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Dear Steve,

Thank you for your letter and for sharing your views with me concerning ongoing industrial action. We were surprised to receive this communication given that NHS England were content to cancel our scheduled meeting at 20:30 tonight to discuss any emerging safety issues, and that across the whole of England we have had derogation requests from just two Trusts during the current period of industrial action.

I am also disappointed to learn that NHS England have chosen to share this letter with the Times within an hour of sending it to me, given that you stressed to me that the letter was private when we spoke this afternoon.

We have always been open to discussing ways in which together we can maintain patient safety during industrial action, and we communicated this directly to you and colleagues at NHS England, most recently in a meeting just yesterday.

As you know, the BMA is strongly committed to ensuring that patients are safe during strikes. It is for this reason we have ensured that emergency services remain in place during industrial action and why consultants and junior doctors have given advanced notice for the current strike dates. I do not agree that the Christmas and Boxing Day model of industrial action is unsafe or that it is the reason for the issues you have detailed in your letter. This model only applies to consultants and junior doctors eligible to strike. Consequently, actual staffing is higher than Christmas and Boxing Day, given SAS doctors, various non-striking consultant and junior doctors, as well as allied health professionals continue to work as normal. Instead, there is clear evidence of the failure by some trusts to adequately prepare for industrial action. In particular the BMA is aware that some trusts have continued with significant amounts of elective activity during industrial action and have failed to reschedule non-urgent elective care in an attempt to meet political targets. This is causing unnecessary risk of harm.

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In the spirit of working together to keep patients safe, the BMA and NHS England agreed joint guidance which was circulated to system leaders and hospital trusts on 14th July this year. This guidance for safe care during industrial action was clear that safety was predicated on pausing the majority of elective activity during strikes. This is mainly because during industrial action there is reduced support in the event of any major surgical complications.

Unfortunately, reports from around the country show that trusts have not been appropriately rescheduling non-urgent elective activity in the days leading up to and during strike action – directly impacting on the ability of the wider service to prioritise more urgent cases.

You will be aware that the BMA sought to agree further guidance to provide much needed clarity across the system in the run up to the last round of industrial action starting on 19 September. It was unhelpful that NHS England did not agree to this and, instead, unilaterally issued guidance days before – without our agreement – that has caused confusion, leading to trusts planning elective activity during strikes that could have been used to generate bed capacity or additional medical cover. Your decision to communicate unilateral guidance at odds with the guidance we previously agreed has undoubtedly made planning for safe industrial action harder.

The BMA subsequently wrote to all Trusts to attempt to understand exactly what elective activity they had planned, given we had serious concerns that they were not following the joint guidance issued in July. Many trusts supplied this information in good faith to the BMA. In response, NHS Employers directly instructed Trusts to withhold this information from the BMA, impeding on our ability to understand the risks and effectively plan for Christmas day cover. We have raised our concerns about this on several occasions in private. Again, the decision to withhold this information has made it more difficult for clinicians on the ground to plan for safe industrial action.

We will happily work with NHS England again on clearer guidance to trusts to prevent any safety issues arising. That offer has always been there and has been communicated frequently. We meet colleagues at NHS England and NHS Employers up to 4 times per day during industrial action, and several times in the run up to each round of strike action.

We would be happy to further discuss and develop the derogations process, though it is important to note that the number of derogation requests we receive is proportionately very low. We are grateful to NHS England, its regional teams and those trusts who do appropriately plan and do not ask that workers, taking legitimate industrial action, return to work. However, you will know that on a several occasions we have provided derogations and withdrawn them when it has emerged that we have been provided with misleading information as part of the derogation request. You will know that some Trusts simply do not plan properly, do not pause activity, and seek to misuse this process to fill the gaps

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caused by poor planning, in services that are already chronically understaffed to run elective and urgent care at the best of times.

Finally, I would like to ask whether you have communicated your concerns directly to the Prime Minister who, tonight, could similarly write to me and open pay negotiations with both junior doctors and consultants? As you know, no further industrial action has been called, and it is now incumbent upon the Government to come to the table, drop their refusal to negotiate on pay and settle its dispute with doctors.

During our regular meetings with NHS England we have discussed several times how the action has exposed underlying, fundamental issues with capacity and workforce planning. I look forward to meeting with you soon to discuss how the NHS can plan appropriately for strikes.

Kindest regards



Professor Phil Banfield
BMA Council Chair

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