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This publication contains information, advice and guidance to help members of the RCN. It is intended for use within the UK but readers are advised that practices may vary in each country and outside the UK. The information in this booklet has been compiled from professional sources, with particular thanks to Denise Kelly and Mike Travis, members of the RCN Trade Union Committee, but its accuracy is not guaranteed. Whilst every effort has been made to ensure the RCN provides accurate and expert information and guidance, it is impossible to predict all the circumstances in

1. Introduction

The RCN appreciates that members will have concerns around professional registration, employment and patient safety should you choose to take industrial action. Therefore, this guide aims to explain what industrial action involves, how it is initiated and organised, and how you can safely participate.

There is no positive right to strike in the United Kingdom or any of its crown dependencies (Guernsey, the Isle of Man and Jersey) but there is a freedom to organise and participate in industrial action.

However, industrial action is heavily constrained by the law and new restrictions were introduced by the Trade Union Act 2016. Notwithstanding that, when negotiations with employers break down, industrial action is a last resort to ensure the best outcome for members.

It is vitally important that all your details are up to date in case you are balloted and called upon to take industrial action.

Please note the statutory requirements referred to in this guide are those that are in force in England and Scotland where the legislation is most onerous. The key differences that apply in Guernsey, the Isle of Man, Jersey, Northern Ireland and Wales are set out in

Only if all statutory requirements are met, will the RCN be protected from being sued for inducing members to breach their contracts of employment by taking part in industrial action.



2. What is Industrial Action?

Industrial action can take two forms: action short of a strike and strike action.

3. Grounds for Industrial Action

Industrial action can only be taken “in contemplation or furtherance of a trade dispute” This is a dispute between an employer and its workers in connection with one or more of the following matters:

- (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 as between workers 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; and
- (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 a trade union to represent workers in any such negotiation or consultation or in the carrying out of such procedures.

This is a complicated statutory definition, but most trade disputes fall within category (a) which relates to terms and conditions.

Industrial action is normally utilised in a trade dispute between employers and workers, but it is possible to be in dispute with a minister of the crown if certain conditions are met. However, the dispute itself must not be purely political in nature, such as in response to a government campaign.



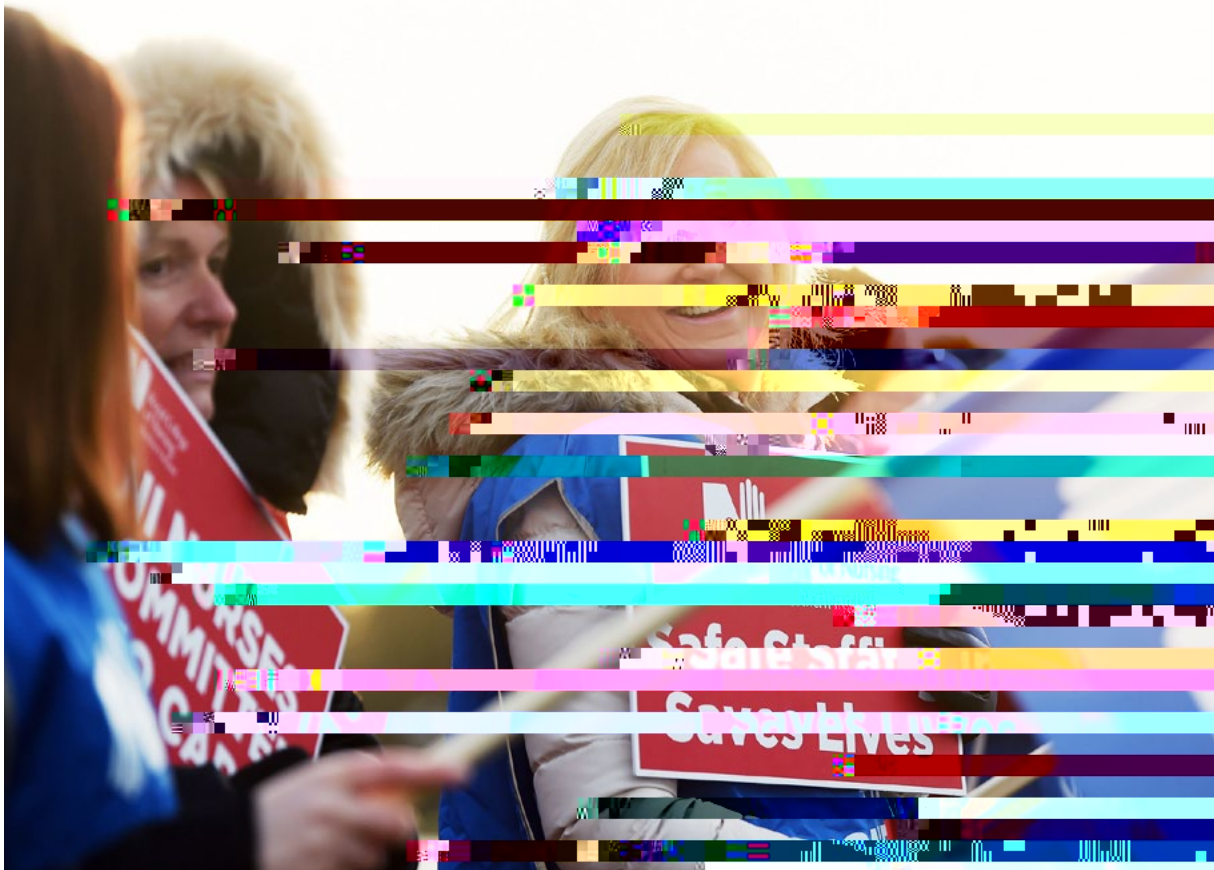
There are circumstances when industrial action is not permissible and therefore will not be protected. These include:

- (a) where a union takes industrial action without the support of a secret ballot
- (b) where a union takes industrial action without first giving the employer notice
- (c) where the action is taken by non-statutory pickets
- (d) where the action is taken to enforce union membership
- (e) where the action is taken in response to the dismissal of unofficial strikers
- (f) where there is illegitimate secondary action
- (g) where the action is taken to impose union labour only or union recognition requirements.

This type of action could result in a legal challenge from an employer or service user who may, or have, been affected by any such unofficial action.

This is usually in the form of an application for an injunction to restrain the action and given its size, the RCN can be fined up to £250,000. This could also result in a claim for damages in respect of any financial loss suffered so it is important these rules are adhered to.

Members would also lose their ability to claim unfair dismissal if they are dismissed because they took part in unprotected industrial action.



4. Initiating Industrial Action

Before industrial action is contemplated, the RCN will explore all avenues to facilitate a resolution of any trade dispute. Including via collective bargaining mechanisms, working with other unions, utilising employers' internal grievance procedures, taking part in round table discussions, and engaging ACAS. If those efforts fail, consideration can be given to initiating industrial action.

The RCN Standing Order 3.2 states that; "No industrial action will be taken by a member without the prior authorisation of the Council". Standing Order 3.5 further states that "The

It is for the country or regional board to agree its balloting constituency. However, only those members employed by the employer with whom the RCN is in dispute, and those it intends to call to action, can be balloted. RCN members employed in any capacity may be included in the ballot but students who are not employed cannot.

The RCN must not call out any member whom it deliberately excluded from the ballot. Minor balloting errors may occur and provided they don't impact on the overall outcome of the ballot any subsequent industrial action wouldn't be precluded. The RCN can also call out new members who become affected by the dispute following the issue of the ballot as industrial action often prompts recruitment.



The RCN must also as soon as reasonably practicable, inform the employer of the result of the ballot in the same terms as the membership. Where several employers are involved, the RCN must inform each of them, and industrial action is to be regarded as having the 'support of a ballot' only in relation to those employers who have been informed.

The Independent Scrutineer must also issue a report on the ballot.

The ballot outcome will remain effective for six months, or nine months if agreed between the RCN and employer or employers. The industrial action must begin and end within that period.

6. Call for Industrial Action

Only following the statutory ballot, and if the necessary thresholds have been met, can the call to take industrial action be made by the RCN Chief Executive & General Secretary in accordance with section 17 of the RCN Code of Practice on Industrial Action included at

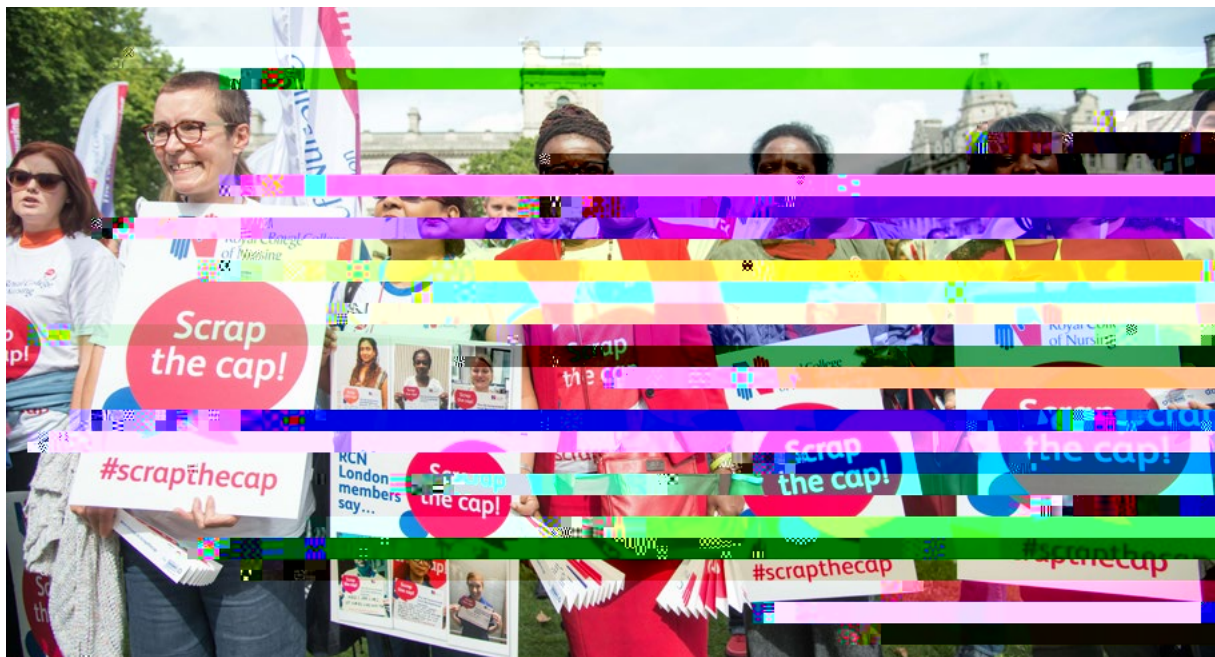
It is an individual choice whether members accept the call to take industrial action, but the success of any action will only increase if it is supported by the full force of the membership.

Following the call for industrial action, the RCN must give the employer or employers formal notice before commencing action.

A relevant notice in writing must contain the following information:

- (a) a list of the categories of employee to which the affected employees belong and, a list of the workplaces at which the affected employees work
- (b) the total number of affected employees, the number of affected employees in each of the list of categories and, the number of affected employees who work at each of the list of workplaces
- (c) the RCN must inform the employer or employers whether the action is continuous or discontinuous and if it is continuous, the intended date the action is to begin or if it is discontinuous, the intended dates when the action will take place
- (d) the information supplied must be as accurate as reasonably practicable considering the information in the RCN's possession at the time the information is compiled.

Any relevant notice will be drafted by the RCN Legal Services department and must be supplied 14 days before industrial action commences or seven days before with employer consent.



7. Organising Industrial Action

Prior to industrial action commencing, operational groups need to be set up to organise the action and they each have a vital role in ensuring the success of the action.

Locally-based Industrial Dispute/Strike Committees should be formed in each place of work, or area of work within a workplace, where action is intended to take place.

The committees should ideally have the following members; RCN Regional Officer, RCN steward, an RCN elected branch official, a member who is representative of the area or type of work where the action is taking place, a member who works in management and a designated individual to liaise with the employer.

The core functions of this committee include:

- (a) to engage a representative spread of members within the workplace to form the committee
- (b) to notify the employer, as soon as possible, of the names of its members
- (c) to work with nominated RCN staff and liaise with local management in relation to derogations from industrial action. Further information on derogations is set out below.
- (d) to devise a rota of committee members to provide cover for the duration of the action. The rota and contact details of the committee members must be made available to all members in dispute in the workplace, and to the relevant local management and RCN staff
- (e) the committee must devise and manage picket duty rotas
- (f) the committee needs to agree contingency plans to deal with unforeseen emergencies in the workplace that align with the employer's Business Continuity and Emergency plans
- (g) to liaise with other unions/workers as required to co-ordinate action
- (h)

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8. Participating in Industrial Action

Members need to be aware of the following matters to ensure they can make an informed choice to participate in industrial action.

For those members who are registrants, the NMC published a statement on Industrial Action on the 30 August 2022:

“Nursing and midwifery professionals have the right to take part in lawful industrial action, including strike action.

Our Code still applies to the people on our register while they’re taking part in industrial action or are on strike. This means the standards and behaviours that the public has a right to expect from their nurses, midwives and nursing associates continue to apply.

During industrial action, employers in health and care services have an important role to play in planning and preparing for how people’s individual needs can be responded to and their continuity of care maintained.

Professionals who are not taking part in a period of industrial action may worry about their decisions and actions, when providing care might be more challenging than usual.

Employers will provide guidance for staff who work during the time. Employers have a key role in planning for continuity of services and timely person-centred care during industrial action.”

Therefore, although the NMC recognises that registrants are entitled to participate in lawful industrial action, the Code will continue to apply, and the following sections will be of relevance:

- (a) Act in the best interests of people at all times (section 4)
- (b) Preserve safety (section 13)
- (c) Always offer help if an emergency arises in your practice setting or anywhere else (section 15)
- (d) Act without delay if you believe that there is a risk to patient safety or public protection (section 16)
- (e) Be aware of, and reduce as far as possible, any potential for harm associated with your practice (section 19)
- (f) Uphold the reputation of your profession at all times (section 20)

Industrial action in principle should not amount to a breach of the Code but other actions which amount to misconduct whilst the action is ongoing, could amount to a breach. The RCN will not ask members to act outside the Code whilst participating in industrial action, but members need to be mindful of their individual responsibility to act within the Code.

The Trade Union and Labour Relations (Consolidation) Act 1992 contains the rules on industrial action, and it includes a provision making it a criminal offence for any person to deliberately break their contract of employment by taking industrial action knowing or having reasonable cause to believe that the probable consequences of doing so, will endanger human life or cause serious bodily injury.

Therefore, any RCN industrial action will follow the life preserving care model. Life preserving services include:

- (a) emergency intervention for the preservation of life or for the prevention of permanent disability
- (b) care required for therapeutic services without which life would be jeopardised or permanent disability would occur
- (c) urgent diagnostic procedures and assessment required to obtain information on potentially life-threatening conditions or conditions that could potentially lead to permanent disability.

To maintain these services in workplaces, service provision should be that supplied on Christmas Day.

The RCN is committed to ensuring industrial action has at its core the preservation of patient safety.

Another form of maintaining patient safety and safe staffing levels is by way of

Any member taking part in industrial action will invariably be breaching their contract of employment.

Action short of strike is unlikely to amount to an express breach of contract but it could amount to an implied breach. Although a worker cannot be expected to do any more than contracted to do, action short of strike involves the withdrawal of goodwill and that

Any period when a member participates in strike action does not count towards continuous employment even though continuity of employment will not be broken. Continuity of service will be paused when strike action is taken. Therefore, days of strike action will not count towards any relevant qualifying periods necessary to acquire statutory employment rights.

This will also impact on days of pensionable service and will not count, nor will pension contributions be made by employers for days on strike.

Participation in strike action may also have an impact on any contractual or statutory entitlement to paid leave if calculated based on earnings during a period when strike action was taken.

If a member participates in strike action and deliberately withdraws labour, an employer is not obliged to pay them for the period when they did not work.

The courts have decided that when determining how much pay the employer can withhold because of strike action, the correct test is to consider what pay the member would have received had they been at work. Therefore, deductions following strike action should be calculated based on 1/365th of a member's annual pay.

Action short of strike may also have an impact on member's pay if the employer considers this is partial performance of the employment contract. Employers expect that contracts of employment are performed in full and even if an employer will accept partial performance, this may result in a deduction from pay on the basis the member is only entitled to be paid for the work performed.

If the action short of strike does amount to partial performance and the employer refuses to accept that, there is authority the employer may be entitled to pay nothing even if some work is performed.

To mitigate any loss of pay, the RCN has a strike benefit policy which provides a discretionary daily payment to eligible members after strike action.

A member will be entitled to strike benefit after they have participated in one complete day of strike action. This benefit is not intended to replace member's daily earnings but is a supportive contribution to reduce the impact of lost pay due to strike action.

The eligibility requirements for strike benefit and how to apply are set out in the policy included at .

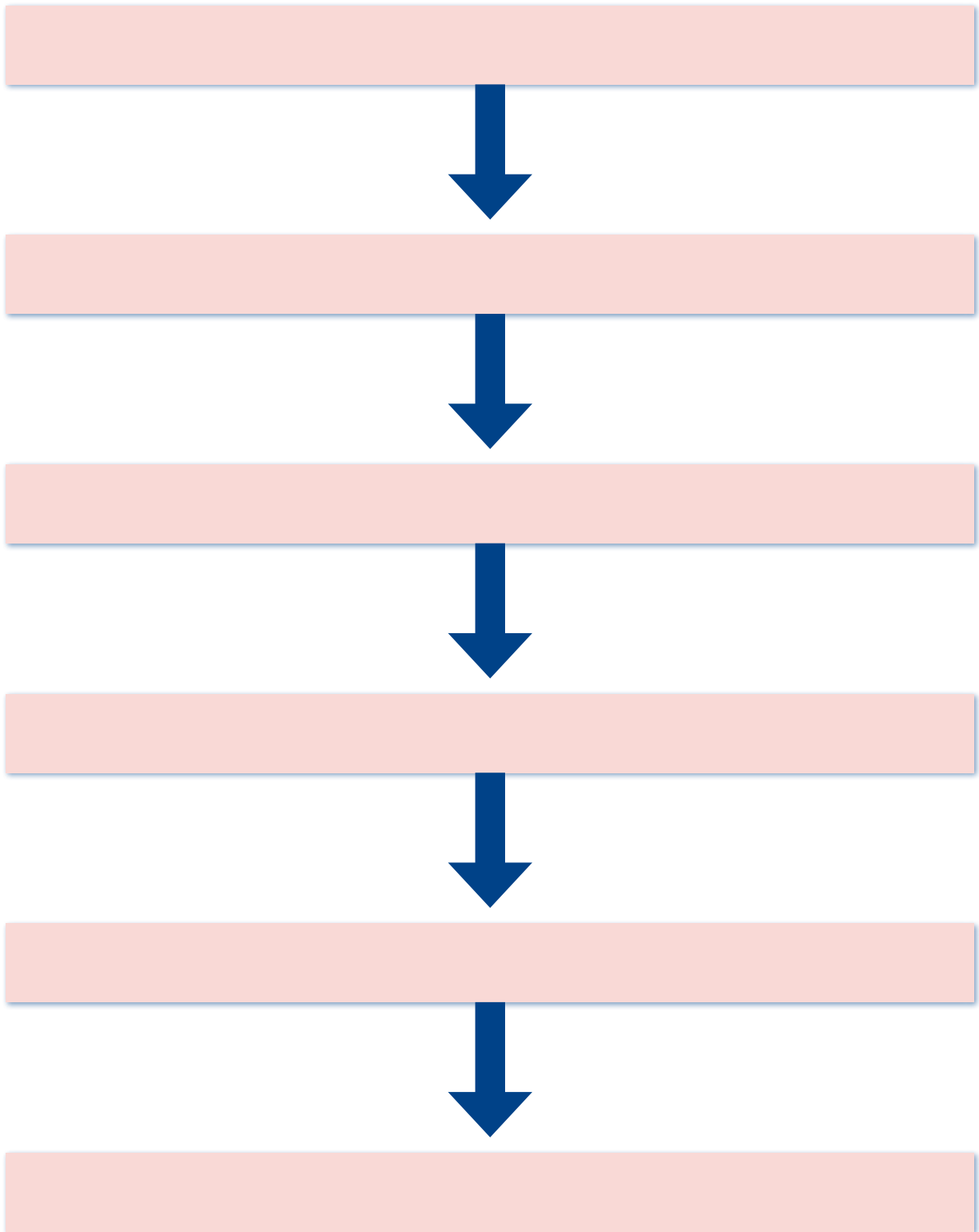
The notice to members will contain the following statement:

“Your Union has repudiated the call (or calls) for industrial action to which this notice relates and will give no support to unofficial industrial action taken in response to it (or them). If you are dismissed while taking unofficial industrial action, you will have no right to complain of unfair dismissal”.

Following the notice of repudiation, the Chief Executive & General Secretary, RCN Council, Trade Union Committee and the country or regional board must not behave in a manner which is inconsistent with the repudiation.



11. Committee Flowchart



Annex A – RCN Code of Practice on Industrial Action

Standing Order 3 of the Rules of the Royal College of Nursing states:

3.1 It is a fundamental principle of the College that its Members shall not act in any way

5. In the case of a national dispute it will be for the Trade Union Committee to ask RCN Council to approve a ballot on industrial action.
6. A meeting of the members involved in a local dispute should be convened. The purpose of the meeting shall be to test whether industrial action is the only option. The local RCN steward and an RCN Officer will be in attendance. The local branch officers may also attend but should not vote unless directly involved in the dispute.
7. 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 to authorise industrial action.
8. At least five, but no more than 10, working days' notice of the meeting should be given. 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. A vote, which may be on a show of hands or by secret ballot of those present, shall be taken to decide whether such an application should be made. For a request to Council for industrial action to succeed a two thirds majority is required.
9. The meeting should also consider what industrial action might be appropriate given the requirements of Standing Order 3.
10. If a two-thirds majority is achieved at the meeting in favour of applying to RCN Council for a ballot for industrial action, a meeting of the country or regional board, with the relevant branch officers in attendance, must be held within five working days to discuss whether to proceed to make the application to RCN Council.
11. The meeting should explore whether all means of resolving the dispute have been exhausted; how effective the proposed action is likely to be; and to achieve a consensus that an application to RCN Council for a ballot should be made. An RCN full-time official may help facilitate the meeting and must also be in attendance throughout.
12. If it is agreed that the matter cannot be resolved locally and that it should be referred to RCN Council a pro-forma should be signed by the steward, branch officers and Board Chair present and sent immediately to the Chief Executive & General Secretary who, as Secretary to RCN Council, will arrange a meeting of the Council with the relevant Board Chair or as otherwise provided, the Trade Union Committee within 10 working days.
13. If RCN Council is unable to meet then the Trade Union Committee is convened and will be joined by the relevant Board Chair, Council Member and Professional Nursing Committee Member from the Country/Region. The Trade Union Committee will recommend to RCN Council whether in their view members should be balloted on industrial action.
14. The meeting of the Council/Trade Union Committee will be attended by the Chief Executive & General Secretary or named deputy and appropriate staff officers. A Legal officer must be present. The Council/Trade Union Committee 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.
15. If the Trade Union Committee is convened and agrees to rehaul (. A)TJ 0 -1.2 Td [(L)11.3 (e)11.7 (g)13

Annex B – RCN Guide on Picketing

It is lawful for a member in contemplation or furtherance of a trade dispute to attend at, or near, their place of work for the purposes of obtaining or communicating information, or peacefully persuading any person to abstain from work.

An RCN official can also attend at, or near, the place of work of a member they are accompanying and who they represent to achieve the same objective.

A picket line comprises members who would otherwise be at work but who are taking part in strike action instead. Peaceful picketing is a lawful activity in the UK and your employer cannot prevent you from taking part nor is it a breach of the NMC Code.

Picketing by members during periods of industrial action short of a strike is permitted. However, it may only be carried out by members who are not scheduled to work and can only facilitate the provision of information. Picketing during action short of a strike cannot be used to persuade others to withdraw their labour.

Members can only picket at their place of work. If there is no picket line at your workplace you are not permitted to picket at another workplace, even if it is another site of your employer unless you also work at that site.

No. If you have not been balloted you are either not employed by the employer whom the RCN is in dispute with, or you are not affected by the dispute in question.

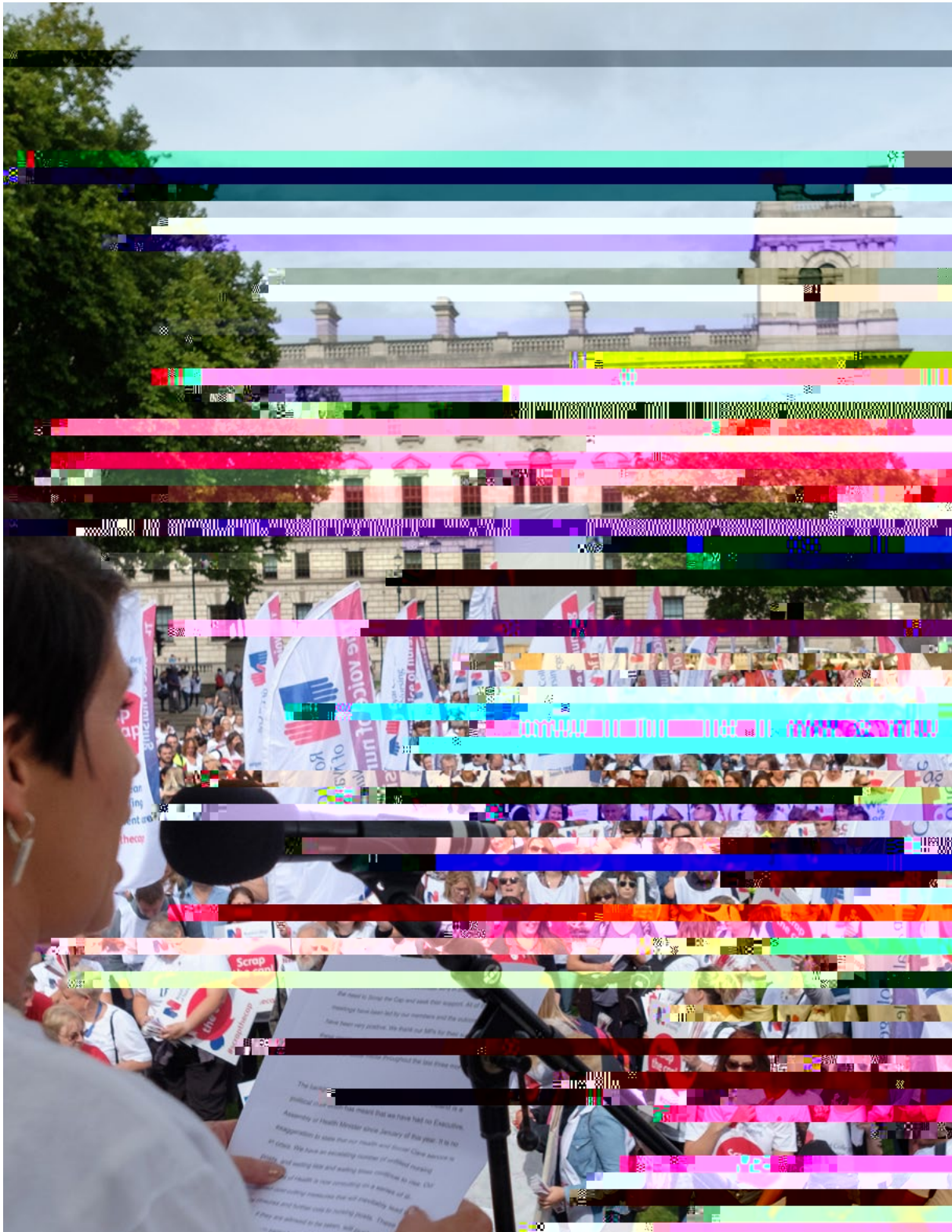
If you fall into either category, you cannot participate in a picket line. Members can however visit picket lines, when not on duty, to provide support to those members who are picketing.

Two Codes of Practice on picketing are available. One applies in England, Scotland and Wales and the other applies in Northern Ireland.

The Codes of Practice recommend that there should be no more than six people on a picket line at any one time. Therefore, local Industrial Dispute/Strike Committees will devise a rolling rota to ensure all members who wish to picket have an opportunity to do so in line with the guidance.

Other union members should be politely informed they are unable to join an official RCN picket line.

If patients or members of the public approach members on the picket line to discuss the industrial action, members should engage with them politely and constructively and try to answer any questions they might have. Above all, members on picket lines should always be courteous, even if the public disagree with the RCN's position.



Annex C – RCN Strike Benefit Policy

1. Industrial action is always the last resort, bringing with it – to some degree – loss of earnings and job instability. However, it is a legitimate strategy when other approaches have been exhausted, and the RCN is committed to supporting its members to exercise their right to take lawful industrial action when required.
2. An employer is entitled to withhold payment for each day of strike action from those deemed to be on strike. As such the RCN will make strike benefit available to those eligible members who require it. However, this benefit is entirely discretionary, and the RCN reserves the right to amend or withdraw it in accordance with this policy and .
3. Strike benefit is not intended to replace a member’s expected daily earnings but is a supportive contribution to reduce the impact of losing pay due to taking part in strike action.
4. Strike benefit will be paid to those members entitled to receive it in respect of authorised action once the action has taken place and the member has had pay deducted by their employer in respect of the industrial action.
5. Branches may not make separate arrangements for the payment of dispute benefit.
6. The Inland Revenue does not regard strike payments as taxable earnings, so long as it doesn’t exceed normal take-home pay. Any set benefits, such a child benefit, should not be affected by strike pay. However, any income-related payments will be affected as strike pay will be treated as income for these purposes and so these social payments may be affected.
7. The rate of strike benefit is set out in detail in .
8. . will be reviewed on an annual basis by the Trade Union Committee.
9. The Committee has the right to recommend to RCN Council to pay a higher amount – up to full take home pay – depending on the circumstances of the dispute. Full take home pay can only be granted in exceptional cases.
10. On very rare occasions, employers reduce annual leave entitlements pro rata to the length of the dispute. The member may make an application for payment for the lost annual leave, but only in disputes where full take home pay has been agreed.
11. The Committee also has the right to pay a lesser amount than standard strike benefit or no strike benefit at all when a large action would exhaust the industrial action fund.

12. Members will be eligible to receive strike benefit after they have completed one day of strike action. A day is defined as 7.5 or more hours for full-time staff, and for part-time staff, the member's contractual rostered hours for the day strike action is called.
13. If a member goes on strike for more than 7.5 hours in one 24-hour period they will only be entitled to receive one day's strike benefit for that 24-hour period.
14. If a member who works full time goes on strike for fewer than 7.5 hours (one day), strike benefit will only be payable upon completion of episodes of strike action that accumulate to 7.5 hours or more in duration, within a period of three months. Further strike benefit will apply when further episodes of strike action total 7.5 hours or more.
15. If a member who works part time goes on strike for fewer than their contractual rostered hours for that day, strike benefit will only be payable upon completion of episodes of strike action that accumulate to their contractual rostered hours for the day in question, within a period of three months. Further strike benefit will apply when further episodes of strike action total their contractual rostered hours.
16. Days on strike can only be added together for the same dispute. RCN Council will, on the recommendation of the Trade Union Committee, make the final decision whether strike benefit should be paid.
17. The following RCN members will be eligible to receive strike benefit if they satisfy the criteria in paragraphs 12 to 15 above and:
 - (a) are assigned to work or to provide emergency cover and will not be paid by the employer for all or part of the strike day
 - (b) are scheduled to work, because of their roster, on a strike day and will have pay deducted by their employer
 - (c) are not absent on any form of leave during industrial action
 - (d) are not student members, unless they are rostered to work as a nursing support worker on the day of strike action
 - (e) are not retired from all employment
 - (f) are up to date in their membership subscriptions in the correct category
 - (g) are taking lawful authorised industrial action.

18. Strike benefit will be managed centrally by RCN membership services who will verify membership and process payments.
19. An individual's participation in strike action will be confirmed by the country/regional/ Board office (this will be based on the ballot lists).
- 20.

Annex D – Key Statutory Differences in the UK

The RCN member guide on Industrial Action refers to the statutory requirements in England and Scotland where the law is most restrictive.

The processes outlined in the guide are to be adopted in all countries of the UK and its Crown dependencies but where the statutory requirements differ, those differences have been identified for members below and they must be complied with.

Industrial action is legally complex and country and regional boards should always seek legal advice from the RCN Legal Services department to clarify the position in their jurisdiction.

There is no legislation governing industrial action in Guernsey and as such there is no protection from Unfair Dismissal if members are dismissed for participating in industrial action.

Industrial Action on the Isle of Man is governed by the Trade Disputes Act 1985 and Trade Unions Act 1991 .

There are the following key differences to the position in England and Scotland:

- There is no requirement to meet the thresholds as set out in the Trade Union Act 2016 as it is not in force on the Isle of Man.
- Notice of ballot must be provided to the employer and the Manx Industrial Relations Officer seven days before.
- Outcome of the ballot must be provided to the members, the employer and the Manx Industrial Relations Officer and does not require the Trade Union Act 2016 threshold information.
- Notice of Industrial Action must be sent to the employer and the Manx Industrial Relations Officer seven days before.
- The ballot ceases to be effective if no action is taken within five weeks of the ballot result or six weeks with the agreement of the Manx Industrial Relations Officer.
- There are specific provisions in respect of ballots in relation to essential services. The Council of Ministers may direct the Appointments Commission establish a Court of Inquiry in relation to the dispute who will make recommendations and a decision.

Industrial Action in Jersey is governed by the Employment Relations (Jersey) Law 2007 and the Code of Practice on Balloting and Conduct in Employment Disputes .

There are the following key differences to the position in England and Scotland:

- There is no requirement to meet the thresholds as set out in the Trade Union Act 2016 as it is not in force in Jersey.
- The Act and Code make references to employment disputes rather than trade disputes.
- A ballot can take place in the workplace if the Independent Scrutineer believes employees will not be intimidated into voting a particular way. If so, the employer must provide appropriate facilities and ensure that employees are given a reasonable opportunity to vote without loss of pay.
- The Independent Scrutineer may agree a combination of workplace and postal voting.
- Outcome of the ballot must be provided to the members, the employer, and does not require the Trade Union Act 2016 threshold information.
- The ballot ceases to be effective if no action is taken within three months .
- Notice of Industrial Action must be sent to the employer seven days before.
- Where a particular service is essential to the well-being of the community, it would be unreasonable for the trade union to fail to reach an agreement with the employer that action will not be taken by key personnel in, for example, the emergency services, utilities and health sector. This would apply if any action would seriously interrupt such a service, endangering the life, personal safety or health of the whole or part of the population; or where the extent and duration of the action might be such as to result in an acute national crisis endangering the normal living conditions of the population; and in services of fundamental importance.
- An agreement should define a minimum service (e.g. to ensure that service users' basic needs are met, or that facilities operate safely, or without interruption) and provide for a formal, rapid and impartial dispute resolution mechanism in the event of a dispute arising which cannot be resolved through negotiation. This may include the use of conciliation, mediation, or arbitration services, including the involvement of Jersey Advisory and Conciliation Service and the Jersey Employment Tribunal.
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Industrial Action in Northern Ireland is governed by Part VIII Trade Union and Labour Relations (Northern Ireland) Order 1995 .

There are the following key differences to the position in England and Scotland:

- There is no requirement to meet the thresholds as set out in the Trade Union Act 2016 as it is not in force in Northern Ireland.
- The outcome of the ballot notification to members and employers therefore does not require the Trade Union Act 2016 threshold information.
- The period of notice required for employers of Industrial Action is seven days .
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The RCN represents nurses and nursing, promotes
excellence in practice and shapes health policies

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