

BMA response to the Department for Business Innovation and Skills Call for Evidence: Social and Employment Review

The British Medical Association (BMA) is an independent trade union and voluntary professional association which represents doctors and medical students from all branches of medicine all over the UK. With a membership of over 153,000 worldwide, we promote the medical and allied sciences, seek to maintain the honour and interests of the medical profession and promote the achievement of high quality healthcare.

The European Union (EU) has an important role to play in social and employment law. Health professionals benefit from EU health and safety legislation which in turn benefits patients in the form of increased patient safety. The shared competence with Member States on employment policy provides employees with important protections with a significant proportion of UK employment law originating from the EU. Key areas of interest to the BMA are patient safety, the European Working Time Directive, and employment rights.

Patient safety and rights

Patients should be the principle focus of any healthcare system and their safety must be guaranteed at all times. The European Union provides additional rights to patients that are often not provided under national law. This is an area where the EU adds demonstrable value to the lives of European citizens which should be promoted to the wider population. The BMA welcomed the 2009 Council Recommendation on Patient Safety which focused political attention on the importance of protecting patients. We will be responding to the European Commission consultation on patient safety and quality of care to provide our views on how the Recommendation can be built upon; it is important that this momentum is maintained across Europe.

European Working Time Directive

The European Working Time Directive (EWTD) is essential health and safety legislation that is necessary for both doctors and patients. Better rested doctors provide better patient care. The ability of doctors to learn is also vastly improved when they are well rested. The EWTD, enshrined in UK law as the Working Time Regulations 1998, and the application to doctors, particularly those in specialty training, is often used as an example of how European legislation is damaging to the UK. The BMA does not agree. We continue to support the EWTD as it protects both patients and doctors and has the necessary flexibility to ensure a high level of training. The ability to average out the 48 hour week over 26 weeks means that it is not unusual for doctors to work longer hours when needed; if a patient requires care then that is given regardless of how many hours someone has already worked. The BMA is satisfied with the EWTD as it currently stands.

Where there are problems in balancing full implementation of the Directive with the demands of achieving a high level of training for junior doctors, the BMA believes that the problem lies with the design of training programmes and hospital rotas rather than with the Directive itself. The authoritative [*Time for Training*](#) in 2010 concluded that where improvements to training were required the answer was not to lengthen hours. If the Directive is to be revised the BMA would prefer the revision to focus on the issues of on-call time and compensatory rest. The revision must enshrine the SiMAP and Jaegar rulings in European legislation and must not dilute them in any way. The implementation of the EWTD in the UK through the Working Time Regulations has led to significant improvements for junior doctors in particular as it protects them from working dangerously long hours and improves patient safety. In the push to change junior doctor rotas by 1 August 2009 rota design often failed to consider doctors' education requirements. Good rota design is essential in ensuring that both the needs of the service and the educational needs of doctors in training are met. Failing to provide for educational

opportunities will negatively affect patient care as the necessary progression to develop the next generation of specialists will halt. The role that the EU plays in protecting employees is essential and consideration should not be given to removing these protections from the UK workforce.

Employment Rights

There are a number of areas where European Directives have provided the basis on which Member States have then been able to legislate for enhanced employment rights are numerous. Key areas of European action include;

- Equal Pay Directive (75/117/EEC) which, following its implementation in the UK, has influenced pay and terms and conditions within the NHS
- Framework agreement on part time work (Directive 97/81/EC)
- Directive 91/533/EEC covering the employer's obligation to inform employees of the conditions applicable to the contract or employment relationship which formed an essential component to the Employment Rights Act 1996
- Directive 98/59/EC on collective redundancies which was implemented by the Trade Union and Labour Relations (consolidation) Act 1992 giving protections during collective redundancies including the framework for consultation.

Transfer of Undertakings (Protection of Employment) (TUPE)

TUPE implemented the Acquired Rights Directive in the UK. This legislation protects the rights of workers. This is particularly pertinent at a time of huge NHS reorganisation. Whilst TUPE is a complex piece of legislation the fundamental purpose is to protect employees if the organisation by which they are employed changes hands, or if an employee is transferring from one organisation to another. TUPE protects employees' terms and conditions of employment during this transfer process. Employees of the previous organisation automatically become employees of the new employer on the same terms and conditions which provides an essential level of protection to staff employed in the NHS. The role of the EU in working alongside member states to protect employees across Europe through employment policy is an important principle and one that should be maintained and protected.

The role of social partners in legislation

The introduction of the EU social dialogue has given employer and trade union representatives the opportunity to directly negotiate European agreements with each other, which can subsequently be turned into EU legislation. It also means the social partners are consulted on any social and employment proposals the Commission is considering. The BMA is broadly supportive of the role of social partners at a European level; the process has been a good example of employers and trade unions working in partnership to create workable legislative solutions. Not all trade unions are members of organisations that are represented in discussions between social partners, including the BMA. There need to be mechanisms in place to ensure that there is broad engagement to ensure that the consultation process is genuinely inclusive.

Conclusion

The BMA is committed to improving the health of the UK citizens and welcomes EU activities which complement UK government work in this field. Future policy developments in this sector should continue to respect the principle of subsidiarity and the right, enshrined in the EU Treaties, of Member States to organise and finance their healthcare systems according to national practices.

The BMA believes that the European Union has a crucial role to play in safeguarding patients' interests and guaranteeing quality standards of care. The BMA will continue to engage proactively with European policymakers in order to protect the rights of both patients and health professionals, and to promote the highest possible standards of public health.

The continued improvement of health is of the utmost importance and, within the aforementioned parameters, the BMA calls on policymakers to work towards creating a safer, healthier Europe.