Independent review of DHSC’s draft Equality Impact Assessment of the proposed changes to the 2016 contract for doctors and dentists in training

Scope

1. This review of the DHSC’s draft Equality Impact Assessment (EIA) of the proposed changes to the 2016 contract for doctors and dentists in training has been commissioned by the BMA but conducted independently. The draft EIA reviewed was supplied by the DHSC to the BMA on 14 June 2019, following approval from the Secretary of State for Health and Social Care.

2. The review considers whether the draft EIA identifies and analyses relevant equalities impacts of the proposed changes, taking account of relevant data. It complements the legal advice that the BMA has received from Jenni Richards QC which concludes that the draft EIA adequately discharges the Secretary of State’s duty under s149 of the Equality Act 2010, provided that the Secretary of State considers the EIA carefully when making relevant decisions.

3. The review concludes with some recommendations, mostly concerned with equalities data and monitoring, that are intended to assist the BMA’s future equalities work in relation to the proposed changes and the contract for doctors and dentists in training more broadly.

Conclusion

4. The draft EIA appears to use available equalities data to consider the most significant and relevant equalities issues in a broadly satisfactory way. The main conclusions of the draft EIA – that a number of the proposed changes should advance equal of opportunity and that the proposed changes that would not do so can be objectively justified – appear reasonably sound and there do not appear to be any significant equalities impacts that have been overlooked or misinterpreted.

5. Although the draft EIA is of a reasonable to good standard there are a number of ways in which it could be further strengthened:

   • The impact analysis within the draft EIA is largely by single equality characteristics and, where the data allows, it would be valuable to consider the likely impacts in relation to combined characteristics. It would be particularly interesting to consider the combined impact of gender and ethnicity (which material in the draft EIA suggests would be possible) and by gender and disability (where the availability of data is less clear).

   • The proposed changes are largely considered individually, which is common practice within EIAs. However, the proposed changes are intended to be a package and it would therefore be valuable to consider their likely cumulative impact in more detail. Analysing the cumulative impact of changes can be
challenging. However, the real-world impact of a series of changes each of which affects people with the same protected characteristic is hard to gauge without it. In this EIA, several of the proposed changes are likely to have a disproportionately beneficial impact (albeit modest in some cases) for female doctors and for disabled doctors and the draft EIA may slightly understate their likely combined impact. More than one of the changes may also have a modest effect on pay gaps within the profession although, given the multifactorial causes of pay gaps, any impact may be outweighed by other changes.

- Specialty data, which is the basis for a number of conclusions, is presented for a single year only and no comment is offered on whether the pattern for that year is typical or if analysis over a number of years shows movement and, if so, in what directions. If there are trends in, for example, the gender breakdown of specialties, this could suggest that impacts (positive or negative) might be expected to increase or reduce in future.
- It would be helpful to include information about the number of people who have a particular protected characteristic alongside the percentage of the whole they represent, particularly when considering the potential impact of a change on, for example, different ethnic groups or people with different religions or beliefs.

6. The draft EIA makes clear that the proposed changes with which it is concerned have a wider context, in particular the current review of the gender pay gap in medicine. The recommendations of that review are likely to have a more significant impact on the gender pay gap than the proposed changes considered by the draft EIA, provided that the gender pay gap review makes robust recommendations that are implemented effectively.

**Introduction of nodal point 5**

7. As the DHSC draft analysis acknowledges, a slightly lower proportion of women doctors will benefit from the additional nodal point than those who will not (and the impact on other protected characteristic groups is largely neutral). However, the differential impact in relation to gender is small, no group defined by protected characteristic will be worse off and the objective justification for the change is relatively strong. A transparent change like an additional nodal point is likely to be fairer than a discretionary approach: discretionary approaches to pay are recognised to be subject to high levels of unconscious bias in relation to equalities.

**LTFT allowance**

8. The conclusion of the draft EIA that this change would particularly benefit female doctors and disabled doctors appears soundly based. The data suggests BAME doctors are less likely to benefit than white doctors even after taking gender into
account because BAME doctors are less likely to work on a LTFT basis than white doctors. There is no negative or disproportionate impact on any group.

**Changes to weekend allowance payments**
9. The draft EIA makes clear that the data available to model the likely impact of this change is somewhat limited and its conclusions - that male doctors are slightly over-represented amongst those who would gain most from the change and there is no differential impact for other groups – should therefore be treated with a degree of caution. Assuming that the available data does accurately forecast the likely equalities impact, it appears to be small.

**Changes to unsocial hours payments**
10. Given the gender breakdown of the specialties where this change would have greatest impact, it is possible that the change might have an impact on the gender pay gap, although any impact would probably be small and would be reversed if efforts to encourage more women into specialties where they are relatively under-represented are successful.

**Pay protection changes**
11. The conclusion of the draft EIA that these changes will either be neutral or contribute to advancing equality of opportunity appears soundly based.

**Changes to non-pay conditions**
12. The draft EIA’s conclusion that the majority of these proposed changes should help to advance equality of opportunity appears sound. The impact in practice of the change relating to shared parental leave will depend on the extent to which uptake of shared parental leave is successfully encouraged.

13. The proposed changes to exception reporting and guardian fines do not appear to have an obvious equality impact. However, if such data exists, it would be helpful to know if the equalities profile of doctors making exception reports matches or differs from the profile of doctors as a whole.

14. The draft EIA notes a potential risk of disability discrimination arising from the facilities changes. That risk might also relate to the protected characteristic of pregnancy and maternity.

**Recommendations**
15. I recommend that the BMA:
   - Considers what steps it can take itself and what steps it can encourage others to take to reduce the current high levels of non-disclosure in relation to disability, sexual orientation and religion or belief.
• Strongly encourages the DHSC to identify and monitor equalities impacts in relation to combinations of protected characteristics, particularly gender and ethnicity and gender and disability (where data allows this).
• Encourages the DHSC to consider more closely the cumulative impact of the series of changes being proposed, not just their individual impact.
• Considers what steps it might take to ensure that the ethnicity pay gap is considered, as well as the gender pay gap.
• Considers how equalities data gaps identified within the draft EIA (e.g. equalities data about doctors doing locum work) could be filled.
• Plays an active part in the process of putting in place comprehensive equalities monitoring mechanisms, as set out in paragraph 7 of the draft EIA.

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