



# Junior Doctors Contract Review analysis

Member briefing

June 2019

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## Introduction

HCSA has today been able to scrutinise the fine print of the Framework Agreement covering the Junior Doctors Contract Review. The document details the precise terms which have been agreed between the negotiating parties.

As a result, we are now in a position to put forward a considered view of the proposals.

It should be noted that HCSA, which was recognised by NHS Employers in 2017 for collective bargaining purposes for all medical contracts, lodged a formal request to take part in the review process in 2018 on behalf of our Junior Doctor members.

The HCSA was subsequently sidelined from direct involvement in the detailed discussions on the 2016 Junior Doctors contract review. The Framework Agreement is wholly the product of the BMA negotiators and NHS Employers.

## The agreement contains several points which HCSA can support in particular:

1. Steps to recompense hospital doctors whose shifts finish between 12am and 4am
2. The implementation of a fifth nodal pay point at ST6 from 2020 - the 2016 contract contained provision for a senior decision-makers allowance, which has now been replaced with an enduring payment.
3. Steps to ensure Good Rostering Guidance is incorporated into the formal contract, provided these are made watertight
4. The clarification of rules around eligibility for academic flexible pay premia
5. The elimination of a clause which leaves FY2 grades with no maximum weekend frequency for one placement.

## However, HCSA has substantial concerns on a number of fronts:

### 1. Commitment to a four-year, 2 per cent pay deal

This is a deal which HCSA could not sign up to. Such a long-term, below-inflation agreement, which appears to be the subtext of these negotiations from an employer perspective (an aspiration stated by Secretary of State Matt Hancock last year) would set an effective ceiling on pay for the foreseeable future.

The employer has already stated its intention to pursue similar multi-year deals for other grades, including Consultants. Signing up to this would create a precedent and therefore pressure on all other grades of hospital doctor to do likewise.

The question, then, is whether the concessions extracted in return for agreeing to this employer demand is worth trading for this commitment.

At a time when wage rises in the wider economy measure 3.4 per cent, after a decade of real-terms pay decline, and with the country facing an uncertain economic future, HCSA believes it is not.

We do not believe that the ability to lodge a pay claim to the DDRB if circumstances change is a meaningful mechanism to correct any shortcomings.

HCSA believes that the risks and impact across the profession of such a long-term deal outweigh any benefits negotiated elsewhere in the agreement.

## **2. Equality Impact Assessment**

Given the serious equalities issues inherent in the previous contract, which were one of the key issues raised by doctors, it is extremely concerning that the Equality Impact Assessment on the proposed amendments has not yet been completed or published. HCSA believes that it is premature to ask doctors to support the amendments until the Equality Impact Assessment is made available.

## **3. Exception reporting**

Exception reporting is designed to act as a “canary in the mine” on safety. HCSA is clear that the current system is broken and is not leading to meaningful change on the ground to address problems forcing Junior Doctors into rota breaches.

This agreement introduces new areas where exception reports can be tabled and formalises the involvement of educational supervisors. It also contains clauses that seek to ensure time off in lieu is awarded and that if lieu is not taken within a timeframe this results in remuneration.

Unfortunately, this is an approach which is likely to exist purely on paper. It avoids several issues which HCSA is aware of. Namely:

- That Junior Doctors often do not report breaches due to the onerous mechanisms for doing so
- That some educational supervisors and others in positions of power actively discourage exception reporting
- That in many hospitals there are no mechanisms for tracking lieu generated by exception reporting

- That the vast majority of exception reports result in no action being taken
- That the fining system is having no measurable impact on the actions of Trusts to resolve sustained issues
- That there is no mechanism to report intensity of work (e.g. that a doctor is covering several roles due to short staffing).

A recent HCSA FoI survey, reported in the Health Service Journal, supports the above points. It found:

- Of 33,406 exception reports between September 2017 and September 2018, only 852 led to service or rostering changes. That is just 2.55%.
- 8,561 (25.63%) of exception reports appeared to have no outcome and just 1.1% resulted in a fine being issued.
- 59 Trusts, which together received 11,862 exception reports, made no changes to services or rostering as a result.
- Over half of all service changes (457) were made in just three Trusts: Barts Health NHS Trust, The Newcastle Upon Tyne Hospitals NHS Foundation Trust and Royal United Hospitals Bath NHS Foundation Trust.
- London North West Healthcare NHS Trust received 1,860 exception reports, the largest number, and made no changes to services or rostering as a result.

By focusing purely on recompense for rota breaches, all the focus remains on Junior Doctors' responsibility to report, rather than employers' responsibility to remedy repeat breaches.

HCSA believes a more fundamental reform of the Exception Reporting regime is required if it is to operate as intended, and work to protect Junior Doctors and ensure safe services.

#### **4. Weekend working**

The framework agreement details a small boost in weekend allowance rates for those working 1 in 2 (from 10% to 15%), 1 in 3 (from 7.5% to 10%) and 1 in 6 (from 4% to 5%).

HCSA remains of the view that this is an insignificant penalty to discourage Trusts from punishing and unacceptable rotas.

No doctor should be working one in two weekends, and a 15 per cent rise in pay is scant recompense for doing so, while it offers little disincentive to employers.

## **5. £1,000 premia for LTFT working**

As part of the 2016 contract LTFT Junior Doctors were awarded £1,500 per year to compensate for loss of automatic pay progression amid concerns over the equality impact.

We are yet to see the Equality Impact Assessment pertaining to this agreement, but we are concerned that the £1,000 figure, while not unwelcome in and of itself because it extends the mechanism to all LTFT Junior Doctors, may be an arbitrary figure. If £1,500 was considered the appropriate amount in 2016, why is £1,000 the appropriate figure in 2019. HCSA shall be seeking clarification around the rationale for this decision.

## **6. Pay protection**

Clauses detailing the extension of pay protection until 2025 fail to tackle the flaws HCSA have seen around Junior Doctors being paid less through the pay protection mechanism than their lower-grade peers on new pay scales.

## **7. “Individualised” pay**

HCSA is concerned at the inclusion of a section on individualised pay and shall be seeking urgent clarification on this point.

We are aware that policy-makers have indicated a desire to move to performance-related, individualised pay mechanisms which would undermine nationally negotiated terms and conditions.

We do not believe that any such step would be in the profession’s best interests.

## **8. Pay protection on changing specialty**

Those switching into hard-to-fill specialties will have pay “protected” based on performance at ARCP. The introduction of “performance-related pay protection” is something which HCSA could not agree to.

## **9. Trust grades/Clinical fellows returning to education**

While the agreements indicate preservation of the pay and terms of SAS doctors who return to education, it does nothing to protect Trust grades in a similar situation. While HCSA does not support the introduction of this “stop-gap” grade in principle, the fact remains that hospitals are increasingly resorting to it to fill rota gaps.

Therefore, there is a requirement to acknowledge this situation within national frameworks so that the doctors involved have some form of protection.

## **Conclusion**

HCSA believes that many of these points could have been incorporated into the review framework agreement but our exclusion from talks meant that they have not been properly addressed.

But fundamentally, we remain of the view that the long-term pay constraint which agreement to this deal would require renders it impossible to support.