



Department  
of Health

# Family test for the new contract for doctors and dentists in training in the NHS

March 2016

## THE FAMILY TEST

1. The family test was designed to complement the existing work of Departments to consider the three aims of the Public Sector Equality Duty:
  - a. eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - b. advance equality of opportunity between people who share a protected characteristic and those who do not.
  - c. foster good relations between people who share a protected characteristic and those who do not.
  
2. Applying the family test when developing policy and complying with the PSED should lead to better overall outcomes for people. The test seeks to ensure that during the development of policy particular attention is paid to its impact on supporting strong families and relationships:
  - Couple relationships (including same-sex couples) including marriage, civil partnerships, co-habitation and couples not living together.
  - Relationships in lone parent families, including relation between the parent and children with a non-resident parent, and with extended family.
  - Parent and step-parent to child relationships.
  - Relationships with foster children, and adopted children.
  - Sibling relationships.
  - Children's relationship with their grandparents.
  - Relatives or friends looking after children unable to live with their parents.
  - Extended families, particularly where they are playing a role in raising children or caring for older or disabled family members.
  
3. The 5 Family Test questions are:
  - i) What kind of impact might the policy have on family formation?
  - ii) What kind of impact will the policy have on families going through key transitions such as becoming parents, getting married, fostering or adopting, bereavement, redundancy, new caring responsibilities or the onset of a long-term health condition?
  - iii) What impacts will the policy have on all family members' ability to play a full role in family life, including with respect to parenting and other caring responsibilities?

- iv) How does the policy impact families before, during and after couple separation?
- v) How does the policy impact those families most at risk of deterioration of relationship quality and breakdown?

## Summary

4. The family test has been considered in respect of the new national contract and to help to achieve an improved NHS Service. The Government's ambition is for the NHS in England to become the safest healthcare system in the world providing the same high quality safe care every day of the week. We believe that the new contract, both on its own terms and with the non-contractual commitments, achieved in the context of negotiations will have a positive impact on the provision of care to patients and their families. We also believe that it will have a positive impact on the family life of doctors, by introducing stronger safeguards to ensure doctors are not required to work long, unsafe hours, enforced through contractual obligations on employers and external scrutiny of those hours by the Care Quality Commission (CQC) and the Independent Guardian of safe working hours.

## The Family Test questions

- i) What kind of impact might the policy have on family formation?
  - In developing the new contract, one of the key considerations was the culture of very long and potentially unsafe hours doctors said they were expected to work under the current contract (some saying that they were forced to work illegal hours every week) and its impact on the balance between their home life and their work (whether the doctor is male or female). The BMA agreed as long ago as 2008 that the current junior contract was not fit for purpose.
  - To reduce the risk of doctors working when tired and to better support their work life balance, the new national contract introduces much stronger contractual safeguards. These safeguards:
    - Will limit average weekly hours to 48.
    - Reduce the maximum hours a junior doctor can work in any single week from 91 hours to 72 hours.
    - Ensure that no doctor will have to work more than four consecutive night shifts.
    - Impose a limit of 5 long days in a row.

- Ensure that no doctor will be required to work consecutive weekends without agreement.
- So to that extent the new contract is considered to include measures that improve on family life for doctors, male and female, through tackling hours worked, as described above.
- Compliance with these contractual safeguards will be scrutinized by the independent Guardian of safe working hours, the CQC and Health Education England (HEE).
- Average pay for all doctors will not change. The average 13.5% increase in basic pay means that pay enhancements for working unsocial hours will be re-distributed to those doctors working most frequently and intensively. For those doctors eligible for transitional protection, those working legal hours will be protected.
- The contract should have the effect of making it more affordable to roster doctors into the evenings and for part of Saturdays (subject to frequency) and will also better reward those doctors working in those specialties which require intensive work at other unsocial times (particularly nights). While there is likely to be some increase in doctors working at weekends, it is anticipated that the impact on individual doctors will be limited.
- We also considered the proportion of female doctors, the likelihood that caring responsibilities may fall mainly to women and that, for example, the (existing) requirement to be 'on call' and work evenings and weekends could have a disruptive effect on family life. There are also men who may have the main caring responsibility for children, and caring responsibilities may include caring for the elderly or ill or disabled family members. For all those with caring responsibilities, and with the likelihood of a particular impact on women, it has been argued by the BMA that, in the respects listed below, the policy may have a particular impact:
  - Unsocial hours – the proposed change to pay enhancements for working unsocial hours will mean that some workers who work daytime hours during the week, as well as Saturday on a frequency less often than one Saturday in four, will receive no pay enhancement those hours, and that this may affect, in particular, those working in paediatrics, obstetrics or gynaecology, where there is a greater proportion of females. This may also have a particular effect on them if they have to pay for child care while at work, which is alleged to be more expensive and difficult to obtain at evenings and weekends – although we would argue that in some cases it may in fact be easier for those doctors who have partners to make

arrangements for the other partner to provide child care in the evenings and at weekends which is often easier than during the week if both parents are working.

- Pay Progression – compared to the current automatic pay progression system where junior doctors receive automatic incremental pay for time served, whether or not they step off training or work less than full time, the new nodal pay structure based on responsibility (even with the amendments to make it flatter and more front loaded which the BMA said it reluctantly suggested) is said to disadvantage those that work less than full time (disproportionately women) or take time out of training due to ill health, disability or maternity leave.
- On call supplements - it is proposed that doctors working on 'on call' rotas would be paid for the actual hours that they are called upon to work during those duty periods, with an allowance (considerably smaller than a banding supplement but greater than that paid to other doctors on call) paid for the frequency of times that they must be available. The BMA argue that some doctors will lose out - particularly those 'on call' for long periods with infrequent working during those periods. There will, the BMA say, be a disproportionate impact on carers, in particular single parents (disproportionately female) who need to bear the fixed costs of arranging alternative care at times which may be more expensive.
- It is important to bear in mind: (a) the 13.5% average increase in basic pay, and (b) that the principle under the new contract is that those working the most intense/unsocial hours should receive the most pay – and the objective of supporting the delivery of a 7 Day NHS for patients through better rostering. We also note that employees in both the private and the public sector do not normally receive higher pay *because* they have child care or other caring responsibilities e.g. for elderly relatives, vulnerable adults, even in circumstances where they may have to work “unsocial hours”.
- Those that choose a medical or non-medical career in the NHS are remunerated at a level which allows employers to recruit, retain and motivate the staff they need. All NHS staff, and indeed those working in the wider economy, are expected to make provision for any costs arising from childcare or other caring responsibilities from within the pay they receive.
- We believe that the overall pay package being offered to all doctors is fair and it cannot be reasonable or proportionate to contractually 'compensate' doctors for childcare or other 'caring' costs through higher pay or to stick to current

pay arrangements that we think are flawed because they can (though are not guaranteed to) favor those who work few unsocial hours or who may be on call occasionally as opposed to frequently/intensely.

- The new national contract provides pay enhancements for those doctors working unsocial hours most frequently and intensively. The new provision also pays doctors for all the hours they do work (e.g. they will receive a supplement for being on call, and will be paid if they have to work after being called out) in a way which recognises the 'unsocial' nature of working during these times, but which is balanced against the need of employers to ensure that care is available for patients 24/7 and that it is affordable.
- As part of the overall NHS employment offer, many employers offer support for childcare through, for example salary sacrifice schemes, by providing childcare vouchers which enable employees to pay for childcare out of their pre- tax and National Insurance income.

**Taking into account the various factors outlined earlier, we believe the new proposed (currently draft) national contract will have a positive impact on family life (and outcomes for patients) by reducing the maximum number of working hours, reducing the number of consecutive night shifts and long days, so doctors do not work when tired and are able to spend more time with their family if they so choose. It will also have a beneficial impact on families by improving patient care across 7 days.**

ii) What kind of impact will the policy have on families going through key transitions such as becoming parents, getting married, fostering or adopting, bereavement, redundancy, new caring responsibilities or the onset of a long-term health condition?

- We paid due regard during the development of the proposed new national contract, to contractual and non-contractual issues that doctors said have an impact on their working and home lives, which often also applied to matters relating to family considerations. The proposed draft contract includes, for example various safeguards outlined above in respect of hours worked, including a provision that limit the number of consecutive nights and long days and requires that doctors are not required to consecutive weekends without agreement.
- A number of new commitments have been made by NHS employers and HEE in the context of discussions around the proposed new contract which will

have a positive impact upon several of the transitional situations identified in this test, for example. These include:

- Requests for leave – NHS employers will be expected to respond to all leave requests positively, even if the leave request is made with less than 6 weeks' notice where that is for reasons beyond the doctor's control. Employers must also allow leave for life-changing events subject to the standard 6 weeks' notice period.
- Fixed Leave – employers will be asked to end the practice of fixed leave, which makes it difficult for doctors to take leave at a time that best suits themselves and or their families. There will be a mutual obligation to plan leave around requests, balancing the need for adequate staff cover to provide a safe service while ensuring that all staff can take full leave entitlement.
- Notice of deployment – HEE will ensure that employers give doctors sufficient notice so that they have time to make the necessary adjustments before being redeployed, including if necessary the need to move their family nearer to their place of employment. This may be particularly helpful to those junior doctors that need to manage family life whilst being employed in different locations.
- HEE will also commit to using this notice period as part of its own internal performance management systems to ensure that this commitment is being realised. Employers will be asked to provide roster information to doctors 8 weeks in advance of starting a post. This should also help facilitate the removal of fixed leave, because doctors will be able to plan their leave requests around advance notice of rosters, without the need for fixed leave.
- Commitments to at least 8 weeks' notice of deployment and roster information will enable doctors to plan their lives around advance knowledge of future posting, which should also assist in planning at times of particular personal transition.
- Flexible training – HEE are already obliged to respond to requests for less than full time training. The BMA want to extend the scope for less than full time training and HEE will consider with the Royal colleges how access can be widened in a way which allows for training at an optimum rate.

- Continuity of service – will not be affected and will be preserved. It is particularly important where doctors through educationally-approved out of training programme arrangements (as at present) or voluntary/overseas service or short gaps between employments will, for example, retain access to maternity pay based on their last year's earnings prior to taking time out. This means that continuity of service would be preserved in a variety of situations where there is a gap in usual working patterns, including when these occur as a result of a transitional situation in the doctor's life.
- Expenses - doctors will continue to have access to expenses relating to travel, subsistence and other business expenses. They will continue to have assistance with relocation, removal or travel expenses and can request extra help should they take up employment which requires them to move home or incur extra travel expenses.
- Doctors will also continue to have access to a range of employment rights under statute and through their local employers' own HR policies, which should allow them to seek support should they need it.
- All the existing wider benefits available to every doctor will remain. Those most significant for those who are undergoing periods of transition identified in the test, are considered to be, for example, the occupational NHS pension scheme; a defined benefit scheme which will increase doctors' pension savings through the average 13.5% increase in basic pay and which includes an employer contribution of 14.3% of pensionable pay; automatic life assurance of twice annual pay on joining the NHS; family and death (widow/widower/partner/ other nominee/child) benefits.
- All doctors will still be able to receive benefits above the statutory minimum, for example, annual, sickness, maternity, paternity, adoption leave which remain unchanged from the current contract.

**The new national contract will not affect the ability of doctors to continue to receive generous personal and family benefits available to them by virtue of their employment in the NHS, through local employer's HR policies and the commitments made in the context of negotiations will only serve to enhance these benefits, many of which will be valuable at times of transition.**

iii) What impacts will the policy have on all family members' ability to play a full role in family life, including with respect to parenting and other caring responsibilities?

- The points set out at points i) and ii) apply here. All doctors will continue to have access to benefits above the statutory minimum and access to their employer's local HR policies, including the right to request flexible working and flexible training if they need to work less than full time, to, for example, help support caring responsibilities for children and adults.
- Locally NHS employers should have a carer's policy to address the needs of people with caring responsibilities and to meet the requirements of the 'right to request' flexible working legislation for carers of children and dependant adults (set out in employment relations legislation). This policy should emphasise the benefits of flexible working arrangements, balancing work and personal life and employment breaks.

**The contract does not detract from these benefits. In addition to the above, we believe the proposed new national contract together with existing benefits above the statutory minimum will have a positive impact on the ability of doctors to participate in family life by reducing the maximum number of working hours so doctors do not work when tired and are able to spend more time with their families, if they so choose.**

iv) How does the policy impact families before, during and after couple separation?

All doctors will continue to have access to their employer's local HR policies which should allow them to seek support should they need it.

- Locally, NHS employers should have policies which give all their staff the right to request time off.
- These policies will continue to apply to doctors and should cover a range of needs, from genuine domestic emergencies through to bereavement.
- Locally, NHS employers should have policies which allow all their staff access to an employment break scheme which should continue to apply to doctors.

**All doctors will continue to have access to the support of their employer through local HR policies by virtue of their employment in the NHS. The proposed draft contract would not affect the support available to junior doctors in the event of couple separation.**

v) How does the policy impact those families most at risk of deterioration of relationship quality and breakdown?

- All doctors will continue to have access to their employers' own local HR policies, which should allow them to seek support should they need it, for example, continuity of service - maintained through educationally-approved out of training programme arrangements (as now) or voluntary/overseas service or short gaps between employment, with access to maternity pay based on the latest year's NHS earnings prior to time out of programme to ensure continued access to the more generous occupational maternity provisions, access to an employment break scheme.
- Local employer's HR policies should cover a range of needs, from genuine domestic emergencies through to bereavement.
- Employers must also allow leave for life changing circumstances.

**The new national contract will not affect the ability of doctors to continue to have access to the support of their employer through local HR policies by virtue of their employment in the NHS. The proposed draft contract would not affect the local support available to junior doctors whose families are most at risk of relationship deterioration.**