Junior Doctors Committee (JDC): report to ARM 2020

Introduction
The last session presented unforeseeable and exceptional challenges, with all in the medical profession called upon to respond to an unprecedented global public health challenge. Much of the work of the junior doctors committee has been focused on the pandemic and its impact on the working and training lives of our members. We have strived to predict and mitigate potential issues for the profession, and where the pandemic has had significant impact, ensured that this has been recognised and factored in for the purposes of remuneration, progress in training, and wellbeing. We have been in regular contact with key stakeholders, including the Department of Health and Social Care, national level employers, the statutory education bodies, the GMC and the Academy of Medical Royal Colleges, to ensure that junior doctors are represented at every level.

We know that there will be enduring effects on trainees for many months, if not years, to come, and we will continue to monitor and take action as the pandemic progresses.

Of course, we have also been working on many issues that arose prior to the pandemic that are important to all our members, and with which we have managed to achieve some success. There are many outstanding matters that we continue to work on to achieve satisfactory resolution to, and these will be outlined in the course of this report.

Non-COVID-19 related work
Terms and conditions of service and negotiations
Implementation of the contractual provisions as agreed in the 2019 framework continue despite COVID-19. The most recent of these include:

– Changes to the maximum number of consecutive shifts rostered (from 5 to 4 consecutive long shifts or 8 to 7 of any shift), with the reversion to the higher number requiring sign off by the prospective cohort i.e. any change will need to be agreed beforehand by the trainees affected.
– Code of Practice - we have successfully agreed that the Code of Practice will be included as an appendix to the contract, with the elements relevant to the 8 & 6 week timeframes referred to specifically within the contract. Any future changes to the Code of Practice will require JNCJ ratification prior to amendment within the TCS.
– 5th Nodal point – this will be introduced for trainees at ST6+ from 1st of October 2020 (initially at +£3,000, to be increased subsequently by +£3,000 1st October 2021, and then +£1,200 1st April 2022 to reach its final value subject to future annual rises). Appropriate additional fine rates have been added to the pay circular in line with the introduction of this nodal point and will require revision as the value increases over the implementation period.

Towards the end of the last session, £10 million of funding was secured for investment into facilities for junior doctors at Trusts across England, to be spent in line with our Fatigue and Facilities Charter. During this session, we have seen this money being put to good use across many Trusts, making a real difference to the working lives of trainees. We successfully reached agreement that any unspent monies could be rolled over into the current financial year, and we will be following up on how the
money has been spent. This will also form part of a poster competition for the junior LNC rep conference in October, where reps will be able to showcase the improvements that have been made for doctors.

**Education and training**

In terms of achievements and work progressed related to education and training, there are a number of items to report on:

– **Transferrable Capabilities Framework** – Our members consistently told us of the issues that they had changing specialties, the difficulties they had in having their previous experience recognised, and the frustration they felt in having to gain competencies that they had already acquired in previous training programmes. This led to the JDC working closely with the GMC and the Academy of Medical Royal Colleges for three years to produce guidance that would end this frustration. The guidance, including the development of a ‘Gap Analysis’ tool for determining relevant clinical experience, was published in June 2020, and provides a detailed process of how all specialties can recognise a trainee’s relevant experience from previous training programmes. It is also hoped that the Gap Analysis tool will allow recognition of experience from outside of formal training in the future, but this will take further development.

– **CESR(CP) changes into CCT** – For some trainees with experience gained outside of formal postgraduate training, the rules in the UK meant that they were unable to gain a CCT, and were instead granted a CESR(CP) route to specialist registration. For some time, the JDC has highlighted this issue to the GMC, in the hope that this might be streamlined and simplified. As a result, in May 2020 the GMC announced that certain specialty trainees would be granted a CCT instead of a CESR(CP), and those doctors that already had a CESR(CP) in those specialties would be able to apply to the GMC to have their qualifications converted to a CCT at no extra cost to them. More needs to be done – several specialties remain that do not yet have access to this progressive and important change. The BMA continues to engage with the GMC to ensure that these specialties are included, and to ensure that the benefit is brought to as many doctors as possible.

– **Foundation Doctor Charter** – The JDC was heavily involved in the Foundation Programme Review, published in the summer of 2019. Within it was the commitment to publish a series of standards required of local education providers, as well as ensuring that Foundation Doctors had adequate time set aside during their working week for their own development. The product of this, the Foundation Doctor Charter, was published in June 2020 as a best practice guidance for local education providers in England, and adherence will become mandatory for all employers in England from August 2021. These standards also include the requirement for 1 hour of development time per week for F1s, and 2 hours per week for F2s – which was a key ask of JDC during the Foundation Programme Review.

– **LTFT Category 3** – After several successful pilots in England for Emergency Medicine trainees to work less than full time when outside of existing criteria, the JDC was delighted in 2019 when it was announced that both the Paediatric and Obstetrics & Gynaecology specialties would be included as part of this forward-thinking initiative. The JDC has since been lobbying HEE to expand this to all remaining trainees, an ask that was granted in early 2020. All specialties have been given two years to implement this in England, including Foundation training, in what is a significant improvement for flexibility for all junior doctors in England. It is hoped that once a clear demonstration has been made that this works for trainees and it is possible to continue to deliver services, that the rest of the UK training authorities will soon follow.

**Professional Issues**

– **Signposting junior doctors to sources of much needed support** – JDC is currently working on developing the BMA wellbeing support directory into an interactive tool, with functionality to allow doctors and medical students to see what is available to support their health and wellbeing wherever they live, study or work. We hope this will go some way to help doctors and medical students who are looking for wellbeing support.

– **Medical Associate Professions (MAPs)** – JDC is at the forefront of the associations work surrounding MAPs and continues to work to protect the training opportunities and safety of our colleagues in their places of work. There have been numerous challenges, including the decision to appoint the GMC as the statutory regulator of Physicians Associates and Anaesthetic Associates,
the work by HEE on their career framework and supporting our members with their concerns regarding supervision, training and the role of the medical profession within changing teams.

**COVID-19 related work**

**Terms and conditions of service and negotiations**

During the initial stages of the COVID-19 outbreak and response, it became apparent that there were significant challenges facing trusts with regards to their ability to appropriately roster junior doctors to ensure necessary safe cover, whilst maintaining all contractual clauses. This was as a result of a combination of factors, including increased clinical pressures, reconfiguration and redeployment of staff and services, and staff shortages due to sickness and self-isolation policies. There was also confusion and misinformation around employers’ abilities/rights to work employees beyond the TCS during a national emergency. This situation required rapid and decisive action at a national level.

A joint statement between the BMA & NHS Employers was agreed, to provide a pragmatic approach whilst ensuring that safety and sustainability was maintained for junior doctors and by extension patients. It made clear that any deviation from the TCS could only take place in instances where it was impossible to implement the working hours restrictions and rest requirements in the TCS for junior doctors, and made some suggestions regarding initial steps that could be considered.

It also stated clearly that this was not a substantive change to TCS, mandated a regular monthly review mechanism, and contained a unilateral withdrawal option for both parties (with a month’s notice).

The BMA met regularly with NHS Employers to oversee engagement and compliance with the joint statement, and address any issues arising. By the end of June, the JDC decided that the time had come to withdraw the statement to protect trainee health and wellbeing, and avoid potential complications of allowing the statement to continue past the recommencement of junior doctor rotations in August.

The provisions of the joint statement came to an end on the 5th August, meaning that all rotas from this point onwards must comply with all elements for the updated 2016 Terms and Conditions of Service for NHS Doctors and Dentists in Training (England) 2016 (TCS).

- **Rota analysis and pay during the pandemic** – As part of the process of agreeing the joint statement, we agreed that any revised / new rota must be appropriately analysed to calculate correct hours and pay. In addition, junior doctors would be pay protected against their previous work schedules. In some trusts, local negotiation has also secured pay protection for trainees who were due to rotate to a more intensive placement where they would have earned enhanced rates, but which didn’t happen due to COVID-19.

- **Pay for >1 in 2 weekends** – A significant issue with some of the working patterns necessitated by the pandemic has been that it involved shift patterns which had no provision for payment within the TCS. There has been significant lobbying on this by the BMA to try and reach a national solution. Unfortunately, the DHSC had already reached a position of local negotiation only with the Agenda for Change unions with regards to these kinds of shifts, and therefore no movement on this was possible. We therefore worked hard to equip local BMA staff and LNC reps with information to aid negotiations on proper remuneration for >1 in 2 weekend frequency due to COVID, including briefing papers outlining a number of options that could be used to determine a fair and proper rate for effected trainees.

- **Management of untaken leave and method of calculation for payment of untaken leave** – As the weeks of the pandemic passed, and annual leave was cancelled, it became clear that many junior doctors would have significant amounts of annual leave left untaken at the end of their post. After extensive discussions, we have successfully agreed national guidance on the management of untaken leave as a result of COVID-19, including that up to 5 days should be able to be rolled forward where both employers agree, with any remaining untaken leave days paid.

At present, we remain in dispute with NHS Employers around the correct method of calculation for a day of untaken annual leave, which has also prevented us from establishing a national agreement
on this for inclusion within the model contract. It has therefore fallen to local negotiation to determine what each trust will include within its contract of employment (in line with the changes to the Employment Act in April this year). Our position is that employers should calculate the value of a day of untaken annual leave as 1/260 of annual salary, as we believe that their suggested 1/365 in not in line with the WTR 1998, nor justifiable based on working and rostering practices now in place under the TCS. We continue to monitor and seek feedback from LNC reps and member relations colleagues as to the progress achieved in the negotiations on annual leave remuneration.

Shielding, risk assessment and rotation – We continue to advocate that those doctors who have been shielding (and subsequently assessed to be at continuing high risk) continue to be able to work and train wherever this can be facilitated through remote working, and that there should be no financial detriment for these trainees. The chair of JDC, along with the other chairs of the secondary care branches of practice, has written to each of the Trust CEOs in England to reiterate that those in the ‘shielding group’, have already been assessed as being in the high risk category, and remain at significant risk from COVID-19. If staff from the shielding group are deemed appropriate and able to return to a ‘COVID secure’ workplace it is essential that they have a sufficiently detailed risk assessment before doing so. The BMA has separately produced guidance to support doctors who are shielding to return to work.

Medical students joining the workforce early – work with MSC – JDC officers, alongside specialist policy teams and secretariat, have actively supported the Medical Students Committee in advocating for medical students entering the workforce to support the pandemic response. This included confirming that all FiY1 doctors required employment under the junior doctor contract, affording them all of the associated rights and protections equivalent to their FY1 colleagues. In addition to this we have collaborated with MSC and HEE to establish appropriate additional guidance and safeguards to protect these potentially more vulnerable new doctors during a time of exceptional strain and upheaval. We have also been clear that we expect FiY1 doctors to be treated with parity to other rotating juniors, appropriately remunerated for any induction or new starter period, and that their FiY1 post should count towards training and years of NHS service as appropriate.

Education and training
The Coronavirus pandemic has provided significant challenges to medical education and training across the UK, including progression, redeployment, recruitment and retention. The JDC has been involved in huge amounts of activity to mitigate impacts on doctors’ careers, as well as ensuring that all levels of doctors are able to proceed through their training on time, in spite of the current challenges.

The JDC was involved in the development of the unique COVID ARCP “no fault” outcome 10s that were introduced in 2020, allowing doctors to progress through training despite difficulties presented by the pandemic. This covered both disruption to acquisition of competencies, as well as difficulties in accessing exams and other important progression points, ensuring that progression could still be facilitated in spite of these challenges. Recruitment was also heavily affected, as many face-to-face assessments and interviews were cancelled in order to comply with social distancing rules. This meant that quick decisions had to be made by recruiters, that led to significant disquiet from trainees. Throughout, the JDC raised, and continues to raise, concerns about the impact of these proposals on trainees with protected characteristics. The JDC has secured a detailed assessment of the impacts of this approach on these groups, which we are told will be completed in late summer 2020.

NACT guidance – The JDC subcommittee has been working with the National Association of Clinical Tutors (NACT) to develop a series of ways that education can work better for junior doctors and supervisors, including addressing practical ways of managing education post-COVID.

Outcome 10s – It was clear that a normal ARCP process would not be possible this year in the majority of cases, given the significant disruption arising from COVID-19. However, the E&T subcommittee has been closely involved with the proposals this year, and successfully pushed for “no fault” outcomes that will be included in an amended process. The new Outcome 10 has two parts (10.1 and 10.2) that are different depending on the trainee’s specific circumstances, but do not exclude the use of pre-existing COVID codes.
– **10.1** – Progress is satisfactory but the acquisition of competencies/capabilities by the trainee has been delayed by COVID-19 disruption. The trainee is not at a critical progression point in their programme and can progress to the next stage of their training with no additional training time required.

– **10.2** – The acquisition of competences/capabilities by the trainee has been delayed by COVID-19 disruption and the trainee is at a critical progression point in their programme, or it is unsafe for them to progress at this stage therefore additional training time is required.

– **Out Of Programme pause (OOPP)** – The Out of Programme Pause (OOPP) proposal has been developing in England since 2018 in order to allow trainees the options to temporarily step out of their postgraduate training programme while still working clinically, and often flexibly. The JDC has strongly supported this proposal since the outset, and has proactively contributed to its development. OOPP has now completed its first full pilot phase, and successful applicants to a second phase had recently started at the beginning of the COVID-19 pandemic. Since the pandemic began, the JDC has been working with HEE to devise ways in which trainees will be given an opportunity to access this programme in order to allow them time to have time to work more flexibly after a period of heavy workload, or gain competencies that may have been missed due to the COVID-19 outbreak. These changes have been implemented and will be made available to trainees, via HEE local offices, from late summer 2020, and trainees will be able to take their OOPP for an initial period of 6-12 months.

**Professional issues**

– **Stronger ties with the HEE/DN PSUs and ability to support good practice for juniors** – JDC has been feeding into a newly formed Conference of Postgraduate Medical Deans working group called “Support in the Time of COVID” which is focused on the needs of trainees during the COVID-19 pandemic. We are meeting regularly with representatives from all the deanery Professional Support Units (PSUs) across all 4 nations and are working together to produce a unifying high-level remit document of what a PSU should be and what it should provide.

**Devolved nations**

**Northern Ireland**

In Northern Ireland, NIJDC still awaits the response from the DoH NI to our proposal of introducing a time-limited re-banding to 2A, of all junior doctor rotas which underwent a change as part of the emergency pandemic response.

NIJDC has also been in further discussions with the DoH NI regarding how to ensure the Improving Junior Doctor and Dentists Working Lives group can be developed into an effective forum for discussion and agreement on junior doctor issues in Northern Ireland, such as adhering to the Code of Practice, establishing a Fatigues & Facilities charter etc.

The chair NIJDC sits on the recently established Single Lead Employer Joint LNC, which has been set up to address issues relating to all aspects of the working life of medical and dental employees including working conditions, policies and procedures and trade union facilities.

**Scotland**

SJDC, the Scottish Government and employers established a national forum for negotiation and agreement on junior doctor issues in Scotland. Since then, the group have reached agreement on a minimum notice period for fixed leave to be implemented for all junior doctors by August 2020, a minimum 46 hours rest following one, or a run of night shifts, which includes 46 hours rest for anyone finishing a shift after 2am.

Lewis Hughes represented BMA Scotland on the Expert Working Group set up by the Scottish Government to consider their proposals for an absolute maximum 48 hour working week for junior doctors. Official publication of the report and the Scottish Government response are awaited. SJDC is seeking to continue to improve doctor-patient safety by limiting fatigue by evidence-based means, on which basis we contributed to extensively during the writing of the Expert Working Group report.
Agreement was reached between the Scottish Government and BMA Scotland to update the Terms and Conditions covering Leave and Pay for New Parents and Child Bereavement Leave in March opening shared parental leave to all medical staff in Scotland. It is hoped this will be a part of addressing the gender pay gap and offer all doctors, regardless of gender, invaluable time with their children.

SJDC issued guidance on the BMA website to junior doctors in Scotland around their employment rights from the changes to working that took place due to COVID-19, including information on rotas, annual leave, rest periods and working additional hours. In a joint statement, BMA Scotland, the Scottish Government and NHS employers reached agreement around carrying over annual leave from 2019/20 and rotas, as well as securing pay protection when changing to COVID rotas and pay for all unplanned overtime over and above this. The Scottish Government also announced a commitment to providing a comprehensive death in service package for all NHS workers in Scotland. SJDC continues to work to make sure Junior Doctors are supported at work with their health, their training and their pay.

Wales

WJDC has entered talks with Welsh Government and NHS Wales Employers to review the Welsh junior doctor contract, exploring possible improvements to the terms and conditions of service which will make Wales a better place to train, work and live as a junior doctor.

The Welsh Fatigue and Facilities Charter and its accompanying FAQs has been launched and is available on the BMA website. The implementation of the charter will be monitored via LNCs in conjunction with health board designated charter representatives and reviewed by WJDC in partnership with the Welsh Government in 2021.

Following the conclusion of WJDC’s work with the HEIW-led single lead employer working group, NHS Wales Shared Services Partnership is currently being implemented as the single lead employer for hospital-based trainees in Wales. All FY1 trainees beginning their training in Wales in August 2020 have been onboarded onto the single lead employer and a phased approach to transferring all other trainees onto the single lead employer is expected to be completed by August 2021. WJDC is monitoring the implementation as a key stakeholder of the SLE project board which meets monthly.

WJDC has begun work with a newly established working group to review the 2016 LTFT training policy. Thus far, the group has agreed to move towards a policy which allows open access to any trainee who wishes to train LTFT in Wales, unrestricted by compliance or lack thereof with particular rationale for doing so. It has also been agreed that specialties which are not currently offering a range of LTFT percentage options (e.g. those only offering 50%) should offer a range of % LTFT/WTE options. The revised policy is likely to be published in early 2021.

WJDC is actively participating in the working group for HEIW’s review of the all Wales study leave policy 2015, which aims to achieve equal access to study leave and budget for all trainees across Wales.

The trainee travel and relocation expenses policy negotiated between BMA Cymru Wales, HEIW and NWSSP was introduced in 2019 to ensure trainees suffer no financial loss from having to travel extra distances or completely relocating as a result of rotating to new workplaces. The task and finishing group has recently reconvened to review the policy, identifying shortcomings, considering whether there is scope to broaden eligibility criteria, and determining if the current allowance is sufficient to meet trainees’ needs. WJDC plans to lobby for an increase in the annual allowance as well as the introduction of an annual rollover system for the funds.

COVID-19

BMA Cymru Wales reached a joint agreement with Welsh Government, NHS Wales Employers and HEIW which stipulates that trainees should be treated similarly to other BoP colleagues who have been granted rollover of their cancelled or unused annual leave to the next two years. They are also allowed to request payment in lieu for any remaining outstanding leave as long as the first 5 days are taken as rollover leave. This agreement also includes the commitment to roll over study leave and budget into the next training year.

BMA Cymru Wales have agreed with Welsh Government and NHS Wales Employers a joint statement regarding the application of the TCS during the pandemic. The expectation is that the protections contained in the TCS should continue to apply during the pandemic, with the exception that rota monitoring will be temporarily paused. Following the deactivation of this statement, WJDC are now
also seeking to agree on a series of conditions that must be met for the emergency COVID19 rota statement to be ‘reactivated’ either locally or nationally at any point in the future.

Many junior doctors in Wales were asked to vacate hospital accommodation and move to temporary accommodation as part of the response to the COVID-19 pandemic. WJDC agreed a joint statement with NHS Wales Employers to ensure that health boards work with junior doctors to make this process as smooth as possible during this challenging time.

**Future work**

**Terms and Conditions of service and negotiations**

- **Pay progression for ARCP outcome 10.2** – For those trainees who receive an ARCP outcome 10.2 (i.e. a COVID-19 “no fault” outcome for those at a critical stage of training, who have been unable to secure the necessary requirement to progress specifically due to the national crisis response) and where they are due to benefit from a change in nodal point, we are arguing that they should continue to receive the nodal point increase as a recognition of the “no fault” nature of the outcome, and working on the principle that without the disruptions caused by COVID they would have progressed forward as planned.

- **Exceptional Flexible Pay Premium (EFPP)**: This FFP was added to the TCS to recognise where trainees spend time away from training, or suffer delays to training, as a result of undertaking some form of exceptional work, such as during a pandemic. As yet the specifics (e.g. eligibility criteria, funding, etc.) have not yet been agreed for inclusion in the TCS, however, given the direct relevance of the COVID-19 pandemic, we are seeking commitment from NHSE to prioritise addressing how the EFPP should be implemented fully, as well as assurances that such a future agreement will be back dated to include the COVID-19 period.

- **JNCJ (Joint Negotiating Committee (Juniors))** – JNCJ is the forum in which ongoing maintenance of the contract and subsequent negotiation will take place. The re-establishment of this forum has unfortunately been impacted by the pandemic, and some outstanding issues from negotiations, however, we hope that it will be operational early in the next session. The first phase will be the establishment of several working groups to look at issues related to the following areas — annual leave; Non-resident on call; GP Recruitment and retention of trainees in general practice, and pay parity with hospital medicine; health and wellbeing of doctors in training.

- As part of the ongoing contract implementation we hope to review and publish guidance on various contractual mechanisms and provisions as detailed in the 2018 review framework agreement, including Exception reporting; Guardian of Safe Working Hours; work scheduling

- **Jersey negotiations** – we will be supporting junior doctors as they seek to negotiate updated terms and conditions for trainees working in the British Crown dependency of the Bailiwick of Jersey.

- **Welsh negotiations** – we continue to actively engage with and supporting the Welsh JDC in their negotiations with the Welsh Government towards a new contract for doctors in training in Wales.

**Education and Training**

**Future flexibility for doctors in training**

HEE’s future doctor report was published in summer 2020 and provided fresh impetus to the JDC’s long-term calls for the need for flexibility in work and postgraduate medical training. The report also includes a variety of other perspectives on how medical professionals will work and train in the future.

The future doctor report has seconded the JDC priorities of step on, step off training, the ability to pause training with an easy, facilitated return, portfolio careers and the ability to pursue interests in and outside of medicine. These developments are crucial to ensuring retention in training, as well as the medical workforce more generally.