NHS Staff Governance Standard
BMA Scotland written submission, March 2017

The British Medical Association is a politically neutral registered trade union and professional association representing doctors from all branches of medicine. The BMA has a total membership of over 168,000. In Scotland, the BMA represents over 16,000 members.

We welcome the opportunity to provide written evidence to the Health and Sport Committee on the NHS Scotland Staff Governance Standard.

The Staff Governance Standard is one of the foundations that underpins Scotland’s partnership approach to employment in the NHS. The principles of that partnership are positive and are designed to ensure that there is genuine staff and trade union involvement and engagement in decisions affecting the operation of NHS boards.

However, while the principles of partnership working are commendable, there is still significant scope for improvement in the way that it is often executed in practice. In particular, NHS boards should do more to ensure that full and genuine engagement with partners takes place as early as possible in the decision making process.

It can often be the case that NHS engagement with partners takes the form of seeking validation of and support for decisions that have already largely been made, instead of involvement at an earlier stage when options are still being drawn up. This naturally can make it harder for NHS staff – whether directly or through trade union representatives – to affect the direction of board decisions than might otherwise be the case.

There is also a need to recognise that as NHS staff and financial resources are becoming increasingly stretched, it can be increasingly challenging for frontline NHS staff to find sufficient time to engage with decision making processes. This is likely to be an increasing challenge going forward as demands on the NHS increase further and boards should be actively seeking ways in which to ensure staff have sufficient time to engage in board decisions.

As well as doing more to live up to the broad principles of partnership working, there are also some specific actions that BMA Scotland believes are needed that would ensure NHS employers better live up to their staff governance responsibilities.

Whistleblowing and junior doctors

Patient safety should always be the priority in the NHS and staff have a responsibility to raise concerns if they believe that somebody’s safety is in danger. This is recognised and reflected in the Staff Governance Standard. It is also essential that such whistleblowers have legal
protection and have confidence that they will not face any detriment as a result of speaking out.

Under current legislation on whistleblowing, junior doctors have the right to take their employer to an employment tribunal if they do suffer any detriment as a result of their whistleblowing. However, junior doctors are in a unique position of being employed by a territorial health board while NHS Education Scotland (NES) have overall responsibility for their training.

As junior doctors are not employed by NES, they do not have the equivalent legal protection if they were to suffer detriment from NES as a result of whistleblowing that they would have if they were mistreated by the territorial health board that employs them.

NES play a significant role in the career prospects of junior doctors during the course of their training, including the provision of their national training number without which they cannot progress through their training.

In England, the BMA has reached agreement with Health Education England (HEE) that a junior doctor who whistleblows will now have legal protection from any action taken by HEE that has a detrimental effect on that junior doctor. HEE has agreed to take on legal liability for ensuring that whistleblowing trainees do not suffer detrimental treatment as a result of their action, giving junior doctors the option of legal recourse if any detriment was to take place.

BMA Scotland has asked NES to agree to equivalent protection for junior doctors in Scotland, but to date has been unable to secure such agreement. The current whistleblowing policy that NES has in place is not sufficient to give junior doctors the option of legal recourse in the event of mistreatment by NES.

BMA Scotland believes that this is one area where the NHS is falling short of what is expected of it in relation to whistleblowing, in line with the Staff Governance Standard.

**Clinician involvement in decisions**

In 2015, BMA Scotland commissioned researchers from the Universities of Dundee and Glasgow to carry out an independent study\(^1\) into the changing work experience of consultants in Scotland. This study saw researchers conduct in-depth interviews with 68 consultants in Scotland and a survey that was completed by 1,058 consultants (**% of the total consultant workforce in Scotland**).

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\(^1\) [https://www.bma.org.uk/collective-voice/committees/consultants-committee/scotland/reinvigorating-local-advisory-structures](https://www.bma.org.uk/collective-voice/committees/consultants-committee/scotland/reinvigorating-local-advisory-structures)
One of the major findings of this research was that consultants feel it is increasingly difficult to input effectively into local service development and clinical priority setting. This is having a detrimental effect on their sense of professionalism and autonomy.

As demands on the NHS in Scotland grow further, it is likely to become even more difficult for doctors to find sufficient time away from immediate service demands to engage with NHS board decisions if action is not taken. It is very difficult for senior medical staff in hospitals to take part in decision making in the NHS in Scotland. This is severely curtailed by many having only one supporting professional activity (SPA) session: this is four hours per week of non-clinical work – the bare minimum required to participate in the GMC registration requirements, making no provision for anything else.

Medical input into board decisions is important as it ensures that boards clearly understand the concerns of doctors and benefit from the input of clinicians who are working on the front line of service delivery. A clear ability to input into board decisions would also help to foster an atmosphere of mutual trust and respect between management and clinicians within the NHS.

Local medical advisory structures in each board area - such as the Area Medical Committee, Consultants subcommittee, Specialty subcommittee etc - are important vehicles through which clinicians can feed in their medical expertise to NHS board decisions in a way which is independent of management pathways. The existence of these bodies is a statutory requirement, but their activity and influence is patchy and varies greatly between NHS boards.

More should be done to reinvigorate these bodies and this will require NHS boards to take an active role in encouraging participation and engagement.

These issues also apply to the operation of HSCPs and IJBs. In most cases there is very little involvement of local GPs, and even less of doctors in secondary care. Senior doctors need to have much more meaningful input into decisions on service spending and development.

**Training and development of medical staff**

The continued erosion of support for CPD with reductions in study leave budgets, in the face of increasing costs of course fees as well as travel and accommodation, will have long term consequences for the training and development of medical staff.

**Health and wellbeing of medical staff**

The care and welfare of many medical staff are inadequate. This affects trainees with very long busy shifts, no proper provision of rest breaks, and overwork, all of which contribute to stress
and ill health. It is also an issue for senior medical staff in hospitals, who often cover long shifts
to plug gaps in trainee rotas with no proper provision of food or facilities to rest. In primary
care, the clinical workload is becoming unmanageable. Problems with recruitment and
retention of doctors in many specialties across the country are both a cause and an effect of the
stressful working conditions for doctors. The most recent ISD figures showed that 6.8% of WTE
consultant posts in Scotland were vacant, with 48% of those unfilled for over six months, while
and a recent BMA survey found that more than a quarter of GP practices had at least one
vacancy.