

To:

- Trust and ICB
- Chief Executives
- COOs
- Medical Directors
- Directors of Nursing
- EPRR Leads

NHS England
Wellington House
133-155 Waterloo Road
London
SE1 8UG

19 December 2023

cc.

- Regional
- EPRR teams
- Directors
- Medical Directors
- Nursing leads

Dear Colleagues,

Planning for Junior Doctor Industrial Action

You will be aware that junior doctors from the British Medical Association (BMA) will take strike action between 07.00 on Wednesday 20 December and 07.00 on Saturday 23 December 2023. Thank you for the preparatory work which has taken place since the action was announced.

NHS England and the BMA both wish to ensure that patient care remains as safe as possible while junior doctors are taking lawful industrial action.

This letter sets out our joint staff recall position and jointly agreed derogations for use during industrial action. This letter updates on previous letters outlining the agreements on staff recall and requests arising due to patient safety concerns.

While productive discussions have been held between NHS England and the BMA in relation to the derogations process, the approach taken remains largely the same as previous strikes.

Staff recall for externally declared major incidents with mass casualties

Both parties acknowledge that, despite the comprehensive contingency plans being put in place, unpredictable events, major incidents, and unexpected and extreme circumstances, where mitigations in place fail, may require a request for staff to return to work for a limited period to maintain safe patient care.



NHS England and the BMA recognise it may be necessary, as an exception, in the event of an externally declared major incident with mass casualties, for a trust to contact doctors explaining the situation and seeking their return to work.

The trust and ICB should then follow standard procedures to escalate the incident, in line with the EPRR framework, via on-call routes, and NHS England's national team will escalate to the BMA. The Trust will be required to complete and submit a patient safety mitigation form (in retrospect) to verify the need for the recall. This process does not apply to incidents that arise due to the industrial action itself.

Derogations

The BMA has advised employers that they are calling a full walkout of junior doctors. However, there is a joint recognition that processes need to be in place to mitigate risks that are identified in relation to patient safety.

NHS organisations have been working hard to ensure that non-junior doctors provide cover for urgent and emergency care pathways. Given the time of year and further action announced for January, patient safety concerns can also be considered for urgent or time sensitive care across the totality of the period, whether directly impacted or indirectly (such as staff being moved to provide cover for emergency care). Urgent surgery including trauma, cardiac, transplant including corneal, caesarean sections and cancer care should be protected where possible and where cover of other emergency services is taking place without the need for derogations. Surgery of this kind is frequently consultant- or specialist-delivered, may be deliverable without junior doctors, or worked around other emergency work.

Trusts should seek to implement mitigations where they have concerns about patient safety, whether in emergency care or in any areas where time sensitive care is impacted by industrial action.

Where an immediate local patient safety concern is identified once the industrial action has commenced, where mitigation is necessary and all reasonable steps have been taken by the trust to mitigate, the BMA and NHS England have agreed the medical director or nominated executive director of the relevant trust or trusts should contact the NHS England EPRR team.



They will pass details of the situation to the BMA who will then need to agree that the incident can only be mitigated by requesting doctors to return to work. This should be supported by use of the enclosed form/template. The BMA cross references the evidence submitted against local intelligence.

The BMA's position in reviewing derogation requests remains that the following considerations are likely to be a factor in whether the derogation is approved:

- whether employers can show that all efforts have been exhausted and/or avenues explored with enhanced pay and TOIL and with sufficient notice to staff to create the capacity required, and;
- whether elective work (not otherwise described in this note as urgent) is still being carried out, where this is being performed or supported by staff who could safely and reasonably be diverted to delivering urgent or emergency care.

Both the BMA and NHS England are committed to assessing and responding to derogations as quickly as possible.

Once the BMA has approved a derogation, the local trust may contact striking doctors and seek their return to work. The BMA will also post to its twitter account that the patient safety mitigation has been agreed so that it is easy for members to verify it.

Doctors on strike need not return to work unless the need for a derogation is confirmed by the BMA aside from in response to major incidents (as set out above).

The full process for seeking a derogation is set out in Annex 1.

Further discussions about the derogations process have been held between NHS England and the BMA, and these discussions will continue to ensure that they take account of the operational experience of Trusts and local intelligence.

Thank you again for your work to ensure patient care remains as safe as possible during periods of industrial action.



Yours sincerely,



Professor Philip Banfield
Council Chair
British Medical Association



Professor Sir Stephen Powis
National Medical Director
NHS England



Appendix 1 – Process for derogations during Junior Doctor’s industrial action including unexpected externally declared major incidents with mass casualties.

Process for Patient Safety Mitigation requests *during* Junior Doctor’s industrial action (summary)

