



Royal College  
of Midwives

## **Industrial action**

### **FAQ's**

At the RCM we understand that members will have some concerns about taking industrial action and what that means regarding their NMC registration, their employment and the safety of the women, parents and families that they care for.

This guide has been put together to help you understand what industrial action is, what is involved and how you can safely participate.

#### **What is industrial action?**

Industrial action involves members of a trade union working together to achieve a goal, in this case we are trying to achieve a decent inflation proof pay deal for midwives and maternity support workers. You can only take part in industrial action if you are a member of a trade union, and your trade union has balloted you for industrial action and achieved a yes vote in that ballot.

There are two types of industrial action, strike and action short of a strike. A strike is the complete withdrawal of labour from the workplace for a period of time, normally a day or two or even half a day, but this can be longer depending on the dispute. Action short of a strike can come in many forms but it is usually working strictly to the terms of your contract of employment. This is sometimes called "working to rule". This can include taking all your contractual breaks and/or starting/finishing your shifts strictly on time and/or refusing to undertake paid or unpaid overtime. This can highlight all the goodwill that you give your employer. Action short of a strike can be just as disruptive to your employer as a strike so just as effective and any action we chose will cause disruption to your employer and the Government but not disrupt women and their babies

## **How does the Trade Union Act 2016 impact industrial action?**

On March 1 2017 the Trade Union Act 2016 (TUA) introduced new restrictions on trade unions and their members as to how and when they could take industrial action. One of those restrictions imposed a 50% turnout requirement on industrial action ballots. What this means is that 50% of members must vote in that ballot for it to be legal. For instance, if 100 workers are eligible to vote, and only 49 turnout for the vote, workers cannot take industrial action even if all 49 vote in favour.

The act also introduced a 40% support requirement for workers whose role mostly concerns the delivery of “important” public services, and this includes our members. What this means is, that as well of having to have 50% of members voting, 40% of them have to vote for the action. For example, if 100 workers are eligible to vote, at least 50 have to vote, and at least 40 of them has to vote in favour. If 50 voted and 39 voted in support, it would still not be legal to take industrial action, even though the vast majority of voters supported it.

There were several other statutory requirements introduced by the TUA and these mainly impacted England and Scotland and will be covered elsewhere in this guide.

## **How does industrial action start?**

The decision whether or not to ballot for industrial action will be made by the RCM board. So it is very important that members show their strength of feeling about their willingness to take strike action by having their say in our consultations. The RCM board will need to see that there is a realistic chance of the ballot hitting the 50% turnout threshold to help them make an informed decision.

If the board decide on industrial action a statutory ballot will need to take place. We will have to give a weeks’ notice to the employer of our intention to hold the ballot. As the law stands trade unions aren’t allowed to ballot their members for industrial action by electronic means and can only do so by postal ballot. This is despite the fact that e-balloting is already accepted as a secure way to ballot members of the Conservative Party in their forthcoming leadership election for example. This is designed to make it harder for unions to win industrial action ballots.

## **Can midwives go on strike? what about our NMC Code of Conduct?**

If we do take industrial action we will not put women or babies at risk and will not ask you to break your code of conduct. It is not against the NMC code of conduct for midwives to take industrial action. The NMC website [confirms this](#) and recognises that many midwives are members of trade unions and the NMC respects their democratic right to express support for their trade unions and to lobby on a wide range of issues. This does of course include their right to support and take part in strike action. The code does not prohibit nurses and midwives from taking part in lawful industrial action”.

### **Would this affect the care that women or babies receive?**

Industrial action would not put women or babies at risk and would not ask you to break your code of conduct. When we took action in 2014 and 2015 we maintained safe services. Our Workplace Representatives worked with managers to ensure there was cover during the stoppage which is intended to be similar to the cover on a bank holiday. We believe that the treatment of NHS staff will affect care because staff that are demoralised cannot deliver the quality of maternity services users deserve. We believe that investing in staff is an investment in better care.

### **The bank holiday cover in our unit is the same as on a normal day, what would the cover during a stoppage look like?**

Using the term 'bank holiday cover' is a useful way of describing how cover might look during industrial action and it is a term that the majority of unions use. However, services/activities vary locally and would be based on the individual needs of the service. RCM Workplace Representatives would work with managers to determine contingency plans for your unit following extensive guidance from the RCM. This would set out key priorities and principles that should be followed to determine which services/activities would be exempted and which services/activities would be postponed till after the stoppage.

### **When does the ballot start?**

The ballot will start on **29 September 2022** You will receive your ballot paper by post.

### **When does the ballot close?**

The ballot closes at midday on **27 October 2022**. You have to send your ballot paper back in the envelope provided by post, the envelope is prepaid so you don't need to put a stamp on it. To make sure the ballot paper is returned by **Thursday 27 October** we recommend you put it in the post as soon as you can bearing in mind that, if there are postal strikes in mid to late October, then these could cause postal delays. In any event, you should post your ballot paper by no later than **Tuesday 24 October**. (Although we would advise you to put it in the post as soon as you can to be on the safe side!).

## **How will I get my ballot papers?**

The ballot papers will be sent to you by post to your home address. The ballot papers will be sent to you from a company called Civica, they are an independent company who run ballots and elections for trade unions and other membership organisations.

## **I haven't received my ballot paper what should I do?**

The ballot will open on **29 September 2022**, the papers will take 1-3 days to arrive, if you haven't received your ballot paper shortly after this date please ring 0300 303 0444 or email [paycampaign@rcm.org.uk](mailto:paycampaign@rcm.org.uk). The last date that Civica will be able to issue papers is **20 October 2022**, so please get in contact with us before then.

## **I am off work at the moment (eg. maternity leave/long term sickness) can I vote in the ballot?**

The ballot is to give the RCM a mandate to call industrial action during the period ending on 26 April 2023. If you expect to return to work on or before 26 April 2023 then you should vote in the ballot but, otherwise, you should not vote.

## **I am planning on leaving employment in the near future, can I vote in the ballot?**

The ballot is to give the RCM a mandate to call industrial action during the period beginning on 10 November 2022 and ending on 26 April 2023. If you expect that you will not be employed by a Trust/Board for the whole of this period then you should **not** vote.

## **I've accidentally thrown my ballot paper away or lost my ballot paper, can I get another one?**

Yes, please ring 0300 303 0444 or email [paycampaign@rcm.org.uk](mailto:paycampaign@rcm.org.uk) and we will ask Civica to send you another paper. The last date that we will be able to issue papers is **Thursday 20 October**, so please get in contact with us before then.

## **How do I respond?**

You can only respond by post. You just need to answer each of the questions and then send the voting paper back to Civica. You don't need to put a stamp on the envelope as the postage is prepaid for you. We recommend you post it back to us as soon as possible and no later than **Tuesday 24 October**.

## **What questions will I be asked?**

You will be asked two questions:

**1. Are you prepared to take strike action? Yes/No**

**2. Are you prepared to take action short of a strike? Yes/No**

We are recommending that you answer **yes to both questions**.

## **How do I complete the ballot paper?**

You need to place a cross in either the yes or no box for each question (and we are recommending that you vote yes to both questions). Please do not mark the ballot paper anywhere else because this could mean it does not count.

## **I've accidentally ticked the box rather than a cross, will it still count?**

Civica have said that as long as they can ascertain a genuine vote has been made, a tick or a cross, it doesn't matter and it will be accepted accordingly.

## **If I accidentally spoil my ballot paper can I have a new one sent to me?**

CIVICA have said that if you accidentally spoil your ballot then they can re-issue a paper but if you can clearly mark out the incorrect vote and put a cross/tick in the correct one and a signature, then that will be accepted as long as they can ascertain clear voting intention.

## **Why does the Ballot Paper say if you take part in industrial action you may be in breach of contract?**

By definition, industrial action is almost always a breach of your contract of employment, however the RCM is given immunity for inducing this breach of contract by running a lawful ballot for industrial action and achieving a yes vote. RCM members taking part in industrial action which has been called as a result of our lawful ballot have some protection against dismissal. Any dismissal where the reason for the dismissal is that the individual took part in lawful industrial action is automatically unfair if it takes place within 12 weeks of that individual starting to take part in the action, and may be unfair if it takes place later. However, while the ballot gives immunity for breach of contract it doesn't give you immunity from breaking your code of conduct, which is why we are stressing that any action we call you to take will not ask you to break your code of conduct or put women and babies at risk.

### **When will I know the result of the ballot?**

The ballot closes at midday on 27 October 2022. We will announce the result shortly after the ballot closes. We will post the results on social media and on our website and we will send you an email.

### **If we reach the threshold and vote yes, when will we take action?**

Since the introduction of the TUA votes in support of industrial action now become invalid after six months if no action has been taken, or after nine months with the agreement of the employer. So it will be taken within that timescale and we will notify members shortly after the end of the ballot.

### **If I vote yes do I have to take part in the industrial action?**

We are recommending that you vote yes in the ballot and if you vote yes you should be prepared to take part in the action. However, as we will need members to ensure there is cover during the stoppage (which is intended to be similar to the cover on a bank holiday) some members will be required to work through the stoppage as we have a priority to ensure that no women and babies are put at risk. Our Workplace Representatives will work with managers after the ballot result and before the action starts to put contingency plans in place to determine how many staff members they need to cover the safe service. If you are required to work during the stoppage to provide that essential cover you can wear one of our stickers.

### **If I am asked to cover the service during the stoppage do I have to? Can't I join in with the stoppage?**

We have to make the safety of women and babies a priority during the action. Our dispute is not with the women we care for but with employers. If you vote yes you should be prepared to take part in the action, however the RCM Workplace Representative will agree with the Head of Midwifery the cover for your service. If you are asked to cover service during the stoppage (which has been agreed by the RCM) you should cover the service.

### **How can taking the breaks we are entitled to and being paid for overtime be considered industrial action?**

Taking the breaks to which you are entitled, and being paid for overtime, amounts to industrial action because it is action being taken collectively, acknowledging that there will be disruption occasioned to employers (but not to mothers accessing midwifery services).

### **How do you expect us to take our breaks? We never take them normally!**

Taking industrial action involves doing things collectively that you wouldn't normally do; for example you wouldn't normally collectively stop work for four hours. Our Workplace Representatives will work with managers to put contingency plans in place and as part of those discussions they should talk to managers about the further action. Managers should make sure their units are correctly staffed so that

midwives and maternity support workers are able to take their breaks. We need to have an impact to make our voices heard and taking your breaks is one way of maximising impact.

**If we conduct a work stoppage doesn't that just mean we will end up being even busier the rest of the time?**

No, the idea is that during the contingency planning before the action the Head of Midwifery and the Workplace Representatives work together to work out what is essential cover for your service (we imagine this would look similar to the type of cover you normally provide on a bank holiday). This may mean that some planned appointments, classes or clinics are postponed to a time after the stoppage. Your employer will have to make arrangements to provide those appointments later in the day, this could mean bringing in extra staff later. It wouldn't be acceptable for an employer to expect you to make up the appointments in the rest of the day without extra cover as this would be relying on goodwill to cover the service. In addition to conducting a work stoppage we will also be asking you to take action short of a strike that will highlight the level of goodwill you give to the employer every day, for example all the times you work unpaid overtime.

**What should I do if I am approached by a member of the Press for a comment?**

Your own employer will have rules about talking to the Press so you should make sure you understand your employer's rules before you speak to the Press. If you are not sure you can speak to your Workplace Representative or you can ask the journalist to call the RCM's press office on 0300 303 0444.

**Do we get paid while we are on industrial action?**

No, you will lose pay for the hours where you are not at work. Pay is not normally deducted for action short of a strike.

**If our pay is affected for taking part in industrial action will this affect some staff more than others?**

Your employer could choose to reduce your wages for the time you have taken part in the stoppage. Pay is not normally deducted for action short of a strike. There will be some members who will continue to work during the stoppage to provide essential services and we wouldn't expect an employer to reduce their wages for the time of the stoppage. This could mean that some staff will have their pay affected and others won't. However, under the government and Employer's current plans everyone's pay will be affected for years to come, and you need an inflation proof pay rise, to help cope with the current cost of living crisis. We believe if you vote yes that we can send a strong message that midwives and maternity support workers deserve fair pay.

**How long will the action go on for?**

The ballot and industrial action are part of our wider pay campaign. Campaigning for fair pay, terms and conditions is part of our day to day work. We know that our

members are leaving maternity services and better pay is a big part in retaining staff to help stop this negative trend.

### **What are the rules about picket lines?**

It is lawful to picket, but there are limitations on what can be done. You can only picket at or near your own place of work and the code of practice says that a picket should be six people or less. Pickets are allowed to peacefully persuade workers and others not to cross the picket line but anyone who decides to cross the picket line must be allowed to do so. Some members will need go in to workplaces to provide cover during the stoppage, they should be allowed to do so.

Since the introduction of the TUA unions must now elect an official supervisor for their pickets, who must give the police their name, contact details and the location of the picket. On the picket itself they must be easily identifiable (such as through wearing an armband) and must carry a letter of authorisation from the union to be shown to employers by request. In theory, a picket could be declared unlawful if any picket supervisor slips up, even in such a small way as forgetting or losing a letter of authorisation. In practice, this is unlikely but you should be aware of the rules just in case.

### **Can I wear my uniform on the picket line or demonstration?**

You should check locally for the rules on whether you can wear your uniform on the picket line or demonstration and ensure you comply with any local hygiene guidelines.

### **I am an agency midwife, can I participate in the industrial action?**

Unfortunately, we cannot ballot members who are solely agency midwives. If you work as an agency midwife and are also employed in a Trust/Board then you will be balloted because you are an employee of a Trust/Board that we are in dispute with. Legally, we can only ballot members who are employed by an employer who we are in dispute with. If you have not been included in the ballot then you cannot participate in the industrial action.

### **I am a student, what do I do during the industrial action?**

As a student you are not able to take part in the industrial action, the laws about industrial action are very strict and we were only allowed to ballot members who are employed by an employer we are in dispute with. As you have not been balloted you will not be able to take part in the industrial action. Therefore, you should not join the picket line and should work the shifts you are due to work. You should do nothing to undermine the industrial action of RCM members for example working beyond the role of a student. However, if you are not due to work that day you may join the demonstration off the hospital grounds (but not the official picket line).

### **Do I have to tell my manager if I am going on strike or taking industrial action?**

You do not have to tell your manager that you are taking industrial action. The union will inform the Trusts/Boards of who we are calling to take action. However, there is nothing to stop you telling them if you wish to do so.

### **I don't think this is going to make a difference, why bother?**

Many of the rights we enjoy at work today have been won because workers in trade unions have taken collective action. Inflation is currently soaring, the cost of gas and electricity is going through the roof, and our members are struggling to pay the bills and keep a roof over their heads. We are not asking for the earth just an inflation proof pay rise to help cope with the current crisis. There is a quote that has been attributed to a few people, but it really fits here. "If you fight you won't always win. But if you don't fight you will always lose"

**These FAQ will be updated on a regular basis to ensure that we are addressing your latest queries**