BRITISH MEDICAL ASSOCIATION (BMA)
INDUSTRIAL ACTION, 21 JUNE 2012
DEBRIEF REPORT

Executive Summary

Following the announcement of the ballot results by the British Medical Association (BMA) to take industrial action on the 21 June 2012, regular planning meetings were held with the BMA, Divisions and Corporate Departments to discuss and agree:—

- The business continuity arrangements to be put in place
- The levels of service to be provided on the day
- The local implementation arrangements for the “Joint principles for Industrial Action by participating BMA members on the 21 June 2012”.

This report provides an overview of the issues, recommendations and actions raised in the planning phase leading up to the BMA Industrial Action Day on the 21 June 2012 and details the minimal impact that medical staff taking industrial action had on service delivery on 21 June 2012.
<table>
<thead>
<tr>
<th>Action/Decision required</th>
<th>To NOTE the contents of this report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Link to other Board Committee (s) and sub-committees</td>
<td></td>
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<tr>
<td>Link to Standards for Health Services in Wales</td>
<td>Standard 25</td>
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<tr>
<td>Link to Public Health Agenda</td>
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<tr>
<td>Link to Board Assurance Framework/Risk Registers</td>
<td>UHB 36/11 Ongoing risk of industrial action linked to national pensions dispute impacting on the ability to deliver service.</td>
</tr>
<tr>
<td>Link to UHB Strategic Direction and Corporate Objectives / Legislative and Regulatory Framework</td>
<td>Links with the Business Continuity Policy</td>
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</table>
INTRODUCTION

Following the announcement of British Medical Association (BMA) of its intention to take industrial action on the 21 June 2012, regular planning meetings were held between the Assistant Chief Operating Officer, Divisional Managers, WOD representatives, Business Continuity Members and Local Negotiating Committee members to discuss and coordinate the arrangements for the day, facilitate communication, develop communication briefs, and agree business continuity plans to ensure that there was minimum disruption to patients.

An All Wales set of principles “Joint principles for Industrial Action by participating BMA members on the 21 June 2012” (Appendix 1) was agreed between BMA representatives and the seven UHBs and two Trusts covering the arrangements for industrial action by BMA members employed by NHS Health Boards and Trusts in Wales for the 24hr period 00:01hrs to 23:59 hrs, Thursday 21 June 2012 (Appendix 1). The BMA indicated from the outset that it would be advising members that they should attend work to provide Urgent and Emergency Care. The nature of the industrial action was therefore centred on ceasing/stopping non urgent care/treatment for a twenty four hour period.

The UHB’s Business Continuity Planning arrangements concentrated on the practical application of the All Wales document “Joint principles for Industrial Action by participating BMA members on the 21 June 2012” in respect of those staff participating in industrial action and running near normal services where the member of medical staff had indicated that he/she would not be participating in the industrial action.

PLANNING FOR THE DAY

The “Joint principles for Industrial Action by participating BMA members on the 21 June 2012 Document” detailed the arrangements for the industrial action, the nature of the services provided on 21 June, the arrangements for cancelling theatres and outpatient activity and confirmed that full payment of salary would be received for the day of the dispute for those involved in industrial action, subject to the individual doctor :-}
• fully contributing to the provision of emergency, urgent and inpatient care within the healthcare setting on 21 June 2012.
• the recovery of lost activity, so far as is possible, be fitted into usual working hours during the subsequent 12 weeks, subject to the offer of facilities to undertake such work and should not be unreasonably refused.
• the sharing of relevant information pertaining to lost activity to be shared with LNC.

Locally, the UHB determined the following:-

That to avoid unnecessary cancellations and disappointing patients, non-urgent theatre and outpatient activity could still be maintained provided that:-
• the doctor responsible confirmed that he was not intending to partake in industrial action;
• there was the appropriate supporting infrastructure to run services safely;
• medical staff participating in industrial action would be given the opportunity to swap non-urgent patients for urgent patients rather than wasting theatre/outpatient slots.
• that individual doctors scheduled to work Supporting Professional Activity (SPA) opting to take industrial action but not required for urgent or emergency work. In this event the doctor taking part in industrial action will not be paid.

As part of the UHB’s business continuity arrangements, Divisions were therefore asked to identify the potential impact on service delivery of BMA industrial action by completing a spreadsheet detailing the following information for each doctor.

• whether the doctor planned to take part in the industrial action.
• if the answer was yes, the level of service the doctor was willing to undertake on 21 June.
• the resulting consequences to service provision (e.g. if an anaesthetist has identified that they are taking part in industrial action, what operating lists, clinics or pre-op assessment this would affect).

Directorates were also issued with guidance on managing the day itself and the arrangements for making pay deductions for non deferred SPAs (Appendix 2).
21 JUNE 2012

No unforeseen problems impacted on service delivery on 21 June 2012. In accordance with previously agreed arrangements, any issues/concerns raised on the day were resolved by the respective Clinical Director(s).

Although there has been some loss of non urgent activity, the indication is that there has not been a significant impact on the UHB:

- only (84) 10% of the UHB’s medical workforce participated in the industrial action
- many medical staff agreed to routine/non urgent activity being replaced with urgent activity where the infrastructure was in place
- Divisions have indicated that lost activity (assessed to be 30 inpatient treatments and 60 outpatient appointments) can be backfilled by utilising lost sessions from annual leave etc or adding any loss of activity to lists over next 12 weeks. In terms of outpatient clinics, Divisions have indicated that appointments will be caught up by adding these to existing clinics and the clinics running slightly longer (or the doctor) being more productive to avoid additional costs as far as practically possible.

RECORDING OF INDUSTRIAL ACTION

Directorates have been asked to record:

- the number of patients who have been cancelled as a consequence of the industrial action.
- the number of urgents that have been substituted in to this capacity.
- for each consultant the lost activity resulting from the industrial action.

Medical staff have also been asked to confirm their actions on 21 June 2012 by completing a self declaration form (Appendix 3). This will be used also for pay deduction purposes. The final date for completed submissions is July 6 2012.

LESSONS LEARNT

Communication of information requests/guidance to Directorates needs to be issued as early as possible to allow for longer response times.
CONCLUSION

The UHB worked closely with local BMA representatives and its medical workforce to minimise the effect of the industrial action on those patients most in need of care and to ensure that emergency and urgent services have been safeguarded, in line with BMA guidance. This has been done via the UHB’s LNC and Business Continuity Meetings. In line with other UHBs in Wales, the industrial action on 21 June did not have significant impact on patients or the UHB services.

RECOMMENDATION

The Workforce and OD Committee is asked to:-

- **NOTE** the contents of this report:

IMPACT ASSESSMENT

<table>
<thead>
<tr>
<th>Health Improvement</th>
<th>Not applicable</th>
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<tbody>
<tr>
<td>Workforce</td>
<td>The UHB worked closely with local BMA representatives and its medical workforce to minimise the impact of the industrial action on patients and other staff groups.</td>
</tr>
<tr>
<td>Education and Training</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Financial</td>
<td>Individual doctors scheduled to work Supporting Professional Activity (SPA) opting to take industrial action but not required for urgent or emergency will not be paid for the SPA.</td>
</tr>
<tr>
<td>Legal</td>
<td>Any UHB response to Industrial action must be compliant with Employment Legislation.</td>
</tr>
<tr>
<td>Equality</td>
<td>Any UHB response to Industrial action must be compliant with Equality legislation.</td>
</tr>
<tr>
<td>Environmental</td>
<td>Not Applicable</td>
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FOR INFORMATION

RISK ASSESSMENT

<table>
<thead>
<tr>
<th>Risk Type</th>
<th>Description</th>
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<tbody>
<tr>
<td>Clinical/Service</td>
<td>No unforeseen problems impacted on service delivery on 21 June 2012.</td>
</tr>
<tr>
<td>Financial</td>
<td>To be determined once all the self declaration forms have been received.</td>
</tr>
<tr>
<td>Reputational</td>
<td>The UHB worked closely with local BMA representatives and its medical workforce to minimise the effect of the industrial action on its reputation.</td>
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Acronyms and abbreviations

SPA – Supporting Professional Activity
LNC – Local Negotiating Committee

CONSULTATION AND ENGAGEMENT

The UHB worked closely with its Local Negotiating Committee, BMA representatives and its medical workforce to minimise impact of the industrial action.

SOURCES OF INFORMATION

Joint principles for Industrial Action by participating BMA members on the 21st June 2012 Document
BMA Guidance to Medical Staff, GPs etc re participating in the industrial action scheduled for 21st June 2012.
Appendix 1

Joint principles for Industrial Action by participating BMA members on the 21\textsuperscript{st} June 2012

1. Scope:

These principles cover the arrangements for industrial action by BMA members employed by NHS Health Board and Trusts in Wales for the 24hr period 00:01hrs to 23:59 hrs, Thursday 21\textsuperscript{st} June 2012 only.

Partnership arrangements between the British Medical Association (BMA) and NHS employers in Wales are long standing and built on the principles of good formal and informal working relations. This partnership is built on trust and shared responsibility, while respecting differences. With these principles in mind the partners are committed to working together on contingency planning to ensure that industrial action does not affect patient safety.

Doctors have voted to take industrial action over a dispute with the UK Government about changes to the NHS pension scheme. An initial 24-hour period of industrial action will commence on 21\textsuperscript{st} June 2012. The BMA has given written notice of the date of action to each employer.

This document sets out the understanding between the BMA and NHS Wales employers for cooperation and collaboration given the proposed industrial action on 21\textsuperscript{st} June 2012. Partnership arrangements locally between NHS Board’s and Local Negotiating Committees (LNCs) should agree plans that will ensure patient safety during any periods of action when doctors are providing urgent and emergency care only. This document does not seek to replace these local arrangements and does not override them. Rather, it seeks to promote partnership working and support employers and staff to work together on local contingency plans.

2. Nature of work to be covered:

On 21st June 2012 doctors participating in industrial action scheduled to work and provide direct patient care will be at their normal place of work, providing only urgent and emergency clinical care. Non-urgent clinical care may be postponed as a result. BMA members attending for work and participating in industrial action on the 21\textsuperscript{st} June 2012 will continue to receive their normal salary providing they adhere to the following and the principles referred to in section 4 are fully met:
2.1 All doctors participating in the industrial action must turn up at their workplace for the times they would normally attend.

2.2 The following Clinical Services continue unaffected:

Urgent and emergency care which consists of providing any treatment which doctors believe cannot be safely postponed to another day such as:

- emergency and urgent procedures, investigations and discharges for inpatients.
- urgent surgery and other urgent treatments.
- outpatients under close review for unstable condition.
- any patient whom doctors feel uncomfortable postponing, for clinical reasons.
- documentation necessary for safe discharge and any urgent community care or follow-up
- emergency department and labour ward or early pregnancy attendances.

2.3 It is recognised that whilst the industrial action is taking place between the hours of 00:01 and 23:59 on the 21st June, the maintenance of services between the hours of 00.01 and 08.00 and 18.00 and 23.59 will comprise in the main of Emergency or Urgent activity and consequently local decisions on action being taken during these hours will rely on the personal and professional judgement and discretion of each clinician working during these hours.

Where industrial action is being taken by BMA members, NHS organisations will:

2.4 Restrict outpatient activity to the categorisations of Urgent and Cancer work unless otherwise specified by the Consultant responsible

2.5 Restrict theatre activity to the categorisations of Urgent, Urgent Cancer unless otherwise specified by the Consultant responsible.

2.6 Endoscopy activity will be restricted to the categorisations of Urgent and Urgent Cancer unless otherwise specified by the Consultant responsible.

2.7 Undertake to schedule no additional activity between the hours of 00.01 and 08.00 and 18.00 and 23.59.

3. Process for determining the cancellation of theatre/outpatient activity:

3.1 The BMA has worked with employers in Wales in developing communications, but it is the responsibility of the employer to take steps to inform patients and staff of the potential impact of industrial action on services in a timely manner
3.2 Employers are entitled to ask doctors whether they intend to participate in industrial action. Doctors are not legally obliged to give a definitive answer and if they are undecided about taking action, they should indicate as such. However, in the interest of planning the service and to avoid unnecessary disruption to patients, if doctors are intending to participate in the action, the BMA and employers encourage doctors to confirm this to their employer when asked in advance of the day.

3.3 Where a BMA member involved in Industrial action has a scheduled theatre list or outpatient session, the employer will contact and agree with the employee the patients booked for those sessions. The scheduling of patients will be based on the clinical judgement of the responsible consultant.

3.4 Clinicians should provide any treatment that the responsible senior doctor does not believe can be safely postponed to another day.

3.5 The default position of the employer should be to assume that activity in respect of all Urgent and Urgent Cancer patients will be maintained and any other activity carried out is subject to the Consultant’s confirmation. Any routine activity cancelled will not be replaced except at the express instruction of the responsible consultant based on their clinical judgement. Any activity that is to be cancelled should only be replaced after consultation with the responsible consultant.

4. Payment during the Industrial Action:

4.1 For full payment of salary to be received for the day of the dispute, those involved in Industrial action will have to:

   a) fully contribute to the provision of emergency, urgent and inpatient care within the healthcare setting as set out in point 2.2. This may entail the employer directing the employee to ward or emergency department work in lieu of routine activity and;

   b) recover lost activity that still needs to be done and this must, so far as is possible, be fitted into usual working hours during the subsequent 12 weeks, subject to the offer of facilities to undertake such work and should not be unreasonably refused. It should be reasonable in terms of when it is done and any support provided to employees. The scope of such lost activity should be shared and agreed with LNC’s. A process will be determined locally for tracking the completion of this work.
4.2 If the provisions of the preceding paragraph are not met the employer shall retain the right to withhold the employee’s salary for undertaking partial performance.

4.3 In the event that staff taking industrial action have agreed to continue to provide patient care during their period of industrial action, such staff will have full access to any facilities and equipment they need to undertake their role and the normal indemnity provisions shall apply.

5. **Authorised Leave:**

5.1 All authorised leave already agreed for the 21st June 2012 will be honoured.

5.2 Where an employee scheduled to take leave chooses to participate in the industrial action, the employee will not be permitted to reclaim the leave.

5.3 Where an employee indicates that he/she will not attend/participate in scheduled study leave on 21st June and will instead be participating in the industrial action, the employer retains the right to recover the lost costs associated with the study leave in recognition of the industrial action being taken.

6. **Pension contributions**

6.1 Pension contributions will not be deducted and pensionable service will not accrue for any period unpaid due to industrial action;

7. **Continuity of employment**

7.1 Continuity of service is not broken by unpaid service due to industrial action on 21st June 2012;

8. **Conduct towards BMA members involved and not involved in Industrial Action / Other Medical Staff.**

8.1 There should be no adverse treatment of BMA members or other Medical Staff either involved or not involved in Industrial Action.

9. **Interpretation of joint principles in event of a dispute:**
9.1 Any question regarding interpretation should be referred to LNC Chairs and Directors of Workforce and OD.

9.2 Referrals for final interpretation must be directed via local Chairs/Secretaries of LNCs and Directors of Workforce and OD.

9.3 Interpretation of these joint principles will be jointly held by Mr. David Saunders on behalf of the BMA and by Mr. Martin Jones on behalf of NHS Health Boards and Trusts.

Mr. David Saunders on behalf of BMA Wales

Mr. Martin Jones on behalf of NHS Health Boards and Trusts.

14th June 2012
INTRODUCTION

This document provides further guidance on the requirements of clinical directorates in managing the industrial action being taken by BMA members on the 21st June 2012.

To date much effort has been put into ensuring that safe services will continue to be provided on the 21st June and that the impact on patient care and patient experience is minimised on this day.

It is anticipated that at this time all directorates have completed:
- confirming whether medical staff will or will not be participating in Industrial Action and the impact on services of this action
- confirming with other directorates that there is the infrastructure in place for planned activity to proceed on the 21st June
- Agreeing with senior clinicians, who are participating in Industrial action, which patients care can proceed and where applicable, whether other urgent patients can be substituted into available capacity where non-urgent patients have been cancelled (Please refer to the guidance agreed by the CEO and Director-WOD on 15th June for further detail)

ARRANGEMENTS & PRINCIPLES FOR THE 21ST JUNE

This document sets out the local arrangements that will apply on 21st June 2012 to directly employed Medical Staff of the Cardiff and Vale UHB.

The NHS Wales document “The Joint principles for Industrial Action by participating BMA members on the 21st June 2012” has been utilised in developing this guidance (appendix a).

The overriding principle agreed by the UHB is that doctors taking industrial action will only be paid for activity fulfilling service need.
Doctors Not Participating In Industrial Action

1) Where medical staff do not partake in industrial action they will be paid accordingly and will be expected to report for work as usual.
2) Where the planned work of a doctor who is not participating in industrial action is affected by the action of other medical staff participating in industrial action, arrangements should be made by the clinical director, in advance of the 21st June, for the doctor to be redirected to other duties.
3) Where proactive re-deployment is not possible, all staff in these circumstances should report to the clinical director (or their nominee) to be directed towards other clinical duties. As these doctors are not participating in industrial action they will be paid as usual (see point 1 above).

Doctors Participating In Industrial Action

4) Where a doctor has indicated that they are taking part in industrial action but have commitments that fall under the definition of ‘urgent and emergency’ care (e.g. A&E, trauma lists, acute ward cover, outpatients under close review for unstable condition, documentation necessary for safe discharge and any urgent community care or follow up etc) provided that these commitments are fulfilled the doctors will be paid as normal.

5) Where a doctor has agreed to backfill ‘non-urgent’ activity with ‘urgent’ cases and the full capacity of the session has been utilised, the doctor will be paid in full and will be expected to report for work as usual.

6) Where a doctor has advised that routine work should be cancelled and that this capacity should not be replaced on the 21st June with urgent patients, the clinician (s) taking industrial action should advise whether they would be willing to reschedule this work as additional activity at a mutually acceptable time within the next 12 weeks.

In the event that the doctor(s) are willing to reschedule the activity, they will be paid in full as usual. This intention to reschedule must be clearly stated on the individual clinician’s self declaration form (appendix b).
If a doctor indicates that he/she is not willing to reschedule the activity, we have the right to withhold the employee’s salary. This will need to be carefully considered on an individual basis and all cases of refusal to reschedule activity must be documented and information provided to the Medical Director, so that such lost activity can be shared with the LNC.

**Doctors scheduled to undertake non-urgent rostered activity or SPAs**

7) As per point 1, where medical staff do not partake in industrial action they will be paid accordingly and will be expected to report for work as usual.

8) Where a doctor is scheduled to undertake non urgent rostered activity or an SPA and decides not to fulfil these commitments by participating in industrial action, the following arrangements will apply:-

   I. The doctor must confirm their intention to take industrial action on 21st June both verbally and by completing the attached self declaration form.

   II. In the event that the doctor makes him/herself available for urgent and emergency activity, this will only be paid if the activity is deemed, by the clinical director (or their nominee), to fulfil service need. The requirement for a doctor to provide activity fulfilling service need will be determined at Directorate Level.

   III. To effect point (II) above, all doctors, rostered on SPA, who wish to take Industrial Action and make themselves available for urgent and emergency work should report to the clinical director (or their nominee) at the beginning of the shift/session.

   IV. It is the CD’s clinical judgement as to whether there is a need for the doctor to provide urgent and emergency work or whether these duties are already being safely fulfilled.

   V. In the event that the CD wishes to utilise the doctor on urgent or emergency activity, the CD should direct the doctor on presentation to the area(s) of service where the cover is required. In this event, the doctor taking part in industrial action will be paid for the activity undertaken.

   VI. In the event that the CD determines that the urgent and emergency needs of the service are already being met, given
due regard to the fact that the individual was rostered on non urgent or SPA, the CD should advise the doctor that they are not required for urgent or emergency work. In this event the doctor taking part in industrial action will be **not** paid.

**Self Declaration Process**

9) Any doctor participating in industrial action is required to complete the self declaration form (appendix b). This will need to be verified by the Clinical rector.

Directorates will be responsible for recording the following:

I. Whether the doctor took industrial action and category of action taken
   (What is required is the letter A-G returned in response to question 2 of the self declaration form)
II. Description of lost activity
III. Whether or not a pay deduction is required

This should be completed using the final three columns (P-R) of the Divisional excel spreadsheets

**Business Continuity /Clinical Management Presence**

Each Directorate will need a clinical management presence available between 8am and 5pm. In the absence of a Clinical Director, the Clinical Director will be responsible for identifying his/her nominated deputy. Directorates operating over split sites are asked to consider whether a nominated clinician is required for both sites, or whether any issues can be managed by alternate means.

**Issues affecting patients that arise on the Day**

Directorates are asked to manage any issues, such as cancellations, that arise on the day at Directorate Level in consultation with the Division and / or one of the four local ‘control hubs’.

In respect of specific clinical issues on they day i.e. where there may be a dispute as to what constitutes an urgent non urgent case, the guidance of the Divisional Director and Medical Director should be sought in respect of an individual doctors responsibilities under the GMC “Good Medical Practice Guide
Process for Pay Deductions

Any pay deductions will be subsequently confirmed in writing to the doctor by the Medical Workforce Department involved. The letter will also confirm the basis of the pay deduction.

Further Guidance

If you have any doubt about the arrangements that are to be applied please contact your Divisional team, Andrew Nelson or Sarah Evans.
To be completed on the day of industrial action (if possible)

Name  Dr/Mr/Ms ...................................................  Grade  .........................................................

Department / Directorate  ..............................................................

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<tr>
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<tbody>
<tr>
<td>1. Are you rostered to work on 21 June 2012? [midnight to midnight]</td>
<td>Yes ☐ No ☐</td>
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</table>

2. Did you participate in the BMA Industrial action scheduled for 21st June?

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<tr>
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<tbody>
<tr>
<td>A: No – I carried out my full contractual responsibilities</td>
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<tr>
<td>B: Yes – I provided only urgent and/or emergency care, although any non urgent patient care work has been replaced with urgent activity</td>
<td>(where applicable)</td>
</tr>
<tr>
<td>C: Yes - I provided only urgent and/or emergency care and with my agreement, lost non urgent work will be rescheduled within the next 12 weeks at a mutually acceptable time</td>
<td>(where applicable) – Please state what activity needs to be rescheduled in Section 3 below</td>
</tr>
<tr>
<td>D: Yes - I provided only urgent and/or emergency care and did not consent to my non urgent direct patient care activity being rescheduled – Please detail the lost activity and the total activity delivered for the session(s) affected in Section 3 below</td>
<td></td>
</tr>
<tr>
<td>E: Yes – I made myself available to the Directorate to undertake only urgent and/or emergency care &amp; was redeployed</td>
<td></td>
</tr>
<tr>
<td>F: Yes – I made myself available to the Directorate to undertake only urgent and/or emergency care, however there was no requirement for me to work</td>
<td></td>
</tr>
<tr>
<td>G: Yes – I did not make myself available for work on 21st June 2012</td>
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3. Please detail the volume of activity that will need to be rescheduled or was lost as a consequence of you participating in industrial action (e.g. 3 new outpatients / reporting of 4 CT scans etc)

................................................................................................................................................................................

.................
4. I certify that the information on this form is correct. I note that the personal information on this form will not be released to any third parties outside the UHB without my express consent. For the avoidance of doubt, if necessary, this information may be shared with the LNC.

Signature ________________________________    Date

Please return this form to your Clinical Director or Directorate Office by Friday 6th July 2012