Small Business, Enterprise and Employment Bill

House of Commons Second Reading
Wednesday 16th July 2014

The British Medical Association (BMA) is a voluntary professional association and an independent trade union which represents doctors and medical students from all branches of medicine all over the UK. With a membership of over 153,000, we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession and promote the achievement of high quality healthcare.

Introduction
This legislation seeks to prevent highly paid public sector employees keeping redundancy payments when they come back to the same part of the public sector within a short period of time. In the National Health Service (NHS), the BMA recognises that there has been a shocking waste of resources which has resulted from numerous restructures in England over recent years. Frequent structural change across the health service has often resulted in a number of redundancies and re-employment of NHS staff where the skill set is still required in the health service but through a different employer.

The policy intention
The BMA is concerned that the Small Business, Enterprise and Employment Bill appeared before a consultation paper on this issue was published on 25 June 2014, with the consultation running until late September 2014. The consultation raises important policy issues that require careful consideration to aid sensible implementation. We are also extremely concerned that legislation rushed through Parliament and without the benefit of detailed analysis of responses to the consultation will lead to bad law with possible unintended consequences.

The consultation paper suggests thresholds for clawback of redundancy and related payments, with sliding scales for repayment. It is not clear how those thresholds have been arrived at, whether they are needed at all or are the right thresholds. The BMA will expand more fully on these points in its response to the consultation exercise.

In its consultation document, the Government states:

‘In line with other decisions on financial management and pay policy it is the responsibility of individual employers and departments to ensure that their exit payment arrangements are fair and represent value for money for the tax payer.’

The BMA agrees with this statement. Employers and employees enter into employment contracts in good faith and it is deeply worrying that the Government proposes to take enabling powers, in effect, to override those contracts insofar as they related to redundancy and related payments.
If these provisions were to become law, there is a very real risk that skilled and experienced employees would be lost to the public sector, as this could well act as a disincentive to senior staff to further their careers within the public sector.

For example, it seems unreasonable that if a consultant made redundant from the NHS in the North East, seeks out, finds and relocates to a role in the South West, that he or she would face clawback of their redundancy and any related payment.

Neither the proposed Bill, nor the accompanying consultation satisfactorily addresses the real problems around poor management of the NHS which have led to inappropriate redundancies and the subsequent rehire of key staff. These problems have also been exacerbated by numerous NHS structural reorganisations pursued by successive governments in recent times. The BMA strongly believes that if structural changes are proposed within the NHS, or individual Trusts, there must be engagement with clinicians at the earliest opportunity to minimise the impact on patient care and wherever possible minimise redundancies.

**Further background on NHS workforce redundancy**

It is worrying that medical redundancies are occurring within the NHS. Recent reorganisations have caused uncertainty across the health service and led to redundancies. These reorganisations have in some cases seen public bodies abolished although the function is taken over by another body. There have, therefore, been instances where medical employees have left one organisation as a result of reorganisation, but have been reemployed elsewhere as the skill set they possess is still required within the health service. We recognise that in some cases this has caused a considerable waste of public finances. We shall expand on that point in our response to the consultation paper.

The BMA is part of the NHS Staff Council\(^2\) who recently held high level talks about reform to current redundancy arrangements. Unfortunately, the BMA lost confidence in this process due to the imposition of this year’s pay award by the Secretary of State for Health, which was a rejection of the evidence-based recommendations of the independent pay review bodies\(^3\). The BMA is concerned that rather than engaging with the BMA and other unions representing public sector workers and taking our concerns into account, the Government is using primary legislation to undermine contractually agreed terms and conditions.

July 2014

---

For further information, please contact:

**Stephanie Creighton | Senior Public Affairs Advisor |**

T: 0207 383 6681 | M: 07824 550771 | E: screighton@bma.org.uk |

BMA House | Tavistock Square | London | WC1H 9JP |

---

Notes and references