

Royal College of Nursing response to Make Work Pay: Revised Code of Practice on Access & Unfair Practices and Unfair Practices in Electronic Ballots

About the Royal College of Nursing

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 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.

Questions

Question 1: Do you have any comments about the changes to the Code to reflect the updated legal framework?

RCN response

For the nursing workforce, structured access improves engagement and informed decision-making while protecting patient safety.

We welcome the Code's duty to behave responsibly and the ban on inducements that deter attendance but recommend an explicit cross-reference to the National Quality Board's Developing Workforce Safeguards so that meeting release is planned without undermining skill-mix, and to Working Time Regulations for rest protection.

The Institute for Employment Rights' (IER) Manifesto for Labour Law argues for stronger access and a rules-based framework so workers can exercise freedom of association meaningfully and the Code's clearer timetable moves in this direction.

UNISON's recognition guidance likewise stresses robust processes, parity of communications and facilities time; alignment here would help operationalise the Code in hospitals and community services that already use internal intranets and staff briefings.

The RCN Employment Standards for Independent Health and Social Care also highlight the importance of giving employees a voice on matters that are important to them and the positive impact on the employer/employee relationship and therefore effectiveness and organisational performance. Having RCN representatives in place also ensures productive dialogue with staff and promotes feelings of being well supported. To undertake this role effectively, anyone becoming an RCN rep should be granted paid facility time.

Question 2: How well do the structural changes to the Code reflect the changes being made by the Employment Rights Act?

RCN response

The new structure closely mirrors ERA and current CAC practice. The Code should include a short Operational Annex, a one-page model access-agreement checklist for safety-critical settings, covering safe-staffing sign-off, shift-equitable sessions, privacy/CCTV, digital access protocols, noticeboard/intranet use, and a clear escalation route.

NHS, independent health, and social care providers routinely plan against safety, infection-prevention and rota constraints. Translating the Code's principles into a checklist would minimise disputes and enable faster, safer implementation. This mirrors the safer-staffing governance the NHS already follows and would improve compliance.

The RCN Workforce Standards and safe-staffing resources emphasise planning, leadership accountability and staff wellbeing, which is consistent with the Code's 'behaving responsibly' section.

A safety-first annex would reassure clinical area managers/ leaders that access can proceed without compromising care and help unions demonstrate responsible planning.

IER's policy programme urges practical support to make collective rights real at workplace level, and a templated annex is a practical way to realise this.

Question 3: Do you agree that the suggested minimum frequency of meetings during the access period should be once every 5 working days?

Yes

No

RCN response

This baseline is proportionate and promotes parity with employer briefings, while allowing CAC flexibility for dispersed and shift-heavy services in nursing.

Nursing teams work 24/7 across multiple sites, and a minimum touchpoint reduces information asymmetry without over-burdening rotas. Where

employers convene cascading team briefings about recognition, parity is appropriate to maintain balance.

RCN evidence on workload and safe staffing reinforces the need to keep sessions tight and planned, and there is recognition across health unions that recognises that regular, predictable touchpoints support meaningful engagement.

The IER's public position, that effective access is foundational to real worker choice, supports a baseline while allowing CAC to vary for small units or complex rosters.

In hospitals, aligning sessions with handover, rest periods or teaching slots minimises disruption.

Question 4: Do you agree that the suggested minimum duration of meetings be increased from 30 minutes to 45 minutes?

Yes with additions

No

RCN response

Forty-five minutes better reflects the time required to present, take questions and manage orderly entry and/or exit in clinical premises. In healthcare, 30 minutes is often insufficient once safe handover and movement from clinical areas to meeting rooms are accounted for.

A 45-minute benchmark enables meaningful member engagement, often on complex topics like recognition scope, bargaining unit boundaries, and unfair practices.

RCN materials emphasise the link between staff voice and safe care, with properly-timed sessions supporting informed decisions and reducing misinformation circulating on shifts.

A modestly longer slot remains workable if accompanied by explicit safeguards that attendance is paid time and must not be at the detriment of statutory breaks. CAC should retain discretion to tailor duration (two shorter huddles) where safer.

Question 5: Do you think the updates to the Code appropriately reflect the increased use of digital communication in workplaces?

Yes

No

RCN response

Normalising digital meetings and internal comms is appropriate, provided the Code explicitly reinforces non-monitoring commitments, privacy, cybersecurity, and data-protection safeguards, and aligns with NHSmail Acceptable Use and other employer/local digital policies.

Digital access is essential for nurses and nursing support workers on community rounds, bank shifts or remote rotations. Expecting employers to mirror customary staff comms (intranet posts, Teams briefings) levels the field and widens reach at low cost.

The RCN emphasises staff voice and safe staffing, and digital communications materials ensure members stay informed and engaged while off-ward/at their place of work.

Pointing to NHSmail policy reinforces non-monitoring of union sessions and anti-surveillance norms, which is of particular importance in clinical estates where logging is routine for cybersecurity.

IER's analysis supports modernising balloting and comms. Using digital communications, supplementary to traditional methods in workplaces, increases participation without undermining secrecy or integrity when accompanied by independent scrutineers and clear audit trails.

Question 6: Do you think the role of the CAC in resolving disputes is adequately explained in the Code?

Yes with comment

No

RCN response

We broadly agree with the steps set out but the code should include a one-page flowchart contrasting the access-breach route with the unfair-practice route, including remedies and indicative timeframes.

The draft sets out orders, remedial steps and sanctions (including declarations of recognition/non-recognition). Given NHS operational complexity, a visual route-map will help HR, matrons/clinical managers and union reps triage whether a dispute is an access non-compliance (meetings cancelled without parity) or an alleged unfair practice (inducements not to attend).

The RCN's focus on safe staffing means swift clarity matters and prolonged disputes risk rota instability. Union guidance encourages early, structured resolution and use of Acas, and the ability to map CAC timelines will cut delay.

The bottom line is that weak, underused procedures blunt worker voice, and clearer signposting would strengthen confidence in redress and serve both sides.

Question 7: Do you think that the Code includes sufficient information in relation to Section D of the Code which covers the elements in an access agreement?

Yes with additions

No

Broadly yes, with nursing-specific refinements recommended. Section D already sets out the core components of a good access agreement, including who may access, where/how access occurs (physical/digital/written), timing and frequency, privacy (including surveillance), provision for nontypical workers, and scope for joint employer/union activity, alongside confirmation that the CAC will have regard to these elements if no agreement is reached. This is an appropriate and workable foundation for NHS settings.

To make the guidance fully effective on wards and in community teams, additions should include roster scheduling aligned to the roster and safestaffing constraints, embed NMCCode-based confidentiality safeguards so meetings are kept to staff spaces, strengthen digital access rules to prohibit tracking/monitoring of engagement and align with ICO monitoring guidance, while ensuring parity of access to employer channels.

These clarifications would speed agreement within statutory timelines and reduce avoidable disputes, without diluting the Code's intent.

Question 8: Do you think the Code provides sufficient guidance on how unfair practices might be used to influence the outcome of an application?

Yes with additions

No

The draft clearly lists what counts as an "unfair practice" and gives some helpful illustrations. However, several high-risk grey areas (digital campaigning, line manager one-to-one conversations, timing of pay/benefit announcements, and the evidential

threshold the CAC will apply) would benefit from more explicit, scenario-based guidance and clearer examples to ensure consistent application and easier compliance.

For nursing, those risks are distinct: 24/7 rotas, patient/client-facing settings, line manager power dynamics, use of NHS/employer digital systems, and confidentiality duties. This calls for more explicit, scenario-based guidance to ensure safe, lawful campaigning without disrupting care or breaching privacy.

To be fully effective in nursing contexts, there should be additional guidance covering scheduling access around rostering and statutory rest so campaigning never compromises safe staffing or fatigue management, explicit safeguards for ward level 1:1s and small meetings in hierarchical teams, digital campaigning on NHS/employer systems with clear prohibitions on tracking or monitoring engagement and alignment with ICO monitoring guidance, and a signpost to the NMC Code to protect patient confidentiality.

Question 9: Are there any areas or topics of the Code of Practice which relate to access that you think would benefit from further guidance?

Yes

No

RCN response

Two areas require further consideration and provisions: nights/community teams and employer digital systems.

Nursing staff frequently work nights, in people's homes or across satellite sites. The Code could add a note on safe meeting windows, travel at night, and manager sign-off for venue switches.

IPC-driven rescheduling needs a defined 'like-for-like' alternative which maintain privacy/parity. On digital, a neutral rule that unions may request a staff-intranet space with HR acting as poster if required, plus a simple takedown process for unlawful content, would reduce disputes.

Question 10: Are there any areas or topics of the Code of Practice which relate to unfair practices that you think would benefit from further guidance?

Yes

No

RCN response

The draft establishes a solid legal baseline on unfair practices by defining dismissal, detriment, outcome-specific inducements, coercion and undue influence, and rightly makes clear these risks can arise before any ballot.

However, to be fully workable for nursing staff, the Code should add a clearer, multifactor test for “undue influence” (intent and likely effect, timing against key milestones, managerial power imbalance, frequency, and the evidential basis), with clinical examples that distinguish legitimate information from pressure in ward environments.

The Code should also draw a sharper line between prohibited outcome-contingent offers and legitimate, preplanned changes (for example, scheduled pay progression), alongside simple evidential expectations for CAC.

In digital campaigning, the Code needs explicit prohibitions on using intranet/email/Teams analytics (read receipts, clickthroughs, attendance logs) to identify or profile workers. Managers also need Acas-aligned safeguards to avoid discipline or detriment linked to campaigning, including a ban on asking how staff intend to vote.

The Code should require roster-aware scheduling of access that maintains safe staffing, and protects statutory rest, reflecting NHS/healthcare rostering good practice, the RCN Workforce Standards, the RCN Employment Standards for Independent Health and Social Care, and Working Time Regulations on breaks and rest, so staff are never forced to choose between safe care and participation in union activities.

These targeted additions would reduce disputes, protect staff and patients, and give trusts and staffside the confidence to campaign robustly without risking unfair practice findings

Part Two: Unfair Practices for Electronic Balloting (Recognition/Derecognition)

Questions

Q1. Do you think that the existing requirements in Schedule A1 are sufficient to prohibit interference with a pure electronic ballot?

Yes

No

Not sure

RCN response

Existing provisions are not sufficient for digital-specific risks. Statutory duties targeting delivery integrity, secrecy, non-impersonation and anti-misinformation are needed alongside scrutineer/platform standards.

The RCN and other health unions increasingly use digital channels for member engagement, moving statutory ballots online requires anti-interference rules that mirror postal protections and recognise cyber risks.

The Knight Review found that e-balloting can be secure given appropriate safeguards, and the draft e-balloting Code now details platform, audit and scrutineer standards, but explicit unfair-practice provisions are still needed to deter manipulation.

The TUC supports rapid, standards-driven introduction to widen participation, with statutory duties to close loopholes on intimidation/misinformation unique to digital channels.

The RCN strongly advocates for modernising ballot laws as a crucial step to strengthening worker voice, the provisions set out in the Code, alongside our further recommendations, do this. On the enforcement of these changes, specific offences will make enforcement clearer for the CAC and courts.

Q2. Do you agree that the government should add a duty prohibiting interference with the delivery of a ballot to eligible voters (proposed duty 1) to the list of unfair practices for pure electronic ballots?

Yes

No

Not sure

RCN response

Interference with delivery, such as blocking/diverting ballot links or credentials, should be a defined unfair practice, with CAC powers to order remedial steps or a fresh ballot.

Digital delivery failures disenfranchise shift-based staff who rely on mobile access. A specific duty fits with the draft Code's distribution standards and protects nurses and nursing support workers who may access ballots off-site.

The TUC highlights that postal-only systems disadvantage younger and mobile workers, therefore a delivery-integrity duty gives clear grounds for remedies if interference occurs.

Defining delivery interference as an unfair practice gives CAC sharper tools, especially in some health settings where employers control e-mail gateways or filtering.

Q3. Do you agree that the government should add a duty to prevent parties seeking to determine how or whether a worker participated in a ballot (proposed duty 2) to the list of unfair practices to prohibit interference with a pure electronic ballot?

Yes with additions

No

Not sure

RCN response

Secrecy in e-ballots is fundamental and underpins legitimacy. The draft Code requires non-monitoring and scrutineer controls, making any attempt to determine voting behaviour an unfair practice, which will deter misuse of device-management tools, keystroke logging, or coerced screen-sharing.

This aligns with professional dignity and safe workplace cultures in health settings. The TUC supports secrecy safeguards, and the IER's rights-based approach requires strong, enforceable privacy norms.

Extend prohibitions on coercion in digital contexts should include bans on device monitoring or pressured 'vote-in-front-of-me' practices to determine intent or actions. These additions, alongside the provisions set out in the draft Code, maximise participation while maintaining ballot secrecy.

Q4. Do you think the government should add a duty to prevent parties from seeking to interfere with a ballot or submit a vote on behalf of a worker (proposed duty 3) to the list of unfair practices to prohibit interference with a pure electronic ballot?

Yes

No

Not sure

RCN response

Bar and proxy/assisted voting outside defined accessibility adjustments administered by the scrutineer should fall under this definition. Credential handover or bulk proxy voting should be an unfair practice.

Impersonation during the balloting process is a recognised e-risk. The draft Code specifies unique credentials and scrutineer-run helpdesks, a statutory unfair practice covering coerced hand-over of credentials or bulk proxy activity will deter organised interference.

The TUC supports robust identity controls alongside accessibility, and scrutineers should manage reasonable adjustments for disabled voters. Our position is that modernising balloting must not dilute secrecy and independence.

Q5. Do you think the government should add a duty to prevent parties from misleading a worker about the secrecy or anonymity of their vote to discourage participation in a ballot in which they are eligible to vote (proposed duty 4) to the list of unfair practices to prohibit interference with a pure electronic ballot?

Yes

No

Not sure

RCN response

Fundamentally, misleading statements that suggest votes are traceable or monitored should be actionable as unfair practices to prevent intimidation and suppression of turnout.

In healthcare settings, rumours that 'IT can see how you voted' can suppress participation, especially among internationally recruited, or newly registered, nurses and nursing support workers.

The draft Code requires scrutineer independence and platform anonymity, making deliberate misinformation an unfair practice that deters intimidation via fear of surveillance.

The TUC argues modernisation should widen participation and this duty directly supports that aim. IER's emphasis on enforceable protections offers a clear basis for remedial orders or fresh ballots where misinformation materially affects participation.

Q6. Do you have any other comments on the government's proposals for unfair practices for electronic balloting?

Yes

No

Not sure

RCN response

Security is manageable with standards, but an explicit 'tampering/spoofing' provision will simplify enforcement where parties (or agents) try to penetrate or clone ballot sites.

Separately, many employers run internal firewalls and analytics, and a statutory 'no monitoring for voter identification' rule complements the Code's non-eavesdropping principle.

Scrutineer obligations should be strengthened for eballots, with independent audit trails, antis spam/allowlisting arrangements, multifactor authentication that does not depend on employer systems, and clear procedures for reissuance where delivery fails, in order that participation is maximised without compromising secrecy.

Remedies must be swift and meaningful. Where digital interference occurs, the CAC should be able to order corrective communications, extend voting windows, or rerun ballots. Repeated or serious breaches should attract the same robust sanctions already outlined for unfair practices in recognition processes.

The TUC supports protecting secrecy and widening participation, and the IER's modernisation stance aligns with CAC remedies (including fresh ballots) to maintain legitimacy.