

Royal College of Nursing response to Department for Business and Trade consultation on Code of Practice on ‘reasonable steps’ in relation to Minimum Service Levels

With a membership of over half a million 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 United Kingdom and the largest professional union of nursing staff in the world.

1. Introduction

- 1.1. The Royal College of Nursing (RCN) opposed the Strikes (Minimum Service Levels) Bill during its passage and continues to oppose the laying of any regulations under the auspices of the Act. The proposed Code of Practice will curtail the freedom of nursing staff to lawfully withdraw their labour and place an unreasonable level of responsibility on Trade Unions for ensuring compliance with work notices.
- 1.2. The RCN believes that industrial relations must be grounded in constructive dialogue and introduction of legislation which seeks to limit the rights of workers is indicative of a lack of commitment to facilitate good industrial relations. Further, the imposition of a Code of Practice which underpins the process for the serving of work notices on NHS staff would mark an abuse of state power. The RCN therefore calls on the Department to desist in their attempt to seek regulations under the auspices of the Strikes (Minimum Service Levels) Act 2023.

2. Consultation responses –specific questions

- 2.1. The Act does not detail the nature of reasonable steps Trade Unions must take to ensure compliance. Consequently, the RCN considers the proposal to require unions to engage in a resource intensive and unnecessary process to identify members issued with work notices to be wholly unreasonable.
- 2.2. The RCN does not consider that it has a role in ensuring its members to comply with a work notice. During Business Questions on 26 January 2023, the Leader of the House of Commons, Penny Mordaunt MP said that ‘the Strikes (Minimum Service Levels) Bill was not about ‘nurses’, and it is ‘wrong’ to suggest it is.¹ Consequently, the RCN expects the Government to honour its word and deliver on the commitment from Leader of the House.
- 2.3. The RCN does not agree that it is reasonable for unions to communicate with all members regarding work notices. The RCN is committed to lawful strikes and as such, the Code proposed in this consultation is unnecessary. During all phases of industrial action in the 2022/23 pay dispute, national derogations or emergency exemptions were agreed in addition to significant numbers of local derogations during the first three phases of industrial action. RCN derogations exempted many of our members from action and ensured that patient safety was

¹ Hansard (2023) [Business of the House Volume 726](#)

maintained. The RCN considers these existing practices to be sufficient. Moreover, these commitments are based upon negotiations between workers and employers, but the provisions in the Code amount to a unilateral imposition of minimum service levels. This signals a failure to commit to dialogue and negotiation through industrial relations and social partnership machinery.

- 2.4. The RCN believes step three of the proposed Code contains sufficient information; however, we also believe that the imposition of work notices would further restrict the freedom to strike. This could potentially undermine the Article 11 right, under the European Convention on Human Rights (ECHR), to freedom of assembly and association, including the right to form and to join trade unions for the protection of one's interests.
- 2.5. The RCN believes that paragraphs 34 to 40 of the proposed Code is likely to contravene workers' rights to engage in peaceful picketing pursuant to section 220 Trade Union and Labour Relations (Consolidation) Act 1992 which affords a person the right to peacefully persuade any person to abstain from working.
- 2.6. The RCN does not believe there is any role for picketing supervisors to encourage members identified in a work notice to comply, as outlined in step four. The UK already has some of the strictest anti-trade union laws in Europe. On 25 April 2023, a joint statement signed by 121 politicians from 18 countries condemning the UK Government's attack on workers' ability to strike noted that the UK 'already has some of the most draconian restrictions on trade unions anywhere in the democratic world.'²
- 2.7. Nursing is a predominately female workforce (89%)³–the RCN remains concerned that compliance with the proposed Code could create a disproportionate impact on women which has the potential to amount to discrimination, in breach of Article 14 of the ECHR and the Equality Act 2010. Consideration should also be given to the ethnic profile of the nursing workforce as 26.04% of NMC registrants are Asian (13.48%), Black (10.46%), mixed race (0.98%), and other (1.12%).⁴
- 2.8. The RCN notes Sir Julian Hartley's (Chief Executive, NHS Providers) comments before the Health and Social Care Select Committee on 9 May 2023, where he said 'additional legislation could make things more difficult, rather than improve the situation.' We strongly concur with this statement. As such, we recommend the department rethink its approach to this Code of Practice.

3. Consultation responses -general questions

- 3.1. The proposed Code does not assist trade unions to meet the requirement to take reasonable steps as per Section 234E of the Act. Further to our responses above, the RCN believes the proposed Code far exceeds the requirements set out in

² Trades Union Congress (2023), [Statement on UK workers' rights from international politicians](#)

³ The Nursing and Midwifery Council (2022) [The NMC register mid-year update](#)

⁴ Ibid

legislation and seeks to place an unreasonable burden of cost and responsibility on unions for making a draconian process work in practice.

- 3.2. The proposed Code does not strike an appropriate balance between the reasonable steps with workers' freedom to take strike action. As above, the RCN rejects the basis for this Code and considers that its introduction is likely to unreasonably and potentially unlawfully restrict workers' ability to participate in lawful industrial action.
- 3.3. Over the last decade there has been a sharp decline in nursing numbers across specific areas of care. On 2 March 2023, NHS Digital confirmed that there were 43,619 vacant registered nursing posts in the NHS in England.⁵ This is a vacancy rate of 10.8% and does not include the number of nurses needed to meet the needs of the population.
- 3.4. Tens of thousands of registered nurses are leaving the profession following a decade-long real terms NHS pay cut, sustained staff shortages⁶, low morale and burnout due to increasing demand for services and unsafe staffing levels.⁷ The prevalence and compounding nature of these conditions is severely affecting the health and wellbeing of nursing staff and insufficient action by governments leaves them with no choice but to take industrial action.
- 3.5. The RCN believes the Department's resources would be better spent delivering a strategy to remedy unsafe levels of staffing and poor morale. Rather than seeking to impose a Code of Practice which will restrict the legal rights of hard-working members of the nursing profession, the RCN calls on the Department to demonstrate a commitment to good industrial relations and constructive dialogue with unions.

⁵ NHS Digital (2023) [NHS Vacancy Statistics, England](#)

⁶ RCN (2022a), [Staffing for Safe and Effective Care: State of the nation's nursing labour market 2022, London](#)

⁷ Royal College of Nursing (2022b), [RCN Submission to the NHS Pay Review Body 2022/23 Pay Round, London](#)