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DD/JM

1 February 2016

Rt. Hon. Jeremy Hunt MP
Secretary of State for Health
Richmond House
Whitehall
LONDON

Dear Secretary of State

I write to advise you on the progress of negotiations with the BMA JDC as of when we adjourned on 29th January 2016.

I am pleased that substantial progress has been made across a large number of areas, where there is now agreement, most notably in the areas of safety and education & training.

SAFETY

We have reached agreement on a majority of hours protections including rest periods, these go further than the Working Time Regulations: a limit of 48 hours worked on average over 26 weeks and an absolute contractual limit of 56 hours where a trainee has opted out of EWR; no doctor would ever be rostered consecutive weekends; maximum consecutive nights reduce from 7 to 4; maximum consecutive long days reduce from 7 to 5; and maximum consecutive days reduce from 12 to 8. These and other changes all provide a substantial guarantee for safe working hours and therefore for patient safety.

The new Guardian role and system are substantially agreed which provide new safeguards in each and every workplace. The Guardian will have the authority to impose fines on an employer if for example, a doctor is found to be working more than 48 hours on average. It is agreed that these fines are to be invested in educational resources and facilities for trainees.

EDUCATION AND TRAINING

We have reached agreement on new terms which support the training of medical trainees, which include: ensuring proper notice of deployment to rotational placements; exception reporting applying to missed educational opportunities; and a review of access to flexible training.

PAY

We have reached agreement with the BMA on their proposal for a new pay structure based on five pay points with pay progression linked to increased responsibility. We have agreed on the principle of pay for work done, that GP trainees should receive a flexible pay premia to maintain pay parity with hospital-based trainees, that academic trainees should have their pay protected to recognise the longer training path, that there should be pay protection for all medical trainees under a new contract, and that trainees changing to shortage specialties should also have their pay protected.

OUTSTANDING ISSUES

The substantive areas where we have not been able to reach agreement are about pay, and the most significant of these is pay linked to unsocial hours.

The key area of difference between the parties remains payment for unsocial hours in the evenings and on Saturday. I confirmed our latest offer (ref. 16th January) which reset the thresholds for the start of premium pay for unsocial hours on the Mon - Fri evenings by one hour (10pm to 9pm) and on Saturday by two hours (7pm to 5pm). Furthermore we provided a new guarantee that any trainee who works one in three Saturdays or more will be paid an enhanced rate for all of the Saturdays they work. I believe that these movements on the employers' side are reasonable and they evidence our willingness to be flexible and responsive. Disappointingly, the BMA restated that they would not negotiate on this issue - and would not concede to any plain time working on Saturdays.

There is a further issue relating to the rate of availability payment for non-resident on call, (these staff are not required to be at their place of work for the period of on call duty unless they are required to attend - when they will be paid for hours worked). An improved final offer of a maximum 10% rate has been made - but has not been accepted by the BMA who are seeking a 20% rate, some two and a half times more than any other employed doctors receive.

There are a small number of subsidiary issues where the BMA is seeking additional payments to trainees: eg, a financial gain to the trainee from the penalty (Guardian) system; additional payment to doctors when a meal break is interrupted (on top of the meal break payment they already receive, which are unpaid for all other staff); and a further payment for doctors who work higher frequency of weekends.

The only outstanding areas which are not pay-related are associated with the definition of night shifts (where the BMA wish to move beyond the definition in the Working Time Regulations); and the question of how the BMA representative on a final stage review panel should be defined.

Interestingly the BMA have indicated their willingness to consider our proposal that the employer would have first refusal on a locum shift, they have not though accepted a proposal for a national rate for internal locum pay.

NEXT STEPS

Given that we have made such good progress over the last 3 weeks – and are very nearly there on all but the pay points – it is very disappointing that the BMA continues to refuse to negotiate on the issue of unsocial hours payment. I note that in the ACAS agreement of 30 November, both parties agreed to negotiate on the number of hours designated as plain time and I hope that the BMA will still agree to do that. I am aware that BMA negotiators are meeting their

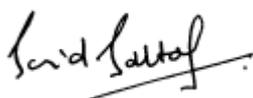
Executive Committee today and I have confirmed my willingness to continue to talk. I should note though that I do not believe negotiations should restart unless the BMA state beforehand that they will negotiate on the principal outstanding issues.

Should the BMA confirm that they will not negotiate and compromise on weekday and weekend plain time/unsocial hours then I will have to conclude that there is no opportunity for a negotiated settlement, and I would then need to advise you accordingly.

The issues around this and other outstanding contract negotiations have caused great uncertainty in the NHS and it is essential that the service finds out how things will proceed as soon as possible. Specifically, if effective implementation is to be assured for junior doctors then agreement is required by no later than mid-February.

Clearly trainee doctors are expressing a high level of discontent which has been fermenting for some years. Alongside the contract offer, I would also recommend that the government, the Academy of Medical Royal Colleges, Health Education England and NHS Employers commission a review of these longer-standing concerns with recommendations to all parties for action which can improve the welfare and morale of trainees.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Dalton', with a horizontal line underneath the name.

Sir David Dalton
Chief Executive
Salford Royal Hospital NHS Trust

Copy to:

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Ben Gummer