

Industrial Action: 2023

FAQs

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Overview

The Trust recognises that this period of industrial action is in relation to an ongoing dispute between the Unions and government as regards national pay awards and government. The Trust fully recognises and respects employees' legal right to participate in industrial action and acknowledges the fact that this is not a decision anyone takes lightly. The Trust is fully committed to ensuring its patients are safe and that staff safety, welfare and dignity are not jeopardised during industrial action.

Consequently, the Trust will continue to work in partnership with our recognised trade union representatives to develop contingency plans which will seek to ensure that we continue to be able to respond to life-threatening or emergency situations.

These FAQs are designed to provide answers to some of the more commonly asked questions related to industrial action. Individual Trade Unions also have FAQ's and resources available to their members.

Frequently Asked Questions

1. Who can take action?

In order to take part in this industrial action you need to hold a contract of employment with an NHS employer. You cannot take industrial action against a non-NHS employer. Post-graduate doctors in training are not a single entity and therefore the following additional advice is provided:

- Junior doctors acting up as Consultants - You can take industrial action if you have an NHS employer and are on the 2016 Terms and Conditions of Service for Doctors and Dentists in Training (2016 TCS). If you are employed as a locum consultant on other Terms and Conditions of Service, you cannot take industrial action.
- Overseas junior doctors can take industrial action if they have an NHS employer
- Trust grade junior doctors can take industrial action if they are on equivalent terms and conditions of service to the 2016 Terms and Conditions of Service for Doctors and Dentists in Training (2016 TCS).
- Locally GP Trainees have a single lead employer contract and therefore can take industrial action.
- Locum junior doctors - If you are not directly employed by an agency, then you are regarded as self-employed. The usual legal position regarding self-employed persons is that they are free to accept or reject offers of work as they see fit.
- Clinical Fellows You can take part in industrial action if you have a contract that mirrors the 2016 TCS. You cannot take part in industrial action if you are employed by a university under a university contract.
- Dental Trainees - Doctors with a specialty in dentistry or oral and maxillofacial surgery ('dental trainees') on the 2016 TCS can strike on the days the BMA has called for strike action if they are BMA members or non-members.

2. Can the Trust ask me if I intend to take part in the strike?

The Trust, through managers or some form of survey, may want to ask staff if they intend to strike during the mandated period of action, so that they can establish the impact upon the service. This is an acceptable approach, but the following points will be taken into account to avoid any possible claims of victimisation linked to the proposed national industrial action:

- Staff should not be asked as part of an open meeting to share their intentions.
- Staff will not be contacted at home on rest days or annual leave/sickness.
- Staff should not be asked to indicate by a show of hands if they will be on strike.
- Staff should not feel coerced to report for work on strike days.
- Managers can ask staff, on a one-to-one basis, if they intend to report to work, acknowledging that even if they indicate that they will be working they might change their mind on the day.
- The Trust can issue an electronic survey or letter to ask what people intend to do. Where individuals choose not to answer, the Trust or manager concerned should assume that the individual will be on strike and plan accordingly.
- Regardless of the methods used by the Trust, staff have the right **not** to answer these questions and will not be at detriment if they choose to not respond.

3. What is included in the action?

The industrial action includes a full withdrawal of work from 07:00 Monday 13th March to 07:00 Thursday 16th March. Emergency care settings are included in the strike. During this period it is the responsibility of the Trust to arrange cover to ensure patient safety. At the time of writing of this information no derogations have been agreed.

4. I'm a GP Trainee what action can I take?

Legally, a GP trainee must picket at or near their place of work. They are not able to picket at a place that is not considered their place of work. However, a GP trainee is not barred from taking part in a protest that takes place near to a hospital or other NHS building. For GP trainees working in a practice setting, rather than picketing your practice workplace we would encourage you to join protests outside of local hospitals on strike days. This is because the dispute is with the government and not GP practices.

There should be no changes to or cancellations of the educational element of your rota during any industrial action. This position is supported by GPC England, who are advising practices not to make any changes to the educational element of GP trainees' rotas on days of planned action.

5. What does the GMC say about industrial action?

The GMC emphasises your legal right to take industrial action. It is important you are clear on the GMC guidance on the duties of a doctor. This guidance is not removed or modified by taking industrial action.

The guidance in Good Medical Practice states the doctor has a duty of care to ensure the safety of patients to whom they are delivering care. This duty extends to ensuring that reasonable steps are taken to achieve the safe hand over of patients under their care.

A doctor who has properly handed over care of his or her patients cannot be said to be under a professional obligation enforceable by the GMC. The GMC acknowledges that during industrial action doctors' employers will have a vital role in planning and preparing for how patients will be cared for.

6. How should I notify the Trust if I intend to strike?

If you intend to strike we would be grateful if you could let your medical staffing rota coordinator know through normal contact channels.

On the day of strike if you do choose to participate and you do not attend for work then you will be recorded as participating in the strike action. If you are sick on the day of strike action please see separate FAQ below.

For any colleagues that chooses to not participate in strike action and to attend for work then on the days of action there will be agreed muster points that colleagues will need to report to (see FAQ below)

7. How will the Trust maintain records of staff participating in strike action?

Article 5 of the UK GDPR sets out the seven key principles which lie at the heart of the general data protection regime. In line with the Records Management Code of Practice 2021 and UK GDPR 2018, records will be maintained lawfully and confidentially, for the specific reason this is collected. In practice, records of staff striking will be held on ESR as a reason for absence.

8. If I choose to take part in the industrial action what will happen to my pay?

If you are due to be on shift and take industrial action you will not get paid. In line with the 2016 TCS your pay will be deducted at 1/365th of salary for every day you take action (or for the number of hours if you strike for less than a day). There are however some exclusions from this as identified below:

- If your roster schedules you for a zero day on the days of industrial action you will receive pay for those days.
- If you are on previously approved annual leave you will receive pay for that period.
- If you are on approved Study leave then you will receive pay for that day, however, if you choose not to complete activities to meet your objectives of study this time will not be re-provided at a later date.

9. When will any deductions be taken from my salary?

Deduction from pay will be made from your March salary but this may potentially extend to April depending on any delays to notification.

10. I'm due to go on maternity leave, will my maternity pay be affected?

Where industrial action falls within the pay assessment period for maternity pay, calculations can only take account of pay that was actually received. Therefore, if your pay was deducted due to you taking strike action this will affect your level of maternity pay.

11. What will the impact on my pension be if I choose to strike?

On the days you choose to strike, then neither your pension contributions, nor the pension contributions the Trust makes on your behalf will be made.

12. What happens if I am ill on the day of a strike?

You should follow the normal sickness absence reporting procedure by calling Empactis on 0330 8080027, failure to do so will lead to an assumption that you are on strike and pay for the day will be deducted. You will be expected to attend a Return to Work interview with your manager when you resume work.

13. If I choose not to take part in a strike but I am unable to attend work for another reason e.g., childcare as the schools are closed, will I still lose a day's pay?

In line with the Trust's Special Leave Policy, whether the special leave is paid or unpaid is dependent on the circumstances as outlined in the policy. You must report all instances of special leave via the Empactis automated absence line or complete the absence monitoring form on the Policy. Requests for special leave for other reasons e.g., bereavement, domestic emergency etc. will be considered on a case-by-case basis in line with the Trust's policy. Unauthorised leave will not be paid.

However, the Trust's Special Leave Policy does not cover planned absence and, if we know in advance that care arrangements are to be affected, you should plan for alternative childcare arrangements to be in place so you can attend work.

14. I have a hospital/doctor/dentist's appointment during the strike action, am I still able to attend?

If you have a pre-arranged appointment i.e., arranged prior to dates of industrial action being announced, you may attend providing you are able to show evidence of the appointment to your line manager. However, you should be aware that this industrial action is a national dispute so services at other NHS providers may be impacted. You should check with the hospital/ doctor/ dentist prior to your appointment date to confirm the service is still going ahead.

15. If I decide to not take part in the industrial action what should I do?

If you are due to work during the time of the strike action and are choosing not to take part, please report for work as rostered.

For those doctors in training working in an acute setting in order to ensure we know who is working and to enable you to be deployed appropriately we are asking you to report to a central muster point on each site. For Pinderfields Hospital the muster point will be on the mezzanine level in the canteen area, for Dewsbury Hospital this will be the Clinical Site Manager Office at the end of the Link Corridor. Representatives from Medical Staffing will be present to record your attendance and you will be deployed to a clinical area from there.

For those doctors in training in a primary care setting you should report for work at your placement practice as normal.

It is important that you follow these instructions to register your attendance as for payroll purposes we will assume doctors in training are taking part in the action unless their attendance has been registered on the day.

16. If I decide not to take part in the industrial action can I be asked to work at another site?

Cover may be needed on a different site to that where you normally work and so it is possible you may be asked to agree to work on a different site in order to address patient safety. You may be asked to undertake alternative duties to support the organisation's business critical functions. Any assigned duties should be within your competencies. The assignment of any alternative duties will be in discussion with the member of staff. Wherever possible duties will be allocated within your specialty or division of placement/rotation.

17. What will happen if pickets try to stop me from coming into work?

We expect that people on the picket line will behave in a responsible way. They have a right to peacefully persuade anyone who is willing to listen.

They are not allowed to:

- Use threatening, abusive or insulting words or behaviour, or disorderly behaviour within the sight or hearing of any person – whether a member of staff or the public.
- Use or threaten violence.
- Obstruct roads or entrances to the hospital or other Trust sites.
- Try physically to bar the passage of vehicles or persons by lying down in the road, linking arms across or circling in the road.
- Jostle or physically restrain those entering or leaving the hospital site or other Trust sites.
- Intentionally or recklessly cause damage to property.
- Physically obstruct a vehicle if a driver decides to drive on

Drivers driving into hospital premises on the day of a strike are asked to exercise extra due care and attention when approaching or driving past a picket line and should not drive in a manner as to give rise to a reasonably foreseeable risk of injury.

Any member of staff who is obstructed or intimidated by pickets on the day of the strike or witnesses inappropriate behaviour towards other members of staff or patients/members of the public should report this to their manager or contact Human Resources. Similarly, members of staff who cross picket lines to come into work will be expected to refrain from using threatening or abusive language towards the pickets.

If you have any queries about the industrial action please contact your manager.

Members of staff who might be concerned about coming into work on a strike day are advised to make arrangements to come into work with a colleague or a number of colleagues on that day. Anyone concerned about crossing the Picket line and requiring support or advice should contact their Medical Staffing Rota Coordinator.

18. If I choose to strike, will I be allowed onto Trust premises those days?

Yes, it has been agreed with the Local Negotiating Committee that to support staff health and wellbeing they will be able to access welfare facilities during any period action. However, picketers must not approach people whilst on Trust sites to persuade them to join the industrial action or offer opinion on them working and likewise we would not expect any member of staff on the premises to offer comment on the staff member taking industrial action. This will help respect the wishes and rights of all staff whether taking part in industrial action or not.

19. What will happen in the event of a major unpredictable incident?

A major unpredictable event could take a number of forms. For example, a major accident or security incident. In these circumstances you would have to go back to work. In the event of the need to declare a major incident the Trust has in place arrangements with the BMA for any such request to be considered.

20. Can staff speak to the press if they are approached during periods of action?

During this period of national industrial action, it is very important that the Trust is not seen to take a position that may jeopardise national discussions. Therefore all requests should be referred to the Corporate Communications team to make sure our communication are clear and consistent.

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