

Royal College of Nursing response to the Department of Business, Innovation and Skills consultation on tackling intimidation of non-striking workers.

With a membership of around 425,000 registered nurses, midwives, health visitors, nursing students, health care assistants and nurse cadets, the Royal College of Nursing (RCN) is the voice of nursing across the UK and the largest professional union of nursing staff in the world. RCN members work in a variety of hospital and community settings in the NHS and the independent sector. The RCN promotes patient and nursing interests on a wide range of issues by working closely with the Government, the UK parliaments and other national and European political institutions, trade unions, professional bodies and voluntary organisations.

To date the Royal College of Nursing has not authorised industrial action on behalf of its members. Up to 1995 industrial action was not supported by our Rules (Rule 12). After a change in the Rules in 1995 industrial action could be authorised by RCN Council as long as it was not detrimental to the interests or wellbeing of patients or clients (Standing Order 3). Whilst the RCN has not authorised industrial action to date it has, on some occasions in the past, authorised ballots on industrial action. In such cases the industrial dispute was resolved before a formal balloting process commenced.

The questions in the consultations deliberately conflate industrial action with strike action and proposes the same punitive approach to both. It should be made clear that there is a range of action that employees take and much of it may have no impact on the public directly.

The changes that are proposed in the Trade Union Bill and linked consultations will do nothing for the improvement of industrial relations. The emphasis on 'strikes' and seeing all industrial action through the prism of strikes is misleading. This is at a time when the number of disputes is low compared to the past. The effect of the proposals to set thresholds, increase notice time and allow agency workers to be brought in to cover staff on industrial action is not a 'neutral' step rather it further strengthens the power already held by employers in workplace disputes now.

Industrial relations law is there to allow workers with a genuine dispute to be able to undertake action in respect of their employment providing that the dispute and action meet certain laid down criteria. To this end the legislation is purposive / enabling. It recognises that the employee / employer relationship is not equal and that in certain circumstances employees should be allowed to breach their contract - subject to many conditions being met - in order to resolve issues in their workplace that have not been able to be resolved through the normal process of collective bargaining.

Workplace democracy is no different to any other form of democracy. It is about giving people a voice and listening to how they use their voice. That is how we elect

governments, how we elect local councillors, how we elect trade union leaders and how we vote to take (or not take) industrial action. It is not right to say to people that you have a democratic voice but at the same time also say that we will listen more to those that do not use their voice at all - i.e. those that choose to abstain from the democratic process. We would not do that in a Government election and we should not do it in a dispute.

The consultations highlight the impact of those people impacted by disputes 'who have no association with the dispute'. That is deliberately misleading. The dispute is with an employer. It is the employer - the provider of services that is responsible for delivering their service and ensuring that in all the decisions they make they have the best interest of their service users / customers in mind. The public involvement in a dispute is linked to whoever provides the service they use and who they pay for that service. That is who the public should be angry at in the event of a dispute - not the employee exerting their rights. An employee who may have been in dispute with an intransigent employer for many months and has now come to the point that all they can do is undertake industrial action with all the risks it contains for them.

It is the proposal to allow employers to bring in agency workers to break a dispute that is the most pernicious of all the proposals. At one stroke that single act cuts away any semblance that the law recognises that there is an imbalance in the employee / employer relationship that needs correcting through the provision of immunities. Allowing employers to bring in agency workers nullifies the whole process of collective bargaining. From now on employers need only 'sit on their hands' and use their economic advantage to ride out any genuine conflict in their workforce. Bringing in agency workers will only extend disputes, it will do nothing towards the key issue of reaching resolution.

Despite the rhetoric, trade unions are democratic organisations made up of people coming together to protect and further their interests. In the case of RCN members they also join to be part of an organisation that champions patients, improves care and furthers nursing research. Union members are intelligent people they are able to form opinions and decide courses of action for themselves. They support each other in matters that affect themselves at work.

The RCN is probably unique in its ability to respond to this consultation. RCN members have never undertaken industrial action and as such have been at work undertaking their normal roles when other unions have been undertaking lawful industrial action. The 1992 code works well and we are not aware of receiving any RCN member complaints following action from our fellow NHS trade unions. The consultation says that 'most unions adhere to the guidelines in the Code' - we would say that in our experience all unions in health have adhered to the Code.

Given our history and this consultation the irony is that the area that we do get complaints from members on is how they are treated by employers when such action by other unions is being planned and then undertaken. There is a presumption that

RCN members at work will be a 'jack of all trades' rather than being allowed to undertake their own clinical role in as full a way as possible. This manifests itself further in RCN members who are not involved in the dispute being 'warned off' by employers from showing some solidarity, such as attending demonstrations outside the workplace - with colleagues taking action. Our anecdotal information is that it is employers that cause our members most difficulty and not striking colleagues.

The consultation again conflates industrial action with striking - these are not always the same.

Questions from the consultation

Q1) Most of this consultation focuses on specific proposals. Before turning to this detail, do you have any other evidence of intimidatory behaviour, directed at either non-striking or striking workers, that you believe should be considered as part of this consultation? If so, do you have any estimate of the economic impact of this?

We have no evidence of intimidatory behaviour being directed at non-striking or striking workers.

Q2) The Government is interested in whether there are any further gaps in the legal framework (see Box 1 below) in relation to intimidation of non-striking workers and third parties. How could the framework be strengthened – for example, should there be a criminal offence, such as intimidation on the picket line?

We do not believe there are 'gaps' in the current Code or current legal frameworks. There is sufficient scope within the Code and the law to deal with the issues that the Government is saying are a concern or are potential concerns.

Q3) Question 3: The Government is legislating to make a number of key aspects of the Code legally enforceable, such as the appointment of a picketing supervisor. Are there other practices that should be directly legally enforceable - for example, training or a requirement for all pickets to be properly identifiable in the same way as the supervisor? Please explain your views.

The Code is already able to be used in Court (as are other statutory Codes such as those produced with ACAS). There is no need to change its status.

Q4) Question 4: Do you have any figures that would enable us to estimate any costs to unions generated by making aspects of the Code legally enforceable?

We have no response to this question

Q5) What are your views on the Government's proposal to require unions to publish their plans? What information should unions be required to provide? Please set out the reasons for your answer.

There is no need to make such changes. The employer is already notified as to the nature of action. Proposed changes are not intended to resolve the dispute but merely to again change the balance between the employee and employer to the employers favour. Publishing plans does nothing towards resolving the dispute.

**Q6) Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions of publishing their plans?
Reporting on industrial action in the annual report**

No response

Q7) What are your views on the Government's proposal to strengthen accountability?

This is not about strengthening accountability in industrial disputes. It is clearly about placing more hurdles before unions and getting them to devote more time and resources to justify what is, in reality lawful industrial action. We notice that there is no counter duty of accountability proposed on the employer to show what actions they have done to resolve disputes in the workplace.

Q8) Do you have any other suggestions how union accountability and / or transparency could be improved?

Unions are democratic institutions. They are accountable to their members for balloting and undertaking industrial action (of any sort). Industrial action only takes place after a democratic process.

Q9) Question 9: Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions to report on industrial action in their annual reports?

No response to this question

**September 2015
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