RCN briefing ahead of Second Reading of the Trade Union Bill in the House of Commons

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.

To date, the RCN has not authorised industrial action on behalf of its members. We have in the past authorised ballots on industrial action but, as a result of strong cooperation and partnership working, resolved the issue before a formal balloting process commenced. This puts the RCN in a unique position in responding to this bill.

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, therefore posing a very real threat to patient care.
- Facility time for union representatives is linked to increased productivity, crucial in the NHS for delivering high quality, cost effective care. There is therefore an economic case for retaining the current arrangements.
- Enabling the Minister to cap facility time seeks to solve a problem which does not exist. Current arrangements for facility time are beneficial to the safety of practice environments, staff welfare and consequently, patients. The RCN is calling for provisions in the bill which enable the Minister to cap facility time to be rejected.
- Trade Unions invest in their representatives bringing skills, knowledge and experience to the workplace and to partnership. This is a cost effective way of developing practice and managing organisations. Without this alternative provision would be increasing costly to employers and therefore the tax payer.
- 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.
- The RCN believes the ballot thresholds in the bill are undemocratic and may enable employers to refuse to engage meaningfully in resolving issues in the workplace, including acting on employee concerns about patient care.
- The RCN is warning that continued pay restraint and attacks on workplace democracy will do little to improve the recruitment and retention prospects for nursing staff in the NHS, posing risks to NHS productivity and patient care.
- The bill will do nothing to improve industrial relations and debate on the bill must consider this context.
Union facility time

Clauses 12 and 13 propose 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.

The underlying assumptions on which this bill is based, that there are excessive numbers of trade union representatives in the public sector at great cost to the public purse, and that restricting trade union facility time will help to improve public sector finances, are mistaken. Independent research commissioned by the RCN into facility time in the NHS casts doubt on these assumptions, and shows that clauses 12 and 13 attempt to solve a problem that simply does not exist.

RCN research into union facility time

Independent research funded by the RCN shows that numbers of full-time representatives in public sector health care workplaces are not disproportionate. Only 1.5% of public sector healthcare 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. 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), 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

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1 Workplace union representatives in the British healthcare sector: evidence from the 2011 Workplace Employment Relations Survey
2 Ibid.
3 Ibid.
- 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.

Ballot thresholds for industrial action

The current provisions in the Trade Union and Labour Relations (Consolidation) Act 1992 that the bill seeks to amend, contain appropriate checks and balances which recognise the imbalance of power between employee and employer. Industrial action is only ever proposed as a last resort, when negotiations have not resulted in an outcome that is considered acceptable or fair.

To date the RCN 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 (Standing Order 3).

The RCN's experience is that members have requested industrial action ballots because of concerns about patient care in a specific unit or department and only after significant steps by members to engage with employers in trying to resolve the issue. In such instances the proposed thresholds could render industrial action impossible, but would not necessarily serve to protect the public. The key issue of the refusal of employers in some situations to engage meaningfully in resolving issues in the workplace will not be solved by placing a threshold on ballots. For this reason the RCN opposes the ballot thresholds set out in clauses 2-3 of the bill.

Trade unions are democratic organisations and workplace democracy is no different to any other form of democracy. A Parliamentary, local government, or trade union leadership election is not decided on the basis of the number of abstentions. Industrial action ballots should be no different. The RCN believes the turnout thresholds in the bill are undemocratic and should be rejected both on this basis and in the interests of patient safety.

This bill would enable a shift of power towards employers and the Government, which may have detrimental effects to patient safety and will only lead to a worsening of industrial relations.

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 should 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 issues of
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 information**

RCN responses to BIS government consultations on industrial action:

Ballot thresholds in important public services  

Hiring agency staff during strike action  

Tackling intimidation of non-striking workers  

RCN research report on union facility time:  

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