

FAQs about the junior doctors' dispute

1. Why are we going back to industrial action?

In December 2015, the BMA suspended the industrial action and the government suspended their plans to impose a new contract, so that we could negotiate. Unfortunately we have been unable to reach agreement on some major points in sufficient time. Therefore despite our best efforts we cannot agree to a new contract and must lift the suspension of the industrial action.

2. What was the outcome of the negotiations?

We could not reach agreement on some key points. These centre on the boundaries for plain and premium time, and punitive rates for exceeding working time regulations.

3. Are we going to be balloted again? If not, why not?

No, when the action was suspended in December, it was with agreement that the ballot results would remain valid for a further 4 weeks. Therefore there is no need to re-ballot members.

4. What action are we taking?

Similar to the last proposal for action, we are planning to start with the emergency care only model and will follow with a full withdrawal of junior doctors labour if required.

5. When are we taking action?

The plan for action is as follows:

- 8am on Tuesday 12 January 2016 to 8am on Wednesday 13 January 2016 – Emergency Care only
- 8am on Tuesday 26 January 2016 to 8am on Thursday 28 January 2016 – Emergency Care only
- 8am to 5pm on Wednesday 10 February – Full withdrawal of junior doctors labour

6. What does the action mean for me?

If you are an eligible junior doctor (and a BMA member) and are rostered to provide emergency care on any of the days of 'emergency care only' action, then you should go into work and perform your duties as normal.

If you are an eligible junior doctor (and a BMA member) and are rostered for a shift which does not require you to provide emergency care, then you should not go into work.

If you are not rostered to work on the days of industrial action then you should not go into work.

No eligible junior doctor (who is also a BMA member) should attend work on 10 February between 8am and 5pm)

7. What will we actually be doing on the day(s) of action?

The industrial action is the act of not providing duty as assigned by your employer. However, the BMA is providing support for pickets of worksites across England from 8am to 12:30pm on the days of action (contact your IRO or regional JDC for details).

We are aware that other activities are being arranged locally and so we advise you contact your local or regional junior doctor reps for local activities.



Background

8. What is the dispute about?

After 2 years of negotiating the BMA withdrew from negotiations in October 2014 because the contract on offer would not have provided sufficient safeguards for junior doctors and their patients – either today or in the future.

The government asked the DDRB to undertake a review and provide recommendations for a new contract. We could not agree to the unsafe and unfair preconditions proposed in the recommendations, and so the government said they would impose a new contract from August 2016.

We have consistently and clearly asked Government for the key assurances we would need in order to re-enter negotiations. In the November ballot on industrial action, more than 99 per cent voted in favour of industrial action short of a strike, and 98 per cent for full strike action.

Following conciliatory talks through Acas, the BMA and the government agreed to suspend the industrial action and the threat of imposition for a four week period to see if we could reach a negotiated contract. This has not been possible and so we have lifted the suspension and are returning to industrial action.

For the full background, visit our website where there is much more information about what has happened so far, including the recommendations, analysis and how we've got here.

9. What are the government's plans for imposition of a contract?

On 4 November 2015, the government released a revised contract offer, confirming the plan to go ahead with the imposition on junior doctors in England, from August 2016. The contract is not substantially different to the recommendations from the DDRB, and leaves many of our key concerns about safety and fairness unrecognised:

The contract would be based on basic pay (up to 40 hours per week), rostered hours (up to eight hours per week, on average) paid at the same rate as basic pay and an unsocial hours premium – with an increase in the level of basic pay (from the current banding envelope).

Pay would be based on stages of training and actual progression to the next level of responsibility, evidenced by taking up a position at that level, with 6 pay grades.

Plain-time would be extended to 7am-10pm on weekdays and 7am-7pm on Saturdays.

A higher rate of pay for 10pm-7am weekdays, 7pm-7am Saturdays and all days Sunday.

The end of banding safeguards and banding payments

Retrospective changes to remuneration could be considered, although only in exceptional circumstances, for doctors who are required to work over their rostered hours

Flexible pay premia would be introduced to address recruitment shortages in three specialties – general practice, emergency medicine and psychiatry, to make up for the proposed removal of the GP trainee supplement, and to make up for proposed removal of pay protection and progression for those taking time out for research.

An on-call availability allowance, with payment for work done while on call, to replace hours-based pay for non-resident on call duty

Current junior doctors would receive pay protection to ensure they do not receive a pay reduction, however new junior doctors would receive a lower rate of pay than their current junior doctor colleagues.

Junior doctors who are at ST3 or above would transfer to the new contract but would remain under the current pay arrangements (i.e. on the banding system and on the automatic pay progression model). It is not clear how this would work alongside the new pay system.

Read the full contract offer [here](#), as well as the BMA response to this latest contract [offer](#).

10. Who will have the contract imposed on them?

The government plans to impose the contract on all junior doctors in England from August 2016.

11. What does the BMA hope to achieve from industrial action?

Our aim has always been to secure a contract that is fair for junior doctors, safe for patients and supports a sustainable future for the NHS. Industrial action, which is always a last resort, is undertaken to demonstrate the strength of feeling within the workforce. We hope that the government will see that the profession is united in opposing the imposition of a contract and will work with us, to develop a workable solution.

12. Are Scotland, Wales and Northern Ireland included?

The Scottish government has stated that they would not impose a contract on junior doctors and instead would talk to BMA Scotland to decide how to move forward (maintaining the existing contract in the meantime).

The Welsh government followed suit a few days later. The Northern Ireland health minister, Simon Hamilton, has said he has "no desire" to impose the junior doctor contract and an imposed contract would be the "worst possible outcome". The BMA will be meeting with the Minister and his officials to discuss how we can work together to resolve the situation.

More information on what is happening in the devolved nations is available on the [website](#).

Industrial action

13. Have junior doctors taken action over their contract before? What was the outcome?

The last time junior doctors as a group took industrial action over the terms of their contract was in 1975. The dispute related to the non-payment of work done outside of the standard 40 hour working week. The action consisted of juniors working only the 40 hour week they were contracted to do (at this time 100 hour weeks were common). The Government relented and a new contract was agreed in early 1976.

14. Can the hospital continue to use agency locums on the day of action?

Locums already scheduled to work on the day of action can work as normal. However there is a law preventing employers from hiring new locums from an agency to cover striking workers. It is also permissible for employers to have an existing locum change their shift to work during the period of industrial action, but they then cannot hire a new locum worker to cover the existing locum worker's other shift.

15. I am a medical student and have been offered a paid 'student-level' role on the days of industrial action (for example as a 'locum' or 'physician assistant') to cover for absent juniors. What should I do?

We are calling on medical student members to decline offers of work to cover for junior doctors taking industrial action. If you receive such an offer, please notify the BMA.

If you have already agreed to an offer of work you should not break this agreement, and should not seek to cancel it unless there is an explicit provision for giving notice to cancel in sufficient time.

Please contact the BMA for individual advice if this affects you (email ia@bma.org.uk).

As per the GMC's standards for medical education and training: http://www.gmcuk.org/Promoting_excellence_standards_for_medical_education_and_training_0715.pdf 61939165.pdf, students must undertake only appropriate tasks in which they are competent and with adequate supervision.

16. Can the hospital ask people who are on call in the evening to come in during the day instead?

Yes, they can be asked to cover. If they are a junior doctor eligible to take action, they may refuse to work during the period of action.

17. Will I be in breach of my contract if I take action?

Yes, those taking industrial action are in breach of their contract. Your employer might send you a letter notifying you of this, however this is just a formality. BMA members receive some protections from unfair dismissal if they take part in legal industrial action.

18. Could I be dismissed for taking part in the action?

The right of an employer to dismiss those taking part in lawful action is restricted. As a general rule, you will be protected from unfair dismissal for taking part in lawfully organised industrial action if any dismissal takes place within an initial protected period of 12 weeks from the first day of the industrial action. Once this initial protected period has ended you are still protected if you personally cease to take any further industrial action. However it is legally possible for an employer to dismiss employees after the 12 week protected period provided that the employer dismisses all those taking part in the ongoing industrial action

and does not then selectively re-engage any of these persons within a three month period. This will clearly be very difficult for most employers to do without significant adverse publicity and operational difficulties.

The BMA will support any member who runs into difficulties due to taking action, however we will not be able to support any non-members who run into difficulties.

19. If I am taking part in a compulsory training session on the day of action, what should I do?

If you are choosing to support the industrial action then do not attend. This activity is a contractual obligation, so you can withdraw your attendance just as you would withdraw your labour. If you are on study leave, you can still take action – as long as you have a current employment contract with an NHS employer in England.

20. Could I be referred to the GMC for taking part in the action? What is the GMC's view?

It is important to be clear about the GMC guidance on the duties of a doctor and that this guidance is not removed or modified by taking industrial action. http://www.gmc-uk.org/guidance/good_medical_practice.asp

21. Are consultants, GPs, SAS doctors etc. supporting junior doctors in their action?

We understand that many doctors will want to show their support for junior doctor colleagues who are taking industrial action, and we will provide further guidance about doing this in due course. However, the BMA is not balloting these doctors and will not be asking any of them to take part in any industrial action.

Doctors from across the profession have expressed their support for their junior colleagues, including members of BMA Council <https://youtu.be/f2MCb1pkFSk?list=PLw2rKIESoTrvAIOHsELKUWOLN9BtlmZff>. Because they are likely to be asked to provide cover for junior doctors taking industrial action, we have prepared [guidance](#) to help them do so.

22. I am currently 'acting up' as a consultant, am I able to take action or continue to act as a consultant during the juniors' action?

Yes, you can take action, because even though you are acting as a consultant you are still employed on the junior doctors' contract.

If however you are being employed as a locum consultant then you will not be employed on the junior doctors' contract and should not take action.

23. Is there a danger that despite industrial action the Government may impose a contract anyway?

The government has made it clear that if we do not agree with them, they will impose the contract. We are resisting in any way possible.

We hope the government will see the strength of feeling on this issue and come back to meaningful negotiations.

24. What does picketing involve?

We have prepared useful [guidance](#) and a picketing video to help you picket safely and within the law. This recommends that there should be no more than 6 people on a picket at any one time. However, we are aware that some trusts may encourage more doctors to be present at the picket and this is a decision that must be made on an individual basis.

25. Will the BMA be there on the day(s) of action?

Yes. We will be there to support with campaign materials etc.

The BMA is supporting around 150 picket sites across England on the days of action. To find out whether we will be supporting a picket line at your workplace, please contact your junior doctor representative, your LNC representative or your industrial relations officer.

26. If I am on maternity leave, can I be on a picket line?

Yes, if you want to. It is up to you to decide whether you take part in any action on the proposed day(s).

27. What support is there for junior doctors worried about the potential financial impact of taking action?

BMA Charities exists to offer support and assistance to any member of the medical profession who is suffering financial difficulty. We are prepared for applications for support from junior doctors who are experiencing significant financial problems as a direct result of taking industrial action. Such doctors can contact info.bmacharities@bma.org.uk for further information and advice.

Please also note Donations to help doctors who are experiencing significant financial problems can be made to the BMA Charities Trust Fund. See the BMA Charities web page for details. <http://bma.org.uk/about-the-bma/what-we-do/bma-charities>

28. What can others do on the day(s) of action?

We have sent out thousands of lanyards, badges and stickers to allow doctors – juniors and non-juniors – to show their support. Many have already taken to social media [hyperlink to support page] to share their views – you can become part of the campaign using the hashtag #juniorcontract

29. I want to get involved with the organisation/planning/awareness raising etc.; how can I do that?

There are plenty of ways to get involved [here](#).

30. What do I need to do know?

We will provide further information as necessary but in the meantime:

- Check [our website](#) regularly
- Read any emails we send
- Keep your BMA details up to date (especially if you move workplace or postal address)
- Attend any extra RJDC meetings planned (check on our [website](#))
- Send comments or questions to info.jdc@bma.org.uk

Who can take action?

31. If I am not a member, can I take action?

Non-members who take part in any action do so at their own risk and under their own authority. The BMA will only be calling upon members to take part in any industrial action, and their non-member peers would not receive support from the BMA if any action was taken against them by the employer.

We would advise that you join up so that you receive the protection as well as support available to trade union members.

32. If I join the BMA, can I take action?

Yes, provided you fall into the categories of members included in the action.

33. I'm not a member but I am a junior doctor with an NHS contract, can I take action?

Non-members who take part in any action do so at their own risk and under their own authority. The BMA will only be calling upon members to take part in any industrial action, and their non-member peers would not receive support from the BMA if any action was taken against them by the employer.

We would advise that you join up so that you receive the protection as well as support available to trade union members.

34. I am currently out of programme, can I take action?

This probably means you are not currently employed in the NHS on your training contract.

If you are currently employed on another NHS contract while you are out of programme, you will need to consider how the eligibility criteria described in these FAQs would apply to this contract to determine whether or not you can take action against this employer.

If you are not employed on another contract while out of programme, then you will not be included in the ballot. This is because you do not currently have an English NHS employer to take industrial action against.

35. I am a clinical academic, can I take action?

Those with an additional contract that is with a non-NHS employer will not legally be able to take action against that other employer – so you will need to think about your particular situation on the day(s) of action.

36. I am a GP trainee, can I take action?

Yes, all GP trainees can take action. This includes those with a single lead employer contract, those who hold a contract directly with a GP practice, and those who have both. This is because they are all included in the trade dispute and will be affected by the imposition.

37. I am a public health trainee, can I take action?

Those with an additional contract that is with a non-NHS employer will not legally be able to take action against that other employer – so you will need to think about your particular situation on the day(s) of action.

- 38. I have an honorary contract, can I take action?**
If your honorary contract is with an NHS employer then you will be able to take part in industrial action.
- 39. I have a lead employer. Does this have any impact on my eligibility to take industrial action?**
If your lead employer is an NHS employer in England then you will be able to take industrial action.
- 40. I have an honorary contract with PHE covering out of hours work, and am on placement with a local authority. I hold a NHS lead trust employment contract, but I do not have an additional contract with the local authority. What action can I take?**
You cannot take industrial action against a non-NHS organisation with whom you hold a contract.

If the day(s) of action falls on a day you are scheduled to be on-call for PHE, you must work as you normally would when on-call, since a) this work is for a non-NHS employer with whom you hold a contract and b) this work is classed as urgent and emergency care. If you are also scheduled to be working at the local authority, you should only take part in work that is classed as urgent and emergency care. If you will not be required to take part in urgent and emergency care whilst at the LA, you should not go into work.
- 41. I have an honorary contract with PHE covering out of hours work, and am on placement with a local authority. I hold a NHS lead trust employment contract, and an additional contract with the local authority. What action can I take?**
You cannot take industrial action against a non-NHS organisation with whom you hold a contract.

If the day(s) of action falls on a day you are scheduled to be on-call for PHE, you must work as you normally would when on-call, since a) this work is for a non-NHS employer with whom you hold a contract and b) this work is classed as urgent and emergency care. If you are also scheduled to be working at the local authority, you should go into work and work as normal – if you have a contract with a non-NHS employer you cannot breach it.
- 42. I am employed by an NHS lead trust employer. I also have an honorary contract with PHE. I am currently on placement at PHE at the moment. What action can I take?**
You cannot take industrial action against a non-NHS organisation with whom you hold a contract.

The contractual position is complex, but your honorary contract with PHE may cover more than just on-call work. To be sure you are not breaching your contract with PHE, and if the day(s) of action falls on a day you are scheduled to be working for PHE, you must work as you normally would.
- 43. I am currently employed under a lead NHS trust contract, but this year I am on the Masters of Public Health course and am not going into 'work' as such. Can I take industrial action?**
You are not undertaking any work that you could withdraw through industrial action, but you could take IA by not attending lectures. You could however visit pickets to show your support.
- 44. I am a medical student; can I take part in industrial action?**
Medical students do not have a current contract with the NHS, and therefore cannot take industrial action.
- 45. I'm employed by the armed forces, can I take action?**
No. If you are solely employed by the armed forces you are legally not permitted to take part in industrial action.
- 46. I work as a NHS hospital locum junior in England, can I take action?**
Yes. You can take action.
- 47. I'm a trust grade junior doctor in England, can I take action?**
Yes. You can take action.
- 48. I'm an overseas junior doctor working in England on a visa, can I take action?**
You can take action if you are an overseas junior doctor, provided that you have a current contract with an NHS employer in England.

Tier 2

If you are working in the UK under a Certificate of Sponsorship from a licensed sponsor you will need to consider the impact that a period of unpaid leave or a reduction in your pay would have on your sponsorship.

If you are employed under a Tier 2 (General) Certificate of Sponsorship it is unlikely that any period of unpaid leave would affect your status as your sponsor is only required to report unauthorised absence (such as industrial action) if it continues for more than 10 consecutive days.

As a Tier 2 sponsored worker however, you cannot be absent from work without pay for more than 30 days in any 12 month period.

If you have already taken a period of unpaid leave for other reasons (not including leave of a permitted type, such as maternity or long term sickness), you will need to consider your own position as to whether your participation in industrial action may take you over the permitted threshold.

Your sponsor may be required to report a temporary reduction in salary as part of their duties as a licensed sponsor. This is unlikely to have an impact on your sponsorship.

Tier 4

The Home Office has confirmed that individuals sponsored under Tier 4 have the same right to take industrial action as resident workers. The UK Foundation Programme Office, as your sponsor, is required to report unauthorised absences of more than 10 consecutive working days to the Home Office. The Home Office considers industrial/strike action as an unauthorised absence. Your sponsor is required to keep a record of all unauthorised absences, so they will need to be notified once it is confirmed that you have undertaken strike action. As Tier 4 is primarily a study route the guidance for Tier 2 on absences without pay does not apply.

In cases where an employer takes action against a BMA member as a result of his or her involvement in industrial action, the BMA would provide support under the terms of the "My BMA" contract of membership. Please refer to this for more details.

49. I'm in my period of grace, can I take action?

Yes. You can take action.

50. I am on maternity leave, sick leave or other type of approved leave; can I take action?

Yes, if you have a current employment contract with an NHS employer in England you can take part in action on the proposed day(s).

51. I'm not on the rota on the proposed days of action, what does that mean for me?

If you are not scheduled to work on a particular day of action, you personally would not need to take industrial action and could not be subject to a deduction of wages on this day. However, you are fully entitled to join in organised activities on the day.

52. What happens if I'm sick on the proposed day(s) of action?

Workers who are absent on sick leave when industrial action takes place retain their right to statutory sick pay during the period of industrial action. If an employee reports as sick on a day of action, the employer can be expected to make their own judgement as to whether the employee should be regarded as on sick leave or taking part in industrial action. Some employers have tried to introduce special rules about sick certificates in the event of sick leave during industrial action – if so, the LNC should inform their BMA Industrial Relations Officer (IRO) and take the matter up with management.

It is likely that some employers will say that they can insist on a medical certificate from an individual's doctor to cover absence on or around the day/s of action as they believe that these are exceptional circumstances. Some contracts do include such a clause. If there is not an expressed provision in contracts then your employer may refer to their own absence/sickness reporting procedures. It is our understanding that these procedures may also have an exceptional circumstances clause.

53. The planned model of strike action with emergency cover would not apply in my specialty, as nearly all of my work is emergency. What action can I take?

For doctors working in some specialties, such as emergency medicine, your ability to participate directly will be more restricted and you may not be able to participate at all in the emergency care only model of action. Please refer to the [definition of emergency care](#) model and contact your IRO.

54. What happens if I'm on a shift when the industrial action is due to start – should I just leave?

No. As per the GMC's Good Medical Practice, you are responsible to effectively hand over; effective handover is essential as part of a patient's continuity of care.

55. If I am an academic clinical trainee and the day of action is the day I am at the university, what should I do?

Those with an additional contract that is with a non-NHS employer will not legally be able to take action against that other employer – so you will need to think about your particular situation on the day(s) of action, and contact the BMA if you need individual advice on this.

56. If I voted 'yes' in the ballot will I have to take part in the action?

The decision to take action is an individual choice, but we would hope that if you vote yes in the ballot, that you are preparing to take action. We encourage members to take action to support the campaign and to support their colleagues.

57. If I voted 'no' in the ballot will I have to take part in the action?

The decision to take action is an individual choice. We encourage members to take action to support the campaign and to support their colleagues.

58. What if I didn't vote for full strike action?

If you voted no you will not be obliged to take part in any action. The decision to take action is an individual choice. We encourage members to take action to support the campaign and to support their colleagues.

59. If I did not return my ballot, can I take part in the action?

Yes. All junior doctor BMA members who have notified us that they hold a contract with an NHS Employer in England (whether solely or in addition to a non-NHS contract), excluding any armed forces trainees, may take action.

60. I have a contract with an NHS employer in England, and another contract with a non-NHS employer, for example a non-NHS hospice (for palliative care doctors). If I am scheduled to work for the non-NHS employer on the day(s) of action, can I take annual leave and join the picketing/ other activities?

Yes, as long as your non-NHS contract does not preclude you from certain activities when on annual leave, you can take approved annual leave and join the picket/activities at your NHS place of work.

61. I am a palliative care (junior) doctor, can I take part in the action?

Palliative medicine trainees who hold a contract with an NHS employer, and another with a non-NHS employer (for example a non-NHS hospice) cannot take industrial action against that non-NHS organisation (whether a full contract or an honorary contract).

If you are not scheduled to work for the non-NHS employer on the days of action, then you will be able to take part in strike activities against your NHS employer.

If you are scheduled to work for the non-NHS employer on the days of action, then you should attend work as normal. It is possible for you to take annual leave from your non-NHS employer (with necessary permission) and join the activities taking place at your NHS employer (subject to any restrictions on activities conducted whilst on annual leave). It is also possible that a non-NHS employer could relieve you from duty (ie changing the rota) in order for you to take action. It is advisable to receive this in writing from the employer in advance.

If you have one contract with an NHS employer who then 'loans you out' to a non-NHS employer, then you would be eligible to take part in the industrial action as you are not impacting any other contract apart from your NHS one.

62. I have an exam (eg MRCP part 1) on one of the days of action. Can I still do the exam? Can my employer cancel my leave and require me to work?

You are able to do the exam on the day of action and if so, you are able to take part in the industrial action activities around that.

It is possible for your employer to cancel your leave, but they must give you notice of this which must not be less than the amount of leave being taken (ie 1 day of leave is 1 day of notice). If your leave is cancelled, you will still be able to take industrial action (as long as you are not rostered for emergency care) and use the time to attend the exam. You will likely lose a day of pay (as your employer is entitled to withdraw pay for any participation in industrial action) but you will receive your day of leave back.

63. I have an ARCP scheduled for one of the days of action. Can I attend my ARCP?

Yes, you are able to do your ARCP and if so, you are able to take part in the industrial action activities around that.

64. What if my employer cancels my leave and rosters me for Emergency Care?

All employers have had notice of the proposed Industrial Action since 4 January 2016. This should have given all employers sufficient time to roster for Emergency Care on the 12th and send out any notices to cancel leave if this was necessary. Therefore if you receive any notice to cancel leave before 11 January 2016 you are entitled to query the notice on the basis that you had pre booked the annual leave for a specific purpose (for example, taking an exam or pre-booked vacation) and cancelling this will involve significant detriment to you. You are also entitled to ask your employer to explain what steps it has taken to roster other persons who are not scheduled for other such activities (eg taking an exam) on the grounds that the detriment to them is less. If your employer complies with this you would then be entitled to ask your employer to confirm (in writing) that it will reimburse you for all costs and losses associated with cancelling your leave if your employer insists upon cancelling your leave and rostering you for emergency care.

65. What happens to my pay if I take industrial action?

If you are due to be on shift and take industrial action, you will not get paid. If you are on annual leave, or a zero hours or study leave day then the trust will pay you, even if you partake in industrial action. You should not be called in.