Guidance for hospital doctors not involved in industrial action

Please note this guidance relates to doctors in England only.

The BMA (British Medical Association) is a professional organisation that supports doctors in the continued delivery of the highest standards of care for patients.

BMA council has endorsed a proposal from the junior doctors committee for an escalated programme of industrial action by junior doctors in England in protest at the imposition of a new contract.

BMA members who are not junior doctors and who therefore have not been balloted should not participate in industrial action. The BMA is only calling on those of its members who are junior doctors to take industrial action.

BMA members who are not in the group balloted are advised to continue their normal duties and responsibilities, mindful that they may well need to adjust those responsibilities to the exceptional circumstances (see below for more on this).

The BMA is calling on all junior doctor members employed by an English NHS Employer to take industrial action against that employer. Such doctors are included within the mandate for industrial action that the BMA has obtained, whether or not they were BMA members and junior doctors at the time of the ballot (and thus balloted personally) or whether they have since become the same.

Why are junior doctors taking industrial action?
We have consistently and clearly asked Government for the key assurances we would need in order to reach agreement on a contract that is safe for patients, fair to doctors and good for service delivery. While progress was made on some issues during negotiations between the BMA, NHS Employers and the Department of Health, the Government’s final offer was not acceptable to members, who rejected it in a referendum held in July.

What action are junior doctor members being asked to take?
The BMA has called on junior doctors who hold an NHS contract in England (including hospital doctors, non-hospital doctors and GP trainees) to take industrial action against their NHS employer. Junior doctors will stage a full withdrawal of labour for five days during the following periods:
- 8am-5pm from Monday 12 to Friday 16 September
- 8am-5pm from Wednesday 5 to Friday 7 October, and 8am-5pm on Monday 9 and Tuesday 10 October
(A will not take place on the Saturday and Sunday)
- 8am-5pm from Monday 14 to Friday 18 November
- 8am-5pm from Monday 5 to Friday 9 December.
Junior doctors have a legal right to take part in lawful industrial action and you must not attempt to influence their decisions about this on or before the days of action.

**How do I plan for the day of industrial action?**

In the previous days of industrial action, the continued dedication and professionalism of senior and other doctors and fellow NHS staff helped to minimise disruption to the public and ensured that patients continued to receive high quality urgent and emergency care. We know that many junior doctors are grateful to their consultant and SAS colleagues for their support and engagement and the BMA echoes those sentiments.

Given that the action due to take place on will involve a full withdrawal of labour, the BMA recognises the need for careful consideration and planning for safe delivery of services. The BMA’s principal concern is helping to maximise patient safety and encouraging agreement between employers and doctors to facilitate this. We urge consultants and SAS doctors to continue to engage with local management to provide expert advice on maintaining safe and effective services. In turn, employers have a responsibility to work with clinicians to ensure staff are sensibly deployed and that a service can continue to run.

Discussions should take place in advance of the days of industrial action, both within your team and with trust management. Arrangements to cover emergency and urgent activity should be made first. Once those plans have been finalised, any doctors who are not required for that work would be available for non-urgent work or other activities.

NHS England have issued [guidance to Trusts](#) and you should refer to this to assist discussions.

In order to maintain patient safety, the BMA has also agreed a protocol with NHS England for use in the event of a major unpredictable event. This sets out the circumstances in which the BMA would encourage junior doctors to return to work on the day of industrial action.

**How can I help to ensure that a service remains safe?**

What follows are suggestions as to questions that you, the senior doctors in your organisations, can pose to your employers to help them test their planning for the days of full withdrawal of labour by junior doctors. This list isn’t exhaustive and you will want to adapt it to your locality.

- Has the list of services for which assurance is needed (produced by NHS England on XX) been considered, adapted and completed for local services?
- Has an appropriate person been identified to provide every emergency role in those areas including those normally provided by a junior doctor?
- Has everyone filling an emergency role in place of a junior doctor been briefed about their role and who else they will be working with?
- Has everyone filling an emergency role in place of a junior doctor been trained with any additional skills they might need (both clinical and administrative)?
- Have staff been briefed about the IA and the Trust’s response to it and how they can access emergency support for their patients during the IA (for example, which bleep numbers to use)?
- Has appropriate planning been carried out in elective care to work out what realistic levels of elective care can be provided without compromising emergency cover? That must include care for patients before, during, and after any procedures/operations.

**Can I be asked to undertake the duties of absent junior doctor colleagues?**

While you are under no obligation to prolong your working day to undertake work that has not been performed by colleagues taking industrial action, you still have a duty of fidelity and good faith to your employer and will need to provide reasonable cooperation during your working day. Doctors also have a responsibility for continuity and coordination of care, and for the safe transfer of patients between different teams. As always, you must ensure that you meet the professional obligations set out in the GMC’s [Good Medical Practice](#).

All doctors are expected to be flexible and to cooperate with reasonable requests to deputise for colleagues who are absent, where it is safe and practicable to do so. There is no absolute requirement to provide cover but your employer may well ask you to perform duties to cover for a junior colleague who is taking industrial
action. Unreasonable refusal to do so could result in your employer taking disciplinary action. It is hard to say in advance what constitutes a reasonable request or an unreasonable refusal to cooperate with such a request. Clinical safety, however, should be a key factor. For example, it would not be reasonable for an employer to ask you to perform all the duties of a junior doctor as well as your own for the whole day, to undertake work that you are not qualified or experienced enough to undertake (such as work in a completely different specialty) or to do anything else that may result in your being too fatigued, unequipped or overburdened to be working safely. Nor would it be likely to be considered reasonable for you to be asked to undertake non-clinical work that would distract you from your usual clinical activities. If you feel that you have been asked to do any of these things, you should raise this with the medical director.

If a patient is at risk, any refusal to cooperate in assisting that patient is likely to be considered unreasonable and you will be more vulnerable than if the request were to undertake work that was not clinically urgent or was not clinical in nature at all.

If you are covering the work of a junior colleague, you must remember that you are still employed as a consultant or SAS doctor but are working at a lesser level of skill or responsibility than you do normally. If you are expected to use systems, such as electronic prescribing or discharging systems, which you are unfamiliar with you should raise this with your employer who may provide training and support to consultants and SAS doctors.

Accordingly, you are not ‘acting down’: you are acting appropriately in response to unusual circumstances and are still paid at your usual level. You must be confident, nevertheless, that the responsibilities you have taken on are within your competencies. This may involve considering, for example, whether they are activities you have undertaken in the past as a junior doctor but with respect to which your skills have diminished due to lack of use or due to the methods of carrying out the activities having changed. With regard to what happens when the episode of industrial action finishes, please remember the importance of continuity of care and communication with colleagues, and the following guidance from the GMC’s Good Medical Practice:

You must contribute to the safe transfer of patients between healthcare providers and between health and social care providers. This means you must:

A. share all relevant information with colleagues involved in your patients’ care within and outside the team, including when you hand over care as you go off duty, and when you delegate care or refer patients to other health or social care providers1,2

B. check, where practical, that a named clinician or team has taken over responsibility when your role in providing a patient’s care has ended. This may be particularly important for patients with impaired capacity or who are vulnerable for other reasons.

If you have undertaken duties outside of your normal duties during the period of industrial action, you must be mindful of your duties with regard to ensuring continuity and good communication if handing back care to another doctor.

Can I be asked to cover an absent junior doctor’s duties, even if those are not emergency duties?

Yes because you are not taking industrial action. As above, you can be asked to undertake reasonable alternative duties by your employer.

Deferring work – your responsibility

As a consequence of industrial action, some work will not be done, and some will be deferred. This might include clinical or administrative work, and is due to the loss of NHS capacity during industrial action. While the NHS will need to consider how to catch up with lost capacity, you are not required to undertake extra work to catch up; the work that was postponed and still needs to be done should be fitted in within your usual hours on other days. If you have an annualised job plan which specifies a number of clinics (for example) to be done in a year, and you have to cancel one or more of these to cover the work of an absent colleague, then the total expected of you in the year must be reduced by that amount.

If you are being pressured to do extra work contact the BMA on 0300 123 1233 for advice and support.
What happens to my supporting professional activities (SPA) if I am covering the duties of absent junior doctors?

If you were due to be undertaking supporting professional activity (SPA) then that activity should be rescheduled for a later date. While there is no strict entitlement to this, we believe this to be a common sense solution which ensures valuable SPA time is not lost. Be aware that if you were scheduled to be, for example, doing a period of CPD, paid time must be made available in future for you to do that CPD.

Should I cancel my own clinical work – such as an outpatient clinic – to make myself available to cover absent junior doctors?

The responsibility for ensuring safe services rests with your employer. You and your colleagues may advise your employer which services can be safely run on a day of juniors’ industrial action, and which should be reduced or cancelled. You can also advise on which staff may need to be redeployed. But the responsibility for reducing or cancelling services and for redeploying staff is your employer’s, not yours.

I am usually required to give 6 (or more) weeks’ notice to cancel DCC activity such as a clinic – can I cancel without giving that notice to cover absent junior doctors?

It is not your right or responsibility to cancel your work in this situation. It is your employer’s responsibility and therefore you would not be giving notice as it would be your employer making the cancellation.

What rate of pay should I be given if asked to cover the duties of absent juniors?

If you are asked to cover work during your normal working hours, then you will already be being paid for that time (but see the answers above regarding shifting cancelled activity). You are under no obligation to work beyond your normal contracted hours. However, if you agree to do so, you must be paid, and that rate should be locally determined.

What should I do if I am asked to cancel pre-booked leave?

You should seek the advice of your LNC who will have access to BMA advice and support. Alternatively, you can get in touch with BMA advisers directly on 0300 123 1233.

How can I show my support for junior doctors?

The most important thing you can do is show moral support and not obstruct or discourage junior colleagues in their legitimate right to take industrial action, but without in any way compromising your own position as a professional and an employee not directly affected by the dispute. You will be informed of any further guidance as this situation develops.

If you have further questions, please call 0300 123 1233.

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