The position of RCN members

The RCN is not involved in the dispute on 21 June 2012. RCN members will be working as normal on that day.

The RCN's advice to members

• Members, including agency staff and students, should attend their place of work as normal – failure to do so is likely to be a breach of contract. The contract requires staff to attend work on the days that they are contracted to. Their employer is required to provide work for them to undertake. If they attend work and there is no work, or less work, to do, they should remain at work and the employer must still pay them. This is the case if employed directly by a GP or by the NHS.
• Members should not volunteer to cover the work of colleagues who are undertaking industrial action, though they are obliged to carry out any reasonable and contractual requirements of the employer.
• Members should adhere to the Nursing and Midwifery Council requirements at all times.
• Members should avoid any voluntary overtime work to cover the work of those taking industrial action.
• Members should monitor the work environment in respect of health and safety and should, where necessary, report any concerns they might have about the safety of staff, patients or property to their line manager.

Examples of care that will be provided and care that might be postponed

<table>
<thead>
<tr>
<th>Example inclusions – care to be provided</th>
<th>Example exclusions – care to be postponed</th>
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<tbody>
<tr>
<td>Emergency procedures, investigations and discharges for inpatients.</td>
<td>Elective diagnostic and treatment procedures.</td>
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<td>Urgent surgery and other urgent treatments.</td>
<td>Clinical coding.</td>
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<td>Outpatients under close review for unstable conditions e.g. Crohn’s.</td>
<td>Non-urgent outpatient appointments.</td>
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<td>Any patient who doctors feel uncomfortable postponing, for clinical reasons.</td>
<td>Audit.</td>
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<td>Documentation necessary for safe discharge and any urgent community care or follow-up.</td>
<td>Discharge summaries that do not request urgent action from the GP.</td>
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<td>Emergency department and labour ward/early pregnancy attendances.</td>
<td>Supporting professional activities, additional responsibilities and external duties.</td>
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<td>Management meetings (unless directly concerned with immediate patient care or planning for coping with industrial action).</td>
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Background

Members of the BMA will be undertaking industrial action on 21 June 2012. They will only be undertaking urgent or emergency work. This can be defined as work that cannot be safely postponed until another day.

Where work is considered non urgent or is non emergency, it should be postponed in advance. The BMA has stated that patient safety remains their priority.

All doctors who would normally be expected to be working on 21 June will be at their normal place of work.

On 11 June the BMA confirmed that: “Patient safety will be our absolute priority. Doctors will be in their usual places of work and providing urgent and emergency care to all those who need it.”
General practice

Doctors in general practice (GPs) will either be an employee of the practice or a partner – effectively an employer of other doctors, nurses and primary care staff. GPs are expected to be at their place of work as normal on 21 June, but will only be undertaking urgent or emergency issues. It may be the case that not all GPs will be undertaking industrial action.

Usually it is the case that it is a fellow worker who is undertaking industrial action. However on 21 June members employed in general practice could find that their employer and fellow employees are undertaking action.

Nurse partners in general practice should discuss with their colleagues how urgent and emergency services will operate. Coordinated management of services will be needed especially where some GPs in the practice may or may not be involved.

The BMA has provided information to their general practice members. This can be found at www.bma.org.uk

The advice suggests that there will be no routine appointments with GPs or nurses in practice participating in the action. It confirms that any patient who believes they require urgent and emergency care from a GP or a nurse should be seen, advising that practices should operate their usual triage system for urgent and emergency patients. The BMA patient leaflet advises that patients will be informed if their appointment should still go ahead.

Hospital doctors

Hospital doctors are NHS employees in the same way that nurses and other hospital staff are. It is highly unlikely that a hospital employer will not be fully prepared for industrial action by some of its staff. The employer will have been informed of the union ballot taking place, who has been balloted, the ballot result and the action that the union intends to take. They will also have been informed about who will be taking industrial action although they may only know the type of worker involved rather than the names of all the individuals concerned. The information supplied by the union will be sufficient for the employer to understand the nature of the action, the locations involved and the category of worker likely to be involved in it.

The employer will therefore have had sufficient time to plan for the action and to take appropriate steps in respect of staff cover, staff safety, patient safety and risk management. BMA members in hospitals will have been involved in drawing up plans for the safety of patients during the action.

The BMA have provided information to their hospital doctor members. This can be found at www.bma.org.uk

NHS Employers' advice

NHS Employers published advice for its members (NHS employers in England and Wales) on managing industrial disputes. This can be found at www.nhsemployers.org

Employers seeking RCN advice and support to cover shortages in staff or services

Unions taking industrial action will be aware of the long standing TUC advice (1979) about ensuring the provision of essential services, and the need for those unions taking action to make appropriate arrangements with employers. Even where a union is not a member of the TUC they are likely to support the principle: “...for the maintenance by their members of supplies and services essential to the health or safety of the community or otherwise required to avoid causing exceptional hardship or serious pollution...”.

If an employer is concerned about essential cover during a period of industrial action, they must discuss this with the union(s) taking the action. It is for the employer to reach an arrangement with the union(s) involved to ensure essential services are protected. It is inappropriate for unions not involved in the action to engage in these discussions before the situation has been discussed with the union(s) undertaking the action.

If the RCN is asked to take part in these discussions we should initially direct the employers to the union(s) involved.

If an employer seeks the view of an individual RCN member or group of union members in their personal capacity as an employee of the organisation, then there may well be legitimate reasons for that individual to discuss how services will be delivered on the day – and for that individual to clarify to the employer what their responsibilities will be. However, this is different from engagement with the RCN as a union.

The RCN and its members, without participating in the action(s) of another union, should not voluntarily engage in any activity with employers that would undermine the lawful industrial action of other trade union(s).

Many employers will have started to work on contingency plans for industrial action. In this process they might ask the RCN (or any other unions not involved) for details of RCN members: names, job titles and area of work. We are not obliged to give this information to the employer.
The employment position of the individual

Members who are registered with the Nursing and Midwifery Council (NMC) are bound by the NMC Code. They should ensure that at all times they fulfil the duties placed upon them by the Code. The Code can be found at www.nmc-uk.org

In employment terms a worker engaging in industrial action is likely to be acting in breach of their contract of employment. However the law provides certain immunities to the worker when they undertake lawful industrial action.

This immunity does not apply to those who are not part of that action.

If a worker who is not involved in the dispute fails to attend work or attends work but does not fulfil their contract of employment then they could be subject to disciplinary action by their employer or the regulator.

However, while at work the employee should not be expected to work beyond their contract of employment; should not undertake activity for which they are not competent; and should not put themselves or anyone else at risk of danger or harm.

Health and safety: patient safety

Under Section 3 of the Health and Safety at Work Act (1974) employers have a duty to ensure that people other than their employees eg patients, service users and visitors, are not exposed to risks to their health and safety. If an employer is on notice that industrial action will be taking place they should ensure that this duty is fulfilled.

Under the NMC Code nurses also have a responsibility to manage risks to patients’ safety. They must:

- act without delay if they believe that themselves, a colleague or anyone else may be putting someone at risk
- inform someone in authority if experiencing problems that prevent working within the code or other nationally agreed standards
- report concerns in writing if problems in the environment of care are putting people at risk.

Health and Safety Act: serious and imminent danger

Under the Health and Safety at Work Act (1974) employers have a duty to protect the mental and physical health of their employees. In particular the employer is obliged to provide and maintain equipment and the environment including systems of work so that they are safe and without risk to health. If an employer has notice that industrial action will be taking place they should ensure that this duty is fulfilled. These duties are not overridden by any industrial action taking place.

Employers must also set up procedures to be followed in the event of serious and imminent danger to persons at work (Management of Health and Safety at Work Regulations 1999 Regulation 8). The regulation states that an individual can take appropriate steps (including stopping work and proceeding to a place of safety) "...in the absence of guidance or instruction or in the light of their knowledge..." in the event of being exposed to ‘serious, imminent and unavoidable danger’. If a worker was dismissed because they stopped working as they feared they were in serious or imminent danger, the dismissal would be deemed automatically unfair (ERA 1996 Section 100).

Where members fear that they are in a position that endangers themselves they should notify their manager immediately and put themselves in a place of safety. They do not need their employer’s permission to do this but they must be clear in their own mind that such a danger is present.

If you have any queries please contact RCN Direct on 0345 772 6100.

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