

Dr Jo Hilborne  
Chariman  
Junior Doctors Committee  
British Medical Association  
BMA House  
Tavistock Square  
London  
WC1H 9JP

11<sup>th</sup> October 2006

Dear Jo Hilborne,

**Re: Age Discrimination and MMC Transition period**

I have enclosed, for your information, a copy of a letter sent to Dr Sarah Thomas, Chair of COPMeD committee on selection and recruitment, and a member of the COPMeD UK MMC Strategy Group.

There are several issues that arise from the data presented to her specifically regarding surgery, however I wished to explore the issue of age discrimination with the BMA JDC a little more.

With regards to the paragraph below from the Employment Equality (Age) Regulations 2006:

**“Discrimination on grounds of age**

**3.(1)** For the purposes of these Regulations, a person (“A”) discriminates against another person (“B”) if

(a) on grounds of B’s age, A treats B less favourably than he treats or would treat other persons, or

(b) A applies to B a provision, criterion or practice which he applies or would apply equally to persons not of the same age group as B, but

(i) which puts or would put persons of the same age group as B at a particular disadvantage when compared with other persons, and

(ii) which puts B at that disadvantage, and A cannot show the treatment or, as the case may be, provision, criterion or practice to be a proportionate means of achieving a legitimate aim.

(2) A comparison of B’s case with that of another person under paragraph (1) must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.

(3) In this regulation

(a) “age group” means a group of persons defined by reference to age, whether by reference to a particular age or a range of ages; and

(b) the reference in paragraph (1)(a) to B's age includes B's apparent age.”  
*Excerpt from The Employment Equality (Age) Regulations 2006.*

The concerns of ASiT in relation to this new legislation are outlined under point 6 of the letter to Sarah Thomas. At the ASiT conference in March 2006, Mr Bernard Ribeiro, President of the Royal College of Surgeons of England, informed the delegates that current SHO's would not be allowed to apply to ST1 level in the application process for entry into specialist training. I questioned this in the open forum and stated that I felt that this was discriminatory to exclude people from applying on the basis of their age and stage in training, but was informed that people could apply, but would be excluded by the use of completion of Foundation training and foundation competencies in the person specification for that post. Upon reviewing the above legislation, and having reviewed many hypothetical situations presented in literature from other industries as to their interpretation of this legislation, I feel that this is discriminatory as these trainees, through no fault of their own cannot have achieved these competencies by virtue of their age (vintage of progression through medical school and early training in a timely fashion).

Therefore, I would be grateful to know if the BMA JDC have explored the possible legal ramifications of this legislation with regards to the implementation of the MMC programme, and whether this is something that may additionally help the current trainees caught in the transition process by opening up another level of training to which they can apply?

I appreciate that this may be a difficult and grey area, as we are talking about Age rather than experience, acknowledging that within each indicative year of training that there may be a wide spread of ages (eg if people have entered medical training late in life or have redirected their training after a period of time). Furthermore, the issue of whether someone is overqualified for a post is still an issue, and the implications of having grossly exceeded the person specifications for the level of entry needs further clarification.

Of interest, the letter to Sarah Thomas has already progressed far up the chain (within 2 days) to Dr Harry Burns, and the issues in this letter are going to be addressed at the next UK MMC Strategy Group meeting.

We would value feedback from the JDC as to whether this has been explored to date, and whether it is going to be explored legally. Obviously given the short time frame, the urgency of this is paramount, and I look forward to hearing your response.

Yours Sincerely,



Conor Marron  
*President ASiT*

c.c. Dr Andrew Rowland  
Mr Craig White  
ASiT Membership

Vice Chairman BMA JDC  
President BOTA  
via ASiT website