Proposed new contract deal for junior doctors – FAQs

Referendum

When can members join to get a vote in the referendum?
The sooner the better. At the very latest members must join by 12:00 noon on 21 June in order to vote. New joiners must provide a valid email address for their electronic ballot to be sent to.

Who can vote by post?
This is an electronic ballot. All new joiners must give a valid email address, for existing members who do not have a valid email address on record a postal ballot will be sent to ensure they can take part in the vote. Any member contacting us to claim a vote as they will be working in England from August 2019 will need to provide an email address and be sent an electronic ballot.

When will we hear the result of the referendum?
The result of the referendum will be announced as soon as possible following the close of voting on 25 June.

Were any other unions involved in the negotiations? Why weren’t the HCSA involved in these negotiations?
The BMA is the sole nationally recognised negotiating body for junior doctors; the HCSA do not meet the minimum membership proportion required to obtain negotiating rights for junior doctors.

Pay

Will the DDRB’s recommendations this year count?
If this deal is accepted the 4 year pay deal will apply retrospectively from April 2019, and the payment of the 2% uplift will be backdated.

What happens if inflation rises above 2%?
If inflation rises to a level at which we no longer believe the 2% annual uplift is acceptable, the BMA will be able to submit evidence to the DDRB as usual, requesting a higher uplift as a result.

Will the 2% uplift apply to the pay of those on section 2 pay protection, i.e. paid under the old contract pay system?
Yes.

How will the new enhanced rates rules be applied?
The change to enhanced rates will mean that any shift finishing after midnight and by 4am will be paid at the enhanced rate in its entirety. All other payments for the enhanced rate remain the same.
Is it likely that pay protection will be extended beyond 2025?
This will depend on whether there are still trainees in receipt of Section 2 pay protection at that stage. The BMA will review this in 2025 with the aim of extending it for any remaining trainees.

What will happen to trainees still fully employed under the 2002 terms and conditions in England?
(note – this does not apply to trainees who transitioned on to the 2016 contract but are still paid under the terms of the 2002 contract due to transitional pay protection)

Some trainees did not transition on to the 2016 contract when it was imposed because they are employed under a long-term lead employer contract that wasn’t due to expire. If the amended 2016 contract is accepted the BMA will collectively agree it on behalf of all junior doctors in England who will all transition on to the new terms. NHS Employers and the Department of Health and Social Care have given a clear commitment that pay protection for trainees who currently remain on the 2002 contract will update the 2016 transitional schedule, to ensure that these trainees can move to the 2016 terms in a fair and equitable manner which ensures they will not earn less than they did prior to transition. These updates will be for those transitioning on to the new amended contract and will not affect those who transitioned in 2016/17 under the existing protection arrangements.

We are agreed that further detailed work is needed to ensure that the different mix of individual circumstances in affected groups is properly considered in post contractual discussions, and that circumstances can be further considered on a case by case basis. DHSC and NHS Employers have given the JDC a firm commitment to work together to agree a transition process and timeline which provides fair pay protection arrangements, that will be applied to all trainees transitioning onto the new TCS, in line with the pay protection that is always applied in national collective bargaining of NHS staff contracts.

Will LTFT trainees continue to receive the £1,000 allowance if they decide to go back to full time?
No, the allowance has been introduced to recognise the additional costs LTFT trainees incur throughout their training and will only apply to trainees when they are LTFT.

Why has the introduction of the fifth nodal point been staggered between October 2020 and April 2022?
The significant additional investment for the various changes and improvements to pay can only be achieved through the funding being released in fixed amounts each year across the next 4 years.

Extensive modelling was undertaken to ascertain the earliest point that changes could be brought in. The staggered approach adopted for the fifth nodal point represents the highest amounts that can be introduced at each stage to cover to all those ST6 and above, without delaying or reducing the amount of the other pay elements that will come into effect in December 2019, such as the LTFT allowance, weekend frequency allowance uplifts, and the extension of enhanced pay to the entire duration of shifts that finish after midnight and by 4am. The only other option available is to reduce the fixed 2% annual pay uplifts to release funding earlier, which is equally unfeasible due to the scale of detriment that would be caused to the wider population of trainees. Introducing the fifth nodal point sooner or at an earlier stage of training than ST6 would have significantly reduced the amount available to each trainee.
How is it fair that some trainees who were in higher training in August 2016 will not receive the full benefit of the fifth nodal point nor the earlier frontloading of nodal point 4?

We are aware that some trainees who were ST3 in August 2016 may not have transitioned onto the contract until August 2017 and may finish training before the fifth nodal point is introduced in August 2020, or finish training before the maximum amount of the nodal point reaches £7,200 in April 2022. We absolutely recognise the frustrations felt by the trainees in this situation.

The rejection and subsequent imposition of the contract meant that advocating for individuals to transition onto the 2016 contract earlier was not a possibility. Furthermore, as outlined above, it hasn’t been possible to introduce the fifth nodal point any earlier without compromising on other elements of pay. The nature of the additional investment and the fact that this funding is available in stages means that difficult decisions have had to be taken to ensure that as much money, as early as possible, for as many as possible could be achieved, while also ensuring no-one was any worse off than the status quo.

Could voting to reject the contract change this staggered implication of the fifth nodal point?

In the event that members vote ‘no’, the status quo will continue, and the current imposed contract will remain in place without any of the improvements that have been negotiated. This includes the fifth nodal point. Following this, as we would not be in collective bargaining, it is likely that the only way to secure further improvements to this contract would be through other mechanisms as part of a successful and sustained dispute process to achieve new negotiations or concessions. In such an event there is no guarantee that it would not lead to compromises being required on other aspects of the deal, nor is it likely that any such improvements could be yielded in a timeframe any sooner than the current proposed introduction date for the fifth nodal point.

In the event members vote ‘yes’, a return to collective bargaining is ensured. This means no new changes could be imposed without collective agreement and we could continue to negotiate areas we have not been able to fulfil during the 2018 review negotiations.

Safety limits

What is the process for locally agreeing the use of the maximum of 8 consecutive shifts or 5 long day shifts once they are reduced as standard?

It should follow existing local processes for agreeing changes to the work schedule and should involve consultation with the trainees on the rota. A work schedule review should be initiated as necessary. Disagreements on changes to the working patterns should be escalated to the guardian of safe working and junior doctor forum in the first instance, then escalated further through the work schedule review appeals process. The second stage of the work schedule review appeals process involves a trade union representative, such as your industrial relations officer.

Are there any safeguards to protect trainees from being pressured to agree to work the maximum 8 consecutive days or 5 consecutive long days? Will there be guidance on this?

As above, escalation layers such as the involvement of the junior doctor forum and guardian of safe working to ensure that trainees are supported by a wider group when disagreements arise in relation to the use of the higher limits. This can also be further escalated through the work schedule review appeals process as necessary, with the final stage appeal process involving trade union representation from your local industrial relations officer.

We will be producing guidance to support employers and trainees with implementing the changes to the TCS.
Why has a third paid break been introduced for 12-hour night shifts but not for day shifts?
While every effort was undertaken to secure an introduction of an additional break for day shifts, operational data at provider level indicated that in many Trusts this would significantly affect daytime capacity. We reached a compromise to introduce the additional breaks for nights, and also secured a commitment to review breaks and associated operational data through a dedicated health and wellbeing group to see where further improvements can be made in the future.

Have there been any changes to rest prior to night shifts?
The changes to rest that have been negotiated apply to those after night shifts rather than prior. However, guardian fines will now apply to a breach of the minimum 11 hours rest between resident shifts, which will improve mechanisms for raising and addressing issues that arise for those cycling from day into night working patterns.

We will be continuing to review the safety and rest provisions on an ongoing basis through the JNC(J) and an outcome of the negotiations is that a dedicated working group on the health and wellbeing of junior doctors will be convened.

How will guardian fines impact rotas with non-resident on-call?
The intention is that fines should provide impetus for the review of NROC working patterns where safety limits are breached. It should facilitate mechanisms to encourage more pragmatic discussions to find agreeable solutions. This does not mean an automatic change to a full-shift pattern and often other solutions may be found, but it could be an outcome that trainees and employers may agree is necessary in certain circumstances.

Does this deal adequately address the concerns related to non-resident on-call working?
The contractual changes secured to make the NROC elements of the good rostering guidance contractual, extending fines to safety breaches and ensuring the free provision of accommodation for those too tired to drive home or who have to secure accommodation due to emergency response timeframes, are a start in the journey to make further improvements.

We are aware that there are wider and more systemic issues with NROC working patterns which we will be looking to review as part of a dedicated NROC working group that will be commissioned.

Exception reporting

How will the new provisions about adhering to exception reporting timeframes be enforced?
Where an educational supervisor (or other nominated supervisor) does not respond within the 7-day timeframe, the guardian will now have the authority to intervene in the process and agree an outcome with the trainee.

Where there is a failure to have this resolved in a reasonable timeframe by both the supervisor or guardian, you should notify the BMA who will support you in challenging this locally and raising a grievance as necessary.

Does exception reporting software allow for reports to be sent to a nominated reviewer as well as the educational supervisor?
This will need to be taken forward with the software providers to update their systems to accommodate it. Some current systems allow for reports to be sent to two individuals, this would facilitate the nominated reviewer and educational supervisor to both be selected.
**How will the new guardian fine rates work?**

The fines are currently outlined on pg.10 of the pay and conditions circular. These are presented in tables; one for plain time hours and one for hours which attract the 37% enhancement. They set out the total hourly rate of the fine, and the apportionment of that to the doctor’s pay and the remaining sum that goes to the guardian pot for the JDF to disburse for the benefit of trainees.

The rates in these table will be updated to increase the total fine amount in reflection of it being 4x the NHSI locum rate, rather than the standard hourly contractual rate of pay. The fines will then be apportioned as usual, with the doctor receiving 1.5x the NHSI locum rate and the remainder going into the guardian pot. The fines will be frozen at these rates and will not be linked to the NHSI national locum rates contained in a separate table at the bottom of pg.10, which will be removed.

The reviewal and any increases to the fine rates will then be through the JNC(J) mechanism.

**What is the penalty for an exception report where a trainee has not met with their educational supervisor within 4 weeks?**

Raising an exception report when there has been no meeting with the educational supervisor — as with any educational exception report — is important to file for the trainee’s ARCP. Creating an audit trail of educational failures or missed opportunities is vital on an individual basis to show where curricula requirements or other important educational milestones have not been achieved due to an issue with the employer. DMEs also must be aware of all educational exception reports and report annually to the trust board — in the case of non-hospital trainees, these must be completed by the relevant Head of School. Filing exception reports when there has been an inability to provide required educational needs for doctors on a postgraduate training programme is important to make sure that the DME/Head of School will resolve those issues going forward.

There is presently no direct financial penalty on a trust for a trainee failing to ensure that the trainee has not met with their education supervisor in four weeks.

**Code of practice**

**When will information be available about elements of the Code of Practice being made contractual?**

The BMA and NHS Employers legal teams are working together closely alongside BMA representatives, BMA staff and NHS Employer representatives to put into place the legal mechanisms to make the Code of Practice contractually enforceable and ensure provision of generic work schedules and rota/roster information at the relevant 8 and 6-week deadlines.

Further information will be brought to JDC and the wider membership as it becomes available and the legal elements established.