

Defendant
P Cullen
First
PC1
26 April 2023

IN THE HIGH COURT OF JUSTICE

CLAIM No. KB-2023-001961

BETWEEN:

THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE

Claimant

and

THE ROYAL COLLEGE OF NURSING OF THE UNITED KINGDOM

Defendant

WITNESS STATEMENT OF PATRICIA YVONNE CULLEN

I PATRICIA YVONNE CULLEN of the Royal College of Nursing of the United Kingdom
, 20 Cavendish Square, London W1G 0RN will say as follows:

1. Since July 2021 I have held office as General Secretary and Chief Executive of the RCN. The RCN has approximately 280,000 members employed in the
in England and who are within the scope of the current trade dispute. It is governed by the College Council. It is a member-led democratic trade union.
2. I was previously employed as a Community Nurse in West Belfast before working for the Public Health Agency and the Health and Social Care Board. I commenced employment with the RCN in 2016. In May 2019, I became Director of Northern Ireland, RCN. In April 2021, I commenced my role as Acting General Secretary before I was confirmed in my current role in July 2021.

real terms reduction in pay when set alongside record levels of inflation and a cost-of-living crisis .

12. Real earnings for nurses have lagged behind employees in other professions in the United Kingdom, particularly those in the private sector. In the private

median earnings fell by 6.0%. This means that nurses have experienced almost double the decline of those working in the private sector.

13. When wages of safety critical staff are allowed to stagnate or fall as they have done nurses at the top of band five have experienced a 20% decline in real terms pay in the last twelve years it has damaging impacts on both recruitment and retention of nursing staff. It is a false economy to conclude that cutting or holding down the pay of frontline 1a q0.000tr3ss0526(1line)-5(11 15o)-3(wnfh)-5(sc0reW*nB

2022/23. (In Scotland this was described simply as an above inflation pay award).

Social Care, or each responsible Minister in any of the devolved Governments in Scotland, N. Ireland and Wales, or any NHS employer in Great Britain. Therefore, the RCN is in dispute in relation to pay which is fundamental to

real terms currently and in recent years is having dire consequences for the nursing workforce in terms of recruitment and retention, and therefore patient safety.

22. The ballot closed at noon on 2 November 2022 [MW p. 16].

Ballot Result

23. In England ballot papers were sent out to members employed by 263 NHS employers. Of which, 129 met the 50% threshold requirement for participation (a requirement inserted by the Trade Union Act 2016). RCN achieved 116,878 votes in favour of strike action across all employers, including those where the

This means that 50,116 members who voted in favour of strike action have been disenfranchised from being called out where we did not achieve the 50% turnout requirement. This is a sad state of affairs where our members are not able to participate in industrial action, notwithstanding that they have precisely the same trade dispute with the Secretary of State (2016).

. RCN vociferously opposes the many changes introduced by the Trade Union Act as being oppressive, fundamental right to strike. Of course I acknowledge that this is not the forum to air those grievances.

25. I understand that when the Trade Union Bill was being considered by both Houses of Parliament, the Government issued Explanatory Notes to members of both Houses which are (and remain) accessible on the legislation.gov.uk website: <https://www.legislation.gov.uk/en/ukpga/2016/15/notes/contents>.

26.

29. Members know that taking strike action is not a decision they will come to lightly, but equally they recognise that the nursing profession has been pushed to the edge because of years of underinvestment. We know patient care is not safe and not only are patients suffering but nursing staff in all roles are facing burnout and many are choosing to leave the profession for good. As a nation, we desperately need to attract more people into the profession so we can give patients the care we were trained to deliver and that they deserve.

30. In England, strike action was called on 15 December 2022. At the time this was announced in November 2022 the message I communicated in public was resoundingly clear:

our members are saying enough is enough. The voice of nursing in the UK is strong and I will make sure it is heard. Our members will no longer tolerate a financial knife-edge at home and a raw deal at work.

y to signal a new direction with serious investment. Across the country, politicians have the power to stop this now and at any point.

too low and we have strong public backing for our campaign to raise them. This

31. Members genuinely hoped that the Secretary of State would sit up and take notice of the strike action planned for 15 December 2022 and explore how it

lines is a sign of failure on the part of governments.

running. The scaremongering we have seen did upset some but also demonstrated the disrespect afforded to nurses for raising their

enough. We'd need to run longer, continuous strikes with a mandate reaching right across the country over derogations.

34. Self-evidently, members considered that the offer was rather underwhelming. Out of 277,906 members eligible to vote, 169,530 acted to cast a vote. Overall, 61% of eligible members voted in the ballot, out of which 46% voted to accept the offer, and the majority of 54% (some 91,646 members) voted to reject it.

35. On 14 April 2023 I wrote to the Secretary of State to advise of the results of the

36. The Secretary of State replied two days later, on 16 April 2023, just before I was about to go on Sunday with Laura Kuenssberg on BBC One. He said that negotiations. He offered a meeting, which I wrote back to accept and attempt to schedule. However, so far it has not taken place.

The Notice of Action giving rise to these proceedings

37. On 14 April 2023 RCN provided NHS employers with notice of intended action in accordance with section 234A TULRCA 1992 [MW p.#]. Employers were notified that the dates of strike action will be between Sunday 30 April 2023 and Tuesday 2 May 2023. Within services that are delivered 24 hours the industrial action will commence at the beginning of the night shift on Sunday 30 April 2023 and will last until commencement of the night shift on Tuesday 2 May 2023. For services that are not 24 hours the industrial action shall commence at 8pm on Sunday 30 April 2023 and will last until 8pm on Tuesday 2 May 2023.

The challenge by the Secretary of State

38. Participating in strike action is a democratic right of every member who wishes to do so. Members are under a professional and a moral duty to speak out when State initially sought to challenge the lawfulness of the industrial action planned on all three days, namely 30 April, 1 and 2 May 2023. In a letter before action dated 21 April 2023, the Secretary of State asserted (at paragraph 6)[MW p. 35]:

Unless by noon on Monday 24 April 2023 the RCN has instructed its members that they must not participate in industrial action between 30 April and 2 May 2023 and repudiates the Notices, informing them of their unlawfulness, the Secretary of State intends to apply

42. The RCN does not shy away from the fact that it believes this challenge to be politically misguided. As RCN explained in its reply to the letter before action dated 24 April 2023 [MW p. 40]:

that have been made by the RCN to resolve this matter, the Secretary of State has taken the aggressive and unwarranted step of seeking to prevent RCN members from taking industrial action based on the overwhelming support for such action demonstrated by the results of the ballots that it has conducted across NHS employers.

43. The threat to challenge all 3 days of strike action was nothing more than a clear attempt to bully and intimidate the RCN into submission when the Government had no basis for challenging all three days. The explanations now advanced as to why the challenge is limited to the planned action on 2 May ring hollow: see that there is “*no public interest*” in seeking to restrain the planned action on 30 April and 1 May. Indeed, the suggestion that the RCN “...*has not taken a reasonable approach after it was alerted to its unlawful action...*” deflects from the unreasonably hostile and aggressive stance adopted by the Secretary of State (Ms Worthington, paragraph 28).

44. I very much take issue with the suggestion that in calling for action on 2 May “*democratic mandate*”: Ms Worthington, paragraph 29. Members have voted to reject the latest pay offer.

Public Support

45. The public support for nurses going on strike across the UK, and receiving a fair pay rise has been immense and unwavering.

(1) RCN release September 2022: polls showed that just short of two-thirds (64%) of the public supported nurses taking strike action in their fight for fair pay.

(2) You Gov blog December 2022: two-thirds of the British public (66%) say

- (iii) The action called to take place on 2 May 2023 falls within the timescales set out in the Explanatory Notes to the Trade Union Act 2016.
- (iv) Not one employer has intimated an intention to challenge the lawfulness of the action.
- (v) It seems premature to grant an interim declaration at this stage even before the