

**Ms Amanda Pritchard**  
Chief Executive  
NHS England

*Sent by email*

03 January 2024

Dear Ms Pritchard,

As you know, the British Medical Association's (BMA) Junior Doctors Committee has been in dispute with the UK Government since February 2023. Since then, with the support of colleagues at NHS England, junior doctors have taken industrial action safely seven times.

At the beginning of this dispute the BMA jointly agreed with NHS England a voluntary system to provide derogations which would allow for junior doctors to return to work in the event of safety concerns arising from "unexpected and extreme circumstances" unrelated to industrial action. We believe that this is a safety critical process.

As derogation undermines strike action, it is, and must remain, a last resort. As part of the agreed process, Trusts are asked for evidence that all other sources of staffing have been exhausted, including, for example, cancellation of elective activity, incentivisation of alternative staffing, and rearrangement of urgent cases to days around or outside strike action.

It is, therefore, astonishing that during this current round of industrial action, NHS England and some Trusts have refused to evidence any efforts to source alternative staffing or demonstrate rearrangements or cancellation of less urgent work. This refusal to provide the information necessary to take well informed decisions is fundamentally undermining the derogation process as we are being asked to take decisions about our members' right to strike without the requisite information. NHS England, it feels, is wilfully placing the BMA in an impossible situation.

Derogation requests received so far in this action include incomplete and inaccurate information such as:

- Unevidenced assertion that no consultants, SAS doctors, or Advanced Practitioners are working at all in some specialties
- Unevidenced assertion that no additional consultants or SAS doctors are available to provide cover for junior doctors, in stark contrast to previous rounds of action



- Refusal to demonstrate they have sought alternative staffing from consultants or SAS doctors
- Refusal to provide information on whether elective activity is ongoing, with staff available to redeploy
- Refusal to detail any efforts to encourage alternative staff to assist, such as incentive rates or time off in-lieu, including in cases where we are aware there is no enhanced rate of pay
- Requests to derogate staff to levels beyond a normal weekend day
- Requests to derogate to enable provision of “P2” activity, which has a 28-day deadline and could be provided outside of strike action
- Refusal to confirm that requests have been viewed and approved by Incident Directors.

We are also in receipt of multiple requests that are dated Friday 29<sup>th</sup> December, demonstrating that little to no effort has gone into seeking an alternative solution. A number of local negotiating committee chairs have told us that their employers have made a decision to apply for a derogation well in advance of strike action and before alternative solutions could be pursued. In addition, consultants on the frontline in several of the departments we have received requests from, have expressed surprise that a derogation request has been submitted, telling us that they are staffed well enough.

We are increasingly drawing the conclusion that NHS England's change in attitude towards the process is not due to concerns around patient safety but due to political pressure to maintain a higher level of service, undermine our strike action and push the BMA into refusing an increasing number of requests; requests, we believe, would not have been put to us during previous rounds of strike action. The change in approach also appears to be politicisation and weaponisation of a safety critical process to justify the Minimum Service Level regulations. It is an operational matter for the NHS if hospitals choose to prioritise less urgent cases over life and limb care.

We request your urgent intervention to ensure the derogations process is used as intended: as a last resort when alternative staffing strategies have failed to provide emergency cover during strike action, and that Trusts and NHS England fully cooperate with us to enable good and safe decision making in a process that we can have confidence in.

Kindest regards,

A handwritten signature in black ink that reads "Phil Banfield". The signature is written in a cursive style with a horizontal line underneath the name.

**Professor Phil Banfield**  
Chair, BMA Council