JUNIOR DOCTOR CONTRACT: A BRIEFING FOR FOUNDATION TRUST GOVERNORS

THE CURRENT POSITION

Last week, amidst the continuing political drama following the EU referendum outcome, the result of another referendum came in. BMA members voted by 58% to 42% to reject the junior doctor contract negotiated in May 2016 by BMA junior doctor leaders and NHS Employers, the body that negotiates on behalf of employers. The turnout was 68%. The day after the result was released, the secretary of state for health announced in parliament that, despite the outcome, there would be a phased introduction of the contract negotiated in May. He also said his door was open to discuss both the way the new contract is implemented, extra-contractual issues like training and rostering, and the contents of future contracts. The phased introduction is as follows:

- **October 2016** Senior obstetrics trainees
- **November to December 2016** Foundation Year 1 doctors taking up new posts and Foundation Year 2 doctors taking up new posts and sharing rotas with Foundation Year 1 doctors
- **February and April 2017** Paediatrics, psychiatry, pathology, and surgical trainees taking up new posts, and Foundation Year 2 doctors and GP trainees taking up new posts who share rotas with the previous four specialties
- **August to October 2017** All remaining trainees taking up new posts and all new starters

Following the vote to reject the contract, the chair of the BMA Junior Doctor Committee (JDC), Dr Johann Malawana, resigned. He had described the contract as “good deal for junior doctors”. He has been replaced as chair on an interim basis by Dr Ellen McCourt, ahead of the election of a permanent chair in September. Dr McCourt was previously a JDC deputy chair and part of the BMA team that negotiated the contract in May 2016. She has described the government’s decision to proceed with the introduction of the contract as “extremely disappointing”, has said the JDC will to resist the “imposition” of a new contract and that the BMA will now need to consult with its members to understand their key reservations about the contract and to inform next steps. The BMA’s consultation with its members is ongoing.

Further strikes cannot be ruled out as the BMA still has a mandate for strike action, based on a vote of its members in November 2015. Alternatively, the BMA could decide to take industrial action short of strike action, for example “working to rule”. A legal challenge to the introduction of the contract by the crowd funded doctors group Justice for Health, which was put on hold pending the outcome of the contract referendum, has now been restarted. However, time is short for the BMA to prevent the introduction of the new contract given that the first junior doctors will move to the new contact from October 2016.

THE BACKSTORY

NHS Employers and the BMA have been working towards a new junior doctor contract for around four years.

- **December 2012** NHS Employers and the BMA start talks to reform the contract
- **October 2014** BMA withdraws from talks
July 2015 Independent pay review body publishes recommendations for a new contract after being commissioned by the government and seeking evidence from all parties

August 2015 BMA refuses to re-enter talks on the basis of the pay review body’s recommendations

November 2015 The government makes a contract offer to junior doctors and BMA announces strikes

December 2015/January 2016 Talks re-start at conciliation service Acas and the first strike set for 1 December is called off

January 2016 Acas talks do not result in an agreement and the first of four strikes, where emergency cover is provided, takes place. Sir David Dalton, the chief executive of Salford Royal NHS Foundation Trust is asked by the government to lead for employers in new talks

February 2016 Following Sir David’s Daltons advice to the government that a negotiated solution is not possible and it should do whatever it deems necessary to end uncertainty for the NHS, and the second strike, the Government announces the new contract will be introduced without agreement from the BMA (widely referred to as “imposition”)

April 2016 First ever all out strike by doctors held

May 2016 Talks restart at Acas after intervention by leaders at the royal colleges of medicine and a contract is finally agreed

July 2016 BMA members vote to reject the contract

**NHS PROVIDERS VIEW**

NHS Providers considers it deeply regrettable that we find ourselves in the current situation, but we think the time has come to end the uncertainty which has dragged on for far too long.

Junior doctors raised a number of legitimate and deeply held concerns during the latest round of negotiations but our view is that the final offer that was put to them, as negotiated by the BMA, was fair and reasonable.

The government’s decision to announce a phased introduction of the contract will help to end the uncertainty faced by NHS foundation trusts and trusts, who will now need to work with their local junior doctors to implement the contract as effectively as possible.

Governors may find it helpful to ask questions such as the following in the coming months in their role of holding non-executive directors to account and in representing the interests of members and the public.

- How are the NEDs assured that the trust is able to implement the new junior doctor contract effectively whilst supporting clinical staff?
- What are the risks associated with implementing the contract? How is the board managing these risks?
- What does the board see as the impact on patient care of any further strikes and of the new contract?