INDUSTRIAL ACTION

Guide for RCN Members
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This brief guidance is a summary of the arrangements within the RCN for approval and authorisation of industrial action. Where members want to take industrial action, they must seek advice and support from their RCN Board office at the earliest possible opportunity. Members should read the RCN ‘Code on Industrial Action’. Nothing in this guidance overrides or limits the procedure and guidance contained in the RCN Code.

Under no circumstances may any member, employee or elected official of the RCN (including stewards, safety representatives and learning representatives) authorise or endorse industrial action before there has been a lawful ballot for such action.

This guidance applies to all Royal College of Nursing (RCN) members, whether they work in the NHS or the independent sector. It covers any industrial action against an individual employer or action against the Secretary of State for Health where the latter has the power to approve the terms and conditions of employment of nurses. It applies equally to workplaces where there is a RCN steward and where there is no RCN steward.

Rule 12 of the Rules of the Royal College of Nursing states:

“It is a fundamental principle of the College that its members shall not act in any way which is detrimental to the well being or interests of their patients or clients. Without prejudice to this fundamental principle, the Council is empowered to authorise action by members of the College in furtherance of an industrial dispute and to make regulations governing the procedure to be followed. This rule may not be altered, amended, added to or repealed other than by resolution of the College in general meeting passed by no less than two-thirds majority of the members present or voting by proxy”.

Regulations relating to industrial action

The RCN rules are covered by the Bye-laws and Rules of the RCN:

No industrial action shall be taken by any member of the College without prior authorisation of Council. Council will not authorise any form of industrial action unless satisfied that such form will not be detrimental to the well being or interest of patients or clients. Council will ensure that any authorised industrial action and the Council’s authorisation will comply with both the relevant trade union legislation in force for the time being and with the RCN Code of Practice on Industrial Action. Council may delegate to a sub-committee of Council the power to recommend to Council when, where and in what form industrial action may be taken by the members of the College.

Members, who are registered with the Nursing & Midwifery Council (NMC), are reminded that they are bound by the NMC Code of
Definition of a dispute

A dispute is essentially a disagreement. It has special meaning in an industrial relations context implying that it is of a collective origin, i.e. that a group of staff rather than an individual are in dispute or have a disagreement with their employer. A dispute also has a statutory meaning. For industrial action to be legal it must arise from a dispute which is strictly defined as:

“between workers and their employer relating to one or more of the following:

a) terms and conditions of employment or the physical conditions in which any workers are required to work.
b) engagement or non-engagement or termination or suspension of employment or the duties of employment, of one or more workers.
c) allocation of work or the duties of employment between works or groups of workers
d) matters of discipline
e) a worker’s membership or non-membership of a trade union
f) facilities for officials of trade unions
g) machinery for negotiation or consultation and other procedures, relating to any of the above matters, including the recognition by employers or employers’ associations of the right of the trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures”.

Speedy resolution and at the lowest level is in line with the statutory code of practice on trade union ballots on industrial action, and good industrial relations practice.

If it is not possible to resolve the dispute and/or local mechanisms are exhausted, members involved may consider requesting a ballot for industrial action. The relevant member of RCN Council and the RCN Board Chair must be informed and kept up to date with developments.

Local Procedure

A meeting of the members involved in a local dispute should be convened (this could range from a ward or department to clinical directorate or a whole employment unit). Industrial action is the last resort. The purpose of the meeting with the affected members should be to test whether industrial action really is the only option.

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. 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. 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. A vote, which may be on a show of hands or by secret ballot of those present, should be taken to decide whether any such application should be made. To pursue a request to Council for industrial action a two thirds majority (2/3rds) is required.

Given the requirement of Rule 12 that “members should not act in any way which is detrimental to the well being or interests of patients or clients” the meeting should also consider what industrial action might be appropriate in the event of RCN Council approving a ballot. Full details of the industrial action that is proposed, information about how the action would conform to Rule 12 and an assessment of how the action will be effective are required. **Members should be aware that any industrial action they threaten should be deliverable and effective and not compromise Rule 12.**

**RCN Council**

Council will only consider authorising industrial action if each stage of the procedure set out below has been followed. There are separate questionnaires that must be used depending on whether the dispute is ‘local’ or ‘national’. These must be completed in order for Council to consider an application to ballot for industrial action. The questionnaire guides members through each stage of the procedure and gives details of the information required by Council before an application will be considered.

1. Every effort must be made to resolve any dispute that may have arisen 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. RCN Officers must be informed about any dispute arising in their area of responsibility.

2. Where the dispute is with the Secretary of State for Health national officers of the RCN will advise the Chair of the Membership Representation and Diversity Committee (MRDC) and the General Secretary of the progress of any negotiations undertaken at a national level. They will advise the General Secretary, MRDC and RCN Council as to why a national agreement has not been possible.

3. Council will expect evidence that every effort has been made to reach agreement.

Where the issue is a ‘national’ one and is directed against the actions of the Secretary of State then it will be for MRDC to ask RCN Council to approve a ballot on industrial action.
Implications of undertaking industrial action for members

Members must be made aware of their personal legal position in the event that they engage in industrial action.

In law industrial action has a very wide interpretation and can take many forms including complete withdrawal of labour (a strike), refusing to perform specific tasks or duties, a ban on working overtime, or working to rule (which means, in legal terms, a poor or imperfect performance of the employee’s contract). The key point is whether the action is intended to put collective pressure on the employer to concede the claim in the context of an industrial dispute.

Most forms of industrial action are a breach of the individual’s contract of employment. Where an employee is in breach of contract the employer may dismiss the employee without notice where the breach is sufficiently serious or, (which is more likely) withhold wages in respect of non-performance or partial performance contractual duties.

In limited circumstances, the employee may lose some statutory rights such as the right to take a claim for unfair dismissal to the Employment Tribunal or the right to claim certain state benefits.

Members should be aware that taking industrial action could have serious personal and financial implications and should be advised that any form of industrial action could be considered to be in breach of their contracts of employment which may result in the loss of earnings and possibly of employment rights.

Implications of industrial action for the RCN

If a trade union fails to ballot its members properly any industrial action will be unlawful. In this case the employer, members of the public or members of the trade union itself may take action to restrain (i.e. stop) the industrial action through an injunction. The trade union may also be liable to the employer for any financial loss arising as a consequence of the unlawful industrial action.

Under no circumstances may any member, employee or elected official of the RCN (including stewards, safety representatives and learning representatives) authorise or endorse industrial action before there has been a successful ballot.

Only the RCN General Secretary may call for industrial action and then only in the event of a ballot producing a vote in favour. Members must be balloted to protect the RCN, and to protect themselves.

If a 2/3 majority is achieved at the meeting in favour of applying to RCN Council for a ballot for local 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.
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 they should aim to achieve a consensus that an application to RCN Council for a ballot should be made. The branch officers should also assess any support needed by the members in any forthcoming dispute. An RCN full time official (regional officer) must help facilitate the meeting and must also be in attendance throughout. Branch officers are specified in the branch constitution, namely, Chair, Vice Chair, Secretary and Treasurer. Every effort should be made to ensure that all the branch officers attend, however as a minimum at least two branch officers must be present.

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 General Secretary who will arrange a meeting of RCN Council, within 10 working days. The meeting of Council will be attended by the General Secretary or his named deputy and appropriate staff officers. A Legal officer must be present. The Council 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.

If the IASC 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.

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.

Following the outcome of the ballot any call for industrial action will be made by the General Secretary. Council confirms when, where and what form the industrial action may take.