Letter to all
NHS Chief Executives

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Dear Colleague,

I want to explain and provide you with context to the position on the junior doctors' contract. I have enclosed a copy of the letter I sent to Mark Porter and Johann Malawana on 9 February. This outlines the much improved offer that was made at a meeting at Tavistock House earlier in that day which was also attended by Clare Panniker and Danny Mortimer. Before making this offer, Clare and I consulted with the senior reference group who have been assisting us since early January and also a wider group of senior leaders in the NHS in England: all of whom agree it needed to be fair and reasonable for doctors in training and for the service.

The offer provided an improved position on the substantive issues that had not been agreed when talks under the auspices of ACAS concluded on the evening of 29 January. These are summarised below.

Unsocial Hours
In my 16 January letter to Dr Malawana, I described revisions to the hours designated as 'plain-time': Monday to Friday, 0700 to 2100 and Saturday 0700 to 1700. I confirmed to the BMA that NHS Employers would move significantly further than the current offer and that all junior doctors who work 1:4 weekends or more would receive premium pay for all the Saturdays they work. This would mean, based upon our assessment, of a representative sample of Trusts, that about half of trainees who work Saturdays would get paid a premium rate. This was a substantial improvement on the 1:3 current offer where we assessed that c.15% would have received premium pay. The final position means that if a trainee works one Saturday a month they will be paid the premium rate and a trainee that works a less frequent 'unsocial hours' shift pattern will not. I believe this is a fair final positon.

Non-Resident On Call
Our current offer proposed to pay a top-rate availability supplement to junior doctors working non-resident on call of 10% for a 1:4 rota and 5% for those on less than a 1:4 rota. I confirmed to the BMA that our improved position would pay a higher rate to ST1 and ST2 doctors based on applying these percentages to the ST3-ST7 nodal point, and making these higher sums available to ST1 and ST2 doctors. We assessed this would provide an increase, above the current offer, of over £1000 to ST1 and ST2s, who work a 1:4 rota, and over £500 for those who work less than a 1:4 on call rota. The final position means effectively introducing flat rate payments so that trainees experiencing a higher frequency of on-call will get paid more and those earning less will get proportionately higher payment. I believe this is a fair final position.

Fines and Pay for Work Done
Where a doctor breaches their hours protection under the EWTD (ie 48 hours) or works greater than 72 hours in a week, our current offer would have provided a pay rate of time and a half (150%). I confirmed to the BMA our willingness to make an improved offer for the doctor to receive a double time excess hours' payment.

Implementation
I also confirmed that the terms of the contract would be introduced by employers in a phased manner over 12 months from August 2016, with the anticipation that implementation would be completed in 12 months. The Guardian role would be introduced in every employer in August 2016, and I proposed that the BMA and NHS Employers would jointly monitor this implementation. This phasing satisfies the concerns of the BMA that we would be 'rushing' into implementation and I believe this is a fair and reasonable final position.

Review into Improving the Welfare and Morale of Doctors in Training
It is also very clear that no matter what the content of a final contract, no contract will make a bad employer a good one, or a disinterested supervising consultant one who takes a greater interest in the training support and welfare of a trainee. It has seemed to me that much of the dispute is not solely, or even significantly, about the terms of the contract, but are an expression of more profound issues which go far beyond any contractual changes.

Throughout the discussions between NHS Employers and the BMA, both parties have maintained that a settlement should protect the safety and welfare of doctors in training and enable a safe and effective service for the NHS. Both parties have acknowledged that there are underlying issues which, over a number of years, have created the conditions for doctors in training to feel a high level of discontent. I have reconfirmed my strong recommendation that an urgent review of these long standing concerns should be established which can make meaningful recommendations to improve the welfare and morale of trainees. The conduct of this independent review, to be commissioned by the Academy of Medical Royal Colleges, Health Education England and NHS Employers, must also ensure that the voices of junior doctors are directly and personally heard.

A Safe and Fair Contract
Much has been said about how the proposed contract supports safe working practices and safe patient care. I confirmed that the proposed contract would provide further enhanced safeguards for protecting trainees from excessive hours worked and consecutive long shift patterns, for example:

- No doctor will ever be rostered consecutive weekends;
- The maximum number of consecutive nights will be reduced from 7 to 4;
- The maximum number of consecutive long days will be reduced from 7 to 5;
- The maximum number of consecutive days will be reduced from 12 to 8;
- There will be a 48 hour limit of 48 hours per week, worked on average over 26 weeks, and an absolute contractual limit of 56 hours where a trainee has opted out of working time Directive; and
- A new role of 'Guardian' within every Trust, who will provide safeguards against excessive working hours in every workplace and the Guardian will have the authority to impose fines on an employer for breaches to agreements in the contract.

These go further than the arrangements within the current contract and are in the interests of safe working practices of trainees.

There have also been many statements in the media regarding the extent to which the contract supports the NHS commitment to provide safe and reliable care across the 7 days of the week. NHS Employers are committed to deliver the agreed Clinical Standards which focus on the care to be provided (timely assessment, effective clinical decision making and proper handover) for patients requiring emergency and urgent care, and also those in-patients who require regular review. Doctors in training already provide a significant level of service across all hours of the day and it is likely that the additional service which will be required of them will be comparatively smaller than that required from other staff. Nevertheless, as the workforce grows then increased numbers will enable supplementary deployment. I can confirm that the contract makes no requirement for existing trainees to work additional weekends and it is not designed to dilute the numbers of staff working over Monday to Friday. The contract is designed to future proof the NHS so that the costs of deploying additionally employed staff are not prohibitive to achieving the agreed NHS Clinical Standards of safe and reliable care every day of the week.

Conclusion

Intermittent negotiations have been ongoing since 2012. There has been substantial progress since the end of last year and all significant issues associated with safety and training had largely been addressed before Christmas. Despite the most recent progress and substantial agreement on many elements of the contract, the BMA has refused to compromise on its insistence that the whole of Saturday must be paid at a premium rate. In contrast Employers position has moved several times, on each occasion offering more hours attracting premium pay. Regardless of these changes no agreement has been possible. It became clear that the only way to move forward was to make a 'best and final' proposal in the hope that this would lead to settlement.

At the meeting on Tuesday I stressed that this significantly improved offer was the best and final position on the substantive issues which remained outstanding. We discussed the importance of ensuring that BMA members had the opportunity to understand the final offer and I confirmed, at their invitation, that I would be happy to present the offer to the Junior Doctors Committee (JDC) on 20 February 2016.

I asked the BMA to confirm to me in writing that they would publicly recommend the best and final offer with respect to these substantive issues, to the JDC and recommend that the committee endorse it as the proposition to be put to their members. I further confirmed that I would need to know by 3pm yesterday at the very latest, whether the BMA Council Chair and the Chair of the Junior Doctors' Committee were both prepared to back the proposals and recommend their acceptance to the JDC. I made it clear that if they could not provide this confirmation then I would be left with no other conclusion than there being no realistic prospect of a negotiated agreement.

Following consultation with Chief Executives and other leaders in the service, I am clear that the NHS needs certainty on this contract and that a continuation of a dispute, with a stalemate and without any clear ending, would be harmful to service continuity, with adverse consequences to patients. I received confirmation that this positon is supported by both the NHS Confederation and NHS Providers, together with support from Chief Executives across the country.

Both parties, NHS Employers and the BMA, knew that I had hoped for a resolution by the end of January and had stated that we needed certainty by the middle of February at the latest. The remaining substantive issues are not new, and I had hoped that my last effort in making the improved offer would resolve these.

As I did not receive the confirmation which I requested from the BMA, I regrettably concluded that we must now have reached the end of the road in relation to the likelihood of achieving a negotiated settlement. I communicated this position in the attached letter to the Secretary of State and let him know that the ball was in his court to take the action which he deemed necessary to introduce a new contract which reflected the best and final offer put to the BMA on 9 February.

This is a deeply disappointing position and I remain perplexed why the BMA negotiators have not been able to see that agreement is always found between two points of view. I have huge personal regret that my contribution has not been able to secure the settlement so longed for by everyone. I very much hope that the service can rapidly find ways to engage with and support the Review I have recommended, in the hope we can build a new basis for improved morale and teamwork. Finally, I would like to pay tribute to Danny Mortimer and his team from NHS Employers and associated DH staff, for their outstanding support to me and Clare during the last 5 weeks.

Yours sincerely

Sir David Dalton
Chief Executive
Salford Royal NHS Foundation Trust