RCN South East Region – Guernsey Industrial action
Member FAQs

1. Why are we being asked again to vote on taking industrial action- we have already done this?

Members in Guernsey have already voted on three pay offers made by the States. Of those, one ballot included an indicative question on action you would be prepared to take if the offer was declined. The responses to those questions gave us an indication of members’ appetite for action and have been used during negotiations and as part of the evidence to support members pursuing a formal ballot for action through the RCN mechanisms, they were not however formal industrial action ballots. Formal ballots need to be conducted in a very particular way and this is what is now happening.

2. What is industrial action?

Industrial action involves members of a trade union working together to achieve a goal by withdrawing their labour. There are two types of industrial action; strike action and action short of a strike. A union must hold a ballot before organising either form of industrial action. There is no legal right to strike in the UK or Guernsey.

You can only take part in industrial action if the relevant trade union has balloted for industrial action and achieved a majority yes vote in that ballot. The RCN is balloting for industrial action in relation to the current pay dispute with the States of Guernsey (the Employer).

3. What does taking strike action mean?

Taking part in strike action means not doing any work at all on the day (or part of the day) specified by the union. It is a well-established way of workers harnessing the power of their collective solidarity to incentivise their employer to stop doing something that will be detrimental to the workers – such as a refusal to agree to an outcome in ongoing negotiations that would be acceptable to the unions involved. The labour of its employees is one of an organisation’s most valuable assets, so if a large number withdraw their labour for even a day, it can have a major effect on the organisation’s finances and reputation – and in many cases if delivered effectively, this will prompt them to reconsider previous positions such as around pay and conditions.
4. What does taking action short of a strike mean?

While a strike is a complete stoppage of work, action short of a strike usually affects some aspects of work, normally a refusal to perform full normal duties in some way.

This could be ‘working to rule’ which is a form of action in which employees do no more than the minimum required by the rules of their contract, and precisely follow all safety or other regulations. For example if you usually work through your lunch break or stay an hour late because you have such a high workload, you could start observing your breaks and leaving exactly on time in accordance with your contract, but if you and lots of others are consistently doing extra unpaid work out of your own good will and it suddenly stops this may be very impactful for your employer. It could also involve not agreeing to work overtime, which can have a similar effect. The RCN will decide the form of industrial action short of strike to be taken and members will be informed before action commences and a guidance document will be available on the RCN website.

5. Who will be called to action?

In any dispute, the RCN will communicate clearly and regularly with members so that they are fully informed as to whether they are affected and can get involved.

6. Can nurses and nurse managers go on strike or take industrial action short of strike? Will this affect the care that patients receive?

Yes, nurses can take strike action and industrial action short of strike. Any industrial action called by the RCN will ensure that patients are not put at risk, and you will never be asked to act outside your NMC code of conduct. The RCN will work with management to ensure there is sufficient emergency cover during any stoppage. Most industrial action in the health service is likely to use the emergency care model, when only those providing non-urgent care services are called on strike to ensure patients aren’t harmed.

The RCN is committed to the maintenance of essential services in acute and emergency situations. While responsibility for maintaining patient safety sits with the employer, we will work constructively with managers to ensure robust contingency arrangements are in place in the event of any sort of major incident.

7. What about the NMC Code of Conduct?

It is not a breach of the NMC Code of Conduct to take part in lawful industrial action and the NMC have during previous disputes confirmed this position in the following statement:

“...we recognise that many midwives and nurses are members of trade unions and respect their democratic right to express support for their 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 industrial action.”

However, the NMC also issued the following reminder:

“The Code does not prevent nurses and midwives from taking part in lawful industrial action but we remind them of their duty to uphold their professional standards at all times. The Code will continue to apply in the event of industrial action.”

However, members are reminded there is no immunity for breaches of the NMC Code of Conduct, or any other misconduct that may take place during the action. The RCN will never ask members to take industrial action in a way that is likely to lead to breaches of the code.

Nor will the RCN ask any members to take industrial action that may contravene the employer’s disciplinary policy. However, the RCN will fully support members in the usual way should they face any disciplinary action whether during industrial action or not.

The NMC has issued information on industrial action which can be accessed here: https://www.nmc.org.uk/news/news-and-updates/update-on-industrial-action/

8. Can I be sacked for taking industrial action?

Unfortunately, the law in Guernsey provides no protection for unfair dismissal in relation to industrial action. Therefore, there is a risk the employer may dismiss you for being in breach of your contract of employment. The RCN believes it would be counterproductive to dismiss, discipline or victimise individuals for taking part in industrial action, however, this remains a risk because of the lack of legal protection and the RCN will offer you full support in the usual way if this affects you, so contact us as soon as possible if it does.

9. Can I be disciplined for taking industrial action?

Again, there are no statutory rights protecting staff from disciplinary action or victimisation for taking part in industrial action. Under normal circumstances breaching your contract of employment may result in disciplinary action. However, this would be counter-productive in relation to authorised industrial action as there is a clear understanding of why the breach has taken place. It would also be very difficult for the employer to initiate disciplinary proceedings against large numbers of staff. It would also be likely to increase tensions and prolong any dispute.

If you are involved in any misconduct separately to the taking of industrial action itself, such as non-peaceful picketing, your employer may initiate disciplinary proceedings against you in the usual way. However provided you follow the guidance given you should not encounter any problems.
To minimise the risk of disciplinary action, before taking part in strike action, it may be worthwhile familiarising yourself with your terms and conditions of employment, as well as the RCN guidance on safe picketing. Should this affect you, the RCN will offer full support in the usual way.

10. What type of industrial action will we be taking?

When a union decides to ballot its members on willingness to undertake industrial action, the ballot will ask whether members are willing to take strike action, action short of a strike or both. The form of action ultimately taken will depend on the outcome of the ballot – for example members may feel they are willing to take action short of a strike such as working to rule (see Q3) and return a majority vote for this, but not feel they want to go on strike and fully withdraw their labour. Or they may vote equally in favour for both types, in which case sometimes it may be appropriate to start with action short of a strike and build up to a full stoppage if needed. Ultimately decisions will be taken by the relevant elected RCN decision making authority, ensuring that the wishes of members are taken into account.

The exact form of action proposed will always be explained in detail to members once decided and sufficient support and guidance will be made available.

11. Are there any exemptions from having to take action?

The RCN will make clear which members it is asking to take action in the event of a positive ballot for industrial action and would hope that these members would choose to participate – industrial action is only as strong as the number of eligible workers supporting it. However, there is no obligation to go on strike, even if you are a member of a union that has voted in favour of doing so, and it is up to you if you take part. The RCN will work with the employer to agree exemptions from taking action where there would otherwise be a direct harm to patients or danger to the life or limb of any person or for the prevention of any permanent disability. This means that members covering roles that are exempted are not expected to participate. In the event of any such exemptions being necessary the RCN will communicate clearly with those affected and offer all necessary support.

Exemptions will not be granted for the administrative convenience of managers, and exemptions will not be necessary where managers make their own arrangements for cover, such as deploying staff willing to break the strike.

The RCN will also take steps to ensure that those who would suffer long term financial loss can work normally during industrial action. This includes:

- Pregnant women who have notified their employer of the expected due date of their baby (unless there is a clear commitment from the employer that the employee will not suffer any detriment)
- People whose benefits would be affected by taking part in industrial action
- Employees in their last year of service whose pension maybe affected by taking part

This is to ensure that the time out of work and deduction from your wages caused by participating in strike action won’t have a disproportionately damaging impact on your long-term financial health.

12. What is a derogation?

During industrial action short of strike or strike action a derogation enables an individual RCN member, a service (or part of a service) to be granted an exemption from taking part in lawful industrial action.

Derogations are usually given to people or services that are deemed to be critical to ensuring patient safety and those delivering life preserving services. It is usually the employer who requests derogations from the local RCN Industrial Dispute and Strike Committee. However, the RCN can identify derogations in advance to ensure life preserving services are maintained. If staff or services do not operate on Christmas day they will not be derogated. If they do operate on Christmas day then Christmas day staffing will apply.

13. My service or my role has been derogated, what does that mean?

If your service, or your specific role, has been allocated a derogation, it means you are required to work your normal duties (as usual for your locally rostered shift). This is to preserve patient safety. You can still be considered to be supporting the industrial action because you have (or your service has) been given an ‘exemption’ by your union from stopping work to ensure patient safety. The RCN will supply a badge/sticker for you to wear to highlight you are supporting the action.

If as part of a derogation or exemption you work your normal duties/shift you will be paid your normal pay.

14. I work in a community setting, I've been told we will work a Christmas day model/service, what does that mean?

The employer should be planning for industrial action in a way that reduces the demands on the service. To assist the employer in planning for safe services during industrial action, the RCN have advised the employer that only those services that run on Christmas day will be considered for derogation. The normal Christmas day service/rota should be utilised for services that have been deemed to deliver care on Christmas day.
15. I have been told that we must maintain a life preserving service. What does ‘life preserving service’ mean?

The “RCN industrial dispute handbook” states that “life preserving services” means:

- emergency intervention for the preservation of life or for the prevention of permanent disability;
- care required for therapeutic services without which life would be jeopardised or permanent disability would occur;
- urgent diagnostic procedures and assessment required to obtain information on potentially life-threatening conditions or conditions that could potentially lead to permanent disability.

The employer will need to identify what staff they require to provide a life preserving service. This will then be discussed with the local RCN Industrial Dispute and Strike Committee and derogations may be agreed with exemptions from industrial action being given to RCN members to ensure delivery of life preserving services.

16. I am participating in the strike, can I be called in to work on a day of strike action?

If the employer declares a major incident the employer will initiate their normal major incident plan. The employer will inform the RCN of the situation and the RCN will confirm the suspension of industrial action as required. The employer may contact members of staff to request that they attend their workplace as part of the Trust’s normal major incident procedures. RCN members should respond to a major incident situation as they would on any other day – they should attend for deployment as part of the major incident response if they are fit and able to do so.

If during industrial action clinical safety issues arise (without a major incident taking place) the employer will raise these issues with the local RCN Industrial Dispute and Strike Committee. The Trust and the local RCN IDSC will agree the appropriate response including any additional or new exemptions that may be required. This may involve staff being contacted and requested to return to work as part of an exemption from industrial action for the purpose of maintaining clinical safety.

17. My manager has said I cannot participate in the industrial action because they need me to maintain patient care. What do I do?

It is the employer’s responsibility to plan for the action and to take steps to maintain appropriate staffing levels, patient safety and risk management.

During industrial action the activity of RCN members, including derogations and exemptions from participating in action will be directed by the RCN local Industrial Dispute and Strike Committee.

If an employer has concerns over the delivery of a service, it is their responsibility to discuss it with the union authorising the action. The RCN will establish local Industrial
Dispute and Strike Committees to liaise with the employer in relation to the impact of industrial action and any requests that the employer may make to the RCN for ‘exemptions’ from industrial action. It is not appropriate for the employer to ask individual RCN members to engage in discussions about how work subject to industrial action is covered. Members should refer their manager to the RCN local Industrial Dispute and Strike Committee.

18. What are the dates of industrial action?

The RCN will notify the employer of the dates of industrial action. The RCN will keep members informed of dates of any industrial action so that there is enough time to prepare.

19. Will we get paid while taking industrial action? Why does the ballot paper say if I take industrial action this will amount to a breach of contract?

Taking part in a strike or in action short of a strike will almost certainly involve a breach of your contract of employment. You have entered into a legally binding contract with your employer, as part of which you agree to do your work at the agreed times and in the agreed ways, in return for payment. If your employer suddenly stopped paying you this would be going against what the contract legally binds them to do so they would have ‘breached’ that agreement, and similarly if you stop providing the work you have agreed to do for them, you are also in breach. Your employer is entitled to withhold your pay if you stop doing the work you’ve agreed to do.

There are differences of opinion as to how one day of pay should be calculated, given that people are often paid on an hourly or annual basis rather than daily. The RCN believes this should be calculated by taking your annual salary and dividing it by 365, the number of days in the year, as this gives the lowest possible amount and therefore minimises the impact on your total earnings. However sometimes an employer may not agree to this as they argue that you are not technically working every single day of the year, so it should be calculated based on dividing by the actual number of days you do work – so where they make this argument, the maximum deduction for each day of strike action should be your annual salary divided by 260.

The UK courts have decided that when determining how much pay the employer can withhold as a result of strike action, the correct test is to consider what pay the employee would have received had they been at work. The employer may or may not follow that principle but the RCN will engage in discussions with the employer and encourage them to do so. Contact the RCN for support if you think your employer is not doing this properly or deducting an unreasonable amount.
20. My employer has said they will deduct a full day’s pay even though a stoppage may only last for part of the day. Can they do this?

It depends whether the employer is willing to accept ‘partial performance’ of your contractual duties. If the employer will accept partial performance you are entitled to be paid for the work that you do. If the employer does not accept partial performance then you are not entitled to be paid – this is within their legal right to do, and you do not have to work at all if they are refusing to accept partial performance, even if you have taken industrial action for only part of the day. Again, the RCN will engage in discussions with the employer in order to clarify their position and we will notify members of the outcome prior to the action commencing.

21. Will the RCN be providing strike ‘pay’ or any benefit?

The RCN has a strike benefit policy which is available at: https://www.rcn.org.uk/-/media/royal-college-of-nursing/documents/council-documents/strike-pay-policy.pdf

22. Will any strike ‘pay’ be subject to tax?

No. Strike benefit is not designed to replace your lost earnings, it is a collectively generated contribution to meet your basic needs during a strike when pay is being deducted. As such it doesn’t constitute earnings and so is not subject to tax.

23. Will taking part in industrial action affect my continuity of service?

Although taking industrial action is a breach of the contract of employment (see Q19 “Will we get paid while taking industrial action? Why does the ballot paper say if I take industrial action this will amount to a breach of contract?”), in the UK it does not break continuous service if you return to work after the strike ends. However, days of strike action will not count towards the length of service for any relevant qualifying periods, such as maternity pay, redundancy pay or unfair dismissal protection. For certain types of employment rights you usually have to have both a certain length of service with your employer, and that employment needs to be continuous, i.e. no breaks. Strike action wouldn’t count as a break in service, but the amount of days of action you take would be subtracted from the total length of your service. There is no statutory guidance in relation to this in Guernsey and the employer may or may not adopt the same principles.

24. Will taking industrial action affect:

• My pension?

There is no provision within the states pension scheme to cover circumstances when pension scheme members are absent from work on strike. In the UK NHS pension scheme, strike days are regarded as “disallowed days” and therefore do not count towards pensionable service nor pensionable pay. It is likely that this
would be the position with the Guernsey scheme. The impact on pensions may not be significant depending on the length of strike action, but it is something members should be aware of and take advice on from their pension provider if they are concerned.

- **My entitlement to maternity pay?**
  Rates of pay for types of parental leave are calculated based on earnings during a specified period prior to taking this leave, so unpaid absence due to participating in industrial action may affect this. If you think this may affect you, contact the RCN to seek further advice as you may be exempt.

25. **Do I have to tell my employer I am going on strike or taking action short of a strike before the action begins?**

The union will provide your employer with statistical information about members taking industrial action but not individual names. You aren’t obliged to tell your employer, but we advise that if asked you should answer truthfully. The RCN intends to work cooperatively with management during any industrial action to ensure that the service can be managed in a way that avoids any potential risk to patient care but allows employees to withdraw their labour and exercise their rights safely. Communicating with your employer honestly will help them plan cover safely.

26. **I am not a member of the RCN, if I join, can I then take part in the action?**

You can join the RCN now at www.rcn.org.uk/join [or https://www.rcn.org.uk/join-the-rcn/join]. If you join after the ballot has taken place, you can still participate in the industrial action, even though you didn’t participate in the ballot. You would only be eligible for support offered by the RCN such as strike benefit and individual employment representation if you have become a member prior to the action taking place. However, if you are employed by the States in Guernsey it is better to join the RCN now and raise your voice alongside hundreds of nursing colleagues.

27. **What happens if I am on leave when the industrial action takes place?**

If you are on annual leave on a day of industrial action, you are free to use this day as you choose and that can include taking part in activities to support the industrial action if you wish. However, you would not be considered to be officially taking part in the action and your employer could not deduct your pay for this day. This means you wouldn’t be entitled to claim any strike benefit from the RCN. As such if you would like to take part in any industrial action that takes place, we would encourage you to postpone your annual leave if you can so that you can participate, or use the day to participate in any local demonstrations that might be taking place.
28. What happens if I am absent due to sickness when the industrial action takes place?

Workers who are absent on sick leave when industrial action takes place retain their right to sick pay during the period of industrial action. If an employee reports as sick on a day of action, the employer can be expected to make their own judgment as to whether the employee should be regarded as on sick leave or taking part in industrial action. Some employers have tried to introduce special rules about sickness certificates in the event of sick leave during industrial action – if this happens to you, contact the RCN for support, as you shouldn’t be subject to any detrimental treatment as a result of being off sick. If you are too ill to go to work you should not worry about participating in strike action and ensure that you protect your own health.

29. What happens if I am not scheduled to work on the day when industrial action takes place?

If you are not scheduled to work on a particular day of action, you would not be deemed to be taking part and you could not be subject to a deduction of wages on this day – and therefore you couldn’t claim strike benefit from the RCN. However, you are fully entitled to join in organised activities on the day. Also, we don’t expect members who are not scheduled to work to cover for those who are taking part in the action.

30. What is picketing? Can I take part in a picket line? Are there rules about picket lines?

A picket (or picket line) is where union members in a trade dispute with their employer gather at or near their workplace. The purpose of a picket is to peacefully obtain or communicate information and/or peacefully persuade others not to work in support of the strike. Generally the picket will be attended by RCN members who would otherwise be at work but are taking part in strike action.

Attendance at or near your place of work for the purpose of peaceful picketing is not illegal and management cannot prevent you from doing it.

To facilitate peaceful picketing at workplaces, RCN members who want to take part in a picket during strike action should contact their local RCN Industrial Dispute and Strike Committee for details of their local picket. For details of your local picket, contact your local RCN IDSC. Details of the IDSC will be made available on Facebook and the website once they are confirmed.

31. Can I wear my uniform on the picket line?

RCN members participating in a lawful and peaceful RCN organised picket will be given some form of identification to indicate that you are picketing (e.g. an arm band,
tabard, branded t-shirt, sticker or placard. Pickets should wear this clothing/item to identify themselves as official pickets. Pickets should follow their employer’s local policy on wearing uniforms outwith their workplace.

32. My employer says that nurses are not entitled to take part in a picket, is this correct?

No, that is incorrect. If your employer says anything to you that doesn’t sound right, contact the RCN to check – see final question for contact details.

Attendance at or near your place of work for the purpose of peaceful picketing is not illegal, and management cannot prevent you from doing it.

33. I am an agency worker; can I participate in the industrial action?

Only if the industrial action relates to a trade dispute involving your own employer. Contact the RCN if you’re not sure.

Unfortunately, we cannot ballot members who work solely as agency staff. If you work both as an agency nurse and are employed by the States of Guernsey (under Agenda for Change pay and conditions) then we will ballot you as you are an employee of the States whom we are in dispute with.

We can only ballot members who are employed by an employer with whom we have a dispute. However we would expect agency workers not to undermine the action by coming in to provide cover for RCN members who are on strike. It is not appropriate for the employer to try to undermine the action by bringing in agency workers to cover for striking staff. It can also be unlawful for agencies to supply agency workers to provide cover for staff who are on strike.

34. I have a bank contract, will I be included in the ballot and industrial action?

We can only ballot members who are employed by an employer we are in dispute with. If you have a contract to work on the bank for the states of Guernsey you will be included in the ballot. However we do not expect RCN members who are employed via the bank to come to work to provide cover for staff who are taking strike action or action short of a strike. It is not acceptable for employers to try to undermine the action by using bank staff.

35. I am a student nurse, what do I do during the industrial action?

You should adhere to the terms of your placement if you are rostered to ‘work’ during a period of industrial action. It is only lawful to take part in industrial action if you are employed by an employer who is subject to a legitimate trade dispute. If you are a
student and employed by the States of Guernsey as a student on Agenda for Change terms and conditions you are entitled to take part.

If students also work as Health Care Assistants or support workers, they may have a contract of employment with the States of Guernsey. These employees may participate in the industrial action in relation to their employment with the States but this must be separate from their student placement or educational studies.

If you are unsure, contact the RCN for advice – see final question for contact details.

36. I work in a prison, will I be included in the ballot and industrial action?

As long as you are employed by the States of Guernsey (under Agenda for Change pay and conditions), you are eligible to participate in the ballot if you work in a prison as you are employed by the employer we are in dispute with.

37. I work on the island of Alderney, will I be included in the ballot and industrial action?

As long as you are employed by the States of Guernsey (under Agenda for Change pay and conditions), you are eligible to participate in the ballot as you are employed by the employer we are in dispute with.

38. If I voted yes, do I have to take part in industrial action?

We would hope that you would participate if there has been a vote by RCN members for industrial action, but ultimately it is up to you. Industrial action involves members of a trade union working together to achieve a goal by withdrawing their labour. The labour of its employees is one of an organisation’s most valuable assets, so if a large number withdraw their labour for even a day, it can have a major effect on the organisation’s finances and reputation – and in many cases if delivered effectively, this will prompt them to reconsider previous positions such as around staffing for safe and effective care, and pay and conditions.

39. What should I do if I am approached by a member of the media?

If you are being asked to provide a comment on behalf of the RCN, please direct them to the RCN staff. If you are asked to comment as an individual, you may do so if you wish, but don’t feel under pressure to. Please contact the RCN for advice if you would find this useful. It is worth noting the employer may react badly to employees speaking critically about their place of work and identifying the employer in the media. As such, if you do want to comment, it is advisable to firstly be clear that you are giving your individual view, and to explain why nurses as a wider group are taking industrial action.
40. I haven’t received a ballot paper what should I do?

Email ballots@rcn.org.uk if you haven’t received, have lost or have spoilt your ballot paper. Only use this email address in relation to queries on your ballot paper no other queries will be answered. Ballots will be posted out on 10 February. Do not contact us before the 14 February to allow time for the ballot to reach you.

41. Why don’t we await the outcome of the Disputes Tribunal before taking industrial action?

Members decided at the branch meeting in January that they wish to pursue a ballot for action as a way of demonstrating the strength of feeling of nursing staff about the situation to P&R hoping it may prompt an improved offer ahead of or even during the tribunal process. The RCN remains committed to agreeing a negotiated outcome with the States notwithstanding the Tribunal process.

42. I have been asked to cover for members of another union who are taking industrial action or are on strike, what do I do?

The RCN would not wish its members to undermine the lawful industrial action of another trade union or professional association. You should attend work as normal and undertake your normal contractual role. If you are asked to cover other work this should not be in addition to your normal work.

In summary:

- Members should not cover the work of colleagues who are undertaking industrial action if that work falls outside of their normal contractual duties.
- Members should not undertake any voluntary overtime work to cover the work of those taking industrial action.
- Members should not undertake any bank or agency work to cover the work of those involved in the industrial action.

You can access the full RCN guidance for members in relation to “Industrial Action by other unions” here.

43. What is picketing? Can I take part in a picket line? Are there rules about picket lines?

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Attendance at or near your place of work for the purpose of peaceful picketing is a recognised lawful activity in the UK, and management cannot prevent you from doing it.

To facilitate peaceful picketing at workplaces, RCN members who want to take part in a picket during strike action should contact their local RCN Industrial Action Committee for details of their local picket. For details of your local picket, contact your local RCN IDSC.

Further RCN guidance on picketing including expectations of members can be found in the “RCN Guidance on Picketing for RCN members”.

44. Can I wear my uniform on the picket line?

RCN members participating in a lawful and peaceful RCN organised picket will be given some form of identification to indicate that you are picketing (e.g. an arm band, tabard, branded t-shirt, etc.). Pickets should wear this clothing/item to identify themselves as official pickets. Pickets should follow their employer's local policy on wearing uniforms out of their workplace.

45. My employer says that nurses are not entitled to take part in a picket, is this correct?

No, that is incorrect. If your employer says anything to you that doesn’t sound right, contact the RCN to check – see final question for contact details.

Attendance at or near your place of work for the purpose of peaceful picketing is a recognised lawful activity in the UK, and management cannot prevent you from doing it.

46. I still have questions; how do I contact the RCN for advice about the industrial action in Guernsey?

The RCN has established local Industrial Dispute and Strike Committees incorporating local RCN representatives and members. RCN members should approach their local Industrial Dispute and Strike Committee and/or local RCN representatives for advice and guidance. Details of these members will be made available shortly.

FAQ v.6, 11 February 2020