Royal College of Nursing Response to the Department of Business, Innovation and Skills consultation on ballot thresholds in important public services.

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 RCN 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.

Questions from the consultation.

1) Do you agree these are the key impacts industrial action would have in these sectors?

No.

These comments are in respect of Health.
The consultation does not make clear at any point that decisions about the nature of industrial action are not random. There are many checks and balances that go to make up the issue. In health, all health professionals are bound by regulatory Codes of Practice. In the case of nurses it is through the Nursing and Midwifery Council (NMC). The Code applies not just to a nurse’s clinical work but to their whole

behaviour in or out of work. It also ensures that nurses must be mindful of whether or not their actions breach public confidence in the profession. In the case of the RCN we cannot authorise industrial action if it would be detrimental to the interests or wellbeing of patients or clients. Other unions will have other similar approaches. The International Council Of Nurses (ICN) is clear that they support the ILO principles of industrial action and that nurses should be able to exercise these rights. However again the ICN makes it clear that patients or clients should not have their life put at risk or put in danger. The TUC has similar guidance. Finally the law is also clear that it is a criminal act to endanger life in the event of undertaking industrial action.

These checks and balances make it evident that the process of moving to industrial action is never simple or taken lightly. We do not believe there is a need to specify areas of the public service as being unique or for there to be arbitrary restrictions placed on balloting thresholds.

Q2) What other impacts of strike action are there in..?

Question 1 relates to industrial action yet Q2 refers to 'strike' action. The consultation deliberately conflates the two issues and suggests that impacts are the same. They are not. There needs to be clarity in the consultation as to what problem the Government is trying to solve.

Q3) What factors do you think are important in defining 'important public services'?

We have no response to this question.

Q4) Do you agree these are occupations and functions in Health services?

We have no response to this question save that we do not agree with the introduction of balloting thresholds.

Q5) What other occupations and functions should the Government consider within these six sectors?

We have no response to this question. See response to Q4.

Q6) (if relevant) Please explain why the additional occupation or function should be covered.

We have no response to this question.

Q7) Do you agree with the Governments proposed approach to ancillary workers?
We have no response to this question.

Q8) Please give examples of ancillary workers in the six sectors discussed that you think should be subject to the 40% important public services threshold.

We have no response to this question

Q9) (if relevant) Please explain why the ancillary worker(s) you have cited should be covered.

We have no response to this question.

Q10**) Do you agree with the Governments proposed approach to private sector workers?**

We do not agree with the introduction of thresholds in the public (or privatised public sector) or private sector.

Q11) How common are disputes involving some workers who would fall within scope of the 40% important public service threshold, and others who would not?

The 40% threshold if introduced will do little to resolve or conclude disputes. We do not believe that disputes in this proposed group are common. In health the current process of collective bargaining and partnership working (Agenda for Change and the NHS Staff Council) has been robust over many years. The few disputes that there has been have been in relation to Government imposed changes (in the main pay restraint and pensions) as opposed to local workforce issues

Q12) Please give an example...

We have no response to this question

Q13) Do you agree the Government should require a ballot to be run under the 40% important public services threshold if a majority of workers involved in the dispute are subject to the 40% threshold?

We do not agree that there should be a threshold or that if there was a threshold it should be different for different groups of workers.

Q14) What are the practical and administrative considerations a trade union would have to make to calculate whether a ballot ought to be conducted under the important public service 40% threshold?

We do not agree with the introduction of thresholds.

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