The gender pay gap and the 2018-2019 Junior doctor contract review

This document sets out the background and current position around the gender pay gap and how it relates to the review being undertaken into the 2016 junior doctor contract.

The BMA is a key stakeholder in the independent review of the gender pay gap in medicine and sits on the review’s steering group. This independent review was in part commissioned in response to the 2016 junior doctor contract dispute, and the current review of the 2016 contract is factoring in the key concerns and ongoing research of the gender pay gap group which is overseeing the review.

The BMA junior doctors committee is also lobbying on wider issues of concern to trainee doctors such as the right to shared parental leave and the cost of training for LTFT doctors.

What is the gender pay gap?
The gender pay gap is the difference in average hourly pay between all male and female employees. The gap reflects a range of factors, often interlinked, including differences in the male and female workforce, changing demographics, societal roles and attitudes, and discrimination in pay.

– Differences in the kinds of jobs that men and women do.
There is a pattern of persistent gender segregation in the UK labour market. Women are over-represented in low-paid jobs, part of which may represent more constrained choices due to caring responsibilities. In addition, the kinds of jobs that women do tend to attract lower pay than jobs that are mainly done by men (e.g. caring vs technical skills), despite requiring similar levels of qualification, responsibility and effort.

– Women are under-represented in higher paid senior and managerial jobs.
Gender pay gaps within professions like medicine and law will partly reflect changing demographics. Women have entered these previously male-dominated professions in larger numbers in recent years so are, on average, younger and more junior. Women may also struggle to get similar promotion and development opportunities as men due to ongoing discrimination and bias in the workplace. Or they may be less likely to put themselves forward for opportunities because they have caring responsibilities, or because there is a relative lack of confidence, support or encouragement, especially in working environments that have tended to be male-dominated.

– Unequal impact of parenting and caring responsibilities.
Research shows there is a ‘motherhood pay penalty’ and a ‘fatherhood bonus’ after having children. This may be down to a variety of factors, though attitudes that men are ‘breadwinners’ while women are less focused on work are still fairly prevalent. Polling by Fawcett shows that a significant portion of the public still believe women are less committed at work after having children while men are more committed. Developments like the introduction of Shared Parental Leave are aimed at challenging assumptions about

gender roles and minimising the unequal impact of parenting and caring responsibilities on women’s and men’s careers and pay. The BMA is part of negotiations to introduce enhanced contractual pay for Shared Parental Leave in the NHS to improve the take up of it by fathers and partners. It is also ensuring that these provisions extend to doctors in training.

– Working part-time and breaks in employment
Working part-time (the majority of part-time workers are women) and breaks in employment lead to a slower accumulation of experience, slower pay progression, and a widening of the gender pay gap3. Shortening pay scales is one way of mitigating the impact of slower progression on women’s pay. From an equal pay perspective, an employer with long pay scales in which it is clear that women are more likely to be clustered towards the bottom will need to ensure that the higher pay points are objectively justified.

– Discrimination in pay
After accounting for factors such as age, qualifications, length of service, type of job, etc., there is a residual and significant proportion of the gender pay gap that cannot be explained, i.e. even when comparing men and women with similar characteristics in similar jobs part of the pay gap remains4. One reason for this may be ongoing discrimination and bias in pay decisions. According to the Equality and Human Rights Commission’s statutory Code of Practice5 discretionary pay systems that lack transparent and objective criteria are likely to be at most risk of introducing bias.

The review of the gender pay gap in medicine
The aim of the review is to quantify and understand the factors leading to the overall pay gap between men and women doctors and to make recommendations that will help to close it.

The Review is chaired by Jane Dacre and is overseen by a steering group which includes BMA representatives. The research for the review is being carried out by a team led by Professor Carol Woodhams at University of Surrey. Based on payroll data from the Electronic Staff Record and HMRC data for GPs’ earnings, the gender pay gap for doctors will be calculated and analysed to identify each of the contributory factors. The review team have also carried out a survey of a representative sample of the profession, in-depth research interviews with a small sample of doctors, and a literature review.

The review is expected to release initial, high level research findings in April 2019. The full findings and recommendations from the steering group will be published later in 2019. Given the range of factors influencing the gender pay gap, the recommendations are likely to cover action across a number of areas including workplace culture, improved support for parents and carers, working hours, and possibly pay and contracts.

The BMA has also set up an internal advisory group with representatives from all the main branch of practice committees, the LTFT Forum and devolved nations to inform the BMA’s input to the review.

The legal right to equal pay for equal work
The statutory right to equal pay between men and women doing equal work in the Equality Act 2010 is not the same as the gender pay gap. The gender pay gap compares the average pay of all men and all women, not just those doing equal work. Equal work is defined as the same or broadly similar work, or work that is rated as equivalent by a valid job evaluation scheme, or work that is different but of equal value in terms of things like skill, responsibility or effort.

A woman (or man) is entitled to the same pay as a man (or woman) doing equal work unless there is a relevant material factor that can genuinely explain the difference in pay.

A material factor could be a difference in relevant qualifications or skills, location (e.g. London weighting), or identifiable differences in performance. A material factor must not result in direct or indirect discrimination. Some factors like paying extra for unsocial hours might place women at a disadvantage because they are less likely to be able to work unsocial hours, but it may be justified if it is a proportionate means of achieving a legitimate aim, for example, it is needed to get sufficient people to cover a service outside standard hours.

**Equality Impact Assessments**

Public authorities are bound by the Public Sector Equality Duty in the Equality Act 2010. The PSED requires public sector organisations in all their functions, including employment, to pay ‘due regard’ to the need to prevent unlawful discrimination and harassment, advance equality of opportunity, and promote good relations. ‘Due regard’ means regard that is proportionate to the policy being considered and its relevance to equality.

To fulfil the PSED, a public sector organisation needs to give consideration to any likely impact on equality before making decisions and they need to monitor the impact on equality and review policies after implementation. The best way to achieve this is through carrying out an Equality Impact Assessment. An EIA should involve:

- Gathering and considering information about who is going to be affected by a policy in practice. This includes ensuring that the information gathered is sufficient to assess impact.
- Engagement with relevant stakeholders.
- Consideration of how to eliminate any unlawful discrimination and eliminate or mitigate any negative impact on equality or good relations that is identified.
- If potential indirect discrimination is identified but the organisation believes a policy or practice is justified as a proportionate means of achieving a legitimate aim this should be made clear in an EIA too.

Public authorities can also take other considerations into account besides equality when making decisions or reviewing policies.

The DHSC is bound by the PSED. It should therefore carry out a full equality impact assessment before putting any proposals that come out of the review of the 2016 junior doctor contract to a referendum.

**The 2016 contract and pay**

Junior doctors conference last year supported a resolution to pursue a fifth nodal point for senior decision makers (SDM). We are aware the SDM allowance or a fifth nodal point might have the potential to widen the gender pay gap, although one of the reasons for JDC proposing a fifth nodal point in place of the SDM allowance was to partly mitigate the equalities impact.

**The SDM allowance in the 2016 junior doctors contract**

The 2016 terms and conditions for junior doctors stipulate the following (Schedule 2, paragraph 45):

45. From 2 October 2019 onwards an allowance shall be paid to doctors who are formally designated by their employer to undertake roles as senior decision makers in line with appropriate clinical standards. The value of such an allowance will be set out in Annex A.

As part of the 2018 review into the contract, the BMA discussed this clause with NHS Employers to explore options for how it should be implemented. We raised concerns that any pay system whereby a substantial element may be down to employers’ discretion would be riddled with bias and be open to abuse. The BMA also consulted both the JDC and the Multi-Specialty Working Group (MSWG) to source views on how trainees thought the SDM should be defined and implemented.

Various options were discussed, including one where the parties jointly agreed eligibility criteria and one where the role was strictly linked to grade. The responses we received from trainees strongly favoured the latter option. We also believed that any system whereby a trainee would need to apply to be recognised as an SDM would be ridden with negative
equalities implications as women are often less likely to apply for awards and recognition. For example, data on awards handed to senior doctors shows that women are significantly under-represented in CEA applications.\(^6\)\(^7\) There is also substantial research which suggests that the more pay is open to individual negotiation, the greater likelihood there is for unequal pay and an increased gender pay gap.

Trainees expressed that as different specialties would have different definitions of what constituted an SDM and given that this would further vary by employing organisation, such a system might be too complex to implement fairly and result in disputes over eligibility.

**Considering a fifth nodal point**

In order to mitigate against concerns about bias and disadvantage coming into a system of discretionary SDM allowances, the BMA explored the idea of having a fifth nodal point. This was partly steered by motions presented at the 2018 junior doctors’ conference which called on negotiators to push for a fifth nodal point rather than an SDM allowance. The BMA has explored the fifth nodal point as a way of ensuring all trainees would receive the additional pay after reaching a specific grade. There would be no application system nor any criteria beyond progressing to the relevant grade.

The gender pay gap is influenced by a myriad of factors and it would be unwise to definitively predict changes in the absence of modelling. Long pay scales have been identified as ‘risk’ factors for introducing indirect discrimination against women because they take longer to progress if working part-time or they have breaks in employment. One of the primary reasons the BMA pushed for a four nodal point pay scale in 2016 was to mitigate against the removal of automatic pay progression based on years in training.

It therefore seems likely that the introduction of a fifth nodal point – whilst better than an SDM allowance as currently set out in the 2016 TCS – could risk exacerbating the gender pay gap when compared to having no additional allowance or higher salary point at all. This is because those who take longer to progress through the nodal points tend to be women who work less-than-full-time. An equality impact assessment will be conducted following conclusion of negotiations looking at the impact of the proposed option.

We encourage you to consider these issues, discuss them with your colleagues and let us know your opinions. Junior doctor input into the contract review is crucial. You can find out more about the contract review and discuss the issues outlined in this document further at your regional junior doctors committee. Find your local committee [here](#).

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