

FAQs on consultant and SAS doctor support during strike action of junior doctors.

Updated 17 March 2023

Q.1 Can we ask consultant and SAS doctors to cover the work of junior doctors in the event of industrial action?

Junior doctors taking industrial action will reduce the workforce's capacity to deliver normal levels of patient care. Securing cover from your consultant and SAS doctors can be a way of ensuring safe care continues. Previously, during periods of industrial action, consultants and SAS doctors have been willing to undertake such work on the basis of accommodating some flexibility within their job plans or picking up the work through the organisation's bank. Our advice would be to take a conciliatory approach with your consultant and SAS doctor workforce at the earliest opportunity to explain the need for cover and to agree on an approach, taking into account any relevant local policies.

Consultants and SAS doctors who are already scheduled to work their usual PAs on a day of action, may be more inclined to voluntarily agree to provide junior doctor cover if the tasks required are already within the scope of their existing job plan and/or are reasonably incidental to it (see further at question 2 and question 6). This will require further analysis of individual job plans and rotas once the dates for strike action are known.

Q.2 What terms and conditions of service (TCS), and national and local policies should we use when organising cover and is there any flexibility within those terms for those who are asked to cover for junior doctors as part of their job plans and rostered work.

There are national TCS in place for consultants ("the 2003 TCS") and also for SAS doctors ("the 2021 TCS").

Links to the relevant terms and conditions of service:

- [Consultants](#)
- [Specialist grade](#)
- [Specialty doctor](#)

There is flexibility within the specialist grade and specialty doctor national terms and conditions re providing cover as they stipulate at Schedule 3, para 3 that these

doctors “will be expected to be flexible and to cooperate with reasonable requests to cover for their colleagues’ absences where they are safe and competent and where it is practicable to do so”. Employers may seek to rely on this term to direct SAS doctors to provide cover for junior doctors as a reasonable management instruction.

In respect of consultants, the 2003 TCS do not contain express terms which oblige consultants to provide cover for junior doctors (only for absent consultant or associate specialist colleagues). However, schedule 2, para 2 of the 2003 TCS, states that:

“A consultant is responsible for carrying out any work related to and reasonably incidental to the duties set out in their Job Plan.”

Job plans, together with the general obligation of cooperation owed by employees to employers, may therefore enable an organisation to direct a consultant who is already working during a period of industrial action by junior doctors to provide cover for junior doctor to the extent that the tasks undertaken are reasonably incidental to their duties on that day (even if they might not normally fall within what they are expected to do). The implied term of adaptability in all contracts of employment to the effect that an employee will undertake work, other than their normal work, if the work is suitable (regard being had to their ability to carry out the tasks in question), there is no loss of pay, and the changes are only temporary will be relevant.

Organisations can therefore, within the terms of contract, require specialist grade and specialty doctors to cover the duties of junior doctors. It can also require consultants to, in turn, cover the duties of associate specialists and, where the duties are incidental to those already scheduled in the job plan, duties that would normally be carried out by junior doctors.

Q.3 Will job plans need to be changed due to industrial action?

It is likely to be impractical to change job plans on a temporary basis to facilitate cover for industrial action by junior doctors. As indicated above, there are some flexibilities within the existing contractual terms that can, however, be relied on.

Generally, SPA time will be part of an agreed job plan which cannot be changed without the agreement of the individual. However, employers could seek to rely on the duty of adaptability to ask SAS/consultants to cover direct clinical care on an exceptional basis during strike action which coincides with SPA time.

Q.4 Can we use acting down policies?

Organisations may also be able to rely on any local ‘acting down’ policies. ‘Acting down’ is the term used to refer to situations where a doctor, normally as a result of an emergency or a crisis, is required to undertake duties usually performed by a

more junior medical employee. For consultants this often involves being resident when they would otherwise be non-resident on-call.

The extent to which an organisation is able to rely on an acting down policy to direct consultants to provide cover for junior doctors taking industrial action will depend on the terms and status of the policy locally. Where these documents have been agreed locally and are put in place as collectively negotiated documents, a Trust will be able to take the view that directing consultants to provide cover is a reasonable management instruction and should therefore refer to the policies in discussions with consultants about cover.

Where a doctor agrees to cover/act down but then reneges on the agreement in the shift, this could be a disciplinary matter and potentially a regulatory matter if reneging on the agreement in/immediately before the shift puts patients at risk. Deductions from pay may also be appropriate, depending on the arrangements under which that shift was due to be covered.

Q.5 Can we rely upon the emergency call-out provisions in the TCS to require consultants and SAS doctors to provide cover?

The relevant provisions are entitled “Recognition for Unpredictable Emergency Work arising from On-Call Duties” and are contained in Schedule 5 of the 2003 TCS for consultants and Schedule 6 of the 2021 TCS for SAS doctors.

If an emergency arises during a day of strike action, the usual emergency provisions in the TCS apply and a consultant or SAS doctor who is rostered on-call can be required to attend to deliver the emergency care required.

Organisations may seek to rely on the emergency call out provisions in the TCS to require consultants and SAS doctors to provide cover as part of their contingency planning.

Q.6 How should we remunerate consultants and SAS doctors that agree to provide cover as additional work?

Where consultants and SAS doctors provide cover under their terms and conditions as part of their job plans and are scheduled to work, remuneration should be in accordance with their usual pay and seeking additional remuneration will not be appropriate.

Remuneration and compensation arrangements will need to be put in place by employers for consultants and SAS doctors who are prepared to provide cover in addition to their job-planned duties (i.e. outside of times when they would normally be required to work under the job plan). Consultants and SAS doctors are paid the rates for additional work that have been put in place locally. We are aware that there may be issues with consultants and SAS doctors not accepting those rates in

accordance with the BMA's suggested rate card (which also covers SAS doctors) [Consultant non-contractual rate card \(bma.org.uk\)](https://www.bma.org.uk). The position remains that pay rates for non-contractual work need to be determined by the local employer, in light of their own affordability constraints. This is likely to be raised in any conversations which take place with consultants regarding the provision of cover and it is important to highlight that organisations are not obliged to pay the rate card. [BMA non-contractual rate cards \(nhsemployers.org\)](https://www.nhsemployers.org).

Q.7 How should consultants and SAS doctors be remunerated for acting down?

Where a consultant or SAS doctor acts down (unless this forms part of their standard sessional commitment where no further remuneration will be necessary) and is required to either be resident on-call or participates in a shift system, they are likely to require to be remunerated at an agreed rate determined in the local acting down policy or by local agreement. Alternatively, the consultant or SAS doctor can request time off in lieu of this period.

Q.8 Will working time regulations and compensatory rest apply?

Yes, those provisions include a requirement for 11 hours of consecutive rest per day and 24 hours of uninterrupted rest per week. However, it is recognised that, as in the case of delivering services such as medical care where continuity of service by the worker is required, providing consecutive rest will not always be possible and that the compensatory rest provisions of the Working Time Regulations may apply. For further detail on compensatory rest please see - [Compensatory rest \(Gov.uk\)](https://www.gov.uk).

Note that rest periods are not working time and therefore they do not need to be paid.

Q.9 Will consultant and SAS doctor activity need to be cancelled during industrial action?

This should be agreed locally at the earliest opportunity to minimize the impact on patients. All non-critical activity taking place on strike days should be reviewed in order to release staff to support clinical activity.

We advise you to consider time periods when you have had to plan for reduced staff numbers such as trainee rotation and induction days, to agree on the most suitable level of activity to take place.