

## **BMA, NHS EMPLOYERS, DEPARTMENT OF HEALTH: 18 MAY 2016**

### **JUNIOR DOCTORS CONTRACT AGREEMENT**

ACAS confirms the agreement between the BMA, NHS Employers and the Secretary of State for Health of negotiated terms which, subject to a referendum of relevant BMA members, form the basis for a new contract in 2016.

Over the last ten days both parties have resolved the outstanding issues taken forward from previous discussions, finalised and confirmed areas already agreed, and developed further measures which address the wider concerns of junior doctors. These are covered in this summary as per the ACAS agenda we followed in the process.

A full contract agreed between the parties will be published at the end of May. The detailed contract will include a combination of agreed terms from February negotiations and the new provisions included in this statement. Issues resolved in the February talks and presumed to form the basis for these additional provisions include:

- an agreement to replace the banding system for rewarding unsocial hours with payment for all work done to support seven day service delivery
- a series of new limits on working hours
- the replacement of an incremental pay system with a series of nodal pay points based on attainment and responsibility rather than time served

This agreement reflects therefore the commitment of the parties to the following:

- the safety of patients and junior doctors
- terms and conditions which appropriately respond to the diverse characteristics of the junior doctor community
- a healthy working environment for junior doctors which values their contribution throughout the week
- a high-quality training experience for junior doctors
- revisions and improvements to terms and conditions to address the ongoing need to properly reward, protect and retain a valued workforce

This agreement is positively supported by all those involved in what have been constructive talks.

## **A. Equalities**

The government, employers and the BMA are committed to supporting equality of opportunity for all medical staff and the wider NHS team. There is a recognition that junior doctors with caring responsibilities can face particular challenges during their training, but also that the NHS is committed to creating the best working environment for all its staff.

The parties have therefore agreed to support a range of initiatives:

### **1. Accelerated Training support**

There is an agreement to develop innovative approaches to training, to remove as far as possible the disadvantage of those who take time out due to, for example, caring responsibilities. This approach would include targeted accelerated learning with the prime intention to enable the person who has taken time out to catch up. This will include access to mentorship, study leave funding and specially developed training inputs.

The Secretary of State has confirmed that this enhancement will be additionally funded from outside the contract pay bill. Both parties recognise the importance of ensuring that these arrangements do not disadvantage a junior doctor who does not take time out or training.

### **2. Deployment**

HEE will lead a review of the processes which allow transfer between regions, joint applications between married couples (or those in a civil partnership), and training placements for those with caring responsibilities within defined travel times. The delivery of this work will form part of the mandate set by the Secretary of State for HEE to be completed by the end of March 2017.

### **3. Improving practice**

NHS Employers will jointly review with the BMA approaches to good rostering practice, including the proper use of technology, which support greater flexibility for junior doctors and employers. Rostering experts will be engaged in this work to ensure that best practice can be applied, which will be completed by January 2017

### **4. Contractual terms**

The parties have agreed to improve the terms and conditions of service to make it clear that where trainees have to change training path due to caring responsibilities, then their previous nodal point pay will be protected. This is the same arrangement as put in place for those changing training programme due to disability related circumstances.

## **5. Governance**

The Guardian role will include proper oversight of safe working practices, including associated diversity and equality issues. This will include liaison with the Director of Medical Education to ensure that a member of the educational faculty in the Trust is designated as a champion for flexible training.

Employers, HEE and the BMA will put in place comprehensive equalities monitoring mechanisms for all protected characteristics to be signed off via the JNCJ for implementation from April 2017.

## **6. Equalities Guidance & Schedules**

Joint guidance will be developed by the BMA and NHS Employers to ensure the effective delivery of elements of the NHS-wide staff handbook for doctors on rotation. This guidance will cover Caring for children and Adults, Flexible working and balancing work and personal leave and will be explicitly referenced in the contract.

## **7. Pay System Improvements**

In order to distribute pay more fairly the parties have agreed to further revise the nodal pay point structure.

## **B. The Guardian of Safe Working**

The BMA JDC, the government and employers confirm their strong commitment to the jointly appointed Guardian, recognising the role's importance in ensuring safe working for doctors in training. The parties have been able to work together to clarify some important details of the role. This aspect of the package of measures will be reviewed by the parties in August 2018.

### **1. Guardian Reporting**

The frequency of the Guardian report to the board will be increased to at least once a quarter. It will include data on all rota gaps on all shifts. A consolidated annual report on rota gaps and the plan for improvement to reduce these gaps should be included in a statement in the Trust's Quality Account, which must be signed off by the Trust Chief Executive.

### **2. Liaison with doctors**

Each Guardian and Director of Medical Education will jointly establish a Junior Doctors Forum (or fora) to advise them. This will include junior doctor colleagues from the organisation and must include the relevant junior doctor representatives from the LNC (or equivalent) as well as the Chair of the LNC. Doctors on the fora will be elected from amongst the trainees employed in the organisation (or

organisations who share the same guardian). Where the guardian for safe working, covers specialties that are small or have specific employment requirements, the fora will include representatives of these groups. The group will also include relevant educational and HR colleagues as agreed with the group. The junior doctors forum or a sub-group it establishes will play a vital role in the scrutiny of the distribution of income drawn from fines.

### **3. Disbursement of Fines**

The money raised through fines must be used to benefit the education, training and working environment of trainees. The guardian should devise the allocation of funds in collaboration with the trust junior doctors' forum, or equivalent. These funds must not be used to supplement the facilities, study leave, IT provision and other resources that are defined by HEE as fundamental requirements for doctors in training and which should be provided by the trust as standard.

The details of the guardian fines will be published in the organisation's annual financial report (accounts), which are subject to independent audit. The guardian's annual report will include clear detail on what the money has been spent on.

### **4. Financial Penalties**

In addition to the financial penalties already proposed in the contract, the parties have agreed that where breaks are missed on 25% or more of occasions, across a 4 week reference period, a guardian fine will apply at two times the rate for the time not taken as a break. Additionally, a work schedule review may be required to ensure that at least 75% of breaks are taken.

### **5. GP trainees**

Where lead employer arrangements exist for GP trainees, the lead employer is responsible for appointing the guardian, who must either be familiar with the issues faced by GPs working in a practice setting or have access to support and advice on such issues. Where lead employer arrangements are not in place, employing practices with fewer than 10 GP trainees must either (a) jointly appoint an independent guardian with another similar employer or employers with fewer than 10 GP trainees such that an appointed guardian has responsibility for a minimum of ten trainees or (b) must enter into a contract with a neighbouring trust or foundation trust to provide the guardian function.

### **6. Guardian and Lead Employers**

All Trusts and FTs must appoint a guardian. The guardian role will be established in host employers, and the arrangements made clear in the memorandum of understanding between the lead and host organisations. The host guardian will ensure information is available to the host organisation board as per this agreement,

and the lead employer guardian must see guardian reports for all of the doctors under their employment.

## **7. Small Employers**

Non-hospital employers with fewer than 10 trainees (this could include but is not limited to public health, occupational health medicine and palliative care) must contract the guardian of safe working at a neighbouring NHS trust to oversee the safe working of their trainees. The trainees affected by these arrangements will be represented in the Junior Doctors Forum, and the Guardian must either be familiar with the issues faced by doctors working in the relevant setting or have access to support and advice on such issues.

## **8. Appealing the decision of the guardian**

The final stage is a formal hearing under the final stage of the employer's local grievance procedure. This will be as per the ACAS guidance for grievances. Any appeal against the decision of the guardian will involve a representative from the BMA or other relevant trade union nominated from outside the Trust, and provided by the trade union within one calendar month.

## **9. Performance Management of the Guardian**

It is agreed that there will be a system of performance management which will include the opportunity for representatives of the doctors in training to contribute to the assessment, for example, through a system of 360° appraisal. Where there are concerns regarding the performance of the guardian, the BMA (or relevant trade union) or the Junior Doctors Forum or any individual doctor in training should raise those concerns with the Trust Medical Director. These concerns can be escalated to the senior independent director on the Board of Directors where they are not properly addressed or resolved.

## **C. Recruitment and Retention**

This new contract ensures that doctors are incentivised to work in some areas of particular need for patients and services, whilst commencing and completing and training in ways which respect their skills and time.

### **1. FPP**

The parties have agreed to increase the Flexible Pay Premia presently to be paid to those with a training number in OMFS, Emergency Medicine and Psychiatry to £20,000 for the duration of the training period, paid for the defined expected period of training (e.g. four year training programme = £5000 pa). The entitlement is to be

pro-rata'd for less than full time trainees, and will remain within the £20,000 envelope. Where training takes longer, annual payments are to be received based on the averaged annual rate for the respective programme, except where the training is combined with that in another speciality where the FPP would be paid for the duration of the training in the shortage speciality. None of the FPP payments would be pensionable.

## **2. Streamlining**

The parties acknowledge that the way that the NHS recruits and inducts all its staff can be improved in ways which are more considerate of the time of the employee as well as more efficient. They are grateful that NHS Improvement and HEE have undertaken to mandate all employers to establish regional streamlining processes by April 2017.

## **3. Period of Grace**

HEE commits to provide its share of salary funding for 6 months after any doctor has successfully completed their specialist training, though this continued employment will not necessarily be in the same place of work as their final training placement (though should be in the same LETB, unless the doctor agrees otherwise)

## **4. Changing Training Path**

It is agreed that where a trainee changes training and career path due to a circumstance related to disability then the protection of their entitlement to nodal pay does not have a qualifying time period. In all other circumstances (change due to caring responsibilities, change to a shortage speciality) then the qualifying period is six months service. Where in this circumstance a trainee has missed the relevant application round, then they must gain a place within twelve months of leaving the original programme.

## **5. Mutual recognition of curricula**

Following a discussion with the Secretary of State, the GMC has agreed to lead a review with the Royal Colleges, representatives of junior doctors and the organisations funding postgraduate medical education in the four countries across the UK to support appropriate recognition of competence where junior doctors change training paths. This review should enable quicker progress through training programmes and through the salary structure for doctors changing training path for reasons other than related to a disability or caring responsibility, or transferring into a shortage speciality. The GMC will complete this work by 31 March 2017.

## **D. Terms of Service**

Through constructive discussion a number of clarifications and revisions have been made to terms and conditions of service which respond to questions raised by doctors.

### **1. Breaks**

An agreement that breaks can be taken flexibly during a shift, and should be evenly spaced where possible. However where breaks are combined the contract will make clear that this must be taken as near as possible to the middle of the shift. No break should be taken within an hour of the shift commencing or held over to be taken at the end of the shift.

### **2. Pay for additional hours of work**

The parties recognise that a doctor may consider that there is a professional duty to work beyond the hours described in the work schedule, in order to secure patient safety. In such circumstances, employers will appropriately compensate the individual doctor for such hours, if the work is authorised by an appropriate person. This authorisation would be given before or during the period of extended working, or afterwards if this is not possible. These provisions will, it is agreed, also apply to additional hours of actual work over the prospective average estimate during non-resident on-call (as described in the work schedule).

Compensation will be made to the doctor by additional payment or by time off in lieu (TOIL), or by a combination of the two. Where payment is not authorized, the reason for the decision will be fed back to the doctor and copied to the Guardian for review.

TOIL arising from breaches in rest requirements must be taken within 24 hours unless the doctor self declares as fit for work and the manager agrees, in which case it can be accrued. TOIL arising from breaches of hours but not rest can be accrued. Accrued TOIL can be "banked" but should normally be taken within three calendar months of accrual.

In any circumstances where TOIL cannot be taken, payment will be made in lieu, at the prevailing hourly rate for the time where the additional work was undertaken.

Employers will introduce systems to support claims for payment which are simple to use.

### **3. Fidelity to the NHS**

The parties have agreed that where a doctor intends to undertake hours of paid work as a locum, additional to the hours set out in the work schedule, the doctor must

offer such additional hours of work exclusively to the service of the NHS via an NHS staff bank. The requirement to offer such service is for work commensurate with the grade and competencies of the doctor, though the doctor may choose to accept work at a lower grade, if they wish.

The doctor can carry out additional activity over and above the standard commitment set out in the doctor's work schedule up to a maximum average of 48 hours per week (or up to 56 hours per week if the doctor has opted out of the Working Time Regulations). The employer will agree with the LNC local processes for the doctor to inform their employer of their intention to carry out such work.

This provision does not prevent paid work for non-locum activities outside the NHS.

Rates of payment for such work have been improved so that the doctor would receive a 22% premium above the prevailing hourly rate.

#### **4. Payment for work undertaken while on call**

The work schedule of a doctor rostered to be on call will contain an average amount of time, calculated prospectively, for anticipated work during the on-call period. Such work includes any actual clinical or non-clinical work undertaken either on or offsite, including telephone calls and travel time arising from any such calls. Any such work is defined as working time for the purposes of the TCS. Any time during the on-call period when the doctor is not undertaking such work, is defined as non-working time for the purposes of the TCS.

#### **5. Senior Decision Making**

The parties recognise that there will be circumstances where the most senior trainees will be designated by their employer to undertake roles as senior decision makers, in line with appropriate clinical standards. It is agreed that there will therefore no longer be a fifth nodal point in the pay system, and this money will be used from [October 2019] to recognise those trainees who undertake a role as a senior decision maker.

#### **6. Whistleblowing**

All NHS staff must be able to raise concerns, and be protected for doing so in line with public interest disclosure (whistleblowing) legislation. This right is enshrined in the contract for junior doctors. They will also be given the ability to raise concerns regarding the work of HEE without detriment, from either the employer or HEE.



### **E. Working Week: Affording and Valuing Weekends, Nights and NROC**

A new approach to the reward for and acknowledgment of the various demanding working patterns of doctors has been taken. This balances the strategic priorities of the government and NHS, to deliver the agreed NHS Clinical Standards for seven-day care, (assuring all patients can receive the same high standard of care whatever the day of the week), with the contribution that junior doctors make across the week, particularly valuing that contribution at weekends. This approach:

1. Recognises the working and completion of work overnight, with an agreement that any shift which starts at or after 8pm, lasts more than 8 hours (and within the 13 hour cap) and finishes at or by 10am the following day, should attract an enhanced pay rate of 37% for all hours worked;
2. Establishes a weekend allowance paid when any doctor is rostered to work more than 6 weekends (in practice it is assumed that this will constitute but not be limited to 12 weekend days/nights across a period of 6 weekends) per annum, with the supplement increased as the number of weekends worked increases. This supplementary allowance is applied as a percentage of basic pay. These rates will be set in accordance with the rates set out in the table below:

| <b>Frequency</b>                 | <b>Percentage</b>    |
|----------------------------------|----------------------|
| 1 weekend in 2                   | 10%                  |
| <1 weekend in 2 – 1 weekend in 4 | 7.5%                 |
| <1 weekend in 4 – 1 weekend in 5 | 6%                   |
| <1 weekend in 5 – 1 weekend in 7 | 4%                   |
| <1 weekend in 7 – 1 weekend in 8 | 3%                   |
| <1 weekend in 8                  | No weekend allowance |

3. Responds to the need for some doctors to be available for on call duties, with a system of payment which recognises the impact on lifestyle of availability for duty. This supplementary allowance is applied as 8% of basic pay over and above any weekend allowance payable.

| <b>Frequency</b> | <b>Weekend allowance</b> | <b>On-call availability allowance</b> | <b>Total allowances</b> |
|------------------|--------------------------|---------------------------------------|-------------------------|
|------------------|--------------------------|---------------------------------------|-------------------------|

|                                  |                      |    |       |
|----------------------------------|----------------------|----|-------|
| 1 weekend in 2                   | 10%                  | 8% | 18%   |
| <1 weekend in 2 – 1 weekend in 4 | 7.5%                 | 8% | 15.5% |
| <1 weekend in 4 – 1 weekend in 5 | 6%                   | 8% | 14%   |
| <1 weekend in 5 – 1 weekend in 7 | 4%                   | 8% | 12%   |
| <1 weekend in 7 – 1 weekend in 8 | 3%                   | 8% | 11%   |
| <1 weekend in 8                  | No weekend allowance | 8% | 8%    |

4. Ensures an average basic pay increase of between 10 and 11% (subject to final modelling of values), maintaining the cost neutrality of the contract. At this stage it is proposed that nodal point values will be increased by at least 1% in 2017/18, 0.9% in 2018/19 and 0.8% in 2019/20 reflecting the need to fund the national living wage in the NHS.

5. The rest periods which ensure the safe working of doctors will be as previously developed between the parties, with amendments to reflect feedback from doctors and their employers:

- there will be a 46 hour rest period after the completion of three or four night shifts
- junior doctors will not be required to work more frequently than 1:2 weekends
- Where the work schedule of a doctor rostered for on-call duty on a Saturday and Sunday contains 3 hours or fewer of actual work on each day, and no more than 3 episodes of work on each day, then such duty is defined as 'low intensity'. In such a working pattern a maximum of 12 shifts of any length can be rostered or worked on 12 consecutive days.

## **F. Implementation Process**

### **1. BMA Referendum**

|   |                        |                        |
|---|------------------------|------------------------|
| Agreed TCS<br>Complete PSED<br>Agreed communications<br>materials | 31 May 2016            |                        |
| JDC Meets   | 3 June 2016            |                        |
| Roadshows (with jointly agreed materials)                         | 17 June 2016           | Completed by this date |
| Referendum  | 17 June to 1 July 2016 | Result by 6 July 2016  |

### **2. Contract Implementation**

|                       |   |
|-----------------------|---|
| July 2016             | All guardians appointed   |
| 26 July 2016          | Guardian conference   |
| 3 August 2016         | New contract "effective date"   |
| October 2016          | Transition to the new terms and conditions of service for: <ul style="list-style-type: none"> <li>• F1s (all specialties)</li> <li>• F2 (when sharing a rota with F1s)</li> <li>• ST3/4 in general practice</li> <li>• ST3+ in obstetrics and gynaecology training programmes.</li> </ul>   |
| February – April 2017 | All grades in: <ul style="list-style-type: none"> <li>• Psychiatry</li> <li>• Public health</li> <li>• All pathology and lab based specialties</li> <li>• Paediatrics</li> <li>• All dental training programmes (excluding orthodontics)</li> <li>• Any F2 and GP trainees who share a rota with trainees above in this category</li> </ul> |
| April 2017            | <ul style="list-style-type: none"> <li>• All grades in all surgical specialties (including orthodontics)</li> <li>• Any F2 and GP trainees who share a rota with trainees above in this category</li> </ul>   |
| August 2017           | <ul style="list-style-type: none"> <li>• All remaining existing trainees</li> <li>• All new entrants</li> </ul>   |

### **3. Public Sector Duties**

The S of S will publish an equality analysis document prior to the publication of the contract.

### **4. Transition**

In order to support the effective implementation of the contract, the parties have agreed to extend the period of transitional pay protection by one year.

### **5. Ongoing role of JNC(J)**

The agreement of this new contract would mean that the present employer based variation clause in the model contract would be replaced by a clause which confirms the national collective bargaining arrangements between employers and recognised trade unions vested in the JNC(J).

### **6. Seven-day Services**

The BMA will, along with other trade union colleagues, the professions and NHS representative bodies, be asked to join a group advising NHS England on the policy direction relating to seven-day services. In addition a sub-group of the Social Partnership Forum will be established to consider and monitor how seven day service policy impacts on the workforce.

### **7. Joint Contract Review**

It is agreed that the regular review and updating of the contract is vital so that none of the parties find themselves in a protracted dispute. It is agreed therefore that the BMA and NHS Employers jointly commission in August 2018 a review of the efficacy of the contract, to identify any areas for improvement to the contract terms. Priority areas for inclusion in this review have been agreed but there is no wish to restrict the terms of any review at this stage.

