The new junior doctors' contract: a guide to safe working and the challenges it brings

This article introduces the role of the guardian of safe working, following the introduction of the new junior doctor contract and the significant changes to working practice that it brings. It also reviews how the process of exception reporting can be used to highlight unsafe working practices and subsequently stimulate a review of how the clinical service is organized so that support for trainees improves while maintaining the clinical service. It includes some data which, although limited because of the short time the contract has been active, are beginning to shed some light on how this contract may significantly change the way doctors work in the coming years.

The implementation of the new junior doctor contract

The new junior doctor contract was brought in under a cloud of disenchantment and the decision to impose its introduction was made during the spring and summer of 2016. A highly publicised court case determined that the Secretary of State for Health, Jeremy Hunt, did not actually enforce the 'nuclear option' as he had put it, but in fact Health Education England required that all junior doctors in a Health Education England-approved training post must be working under the new, 'safer' working conditions, leaving NHS trusts who train junior doctors little choice other than to conform.

The terms and conditions of service were first implemented for all ST3+ trainees in obstetrics and gynaecology in October 2016. December 2016 saw the transition of all foundation year 1 doctors onto the new terms and conditions of service, with the remaining junior doctors in training undergoing a staggered introduction to the new terms and conditions of service by October 2017.

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Safety as a key feature of the new contract

Key features of the new terms and conditions of service are the creation of 'work schedules' which define training objectives as well as confirming rota patterns for each individual job, while the main emphasis is to strongly promote safe working practice.

The introduction of significant restrictions on working patterns compared to the 2002 contract (e.g. no more than a one in two weekend, maximum of no more than four night shifts in a row) and shift construction (e.g. minimum of 46–48 hours off between certain stretches of work, no more than eight shifts in a row and no more than 72 hours worked in a rolling 7-day period) has been done on the premise that this will reduce fatigue among junior doctors, which is safer for both patients and junior doctors. In parallel there has been the creation of the role of guardian of safe working hours and the introduction of exception reporting, to support junior doctors to ensure they are working safely and receiving their training; these are summarized in *Table 1*.

Exception reporting

The 2002 contract relied on 'diary card monitoring' to capture variations from the described rota pattern of a job. This was flawed in many ways, not least because the majority of junior doctors on a rota had to respond and report a problem before the process was deemed valid. Exception reporting is a vast improvement on this and a report can be placed by a junior doctor, using an online tool to record a contemporaneous breach in safe working hours or a deficiency in his/her education (Allocate / Zircadian and Skills for Health DRS – Doctors Rostering System are the two commonest systems). An exception report ensures that the clinical supervisor or clinical lead assigned by the junior doctor, the director for medical education and the guardian of safe working hours are aware that there has been an issue.

When extra hours have been worked, the junior doctor is compensated following a formal, but local, 'initial review' of the circumstances in which working hours were breached, with a view to preventing similar from happening again. The terms and

Table 1. Key changes arising from the new junior doctor contract related to safe working

New feature	Description
Work schedule	A document containing the range and pattern of expected duties during a placement (i.e. a rota compliant with new safety rules), as well as a framework of intended learning outcomes. This is personalized to the individual doctor's training needs when he/she starts the job and meets with his/her clinical or educational supervisor
Exception reporting	A formal way for junior doctors to contemporaneously raise issues when their work schedule, either in terms of service or training, does not reflect the reality of their actual job
Guardian of safe working	This role is to oversee the safety of junior doctors in training by providing assurance on compliance with safe working hours. The guardian will monitor and collate details of exception reports and act on them where necessary. He/she is required to engage with junior doctors through regular meetings (junior doctor forums). He/she can participate in work schedule reviews and fine a department if one of their trainees breaches certain safety parameters

conditions of service prefers that the doctor be compensated for the extra work with time off in lieu to prevent extra work breaching safe working limits or inducing fatigue. A junior doctor can be paid at the standard hourly rate (with a 37% enhancement for 'out of hours work' where appropriate), with the agreement of his/her supervising consultant or department, if he/she has not breached safe working hours limits.

The intention is that a local solution can be found to most exception reports; however, should a pattern of breaches to working hours or unsafe working emerge then escalation to a more formal (level 1, 2 and then 3) work schedule review can take place, which would include input from the guardian of safe working hours and director for medical education. Any compensation needs to be agreed by the junior doctor before a work schedule review can be closed and there are strict time limits (7–14 days) defined for initial, level 1 and 2 reviews. A level 3 review would be in line with a trust's grievance procedure.

Personal experience

Barts Health is the largest NHS trust in the country, with nearly 1700 junior doctors working across five sites. Of these approximately 1040 are in Health Education England-approved training posts. By the end of January 2017 130 doctors were working under the new terms and conditions of service and the trust had received 54 exception reports for safe working hours and four for educational issues.

From these reports it is clear that foundation year 1 doctors have struggled to work within their scheduled hours and this is, as expected, multifactorial (*Table 2*). There is a need for senior staff (including within the junior doctor cohort) to support foundation year 1 doctors in understanding and managing their workload while they get to grips with 'the system' and their own role in their new profession. Many foundation year 1 doctors also feel the restriction on working patterns has reduced their ability to be 'a professional', particularly handing over jobs they feel are their responsibility and also when senior doctors arrive on the ward to send them home at the end of their shift. As both guardian and human resources specialist the authors are sympathetic to this – the terms and conditions of service are clear that professionalism is expected. However, the caveat is that if a junior doctor stays late to be professional (e.g. finish seeing a patient, talk to a relative) then he/she must be given his/her time back for the reasons mentioned above. There needs to be a shift in working organization to accommodate this and an understanding from junior and senior doctors that handover of routine jobs and fragmentation of work is likely to be more common.

Table 2. Repeated reasons in exception reports for foundation year 1 doctors to work beyond their scheduled hours

Starting early to prepare for a ward round
Taking time to order the next day's blood tests
Relatives arriving on the ward after 5 pm and wanting an update
Covering a colleague's leave or rota gap
Struggling to finish ward round jobs once the round has finished
Starting or learning a new job or system
Feeling uncomfortable handing over jobs from the day to a more senior colleague

In addition the authors think there is a global lack of detailed knowledge and the notable presence of misinformation among both junior and senior doctors, which is not isolated to their trust. Many have not read the terms and conditions of service and are unclear of the changes that have been made and how they affect them. The authors urge everyone to get to grips with the changes – they are here to stay. Concern over the pay protection policy and changes to pay and conditions that will affect maternity leave and less than full time training are common questions which require accessible and robust human resources support. Although these are not under the remit of the guardian of safe working hours, questions regarding these issues are commonly directed to him.

The argument to improve safety is one that is very difficult to challenge and doctors must accept that hospitals no longer operate 'like they did in my day'. The authors believe that the new terms and conditions offer significantly better safeguards to unsafe working practices than the 2002 contract but this undoubtedly comes at a price of reduced flexibility, more disjointed service delivery and an increased emphasis on training.

KEY POINTS

- The new junior doctor contract applies only to doctors in training posts.
- Increased restrictions on working patterns are designed to reduce fatigue and thus improve safety.
- The guardian of safe working is a new role overseeing the compliance of trainees with safe working hours.
- Reduced flexibility will require new ways of working.

As a consequence, a two-tiered system of employment for junior doctors has also been created. Doctors employed as Health Education England-approved trainees will work under the new terms and conditions of service but trust doctors or clinical fellows who are not working under the SAS (staff and associate specialist) contract will remain on the old 2002 terms and conditions of service. There is a real possibility that doctors on the same rota will be working under different pay and conditions, with non-Health Education England trainees on a 'less safe' contract than Health Education England-approved trainees. The guardian of safe working thinks this is very worrying and would urge NHS Employers to offer clear guidance to all NHS trusts on how to support this group of junior doctors in the same way they support Health Education England-approved trainees.

Conclusions

The triad of working safely, training junior doctors and covering the needs of a clinical service is becoming increasingly difficult to deliver without some significant changes in process. This is attenuated by a reduction in the number of training posts by Health Education England and the increasingly apparent lack of supply of junior doctors required to support the needs of service delivery. It is clear that this perfect storm will necessitate a rapid but ongoing review of the way services are delivered and this may include an increasing role for specialist nursing teams and physician associates in order to allow for more focused training of junior doctors. This all has to be done within the boundaries of safe working, which is something which must be strongly supported despite the restrictions it may bring. **BJHM**