Dear Sirs

NHS Pension Scheme 2015

We are instructed on behalf of the British Medical Association’s Pensions Committee (“BMA”).

The BMA intends to support a number of its members in bringing age discrimination claims in the employment tribunal in respect of the discriminatory impact of the pension changes that were implemented in 2015.

Before 1 April 2015, the claimants were members of either the 1995 or 2008 Sections of the NHS Pension Scheme (“1995/2008 NHSPS”). The National Health Service Pension Scheme Regulations 2015 (SI 2015/94) established the NHS Pension Scheme 2015 (“2015 NHSPS”). The 1995/2008 NHSPS closed on 31 March 2015 pursuant to the Public Service Pensions Act 2013 and members were compulsorily transferred into 2015 NHSPS. This provided for less valuable retirement benefits, but created an exception in the form of transitional provisions which permitted older members to remain members of 1995/2008 NHSPS, either until retirement or until the end of a period of tapered protection, dependent on their age. The claimants, some of whom had tapered protection, have either already been compulsorily transferred into 2015 NHSPS or will be so transferred at the end of their period of tapered protection.

The claimants allege that the transitional provisions, whereby older members were permitted to remain members of 1995/2008 NHSPS until retirement, constitutes unlawful age discrimination. In reliance upon the judgment of the Court of Appeal in Lord Chancellor v McCloud [2018] EWCA Civ 2844, they will contend that the discriminatory effect of the transitional measures cannot be justified as a proportionate means of achieving a legitimate aim.
At this stage, the BMA is finalising the individual claimants’ claims, but it is envisaged that there will be claims brought by doctors in each of the following categories: consultants, specialty doctors, junior doctors, GPs. Within each category, there will then be a doctor from within the group of members with tapered protection and one from the group with no protection.

In order to avoid further litigation, and given the clear findings reached by the Court of Appeal, we trust you will welcome the opportunity to assure the nation’s doctors that you will take the action necessary to avoid any discrimination.

We therefore invite you to confirm that, should your appeal to the Supreme Court fail, you will agree that the 2015 NHSPS unlawfully discriminates against its younger members and that you will remedy this so as to ensure that no BMA members are adversely affected by its provisions, as outlined above, to include but not limited to withdrawing the 2015 NHSPS.

We look forward to hearing from you in response.

Yours faithfully

Capital Law Limited

cc. Government Legal Department