

Industrial Action by Other Unions: advice for RCN members

POLICY AND POSITION STATEMENTS



Introduction

Occasions may arise where RCN members are employed in a workplace where colleagues in other unions are involved in industrial action. This document outlines what approach RCN members should take relating to their own contract of employment, while ensuring they do not undermine the lawful industrial action taken by trade union colleagues.

It covers the issues arising out of lawful industrial action and does not cover action that might be described as 'wild cat' industrial action; ie action that is not supported by a lawful statutory industrial action ballot.

It is highly likely that an employer will be fully prepared for the industrial action undertaken by its staff. The employer will have been informed of the union ballot, who has been balloted, the result of the ballot and the action that the union will be taking. An employer may not know the name of every employee involved in the action, but the information supplied by the union will be sufficient to understand the nature of the action, the workplaces participating and the category of workers likely to be involved in it.

The employer will have had sufficient time to plan for the action and to take appropriate steps to ensure staff cover, staff safety, patient safety and effective risk management.

The employment position

A worker engaging in industrial action is likely to be in breach of their contract of employment. However, the law provides certain protections to the worker when they undertake lawful industrial action; ie action that is supported by a lawful ballot.

This protection does not apply to workers who are not part of that action. Therefore, if a worker who is not involved in the dispute fails to attend work or attends work but does not fulfil their contract of employment, then they could be subject to disciplinary action by their employer.

However, while at work, the employee should not be expected to work beyond their contract of employment, should not undertake activity for which they are not competent, and should not put themselves at risk of danger or harm.

Members cannot be told by their manager, or any other person, that they are competent in a role or task that they have not undertaken before. Whether or not they are competent is for the member to decide, having considered their training, development, competencies, skill set and their duties and obligations under the NMC Code.

Information on the [NMC position is available on their website](#).

The RCN view

- Members, including agency staff and students, should attend work as normal – failure to do so will be seen as a breach of contract.
- Members can, if they wish, stop at any picket line on the way into work to show support for striking workers. Members **should** explain that they are not crossing the picket line as they have not been balloted as part of this specific dispute.
- Members **should not** undertake any work that is outside of their professional competency.
- Members **should not** cover the work of colleagues who are undertaking industrial action if that work falls outside their contract.
- 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.
- Members **should** monitor the work environment in respect of health and safety and should, where necessary, immediately report to their manager, or another relevant person, any concerns they might have on the safety of staff, patients or property and the environment.
- Members **should** ensure that they take any breaks they are entitled to during their shift/day.
- Members can also visit picket lines during their lunch and break times and can offer support by bringing refreshments to striking workers.

- Members **should** report any difficulties or concerns in delivering care to their manager immediately. They should also notify their RCN representative as soon as possible.
- Members may wish, in their own time, to support the action of colleagues by attending demonstrations or signing petitions, etc.
- Members **should not** ask fellow workers to undertake work that they are not clinically competent to undertake.
- Members **should** work within the NMC Code at all times.

Joint membership

RCN members may also be a member of another union. If the other union undertakes industrial action and RCN members have voted in the ballot on the basis of their membership of that union, then they will make a decision as to whether or not they undertake the action called by that union. The member must also understand that they are undertaking the action based on their membership of the other union and the action is unrelated to their RCN membership.

If they are subject to any detriment for taking lawful action with another union, assistance should be sought via the union taking the action and not the RCN.

Employers seeking exemptions of union members from industrial action

When a union calls for industrial action, employers may ask the union(s) to exempt some of its members from the action to ensure delivery of some essential task or service. Essentially, employers will be asking the union to allow the member(s) to work as normal. Unions are not legally required to grant exemptions from industrial action. Therefore, the decision to approve the request sits with the union and the responsibility for maintaining safe services remains with the employer.

If an employer has concerns regarding the delivery of a service, it is their responsibility to discuss it with the striking union. It is not appropriate for the employer to ask the RCN to engage in discussions about how that work is covered. Neither should unions undertaking industrial action divert the issue away from themselves onto the RCN. RCN representatives should not be involved in this discussion, and they should refer the matter back to the unions taking the action.

Picket lines

The law allows those undertaking industrial action the opportunity to ask those continuing to work to support their action with activity such as: refusing to attend work, not enter a particular building, not deliver goods or not provide services to the employer.

There is no legal limit on the number of people on a picket line. The codes of practice for picketing recommend six people on a picket line, however, if the picket is peaceful, striking colleagues can gather to picket with more than six people. The official picket line can only consist of workers who are on strike at that workplace where the picket is located. However, the law permits a picket supervisor to be any official or member of the union who is familiar with the provisions of the Code of Practice on picketing and appointed by the union to support the members in the role of Picket Supervisor. Other workers and members of the public are also free to show their support in a demonstration of peaceful protest.

Health and Safety Act: serious and imminent danger

Employers have a duty to protect the mental and physical health of their employees. In particular, the employer is obliged to provide and maintain the workplace so that it is safe and without risk to health. If an employer has notice that industrial action will be taking place, they should ensure that duty is fulfilled. These duties are not overridden by industrial action.

Employers must also set up procedures to be followed in the event of serious and imminent danger to persons at work (MHSWR 1999 Regulation 8). These procedures should enable employees to stop work and immediately proceed to a place of safety in the event of being exposed to serious, imminent and unavoidable danger. The legislation states that the individual can take appropriate steps, including stopping work, in the absence of guidance or instruction or in the light of their knowledge. If a worker was dismissed because they stopped working due to a fear of being in serious or imminent danger, the dismissal would automatically be deemed an unfair dismissal (ERA 1996, Section 100).

Where members fear that they are in a position that endangers their health and safety, they should notify their manager immediately and ensure they are in a place of safety. They do not need their employer's permission to do this, but they must be clear in their own mind that such a danger is present.

Work attendance

RCN members may be working as normal on any day of action or strike day in the NHS. If members do not attend work when another union is taking strike action, they will be breaching their contract of employment and could face disciplinary action.

Taking part on a picket line

Picket lines give those who are undertaking industrial action the opportunity to try and influence others to support their action. If RCN members are not on strike, they may support the picket line at break times and/or outside of their contracted working hours.

I have been asked to provide cover for a striking colleague

RCN members should not 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.

I have been asked to work overtime or do extra work on the hospital/unit bank

You cannot be made or required to undertake work that is outside of your contract of employment. Your employer will have had ample time to make arrangements to cope with any industrial action in your workplace.

We would ask that you support the lawful industrial action of colleagues by not undertaking extra contractual work and/or voluntary overtime.

My employer wants to discuss cover with me as an RCN rep

The employer should discuss any concerns they may have over the action with the union calling the action. It is for the employer to ensure that safety is maintained and risk minimised. The employer should not come to the RCN asking us to resolve the issue for them.

My employer wants to speak to me in my capacity as staff side chair/secretary

If this happens it will be purely on the basis of the office you hold on the staff side and not because of your membership of the RCN. There is no reason not to speak with the employer. However, you will want to ensure that if the employer is seeking exemptions from the action, that they speak first to the union calling their members to strike.

Taking part in a demonstration/march

It is acceptable to support your fellow workers on a march or demonstration. You should ensure that this is done in your own time and that you do nothing that contravenes your contract of employment or NMC requirements.

My employer wants me to extend my prescribing rights to cover the period of industrial action

Any extension of your prescribing role can only be with your agreement and has to comply in full with any regulatory guidance set out by the NMC. Any such change should not be 'short term' but should be part of your normal role in the future.

This document has been designed in collaboration with our members to ensure it meets most accessibility standards. However, if this does not fit your requirements, please contact corporate.communications@rcn.org.uk

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