

**To: All Doctors in Training in England**

Dear Doctor

**Contract for doctors in training**

We are writing at the request of Sir David Dalton, Chief Executive of Salford Royal NHS Foundation Trust, who is now leading negotiations for NHS Employers and the Department of Health with some more details on the proposed new contract for junior doctors in the key areas of safety, training and pay for which we have respective responsibilities in the NHS. We are conscious that there has been much speculation and some misunderstandings of the intended changes, and want you to be in full possession of the facts before you consider any industrial action.

Some doctors have said the new contract will require them to work longer hours for less pay and is unsafe. This is categorically not the case. In the wake of Mid Staffs the NHS has made huge strides in improving patient care – and making sure doctors are supported to deliver safe care is an essential part of that. However it is also the case that we can do more and a particular area of concern is the extent to which we deliver consistently high standards of care across seven days. The new contract tries to do this in a way that improves support, training and work-life balance for junior doctors whom we recognise work long hours in challenging situations.

Below we set out our summary of the key issues that you will be considering and hope that this will help inform your difficult decision on whether to participate in the action.

**SAFETY**

On safety, the existing contract provides inadequate safeguards for doctors, too many of whom still work unsafe hours. It allows you to work up to 91 hours in any one week and to exceed other working time limits. There are insufficient safeguards against consecutive long shifts. And it can be very difficult to speak up when you believe that safety is being compromised as a result.

The new contract proposals will improve patient safety. They aim to deal comprehensively with these issues, with safeguards introduced in relation to hours worked, breaks between shifts, and accountability and oversight.

- In terms of hours worked, the proposal is to introduce new strict safeguards with an upper limit of: 72 hours in a 7-day period (compared to 91 now), 4 consecutive night shifts (compared to 7 now), and 5 consecutive day shifts (compared to 12). It also aims to provide greater flexibility on rotas, enabling doctors to arrange working hours better around their needs.
- The proposals also introduce break shifts of 48 hours off after 3 or 4 consecutive night shifts or 5 long days, and a maximum of 8 consecutive days worked (also to be followed by a minimum 48-hour break).
- Employers would have to set out in the work schedule contracted hours for junior doctors and to identify the learning opportunities that will be provided to enable doctors' learning needs to be met.
- The proposals would create a new senior leadership role in every hospital, a "Guardian of Safe Working" whose appointment would be agreed with the BMA. Junior doctors would be able to report exceptions and concerns to this Guardian without fear and request a review if they are not treated as promised.
- The Care Quality Commission will scrutinise working time for junior doctors, and explicitly consider this as part of their inspection process.

In addition, the proposals make it clear that financial penalties for employers would be put in place where there are consistent breaches of working time regulations. On 4 January, NHS Employers set out a significant proposal for penalty payments of four times the payment made to the doctor for working those extra hours. This money would be held by the Guardian at each Trust, allowing them to spend the money on improving the working conditions or education of doctors in training in their institution.

## **TRAINING**

The BMA have raised a number of non-contractual issues with training that we are committed to addressing. Training opportunities are too often missed because of service pressures. Insufficient notice of the next training placement results in a requirement for fixed leave and makes it difficult for doctors to plan their lives. The existing contractual arrangements scarcely reference training, dealing instead almost entirely with the service contribution that doctors in training make. The lack of consultant presence at weekends may also contribute to a poorer training experience.

The proposals for a new contract include, for the first time, an 'exception reporting' system which will identify when there are issues relating to training including when training opportunities are missed. It will be the responsibility of the Trust Director of Medical Education to address concerns raised through exception reporting and the

new system will provide valuable information about the training experience of juniors; including how they are escalated to Health Education England.

The importance of protecting training time within a post which is also delivering patient care has been recognised in these discussions and the proposals around work scheduling reflect this. Further work on a series of related issues with HEE has been agreed:

- How to define training opportunities, including study leave, as an explicit part of work scheduling;
- To develop new arrangements to tackle issues for trainees rotating to different Trusts, for example by defining a lead employer;
- To identify and remove educational barriers to access to flexible training, liaising with others including the General Medical Council;
- To tackle rising training costs, for example through bulk purchasing of key courses and addressing variation in how these costs are met;
- National discussions will seek to address the costs both to employers and doctors in training. This includes a specific commitment by Employers to explore the development of 'salary sacrifice' arrangements to offset some of the costs of their training against tax.

A commitment was made to give better notice of deployment to posts, against which HEE will monitor performance and publish monitoring data. To support this, it was agreed that there should be an aim of achieving notice to employers of 12 weeks for at least 90 per cent of trainees by August 2016, with the expectation that this be achieved for everyone by October 2016. This in turn will enable NHS employers to commit to providing roster information to trainees 8 weeks in advance of starting a post. This should facilitate the removal of fixed leave.

HEE will, where necessary, introduce new measures ensuring, subject to service and training needs, that their processes for the recruitment, selection and deployment of doctors in training support those whose partners or spouses are also doctors in training. HEE will continue to review their processes with the BMA to address any further challenges being experienced.

## **PAY**

The current contract does not meet the fundamental fairness test of paying doctors equal pay for work of equal value. Annual incremental pay progression linked to time served means that pay is not directly linked to increases in responsibility. Most junior doctors are paid banding supplements (which are not pensionable) of 40 per cent or 50 per cent of basic pay for overtime worked, on call availability and recognition of unsocial hours. However doctors may work anything between 41 and 48 hours for that payment with significantly different amounts of unsocial hours working. Rotas

with no night shifts get paid the same as rotas with night shifts. A rota with no Sunday working gets paid the same as a rota with Sunday working. This means doctors are not paid fairly for hours worked under the current contract and this was recognised by the BMA as well as employers.

The November contract offer proposed a fairer pay system with a pay rise for 75 per cent of junior doctors; and guarantees of income protection for a three-year period for **all** junior doctors working within the current contract, after which nearly all will have moved to a higher pay grade. Our proposals to protect pay have not been challenged by the BMA.

The overall cost to the government of the new arrangements is more than the current junior doctors pay envelope, not least because the addition to basic pay is pensionable (unlike current banded payments) so employers will pay more into doctor pensions than under current arrangements. The key elements of the package are:

- 11 per cent higher base pay for the 40 hour working week;
- additional pension contributions by employers and additional pension for doctors as a result of the increase in basic pay;
- pay progression with six pay points linked to increase in responsibility rising from £25,500 to a maximum of £55,000;
- payment for additional hours worked up to the maximum weekly average of 48 or 56 if doctors opt out of the Working Time Directive;
- availability payments for on call where doctors are required to be available at home;
- higher pay rates for unsocial hours worked at nights, on Sundays and on Saturday evenings;
- pay premia for trainees in hard to recruit specialties; initially general practice, emergency medicine and psychiatry;
- transitional protection for Foundation trainees and those in ST/CT years 1-2 to August 2019 which means that 99% of doctors will receive no less pay than as at October 2015 (with the exception of around 500 doctors on band 3 pay for whom the appropriate action is to reduce hours worked to safe levels);
- for higher trainees from ST3 onwards maintains present pay and banding (with the exception of Band 3 pay) until August 2019.

You can see what these arrangements might mean for you via the pay calculator on the NHS Employers website. As part of the agreement reached through ACAS (the Advisory, Conciliation and Arbitration Service), NHS Employers and the Department of Health shared all of their workings with the BMA so that they could see how the contract offer had been costed and have confidence that average pay for juniors will not reduce. NHS Employers have assured the BMA that they would have continued access to pay data during transition to ensure both that cost neutrality is maintained and that average pay does not reduce.

The BMA proposed a system of pay points with a reduced number of levels (nodal points) – five as against six in the November offer. Progress through these nodal points would be based on the same approach described in that offer. This proposal was discussed and welcomed by NHS Employers. In principle both sides confirmed that they are content in principle to move to a five point nodal pay system. The final base pay values would need to be subject to further modelling, which would of course be shared. The pay values must maintain the cost neutrality of the pay system.

### *Plain Time and Unsocial Hours, and 7 Day Services*

Some have argued that the proposals aim to force junior doctors to work longer hours for less pay. The explanations earlier in this letter show how the proposals will protect pay and protect junior doctors from working unsafe hours. However, it is important to deal directly with the question of definitions of unsocial hours. The Government has consistently set out the fundamentally important role that junior doctors play in providing clinical cover at weekends. But it has also been clear that its objective is to achieve the same consistency of standards throughout the week, and that this will involve all parts of the workforce to be rostered to provide care through weekends as well as during the week.

The November offer described a designation of plain time for pay purposes as 7am to 10pm Monday to Friday, and 7am to 7pm Saturday. All other time was, the offer made clear, to be paid at an enhanced rate. This would be time plus 50 per cent for nights and time plus 33 per cent for Saturday evenings and Sundays.

The main area of difference between the two sides is on this issue. The report by the DDRB (the Review Body on Doctors' and Dentists' Remuneration) set out clearly that current plain time definitions are out of line with the wider economy and that comparator groups to doctors generally do not receive unsocial hours enhancements. In ACAS, however, NHS Employers confirmed as part of an overall agreement their preparedness to discuss their proposals. They also offered to discuss protections relating to the frequency of weekend working. Employers also take the view that night working is onerous and should receive a **higher** premium.

The ambition to deliver more consistent standards of urgent and emergency care across seven days will require change across every area of healthcare delivery, not just doctors' contracts. The 7-day services programme which started in 2009 is designed to improve the whole range of weekend services, from making diagnostic tests like MRI scans available, to providing better support services like pharmacy and physiotherapy so that patients can get the treatments they need in good time. There are also plans to integrate health and social care to make it easier for doctors to discharge patients at the weekend and improve flow across the hospital.

Employers are clear that they need to be able to roster staff when they are needed. However doctors in training can be assured that they will not be expected to work longer than an average 48 hours and average pay will not reduce.

## **QUALITY OF LIFE**

Doctors in training have the challenge of being in training whilst also providing a substantial service contribution. It is clear that your work and training experience can adversely impact on quality of life and that it is therefore not as good as it could be. In order for you to feel valued, it is clear that the issues you have raised around quality of life need to be addressed. Following discussions with the BMA, these issues will start to be addressed in the following ways:

- the inclusion of training time and study leave in your work schedule recognises in the contract the need to provide quality training alongside the service contribution;
- earlier notification of deployment will give you more time to plan for job changes;
- This will allow for substantial progress towards the ending of fixed leave giving you more flexibility;
- Safer working patterns with a shorter maximum working week, fewer consecutive long shifts or nights and longer guaranteed rest periods will address the issue of tiredness;
- The commitment to have better access to flexible training will enable you to have more choice about the work life balance that suits their circumstances;
- The commitment to enable more doctors in training whose partner is also a doctor in training to work close to each other will address that difficult personal issue;
- Agreement of minimum standards for rest and refreshment facilities will help make the environment for night working more acceptable;
- Increased consultant presence at weekends working alongside you will improve both the training experience and the sense of isolation at weekends that some of you feel. This should also lead to less need for junior doctors on call to be called in for an emergency.

## Conclusion

The BMA has now reactivated its strike action and is calling on juniors to participate in three separate periods of industrial action. As doctors in training, you will now be wrestling with the difficult decision as to whether to participate in the action. Inevitably strike action that disrupts patient care can lead to a hardening of attitudes and make agreement more difficult. The action the BMA has announced, particularly withdrawing emergency cover, potentially makes reaching an agreement much harder. We remain committed to supporting a negotiated settlement for your concerns, working with the BMA as your trade union representatives.



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**Comparison of November offer and January proposals:  
Safety and Working Hours**

<b>November Firm Offer</b>	<b>January Proposals</b>
	Guardian of Safe Working
	Financial Penalties on employers when Working Time Regulations breached
	Safe working hours enshrined as a KPI for organisations performance management framework
Exception Reporting	Exception Reporting
Work Scheduling	Work Scheduling
Work Reviews	Work Reviews
Maximum 48 hour week	Maximum 48 hour week
Opt Out Capped at 56 Hours	Opt Out Capped at 56 Hours
Maximum 72 hours in seven days	Maximum 72 hours in seven days
13 hours maximum shift length	13 hours maximum shift length
Maximum five consecutive long shifts	Maximum five consecutive long shifts
Maximum four consecutive night shifts	Maximum four consecutive night shifts
	48 hours off after three or four consecutive night shifts
	48 hours off after five long days
	Maximum eight consecutive days work with a 48 hour break after eight days
	Flexible on call arrangements linked to intensity of work, rather than fixed through rigid shift patterns.
	Joint best practice guidance on rostering.