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

Dear Secretary of State

PROGRESS OF NEGOTIATIONS ON THE JUNIOR DOCTORS' CONTRACT

Following our offer today with the BMA Junior Doctors Committee, I am writing to summarise the position we have reached in the talks since our agreement with ACAS on 30 November. There have been three key areas of discussion, and I believe we have either proposed or agreed progress on all points of substance, with the exception of pay.

As you know, on your behalf I provided a revised offer document to the BMA this morning. They withdrew to consider this document, but declined to discuss it with us. I have received a letter from Dr Malawana but it does not address the specific proposals made.

1. Safe working for doctors in training

We have agreed with the BMA a number of areas which improve on the present (New Deal) contract reflecting both our November 2015 offer and further discussions with the BMA, and our clear wish to ensure safe working patterns for doctors.

In particular, since our firm offer on 4 November, we have agreed in principle with the BMA several further important safeguards building on the substantial improvements already in the November offer. These appeared to be broadly supported by the BMA:

- The establishment of a jointly appointed host employer level 'Guardian' role for safeguarding with oversight of junior doctors' work and with direct accountability to the Board of every Trust, to independently ensure and enforce safe hours of work for junior doctors
- A system of agreed work scheduling which includes a robust system for 'exception reporting' of relating to safety or training, including escalation to the new 'Guardian' role.

- Capping at four the number of consecutive nights a doctor can work with new requirements for rest provisions after night shifts.
- We made also clear our commitment to review the new contract following implementation, including further objectives for enhancing safeguards for hours of work with any agreement to be implemented from August 2019.

Further, we made today clear your commitment to safe working, and described the introduction of a system of financial penalties where the Working Time Regulations hours protections or the absolute maximum of 72 hours in one week are consistently breached. Any fines will be paid to the Guardian at each Trust, allowing them to spend the money on supporting the working conditions or education of doctors in training in the institution. The BMA seemed unwilling or unable to discuss this major development with us.

2. Training

With the active support of colleagues at HEE, and under the leadership of my colleague David Grantham from the Royal Free Hospital, we have agreed a number of clear commitments since early December to improve the training and deployment of junior doctors.

These include:

- A review of access to flexible training.
- Active performance management by HEE with clear milestones to improve the notice given to doctors of their deployment to Trusts and FTs. This in turn supports the notice that is given to doctors about their employment contract and their roster.
- Clear best practice guidance in relation to study leave, with action also to reduce costs of training and education to employers and most importantly to doctors themselves

3. Pay

The BMA presented an extensive proposal regarding pay which went beyond the areas we agreed to via ACAS.

A large number of the proposals require us to make clearer the implications of the November offer, and we are happy to do so. We have accepted in principle the BMA's proposed reduction in the number of nodal pay points, but have pointed out to them that they need to provide much more information on their proposals to pay additional monies to non-resident on call staff who are carers and for an increase in pay within London, reducing pay to juniors in the rest of England. We have rejected their proposal to pay more money to those available on call from home, at the expense of the majority of juniors working full shifts.

The key point of difference relates to the BMA proposal - which they have to date refused to compromise on - that the same rate of unsocial hours are paid to staff working across the weekends and at night. Further, they argue that the present 1999 definition of unsocial hours pay as any outside seven to seven is maintained.

This seems to us as a hardening of their position since our discussions with ACAS and would reduce the uplift in basic pay to 6.8 per cent. We are prepared to be flexible as part of an overall package, compared to our firm offer, but have been clear that this cannot stand unless we see movement in terms of plain time on Saturdays to ensure hospitals can roster staff properly.

Conclusion

In summary, very good progress has been made to reach agreement or make a substantive offer on 15 of the 16 issues raised in the ACAS process or subsequently by the BMA in the areas of safety and education:

- 4 areas on training and deployment: fixed leave, study leave, notice of deployment, work facilities
- 3 areas on career paths: flexible training, GP training and clinical academics
- 6 areas in relation to safety including establishing the guardian role, work scheduling, exception reporting, rest periods, on call working and application of financial penalties
- 2 out of 3 areas regarding pay: acceptance of their change to nodal pay, payment for work done.

One issue does remain outstanding regarding the length of paid rest breaks, but the most material outstanding issue is on pay, which centres on the definition of unsocial hours. In light of that it is extremely surprising that the BMA refused to discuss our latest proposal - including the application of financial penalties - at all during the day today and have now indicated that they will move to strike action. I am disappointed and frustrated that this has been the outcome.

Yours sincerely



Daniel Mortimer
Chief Executive
NHS Employers