



RCN briefing for Committee Stage of the Trade Union Bill in the House of Lords

With a membership of more than 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. The RCN is a politically neutral organisation.

The RCN's position

- The RCN strongly opposes the Trade Union Bill, which if enacted, would have serious consequences for productivity and staff morale in the NHS, posing a threat to patient care. The RCN is calling for clauses 12 and 13 of the bill to be rejected.
- Clauses 12 and 13 enable the Minister to cap facility time and impose reporting requirements on public sector bodies, and the RCN believes these clauses seek to solve a problem that does not exist.
- Facility time for union representatives is linked to increased productivity, crucial in the NHS for delivering high quality, cost effective care. There is an economic case for retaining the current arrangements.
- Facility time arrangements are beneficial to the safety of practice environments, staff welfare and consequently, patients. Trade Unions invest in their representatives bringing skills, knowledge and experience to the workplace and to partnership arrangements. This is a cost effective way of developing practice and managing organisations. Alternative provision would be costly to employers and therefore to tax payers.
- Facility time arrangements are best agreed between employers and trade unions, taking into account the needs of employees and specific circumstances of different workplaces. The RCN believes there is no need for primary or secondary legislation to prescribe the existing arrangements, which work well as they are and are valued by employers.
- Evidence shows that turnover in organisations where there are no union representatives is three times higher than in those with union representatives, equating to an annual saving for the NHS of over £100 million.
- Against the backdrop of continued pay restraint the Trade Union Bill risks further depleting the recruitment and retention prospects for nursing staff in the NHS, threatening productivity and patient care.

- The bill will do nothing to improve industrial relations and the RCN fears that this will cause further unrest during this Parliament.

Clauses 12 and 13

Clauses 12 and 13 proposes changes to the current arrangements for union facility time under the Trade Union and Labour Relations (Consolidation) Act 1992. They enable the Minister to impose a cap on the percentage of facility time that trade union representatives are allowed for carrying out their duties. Provisions would also give the Minister power to require public sector employers to annually publish details of funds used for trade union facilities, including paid time off for union officials.

Amendments to exclude services devolved to the Scottish, Welsh or Northern Ireland Assembly Governments

The RCN is aware of arguments around whether the bill impacts on those matters which fall under the competences of the devolved parliament and assemblies. The RCN fully supports moves to exclude health services from the facility time provisions in the bill. We believe such an exclusion should apply on a UK-wide scale and, on this basis, support the raft of amendments to exclude Scotland, Wales and Northern Ireland from the facility time provisions. The RCN recommends that these amendments be considered along with those which exclude local government and the NHS from the facility time provisions in the bill.

Amendments to exclude local Government and the NHS from clauses 12 and 13 provisions tabled by Lord Beecham and Lord Harris

Page 9, line 26 at end insert –

“(j) None of the provisions of this section shall apply to the following public sector employers –

- (a) Local authorities in England*
- (b) The Greater London authority; and*
- (c) The NHS.”*

Page 11, line 4 at end insert –

“(j) None of the provisions of this section shall apply to the following public sector employers –

- (d) Local authorities in England*
- (e) The Greater London authority; and*
- (f) The NHS.”*

Patient safety is the single biggest concern of nursing staff. These amendments address the RCN's specific concerns about the risks of reducing facility time in the health sector. The risk to industrial relations across the wider public sector will still be affected by clauses 12 and 13 in the bill, should it be enacted.

The RCN is calling on Peers across the political spectrum to consider the attached evidence, which shows the economic benefits of facility time in the NHS, and to consider the impact on patient safety if facility time arrangements were to be forcibly reduced as a result of the bill.

The ability of the health service to transform and improve without protected facility time for union representatives to enable smooth transition, facilitate learning and ensure safety, is a significant cause for concern. Facility time is fundamental to enabling trade union representatives to support members through changes in their workplace and service redesign. Without it, the RCN believes risks to patient safety will be increased. The management team at University College London Hospitals (UCLH) NHS Foundation Trust told the RCN that *"elements of the bill that would confine trade unions' ability to engage with us are widely viewed by NHS employers as potentially undermining the Government's health policy in restricting the transformation we are keen to drive to achieve the Five Year Forward View."*

Clause 12 stand part amendment tabled by Baroness Hayter of Kentish Town and Baroness Wheeler

The RCN is clear that clause 12 is unnecessary and must not stand part of the bill. We welcome this stated intention to oppose the clause.

The RCN has warned that should facility time be restricted, alternative provision may prove more, rather than less, costly to employers, ultimately leading to taxpayers footing the bill for the change. The RCN believes that in the current climate of reduced public spending it is highly unlikely that the Government's intention would be to introduce provisions that increase costs for UK taxpayers.

Facility time arrangements vary from one workplace to the next, depending on the specific circumstances and needs of the workforce and employers. Facility time arrangements are agreed between trade union representatives and employers and the RCN does not believe there is a need for primary or secondary legislation to make changes to this process.

The RCN believes the benefits of facility time for healthy industrial relations cannot be overstated. UCLH management team warned that *"given current and forecast challenges facing the NHS, the quality of partnership we achieve will be fundamental to the patient care our staff are motivated and enabled to provide."*

Employer perspectives

South Tees Hospitals NHS Foundation Trust:

“The RCN’s role in a case of excellent partnership working was formally recognised at the South Tees Star Awards ceremony on 18 September. Senior RCN Officer Sandra Bullock was part of the IMproVe (Integrated Management and Proactive Care for the Vulnerable and Elderly) project team, which won the Chairman’s award for its role in smoothly facilitating a radical restructure of community services.”

University College London Hospitals

“The trade union partnership at our Trust is chaired by an experienced nurse and highly respected RCN member. Given current and forecast challenges facing the NHS, the quality of partnership we achieve will be fundamental to the patient care our staff are motivated and enabled to provide. Thus elements of the Bill that would confine trade unions’ ability to engage with us are widely viewed by NHS employers as potentially undermining of the Government’s health policy - in restricting the transformation we are keen to drive to achieve the Five Year Forward View.”

Nottingham University Hospitals NHS Foundation Trust:

“The Trust believes that recognised trade unions have a vital role to play in the development and consistent application of employment practice and provide valuable and ongoing feedback regarding the concerns and needs of the workforce. The Trust restates therefore the commitment to constructively engage with staff representatives to support the provision of ever better standards of care to patients.”

The Chartered Institute for Personnel and Professional Development:

“CIPD research with employers and consultations with its own members show that employer relationships with trade unions are generally good. Therefore the CIPD has urged the government and organisations to build a better dialogue with their workforces and consider alternative approaches...”

RCN research into union facility time

Independent research funded by the RCN¹ shows that numbers of full-time representatives in public sector health care workplaces are not disproportionate. Only 1.5% of public sector health care workplaces have a full-time union representative, and in such cases, the average workplace has 2,500 employees compared with only 371 for workplaces with no full-time representative. Workplaces with full time representatives therefore have high numbers of staff and trade union representatives are required to deal with employment issues on a daily basis, including resolving conflicts before they escalate.

¹ <https://www.rcn.org.uk/about-us/policy-briefings/RCN-WERS-briefing>

The report also shows substantial evidence of close working between union representatives and management, with managers reporting a high level of trust in their union colleagues. The positive link between union representation and organisational performance outcomes is clear. Most significantly, staff turnover in organisations where there are no union representatives is three times higher than in those with union representatives, which equates to an annual saving for the NHS of over £100 million. In a large teaching hospital NHS organisation, annual savings are estimated to be £1,190,625 for all Agenda for Change staff.

This link between union facility time and organisational productivity shows that the case for retaining the current arrangements is an economic one. Increased productivity in health care workplaces delivers improved patient outcomes; facility time for trade union representatives is therefore linked to patient safety.

Government research into union facility time

The Department for Trade and Industry's (DTI) 2007 review of union facility time echoed the findings of the RCN's recent research, based on analysis of the 2004 Workplace Employment Relations Survey (WERS)², which found cost savings associated with union representation, including that union activity is associated with:

- lower voluntary exit rates, saving £72-£143 million annually in recruitment costs
- lower dismissal rates, saving £107-£213 million annually in recruitment costs
- lower rates of employment tribunals, saving the Government £22-£43 million annually
- lower rates of workplace related injuries, saving employers £126-£371 million annually and
- lower incidences of workplace-related illness, saving employers £45-£207 million annually.

Improving patient care

Health care employees, union representatives and employers share a common goal to improve services and deliver high quality patient care. Productive partnerships between union representatives and managers is made possible because of the provision of facility time. Positive industrial relations enable situations to be resolved before they escalate. Any reduction in union facility time will reduce the ability of union representatives to carry out their roles, weaken union/employer partnerships and intensify the potential for industrial unrest. Attacking employees' rights and lowering morale even further, will result in patient care bearing the brunt of these changes. Evidence shows that the current arrangements for union facility time are working well and the RCN believes that in the interests of patient care and staff welfare they must not be capped.

The RCN calls on Parliament to carefully consider this briefing against the backdrop of the current economic climate, straitened NHS finances and the as yet unresolved

² <http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/files/file36336.pdf>

issues of health workforce planning, recruitment and retention of staff and safe nurse staffing levels.

In the last Parliament the biggest cause of industrial unrest was pay. Continued pay restraint coupled with the attack on workplace democracy contained within the bill will do nothing to improve industrial relations. Within this volatile environment the RCN is warning that this bill poses a profound risk to productivity, morale and the delivery of safe patient care in the NHS.

Further reading

- Ballot thresholds in important public services, Hiring agency staff during strike action and Tackling intimidation of non-striking workers.³
- RCN research report on union facility time.⁴

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³ <https://www.rcn.org.uk/about-us/policy-briefings/conr-4715>

⁴ http://www2.rcn.org.uk/_data/assets/pdf_file/0009/640449/RCN-WERS-briefing.pdf