

## **CODE OF PRACTICE ON INDUSTRIAL ACTION**

Standing Order 3 of the Rules of the Royal College of Nursing states:

### **Power to Call Industrial Action**

*3.1 It is a fundamental principle of the College that its Members shall not act in any way which is detrimental to the wellbeing or interests of their patients or clients. Without prejudice to this fundamental principle, the Council is empowered to authorise action by Members in furtherance of an industrial dispute and to make regulations governing the procedure to be followed;*

*3.2 No industrial action shall be taken by any Member without the prior authorisation of the Council;*

*3.3 The Council will not authorise any form of industrial action unless satisfied that such form will not be detrimental to the wellbeing or interests of patients or clients;*

*3.4 The Council will ensure that any authorised industrial action complies with both the relevant trade union legislation in force at the time and with the RCN Code of Practice on Industrial Action;*

*3.5 The Council may delegate to a committee of the Council the power to make recommendations when, where and in what form industrial action may be taken by Members (subject always to the provisions of the above clauses). Such committee may be convened at the request of the Chair of the Council*

### **Regulation**

The process for making the decision to ballot on industrial action is for RCN Council to determine. Once RCN Council has made a decision to ballot on industrial action then all balloting arrangements must comply with the Statutory provisions. The process adopted by the RCN to date has been as follows;

1. Any dispute giving rise to a request to Council pursuant to Standing Order 3 must satisfy the statutory definition of the same.
2. Every effort must be made to resolve any dispute (a 'local dispute') with an employer at the lowest level possible (i.e. preferably by the staff and manager directly involved in the situation) and as speedily as possible.
3. Where the dispute is with the Secretary of State for Health or equivalent Ministers in the devolved countries (a 'national' dispute) the relevant national officers of the RCN will have advised the Chair of the Membership and Representation Committee (MRC) and the RCN Chief Executive & General Secretary (CE&GS) of the progress of any negotiations at a national level. They will advise the CE&GS, MRC and RCN Council as to why a national agreement has not been reached. Council will expect evidence that every effort has been made to achieve agreement.

4. If it is not possible to resolve the local dispute and local mechanisms are exhausted the members involved may seek a ballot for industrial action. RCN Council members for the relevant region or country must be informed and kept up to date with developments.

7. In the case of a national dispute it will be for MRC to ask RCN Council to approve a ballot on industrial action.

8. A meeting of the members involved in a local dispute should be convened. The purpose of the meeting shall be to test whether industrial action is the only option. The local RCN steward and an RCN Regional Officer will be in attendance. The local branch officers may also attend but should not vote unless directly involved in the dispute.

9. Only those in RCN membership and who are directly involved in the dispute may vote. A list of names and membership numbers of those present who are involved in the dispute should be taken and checked with membership records. This list will be required if an application to RCN Council is to be made.

9. At least 5, but no more than 10, working days notice should be given. The purpose of the meeting will be to discuss the progress of the dispute and to consider whether an application to RCN Council for a ballot on industrial action would be appropriate. A vote, which may be on a show of hands or by secret ballot of those present, shall be taken to decide whether such an application should be made. For a request to Council for industrial action to succeed a two thirds majority (2/3rds) is required.

11. The meeting should also consider what industrial action might be appropriate given the requirements of Standing order 3.

12. If a 2/3 majority is achieved at the meeting in favour of applying to RCN Council for a ballot for industrial action, a meeting with the branch officers should be convened within five working days to discuss whether to proceed to make the application to RCN Council.

13. The Branch officers should explore whether all means of resolving the dispute have been exhausted; how effective the proposed action is likely to be; and to achieve a consensus that an application to RCN Council for a ballot should be made. An RCN full time official (Regional Officer) may help facilitate the meeting and must also be in attendance throughout. At least two Branch officers must be present throughout.

14. If it is agreed that the matter cannot be resolved locally and that it should be referred to RCN Council the pro-forma should be signed by the steward and branch officers present and sent immediately to the CE&GS who, as Secretary to the RCN Council, will arrange a meeting of the Council, or as otherwise provided, the industrial action sub-committee of Council (IASC), within 10 working days.

15. If RCN Council is unable to meet then the IASC is convened. The IASC will comprise of seven Members of Council, including the Chair / Vice Chair, Chair/ Vice

Chair of MRC, Chair / Vice Chair of the Nursing and Public Policy Committee (NPPC), the relevant Council member (s) for the region/country and three Council members at large. The IASC will recommend to RCN Council whether in their view members should be balloted on industrial action.

16. The meeting of the Council / IASC will be attended by the CE&GS or named deputy and appropriate staff officers. A Legal officer must be present. The Council / IASC will consider the pro-forma. The signatories should also be invited to make written or oral representations to support their case if they so wish.

17. If the IASC is convened and agrees to recommend to Council that the members should be balloted, Council should meet as soon as possible afterwards and in any case, within the next ten working days, to consider the evidence put forward in support of industrial action. There is no right of appeal if the application is rejected. If authorisation is given, a ballot (organised by the Returning Officer) will then be conducted.

18. There must be no call by the RCN, i.e. by any officer or Branch official or steward of the RCN for members to take part in the proposed industrial action either before or during the ballot.

19. Following the outcome of the ballot any call for industrial action will be made by the CE&GS.

### **The Statutory Balloting process**

Once RCN Council makes a decision to ballot members on industrial action the balloting process has to conform to the statutory requirements. These are contained in the DTI 'Code of Practice for Industrial Action Ballots and Notice to Employers'. The Code also covers arrangements following a ballot for industrial action.

<http://bis.ecgroup.net/Publications/EmploymentMatters/TradeUnionsCollectiveRights/051462.aspx>

The Code itself imposes no legal obligations and failure to observe it does not by itself render anyone liable to proceedings. But section 207 of the 1992 Act says that any provisions of the Code are to be admissible in evidence and are to be taken into account in proceedings before any court where it considers them relevant. Essentially this means that the provisions of the Code should always be adhered to. A breach of the RCN's own rules or failure to adhere to the statutory requirements and Code renders the union open to legal challenge from our members, employers or members of the public.