Potential Industrial Action 2025/26
(Resident Doctors and Dentists in Training NHS Scotland)

Employers Reference Group Guidance

1. Guiding Principles

1.1 It is fully recognised and acknowledged that this is an industrial dispute, and that the right to take industrial action is understood and accepted by Employers (and Placement Boards). Therefore, it is recommended that:

- Boards assess the required staffing levels within Services directly affected by Industrial Action and would normally seek derogations where they feel it is not possible to provide a safe service due to the impact of a Trade Union(s) taking industrial action
- Requested Essential and Emergency staffing levels will not exceed the 'normal' staffing levels for the affected services.
- Before requesting exemptions for Essential and Emergency services all reasonable efforts will be made to secure essential staffing from within the cohort of staff who are not members of a union or are members of a union which is not on strike on the nominated day.

2. Information on Strike Action

2.1 This section contains background information on the Industrial Action process and the associated requirements.

2.2 Understanding the Legal Position

Under the Trade Union and Labour Relations (Consolidation) Act 1992 industrial action is lawful, provided certain conditions are met.

2.3 What is industrial action?

There is no specific statutory definition. However, it is generally considered to be concerted action, by 'workers', which is taken in order to put pressure on their employer. Industrial action includes a strike (i.e. where 'workers' refuse to work) and action short of strike action. The latter includes (though this is not an exhaustive list):-

- an overtime ban
- work to contract
- withdrawal of goodwill
- a 'go slow'
- refusal to perform administrative or other duties

In general, under trade union law a dispute is between 'workers and their employer' to enable industrial action to be taken lawfully (for which there would first need to be a ballot). Even though, in this situation it could be said that the negotiations are directly with Scottish Government, Employers are part of the tri-partite discussions and therefore the dispute is between 'workers and their employer'.

2.4 Notice of Ballot

The law states that industrial action ballots must attract at least a 50% turnout and the majority must vote in favour of action to be lawful.

Notice of an industrial action ballot must be provided by the Trade Unions and will be notified to Boards directly. This must be received by the employer no later than the 7th day before the opening day of the ballot (i.e. the first day the ballot paper is sent out). It must state that the union intends to hold a ballot and the opening day of the ballot. The notice must contain:

- List of categories of employee to be called out and a list of the workplaces
- Total number of employees affected, the number in each category and the number in each workplace
- An explanation of how these figures were arrived at should also be provided

The law explicitly states that a union is not required to disclose the names of those who will be called out.

2.5 Ballot Results

After the ballot has occurred the Trade Union(s) have a legal obligation to supply individual employers with the following information on the ballots:-

- The number of individuals who were entitled to vote
- The number of votes cast
- The number of yes and no votes to each question
- Whether the number of votes cast is at least 50% of those entitled to vote

2.6 Notice of Industrial Action

14 days' notice must be provided to individual Employers before industrial action can begin. The Trade Union is required to state if the action will be continuous or discontinuous. Where it is continuous the date on which it will start must be specified. Where it is discontinuous the intended dates on which it will start must be given.

2.7 Picketing

Picketing enables Trade Unions and their members to publicly and peacefully communicate the reasons and purpose of the Industrial Action.

Unions and Employers should seek to agree picketing rules before the commencement of the action. Employers must respect the right of union members to picket and unions must respect the need for picketing to be peaceful.

It is lawful to picket but the law imposes some limits.

Employees who approach a picket line may be spoken to, given a leaflet and the reason for the strike may be explained in a polite manner. The picket does not have the power under law to require people to stop or compel them to listen. Picketing by union members may only take place at, or near their own place of work. Employers will work with Unions to discuss picket supervisors. We would expect that the privacy and dignity of patients and services users will be respected at all times.

The number of pickets should generally not be more than 6 at any entrance or exit.

A pass system to aid the smooth passage of staff identified for duty through any picketing arrangement should be established as part of the local Board planning arrangements. All employees and employers should ensure they are treated with dignity and respect during periods of industrial action.

Further information on Picketing can be found within the Statutory Code of Practice: Picketing

3. Information on Contingency Planning

3.1 All Boards will have drawn up organisation contingency plans for the management of a period of Industrial Action involving Resident doctors and Dentists in Training. This section has been developed to assist local planning for industrial action.

3.2 Each Board is responsible for taking forward the development of an individual local plan based on the principles set out in this guidance.

3.3 Local Planning

It is important that local planning starts as early as possible. This is not restricted to Host Employers and includes Placement Boards

It is recommended that planning is taken forward under normal resilience planning structures (e.g. bronze, silver and gold commands) or some similar arrangement e.g. an Industrial Action Planning Group chaired by a member of the Executive Management Team. The normal principles of resilience planning should apply. Local Board business continuity plans should already provide a basis on which to further develop local arrangements. Any Board facing difficulty in agreeing local plans should consult with colleagues.

It is recommended that each Board develop an Industrial Action Resilience Plan with clearly defined trigger points and escalation processes to help manage local response in the run up to industrial action and on the day(s) of action, e.g. what arrangements have been agreed with BMA if there are insufficient staff to run an agreed Essential and Emergency Service on the day of action. Local Board Industrial Action Resilience Plans need to be specific on the exact level of Essential and Emergency Service that will be maintained during Industrial Action.

Communications with staff, patients, and primary care and service users will be a critical element in the planning of industrial action.

It is advised that Boards would want to stand up their bronze, silver, and gold command structures on the day(s) of action.

It is likely that Scottish Government will require a series of situation reports in advance of and during any period of industrial action, therefore this should be anticipated and planned for. Wherever possible reporting requested will be based on existing arrangements (e.g. A&E sites daily performance reporting).) and the Scottish Government will look to do reporting by exception for other areas, working on the principal of minimising requests to Boards during the days of action.

4. Mutual Aid

4.1 The primary focus for each Board will be to maintain and deliver the agreed list of emergency and essential services within its own Board area. In the event that a Board requires mutual aid to do this, then the normal protocols for mutual aid should be followed.

5. Asked Questions (FAQ)

5.1 A set of likely FAQ's is attached for at Annex A for reference. This section will remain live and will be updated when any further questions received have been responded to by the Employers Reference Group. Any questions not addressed in this guidance or FAQ section can be sent by email in the first instance to nss.nhsscotlandexecsupport@nhs.scot

6. Priority Services and Business Continuity

6.1 The principle aim is to maintain protected and critical clinical and non-clinical services with as little risk as possible. **These services must be maintained at a safe level with at least minimum safe staffing levels.** Significant understanding of critical services has been established throughout the COVID pandemic. The timeframe for this response will be short term over initially 72 hours with a subsequent recovery period of up to one week. This will require a different planning response to manage the loss of the non-career grade doctors. A number of essential service maintenance principles should be considered:

- Time critical services should be assessed against clinical impact of a 72 hour period of Industrial Action with an expected recovery period of one week to return services to normal.
- Plan for complete absence of all Resident doctors'
- Plan for no derogations in strike action for any services
- Maintain all usual pathways of care for critical services
- Maintain all usual contact methods for critical care pathways
- Ensure organisation wide communication
- Consider current distribution of Resident doctors' service by service to assess risk
- Consider current levels of leave of all other staff groups to assess potential mitigations

6.2 Whilst most organisations will be fully aware of their critical services that must remain fully functional a useful check list is outlined below.

- In hospital resuscitation team
- Hospital Critical care services (HDU + ICU)
- Maternity services
- Neonatal service
- Hospital at Night Team
- Emergency Department
- Acute Medical + Surgical Initial Assessment Units
- Unscheduled Medical + Surgical Care
- Specific time dependent intervention services (Primary Angioplasty, Stroke interventions, Endoscopy, Urgent surgical interventions etc)
- Urgent Diagnostic Services
- Primary Care Urgent Care services
- Unscheduled Mental health services
- Acute Psychiatric in-patient care

6.3 For each of these services check the following to support continuity planning:

- Current Resident Doctor Provision for service
- Skills + Numbers Gap against loss of this provision
- Involvement in Urgent Care Pathways
- Routes of communication to access service
- Key activities within service (Admission arrangements, Rounds, Clinical Meetings, Handovers, Diagnostics, Interventions + Discharge arrangements)
- Minimum levels of safe staffing using an alternative staff model.

6.4 A Clinical Service Lead Check list can be found in **Annex C**. This will be updated as required throughout the Industrial Action risk period.

6.5 **Working with staff to cover priority services**

Maintaining critical clinical services through a period of Resident Doctor Industrial Action will require support from all staff groups. **These services must be maintained at a safe level with at least minimum safe staffing levels.** Early engagement and discussion is essential and a clear understanding of the skill set that different Professional groups provide. Support for the staff working through these unusual circumstances is important and the contingency arrangements should detail how this support should be provided. Consider:

- Welfare Support as a key element of the Contingency response
- Maintain Leadership Visibility
- Provide additional Rest Facilities particularly for staff not usually working out of hours
- Provide suitable access to Food and Sustenance

7. Pay and Contractual Issues - Consultant and SAS Doctors

7.1 Engage early with consultants and SAS doctors to plan the contingency arrangements. Advice on contractual issues related to asking Consultant and SAS doctors to work covering Resident doctor activities is available from HR Directors and MSG:

7.2 Current MSG advice on pay is outlined in the FAQ at Annex 1 and in Annex B to this document.

7.3 In addition, SAMD suggest a number of General Principles to consider:

- Consider all available Consultant and SAS staff taking into account paused activities
- Consider pausing 'Supporting Professional Activity' if a service cannot be safely maintained with available doctors.
- Consider pausing 'Study Leave' if a service cannot be safely maintained with available doctors.
- Consider staff on 'Annual Leave' when alternative options are unavailable.
- Focus Consultant and SAS cover on the critical 'Clinical Decision Making' activities recognising that involvement in other medical process activities may be required.
- Keep requests firmly within their usual scope of practice
- Ensure systems, process and skills support is provided as described below
- Consider pairing with other staff groups who are familiar with pathway activities such as admission documentation, diagnostics requests, prescribing systems and discharge documentation.

8. Other Staff Groups

8.1 Many other staff groups already work alongside Resident doctors in directly providing clinical activities or supporting activities. These include Physician Associates, Specialist Nurses, Advanced Nurse Practitioners, Pharmacists, Healthcare Support Workers and Administration Staff. They not only have skills and knowledge but also familiarity with some of the pathway processes that largely involve Resident doctors.

8.2 General Principles to consider:

- Involve these staff groups in service level contingency planning
- Maximise availability of these staff groups
- Focus capacity against critical services
- Build teams with Senior Medical staff around service activities

- Consider pairing with other staff groups who are familiar with pathway activities such as admission documentation, diagnostics requests, prescribing systems and discharge documentation.

9. Systems, process and skills support

9.1 Local contingency arrangements will almost certainly require some staff to cover activities that are not part of their usual role. No staff should be asked to work outside their area of clinical competence or confidence. In particular there may be a number of administrative tasks that require access to systems that individuals are less familiar with. This is likely to mainly apply to consultant staff involved in supporting the clinical administration activities involved in admission, discharge and in hospital investigation. Each Board will have their own systems and processes but consider:

- Clinical Systems Access (Logins + Passwords)
- Basic System Use (Viewing, Updating + Requesting)
    - Trakcare
    - HEPMA
    - PACS
    - Discharge Documentation System
- Communications Systems (Bleeps and Phones and 'Rota Systems')
- Death Certification

9.2 Consider developing bite size refresher material or Desk Instruction Cards (Physical +/- Digital) which take an individual through a key system process.

9.3 For staff covering roles that that may require an immediate response to an emergency 222 call ensure that Advanced Life Support Refresher training is offered or up to date.

10. Principles of pausing services

10.1 Each Board will need to pause some planned services to enable critical clinical services to be maintained. In considering which services to pause there will be significant learning from contingency arrangements that were enacted through the COVID pandemic. A number of principles should help guide these local decision:

- Pausing this service or activity will not be expected to have any clinically significant adverse impact (Consider a time delay of 72 hours followed by one week for the industrial action + expected recovery time to reschedule the activity)
- Pausing this service will reduce the need to provide cross cover from other staff (Consider services that are delivered in part by Resident doctors)
- Pausing this service will release some capacity that can be usefully deployed to support other critical services disrupted by industrial action.

11. Supporting Doctors in Training

11.1 Internal and external communication will be critical during any period of Industrial Action. Industrial action may have an impact on training opportunities for Doctors in Training who are a significant proportion of Resident doctors who will be in scope for this Industrial Action. The aim is to give clear guidance, support, and reassurance on any concerns they may have arising from their participation in any action:

11.2 The priorities for NES are to:

1. Minimise the impact of industrial action on training and progression for Resident doctors

- Prioritise information flow to boards around rotations and to support swift onboarding for August changeover
- To add flexibility to timelines for Annual Review of Competency and Progression and minimise rescheduling and cancellation of panels by using existing GMC derogation agreements to minimise panels where necessary
- Give clear guidance on study leave, local teaching and wellbeing

2. Support Board colleagues in delivering patient services.

- Supporting DMEs in local arrangements for rescheduling teaching and redeployment of trainees using guidance developed during the pandemic
- Reducing, where necessary, the number of panellists for ARCPs utilising the existing derogations as above to minimise time away from clinical commitments for trainers, supervisors and other ARCP panel members
- Utilise NES clinical colleagues to complete panels where appropriate to minimise the impact on Board clinicians

11.3 Detailed guidance on the impact of industrial action on training will be published on the Scotland Deanery website.

https://www.scotlanddeanery.nhs.scot/news-events/industrial-action/

12. Communications

12.1 Internal and external communication will be critical during any period of Industrial Action. Scotland wide level communication will be led by Scottish Government and is detailed below:

- A communications plan will be developed by SG to cover Ministerial communications and key Lines-to-take before/during/after any IA.
- SG will issue national messaging to media to complement Health Board messaging. This will enable a consistent form of language nationally, particularly around cancellations.
- Health Boards are responsible for local messaging to patients indicating likely disruption/impact to services.

ANNEX A

Frequently Asked Questions

Question	Answer
ABOUT INDUSTRIAL ACTION	
What is a picket line?	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. Picketing enables BMA/HCSA and their members to publicly and peacefully communicate the reasons and purpose of the industrial action.
Will there be picket lines in place if strike action goes ahead?	When known, the location of any picket lines will be shared. Employees who approach a picket line may be spoken to, given a leaflet and the reason for the strike may be explained to them in a polite manner. The picket does not have the power under law to require people to stop or to compel them to listen. A person who decides to cross a picket line must be allowed to do so.
Can employees cross a picket line?	Yes. Pickets cannot force colleagues to stop and listen. Employees wishing to enter the premises must be allowed to do so.
If a member of staff refuses to cross a picket line, whether a trade union member or not, could he/she be disciplined	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.
Are BMA / HCSA allowed to picket outside council buildings or only health buildings?	Lawful picketing must be limited to attendance at, or near, an entrance to or exit from the place at which the picket works. This may mean picket lines located at council buildings. The location of picket lines will be shared when known.

Question	Answer
Will continuity of service be broken by the day of action?	Continuity of service is not broken by unpaid service due to Industrial Action. However the length of service will be reduced by the number of days the employee was on strike which may impact calculations such as pensionable service and redundancy payments.
Can managers reallocate the duties of striking staff to non-striking colleagues?	Yes, non-striking employees can be asked to cover essential work, shifts, or be moved to other locations to cover striking employees. However, any requests to do this would need to be reasonable, taking into account the work concerned and the capability and qualifications required to undertake the work.
Can employees be asked to undertake other duties on day of strike as a result of colleagues not attending for work?	Yes - employees working on the day of action can be requested to undertake other duties in accordance with their contract of employment to help maintain essential services.
If undertaking other duties what will the rate of pay be?	Rates of pay will be as per existing National T&Cs or extant Local Agreements.
If taking strike action, can employees work a Locum / Bank Shift instead?	No - if taking Strike action, employees cannot work a Locum / Bank Shift at the time they have been at work

Question	Answer
Do members of the trade unions involved in the industrial action have an option to strike or not, and if they decide against can the trade unions take disciplinary action?	The decision to strike is a personal choice and employees who wish to work can do so. It is up to individuals to decide whether they will take strike action or not. Any response to union members crossing a picket line will be a matter for the Trade Unions to determine.
Can different trade unions take different action at different times/days ?	Yes, different trade unions may take different action at different times however they may also co-ordinate their actions to take place at the same time.
ABOUT PAY	
Will employees who choose to strike be paid?	No, employees who fail to attend for work on any day, or part day of Industrial Action will not be entitled to pay (including basic pay, banding supplements etc). Appropriate arrangements will be made between Supervisors, Managers and the Pay Department to record, report and enact the unpaid status of employees taking Industrial Action.
Will Maternity / Paternity / Parental leave Pay etc. be affected by the	Maternity and Paternity Pay etc. will not be affected by Industrial Action. Staff due to go on maternity leave or due to retire within the next 12 months may seek exemption from taking industrial action.

Question	Answer
industrial action?	
Will Sickness Absence Pay be affected by the dates of action?	Employees on Long Term Sickness Absence will not be affected unless they choose to return to work that day then go on strike. Employees who report sick will be required to notify absence in accordance with sickness absence notification processes, and their absence will be dealt with in accordance with the NHS Scotland Workforce Attendance Policy. [Insert specific details for each Placement Board].
Does the employer have to record attendances / absences for staff on the day of action, and how is this done?	Yes, it is very important that all attendance and absence information is captured, recorded and if necessary investigated, to ensure that employees are paid/not paid appropriately for the day, according to their attendance/absence and reasons for absence. Local guidance will be agreed by each Board.
What is the impact of taking day(s) of strike action if working in the UK on a health and care visa?	It is an employee's responsibility to check for any implications
ABOUT LOCUMS	
We have booked a Resident doctor via Bank /Agency to cover a shift on a locum capacity can we expect them to work on a strike day	Bank/Agency staff are classed as workers for which there is no mutuality of obligation – i.e., the Health Board is under no obligation to offer any work, nor is the worker under any obligation to accept any work that has been offered. There may be a contractual notice period that the worker needs to provide if they do not intend to be at work which the worker should honour, but the standard agency contract does not require the worker to give any notice. Boards should engage with Bank/Agency workers to ascertain whether the worker intends to be in the workplace during the period of strike action and make plans based on that.

Question	Answer
We have booked a consultant locum via Bank/Agency and they are saying not willing to work on strike day will they get paid/can we insist they work	It will be useful to advise all your agencies that you may seek additionality of consultant grades over the strike days and can they inform their workers that the ballot is specific to Resident doctors not consultant grades. Bank/Agency staff are classed as workers for which there is no mutuality of obligation – i.e., the Health Board is under no obligation to offer any work, nor is the worker under any obligation to accept any work that has been offered. There may be a contractual notice period that the worker needs to provide if they do not intend to be at work which the worker should honour, but the standard agency contract does not require the worker to give any notice. Boards cannot therefore insist that they work, but workers will not be paid if they don't work on a strike day. Boards should engage with Bank/Agency workers to ascertain whether the worker intends to be in the workplace during the period of strike action, and make plans based on that.
ABOUT LEAVE	
Can employees take annual leave on the day of any proposed strike?	Requests for annual leave will require to be made and considered in accordance with normal policy.
What should employees do who 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?	Employees 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.

Question	Answer
What happens if someone phones in sick that day?	Employees who report sick on days of industrial action will be required to notify absence in accordance with sickness absence notification processes, and their absence will be dealt with in accordance with the NHS Scotland Workforce Attendance Policy.
What about employees who are already on long-term sickness absence?	Employees who are already on long-term sickness absence should continue to be dealt with in accordance with the NHS Scotland Workforce Attendance Policy.
If an employee does not report for duty, what happens?	Where an employee does not report for duty and no contact is made with their line manager/or agreed point of contact regarding the reason for absence, managers should attempt to make contact with the employee as soon as possible to ensure their wellbeing and clarify the reason for their absence.
What about allocation of any request for Special Leave or Carers Leave?	Managers will undertake this in line with normal policy giving consideration to service continuity.
What should employees do who are intending to be on a study day on a day of strike action	Employees should discuss the issue with their line manager. If there is a shortage of employees in the department, managers may need to request that staff do not attend the study day but attend the workplace to cover duties.
ABOUT THE DAY ITSELF	
Is a day of industrial action considered to be from midnight or would it follow a shift	This will be agreed with BMA / HCSA when any action has been proposed/notified.

Question	Answer
pattern e.g. 7pm – 7am?	
What happens if a service / building is not open on a day(s) of Industrial Action?	In the event a service is stopped or reduced on the day of action employees should contact their Line Manager who will clarify what is required on the day.
Is there a central number to call to get advice before and on the day?	Advice is available from your Placement Board – specifically Head of Service Name and/or Head of Human Resources
When do employees have to tell their employer if they will be on strike?	Whilst there is no requirement it is hoped that employees will advise their Line Manager (Boards to clarify Named Contact) of their intention to be at work during any period of industrial action at the earliest opportunity in the interest of maintaining emergency and essential services.
Can a manager ask an employee if they intend to be at work during any period of industrial action?	It is not appropriate to ask an employee if they are a member of a trade union. However managers can and should ask employees if it is their intention to be at work on a day there is proposed industrial action.
Should SSTS / normal attendance sheets be used to record employees being on	Yes. Any days of strike action should be recorded by managers in Placement Boards on SSTS / normal attendance sheets as “unauthorised absence”, both for payroll and workforce reporting purposes on the day of Strike Action or as soon as possible before the payroll deadline. Employees will not be paid by their employer for time when they are striking.

Question	Answer
strike - how should this be recorded for pay purposes?	
What happens if strike action starts in the middle of a shift?	Employees do not have the right to leave their workplace in the middle of a shift to take industrial action. For example, if rostered to work from 7pm on Tuesday 29 November to 7am to Wednesday 30 November and the strike starts at midnight, an employee must finish their shift.
Resident	For example
What is the situation in relation to reporting absence from work in GP practices?	NES advised that all GP practices that although employers (including placement boards) can ask about a doctor's intention to be at work on a strike day there is no obligation on the doctors part to provide this information. They also advise that it is not appropriate to ask a doctor if they are a member of a Trade Union/Professional Organisation. However, there is a requirement to record any actual withdrawal of labour as this affects pay. Practices are asked to follow the processes in place for sickness or special leave and inform NES of any industrial action taken by a doctor placed in their practice. In addition, NES ask that practices inform them by close of play onfollowing the end of strike action , of the hours taken in industrial action including any out of hours working. This helps with pay calculation and allows us to make sure that GPSTs undertake the required amount of out of hours work for their curriculum. Notification should be made, following the normal process, contacting trainee services helpdesk as follows . https://nesdigital.atlassian.net/servicedesk/customer/portal/30/group/121/create/594
BUSINESS CONTINUITY	
What business continuity arrangements will be in place on day of strike?	In line with any other business continuity situation a 'command and control' structure with local and strategic control rooms will operate throughout the period of industrial action as necessary.

Question	Answer
What happens if there is a major incident on day of strike?	In the event of a major incident or other significant event e.g. severe adverse weather there will be an agreed communication mechanism between senior managers and senior trades union representatives to ensure appropriate staffing is in place to maintain essential services.
Will Placement Board managers be asked to submit sit reps (situation reports) on day of strike?	TBC It is not clear if sit reps will be required on the day but it is anticipated that Scottish Government may request information on staff levels e.g. numbers on strike, sick leave, annual leave either on the day or quickly thereafter. It would therefore be advisable for Placement Board line managers to ensure that they have robust recording mechanisms in place. Further guidance will be provided on this as necessary.
How do you know if you are an essential area?	When essential and emergency areas, also known as derogations, have been agreed this will be communicated to services by the Industrial Action Planning Group.
Are there refresher resources available for tasks that individuals are less familiar with i.e. death certification?	Some available resources can be found at the following links; https://www.sad.scot.nhs.uk/atafter-death/ How to complete a paper-based Medical Certificate of Cause of Death in Scotland on Vimeo https://www.scotlanddeanery.nhs.scot/news-events/industrial-action/

Annex B

MANAGEMENT STEERING GROUP

MEDICAL STAFF WORKING DURING INDUSTRIAL ACTION BY RESIDENT DOCTORS

Introduction

The purpose of this FAQ is to provide guidance to Boards in relation to pay for Career Grade Doctors in the context of potential industrial action by Resident doctors and the BMA Scotland rate cards issued for Consultants and SAS Doctors in Scotland.

Q1. What is the position in relation to the rate cards issued by BMA Scotland?

Previous industrial action advice referred to rate cards issued by BMA Scotland. These rate cards were withdrawn as part of the 24/25 pay deal agreed between the Scottish Government and BMA Scotland. BMA Scotland did however reserve the right to re-introduce the rate card in the event that no agreement is reached in respect of short term cover or in the event of a future industrial dispute. Should they decide to do so MSG's position remains that the rate cards were neither discussed nor agreed with NHS Scotland employers and are **not** supported by MSG. NHS Boards should maintain an approach consistent with MSG's position in the event that they are asked to adopt the BMA's suggested rates locally. MSG's overall position remains that Boards should adhere to national terms and conditions, local agreements and the published bank rates.

For the purpose of this guidance local agreements are defined as extant agreements i.e. those already in place prior to BMA members voting to undertake industrial action, normally agreed through the Local Negotiating Committee. In the event that Boards are in any doubt as to whether the local agreement they intend to apply is appropriate in the context of industrial action they must contact MSG for advice. Contact e mail is colin.mcgowan@ggc.scot.nhs.uk

Q2. What rates should be paid for career grade doctors working Resident on call to cover gaps resulting from Resident doctors' industrial action?

There are no nationally agreed rates for Resident on call. The 2004 Consultant Contract advises that where it is agreed between the Consultant and employer that he/she will undertake Resident on call duty, arrangements agreed locally with the LNC will apply.

Boards should therefore have their own locally agreed Resident On Call Agreement and should adhere to this. In the context of industrial action by Resident doctors where absence resulting from this occurs the only way to maintain a critical/emergency clinical service may be by asking a Consultant to undertake Resident work in place of the non-Consultant doctor. This will normally be the Consultant already scheduled to be on duty (on call) over the period in question and they will then undertake the missing Resident Doctor's work in addition to any senior contribution that they might have made anyway.

The rate of pay should be as per Boards' local RoC agreement (usually triple time), with these rates of pay also being applied to SAS Doctors (based on SAS pay scales in the new 2022 contract) in the event that they provide cover.

In the event that there is no local Resident On call agreement it is open to Boards to utilise the agreement in place within their Regional Lead Employer.

Remuneration applies only to the duration of the on-call period. The payments will not be superannuable and will be in addition to any remuneration that the Clinician would otherwise receive for being on duty.

Q3. What rates should be paid to a Consultant acting down to cover a Resident Doctor gap?

If the Consultant is already on duty during normal working hours and has been asked to provide cover for a Resident Doctor in addition to or by replacement of their own work no additional payment will be due

During the period of any strike action any Consultant or SAS doctor who has agreed to be Resident overnight (5pm to 8am) to cover a Resident doctor gap will be remunerated at triple time. This includes circumstances where there is already a Consultant on-call and another consultant steps in to cover a Resident doctor rota gap. This fairly reflects the principles set out in the Resident on-call agreements and will protect safe patient care for critical and emergencies services during these extenuating circumstances.

Q4. What rate should be paid to a Consultant who is asked to undertake an additional non Resident on call shift either to cover a colleague who is "acting down" into a Resident Doctor gap or to cover a Resident Doctor on call gap?

A consultant covering an additional non resident on call shift should be paid iin accordance with the arrangements locally, at standard, medical bank or premium rates as outlined on the 2004 consultant contract

Q5. What rates should doctors working on Medical Banks be paid during the Resident Doctor's industrial action?

In relation to work carried out on the Medical Staff Banks the position remains that Boards should adhere to the national rates set by MSG. These are:

Grade	**Rate per Hour**
Consultant (based on Point 20 of the pay scale)	£102.23

Grade	Rate
New Specialist Doctor Grade (based on point 3 of the pay scale in 2022 contract)	£75.52
Specialty Doctor on 2022 contract (based on Point 5 of the pay scale in 2022 contract)	£67.75

Grade	Rate
Specialty Doctor on 2008 contract (based on Point 10 of the existing pay scale under 2008 contract)	£66.71

Grade	Rate
Associate Specialist (based on Point 10 of the existing pay scale under 2008 contract)	£81.62

- **2025/6 rates based on PCS (DD) 2025 01**

The only exception to this are the enhanced rates currently being paid in some Boards for Consultants and Specialty Doctors working in Emergency Medicine Departments and these should continue locally. **These enhanced rates only apply to work carried out in Emergency Departments and should not be extended to work conducted in other areas of activity.**

Q6. Can Boards use Time off in Lieu as a means of recompensing career grade staff for cover during the industrial action?

TOIL is an alternative way of compensating for additional work undertaken and should only be used as an alternative to payment if the work is not already factored within the Job Plan.

At this time we are not endorsing TOIL as an alternative to payment as this will undoubtedly cause issues to Services in the future, however if Clinicians do not wish to be paid for additional Ad-hoc hours they should discuss with Management the option of receiving time off in lieu. (TOIL).

TOIL would be based on the number of additional hours worked. If the additional hours are worked in premium time (Time + 1/3) Premium time applies to work undertaken at weekends, public holidays, between 8pm and 8am Mon - Fri for consultants and 7pm – 7am for Specialty doctors) e.g. this would mean that for every 3 hours worked in premium time this will attract 4 hours TOIL.

Q7. What rate of pay should be made for work deemed as extra – contractual?

BMA Scotland have issued guidance in relation to a number of activities which are in their view extra contractual. In these cases BMA Scotland are recommending doctors should utilise the BMA rate card as a basis for remuneration. BMA Scotland's argument is that these works are outside the agreed job plan, are therefore extra contractual, and that pay needs to be negotiated and agreed between the employer and the doctor.

The activities in question include:

- Catch-up work such as waiting list initiatives (WLIs) and similar
- Weekend clinics
- Extra lists at the weekend (including trauma lists)
- Additional shifts (e.g., in emergency departments)
- ward rounds (including post-on call ward rounds) in premium time (time outside of 7am-7pm Monday to Friday)
- providing cover for foreseeable Resident doctor colleague absences
- periods of on-call in premium time which necessitate a consultant in practice to be Resident whilst 'on call'.

It seems likely that a number of these areas of activity will come into play in the context of industrial action. Some of these e.g. WLI work are clearly covered by National Terms and Conditions. Others, e.g. Resident On Call will be the subject of local agreements with Local Negotiating Committees or in the case of Bank work in Emergency Departments, already covered by enhanced Bank rates.

There are however a multiplicity of potential circumstances in which cover will be required in the context of industrial action. Providing this cover will sometimes require career grade doctors to carry out additional work, whilst in other cases the work required will not be additional but will be different to that agreed in their job plan.

The general principles to be followed are:

- If the work is additional, whether within or outside core working hours it should attract additional pay at the rates outlined above depending on the circumstances of the additional work
- Where the work is not additional but is replacing Resident Doctor's work during core working hours this should be undertaken at normal salary rates.

As previously advised MSG's overall position remains that Boards should adhere to national terms and conditions, the relevant extant local agreements and the published bank rates.

Q8. If a Resident Doctor who has chosen not to strike is asked to work an additional shift to cover a gap what will they be paid?

In these circumstances, payment will be made in accordance with the arrangements locally i.e. bank rates or as per terms and conditions.

Q9. In the event that Advanced Nurse Practitioners are asked to cover gaps in Resident doctors rotas, how should they be recompensed?

All Agenda for Change staff are eligible for overtime payments for excess hours worked over full time hours. Part time staff will receive payments for the additional hours at plain time rates until their hours exceed standard hours of 37.5 hours per week. An additional on call would be subject to the normal on call payments.

Annex C – Clinical Lead Checklist

Resident Doctor strike planning and coordination: checklist for Clinical Directors

- Make sure you are familiar with the FAQs and share these with colleagues
- Work through your services with your CSM and CNM, they will think of other things and will help coordinate staff across your service areas
- It is better to plan for a worst case scenario, and so we are planning for service delivery without doctors in training and CFs
- Think about services provided as in hours and out of hours, being careful to separate out relevant time zones abased on your rotas and working patterns
- Separate areas of service provision into STOP, REDUCE, CONTINUE (i.e. those you must provide)
- Consider activity that might need to be reduced or stopped in the days prior to planned industrial action
- The impact on services will extend for longer than the period of industrial action as there will be a period if catch up afterwards
- This should allow you to look at how the CONTINUE and REDUCE areas are usually staffed and where you will have gaps, to then consider how best to fill those gaps
- Use the staff released from STOP or REDUCE first then escalate remaining gaps to your AMD and GM

To check:

- LEAVE- do not approve any more AL or SL for the period of industrial action
- Refer to FAQ for leave already approved
- REPORTING ARRANGEMENTS: do you have a robust mechanism in place for knowing who is at work on any given day and recording this on SSTS? See FAQs
    - [cover this in FAQ or note]. Usually we record absence but during industrial action we will need to record presence at work- those not recorded as present will be recorded as on strike. Make sure have identified who is going to do this
- PASSWORDS – make sure all consultant and SAS grade staff who might be deployed to work differently have up to date passwords for essential clinical systems- Trak and HEPMA, plus APEX and PACS (in case of Trak outage)
- SUNRAY- do they have a Sunray card to access Wyse devices?
- ID badge to access swipe card areas
- KNOWLEDGE of clinical systems- are staff comfortable and confident entering information directly and prescribing on HEPMA?
- Consider the essential tasks that are undertaken in your service areas and what you can put in place to make these more robust
    - Are there any essential practical procedures in your area which you rely on DiTs to undertake, and are some consultants who have not maintained these skills?
    - Does your service rely on HAN for out of hours cover and can you identify suitable staff members who will contribute to the HAN rota in the absence of DiTs?
    - Do staff know how to complete an MCCD and to report to the PF?
    - ECG and phlebotomy- would it help to have additional staff on duty able to take blood and do ECGs?
    - Do consultant staff know how to complete an IDL?

- Management of emergencies: have you thought through how this will work, is there any need for additional ALS training?
- Handover- how will your teams handover to HAN and pick up issues in the morning?

Annex D – FAQ for Pay Deductions

Introduction

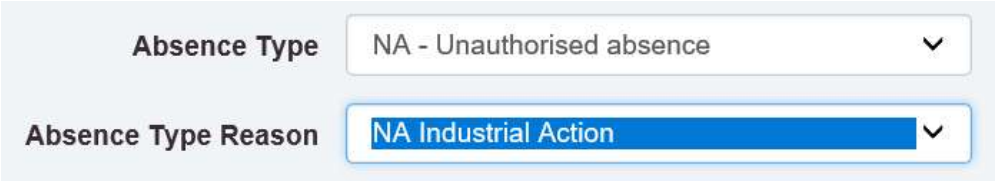
The purpose of this FAQ is to provide guidance to Boards in relation to the recording of rostered shifts and absences in the context of potential industrial action by Resident doctors, and to allow a consistent approach that supports real time reporting and timeous deductions from pay.

Q1. What system do I need to record strike action for a Resident doctor in my placement board?

To allow for consistent workforce reporting and calculation of strike deductions across NHSS, all industrial action must be recorded onto the Scottish Standard Time System (SSTS). All absences pertaining to the period of industrial action must be recorded.

Q2. How do I record in SSTS that a Resident doctor is off on strike?

This is recorded as:



This can be done by individual employees, or by selecting the Bulk Absence option for the SSTS roster:

Q3. SSTS doesn't hold the actual shifts worked, only notional shifts – how will the correct hours due to be worked be recorded on SSTS?

As the pay deductions will be calculated upon the number of calendar days not worked e.g. 1//31 of monthly salary for each calendar day, you are not required to update SSTS with the actual shifts that would have been worked.

However, when recording Industrial Action absences, you must make sure that no absence is recorded for someone who would have been off on a particular day due to their working pattern or pre-agreed period of annual leave e.g.

Wed 12th July – actual or notional shift recorded and due to work = Industrial Action absence
Thurs 13th July – actual or notional shift recorded and not due to work = No Industrial Action absence
Fri 14th July – actual or notional shift recorded and on pre-agreed leave = No Industrial Action absence, record particular absence for leave

Q4. Is this process the same for doctors who are placed with me from their lead employer, and doctors who are directly employed by me under a Clinical Fellow or LAS contract?

Yes – in keeping with the existing DDiT SOP's and employer responsibilities, placement boards are responsible for recording accurate industrial action absences on SSTS, irrespective of who the employer is.

Q5. I don't have many SSTS users who can update the system – how can I get more users set up?

The SSTS Team for your lead employer (or your own local Board for Clinical Fellows/LAS contracts) can be contacted to get more users set up. You would need to allow sufficient time for this access to be set up. Alternatively, you may wish to consider prioritising the workload of those colleagues who already have access and are familiar with the system, or organise a central point for input.

Q6. If required, where I can I get any guidance or support on how to record absences on SSTS?

The SSTS Team for your lead employer (or your own local Board for Clinical Fellows/LAS contracts) can be contacted for any advice or guidance you may require.

Q7. Should other absences be recorded for the period of industrial action?

Yes – any other types of absence should be recorded e.g. day off, annual leave, sick leave, maternity leave, etc. as it may be useful to locally understand the reasons for staff not being available for work.

Q8. Once the absences are recorded, can I report on this?

Yes – SSTS BOXI can be used to provide local, regional and national reporting of ResidentResident doctors who are recorded as being on industrial action. SSTS users should have access to this, or can request this in line with Q&A 4 above.

Q9. How will Payroll Teams in lead employer boards be notified of the absences that are recorded?

SSTS Teams in lead employers will run absence reports from SSTS to show the days lost due to industrial action. Payroll Teams in lead employers will then add the ResidentResident doctors' monthly salary and JKL band to the SSTS report to allow the correct pay deductions to be calculated.

Q10. When will the pay deductions be made?

Due to the timing of the intakes and rotations, which may involve changing employers, the intention is to make the pay deductions from July salaries.

Timescales for this are tight, so real time recording of industrial action is vital in ensuring both accurate workforce reporting, and timeous deductions from pay.

Q11. Will lead employers calculate and process the strike deductions for all ResidentResident doctors on their payroll, regardless of placement Board?

Yes – placement boards are not required to make any payroll calculations or deductions for ResidentResident doctors who are on the payroll of the lead employer.

However, please see Q&A 2 above detailing the requirement for placement boards to accurately record absences on SSTS.

Q11. How will the pay deductions be shown on payslips?

Calendar days not worked due to industrial action will show as “Industrial Action”
The JKL banding supplement for the days not worked due to industrial action will show as “Industrial Action NS”

Q12. What if the rota is re-assessed at a later date, and the banding supplement changes – will this mean the industrial action pay deduction is changed?

Yes, it will be changed as part of any backdated calculation.

Q13. Is there any notification to the Scottish Public Pensions Agency (SPPA) of strike days?

Yes, employers are required to advise SPPA of days where superannuation contributions are not paid; known as non-contributing days. The SPPA will receive separate notification of the industrial action/non-contributing days from Lead Employer Payroll teams.