

**To:** The Board

**For meeting on:** 26 May 2016

**Agenda item:** 8

**Report by:** Dr Kathy McLean, Executive Medical Director

**Report on:** Junior Doctors' industrial action: Impact assessment

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## **Introduction**

1. The purpose of this report is to update the Board on the impact on safety, quality and efficiency of services during the recent periods of Industrial Action (IA) by junior doctors. This report builds on the report to the Board in April and will give a brief background to the negotiation process up to the decision to introduce the new junior doctor contract as well as information on what the impact of the IA has been to date.
2. The Board is asked to note this report which is provided for information only.

## **Background**

3. In June 2011 a scoping study began on the contract for doctors in training. Following publication of the scoping study report in December 2012, NHS Employers and the British Medical Association (BMA) were invited to discuss the prospects of negotiating change to the contract for doctors in training and negotiations have been ongoing since that time.
4. Following a breakdown in negotiations the BMA undertook a ballot of their junior doctor members and the results of this were published on 19 November 2015:
  - More than 76 per cent of trainees took part in the ballot.
  - 99.4 per cent voted 'yes' to the first question: 'Are you prepared to take industrial action short of a strike?'
  - 98 per cent voted 'yes' to the second question: 'Are you prepared to take part in industrial action including strike action?'
5. In light of this result during December 2015 the BMA announced 3 periods of IA. ACAS was approached to offer conciliatory talks between the BMA, Secretary of State for Health and NHS Employers. Following productive talks all agreed that a

return to direct and meaningful negotiations in relation to a new contract for junior doctors was the right way forward. NHS Employers agreed to extend the timeframe for the BMA to commence any IA by four weeks to 13 January 2016, to allow negotiations to progress. Within that timetable, the BMA agreed to temporarily suspend its proposed strike action in December 2015 and the Department of Health agreed similarly to temporarily suspend implementation of a contract without agreement.

6. Talks between the Department of Health, NHS Employers and the BMA around the junior doctors' contract dispute ended on Monday 4 January without significant progress and as a result, the BMA announced that junior doctors' would be taking IA (for the first time in 40 years). As of 4 January there were four areas where significant disagreement still existed, safety; pay progression; pay for all work done; and plain time/premium time.
7. On 5 January 2016 Sir David Dalton, Chief Executive of Salford Royal NHS Foundation Trust, agreed to support the NHS Employers Team in negotiations with the BMA. Following further negotiations Sir David Dalton wrote to Dr Mark Porter and Dr Johann Malawana of the BMA Junior Doctors Committee (JDC) on 9 February 2016 requesting a response to confirm that they were both prepared to back the proposals and recommend their acceptance to the JDC. These assurances were not provided in the timeframe set out, therefore Sir David Dalton wrote to the Secretary of State on 10 February 2016 concluding that there was no realistic prospect of a negotiated outcome. The Secretary of State announced in Parliament on the 11 February 2016 that the government would be introducing the new junior doctors' contract.
8. On 5 May 2016 the Secretary of State for Health announced that the Government would pause introduction of the junior doctors' contract for 5 days to negotiate with the BMA on outstanding issues. Talks began on 9 May 2016 under the auspices of ACAS. Sir David Dalton returned to lead the Government's negotiating team. On 13 May 2016 ACAS announced that negotiations would continue until 18 May 2016 to give the process a chance of reaching a successful conclusion.

### **Impact of the Industrial Action to date**

9. To date there have been five separate periods of Industrial Action:
  - Emergency care only between 8am on Tuesday, 12 January and 8am on Wednesday, 13 January (24 hours)
  - Emergency care only between 8am on Wednesday, 10 February and 8am on Thursday, 11 February (24 hours)
  - Emergency care only between 8am on Wednesday, 9 March and 8am on Friday, 11 March (48 hours)
  - Emergency care only between 8am on Wednesday, 6 April and 8am on Friday, 8 April (48 hours)
  - Full withdrawal of labour between 8am and 5pm on Tuesday, 26 April and Wednesday, 27 April

10. NHS England lead on national planning and assurance through Emergency Preparedness, Resilience and Response (EPRR) processes. NHS Improvement is supporting the EPRR process under the leadership of Dr Kathy McLean, bringing together regional and communications leads to work in partnership with national and regional EPRR teams. Dr McLean has also worked closely with colleagues in the Department of Health and NHS England, attending national oversight and Cabinet Office meetings.

11. In April 2016 the Board received an update on the impact of the first 4 periods of IA. The headlines were:

- We have not been made aware of any serious incidents directly attributed to IA
- It is reported that the overall impact is in the region of 25,000 procedures to be rescheduled as a result of IA, with 16,767 procedures accounted for in the figures reported via UNIFY2
- The financial impact of the reported 16,767 cancelled procedures is estimated to be £31m based on the 2014/15 reference cost schedule
- Based on nationally published data, A&E performance was slightly improved on the days of industrial action compared to the preceding day
- For Referral to Treatment (RTT) incomplete pathway performance, the numbers waiting over 18 weeks as at the end of February dropped by around 5,500 when compared to December, and in addition, the corresponding performance for this measure improved from 91.6% to 91.9%

### **Full withdrawal of labour, 26 and 27 April 2016**

12. On Tuesday 26 and Wednesday 27 April, junior doctors in England took part in IA which took the form of full withdrawal of labour between 8am and 5pm on both days. For the first time during the dispute this also included withdrawal of urgent and emergency care provision. Whilst the available data indicates that 78% of junior doctors who were expected to be working did not report for duty, this includes other forms of absence not just IA, such as sickness.

13. As with the previous periods of IA, we have not been made aware of any serious incidents directly attributed to IA on the 26 and 27 April. However it should be noted that it will be complex to fully assess this and information from any investigations that might support a link between IA and serious incidents would not be available for a number of weeks. There were a significant number of procedures expected to be cancelled as reported through UNIFY2. For the first time this also included the postponement of outpatient appointments (OP Appt.) due to the unprecedented situation of withdrawal of urgent and emergency care provision. The total number of cancelled procedures reported via UNIFY2 for all periods of IA is shown in the table below.

	<b>Inpatient</b>	<b>Day Case</b>	<b>OP Appt.</b>
12-13 January 2016	1,279	2,175	
10-11 February 2016	1,150	1,734	

	<b>Inpatient</b>	<b>Day Case</b>	<b>OP Appt.</b>
9-11 March 2016	2,077	3,187	
6-8 April 2016	2,061	3,104	
26-27 April 2016	4,187	8,524	112,856
<b>Total</b>	<b>10,754</b>	<b>18,724</b>	<b>112,856</b>

14. The financial impact on provider income of the cancelled procedures and appointments is estimated to be £65m, £34m of this relates to the latest period of IA on the 26 and 27 April. This figure is based on the 2014/15 reference cost schedule, for elective inpatient and day case procedures, and outpatient attendance. A detailed breakdown can be found at appendix 1.

15. A&E performance saw an 8.7% increase on Tuesday 26 April compared to average performance on a Tuesday in April and a 9.0% increase on Wednesday 27 April compared to the average. The table below shows the regional breakdown. The charts at appendix 2 highlight daily A&E performance and attendances for all periods of IA.

<b>Region</b>	<b>Mon 25 April</b>	<b>Tue 26 April</b>	<b>Wed 27 April</b>	<b>Thu 28 April*</b>
London	88.73%	93.06%	93.98%	90.50%
Midlands & East	85.71%	91.58%	94.81%	93.15%
North	90.70%	95.35%	97.17%	94.46%
South	87.43%	91.70%	95.94%	94.15%
<b>England</b>	<b>88.31%</b>	<b>93.14%</b>	<b>95.61%</b>	<b>93.17%</b>

\*data to be validated for 28 April

16. When compared to the previous week there was a significant reduction in call volumes across all ambulance trusts on the Tuesday of the industrial action. On Wednesday 27 April the majority saw a decrease on the previous week, with the exception of London which saw a slight increase.

<b>Trust</b>	<b>Tue 19 Apr</b>	<b>Tue 26 Apr</b>	<b>Reduction</b>	<b>Wed 20 Apr</b>	<b>Wed 27 Apr</b>	<b>Reduction</b>
East of England	2830	2402	15.12%	2724	2546	6.53%
East Midlands	1975	1819	7.90%	2122	1890	10.93%
London	4393	4174	4.99%	4292	4301	+0.21%
North East	1333	1034	22.43%	1,241	1,055	14.99%
North West	3362	3013	10.38%	3623	3192	11.90%
South Coast	1745	1585	9.17%	1753	1729	1.37%
South East Coast	2415	2245	7.04%	2331	2250	3.47%
South West	2428	2303	5.15%	2277	2230	2.06%
West Midlands	2876	2588	10.01%	2893	2826	2.32%
Yorkshire	2001	1841	8.00%	2087	1969	5.65%

17. A series of debrief sessions for NHS England Regions, NHS England National and NHS Improvement are planned to ensure that lessons from this period of

action are identified and incorporated into planning for any potential future action that may be taken by the BMA. A range of options from action short of a full withdrawal of labour (emergency cover only) to full and indefinite withdrawal of junior doctor labour will be planned for and Jim Mackey and Simon Stevens have written to the NHS asking them to plan for the range of scenarios.

18. The NHS should be commended for the hard work undertaken to ensure that services have remained safe during all periods of IA, safeguarding patients and ensuring effective operational plans were in place throughout the country.

## **Recommendations**

19. The Board is asked to:

- note the role of NHS Improvement in supporting NHS England and NHS Trusts and NHS foundation trusts in the planning and preparation for previous and future periods of IA
- note the impact on safety, quality and efficiency of services of the recent periods of IA by junior doctors

## **Public Sector Equality Duty**

*NHS Improvement has a duty under the Equality Act 2010 to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations between people from different groups. The Act protects against discrimination on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, gender and sexual orientation. We have thought about how the issues dealt with in this paper might affect protected groups.*

*We believe the paper will not have any adverse impact upon these groups and that NHS Improvement has fulfilled its duty under the Act.*

### **Exempt information:**

*None of this report is exempt from publication under the Freedom of Information Act 2000.*

## Appendix 1: Estimated financial impact of cancelled procedures

The table below provides an estimate of the financial impact of the procedures and appointments cancelled as a result of IA. These figures have been calculated using the [Department of Health reference costs 2014-15](#). The estimated unit costs are:

- Inpatient - £3,573
- Day Case - £721
- Outpatient Appointment (OP Appt.) - £114

	Cancelled procedures			Total cost (£)		
	Inpatient	Day Case	OP Appt.	Inpatient	Day Case	OP Appt.
<b>12-13 January 2016</b>	1279	2175		4,569,867	1,568,175	-
<b>10-11 February 2016</b>	1150	1734		4,108,950	1,250,214	-
<b>9-11 March 2016</b>	2077	3187		7,421,121	2,297,827	-
<b>6-8 April 2016</b>	2061	3104		7,363,953	2,237,984	-
<b>26-27 April 2016</b>	4187	8524	112856	14,960,151	6,145,804	12,865,584
<b>Total</b>				<b>38,424,042</b>	<b>13,500,004</b>	<b>12,865,584</b>

Source: 2014/15 reference cost schedule, elective inpatient and day case average costs

Notes: Elective inpatient costs do not include excess bed days

**Appendix 2: Charts for overall NHS Improvement position showing daily A&E performance over the period of industrial action from 1 January 2016 to 30 April 2016**

