BMA response to Government consultation on Minimum Service Levels for hospital services

About the BMA

The BMA is a professional association and trade union representing and negotiating on behalf of all UK doctors and medical students. It is a leading voice advocating for outstanding health care and a healthy population. This is the BMA response to the consultation on behalf of our members, and the wider medical profession, to the consultation on Minimum Service Levels for hospital services.

Introduction

The BMA strongly opposes the introduction of Minimum Service Levels (MSLs) in hospital settings as a counterproductive, undemocratic, unworkable, and draconian interference with doctors' right to take strike action to protect their pay and working conditions.

The proposals do nothing to address the current state of the NHS which currently compromises patient safety daily, or to address the underlying reasons why doctors and other healthcare staff are striking. There are over 10,000 doctor vacancies in hospitals in England alone,[1] and the Royal College of Emergency Medicine has estimated unacceptably high excess mortality due to the NHS not functioning as we need it to.[2] Doctors do not take action lightly, and their focus is on ensuring that any strike action is as impactful as possible whilst protecting patient safety and ensuring the NHS can function in the long-term.

Curtailing doctors' right to strike could lead to doctors' grievances going unaddressed, resulting in even greater workforce attrition and subsequently higher workloads, with obvious knock-on impacts for staff and patient safety. Instead of focusing on strike days, the Government should be taking action to ensure the NHS is safely staffed 365 days a year, which means addressing lost value of doctors' pay and poor working conditions that result in more and more doctors leaving the NHS.

The proposals diminish the importance of clinical expertise in decisions over how best to ensure patient safety, instead giving Ministers wide-ranging powers to define MSLs and managers to set work notices naming who is required to work on a strike day. This presents a significant risk of abuse from unscrupulous employers when identifying people to work that is not adequately addressed by either the Strikes Act or the proposed work notice guidance.

MSLs also risk damaging industrial relations, a concern shared by both unions and organisations representing NHS management, including NHS Providers and NHS Confederation, who have said that the current system works well and local agreements and arrangements between employers and unions work "much better" than a legal framework that "could potentially make things more difficult rather than easier".[3]

Under this repressive legislation, employees will lose their protection from dismissal if they participate in strike action contrary to a work notice. Despite Ministers repeatedly stating[4] that the

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[1] NHS Digital, NHS Vacancy Statistics (and previous NHS Vacancies Survey), 24 August 2023
[2] Sky News, NHS: Around 23,000 excess deaths in 2022 were 'linked to A&E waits', college claims, Tuesday 28 February 2023
[3]Matthew Taylor, Chief Executive, NHS Confederation, and Sir Julian Hartley, Chief Executive, NHS Providers Oral evidence to Health and Social Care Committee, 09.05.23
[4] Lord Callanan, House of Lords Second Reading of the Strikes (Minimum Service Levels) Bill, Tuesday 21st February

Strikes Act would not result in nurses, doctors and other key workers being sacked, the draft work notice makes clear that this is a threat, and the code of practice goes further by requiring unions to inform all members of this risk.[5] This places employees at risk of intimidation whilst undermining unions' responsibility to represent their members by forcing them to take "reasonable steps" to ensure their members comply with notices, or face fines of up to £1m.

Given the workforce crisis facing the NHS, placing workers at risk of dismissal greatly undermines the argument that these regulations are about protecting patient safety. Instead, they risk further demoralising staff and forcing them out of the NHS by restricting their recourse to industrial action in fighting for better pay and conditions.

Critically, the Government has failed to give legitimate justification for the introduction of MSLs. Life and Limb protections already exist within current legislation under the Trade Unions and Labour Relations (Consolidation) Act 1992. The consultation points to 22 critical incidents declared during strike action since December 2022. However, a BMA Freedom of Information (FoI) request into critical and major incidents called during 2022 and 2023 found there were 4 critical incidents due to operational pressures called during the 27 days of junior doctor and 9 days of consultant strike action.

It is unclear whether any were a direct result of the action being called and they are in the context of 234 critical incidents declared in 2022 when there was no strike action called by doctors, and 77 declared between Jan-Oct in 2023. Rather than demonstrating patient safety was compromised due to industrial action, the data show the importance of tackling the stresses the NHS faces daily, which means investing in the workforce and clearly undermines the Government's stated rationale for MSLs.

Repeated Government claims that the BMA blocked 17 derogations agreed locally have also been strongly refuted by the Local Negotiating Committee Chairs who were involved in 12 of the derogation requests.[6]

Whilst there will always be some disruption caused by strikes, this is the nature of industrial action, and it is an established principle that health unions strike in a way that protects patient safety and ensures emergency and urgent care continue to be delivered. Restricting the ability of healthcare workers to take strike action to the point where levels of service may be higher than on some non-strike days such as weekends and bank holidays, as the Government's proposals would do, risks contravention of the International Labour Organisation's (ILO) emphasis[7] that any limits on strike action in essential services "must genuinely and exclusively be a minimum service", and maintain "the effectiveness of the pressure brought to bear" by the strike.

The Government's argument that the ILO provides justification for their proposals is further undermined by the ILO General Director refuting that the organisation supports the proposals.[8] The lack of provision for agreement with unions or independent arbitration within the Strikes Act meanwhile goes against ILO recommendations on how MSLs should be implemented.[9] Parliament's own Joint Committee on Human Rights on scrutinising the Bill concluded that it "fails to meet human rights obligations" pointing to failure to prove that existing strike laws and voluntary MSLs are

[5] Department for Business and Trade, Minimum Service Levels: Code of practice on reasonable steps
[6] LNC letter to Health Secretary, 19 September 2023
[7] International Labour Organisation, Chapter V. Substantive provisions of labour legislation: The right to strike
[8] The Guardian, 'UN agency and US labour secretary deny backing anti-strike bill', 18th January 2023
[9] Ibid.

insufficient, and that the lack of a mechanism for independent arbitration risks interference with ILO standards and Article 11 of the European Convention on Human Rights (ECHR).[10] The Government has also pointed to international comparisons for justification. However, the BMA understands that most European Countries with MSLs (69%) require that a dispute over minimum service levels should be resolved by either an independent body or arbitration, whilst 85% have a requirement for an agreement between trade unions and employers.[11] The UK already has some of the most restrictive trade union legislation in the world, a fact highlighted in a joint statement signed by 121 politicians from 18 countries across the world who condemned the Strikes Act as an "attack on workers' rights".[12] The Standing Committee of European Doctors (CPME) General Assembly 2023 has also passed a motion expressing concern that the Strikes Act infringes on doctors' right to strike.[13]

The entire process towards implementing MSLs has been marked by limited time, opportunity and scope for consultation with the unions and workers who will be most impacted by their implementation. The Government rushed through the Strikes (Minimum Service Levels) Act with only a limited impact assessment, rated "not-fit-for purpose" by the Regulatory Policy Committee,[14] and published after the Bill had already begun its parliamentary process. The consultation on proposals for MSLs in hospital settings is now happening retrospectively, after the primary legislation, which hands wide-ranging powers to the Secretary of State to determine MSLs and employers to set work notices, has already been laid.

As such, it is difficult to see this consultation as a meaningful opportunity for engagement or influence. Only eight weeks have been given for the consultation, which is taking place whilst strike action is ongoing, again, against the recommendations of the ILO standards committee.[15]

Consultation questions

To what extent do you agree or disagree that current arrangements are sufficient in providing cover for essential services?

The BMA strongly agrees with the statement that current arrangements are sufficient in providing cover for essential services. This is evident from the recent doctors' strikes where urgent and emergency services have continued to run either through Christmas Day cover or other doctors stepping in to provide cover for their colleagues.

To justify bringing forward MSLs in hospital settings, the Government has stated that there were 22 critical incidents declared during strike action since December 2022, but has not evidenced where that number has come from. A BMA FoI request into critical and major incidents called during 2022 and 2023 found there were in total 7 critical incidents and 2 major incidents during the 27 days of

[10] Joint Committee on Human Rights, Legislative scrutiny: Strikes (Minimum Service Levels) Bill 2022-23, 6 March 2023

[11] Dr Joelle Grogan; Professor Catherine Barnard, 'Where does the Strikes Bill put the UK relative to other countries?' 7 February 2023

[12] TUC, Statement on UK workers' rights from international politicians, 25 April 2023

[13] CPME 2023 Statement on doctors right to strike

[14] Regulatory Policy Committee, Strikes (Minimum Service Levels) Bill: RPC Opinion (Red-rated), 21 February 2023

[15] International Labour Organisation, Chapter V. Substantive provisions of labour legislation: The right to strike

junior doctor and 9 days of consultant strike action, and it is unclear whether any of these were a direct result of the action being called.

Two critical incidents were called prior to our action beginning. One critical incident and both major incidents were called for reasons other than operational pressures and one major incident was related to an ambulance trust, and therefore would include minimal to no involvement from doctors. This comes in the context of 234 critical incidents being declared during 2022 when there was no strike action called by doctors, and 77 having been declared between Jan-Oct in 2023. Given that the data makes it clear critical incidents are called regularly on non-strike days in the NHS and the lack of evidence that critical incidents were called as a direct result of strike action, the Government's inference that the data demonstrates that patient safety was being compromised due to industrial action does not stand up to any form of scrutiny.

The consultation repeats Government claims that the BMA blocked requests for strike exemptions that had already been agreed locally as justification for bringing forward MSLs in hospital settings. This claim has been refuted by Local Negotiating Committee Chairs who were involved in 12 of the derogation requests referred to, who have clarified that "derogation requests are subject to a national process which has been agreed by both the BMA and NHE England" and that "urgent and emergency services continued to be delivered with other doctors stepping in to provide cover for their colleagues."[16]

There is a relatively limited body of evidence on the impact of strikes on patient safety, but studies conducted both in the UK and internationally[17] do not find significant increases in patient mortality or morbidity during strike periods. The findings of the Furnivall et al (2018) paper[18] on mortality and deaths during the 2016 junior doctors' strikes are especially relevant to the English context. This paper found that strike action's impact on mortality was not statistically significant, meaning it was not possible to determine whether action had led to any increase in mortality rates. A Kings College Hospital study investigating the impact of the 2023 junior doctors strikes in March and April,[19] meanwhile, concluded that 'patient presentations and outcomes were unaffected by junior doctor strike action'. Number of attendances, acuity, diagnoses, admission, discharge and mortality rates were similar during strike and non-strike days.

To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action to achieve the aim of ensuring continuity of access to essential services during strike action?

The BMA strongly disagrees with proposals to introduce minimum service levels during strike action in hospital settings. As evidenced above, the imposition of MSLs is unnecessary given that current arrangements ensure access to essential services during strike action.

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[16] LNC letter to Health Secretary, 19 September 2023

[17] A 2022 worldwide meta-analysis, produced by Essex et al, that evaluated the impact of healthcare strike action on patient mortality found no evidence that strike action had any significant impact on in-hospital patient deaths; Thornton & Hazell, 2008 and Robinson et al. 2008, New Zealand found no patient safety concerns and that length of stay in the ED had actually reduced with better senior cover; Cunningham et al., 2008, Worldwide systematic review, studies examined showed either no statistically significant change in mortality during the strike period or in the period following the strike.

[18] : Furnivall D, Bottle A, Aylin P. Retrospective analysis of the national impact of industrial action by English junior doctors in 2016. BMJ Open 2018

[19] Ravioli, Svenjaa; Jina, Raeesaa; Risk, Omarb; Cantle, Fleura. Impact of junior doctor strikes on patient flow in the emergency department: a cross-sectional analysis. European Journal of Emergency Medicine ():10.1097/MEJ.0000000000001093, October 16, 2023. | DOI: 10.1097/MEJ.0000000000001093

Risk to industrial relations
Given that there will always be a need for some voluntary agreements between employers and unions, it is vital that industrial relations are not weakened to ensure these can happen as effectively and efficiently as possible. Conversely, proposals for MSLs risk damaging industrial relations if employers feel forced to issue work notices that place their employees at threat of dismissal if they fail to adhere to a notice, with no requirement for agreement from unions or employees.

This concern is shared by both unions and organisations representing NHS management, including NHS Providers and NHS Confederation, who have said that the current system works well and local agreements and arrangements between employers and unions work "much better" than a legal framework that "could potentially make things more difficult rather than easier".[20] NHS Providers repeated these concerns in response to the launch of the Government consultation on MSLs in hospital settings, warning that it "risks worsening industrial relations" and fails to "address any of the issues underlying current strike action".[21] This risk has even been recognised by Government, which has expressed a preference for voluntary arrangements over "the heavy hand of legislation".[22]

Lack of consultation
Under the current arrangements, decisions over derogations are made through discussion and agreement between clinicians on the ground, unions and employers, ensuring that clinicians have a key role to play in determining what is necessary to protect patient safety.

The Government proposals for MSLs diminish the vital role of clinicians and unions in making these decisions, instead enabling Ministers to define MSLs via regulations and employers to set work notices with limited consultation and no requirement for agreement with unions.

This consultation deficit has been evident in the way the Government pushed the Act through parliament with little consultation and transparency over its impact. Only consultations on MSLs for rail, ambulance and fire services were launched during the passage of the Bill, meaning there was very little transparency during the passage of the Bill over how the legislation might impact wider healthcare services.

Now the proposals have been published, it is clear these go beyond what would be considered a minimum service and unions have only been given eight weeks to respond to proposed regulations that will have significant impact on them and their members.

The Government's draft code of practice for reasonable steps to ensure compliance with work notices and guidance on issuing work notices fail to provide any strengthening of consultation requirements and again, only a few weeks were given to respond to both these consultations.

The Government's approach has failed to observe fair consultation principles, including consultation taking place at a stage when proposals are formative, in sufficient time, and a guarantee that the BMA's and other unions' responses will be fully considered and reflected in the final decision.

Risk of intimidation and abuse

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[20] Matthew Taylor, Chief Executive, NHS Confederation, and Sir Julian Hartley, Chief Executive, NHS Providers [Oral evidence to Health and Social Care Committee, 09.05.23]

[21] NHS Providers, Press Release: NHS Providers responds to new consultation on minimum service levels in hospitals, 19.09.23

[22] Lord Callanan, Minimum Service Levels Bill, Thursday 9th March 2023

There is risk of abuse and intimidation from unscrupulous employers when identifying people to work that is not adequately addressed by either the Strikes Act, the draft work notice guidance or proposals for MSLs in hospital settings. Instead of doctors using their expertise to make decisions in the best interest of patient safety, non-medical managers will be able to determine who should work to meet the Government imposed definition of minimum service levels, leaving doctors who want to strike vulnerable to bullying and intimidation.

There is a further risk of employees being deterred from making clear their beliefs and support for strike action due to threat of disciplinary procedure or dismissal. This is extremely troubling given multiple incidences of trade union members being unfairly targeted or blacklisted by some employers. The legislation states that employers must not take into consideration factors including trade union membership or whether a worker has made use of trade union services when deciding who should be named in a work notice. However, there is no guidance on how this would be done fairly and no requirement for transparency over how decisions are made. If employers can target specific individuals there is significant risk that this will be politicised and abused, for example the targeting of union representatives. The lack of transparency regarding how these decisions will be made also presents a risk that some employees will be favoured either to work (and receive pay) or to have the time and ability to strike.

Unlawful

The proposals also risk interference with workers' right to strike by contravening the standards set by the ILO's Committee of Experts and Committee on Freedom of Association. Most important of these is that setting the minimum service level, and the number of workers required to achieve it, should be reached with the participation of trade unions, and, if agreement cannot be reached, by resolution by an independent body. The MSLs Act (i) does not provide for adequate union involvement, as recognised by the ILO's supervisory bodies; and (ii) does not provide for resolution of disagreement over minimum service levels and/or numbers to provide the minimum service levels by an independent body.[23]

The ILO also states that minimum service levels should be clearly defined and known in advance to those impacted. To this end, it adds that "it is highly desirable that negotiations on the definition and organisation of the minimum service are not held during a labour dispute, so that the parties can examine the matter with objectivity and detachment, and the parties envisage the establishment of a joint or independent body responsible for examining rapidly the difficulties raised by the definition and application of such a minimum service, with the power to issue enforceable decisions."[24] The UK Government clearly has not followed this guidance, with the timing of the proposals suggesting they are politically motivated to restrain existing disputes, rather than the focus being on ensuring patient safety or resolution through meaningful negotiation with unions.

Unworkable

Perhaps most critically, it is unclear how the proposals will achieve the Government's stated aim of protecting the ability of workers to strike whilst ensuring the lives and health of the public is protected. As argued, not only is this already provided for during strike action, but the proposals would greatly curtail workers' ability to take impactful strike action. Perversely, and as recognised by the Government's impact assessment on the formerly proposed Transport (Minimum Service Levels) Bill,[25] the proposed MSLs could result in prolonged and more frequent disputes, which would be more difficult for the NHS to plan for. Again, this is contrary to the Government's aim of enabling

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[23] International Labour Organisation, Chapter V. Substantive provisions of labour legislation: The right to strike

[24] International Labour Organisation, Chapter V. Substantive provisions of labour legislation: The right to strike

[25] *Department for Transport (22 October 2022). Transport Strikes (Minimum Service Levels) Bill Impact Assessment*

more certainty in planning across hospital services or minimising the circumstances in which patients are not able to receive treatment.

There remains a lack of clarity over how processes for issuing work notices should be implemented. These requirements create a significant additional burden on both unions and employers, and as set out in the BMA's responses to the work notice and code of guidance consultations, there remain significant questions over how such processes can operate in practice. This includes little consideration of the data protection risk caused by requiring unions to share data with employers, how to ameliorate that risk or if the risk can be avoided. This is a significant concern given that trade union membership is a protected characteristic under data protection regulations. As highlighted in the BMA's response to the work notice guidance, the timetable for issuing what might be a lengthy and excessive work notice is only a week prior to action taking place, with scope for variation up to 4 days prior to action. This enables very little time for employers to notify employees and unions to contact members to ensure they are aware they are subject to a work notice.

To what extent do you agree or disagree with the proposal to introduce minimum service levels during strike action for in-patients already receiving hospital care; patients requiring urgent elective treatment; existing patients needing emergency, critical or urgent assessments, diagnostics or treatment; and new patients presenting to the hospital requiring unplanned assessment, diagnostics and/treatment?

The BMA strongly disagrees with the Government's proposals for the groups of patients that should be covered by MSLs in hospital settings. Given our fundamental opposition to the introduction of minimum service levels for the principled and practical reasons set out above, we do not agree this policy should be implemented for any patient categories set out within the consultation.

Existing arrangements are sufficient to protect patient safety by ensuring that any patients requiring urgent, or emergency care, will continue to be treated either by doctors covering their colleagues or through the provision of a Christmas Day level of service.

Proposals to include all patients requiring priority 1 and priority 2 elective care risk undermining workers' right to strike by requiring a level of service that could exceed that offered on non-strike days, such as weekends and bank holidays. This is highlighted to a degree within the consultation with the Government proposing that strike action lasting for more than 24 hours would need to include clinically significant services not provided for as part of a Sunday service. It is unclear how this would be in line with the ILO's emphasis that any limits on strike action in essential services "must genuinely and exclusively be a minimum service" and must be "strictly necessary to meet the basic needs of the population… while maintaining the effectiveness of the pressure brought to bear" by the strike.[26]

We are further concerned that requiring the covering of elective treatment on strike days, could present patient safety concerns if it results in insufficient staffing in urgent and emergency care, such as when theatre emergencies arise.

[26] International Labour Organisation, Chapter V. Substantive provisions of labour legislation: The right to strike

To what extent to you agree or disagree with allowing local clinicians to determine whether their patients fall under the categories for MSL outlined in the principles listed above during strike action?

Clinicians are undoubtedly best placed to determine how to ensure patient safety. However, this is best done through existing arrangements where clinicians can have meaningful input and decision-making power over how best to protect patient care, based on clinical need not politically imposed targets. Although clinicians may be best placed to determine whether a patient falls under such a category, it is unclear how this would interact with the power for the Secretary of State to define MSLs and employers to set work notices, which give little weight to the importance of expert clinical experience in determining how best to maintain patient safety on strike days.

If MSL regulations are introduced for hospital services, which types of employers should be specified to follow these regulations during strike action?

Given the BMA's opposition in principle to the introduction of MSLs, we do not believe any employers should be specified by MSL regulations.

Our opposition to these proposals in part stems from concern over the overwhelming powers for the Secretary of State to determine MSLs through regulations. The vast range of employers listed within the consultation as groups that could be named by the Secretary of State is incredibly concerning and indicates scope for overreach in setting MSLs. This could also have a considerable impact on the ability of a broad range of workers within the healthcare estate to take strike action.

To what extent do you agree or disagree that MSLs should not include community-based health services?

We are opposed to MSLs applying in any health settings as an unnecessary encroachment on the right to strike. As such, it follows that we strongly agree that MSLs should not include community-based health services.

Do you think there is an alternative option to introducing MSLs in hospitals, to ensure continuity of access to essential services and protect patients from risks to life and life-changing harm during strike action?

The BMA disagrees with the premise of this question as it is a principle among healthcare unions that strike action will be carried out in a way that ensures patient safety is protected. The alternative option is retaining the current system which includes strong protections in existing legislation to ensure 'life and limb' cover during strikes.

Instead of bringing forward unnecessary and unwanted proposals for MSLs, the focus should be on ensuring the current system works as effectively as possible. This means fostering good relationships between employers, unions and workers, not worsening them with the enforcement of MSLs and work notices.

Most importantly, the Government must focus on meaningful negotiation to address the root causes of strike action, rather than imposing heavy-handed legislation that risks damaging industrial relations further.

Trade union experience

Has your trade union called industrial action in any NHS hospital since December 2022?

Yes. The BMA has been engaged in strike action following overwhelming mandates delivered by junior doctors and consultants. Junior doctors took their first strike action in March 2023 and consultants in July 2023.

Considering the proposal for a hospital MSL and the draft code of practice on reasonable steps trade unions should undertake, how do you anticipate the time commitment for your union officials to take these reasonable steps will compare to the time currently spent working with NHS trusts or health boards in preparation for industrial action?

It is difficult to know how time-intensive requirements for unions to undertake "reasonable steps" to ensure compliance with work notices will be given the lack of clarity or guidance over how these processes will work. What is clear is that proposals for MSLs will create a significant additional burden on both unions and employers by requiring them to set up processes for issuing work notices, identifying members, issuing communications to all members and those subject to a work notice, policing picket lines, and for sharing personal data in a safe way.

Whilst discussions between employers and unions in the lead up to and during strike action can be resource intensive and frequent, these are critical to ensuring patient safety and fostering good relationships. They are a much more effective use of time than the unnecessary admin that will come with fulfilling the duties on both employers and unions imposed by the Act.

Do you anticipate that your trade union will incur new costs, either one-time or recurring, in implementing the reasonable steps as outlined in the draft code of practice?

The requirement to implement new processes for implementing the steps outlined in the draft code of practice risk significant resource and cost implications for the BMA.

These costs are unknown and difficult to measure or prepare for given the lack of clarity over how the proposals will operate in practice and when they will come into force, and the extent to which they will be dictated by employers and Ministers. The additional administrative burden and costs associated with implementing MSLs also risk reducing the resources available to hospitals in delivering patient care.

Public sector equality duty (PSED)

Are there groups of people, such as (but not limited to) those with protected characteristics, who would benefit from the proposed introduction of minimum service levels in some or all hospital services?

The BMA does not believe any groups would benefit from the proposed introduction of MSLs in hospital settings. Any interference with the right to strike risks resulting in failure to act on doctors' grievances, which could lead to more staff leaving the NHS, negatively impacting on patient care for all.

Are there groups of people, such as (but not limited to) those with protected characteristics, who would be negatively affected by the proposed introduction of minimum service levels in some or all hospital services? Which particular groups might be negatively affected and why?

A BMA report[27] found that two-thirds of doctors said that bullying and harassment was a problem in their main place of work because people are under pressure. Three-fifths said such behaviour is difficult to challenge as it comes from the top. Doctors feeling pressured and unable to raise concerns unavoidably has an impact on patient safety.

The imposition of minimum service levels exacerbates the risk of bullying and intimidation at the hands of poor employers who may use work notices to target staff or put undue pressure on staff to adhere to a work notice.

Our surveys of members during the covid-19 pandemic found that doctors from ethnic minority backgrounds were more likely to feel pressured to work without adequate PPE and were more afraid to speak out about safety concerns for fear of recrimination, or it affecting their careers. When health service provision is under similar pressures, such as reduced staffing through strike action, it is possible to extrapolate that there will be similar pressures placed on doctors with these protected characteristics.

Findings from our survey reports also show that doctors with certain characteristics face greater levels of bullying, harassment, and discrimination:

- 35% of disabled respondents said they experienced bullying because of their disability in their current place of work or study[28];
- 91% of women respondents had experienced sexism at work within the past two years[29];
- 76% of respondents experienced racism in their workplace on at least one occasion in the last two years[30];
- 43% of lesbian, gay, bisexual and queer respondents had directly experienced homophobia or biphobia, and
- 49% of trans respondents said they had directly experienced transphobia, at least once in the past two years[31].

Certain cohorts of doctors, such as SAS, International Medical Graduate (IMG) and locally employed doctors may be more likely to be targeted in work notices and at risk of bullying and pressures to work.

The medical profession is highly diverse and, recent data shows, increasingly reliant on IMG doctors. Currently, ethnic minority doctors make up over two fifths (42%) of all licensed doctors and account for almost two thirds (64%) of new joiners. As seen by complaints raised during recent strike action, there is a risk of IMG doctors being wrongfully pressured not to take strike action or risk their visa status.[32]

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[27] BMA (2019) Caring, supportive, collaborative: a future vision for the NHS
[28] BMA (2020) Disability in the medical profession
[29] BMA (2021) Sexism in Medicine
[30] BMA (2022) Racism in Medicine
[31] BMA (2022) Sexual orientation and gender identity in the medical profession

[32] BBC News, London NHS trust criticised after warning to striking staff on visas, 4th April 2023

SAS doctors who may be likely to be named in work notices are disproportionately likely to be ethnic minorities or IMGs. SAS doctors already face high levels of bullying and unsupportive work environments, and this could be exacerbated if they were subject to work notices in strike situations. Equally, Locally Employed Doctors might be under increased pressure to work on strike days due to the lack of a national contract.

It is also worth noting that International Medical Graduates are often employed on non-nationally agreed, local contracts, which can exacerbate these challenges. A survey carried out by the British Medical Association and the Doctors Association UK in 2022 of Resident Medical Officers (RMOs) indicated that these doctors experience very poor working conditions and are often employed on sub-standard terms and conditions. The survey showed a lack of support, threats, underpayments, racism, bullying and poor welfare in particular.[33] RMOs are predominantly ethnic minority overseas qualified doctors.

There are certain cohorts of doctors, including disabled doctors and doctors going through the menopause, who need individualised adjustments to their working patterns. BMA surveys have shown that currently these doctors are often treated less favourably, sometimes facing illegal discrimination. Imposing MSLs and work notices on strike days would inevitably exacerbate these issues for these doctors.

The BMA's 'Disability in the medical profession' report[34] found that disabled doctors and medical students struggled to get the adjustments they need and are entitled to, and the most common adjustment requested was flexible working. Our 'Challenging the culture on menopause for working doctors' report[35] found that a significant number of women senior doctors have reduced their hours, left management roles or intended to leave medicine altogether, despite enjoying their careers, because of the difficulties they faced when going through menopause.

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[33] BMA & DAUK RMO survey 2022 results summary
[34] BMA (2020) Disability in the medical profession
[35] BMA (2020) 'Challenging the culture on menopause for working doctors'