Evidence from NHS Employers to the WTD Taskforce, December 2013

Introduction

The NHS Employers Organisation (NHSE) is the representative organisation for employers in the NHS. NHSE is active in all matters relating to employment in the NHS. Our key work areas are: pay and negotiations, recruitment and planning the workforce, healthy and productive workplaces and employment policy and practice. We work with the HR community and the whole range of Board level members to ensure we arrive at a position based on the views of employers. The NHS Employers Organisation (NHSE) is part of the NHS Confederation which represents all the organisations which make up the NHS.

Implementation of the European Working Time Directive EWTD is a major NHS service undertaking that has required substantial organisational changes. We believe the implementation of the reduced working week has, for the most part, been successful. However while compliance may have been achieved there are still significant challenges ensuring that service delivery and standards of training are maintained.

NHS Employers on the European Working Time Directive

- The NHS Employers organisation supports the need for controls on working hours for all doctors, including doctors in training. This helps ensure safe working and a decent work-life balance.

- With improved handover, better team working at night, more involvement by doctors in designing their own working patterns, less reliance on junior doctors and more involvement of consultants during the out of hours periods, employers have found positive results can be achieved which are not dependent on excessive working hours.

- Individual doctors in training may choose to opt out of the 48-hour working week. If they do so, they can work up to 56 hours, the maximum outlined in the New Deal contract. It is an absolute priority for the Government that individuals continue to enjoy the right to opt out of the maximum 48-hour working week if they wish.

Addressing the challenges

- The current junior doctors' "New Deal" contract includes detailed restrictions on doctors' work and duty hours which in many cases go beyond or cut across the

requirements of the EWTD. Doctors are currently subject to both the New Deal and EWTD restrictions. Both Professor Temple's report and the NHS Employers review of the current contract have commented that this interaction causes significant difficulties. A new contract for doctors in training is being negotiated which aims to focus more on training and patient needs and less on working hours targets, and which would not provide financial incentive for non-compliance.

- The NHS Employers organisation engaged with the European Commission review of EWTD in the wider European context (led by our NHS European Office, and involving engagement with DH and BIS), seeking some additional "common sense" flexibility on on-call hours and compensatory rest. Re-interpreting the Jaeger judgement so that compensatory time off could be taken at a suitable later time rather than "immediately" would be helpful. Employers tell us they find this a particular difficulty in the management of rotas.

- Negotiations in 2012 between the social partners (employers' organisations and trade unions) at European level failed to reach agreement on revision of the Directive. The NHS European Office was heavily involved in briefing the employers' negotiating team in order to secure the best possible outcome for the NHS, and despite the failure of the talks will continue to brief Commission officials on constructive ways forward. The European Commission has announced it will conduct a new impact assessment, with a view to bringing forward new legislative proposals which will pass through the EU's usual co-legislative procedure involving the European Parliament and the Council of Ministers.

Background

- Professor Temple's 2010 report *Time for Training – A review of the impact of the European Working Time Directive on the quality of training*. concluded that quality medical training can be delivered within a 48-hour working week. The report highlighted some challenges to be addressed on round-the-clock team working but also where it was implemented effectively positive impacts had been realised including:
    - an improved work–life balance
    - reduction in sleep deprivation
    - appropriately experienced doctors more involved in acute care situations
    - enhanced supervision of trainees out of hours leading to safer patient care
    - a reduction in the loss of daytime training opportunities and increased training opportunities

- The GMC's State of Medical Education and Training Report (2011) noted that studies have shown a significant reduction in patient errors where the working hours of training grade doctors are restricted however it also found that the "that the loss of training opportunities continues to be an issue."(GMC survey p 57).

- Rota and shift compliance is fragile in some areas and some doctors continue to work longer hours – usually via individual opt-out arrangements - to suit their training needs and to meet service requirements (gap-filling). Absences can be difficult to cover, sometimes interfering with planned training schedules, and can lead to high locum costs. Supervision may be more 'fragmented' for trainees and those supervising them. Employers have made the point that, although compliance may have been achieved there are still very significant challenges ensuring that service delivery and standards of training are maintained. This is particularly the case in the craft specialties such as general surgery where the twin restrictions of the New Deal contract and EWTD have perhaps had more impact on the traditional 'apprentice' and 'firm' based approach to training and there has been significant opposition to EWTD.

- Certain services where workload can be highly unpredictable, such as transplant services, have more difficulty conforming to the New Deal and EWTD restrictions.

- The 'New Deal': The 1990 *New Deal* was the first national attempt to control junior doctors' working hours. Up until then, 100-hour working weeks were not uncommon. The *New Deal* set an absolute maximum of 83 hours a week, with a 40 hour basic week, overtime rates for hours worked above that, and set rest periods. It also confirmed that junior doctors' educational objectives should be met within a maximum 72 hour working week, and that full shift working should not exceed 56 hours.

- 2000 contract: Compliance with the *New Deal* through the 1990s was poor, so a new contract was introduced in 2000 which provided a mechanism for rewarding junior doctors appropriately for the hours they work over and above a basic 40 hours per week. Doctors receive banding supplements, paid in addition to basic salary, the bandings reflecting: whether the post is compliant with *New Deal* hours limits and rest requirements; whether the doctor works up to 40, 48 or 56 hours per week; the type of working pattern; the intensity of work and whether the doctor receives appropriate rest; and the unsocial nature of the working arrangements.

  The 2000 contract introduced a financial incentive to NHS Trusts to secure compliance with the *New Deal* and to reduce hours and intensity of work. Doctors working in posts which are non compliant with the hours limits and rest requirements in the *New Deal* are placed into 'Band 3', which attracts a 100% supplement to basic pay. Since March 2005, at least 98% of doctors have been fully compliant with the *New Deal* (99% in March 2010).

  However, the contract is complex and places additional demands on employers in monitoring the banding of posts and dealing with appeals.