assignments fell under IR35. As appropriate and necessary, meetings took place to discuss the impact with individuals. The UHB has provided examples of communications sent to agencies and managed practices confirming the changes being applied in Attachments 1 and 2.

## Part 5

1. In relation to GP practices for which the Health Board is directly responsible how are these managed by the Health Board? Please include specifically how matters of clinical governance and health and safety are addressed.

This information is available within the public domain therefore the UHB has applied a Section 21 exemption as the information is accessible by another means.

The Primary Care Applications Committee (PCAC), is responsible for the consideration of primary care contractual matters. Further information regarding the committee is available via the PCAC webpage. Additionally the committee's terms of reference (TORs) and minutes are publically available.

For ease of reference please click on the links below:

PCAC - <http://www.wales.nhs.uk/sitesplus/862/page/83831>

TOR's - <http://www.wales.nhs.uk/sitesplus/documents/862/PCAC%20ToRs%20V%2007%20following%20May%202019%20Board%20approval%20and%20PCAC%20removal%20of%20paragraph.pdf>

2. What are the responsibilities of the Health Board's Medical Director in relation to locum or self-employed GPs?

The UHBs Medical Director has no specific responsibility for locum/self-employed GPs. The UHBs Medical Director is responsible for delivering high quality, safe patient care that complies with statutory, regulatory and financial duties, and for building strong relationships with other organisations.

3. Since April 2016 what is the range of payments made to such locum or self-employed GPs either 'sessionally' or hourly rate as appropriate setting out any additional costs for employers NI and pension contributions etc.

The UHB is unable to provide you with the range of payments made to locum or self-employed GPs, setting out any additional costs for employers NI and pension contributions etc. as it is estimated that the cost of answering your request would exceed the "appropriate level" as stated in the Freedom of Information (Fees and Appropriate Limit) Regulations 2004. The "appropriate level" represents the estimated cost of one person spending 18 hours or (2 ½ working days) in determining whether the UHB holds the information, and locating, retrieving and extracting the information.

In order to provide you with the information requested the UHB would need to contact its GP practices to conduct a manual search of all invoices submitted during the requested time period, to collect the recorded pay ranges. To conduct the search on one invoice for each of the 97 GP/Locums recorded in part 1 it is estimated to cost the following, should these GP/Locums have submitted more than one invoice the estimated cost would increase.

97 invoices @ 15 minutes per invoice = 24.25 hours  
24.25 hours @ £25 per hours = £606.25

The UHB is therefore applying an exemption under Section 12 of the Freedom of Information Act 2000, which provides an exemption from a public authority's obligation to comply with a request for information where the cost of compliance is estimated to exceed the *appropriate limit*.