INDUSTRIAL ACTION FOR JUNIOR DOCTORS - DECEMBER 2015

FREQUENTLY ASKED QUESTIONS

What is the dispute about?

The dispute is in relation to the Government’s contract offer to doctors in training following a breakdown in negotiations between the British Medical Association (BMA) and the Government. The Trust has no influence or control over policy decisions taken about the pay and contractual arrangements for doctors in training through a nationally determined contract framework which are essentially matters for central government.

Who is involved in the dispute?

The BMA have balloted junior doctor members (doctors in training). No other unions or staff groups are involved in the dispute.

What action is the BMA taking?

The BMA has recently balloted junior doctors on taking strike action and action short of a strike.

Now that the outcome of the ballots is known what happens next?

Industrial action will take place on 3 dates in December.

The BMA has said that action will begin with emergency care-only model provision on Tuesday 1 December 2015 between 8.00am and 8.00am on 2 December 2015. This will see junior doctors provide the same level of service that is delivered in their given specialty, hospital or GP practice on Christmas Day.

The industrial action will escalate to a full walk-out by junior doctors on Tuesday 8 December 2015 and 16 December 2015 between 8.00am and 5.00pm.

What is the Trust doing to prepare for the industrial action?

The Trust is engaging with its regional BMA representative and the Chair of the Local Negotiating Committee (LNC) to ensure that patient safety is not compromised during the period of industrial action. We are currently working with senior clinical leaders in developing and refining our planning, to ensure all our inpatients as well as emergency and urgent admissions are looked after safely and appropriately during any industrial action
What communication will take place with patients about the industrial action?

A decision will be made by the Executive Board about the level of activity we can cover during the period of action. Where any elective surgery or outpatient clinics are cancelled we will be writing to patients to inform them and will share information via the local press. We will also reassure any patients who continue to attend that they will receive safe, effective care.

What is the position if I want to work on the day the strike action takes place?

The Trust recognises that individual junior doctors have the right to decline to take part in the industrial action. Individuals who wish to work will be given full support by the Trust. It is possible that picket lines will be formed at Trust premises. If there are picket lines these will be formed at the entrances to Trust sites and will be organised and good natured allowing access to sites, services and/or places of work for those who require it. Pickets are not allowed to stop people or vehicles and lawful picketing involves only peaceful communication of information and peaceful persuasion. There should not be more than 6 pickets at any entrance.

Can I take part in industrial action even if it means that emergency or life-saving care is put at risk?

The General Medical Council (GMC) has issued guidance to its members on this matter which can be found here. The GMC’s ‘Good Medical Practice’ says that doctors must make the care of their patients their first concern. They should take reasonable steps to satisfy themselves that arrangements are in place to care for their patients and should not disrupt the arrangements the Trust has made. Doctors have a responsibility for continuity and coordination of care, and for the safe transfer of patients between different teams. Their actions must not harm patients or put them at risk.

The Trust will discuss with the BMA and Chair of the LNC specific arrangements for critical and emergency care services particularly for the walk out action on 8 December 2015 and 16 December 2015. This could include such areas as critical care, A&E, stroke, maternity, radiology and oncology.

Will I be paid if I participate in industrial action?

Colleagues who participate in the provision of ‘emergency care’ from 8am on Tuesday 1 December to 8am Wednesday 2 December 2015 will be paid as normal for this period. However, where normal working is disrupted or partly performed due to industrial action the Trust may decide either to abate normal pay in proportion to the reduction in duties undertaken or determine that anything materially less than full performance of contractual duties is not acceptable and pay in full will be withheld.

Colleagues who participate in action on the 1 December 2015 and/or participate in the full walk out on 8 December 2015 and/or 16 December 2015 will not be paid if they are contracted to work between the hours of 8am and 5pm on these dates.

Will I only lose nine hours pay if I participate in industrial action on 8 and 16 December 2015?

You should be aware that like other Trusts, we will be treating the strike action as non-performance of the contract of employment. Colleagues who go out on strike will not be paid for any hours not worked. Pay will be deducted at your usual contractual hourly rate.
Will I be entitled to my break at the normal time after I return to work after participating in strike action?

You should discuss this with your line manager, however, if you have been participating in strike action between 8am and 5pm and then report to work you would not normally be entitled to a break until you have worked six hours.

How will the strike affect my pension?

For colleagues participating in action on the designated dates the hours will be non-pensionable and will not count as membership for calculating benefits.

How will the Trust deal with medical staff who report sick on the day of the strike?

Except in cases of recognised continuing sickness absence, the Trust will require medical evidence in support of any claim for sick pay from ALL medical staff not just junior doctors who report sickness absence on any strike day. Pay will be withheld where the evidence is absent or there is a failure to provide satisfactory evidence. Colleagues reporting sickness absence on a strike day will be required to attend a return to work interview.

What if I do not want to cross a picket line?

Anyone who wishes to do so is entitled to cross a picket line. Colleagues who refuse to cross a picket line, or otherwise fail to attend their place of work on an industrial action day will be regarded for pay purposes as participating in the industrial action regardless of whether they have been balloted and called upon to strike.

As a general principle, unauthorised absence on a strike day will not be paid.

Will I be able to take annual leave or unpaid leave?

Requests for annual leave and lieu days granted on or before 18 November 2015 will be paid in the normal way. Any request submitted after 18 November 2015 for leave on a strike day will not be granted. The Trust will need as many staff as possible to attend work to avoid disruption to services. This applies to ALL medical staff.

What is happening to study leave on the strike days?

No new study leave requests will be approved for 1, 8 and 16 December 2015 respectively. At this stage there are no plans to cancel planned study leave although this may change as the Trust develops its plans for the designated industrial action days.

Can the Trust use locum or agency doctors?

The Trust can continue to use locums and agency doctors already working in a post for which they were engaged. They should not however, be specifically re-deployed to the duties normally performed by those taking part in industrial action. Instead, they should be left in their role with substantively employed colleagues not participating in industrial action being moved to cover any staffing gaps. It is a criminal offence for the Trust to use agency workers to cover for striking employees. This prohibition does not apply to bank workers, if they are already engaged by the Trust on a bank contract. In this regard, the Trust is looking to engage bank workers to support the service on the industrial action days.
Can bank workers be used?

Bank workers can be used to support areas where there is a shortage of staff and will be dependent upon individuals skills and experience. The same applies to volunteers.

Can the Trust redeploy Consultants or SAS doctors to cover junior doctor colleagues?

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. The Trust may ask those medical staff not participating in industrial action to perform duties to cover for a junior doctor. Clinical safety will be a key factor. For example, the Trust will not expect a Consultant to perform all the duties of a junior doctor as well as their own for a whole day, to undertake work that they are not qualified or experienced enough to undertake and the responsibilities are within their competencies.

Can I refuse to work in another area?

It is a contractual requirement that colleagues can be required to work in a different area where there is a service need. 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 and should provide reasonable cooperation during your working day. Unreasonable refusal could result in disciplinary action.

Will I be expected to work in areas which are not my normal place of work?

Depending on service need colleagues may be required to work in areas which are not their normal place of work. Clinical safety will be a key factor and you will not be expected to work in a completely different specialty or undertake work that you are not qualified or experienced enough to undertake.

If I am redeployed to another area will I be reimbursed for additional travel costs?

Colleagues will be able to claim excess travel costs that they incur if they are redeployed to another area due to service need. These will be the difference in either mileage or public transport costs between those incurred on their journey to and from their normal place of work and those incurred on their journey to and from the area to which they are redeployed.

Alternatively and wherever possible, the Trust’s free shuttle bus service should be used.

What happens if my normal work start time is at or before the strike action starts at 8.00am on 8 and/or 16 December 2015?

Strike action will take place on 8 and 16 December 2015 commencing at 8.00am and concluding at 5.00pm.

Where an employee starts work before strike action commences they may choose to be on strike from 8.00am on the strike day.

It is expected that colleagues whose shift continues beyond the end of the strike time will attend for work and complete the remaining part of their normal working hours on the day.

If an employee does not report for work after the strike action has ended they will be classed as being on unauthorised absence.
What should I do if my normal start time is at or after 5.00pm on 8 and/or 16 December 2015?

You will be expected to attend for work as normal.

What will happen if I attend for work on a strike day but join the strike action without completing my full working day?

You will not be paid for the hours that you do not work. In exceptional circumstances, where normal working is partly performed due to industrial action the Trust may determine that anything materially less than full performance of contractual duties is not acceptable and pay in full will be withheld.

Can the Trust request confirmation from me as to whether I intend to take strike action?

The Trust does intend to speak to junior doctors and other medical colleagues about their plans for the industrial action days in order to make arrangements for service continuity and patient safety. As long as there is no coercion or harassment, there is no legal restriction on steps taken by the Trust to persuade colleagues to attend work on the strike day.

If I have annual leave already approved and I am not participating in the planned industrial action, will I be able to take it?

In terms of pre-booked annual leave, you may be approached by the Trust to establish if you are willing to cancel your leave and attend for work where it coincides with the industrial action days. Wherever possible, the Trust will try to allow you to take the leave as planned but patient safety and care is paramount in any decisions reached. At this stage, there are no plans to cancel annual leave.

Will I be able to attend a pre-booked study day that coincides with any of the industrial action days?

If you are a junior doctor and are due to attend a study day either in the Trust or externally, you will need to provide the Trust with confirmation of attendance. Failure to provide this confirmation will result in you not receiving pay for that day. At this stage there are no plans to cancel planned study leave.

Will meetings be cancelled that fall on industrial action days?

It is likely that all non-essential meetings will be cancelled during the 3 days of action, including the audit day which coincides with the industrial action day on 8 December 2015.

What are the rules for picketing?

The BIS Code of Practice sets out the legal framework pertaining to picketing during periods of industrial action and good practice associated with it. The Code provides practical guidance on picketing to facilitate the management of peaceful and orderly picketing that does not disrupt access to sites, services and/or places of work. The Code can be found here. The Trust does not anticipate any problems arising from colleagues being present on picket lines if they occur.

What happens if a non-union member decides to take strike action?

A non-union member who refuses to cross a picket line on the day will enjoy the same statutory protection as members of the union which has organised the strike action in the workplace. Colleagues joining the strike action will not be paid for any hours that are not worked.
What is the position for members of other unions?

As these unions have not balloted for industrial action members cannot legally be called out to participate in the strike or action short of a strike.

Can BMA members who have not been balloted take part in the industrial action?

BMA members who are not junior doctors and have not been balloted should not participate in industrial action resulting from the ballot as only doctors in the group balloted are given the protection from dismissal that the law offers. The BMA’s Guidance for hospital doctors not involved in industrial action can be found here.

What will happen to my SPA time when it falls on the industrial action dates?

The Trust will need as many medical colleagues as possible to be in work to ensure there is no impact on patient care or safety. Therefore, it is expected that you will convert your SPA time into direct clinical care on the days of industrial action and your SPA time will be reallocated to you.

What restrictions are there for colleagues who are working but intend to take part in activities supporting strike action?

This will depend on the nature of the activity. The Trust will not prevent colleagues from attending peaceful demonstrations during non-working hours (e.g. lunch breaks) but will not allow those demonstrations to take place on Trust premises.

What communication will take place with patients about the industrial action?

A decision will be made by the Executive Board about the level of activity we can cover during the period of action. Where any elective surgery or outpatient clinics are cancelled we will be writing to patients to inform them and will share information via the local press. We will also reassure any patients who continue to attend that they will receive safe, effective care.