

## **Royal College of Nursing response to the Department of Business Innovation and Skills consultation on Hiring agency staff during strike action: reforming regulation.**

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 (now 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.

#### **DBIS Consultation Hiring agency staff during strike action: reforming legislation.**

As we have stated earlier this is a proposal directly targeted at changing the historical and legal basis of industrial disputes and the balancing of power within the employer / employee relationship. It will no longer be that an employer has to seriously attempt to resolve a dispute in their workforce.

We do not agree with this proposed change. In health it is difficult to see how it will have any serious effect on the resolution of disputes. There is no 'reserve army' or qualified nurses or others able to be brought into deliver services at short notice. As many agency nurses are already NHS employees they will themselves also be affected by the dispute and are unlikely to wish to work and thus undermine their own interests. Health is a regulated profession. Not just in terms nurse regulation but also the wider controls placed on workers and employers. All of these mitigate employers bringing in random staff to undermine the interests of their fellow workers.

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