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# Further Measures to Improve the Provision of Primary Care Services A Consultation

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This consultation paper is being sent to NHS Boards, family health service practitioners and other interested parties. Contractors are asked to draw it to the attention of all practitioners who work for them.

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Further Measures to Improve the  
Provision of Primary Care Services  
A Consultation

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## SCOTTISH EXECUTIVE

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Health Department  
Directorate of Service Policy & Planning

**Primary Care Division**

St Andrew's House  
Regent Road  
Edinburgh EH1 3DG

To:  
Chief Executives of NHS Boards  
and Trusts  
Council on Tribunals  
Scottish Committee of the Council on Tribunals  
Chair, NHS Tribunal  
Clerk, NHS Tribunal  
Scottish General Practitioners' Committee  
Scottish Dental Practice Committee  
Optometry Scotland  
Scottish Pharmaceutical General Council  
Local Health Councils  
Family Health Service Practitioners  
Other Organisations (list on request)

Telephone: 0131-244 2331

Fax: 0131-244 2326

John.W.Davidson@scotland.gsi.gov.uk

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

March 2004

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Dear Colleague

### **FURTHER MEASURES TO IMPROVE THE PROVISION OF PRIMARY CARE SERVICES – A CONSULTATION**

Within its broader health care strategy, the Scottish Executive proposes to strengthen further the quality of primary care services. Your views are sought on a series of measures outlined in this consultation paper which are designed for that purpose through improving protection of patients and NHS resources.

You are invited to submit comments on this consultation paper by 18 June 2004. **Please send your response to:**

John.W.Davidson@scotland.gsi.gov.uk

or

John W Davidson,  
Primary Care Division,  
Scottish Executive,  
1 East Rear,  
St Andrew's House,  
Regent Road,  
Edinburgh  
EH1 3DG (0131 244 2331)

We would be grateful if you could clearly indicate in your response to which questions or parts of the consultation paper you are responding as this will aid our analysis of the

responses received. You are asked to return the enclosed "Respondee Information Form" with your response to help ensure that we deal with it appropriately. We will make all responses available to the public in the Scottish Executive Library by 19 July 2004 unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library.

This consultation paper is being published electronically on the Scottish Executive and the Scottish Health Service (SHOW) websites. If you wish to access this consultation online, go to <http://www.scotland.gov.uk/view/views.asp>. You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

#### SEConsult

A new email alert system for SE consultations ([SEconsult](#)) was launched in December 2003. This system will allow stakeholder individuals and organisations to register and receive a weekly email containing details of all new SE consultations (including web links). SEconsult will complement, but in no way replace SE distribution lists, and is designed to allow stakeholders 'keep an eye' on all SE consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We encourage you to register as soon as possible.

If you have any queries, please contact John W Davidson on 0131 244 2331. We look forward to receiving your views.

Yours faithfully

**DR HAMISH WILSON**  
**Head of Primary Care Division**

## **The Scottish Executive Consultation Process**

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site ([www.scotland.gov.uk](http://www.scotland.gov.uk)) enabling a wider audience to access the paper and submit their responses. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

If you have any comment about how this consultation exercise has been conducted, please send them to: **John W Davidson, Primary Care Division, Scottish Executive, 1 East Rear, St Andrew's House, Regent Road, Edinburgh EH1 3DG (0131 244 2331) e-mail [John.W.Davidson@scotland.gsi.gov.uk](mailto:John.W.Davidson@scotland.gsi.gov.uk)**

**FURTHER MEASURES TO IMPROVE THE PROVISION OF  
PRIMARY CARE SERVICES**

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# **FURTHER MEASURES TO IMPROVE THE PROVISION OF PRIMARY CARE SERVICES**

## **1. INTRODUCTION**

Within its broader health care strategy, the Scottish Executive proposes to strengthen further the quality of primary care services. Your views are sought on a series of measures which are designed for that purpose, through improving the protection of patients and of NHS resources. Legislation will be required to take the measures forward. The views of those with an interest are key to the consultation process which is an essential part of the Executive's preparations for developing legislation.

The proposals are outlined in section 3 of this paper. They include a number of changes to the powers and duties of the NHS Tribunal and Health Boards ("NHS Boards") in order to strengthen quality assurance and improve the protection of patients and NHS resources. The proposals also bring in changes to require family health service (FHS) practitioners (GPs, dentists, community pharmacists, optometrists and ophthalmic medical practitioners) applying to join an NHS Board list or already on such a list to provide certain information to the relevant Board or Boards for similar purposes.

This paper sets out the proposals in detail and your responses to the points made will be very helpful to us in considering the way forward. If you have views, however, which you feel are not covered by this paper, please do not hesitate to put them forward as all comments on any aspect of the paper are welcome.

In the context of this consultation paper, references to "practitioners" include references to ophthalmic and pharmaceutical bodies corporate and appliance suppliers.

## **2. BACKGROUND**

### **NHS Boards**

The protection of patients and the quality of practitioners providing treatment to them are of primary importance to the Executive. Both NHS Boards and the NHS Tribunal have a role to play in this and we wish to strengthen these roles further.

NHS Boards currently maintain for their areas lists of

- dentists undertaking to provide NHS general dental services;
- optometrists and ophthalmic medical practitioners undertaking to provide NHS general ophthalmic services;
- pharmacy contractors undertaking to provide NHS pharmaceutical services; and
- <sup>1</sup>GPs undertaking to provide or assisting with the provision of NHS general medical services.

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<sup>1</sup> Under the arrangements for the new GP contract, from 1<sup>st</sup> April 2004, the lists of GPs held by NHS Boards will be lists of GPs performing primary medical services.

At present, NHS Boards must refuse a FHS practitioner entry to its list or remove him or her from its list on certain mandatory grounds: for example, where the practitioner's name is not included in the register of his or her professional body (the General Medical Council, the General Dental Council, the General Optical Council or the Royal Pharmaceutical Society of Great Britain) or where the practitioner is subject to national disqualification by the NHS Tribunal. (An explanation of the Tribunal's role and powers is given below).

For GPs and dentists only, the Board has a duty to remove from its list any practitioner who has been convicted of a criminal offence and sentenced to a term of imprisonment of 6 months or more or who has been convicted of murder by a UK court. Boards have no such duty in relation to pharmacists, optometrists or ophthalmic medical practitioners nor can they refuse list entry to GPs or dentists - or to other FHS practitioners - on this basis.

### **Requirements Placed on FHS Practitioners Who Wish to Join NHS Board Lists or Who Are on Lists**

At present, FHS practitioners supply certain information when applying to join an NHS Board list such as whether they are on the register of the relevant professional regulatory body or are subject to national disqualification by the NHS Tribunal. The amount of information provided varies according to the type of family health service and is limited in scope. Little information is supplied once the practitioner is listed. NHS Boards are therefore restricted in their ability to check the fitness of the practitioner to join or remain on their list.

### **The NHS Tribunal**

The NHS Tribunal is the principal NHS disciplinary body for FHS practitioners. It is an independent body, comprising a Chair, appointed by the Lord President of the Court of Session, a member of the relevant profession appointed by Scottish Ministers, and a lay member appointed by Scottish Ministers. The Tribunal may inquire into cases where:

- the continued inclusion of an FHS practitioner on a list held by a NHS Board would prejudice the efficiency of the service to which the relevant list relates; or
- list applicants or those already on lists have committed or attempted to commit fraud against any publicly funded health service.

The Tribunal cannot however inquire into cases of list applicants whose inclusion on a Board list would prejudice the efficiency of the service to which the list relates.

The Tribunal has the power to impose Scotland-wide suspension on practitioners who have been referred to it in order to protect patients or on the grounds that there is a significant risk that a further fraud may occur or a fraud investigation be prejudiced. Where, following investigation, the Tribunal finds against a practitioner, the sanctions available to it are the disqualification of the practitioner from the list on which the practitioner appears (known as "local disqualification"), or from all NHS Board lists in Scotland (known as "national" disqualification). The disqualification imposed may be substantive (i.e. the name of the practitioner is removed immediately) or conditional (i.e. the practitioner remains listed but subject to conditions). Where national substantive disqualification is imposed, the Tribunal

may direct additionally that the practitioner disqualified is not fit to be engaged in the provision of the relevant services in any capacity.

### **3. FUTURE APPROACH**

As is evident from the description above, there are deficiencies in the current arrangements which the Executive seek to address. We also wish to improve on these arrangements in the interests of patients.

#### **Requirements Placed on FHS Practitioners Who Wish to Join NHS Board Lists or Who Are Listed**

For FHS practitioners, our proposals are that the information which FHS practitioners in all groups must supply to their NHS Board should

- be harmonised as far as possible; and
- cover additional types of information which would help demonstrate their fitness to be listed and to treat patients.

The information supplied would include written declarations/undertakings. For example, all listed practitioners would need to inform their local NHS Board of gifts from patients and any financial interests as prescribed in Regulations; all applicants to join an NHS Board list and all those already listed would need to report all adverse or current proceedings in a court or by professional regulatory/licensing bodies and provide confirmation that they have no criminal convictions by means of an Enhanced Disclosure when required to do so. (Further background information on Enhanced Disclosures may be found in the Annex to this consultation paper.)

#### **NHS BOARDS AND THE NHS TRIBUNAL**

The chart overleaf outlines in detail how we propose the system may operate in future. It lists the current arrangements alongside the suggested revised approach. References in the chart to “the 1978 Act” are to the National Health Service (Scotland) Act 1978. In summary, the main changes we propose are:

- introducing a new statutory power for NHS Boards to suspend practitioners locally;
- there should be 2 grounds for local suspension by a Board or for national suspension by the NHS Tribunal – the existing ground of patient protection and a new ground of suspension where it is otherwise in the public interest;
- changes to the grounds on which an NHS Board must refuse an FHS practitioner entry to or remove him or her from its list i.e. we propose refusal of entry or removal from a list where the applicant or listed practitioner has been convicted of murder by a court in the UK or elsewhere;
- an additional ground – unsuitability by reason of professional or personal conduct - on which practitioners may be referred to the NHS Tribunal for disqualification; and

- changes to the sanctions available to the Tribunal in dealing with practitioners where an adverse finding has been made. i.e. removal of the sanction of local disqualification.

### **Grounds<sup>1</sup> for Referral by an NHS Board to the NHS Tribunal and the Grounds<sup>1</sup> on which the NHS Tribunal May Direct a Disqualification**

<b>PRESENT</b>	<b>FUTURE</b>
<p>1. "Prejudice to efficiency grounds" as defined in section 29(6) of the 1978 Act: the continued inclusion of a practitioner on a list would be prejudicial to the efficiency of the service to which the list relates.</p> <p>2. "Fraud grounds" as defined in section 29(7) of the 1978 Act: the practitioner applying to join or included on a list has either independently or in concert with another practitioner knowingly defrauded or sought to defraud the NHS or another publicly funded health service (such as the health service provided to the armed forces).</p> <p>3. No "unsuitability grounds" at present.</p>	<p>1. The grounds would remain unaltered but an NHS Board would also be able to refer a practitioner who had applied to join its list on these grounds as well as listed practitioners.</p> <p>2. To remain unaltered.</p> <p>3. A new, additional ground to be introduced: "unsuitability by reason of professional or personal conduct".</p>

<sup>1</sup>Note: an NHS Board would be able to refer a case to the Tribunal and the Tribunal to disqualify a practitioner on one or more of these grounds.

### **Those who may be Referred to the NHS Tribunal and Made Subject to Disqualification**

<b>PRESENT</b>	<b>FUTURE</b>
<p>1. On "efficiency grounds" those practitioners whose names are included already on an NHS Board list.</p> <p>2. On "fraud grounds": those practitioners applying to join a list or those whose names are included already on a list.</p> <p>3. On "unsuitability grounds": no-one at present.</p>	<p>1. Those practitioners applying to join an NHS Board list or those whose names are included already on a Board list.</p> <p>2. Unaltered.</p> <p>3. Those practitioners applying to join a list or those already on a list.</p>

## Sanctions Available to the NHS Tribunal

PRESENT	FUTURE
<p>1. “Local disqualification”: disqualification from the list of the referring NHS Board.</p> <p>2. “National disqualification”: disqualification from the list of the referring NHS Board and from inclusion in all equivalent lists held by Boards.</p> <p>3. Conditional disqualification, local or national i.e. the practitioner may remain listed subject to conditions specified by the NHS Tribunal.</p> <p>4. A declaration that the practitioner is not fit to be engaged in the provision of the relevant services in any capacity.</p>	<p>1. No longer available.</p> <p>2. Unaltered.</p> <p>3. Unaltered but only national conditional disqualification will be available.</p> <p>4. Unaltered.</p>

## Grounds for Local Interim Suspension<sup>1</sup> by an NHS Board or for National Interim Suspension by the NHS Tribunal

PRESENT	FUTURE
<p>1. It is necessary to do so in order to protect patients who are or may be provided with FHS treatment/care.</p> <p>2. There is a significant risk of continuing fraud or that a fraud investigation may be prejudiced.</p>	<p>1. Unaltered.</p> <p>2. Future ground would be “in the public interest”. (This would cover cases where there was a significant risk of continuing fraud or that a fraud investigation might be prejudiced. It would also cover cases for instance where the practitioner’s continued inclusion on the relevant list would seriously compromise or disrupt the efficient delivery of local health care.)</p>

<sup>1</sup>Note: The new power of suspension by an NHS Board to be for a period of no longer than 6 months in most cases. Exceptions where the outcome of a case before a court or before the professional regulatory body is awaited. The NHS Board would be able to seek an extension to the 6 month period from the NHS Tribunal.

## Mandatory Grounds for Refusal of Entry to or Removal from a NHS Board List

PRESENT	FUTURE
<p>1. Mandatory removal from local list by NHS Board where a listed GP or a dentist has been convicted by a court in the UK of murder.</p>	<p>1a. Extend mandatory list removal by NHS Board on grounds of murder conviction to pharmacists, optometrists and ophthalmic medical practitioners, as well as GPs and dentists.</p> <p>1b. Extend mandatory removal to those practitioners convicted of murder by a court in the UK <i>or elsewhere</i>.</p>
<p>2. New ground for refusal of entry to a list.</p>	<p>2. Mandatory refusal of entry to local list by NHS Board where a FHS practitioner has been convicted of murder by a court in the UK or elsewhere.</p>
<p>3. Mandatory removal from local list by NHS Board where a listed GP or a dentist has been convicted of a criminal offence in the UK and sentenced to a term of imprisonment of 6 months or more.</p>	<p>3a. Change the ground to “conviction of a criminal offence in the UK or elsewhere” i.e. all criminal offences, rather than those carrying a term of imprisonment of 6 months or more but see below.</p> <p>3b. Replace mandatory list removal by an NHS Board with a power for NHS Boards to refer to the NHS Tribunal cases concerning those convicted of a criminal offence in the UK or elsewhere for a decision on whether disqualification is appropriate for the type of offence. The grounds for referral would be that the continued inclusion of the practitioner on the Board list would be prejudicial to the efficiency of the service to which the case relates and/or the practitioner is unsuitable to be listed by reason of professional or personal misconduct.</p> <p>3c. Give NHS Boards the power to refer to the Tribunal on these grounds cases concerning list applicants as well as cases where the practitioner is already listed.</p> <p>3d. Extend these provisions to pharmacists, optometrists and ophthalmic medical practitioners, as well as to GPs and dentists.</p>

## **4. THE CASE FOR CHANGE**

### **4.1 Reasons for Change**

There are a number of reasons for proposing these changes. The first and most significant of these is shortcomings in the system identified in the course of the Dr Harold Shipman case. Following this case, the Executive has put in place a programme to identify deficiencies in existing arrangements and measures to improve patient protection. Another impetus for change was a recent report prepared by the Executive's "Poorly Performing Doctors" Working Group which made a number of recommendations, including the introduction of a power for NHS Boards to suspend GPs locally where patients may be at risk. A third stimulus for change was a Government scrutiny of Prescription Fraud. Although the main aim of the measures we propose is to improve the protection of patients, it is important to recognise that NHS resources must also be protected from those who seek to defraud them.

### **4.2 Sanctions Available to the NHS Tribunal**

We do not believe that there are any circumstances where it could be argued that a practitioner who is disqualified from the NHS Board list for an area is fit to be on equivalent lists in any area. That is our reason for proposing that the Tribunal should retain only the sanction of national disqualification. The sanction of local disqualification has not been used by the Tribunal in recent years in any case. Only serious cases are referred to the NHS Tribunal and these are dealt with in an appropriately serious manner. Deterrence and the better protection of patients are our reasons for seeking this change.

Our proposal to introduce a new ground of unsuitability by reason of professional or personal misconduct is driven by a wish to ensure that all those practitioners who may do harm to patients, including those convicted of sexual offences, will be disqualified in future from working in family health services. We believe that this ground would better enable the NHS Tribunal to direct the disqualification of such practitioners.

### **4.3 NHS Board Duties**

Our proposal that NHS Boards should have a power to refer to the NHS Tribunal list applicants/people who are already listed and who have criminal convictions is driven by fairness to FHS practitioners, as well as to patients. At present, a GP or dentist (but not a pharmacist, optometrist or ophthalmic medical practitioner) is subject to mandatory removal by an NHS Board where he/she has been convicted of a criminal offence in the UK and sentenced to a term of imprisonment of 6 months or more. Those convicted of crimes, including sexual offences, are not necessarily sentenced to a term of imprisonment however. They may instead be given a fine, a term of community service and/or have their names included in a register (e.g. of sexual offenders or paedophiles) for a set period. We consider that the type of crime may be used as a basis to demonstrate a practitioner's unfitness to be included on a Board list, as well as or, possibly in some cases, instead of the length of prison sentence. Where the conviction might justify list exclusion, we believe that the independent Tribunal should judge this and, if there is an adverse finding, direct the practitioner's national disqualification.

The reason for our proposal about the handling of FHS practitioners who have been convicted of murder by a court in the UK or abroad is enhanced patient protection. The Executive

believes that it should take all reasonable steps to ensure that FHS practitioners who have murdered are not in a position to put further patients at risk of harm.

#### **4.4 Additional Requirements Placed on Practitioners Wishing to Join a List and on Listed Practitioners**

Practitioners on occasion receive gifts from their patients or are bequeathed gifts in patients' wills and this creates the opportunity for advantage to be taken of the unique relationship between practitioner and patient. The case of Dr Harold Shipman highlighted the need for monitoring of such gifts. The Executive considers that, if practitioners were required to declare to their local NHS Board gifts above a specified value, it would create a situation in which they could be considered and handled in an open and honest way. We believe that a reporting requirement would also be beneficial in relation to financial interests. A Government scrutiny of prescription fraud indicated that there was an inherent problem with GPs owning a pharmacy or with GPs or pharmacists having financial interests in care homes while at the same time providing health care to any of its residents. The scrutiny concluded that this enabled a dishonest individual to manage both the ordering and the supply of medicine and it could create a conflict of interests and unfair competition with neighbouring homes. Our proposal is that Regulations should prescribe types of financial interest to be declared or reported, including financial interests in nursing homes/pharmacies and other financial interests which may impact on the way in which FHS practitioners provide services to patients.

### **5. FINANCIAL IMPLICATIONS**

Referrals to the NHS Tribunal are a rare event. They concern only the most serious actions or lack of action and this will continue to be the case. The current maximum administrative cost to the Executive of a Tribunal case has been around £10,000. When cases are referred to the Tribunal, costs are incurred by the defence bodies of the referred practitioners who wish to engage legal representation. These will depend on the length of the hearing and the type of representation engaged.

### **6. CONCLUSION**

This consultation paper seeks your views on important proposals to strengthen quality assurance through improving the protection of patients and NHS resources.

In particular, we should be grateful to know whether:

#### **NHS Tribunal**

- ❖ you support the future role envisaged for the NHS Tribunal;
- ❖ there are elements of the proposed future Tribunal role you do not support;
- ❖ the aims could be achieved in other ways;
- ❖ there are points which you do not believe we have covered;

### **NHS Boards**

- ❖ you support the future role envisaged for NHS Boards;
- ❖ there are elements of the proposed future NHS Board role you do not support;
- ❖ the aims could be achieved in other ways;
- ❖ there are points which you do not believe we have covered;

### **Additional Requirements placed on FHS practitioners**

- ❖ you support harmonisation of the types of information to be given by practitioners to NHS Boards;
- ❖ you support the proposal to place additional requirements placed on FHS practitioners. including to provide an Enhanced Disclosure to NHS Boards when required to do so and to inform NHS Boards about adverse or current proceedings in a court or by professional regulatory or licensing bodies, specified financial interests and receipt of gifts above a specified value;
- ❖ you support some of these proposed requirements;
- ❖ the aims could be achieved in other ways;
- ❖ there are points which you do not believe we have covered.

Your views are important to us and will help us shape the draft legislation to be brought before Parliament in due course.

**We invite individuals and organisations to respond to the issues in this consultation paper by 18 June 2004. Responses should be sent to John W Davidson, Primary Care Division, Scottish Executive, 1 East Rear, St Andrew's House, Regent Road, Edinburgh EH1 3DG (0131 244 2331) e-mail [John.W.Davidson@scotland.gsi.gov.uk](mailto:John.W.Davidson@scotland.gsi.gov.uk) from whom further copies are available.**

Primary Care Division  
March 2004

## ENHANCED DISCLOSURES

An Enhanced Disclosure is the highest level of three types of Disclosure available under Part 5 of the Police Act 1997 ("the 1997 Act"). It will show any spent or unspent convictions and any cautions (from England and Wales or Northern Ireland) plus any non-conviction information supplied by a Chief Constable which he agrees may be shown on the Disclosure. This would be information about pending cases or information held by the police as "intelligence" which in the Chief Constable's opinion might be relevant to the position in question. The Chief Constable should therefore also indicate whether relevant information can be shown on the Disclosure without harming the interests of the prevention or detection of crime.

These Disclosures are available to those seeking inclusion or already included in any of the family health service lists held by NHS Boards (that is lists for medical practitioners, dentists, pharmaceutical chemists and ophthalmic opticians/medical practitioners).

Any applicant for an Enhanced Disclosure must have his/her application countersigned by a body or person registered under section 120 of the 1997 Act. In terms of the 1997 Act, the registered person would be sent a copy of the Disclosure issued to the applicant. The registered person may, in addition, receive additional information supplied by a Chief Constable but not shown on the face of the Disclosure in order that it may not be made known to the applicant for disclosure to avoid harming the interests of prevention or detection of crime.

In Scotland, the Disclosures are issued on behalf Scottish Ministers by Disclosure Scotland, a unit within the Scottish Criminal Record Office. The current fee in Scotland for a Disclosure is £13.60.

# RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response.  
This will help ensure we handle your response appropriately:

Name: .....

Postal Address: .....

.....

.....

.....

Consultation title: Further Measures to Improve the Provision of Primary Care Services

1. Are you responding as: (please tick one box)
- (a) an individual (go to 2a/b)
  - (b) **on behalf of** a group or organisation (go to 2c)

2a. **INDIVIDUALS**

Do you agree to your response being made available to the public (in SE library and/or on SE website)?

- Yes (go to 2b below)
- No, not at all

2b. **Where confidentiality is not requested**, we will make your response available to the public on the following basis (**please tick one** of the following boxes)

- Yes, make my response, name and address all available
- Yes, make my response available, but not my name or address
- Yes, make my response and name available, but not my address

2c. **ON BEHALF OF GROUPS OR ORGANISATIONS**

Your name and address as respondees **will be** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

- Yes
- No

3. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future for consultation or research purposes?

- Yes
- No

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