1. **Introduction**

**1.1** NHS Lanarkshire’s purpose is to provide safe, effective and person-centred care to the communities we service and with this in mind we have developed this manager guidance and supporting frequently asked questions (FAQs) to raise awareness in the event of industrial action which should be read in conjunction with any national guidance.

**1.2** NHS Lanarkshire recognises that their members of staff have a right to take industrial action without it being held against them in any way.

**1.3** Successfully working through a period of industrial action remains a key challenge for many employers and managers. These guidelines have been developed to provide managers with advice on action they may need to take and responsibilities they have during a period of industrial action. These guidelines address key issues that may arise but are by no-means exhaustive.

The guidelines apply only to legitimate industrial action that has been called in accordance with the statutory requirements.

**1.4** The approach of Trade Unions participating in the strike action will be governed by their own guidance/protocols and may not accord fully with these guidelines. Where strike action is declared, one of the main aims of the Trade Unions is, within the legal framework, to maximise disruption to the employer.

**1.5** These guidelines provide general advice on managing strike action but cannot cover every eventuality. For advice on specific situations and/or circumstances, managers should log a call on HR Service Now: <https://nhsnss.service-now.com/lanarkshire_hr> in the first instance.

1. **Definitions**

**2.1 Business Continuity Management (BCM)**

For NHS Lanarkshire, BCM is defined as:

* An essential activity in establishing an organisation’s resilience by enabling it to anticipate, prepare for, respond to and recover from disruptions and to have a clear understanding of dependencies with other organisations.
* To protect the public and ensure that NHS Lanarkshire is safe, resilient and ready to respond when required.
* The management process that enables an organisation to identify those key services which if interrupted for any reason would have the greatest impact upon the community, the health economy and the organisation
* To identify and reduce the risks and threats to the continuation of these key services
* To develop plans which enable the organisation to recover and/or maintain core services in the shortest possible time.

Everyone expects the NHS to be there, functioning normally and safely when they need it. This expectation is constant despite an increasing number of disruptive challenges facing health services. These include severe weather, utilities failures, industrial action, public health and other types of major incidents and acts of terrorism. All carry with them short and long term consequences for operating business as usual. (The Scottish Government, 2013. *Preparing for Emergencies: Guidance for Health Boards in Scotland*.)

**2.2 Industrial Action**

Industrial action can take many forms, the extent and impact of which will often depend on the causes and issues at stake in any particular dispute. This section provides details of the main types of industrial action.

**2.3 Official industrial action**

Official industrial action is that which is authorised or endorsed by a recognised trade union. In practice, this means any industrial action which is authorised by the trade union from the outset and any industrial action which starts as unofficial but which the union later decides to endorse. A formal ballot must precede any form of official industrial action. The union is required to give the employer 7 days’ written notice of the intention to hold such a ballot. Also Trade Unions are legally bound to provide at least 14 days’ notice of any industrial action to an employer.

Following the call for industrial action, unions must give the employers formal notice before commencing action. A relevant notice in writing must contain the following information:

* A list of the categories of employee to which the affected employees belong and, a list of the workplaces at which the affected employees work.
* The total number of affected employees, the number of affected employees in each of the list of categories and, the number of affected employees who work at each of the list of workplaces.
* The union must inform the employer or employers whether the action is continuous or discontinuous and if it is continuous, the intended date the action is to begin or if it is discontinuous, the intended dates when the action will take place.
* The information supplied must be as accurate as reasonably practicable considering the information in the union’s possession at the time the information is compiled.
* Any relevant notice will be drafted by the union and must be supplied 14 days before industrial action commences or seven days before with consent from the employer
* Within England, Scotland and Wales the action must start within six months of the last voting day in the ballot.

**2.4 Unofficial industrial action**

Unofficial industrial action is that which is not authorised or endorsed by a recognised trade union. By its nature unofficial industrial action is often initiated at local or branch level in response to particular issues, although it may sometimes form part of a wider co-ordinated campaign. Such action is therefore likely to take place spontaneously or at least with little forewarning and management should therefore have a contingency plan for dealing quickly with this action should it arise.

**2.5 Strikes**

Strikes can be long-term (when the union has called out its members for an indefinite period); short-term (for example a one-day strike, or a strike for one or two hours only); or intermittent (when strikes take place for part of the day or week on a rolling basis but normal working is resumed for the rest of the working day/week). Whatever other response may be appropriate in particular circumstances, the central principle is "that all periods where staff are on strike will be unpaid".

**2.6 Industrial action short of a strike**

There are a number of ways in which staff may take industrial action short of a strike.

**2.6.1 Bans on overtime**

Bans on overtime are a common form of industrial action. Overtime bans may be introduced to put collective pressure on management to make concessions over a particular dispute and may in certain circumstances constitute a breach of contract, for instance contractual overtime vs non-contractual.

**2.6.2 Working to rule/going slow**   
This can have a damaging and disruptive effect on work, whilst those engaged in such action suffer no financial loss and unions do not have to meet 'strike pay'. In areas of work where, of necessity, there are detailed instructions about the way in which a task should be done, working to rule offers considerable scope for disruptive action. Management will be required to define the parameters for working to rule and make them clear to those taking working to rule measures in order that the risk of over-rigid interpretation (or misinterpretation) are reduced.

**2.6.3 Wilful disruption (e.g. selective working)**

It is necessary to consider whether the intention is wilfully to disrupt the employer's business or merely involves a withdrawal of goodwill. Where there is wilful intent to disrupt the business, such action could amount to a breach of contract. Selective working may be a refusal to undertake certain tasks or a refusal to operate new working procedures. Management must be able to fully demonstrate that staff have been appropriately trained in new procedures prior to any industrial action being taken.

Where selective working is in prospect, it may be possible to specify in advance to the staff involved the duties to be undertaken and when. Failure to comply with such instructions given in advance may then amount to a breach of contract.

The above is not an exhaustive list of all possible types of industrial action, but covers the main forms which are likely to be encountered.

1. **Business Continuity Plan**

**3.1** NHS Lanarkshire have in place agreed processes to prepare for and manage during episodes of industrial action. Specific responsibilities for managers are outlined below. The organisation should also establish an incident response that will include a proportionate command structure relative to the industrial action and also provide a formal log of decisions this will ensure the organisation has a clear understanding of the impact of this action in each area and the actions that are being taken to maintain services, and support decisions in relation to the reduction of services or redeployment of staff. This process should be led by an [executive director]. Dependent on the potential impact of the Industrial Action the organisation may decide to set up an [urgent response group in partnership] to provide direction, with membership to be determined dependent on the planned action.

**3.2** Managers need to have in place contingency plans in anticipation of strike and/or other industrial action that can be drawn upon once strike action is confirmed to:

* Ensure patient safety and continuity of care
* Maintain essential service delivery
* Ensure that H&S is in place for non-striking employees, service users and contractors
* Ensure, where practicable, all statutory duties are met.

* 1. A risk assessment approach should be taken to contingency planning for industrial action using local risk assessment tools taking cognisance of co-dependences. Managers should review their services to establish which are essential and then consider the key elements that need to be in place if they are to be delivered. Those key elements then need to be assessed as to their vulnerability to strike and/or other industrial action and as to the likelihood of such action taking place. As Trade Unions are legally bound to provide at least 14 days’ notice of any industrial action, there should be sufficient time to implement, in partnership, contingency plans that have been previously prepared. Managers should draw on plans that are in place in relation to other critical events e.g.: severe weather or pandemic which should take into account reductions in staffing levels.
  2. Such arrangements need to be sufficiently clear and understood by those who will continue to deliver essential services on strike and/or other industrial action days. Decisions on building and service opening and closing will be up to the relevant senior manager in consultation with the site managers and facilities managers.

**3.5** NHS Lanarkshire communications during periods of strike action will be co-ordinated by the [Organisation’s Lead Communications Officer]. Senior managers should ensure that communications are accessible to those not on e-mail and that any service specific information is also made available to their employees. Organisational communication should be agreed through the ‘command, control and co-ordination’ process to ensure continuity of messages, recognising the impact of industrial action on public confidence and organisational reputation.

1. **Communication**

**4.1** The Communications Team should establish the necessary internal and external communication channels as early as possible within the business continuity planning process. Communication should be a key element of the contingency planning arrangements and regular communication briefing documents agreed and disseminated as appropriate.

**4.2** Internal communication links may include\*:

* HR department
* Departments affected by the industrial action
* Other internal support departments, such as Estates, Facilities, eHealth,
* National / Regional / Local Trade Union Representatives
* Staff
* Patients / Service Users
* Visitors

**4.3** External communication links may include\*:

* Other Health Boards
* Scottish Ambulance Service
* Police
* Local Councils
* Community Health Councils
* General Practitioners (GPs)
* Scottish Government
* Media / National and Local Press
* External contractors

\* These lists are not exhaustive.

**4.4** All communication between NHS Lanarkshire and the Media / Press should be handled and approved by the Communications Team.

1. **Health & Safety**

**5.1** The Health and Safety at Work Act 1974 states that it shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his/her employees", and in particular that such a duty extends to:

* Provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;
* Arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
* Provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees;
* So far as is reasonably practicable as regards any place of work under the employer’s control, the maintenance of it in a condition that is safe and without risks to health and the provision and maintenance of means of access to and egress from it that are safe and without such risks;
* Provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work.

**5.2** Legal responsibilities and duties on NHS Lanarkshire and individuals are not suspended during industrial action. There is a statutory duty to ensure safe and healthy work environments, safe working practices for those who remain in work and to ensure the health and safety of the public. A health and safety risk assessment should be carried out beforehand on all workplaces remaining open on the day(s) of strike action by an appropriate, competent person. All work activities, procedures, systems and the environment/workplace should be reviewed during and throughout the days of strike action to ensure risks to health and safety of employees and the public are reduced as far as is reasonably practicable. Suitable and sufficient risk assessments should be undertaken and recorded using the normal risk assessment form and the appropriate control measures implemented and monitored.

**5.3** Whilst it is not possible to identify all the issues which need to be considered in risk assessments across NHS Lanarkshire, particular attention should be paid in respect of:

* lone working;
* reduced staff levels;
* staff requiring close supervision/instruction;
* disabled people;
* young persons;
* visitors and the public;
* emergency evacuation procedures for staff and the public;
* first aid provision;
* acts of aggression;
* increased risk of violence; and
* use of plant, vehicles and equipment.

Evacuation procedures for employees and the public, including those who are disabled, should be reviewed to ensure that if needed, buildings can still be evacuated safely.

**5.4** Employees have a duty under health and safety legislation to take care of their own health and safety, and that of other people. This could include maintaining or co-operating in the maintenance of safety equipment up until the time any strike action occurs.

There is a duty on all persons, regardless of their employment status, to not intentionally or recklessly interfere with or misuse anything provided in the interests of health, safety or welfare.

1. **Contractual and Pay Deductions**

**6.1** Strike action is in breach of contracts of employment but does not break continuity of employment. Employees will not receive pay when they are on strike.

**6.2** Managers should ensure that accurate, proper and consistent administrative arrangements are in place for the recording of those participating in the industrial action, i.e. it must be clear whether their staff are taking industrial action, on sick leave, on annual leave/TOIL (pre booked before the date of the strike was announced) or other legitimate absence. Pay deductions should be made from the earliest possible pay period following strike action. Information will be circulated on the deduction process and timescales.

* 1. For SPPA Members, as any period of absence from your work place due to industrial action is regarded as ‘non-pensionable’, no employee or employer contributions are made for any period of time you spend on strike. As a consequence, any earnings lost through industrial action are not included in your benefit calculations.

There’s also no provision to pay back contributions directly relating to strike days, but, there are other options to [**increase your benefits**](https://pensions.gov.scot/nhs/employers/increasing-benefits)that you may want to consider following a prolonged period of industrial action.

1. **Sickness/Annual Leave/TOIL etc**.

**7.1** Once strike action is declared, annual leave, TOIL etc. should not be approved (unless pre-agreed) for the day(s) of action.

If an individual member of staff is called to Action by their Trade Union, NHSL must not use Home Working as a means to reduce the impact of the Strike Action. Staff who are working from home, or work at home on a regular basis, can work from home onthe day of Industrial Actionprovided this meets business needs. In relation to those whose normal place of work is at home, managers will need to clarify the intentions of those employees in relation to strike days.

**7.2** Those on self-certificated sick leave before industrial action starts should be assumed to be on sick leave, providing that a Statement of Fitness for Work is provided that covers the day(s) of action and they comply with the reporting in procedures.

**7.3** In terms of those on shift work, the intention of shift workers and the hours they actually work should be closely monitored.

1. **Reallocation of work to others**

Managers will need to consider whether any of the work that will be disrupted by the action is essential i.e. endangers life, fulfils a statutory duty, strategically important, etc. If this work must be covered, managers should make contingency arrangements and the following options should be considered: -

**8.1** **Reallocating work to those not taking part in the action.**

Managers should not endanger goodwill with staff not participating in industrial action. They should not ask them to perform additional duties that are either unreasonable or for which they are not competent/qualified to perform.

**8.2 Reallocating work to other groups**

Staff cannot be forced to perform alternative work if it conflicts with their contract of employment unless it is a reasonable request. Appropriateness of work in relation to the employee’s current duties, position, skills/qualifications, etc. are factors that should be taken into account. A request to undertake additional duties is more likely to be considered reasonable if the work is necessary to prevent a break of NHS Lanarkshire’s statutory duty or is vital to essential emergency service provision.

**8.3 Use of Temporary /Casual Staff**

If essential services cannot be maintained by utilising existing staff, managers may wish to consider utilising an existing bank of casual staff. This should only be done to the point of maintaining life and limb cover.

**8.4 Alternative Workplace**

Managers should assess the impact of the industrial action so that, if possible, alternative arrangements can be made. Once made, staff should be advised so that they clearly understand the arrangements.

If possible, staff wishing to work on the strike day(s) may be asked to report to an alternative location, where reasonable alternative duties will be provided. Those attending work should report their attendance to a senior manager within the service.

**8.5 Use of Agency Workers**

Risks to critical services, in terms of staffing, should be identified prior to strike action and staffing levels for those areas should be agreed in partnership with staff side. From July 2022, legislation changed to allow the use of agency workers to cover staff on strike. This should, however, only be used to provide the previously agreed staffing level.

**Picketing**

**9.1** Picketing occurs when a group of people gather outside a workplace to try and persuade others e.g. non-strikers, temps, suppliers, to take some form of industrial action. It is an indirect form of industrial action that is protected by the law.

**9.2** Everyone whether in a Trade Union or not has the right to decide whether they will cross a picket line and they would not be subject to disciplinary action should they chose not to cross. Any response to union members who cross picket lines will be a matter for the Trade Union(s) to determine.

**9.3** "Peaceful" picketing has long been recognised to be a lawful activity. However, the law imposes certain limits on how, where, and for what purpose such picketing can be undertaken.

**9.4** The ACAS Code of Practice (www.acas.org.uk) sets out the basic rules which must be followed if picketing is to be legally carried out. To keep to these rules, attendance for the purpose of picketing may only:

* “be undertaken in contemplation of furtherance of a trade dispute”;

**9.5** The only purposes of lawful picketing are to peacefully obtain or communicate information; and/or persuade a person to work or not to work. Pickets do not have the legal power, to require other people to stop, or to compel them to listen or to do what they ask them to do. A person who wants to cross a picket line and report to work must be allowed to do so. The Health & Safety of all parties must be a consideration at all times.

**9.6** For the avoidance of doubt, it is a criminal offence for pickets to use threatening, abusive, insulting disorderly words or behaviour. Staff who are physically prevented by pickets from entering their workplace should contact their/a manager to support them in crossing the picket line or make alternative arrangements to attend work.

**9.7** The law allows pickets to seek to explain their case to those entering or leaving the picketed premises and/or ask them not to enter or leave the premises where dispute is taking place. This may be done by speaking to people, the distribution of leaflets, carrying of placards and banners putting the picket’s case. In all cases such activities by pickets and those crossing the picket lines must be carried out peacefully with mutual regard for Health and Safety matters.

**9.8** Large numbers on a picket line can be intimidating and cause resentment amongst those seeking to cross that picket line. The Government’s Code of Practice recommends that pickets be restricted generally to a maximum of 6 people at their own place of work.

**9.9**  A Trade Union member who crosses a picket line should not be disciplined by their Trade Union. The law provides a remedy for any union member who is disciplined by the union because they have crossed a picket line. If a union disciplines any member for crossing a picket line, the member will have been ‘unjustifiably disciplined’. In such a case, the individual can complain to an Employment Tribunal.

**9.10** Picketing is only lawful if it is carried out by a person attending at or near the place of work they report to. Peripatetic staff should regard the administrative centre, or any place they work regularly, as their place of work.

**9.11** The ACAS Code of Practice sets out expected standards of behaviour on picket lines. At no time should activity on picket lines include:

* Unlawful threat or assault.
* Harassment (i.e. threatening or unreasonable behaviour causing fear or apprehension to those in the vicinity).
* Obstruction of a path, road, entrance or exit to premises (ACAS Code of Practice on Picketing paragraph 27).

**9.13** NHS Lanarkshire has a right to expect appropriate behaviour on any picket lines on or outside their property and reserve the right to take appropriate action in relation to inappropriate and unacceptable behaviour.

**10. Closed Places of Work**

Individuals not involved in the strike action should report to their normal place of work. If an individual attends their normal place of work and is unable to gain access i.e. the building is closed, they should contact their/a manager to gain instructions. This may include being instructed to go to another location to undertake appropriate work or if this is not possible and there is not alternative work, being sent home. In the event of the latter, this should not be seen as strike action and pay must not be deducted.

**11. Staff Relations**

Managers should identify any ongoing issues and concerns that staff may have and deal with them promptly.

No employee will be regarded or treated less favourably in respect of employment right, working condition, or career opportunity, on account of the industrial action they took.

**MANAGERS FAQS**

|  |  |  |
| --- | --- | --- |
|  | **Question** | **Answer** |
| **General** | | | |
| 1. | What is the date and timing of the Industrial Action? | TBC |
| 2. | What form will the Industrial Action take? | TBC |
| 3. | Will there be picket lines in place? | Yes, it is anticipated that there will be picket lines at the entrances to various NHS Lanarkshire sites. |
| 4. | What is the ‘code of conduct’ for those picketing? | It is lawful to picket, but the law imposes some limits.  Picketing by trade union members may only take place at, or near their own place of work. Pickets are allowed to peacefully persuade workers and others (e.g. suppliers) not to cross the picket line but anyone who decides to do so must be allowed to.  The number of pickets should generally be no more than 6 at any entrance or exit. |
| 5. | Can employees cross a picket line? | Yes. Pickets cannot force colleagues to stop and listen, staff wishing to enter the premises must be allowed to do so. Staff are entitled to cross a picket line. |
| 6. | If employees refuse to cross a picket line, whether a trade union member or not, could they be disciplined by NHS Lanarkshire? | Disciplinary action will not be taken against employees because they have refused to cross a picket line, but they should be considered to be taking industrial action and the appropriate pay deducted. |
| 7. | Will employees be in breach of their professional/ regulatory code of conduct if they go on strike? | Employees have the right to participate in official strike action and will not be in breach of their code of conduct for doing so. They are however expected to maintain the standard of behaviour expected as per their code of conduct. |
| 8. | Can employees be dismissed for participating in official strike action? | Employees who take part in official strike action are legally protected. |
| 9. | If employees are non-union member can they go on strike? | Non-union members are entitled to join the action, however, members of other unions who are not part of the mandate cannot. |
| 10. | Can employees work elsewhere during strike action? | Employees cannot undertake any other work during the hours they are scheduled to work for NHSL. |
| 11. | Will a strike break continuous service? | Days when on strike do not count towards continuous employment, but this is not treated as a break. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Pay** | | | |
| 12. | Are employees who strike entitled to be paid? | No. Any member of staff who fails to attend for a shift, or part of a shift during the period of industrial action will not be entitled to be paid. This will include any enhancements or allowances which would normally have been paid to the employee.  The employees pay status must be recorded as ‘unauthorised unpaid leave’ in SSTS and updated in timely and this will be processed in the [months pay] |
| 13. | Will my maternity pay be affected by the day of action? | Maternity pay for staff on maternity leave and who wish to participate in the day of action will not be affected. |
| 14. | Will my pension contributions be affected if I am on strike? | Yes. Neither employee nor employer pension contributions will be made for the period, therefore pensionable salary for the year will be reduced by the equivalent amount. |
| 15. | What if I am not scheduled to work on a day of strike action? | Employees who are not scheduled to attend work on the day(s) of the strike action, including job sharers or part time workers, will receive their normal pay for the day. |
| 16. | What happens if employees don’t report for duty on days of action? | If no contact is made with the line manager/agreed contact regarding the reason for absence, it will be assumed that the member of staff is on strike and therefore pay will be deducted accordingly. |
| **Leave** | | | |
| 17. | Can employees take annual leave on the day of industrial action? | All annual leave requests must be approved in advance and as per normal provisions for the management of leave which will be subject to the exigencies of the service. Staff cannot be refused leave simply because there is industrial action. |
| 18. | Can employees request special leave on the day of industrial action? | Any such requests must be managed in line with the appropriate NHS Lanarkshire employment policies and procedures |
| 19. | If the schools/nurseries are affected by industrial action and are closed on the same day as any industrial action affecting NHS Lanarkshire will employees be able to request special leave? | Special leave is granted in response to unexpected crisis and urgent family problems. On this basis in line with the Special Leave Policy, special leave will not apply due to the advance notice of this likelihood having been widely communicated via the media and elsewhere. This means that parents and carers have had time to plan alternative arrangements. |
| 20. | What if employees are sick on the day of any planned industrial action? | The absence is managed in line with the Once for Scotland Attendance Policy. |

|  |  |  |  |
| --- | --- | --- | --- |
| **Service and Staffing Arrangements** | | | |
| 21. | Can employees be allowed to work from home on the strike day? | Staff who are working from home, or work at home on a regular basis, can work from home provided this meets business needs. |
| 22. | Can agency staff be employed during industrial action? | From July 2022 the legislation changed, allowing the use of agency workers to cover staff on strike where there is a risk to critical services. If essential emergency services cannot be maintained by utilising existing staff, managers may wish to consider utilising agency workers.  if this would be essential to provide a safe and effective level of care. |
| 22. | Can employees be asked to undertake other duties as a result of colleagues striking? | Yes, to cover essential and emergency services. Employees can be requested to undertake other duties in accordance with their contract of employment to help maintain essential and emergency services. These duties should be within their skill base and where required necessary training provided. |
| 23. | If employees are not participating in strike action, should they attend for work? | Yes, they should attend for work as normal. |
| 24. | What should employees do if they have booked annual leave prior to the notification of a day of strike action and now wish to change in order to participate in the strike action? | Staff have a right to strike. If they choose to, every effort should be made to accommodate the change of leave. However, service needs will need to be met and the principles relating to carry forward of leave applied. |
| 25. | Can managers ask employees if they are attending work on the days of action? | Employers are allowed to assess the impact of any action on their ability to deliver safe services. Employers are allowed to gauge staff intent in a sensitive manner such as ‘are you likely to be available for work’. Staff who wish to strike should not be coerced into attending work. |
| 26. | Will training sessions take place? | It is likely that training sessions will be cancelled to ensure that all available resources are used to support service delivery. |
| 27. | What should employees do who are intending to be at college/study day on a day of strike action? | Managers should discuss this with staff. If there is a shortage to maintain essential and essential services staff maybe requested to attend the workplace. |
| **Staff Facilities** | | | |
| 28. | Will there be catering facilities available for staff during industrial action? | It is anticipated in NHS operated facilities there is unlikely to be a staff service available. |