

11th November 2021

To all practices in Surrey & Sussex LMCs

Dear Colleagues

BMA advice on pay transparency income declaration

I am writing to all colleagues regarding this issue, firstly I must apologise as despite requests from numerous LMCs for updated guidance, given the deadline for income declaration was 11th November, this BMA guidance was available from yesterday.

It is available at:

<https://www.bma.org.uk/pay-and-contracts/pay/other-doctors-pay/declaring-gp-earnings-over-150-000>

This may be further updated over the next few days as a result of more questions; however, I can also provide further guidance, as below, based on BMA information.

As colleagues will be aware, the requirement to declare NHS earnings greater than £150k (rising annually from this baseline in the 2019/20 financial year) was imposed by NHS England. The original agreement stated other contractors, such as dentists and community pharmacists, would also be covered by this requirement but this has not happened. Instead GPs have been singled out, however, the BMA has not been able, on legal advice, to challenge this on the grounds of discrimination.

GMS, PMS and APMS Regulations have all been varied from 1st October 2021 to include this requirement, which is thus part of practices primary medical services contract. Each practice should have received a Variation Notice from their CCG updating their contract to include this, and other amendments that came into force on 1st October 2021, such as the COVID exemption certificate scheme. CCGs are required to send out such Variation Notices to partnerships, and are entitled to vary contracts to ensure they are compliant with current legislation. GP partnerships cannot refuse to accept Variation Notices where the only contractual change(s) is/are those required for legal compliance.

Although the BMA is in dispute with NHS England about these 'pay transparency' declarations, this in itself does not allow the BMA to encourage GPs not to declare information required under their contract. An Indicative Ballot is currently being undertaken, this closes on 14th November, to gauge GPs willingness not to comply with this element of their contract, amongst others. This is in anticipation of the BMA deciding whether or not to hold a formal ballot on taking industrial action. If this occurs and passes the necessary threshold, the BMA would then be protected by Trade Union Legislation in encouraging a breach of contract.

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There are a number of other points colleagues have raised, including:

- The extent to which GPs having different roles are covered by these Regulations: At present GP partners, including single-handed practitioners, and subcontractors if they are individuals or partnerships, but not limited companies, are covered. Only clinical subcontractors are in scope, including locum GPs.
- Salaried GPs are not included: it is unclear if this is a policy decision by NHS England, or a result of poor drafting of the Regulations.
- Locums who are employed by a limited company which is subcontracted by a practice do not seem to be covered by the wording of the Regulations, but again, it is unclear if this is a result of the ambiguous drafting of the Regulations.
- Locums who are subcontracted by a locum agency or other private company, and who work at a practice because the practice has subcontracted the locum agency, are covered by the Regulations because they require a GP practice to include compliance with this stance within any subcontracting arrangement.
- Checking compliance: It is unclear how NHS England will check compliance; NHS Pensions and HMRC data shared with NHS Digital/NHS England appears to be on an anonymous basis. If a CCG or NHS England approach a GP saying they should declare, any evidence underpinning this assertion would have to be obtained legally.
- NHS England has provided guidance on how this declaration should be made: practices are required to 'have regard' to such guidance. If a practice did not follow this guidance, then it would have to demonstrate, in a rational way, why it did not. The BMA has not provided examples of what reasons a practice might consider provide weight to not following NHS guidance, despite having regard to it.
- Definition of earnings: The BMA link includes several examples (courtesy of Ramsay Brown LLP) which colleagues may feel provide evidence that the outcome, in terms of which GPs would be required to declare their income, and which would not, appear to be based on the interpretation of accountancy procedures rather than any coherent underlying NHS England strategy. I invite colleagues to click on the rainbow of example GPs within the link and draw their own conclusions, noting this information is provided by the BMA.

The above is a summary of the BMA's preliminary response to these questions, which I understand will be included in the BMA link shortly.

The LMC is awaiting the result of the BMA Indicative Ballot, due to be presented to the next BMA General Practitioners Committee meeting in 18th November.

If the option of encouraging undated resignations from the PCN DES is supported by the BMA, SSLMCs will institute a confidential process to enable colleagues to do so.

The LMC will also provide information on other Collective Action, that GP colleagues might wish to consider, if endorsed by the BMA.

The LMC cannot encourage GP partners or other GP colleagues to take action that would represent a breach of contract.

With kind regards

Dr Julius Parker

Chief Executive