



Department
of Health

FROM THE RT HON JEREMY HUNT MP
Secretary of State for Health

IMC: 000408

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Dear Heidi,

22 April 2016

Junior Doctors Contract

You have sought clarification from the Attorney General as to my legal powers, mentioned during the debate on 18 April and I have agreed with him that I will write to you with the clarification you seek.

Your letter raises three questions:

- Your letter refers to me "imposing a contract on NHS employers", and asks what is the basis of my legal power to do so. As I explained to the House on Monday 18th April 2016, the new contract is being introduced without the agreement of the BMA. This is what you describe as "impose", although I generally prefer to use the term "introduce" (the term I used in my announcement to the House on 11th February 2016). This is being done by me, working together with NHS employers. In doing so, I am exercising my powers under the NHS Act 2006 (in particular sections 1, 1A, 1B, 1F, 1G and 2). NHS employers are using their employment powers, as they are the employers of junior doctors, and not me. This is well established as a precedent in the NHS, as you will know.
- I made the scope of my powers clear at the outset of the debate. I said that while NHS Foundation Trusts can determine pay and conditions for the staff they employ, in practice, trusts opt to use national contracts. The benefit of a uniform approach and use of this new contract has been recognised by Health Education England to ensure consistent education and training of the medical workforce. These benefits have also been supported by the BMA themselves for their members, where they have instructed their local branches not to enter into local contractual arrangements.



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- When I said, in answer to some questions in the course of the debate on 18th April 2016, that I have the legal power to “impose” the new contract, I was not conveying that I had this power working alone. As I had already explained, the “imposition” of the contract or, as I prefer, “introduction” is being done by me, working with NHS employers.
- The Government Legal Department very clearly explained the source of my legal powers in its letter to Bindmans LLP dated 15 April. As such, the duty of candour was complied with as applicable at the pre-action stage. For the avoidance of doubt, the duty of candour set out in the Treasury Solicitor’s guidance does not require full disclosure at pre-action stage. I and the GLD will of course continue to comply fully with our duty of candour as applicable in these proceedings.
- My legal powers under the NHS Act 2006 are well known to those with any knowledge of the junior doctor dispute. Notably, there has never been any suggestion by the BMA that it was under any doubt whatsoever as to the powers I was exercising in announcing that introduction of a new contract should proceed without its approval. In fact, the BMA’s published ‘frequently asked questions’ makes clear to its members that there was nothing unlawful in me taking these steps. Your suggestion that there is, or has been, any “lack of candour” on these points is therefore difficult to follow.

As you know, these matters are now the subject of on-going legal proceedings. It would not therefore be appropriate for me to engage in sustained correspondence on this topic. However, I hope that the explanation I have provided will be of assistance to you in following the issues. As the Government Legal Department has made clear, we consider that the claim raised by Bindmans LLP is entirely without merit and we will be robustly defending the litigation.

I am copying this letter to the Rt. Hon Jeremy Wright QC MP, Her Majesty’s Attorney General, and a copy will be placed in the Parliamentary Library.

JEREMY HUNT

CC: The Rt. Hon Jeremy Wright QC MP