

## Our decision on balloting academic trainees in England

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In balloting junior doctors for industrial action, the BMA is legally obligated to ensure that only junior doctors who are eligible to take part in any industrial action are balloted. By making every reasonable effort to ensure that only eligible members take part, the BMA can minimise the threat of a legal challenge to the ballot and any subsequent action. At the same time, we want to make sure that every eligible member is able to take part.

The contractual position of academic trainees is complex, and we have sought considerable legal advice in relation to who is eligible to take part in the action and to include in the ballot.

### The definition of academic trainees

Academic trainees are junior doctors that also have an academic component to their training. In the early stages of the training pathway, they are employed by the NHS but, as they progress, they move to being employed by a university.

Academic trainees employed by a university will also often have an honorary contract with an NHS employer. The university contracts of employment are not of a uniform standard form. However, it is not unusual for those contracts or the related job description to include terms which require the academic trainee to perform various obligations in relation to their honorary NHS contract.

### Deciding who to ballot

If all medical academics were indiscriminately included in the ballot to participate in industrial action affecting their NHS employer, this would risk giving rise to secondary action against a non-NHS Employer. The BMA would run the risk of inducing academic trainees to act in breach of their substantive university contract. As the BMA is not in dispute with the university employers, it would also not have complied with the ballot notification requirements laid down in law.

If all academic trainees were not included in the ballot, this would extinguish the risk of challenge but would have unfairly deprived all medical academics regardless of potential eligibility.

The BMA is not in dispute with the university employers that are responsible for determining rates of pay for medical academics, but with the Secretary of State for Health and Social Care with whom the BMA has registered a trade dispute. Junior doctors can only take industrial action against an NHS employer. Therefore, to safeguard the ballot appropriately, the decision was made that academic trainees employed by universities cannot take action and so cannot be balloted.

There is an agreement between the BMA, the Universities and Colleges Employers Association ('UCEA'), and the BDA, which paves the way for pay parity between academic doctors and their NHS counterparts. We have received legal advice that this agreement alone is not sufficient to establish the necessary connection between NHS pay rates and the pay rates of medical academics for the purpose of including universities within the scope of the current trade dispute relating to NHS pay rates. It is also the case that not all universities are bound by the agreement reached with UCEA.



**Below we detail who will and will not be balloted and the reasons why:****Academic trainees employed by the NHS (often with an honorary academic contract)**

This group will be balloted. If the ballot is successful, these academic trainees can only take action in relation to their NHS activities. Their academic responsibilities will continue as normal. This will bring 'Specialised Foundation Doctors' and 'Academic Clinical Fellows' within the scope of the ballot and industrial action as they are employed substantially on the 2016 junior doctor contract.

The honorary academic contracts we have seen and been able to give advice on do not provide specific NHS action and therefore a member would not be in breach should they not perform NHS duties. If you feel though your honorary contract does include NHS duties, please contact our member relations team at [support@bma.org.uk](mailto:support@bma.org.uk).

**Academic trainees employed by universities and without an honorary NHS contract**

To safeguard the ballot appropriately, as academic trainees wholly and only employed by universities do not undertake work in the NHS they cannot take action and cannot be balloted.

**Academic trainees employed by universities and with an honorary NHS contract**

This group will not be balloted. This is based on concerns that their substantive university contract could require these trainees to work in the NHS (and that not to do so would be a breach of that contract), we decided that this group should not be balloted. This means they cannot take and industrial action.

This decision was based on the risks to the integrity of the ballot if they were included and to individual trainees if this group took part in industrial action. This will cover academic clinical lecturers and most clinical research/doctoral fellows funded through national schemes as OOPR.

**Clinical fellows (such as those delivering undergraduate teaching) and research fellows employed by the NHS in contracts that mirror the junior doctors contract and who may also have an honorary contract with a university:**

This group will be balloted and can take part in industrial action.

**Clinical fellows employed by universities:**

This group will not be balloted and cannot take part in any action under their contract with the university.

They might be able to take part in industrial action if they have a separate NHS employment contract that mirrors the junior doctor contract (eg for 'out of hours' work). They would only be able to take action against that contract. They would not be able to take action during their academic time.

**Further advice**

Further advice will be provided on what trainees who are not being balloted can do on the days of action to support the action and on whether they can refuse to be redeployed.

If you are not being balloted as a result of these decisions and you feel you are eligible, please contact our member relations team at [support@bma.org.uk](mailto:support@bma.org.uk).

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