

Memorandum

41371419

1086

**General
Medical
Council****Regulating doctors
Ensuring good medical practice****To:** Niall Dickson
Ben Jones**From:** David Buckle
Tanja Schubert**Copy:** Luke Bruce**Date:** 9 May 2011**Briefing for the meeting with Norman Lamb MP, Steve Barclay MP, Code A
and Code A****Logistics**

Date: Tuesday 17 May 2011
Time: 15:00
Location: Portcullis House
Attending: Niall Dickson and Ben Jones

Background

1. Norman Lamb, Steve Barclay, Code A recently met Andrew Lansley to discuss language competency. We approached Norman Lamb and agreed to hold a follow up meeting with them to discuss the issue further.

Meeting objective

2. To update and reassure the attendees on the recent progress made with DH on language and clinical competency issues.

Suggested agenda

- a. Our proposal for language testing and an update on recent progress
- b. Discussion about next steps and expected timelines for progress

Main points to convey during the meeting

3. The GMC is working closely and urgently with the DH to ensure that we are able to assess the language competency of doctors from the EEA on a non-systematic and proportionate basis.
4. The most likely route for positive change is for the GMC to work with the DH to develop:
 - a. a proposal that would be acceptable to the European Commission; and
 - b. amendments to the Medical Act that would allow the GMC to assess the language competency of doctors from the EU.
5. Good progress has been made in recent months in developing a joint GMC/DH proposal that will need to be considered by the European Commission.
6. In the longer term, there is also an opportunity to change the mutual recognition of professional qualifications Directive (2005/36/EC). The GMC has submitted robust evidence to the consultation. We are pushing for an exemption for healthcare professionals which will allow competent authorities to carry out more thorough language checks than the ones permitted by the current Directive.
7. During a recent meeting the European Commission confirmed that it is considering the language issue.
8. The European Commission has indicated that it will publish a Green Paper and a second consultation on the review of the Directive in June 2011 and a revised Directive proposal before the end of the year.
9. We would like to remain in close contact with Norman Lamb, Steve Barclay, Code A and Code A about the progress that we expect to be made in the coming months.

Potential issues that we should be aware of and prepared for

10. The attendees at this meeting recently met the Secretary of State and we understand that they received a detailed briefing on our joint proposal. We should therefore be relaxed about discussing the details of our proposal with them and we should expect that they will have a reasonable amount of prior knowledge.
11. We should be prepared for the possibility that Steve Barclay will ask again for a copy of the Englehart legal advice from September 2009. He was obviously frustrated that we would not do so during our meeting with him in February 2011. He may now be aware— or it may be raised during the meeting – that we subsequently shared our legal advice with Code A and Code A in late March.

12. We should also be prepared for a request that we share a copy of our proposal and latest legal advice with the group. It is suggested that we say we are happy to talk through the details of our proposal but given that the document is due to be considered by the DH and Cabinet Office it would not be appropriate for us to share a copy at this stage and we are keen not to disrupt the good progress that is being made.
13. Steve Barclay may suggest tabling a Ten Minute Rule Bill on language competency or raising it in Parliament during a health debate. We should emphasise that ongoing interest from parliamentarians in this issue has helped to ensure that the issue has been prioritised by the Government. Whilst we would be happy to provide him with supporting information, we should also emphasise that we are confident that good progress will continue to be made and the most likely route to success is to work with the DH to develop a joint proposal and for the Government to subsequently introduce legislation to Parliament.
14. We should also be prepared to respond to an offer from Norman Lamb to take up this issue with senior colleagues. He has a strong interest in this area and he is influential in health circles and with the Deputy Prime Minister.
15. Number Ten published a Structural Reform Plan on 6 May for the DH, which stated that the Department had not met the deadline for the end of April to *'Develop options, in collaboration with the General Medical Council and European Commission, to strengthen the language competence checks of European Economic Area migrant doctors seeking to work in the NHS'*. It is stated that this work is 'not complete' and that *'work is underway on which legal advice is currently being sought'*. These reports are produced for all Departments on a monthly basis and rarely get much press attention. This month's report for the DH did however get coverage in the Guardian on 11 May 2011 and in Pulse on 16 May 2011. Code A provided a quote for the Pulse article to state "It is frustrating, but these things do take time and it seems to be moving in the right direction". It is likely that this issue will be raised during the meeting and that the attendees will be aware that the DH has not met their target date.

Stephen Barclay MP on language competency

16. **Code A** lived within the constituency of North East Cambridgeshire up until his death in February 2008. Since being elected as the new MP for the area in 2010, Steve Barclay has developed a close relationship with **Code A** and has raised issues of language competency and **Code A** many times in Parliament.

17. Steve Barclay has a good understanding of this issue and of recent developments. He met recently with Andrew Lansley to discuss the issue (alongside Norman Lamb and **Code A**). He also has a detailed letter from David Nicholson outlining the current position (see appendix).

18. At a Public Accounts Committee oral evidence session on 25 January when David Nicholson and Una O'Brien gave evidence, Stephen Barclay said:

*Out-of-hours GPs has obviously been a hot topic and a big constituency interest of mine; it was my constituent Mr **Code A** who was unlawfully killed by the German out-of-hours GP **Code A** who is still able to practice in Germany although he is banned in the UK. So there is an imbalance firstly between someone being able to work here because they are qualified in Germany but being banned here and not being banned in Germany. The GMC do not have unfettered control in setting language and competency tests for European qualified doctors when they come to the UK. It may be something you want to send me a note on, but I would be very keen to establish by what time UK legislation is going to allow the GMC to set the language and competency tests in the new health landscape in order that they can ensure that those coming to this country are correctly qualified and can speak the language.*

19. On 1 November 2010 Steve Barclay tabled a written question to ask the Secretary of State for Health 'whether he plans to bring forward proposals to amend legislation implementing the appropriate EU directives so as to allow the administration of a language test to medical professionals qualified in other EU member states who wish to practice in the UK'.

20. On 15 July 2010 Stephen Barclay spoke during a debate to request a debate on the CQC report on Take Care Now in order to learn the lessons from the death of **Code A** and ensure that EU-qualified doctors working here are both medically competent and able to speak English.

21. Steve Barclay is also quoted as saying in July 2010 that:

"It is time we made it clear that UK legislation does not goldplate European requirements and allow tests to be applied for EU qualified doctors, or amend our legislation to make this possible."

“A further concern is the sporadic nature of information in certain European countries regarding doctors who have been subject to disciplinary proceedings. Data protection rules in these countries often prevent disclosure of information to the same level as that of the United Kingdom. This creates the risk that constituents from North East Cambridgeshire who are treated by a doctor in another EU country cannot always find out whether that doctor has been guilty of misconduct in the past. Such a lack of transparency over information contrasts with the information available within the UK, and this is an issue I will be raising in the future in the House.”

22. Stephen Barclay has tabled more than ten parliamentary questions about Dr Code A most of which concern his arrest warrant. He has also tabled a question to ask whether we shared our legal advice with the Department of Health.

GMC contact with Stephen Barclay

23. Niall and Ben met Steve Barclay on 14 July 2010 to discuss the role of the GMC and the testing of language skills and competency of doctors from the EEA.

24. Ben and David met Steve Barclay again on 14 February 2011. Steve Barclay requested that we share our legal advice with him on this issue so that he could push for legislative change (either in the form of an amendment to the Health and Social Care Bill or as a Ten Minute Rule Bill). We stated that we would not be able to do so at that time as our conversations with the DH were ongoing and we did not want to disrupt the progress. Steve Barclay was disappointed by our response.

Profile of Steve Barclay MP

Conservative MP for North East Cambridgeshire since May 2010. He has a majority of 16,425.

He is a member of the Public Accounts Select Committee.

Before entering Parliament, Steve Barclay was Director of Regulatory Affairs at Barclays Bank where he was responsible for anti-money laundering in the retail bank.

He is a qualified solicitor and worked at Axa Insurance and then the Financial Services Authority.



In 1997 he contested the Labour stronghold of Manchester Blackley. In 2001 he contested Lancaster Wyre but didn't achieve the 1.1% swing required and lost by 481 votes. He did not contest the 2005 election and worked as a special adviser to the then Party chairman Dr Liam Fox. He studied history at Cambridge University and qualified as a solicitor at College of Law, Chester. He went to Sandhurst and served briefly as officer in the Royal Regiment of Fusiliers before the army sponsored him to go to Cambridge.

Norman Lamb MP on language competency

25. Norman Lamb has a long-running interest in doctor's language competency. He spoke about this issue many times while he was Lib Dem Shadow Health Secretary. His constituency of North Norfolk is near to where the Gray family are from.

26. In an article dated 14 December 2009 on the prosecution of **Code A** by the German authorities, Mr Lamb argued that 'the **Code A** case should justify Britain suspending the system under which European clinicians can practise in this country without being tested first'.

27. By January 2010 Norman Lamb developed three main proposals for ensuring that doctors from the EEA are clinically competent and able to speak English:

- foreign doctors wishing to work in Britain should have to undergo a national language and competency test
- a suspension in one country should be effective across the EEA
- it should be a criminal offence when a PCT allows a doctor to operate without ensuring they can speak English.

28. Of these proposals, he said: "we cannot allow a situation to continue where we are reliant on tired, overworked foreign doctors to cover out-of-hours care. Patients' lives are being put at risk because standards across Europe are not uniformly good and foreign doctors can practice in the NHS without a test of competence and language. Ministers have known for some time that the safeguards in place were not adequate but they have completely failed to take action. These proposals will ensure that every doctor working in this country can speak English, is familiar with our health service and is well trained."

29. The Liberal Democrat manifesto for the 2010 election said that they would "Make it illegal for a Local Health Board to allow a doctor to work in the UK without passing robust language and competence tests". As Shadow Health Secretary, Norman Lamb would almost certainly have been responsible for ensuring that this was in their manifesto.

GMC contact with Norman Lamb MP

30. Graeme Catto met Norman Lamb MP on 10th January 2007, shortly after he was appointed Lib Dem Shadow Health Minister for an introductory meeting.

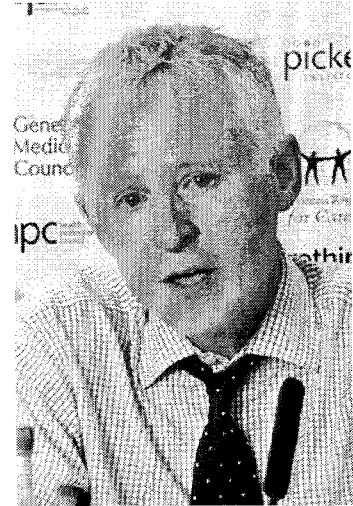
31. Paul Philip met Norman Lamb MP on Thursday 18 June 2009 to clarify the GMC's FtP processes and to explain the GMC's position in the case of Dr Jane Barton (Gosport War Memorial Hospital).

32. Paul Philip met him again on 19 January 2010 to discuss the **Code A** case and the competency of doctors from the EU. They also discussed Jane Barton and revalidation.

Profile of Norman Lamb MP

Lib Dem MP for North Norfolk since 2001. During this time he has held the following posts:

- Chief Parliamentary and Political Adviser to the Deputy Prime Minister, Nick Clegg (2010 – present).
- Former Shadow Secretary of State for Health (2006-10).
- Former Shadow Secretary of State for Trade and Industry (2005-06).
- Former spokesperson for the Treasury (2002-05)
- Former spokesperson for international development (2001-02)



In this current role he is effectively the liaison officer in charge of relations between the two parties as well as Nick Clegg's eyes and ears in the House of Commons.

Mr Lamb won his North Norfolk seat narrowly on his third attempt in 2001. He increased his majority in 2005 and again in 2010. His current majority is 11,626.

Prior to his election he worked as a solicitor specialising in employment law and was a local councillor.

Appendix: David Nicholson's letter to the Public Accounts Committee about language competency – January 2011

The Medical Act 1983 currently makes no provision for the GMC to be able to require EEA doctors seeking registration to sit language or competence tests. However, it is not simply the case that domestic legislation could be amended to enable the GMC to undertake checks on the competence and language knowledge of EEA migrant doctors. Whilst this would remove one impediment, any arrangements for language testing of EEA doctors would still need to be proportionate in order for it to be consistent with Directive 2005/36/EC to enable the United Kingdom to meet its treaty obligations.

Under the automatic recognition procedures provided for by Directive 2005/36/EC, the GMC is required to check that doctors from the EEA applying for inclusion on its Register hold a recognised qualification, listed in the Directive that has been issued by an EEA competent authority. This qualification attests to fact that the individual has met common European minimum standards of training. The Directive specifically provides for certain additional checks to be undertaken, such as identity checks and character references, but there is no provision for competent authorities to apply additional checks on language and competence at the point of registration.

Our assessment therefore is that the Medical Act 1983 cannot be amended to enable the GMC to undertake systematic blanket testing of the language skills of all migrant workers from the EEA, or to impose additional tests of competence before registering them because of the requirements of the Directive. Registration depends on whether or not the migrant has the appropriate qualification to practice their profession. It does not mean that a professional has demonstrated that he or she is fit to do a particular job in a particular place.

The responsibility lies with the employers of doctors to ensure that they have adequate skills for a specific post to which they recruit.

The European Commission has begun its review of the implementation of the Directive, which is due for completion 2011 with any new proposals to be put forward in 2012. The review will involve all 27 Member States. The UK Departments involved in the operation of the Directive agreed to hold a mini review in 2009–10. The Department of Business, Innovation and Skills (the lead Dept for the Directive) sent out a questionnaire to all UK regulators and analysed the replies, which included those from the health regulators which produced a report on the first two years of operation of the Directive.

The completed report was copied to the regulators and the European Commission who had specifically requested a copy of the report, which helped inform the Commission of the content of their review. The issue of language testing was raised in the report.

The Commission's review began with experience reports being completed by the competent authorities throughout Europe with responsibilities under the Directive for the regulation of doctors, nurses, midwives and pharmacists. The regulators came together in a network to discuss the issues and, in the case of nurses, the European Commission appointed the NMC as the lead regulator for nurses. However, there is no guarantee that the review will lead to any changes to the Directive and it is worth noting that only the European Commission can propose amendments to EU law in this area.

Any amendments to the Directive would be likely to take several years to be fully implemented and therefore we believe that the priority should be to concentrate on strengthening language checks under current scope of the law. The Government therefore believes that this is the most appropriate way of delivering the Coalition Agreement commitment to seek to stop foreign healthcare professionals working in the NHS unless they have passed robust language and competence tests. In particular, we plan to explore how the NHS Commissioning Board, could oversee a more effective system for undertaking checks on language knowledge of primary care.

At the same time we continue to explore actively with the GMC whether there is the scope for a GMC scheme that would be consistent with the Directive and which would enable a proportionate approach to testing, where there was a concern, whether individual doctors had the right language skills for the role they intend to take up.