The Royal College of Midwives Response to the Department for Business Innovation and Skills Consultation on Tackling Intimidation of Non-Striking Workers

September 2015
Executive Summary

The Royal College of Midwives (RCM) welcomes the opportunity to respond to the Department for Business Innovation and Skills consultation on Tackling Intimidation of Non-Striking Workers.

The RCM is the trade union and professional organisation that represents the vast majority of practising midwives and maternity support workers in the UK. The RCM is the voice of midwifery, providing excellence in representation, professional leadership, education and influence for and on behalf of midwives. We actively support and campaign for improvements to maternity services and provide professional leadership for one of the most established clinical disciplines.

The Trade Union Bill will introduce wide-ranging measures designed to curtail the right to strike and restrict our ability to represent midwives and maternity support workers in the workplace. The right to strike is a fundamental human right which is protected by an array of international treaties and human rights standards, including ILO Conventions, the UN Covenant on Social and Economic Rights, the European Social Charter (1961) and the European Convention on Human Rights.

The RCM is profoundly concerned that measures set out in the Trade Union Bill will unjustifiably restrict the right to strike in the UK. This will undermine workers’ ability to organise collectively to protect their jobs, their livelihoods and the quality of their working conditions. Protecting working conditions is important because midwives’ and maternity support workers’ working conditions are women’s birthing conditions.

This consultation deals with the Government’s proposals to tackle intimidation of non-striking workers.

The RCM is firmly opposed to these proposals as they are unnecessary, unjustified and disproportionate restrictions on the right to strike and we believe they will create a serious imbalance of power between employers and working people. We do not recognise that there has been intimidation of non-striking workers and was certainly not the experience of our members on our picket lines when we took industrial action in 2014/15.

The RCM has many serious concerns about the proposals of tackling intimidation of non-striking workers which we will discuss more in our consultation response below but briefly our concerns are:

- We believe this will fundamentally damage employment relations and make it more difficult to resolve disputes, the Government must remember that industrial action is a symptom of poor employment relations not the cause. Industrial action is a last resort for trade unions; it certainly was for the RCM with our first period of industrial action taking place in 2014, which was the first time in our 134 year history. The Government should not underestimate the gravity of the union’s decision to ballot their members for industrial action and the seriousness of the member’s decision to vote for and take industrial action. This demonstrates that the relationship between the employees and employers is at an all time low. By imposing unnecessary and disproportionate rules the Government is attempting to paint striking workers as the villains. Government should be working to improve employment relations and helping both sides resolve the dispute before it gets to the stage
of taking industrial action rather than profoundly shifting the power balance and allowing one side to steamroller across the other.

- During the RCM’s industrial action in 2014/15 we provided extensive guidance to our Workplace Representatives to make contingency plans to ensure safe and essential services could still go ahead. Our Workplace Representatives granted exemptions so that RCM members could provide those services based on three fundamental priorities: safety for women and babies must be ensured; a women’s choice of birthplace must be ensured; and RCM midwife members should not break their NMC Code of Conduct. We made it crystal clear that our dispute was with employers, not with the women and babies we care for.

- The right to picket and protest is a fundamental human right which is safeguarded by ILO Convention 87 (Article 3), the European Social Charter (Article 6(4)) and the European Convention on Human Rights (Articles 10, 11 and 14). Pickets and protests enable trade unions and their members to communicate the reasons and purposes of industrial action publicly, peacefully to persuade employees and substitute workers to support the industrial action and to mobilise support for their campaigns.

- Our picket lines were peaceful and supported by the public. There is no evidence to support strengthening the laws on picketing and protest as there is no evidence that picket lines are anything but peaceful. The Carr Review¹ in 2014 found that the current legislation on picketing is fit for purpose and the Regulatory Policy Committee² concluded that not only is there no evidence on which to base the proposals in the Trade Union Bill but there is also no discernable benefit to be derived from the proposal.

- We would like to caution the Government against giving the impression that they are trying to prevent and intimidate workers from raising workplace concerns, in particular public sector workers. We are very alarmed by the extreme nature of the proposals in the consultation as they are complicated and wholly disproportionate. We believe the intention is to frighten and confuse midwives and other hard working citizens from exercising their right to protest for fear that they will make a simple mistake and be prosecuted. It is a fundamental right that workers should be able to peacefully protest and these proposals are an attack on civil liberties and are wholly disproportionate and unnecessary.

We would like to highlight that it is not just trade unions that have raised concerns about the Trade Union Bill. The Chartered Institute for Personnel Development (CIPD)³ have described the Bill as outdated and warn against the unintended consequences of the Bill. The Recruitment and Employment Confederation⁴ has raised concerns about the removal of the ban on agency workers. The Regulatory Policy Committee⁵ has rated all three consultation impact assessments as not fit for purpose. Liberty, the British Institute of Human Rights and Amnesty International have published a

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Joint statement that says: ‘Taken together the unprecedented measures in the Bill would hamper people’s basic rights to protest and shift even more power from the employee to the employer. It is hard to see the aim of this bill as anything but seeking to undermine the rights of all working people. We owe so much many of our employment protections to Trade Unions and we join them in opposing this bill.’

Furthermore, the RCM is concerned that the Government is proposing wide ranging legislation without proper consultation or Parliamentary scrutiny. The current consultation has lasted for just 8 weeks over the summer holiday period. This is not consistent with the Government’s consultation principles. The limited consultation period indicates that the Government is not interested in developing evidence based, considered policy.

Responses to Consultation Questions

Question One:

Most of this consultation focuses on specific proposals. Before turning to this detail, do you have any other evidence of intimidatory behaviour, directed either at non-striking or striking workers, that you believe should be considered as part of this consultation? If so do you have any estimate of the economic aspect of this?

The RCM has no evidence of any intimidatory behaviour. Our picket lines and demonstrations during our industrial action in 2014/15 did not have any of the types of behaviour that are described in the consultation document. Our picket lines and demonstrations were peaceful and supported by the public.

We conducted a survey in July/August of our members and asked them what was their experience on the picket line and they said:

“The atmosphere on the picket line was up beat, we were all overwhelmed by the extent of the support from the public.”

“Fun, and determined. Lots of women and babies turned out.”

“A joyful gathering, not a display of aggression, more of a sisterly event supporting one another.”

“The atmosphere was good, there was a lot of support from passers by.”


7 The government Consultation Principles state that ‘Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period policy makers should consider what if any impact there may be and take appropriate mitigating action.’ The principles are available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf
“Great, public were very supportive bringing us food and drinks.”

“Great camaraderie, everyone sticking together fighting for what’s fair!!”

“Very good, and very cold! But we were all in it together. A great atmosphere.”

“A brilliant atmosphere of like-minded people politely, but enthusiastically drawing attention to the situation we found ourselves in.”

“Wonderful, despite rain on first occasion. Absolute single mindedness from those on line with visits from those continuing with core work. Great support from drivers and public on busy road. Even security staff supportive as we were loud, clear but so many had to ensure not spilling over into bus lane. All grades of staff present which was commented on positively by colleagues.”

“Great, everyone was upbeat and showing great team spirit despite torrential rain!”

“Good humoured even thought it was cold weather. People had brought drinks and cake.”

“Very good, there were retired staff came along to support us and someone brought us food. Lots of drivers going past were hooting their horns in support.”

“Rather than feeling disappointed that they had been driven to this point, colleagues felt positive that they were able to take action and stand up for their beliefs.”

“Fantastic. It was brilliant meeting with members of other unions. I felt the other unions were really pleased that midwives were with them as it definitely helped the cause for the government to see us joining with the other unions.”

“Very good. We had the biggest representation including babies and a dog! The public drove past and gave us food and also beeped their horns for us.”

“Fantastic! There was a tremendous amount of public support, the midwives were enthusiastic for the cause and the general atmosphere was very upbeat.”

“Great. Tea and cake helped. The weather was rubbish but there was a brilliant spirit of solidarity. It was also a chance to chat with colleagues who you barely ever see and talk about how things are in other areas of the maternity unit.”

“We were strident but it was cheerful and sociable. We were on a busy road and it was tremendously uplifting to see the support we got from the public.”

“Jolly! And the heavens opened but we still stayed out there”

“Fantastic! A real sense of community, high spirits and fantastic support from the public. Even in the rain!”

“It was good. Supportive and good natured. I think the point was being conveyed pretty well.”

“Electric, exciting and incredibly strong. The best unexpected team building exercise I've ever experienced - but significantly sad. The fact that we were driven to leave our women (safely cared for) to have to stand up for such a fair amount of pay was incredibly frustrating. We're midwives, we want to be with and there for our women.”
“We received an enormous amount of public support, especially from women, families, medical staff and other healthcare professionals. The picket line had a large turn out and people stood for the entire duration of the strike. The atmosphere was very united and encouraging, we all left feeling very positive and optimistic about the future.”

“Full of energy, determination, pride and respect for each other to be finally standing up for ourselves against the constant onslaught of abuse from the government. But the best feeling came from the support of the public we serve every day; bringing us hot drinks, hooting their horns, waving and the words of encouragement they gave.”

“Very positive among the midwives. The atmosphere was a very happy one because it reminded us why we're all work in the sector we do and also boosted morale that we are a team and the only ones who support us is our own colleagues.”

“Light hearted, good humoured, but with a mutual sense of purpose.”

The RCM is seriously concerned that the Government is planning to introduce tighter restrictions on picketing by Trade Unions without first demonstrating the case for reform. The Regulatory Performance Committee’s (RPC) recent review of the government’s impact assessment found that ‘there is little evidence presented that there will be any significant benefits arising from the proposal.’

Additionally, we are concerned that the Government’s proposals amount to a serious attack on the civil liberties of Trade Unions and their members, including the basic democratic rights to assemble and to protest and the right to freedom of expression. These rights are safeguarded by a range of international treaties and human rights standards. The RCM believes it is not legitimate for Government to restrict the human rights of UK citizens on the basis of unsubstantiated allegations.

The proposals set out in the consultation document are not even-handed. For example, no consideration has been given to protecting striking workers from intimidation by their employers. Union members and activists are highly vulnerable to intimidation and victimisation by employers if they contemplate or take part in industrial action. UK law provides such workers with very limited protections. Protections from dismissal for striking workers in the UK are limited and restricted to 12 weeks, after which employers are entitled to dismiss striking employees, providing they do not do so in a selective manner. Union members have no right to automatic reinstatement if they are unfairly dismissed for participating in industrial action. The absence of effective protections for striking workers has been roundly criticised by the ILO Committee of Experts and the European Social Rights Committee on a number of occasions.

**Question Two:**

The Government is interested in whether there are any further gaps in the legal framework in relation to intimidation of non-striking workers and third parties. How could the framework be strengthened - for example, should there be new criminal sanctions such as an offence of intimidation on the picket line?
In the RCM’s opinion, there are no gaps in the current legal framework which governs picketing or protests by Trade Unions and their members.

The conduct of those involved in picketing is heavily regulated in the UK by an extensive range of civil and criminal laws. Unions must comply with the requirements for peaceful pickets contained in section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992. Failure to comply with these provisions will mean the union loses its statutory immunity for liability in tort and may be vulnerable to damages or injunctions preventing or restricting the picket.

Unions and their members are also subject to a range of laws on public order, highways protection from harassment and criminal damage. It is also a criminal offence for pickets to use violence or intimidate individuals or their families, to follow individuals from place to place, to hide work tools and to watch and beset an individual.

The RCM cannot understand why the Government is considering introducing a criminal offence of intimidatory activities on a picket line when such an offence already exists in Section 241 of the Trade Union and Labour Relations (Consolidation) Act 1992. Any duplicate offence would be excessive and unnecessary.

There is no case for introducing additional criminal offences or sanctions. In our opinion, scarce police resources would be better deployed protecting the wider community rather than monitoring the peaceful activities of Trade Union members.

The RCM is also concerned that the Government’s proposals do not comply with the requirements of international law, including ILO Conventions and the European Convention on Human Rights. Future offences will also only apply to Trade Unions and not to other civil society or campaign groups in the UK. This is discriminatory and may be inconsistent with Article 14 of the European Convention.

**Question Three:**

The Government is legislating to make a number of key aspects of the Code legally enforceable, such as the appointment of a picketing supervisor. Are there other practices that should be directly legally enforceable - for example, training or a requirement for all pickets to be properly identifiable in the same way as the supervisor? Please explain your views.

The RCM is firmly opposed to Clause 9 of the Trade Union Bill which will require unions to appoint a picketing supervisor to oversee the picket. We are opposed to this because we feel it is unnecessary and the duties of the supervisor are excessive and complicated and the sanctions against supervisors are extreme and disproportionate. We are concerned that these provisions are likely to deter responsible individuals, who might otherwise have been willing, from volunteering to co-ordinate pickets.

In our opinion, the provisions of the Bill are unwarranted and overly-prescriptive. As the RPC has pointed out, it is unclear how compliance with the detailed requirements of Clause 9 is connected to the prevention of intimidation of non-striking workers. There is no evidence that they will do anything to address the types of behaviour that the Government claims to be seeking to address.
The provisions will impose a significant amount of red tape on unions. It will also make it easier for employers to take legal action against a union. Such legal challenges are likely to escalate disputes and will make it more difficult to find an amicable settlement. As we have previously said, the Government must remember that industrial action is a symptom of poor employment relations not the cause. Industrial action is a last resort for trade unions; it certainly was for the RCM with our first period of industrial action taking place in 2014, which was the first time in our 134 year history. The Government should not underestimate the gravity of the union’s decision to ballot their members for industrial action and the seriousness of the member’s decision to vote for and take industrial action. This demonstrates that the relationship between the employees and employers is at an all time low. By imposing unnecessary and disproportionate rules about behaviour the Government is attempting to paint striking workers as the villains. Government should be working to improve employment relations and helping both sides resolve the dispute before it reaches the stage of taking industrial action rather than profoundly shifting the power balance and allowing one side to steamroller across the other.

The sanctions accompanying these provisions are also excessive. It is disproportionate that a union should lose its statutory immunity from tortious liability simply because a union official accidentally forgets to wear an armband or has inadvertently misplaced their letter of authorisation. As a result, the union could face applications for injunctions preventing or imposing conditions on the pickets or even damages. The RCM believes such penalties are unjustified and conflict with the requirements of the European Convention on Human Rights, the European Social Charter and ILO Convention 87. Like the RPC we fail to see how not wearing an armband can be taken as intimidating. For example, during our industrial action some of our members used spare ‘official picket’ stickers to decorate their buggies (as they had bought their babies along) we cannot understand why this should be interpreted as anything but good natured.

The RCM is also concerned that Clause 9(6) states that a picket supervisor must show the letter of authorisation to any police officer who asks to see it, even if there is no evidence of criminal behaviour and the interaction between a police officer and an individual could form the basis of a future legal challenge by the employer. These provisions could call into question the independence of the police in relation to industrial disputes. It could also have a long term impact on the ability of those workers to trust the police (if they are not seen as independent). This is particularly important for midwives because there are many times when midwives have to work with police, for example in safeguarding cases or domestic violence cases, so both midwives and police need to have a good working relationship. It is not fair or sensible for the Government to put the police in this situation; they need to think not just about the periods of industrial action, but the periods of time when professionals need to work together.

Clause 9(6) also requires picket supervisors to show their letter of authorisation to anyone who reasonably asks to see it. This requirement is broader than the current wording of Code of Practice which requires the letter to be shown to ‘the people who want to cross the picket’. It is unclear why members of the public should be entitled to know the identity of picket supervisors. The RCM is concerned that this requirement could encourage officious third parties to approach picket lines and
to demand to see the individual’s letter of authorisation. This could unnecessarily aggravate pickets and could lead to needless tensions. This in turn could make it more difficult for the union to reach an amicable settlement with the employer thereby prolonging the dispute.

In the RCM’s opinion, additional elements of the Code of Practice should not be transposed into legislation. The consultation document acknowledges that most pickets conform to the guidance set out in the Code and has provided no evidence of widespread violations which would justify giving it a legislative basis. As we state earlier, our picket lines were peaceful and supported by the public. The existing Code is therefore effective as a regulatory tool. There is no justification for imposing additional legislative regulations on unions.

Requiring unions to identify pickets, in the same way as the picket supervisor, would be excessive and would be a form of intimidation. Many individuals would fear being victimised by their employer or even ‘blacklisted’. They would therefore be unreasonably deterred from exercising their fundamental democratic rights.

Unions already make sure that union officials are familiar with the laws governing picketing. If Clause 9 comes into effect, unions will ensure that picket supervisors are aware of their additional responsibilities and the implications of not complying with them. However, the RCM believes it would be excessive and unreasonable for the Government to impose a legal duty on unions to train officials in law relating to picketing. No equivalent duty applies to employers. If the Government decides to acts on this proposal they should also introduce legislation requiring employers to send all line managers on employment law courses.

We are very alarmed by the extreme nature of the proposals in the consultation as they are complicated and wholly disproportionate. We believe the intention is to frighten and confuse midwives and other hard working citizens from exercising their right to protest for fear that they will make a simple mistake and be prosecuted. It is a fundamental right that workers should be able to peacefully protest and these proposals are an attack on civil liberties and are wholly disproportionate and unnecessary.

**Question Four:**

**Do you have any figures that would enable us to estimate any costs to unions generated by making aspects of the Code legally enforceable?**

The provisions contained in Clause 9 of the Trade Union Bill will create significant additional costs for unions, and as we discuss further below the assumptions of the costs to unions in the Government’s impact assessment are a substantial underestimate as the costs to unions will go far beyond those of familiarising themselves with the legislation.

Union representatives could also lose out as a result of these proposals. Increasing constraints on facility time mean than union reps, particularly in the public sector, will find it difficult to negotiate release time to attend union education courses. Workplace representatives could be required to attend courses in the evenings or weekends or take annual leave in order to participate. This would interrupt individual’s time for family life and wider caring responsibilities. This is particularly
important for the RCM as over 99% of our members are female so many have child care responsibilities.

**Question Five:**

**What are your views on the Government’s proposal to require unions to publish their plans? What information should unions be required to provide? Please set out the reason for your answer.**

The RCM is strongly opposed to the Government’s proposal to require unions to publish picketing and protest plans in advance of taking industrial action.

If the proposals are implemented, unions would be required to publish plans 14 days in advance of any action taking place. The Government proposes that the plans would need to specify when a union is intending to hold a picket or protest, where it will be, how many people it will involve and whether they plan to use ‘loudbspeakers, props, banners etc.’ The Government’s proposals may even require unions to report on plans to use Twitter or Facebook accounts. The consultation document also suggests that unions will have to report in advance on the likely content of any websites or blogs.

Although the Government suggests that Trade Unions will have the chance to update their plans once the industrial action has started, they also note that if unions do not provide updates or if they fail to provide initial notification of their intended activities, they could face enforcement action, including penalties imposed by the Certification Officer.

In the RCM’s opinion, these measures represent a serious attack on the civil liberties of trade unions and their members – rights which are protected by the European Convention on Human Rights. The Government’s proposals may also conflict with ILO Convention 87 (Article 3) and the European Social Charter 1961 (Article 6(4)).

The RCM is concerned that the Government’s proposals could lead to an unacceptable level of supervision of picketing and union protest activities by the state. According to the consultation document, unions will be required to provide copies of the picket and protest plans to the employer, the police and the Certification Officer.

There is also a suggestion that the Certification Officer and his/her inspectors will be expected to inspect pickets and protests on a ‘real time’ basis. The RCM believes this would equate to excessive and unjustified monitoring by a government agency of the activities of trade unions and their members as they exercise their fundamental, democratic rights to assemble and protest.

The RCM is also concerned that the proposals could have the effect of limiting unions’ rights to freedom of expression and those of union officials and activists. The Government has not explained why unions should be required to report on their intended use of social media during the course of a dispute or how the police or Certification Office are expected to use this information. We are concerned that this proposal is designed to deter unions and their members from using social media.

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8 Gate Gourmet v TGWU
to promote their campaigns and to mobilise support. This could have the effect of stifling democratic debate.

There is also a concern that the requirement on unions to provide notice of their campaign activities could lead to increased monitoring of Trade Union communications and activities. This could have the effect of stifling democratic debate.

The RCM is not aware of any other organisations which are required to inform the police or state agencies if they plan to use social media or when or how they plan to use websites to prompt lawful campaign messages. In our opinion this requirement is excessive and discriminatory.

The Government’s proposals are not even-handed. Unions will be required to notify employers that industrial action will be taking place 14 days in advance, but employers are not required to announce whether they plan to use agency workers to break the strike. Employers will also be under no obligation to publish a notice detailing their plans to campaign against the industrial action, including how they plan to communicate with union members.

The Government has claimed\(^a\) that the measures will not apply individual union members. However, the RCM expects that employers will argue that unions are responsible for the actions of union officials, including full-time officers, branch secretaries and union workplace representatives. Given the realities of how social media works, it can be difficult to differentiate between accounts run by organisations and those which represent the personal views of those employed by or who are members of those organisations. Will a union member who changes their twitter profile to reflect their union’s logo be considered to have been tweeting on behalf of the union or of themselves? Will a workplace representative whose Twitter profile recognises their voluntary union role be seen as running a personal or an organisational account? We anticipate that these complexities will lead to endless legal challenges on whether tweets were written and posted on behalf of the union or in a personal capacity. The overall effect of these measures will be to constrain rights to freedom of expression for unions and individual members and activists.

The RCM also believes that the sanctions proposed for failure to comply with the notice requirements are excessive and unjustified. The consultation document suggests that unions who fail to publish accurate and up to date notices could face financial penalties of up to £20,000, imposed by the Certification Officer.

We are also concerned that if this proposal proceeds, the Certification Officer will have wide-ranging powers to initiate complaints against the union, to investigate the activities of the union and to decide which penalties should be imposed on the union. This would not be consistent with basic principles of justice.

The RCM also notes that Government has not so far ruled out the possibility that unions who fail to publish an accurate notice of their picket and protest plan may lose immunity from liability in tort under section 220 of TUL(C)RA 1992. Were this to be the case, unions would face an increased risk of legal challenges by employers for minor technical oversights in the notice. The RCM believes it would be unreasonable and disproportionate for unions to face an injunction preventing the picket from taking place or claims for damages simply because they failed to list a twitter account being used by

\(^a\) [http://www.bbc.co.uk/news/uk-34017423](http://www.bbc.co.uk/news/uk-34017423)
a branch secretary. Such legal challenges will increase tensions between employers and their employees. They will make it more difficult for the union and the employer to negotiate a settlement. The proposal is therefore likely to prolong disputes and delay the point at which employees return to work and the organisation returns to normal productivity levels.

The RCM is also concerned that the reporting requirements will create significant costs and administrative burdens for unions. If the Certification Officer is to be tasked with enforcing any new notice requirements, this will also lead to direct additional costs for unions through the proposed levy which will be charged to unions to cover the running costs of the Certification Office.

Unions could be expected to monitor and report on the Facebook accounts and twitter feeds of branches, union officials, branch officials and even workplace reps. This will inevitably divert union officials’ time and energy away from working with employers to find solutions to disputes.

The Government has suggested that the requirement to publish plans would assist unions to identify which activities are being undertaken in the union’s name and would give them the option of repudiating non-official pickets and protests. The RCM suspects that the Government’s real purpose in making this proposal is to encourage tensions between the union and its members. This proposal is however likely to prove counterproductive not only for unions but also for employers. If a union repudiates the actions of its members, union officials and indeed employers will find it increasingly difficult to convince the workforce to return to work. This will escalate disputes, making them more difficult to settle.

Overall, the RCM believes that the Government’s proposals represent a serious attack on the fundamental rights of Trade Unions and their members to protest in defence of their job, their livelihoods and their working conditions. The proposals seek to limit freedom of speech and as such will be bad for democracy. The measures will do nothing to encourage the earlier settlement of disputes, promote good employment relations or to increase workplace productivity. The RCM therefore calls on the Government not to proceed with the proposals.

**Question Six:**

Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions of publishing their plans?

We believe that we are likely to incur significant additional costs and administrative duties if the Government’s proposals to publish protest and picketing plans proceed. We can not provide figures to improve the estimates in the Impact Assessment costings until the Government publishes more detailed proposals and we are made aware of what any new reporting requirements will involve. However, we will again draw the Government’s attention to the conclusions of the RPC who say that the impact assessment is not fit for purpose.

**Question Seven:**

What are your views on the Government’s proposal to strengthen accountability?
The RCM believes these proposals are yet another bureaucratic burden to be placed on Trade Unions which will serve absolutely no useful purpose and does not strengthen accountability. The proposal also makes the assumption that the union is responsible for the activities of those involved in a picket or demonstration. That is not the case.

In the UK, trade unions are subject to wide-ranging regulation. As a result, the UK has been repeatedly criticised by international supervisory bodies, including the ILO Committee of Experts and the European Social Rights Committee which supervises compliance with the European Social Charter (1961).

**Question Eight:**

*Do you have any suggestions how union accountability and/or transparency could be improved?*

Unions are democratic organisations which are highly accountable to their members. Responding to and representing the interests of their members is the core business for all trade unions, including the RCM. Effective communication with members is essential to be able to represent members properly.

The RCM believes that the Government should remove the barrier on Trade Unions conducting ballots by electronic means. The necessary power is already contained in section 54 of the Employment Relations Act 2004. The Government should exercise it.

**Question Nine:**

*Do you have any figures that would enable us to improve the estimates in the Impact Assessment of the cost to unions to report on industrial action in their annual reports?*

As noted above, if these proposals are implemented, unions are likely to incur significant additional costs. It is difficult for the RCM to provide in depth costings until the Government publishes more detailed proposals and we are made aware of what any new reporting requirements will involve.

It is, however, important that the Government does not consider the impact of this proposal in isolation from other measures in the Trade Union Bill. Unions will also incur significant additional costs from the following:

- The new duty to report annually to the Certification Officer on where industrial action has taken place and on the outcomes of industrial action ballots;
- The levy which will be charged to unions to cover the running costs of the Certification Office;
- The requirement to re-ballot members where industrial action will continue for more than 4 months;
- The proposal that unions must prepare and update picketing and protest plans; and
- Caps on facility time within public services.
Question Ten:

How should the Code be updated to be more useful for parties affected by industrial disputes? Please explain your answer.

In the RCM’s opinion, the Code of Practice could be strengthened with regards to a statement that picketing is protected as aspects of peaceful protest and freedom of association by the European Convention on Human Rights and the Human Rights Act. The Code of Practice could also make clear that the civil and criminal law, and the Code itself, should be interpreted consistently with the European Convention. We note that the consultation document acknowledges that union activity complies with the Code of Practice.

It would be helpful if the Code of Practice gave increased prominence to the rights of workers who participate in industrial action. However, the RCM is not convinced that guidance alone will be sufficient to ensure that individuals are not subjected to intimidation, victimisation or detriment because they exercise their fundamental rights. We believe that legislative reform is also needed, particularly around the issue of unfair dismissals.

Conclusion

The Royal College of Midwives (RCM) welcomes the opportunity to respond to the Department for Business Innovation and Skills consultation on Tackling Intimidation of Non-Striking Workers.

We would like to conclude by reiterating that we believe the Trade Union Bill will introduce wide-ranging measures designed to curtail the right to strike and restrict our ability to represent midwives and maternity support workers in the workplace. The right to strike is a fundamental human right which is protected by an array of international treaties and human rights standards, including ILO Conventions, the UN Covenant on Social and Economic Rights, the European Social Charter (1961) and the European Convention on Human Rights.

The RCM is profoundly concerned that measures set out in the Trade Union Bill will unjustifiably restrict the right to strike in the UK. This will undermine workers’ ability to organise collectively to protect their jobs, their livelihoods and the quality of their working conditions. Protecting working conditions is important because midwives’ and maternity support workers’ working conditions are women’s birthing conditions.

Our key concerns are:

- We believe this will fundamentally damage employment relations and make it more difficult to resolve disputes, the Government must remember that industrial action is a symptom of poor employment relations not the cause. Industrial action is a last resort for trade unions; it certainly was for the RCM with our first period of industrial action taking place in 2014, which was the first time in our 134 year history. The Government should not underestimate the gravity of the union’s decision to ballot their members for industrial action and the seriousness of the member’s decision to vote for and take industrial action. This
demonstrates that the relationship between the employees and employers is at an all time low. By imposing unnecessary and disproportionate rules the Government is attempting to paint striking workers as the villains. Government should be working to improve employment relations and helping both sides resolve the dispute before it gets to the stage of taking industrial action rather than profoundly shifting the power balance and allowing one side to steamroller across the other.

- During the RCM’s industrial action in 2014/15 we provided extensive guidance to our Workplace Representatives to make contingency plans to ensure safe and essential services could still go ahead. Our Workplace Representatives granted exemptions so that RCM members could provide those services based on three fundamental priorities: safety for women and babies must be ensured; a women’s choice of birthplace must be ensured; and RCM midwife members should not break their NMC Code of Conduct. We made it crystal clear that our dispute was with employers, not with the women and babies we care for.

- The right to picket and protest is a fundamental human right which is safeguarded by ILO Convention 87 (Article 3), the European Social Charter (Article 6(4)) and the European Convention on Human Rights (Articles 10, 11 and 14). Pickets and protests enable trade unions and their members to communicate the reasons and purposes of industrial action publicly, peacefully to persuade employees and substitute workers to support the industrial action and to mobilise support for their campaigns.

- Our picket lines were peaceful and supported by the public. There is no evidence to support strengthening the laws on picketing and protest as there is no evidence that picket lines are anything but peaceful. The Carr Review10 in 2014 found that the current legislation on picketing is fit for purpose and the Regulatory Policy Committee11 concluded that not only is there no evidence on which to base the proposals in the Trade Union Bill but there is also no discernable benefit to be derived from the proposal.

- We would like to caution the Government against giving the impression that they are trying to prevent and intimidate workers from raising workplace concerns, in particular public sector workers. We are very alarmed by the extreme nature of the proposals in the consultation as they are complicated and wholly disproportionate. We believe the intention is to frighten and confuse midwives and other hard working citizens from exercising their right to protest for fear that they will make a simple mistake and be prosecuted. It is a fundamental right that workers should be able to peacefully protest and these proposals are an attack on civil liberties and are wholly disproportionate and unnecessary.

We would again like to highlight that it is not just trade unions that have raised concerns about the Trade Union Bill. The Chartered Institute for Personnel Development (CIPD)12 have described the Bill as outdated and warn against the unintended consequences of the Bill. The Recruitment and

Employment Confederation\textsuperscript{13} has raised concerns about the removal of the ban on agency workers. The Regulatory Policy Committee\textsuperscript{14} has rated all three consultation impact assessments as not fit for purpose. Liberty, the British Institute of Human Rights and Amnesty International have published a joint statement that says: 'Taken together the unprecedented measures in the Bill would hamper people’s basic rights to protest and shift even more power from the employee to the employer. It is hard to see the aim of this bill as anything but seeking to undermine the rights of all working people. We owe so much of our employment protections to Trade Unions and we join them in opposing this bill.'\textsuperscript{15}

\begin{footnotesize}
\textsuperscript{13} http://www.recruiter.co.uk/news/2015/07/recruiters-wary-of-using-temps-as-strike-breakers/?utm_source=Adestra&utm_medium=email&utm_term=
\textsuperscript{14} https://www.gov.uk/government/publications/regulatory-policy-committee-opinions-issued-since-may-2015
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