Royal College of Nursing Health and Social Care Bill briefing to the House of Lords (Report Stage)

In January 2012 the Royal College of Nursing (RCN) announced that it had moved to a position where it opposes to the Health and Social Care Bill and calls for it to be withdrawn.

This document sets out the RCN’s major areas of concern and the reasons behind the decision to oppose the Bill.

Although the RCN has now called for the Bill to be withdrawn, we remain firmly committed to engaging with Peers, MPs and the Government on the reform process to ensure that the quality of patient care is safeguarded.

Background

On the 19th of January 2012, the RCN announced that it was moving to a stance of outright opposition to the Health and Social Care Bill. This decision, taken by the RCN’s governing Council, was due to a number of factors including the failure of the Government to introduce significant amendments at Committee stage, the rejection of nursing specific safeguards to the Bill and increasing concerns about the impact of the reforms on the NHS as it is trying to achieve £20 billion of efficiency savings.

The RCN has engaged with the Government at every stage of the NHS reforms since the NHS White Paper was published in July 2010. This engagement has included the legislative progress of the Bill, the “listening exercise”, and the ongoing work of the Future Forum. We have also worked closely with Peers on all sides of the House to try and ensure that the Bill’s passage through the Lords saw significant amendments to reflect the wide ranging concerns of our membership.

The RCN recognises that the Government has made some attempts to accommodate our concerns and we acknowledge that there has been a range of changes to the legislation. However, we do not feel that these changes are sufficient to allay the fears of RCN members.

In response to the NHS White Paper, the RCN outlined 18 assurances which had to be addressed to ensure that the reforms would deliver a health service fit for purpose. To date, the RCN has not seen satisfactory evidence that the legislation, and importantly the reforms taking place on the ground, fulfil the Government’s initial promise to: place patients at the centre of care; reduce inefficiency in the NHS; be clinician led; and improve standards and outcomes across all aspects of the health service. We do not believe that the Bill as it stands delivers on these principles.

What are the RCN’s concerns?

“Nicholson challenge” and the reforms

The “Nicholson Challenge”; the drive to save £20bn in the NHS in England by 2014/15, is presenting staff with monumental difficulties. The RCN’s ‘Frontline First’ campaign has exposed that 48,000 NHS posts have been cut, or are earmarked to be cut, in England alone. This is far from the Government’s promise to protect the frontline. Dealing with such significant cuts to services and staff numbers would be difficult at any time, having to deal with it during a programme of dramatic and distracting reform makes the job virtually impossible.
The RCN warned that if the reforms were pushed through without first winning the support of NHS staff, and if an adequate risk assessment was not carried out, it could lead to the breakup of the NHS and have a negative impact on patient care. The RCN believes that in light of the Government’s refusal to publish the risk register and in the face of such vast cuts to a demoralised workforce, this RCN warning is destined to become reality.

We are not seeing evidence of intelligent, well thought through service redesign and reconfiguration. The nursing workforce is not inflexible and is ready to take on the challenge of transferring the focus of service delivery from the acute to the community sector. However, with the short sighted cuts which we are aware of, the NHS faces a very real danger of losing many members of a highly skilled workforce.

Safe staffing levels and healthcare support worker regulation

At Committee Stage, the RCN worked with Baroness Emerton to support amendments that would mandate safe staffing levels and the regulation of healthcare support workers. Baroness Emerton withdrew these amendments in the face of Government opposition. The RCN was extremely disappointed that the Government opposed these amendments and will be revisiting this issue further during Report stage debates.

These amendments were presented as nursing specific safeguards against the potential negative effects of the reforms and the “Nicholson Challenge”. They would have guaranteed safe staffing levels when there is a real danger that priority may shift from patient care to finance. The RCN is already aware of some Trusts downbanding nursing posts and replacing Registered Nurses with untrained healthcare support workers for financial reasons, potentially putting patients at risk.

In tragic care failures, such as at Mid Staffordshire NHS Foundation Trust, nursing numbers were cut to unsafe levels due to financial constraint. The RCN’s ‘Frontline First’ campaign has highlighted that more than 48,000 posts in England have already been earmarked for removal. Our analysis of 41 Trusts in England showed that in those Trusts 8.3% of the qualified nursing workforce is to be lost1. The nursing workforce cannot deliver high quality, safe care under such strain and we fear that potentially further care failures could occur.

Private Income Cap – Clause 164

One of the RCN’s most significant concerns is the proposed removal of Foundation Trusts’ cap on private income generation. The RCN has stated categorically that this cap should not be removed without evidence being provided that NHS patients will not be forced to the back of the queue, behind private, paying, patients. At a time when NHS organisations are being forced to slash budgets and maximise income, we are genuinely worried that many organisations will take advantage of the lucrative private market, impacting on the service delivered to NHS patients.

The RCN has stated since the Bill was introduced that this clause, or any clause relating to the removal or relaxation of the private income cap, should be removed from the Bill. The RCN retains this position. Therefore, the introduction of an amendment to cap private income at 49% of a Trust’s income prior to the Christmas recess is inadequate. If the Bill does proceed, the RCN believes that, this clause, which will allow Foundation Trusts to accrue large percentages of their income through private income, should be removed from the Bill.

Competition and ‘red tape’ – Part 3

The RCN does not oppose the principle of competition, nor independent or third sector involvement in the NHS. However, the reforms go too far in promoting competitive behaviour that the RCN believes will fragment the service and impact negatively on the patient experience.

The Government’s amendments to the role of Monitor, from promoting competition to tackling ‘anti-competitive behaviour’, do not go far enough and whilst the language has changed, the overall direction of travel has not.
The reality of multiple providers competing for contracts will present a natural barrier to collaborative working, integration, and the sharing of best practice. This would make it harder for health professionals as part of a multi-disciplinary team to work with colleagues in hospital and other settings to create the integrated care pathways that patients want and need. There is a fundamental absence of suitable checks and balances in the Bill to ensure the right balance of competitive and collaborative forces for delivering safe and effective care.

We are also becoming increasingly concerned about the hitherto unknown consequences of EU competition law, with a real worry that NHS funds will be diverted from funding care to fighting costly law suits.

The RCN has supported the Government’s aim of removing the onerous burden of bureaucracy and red tape. However, we believe that the reforms will not achieve this objective. The Bill creates a new plural market system based on contracts, which we believe will actually lead to increased bureaucracy and transactional costs and less accountability and transparency.

We have consistently called for amendments to be introduced to guard against the potential negative consequences of competition, within the framework set out for the roles of Monitor and the Care Quality Commission. Such amendments have not been forthcoming from the Government. We have consistently warned against unfettered competition without clear checks and balances to ensure co-ordinated and joined up services.

New structures

The RCN fears that the reforms create a new architecture for the NHS with increasingly complex interrelationships. Unanswered questions remain on how individual components within the reforms will be ‘hard wired’ together. There is a danger of confusion and duplication, with uncertainty regarding which organisation is ultimately in charge. We are also concerned about the consequences of unclear accountability structures and a lack of transparency.

Clinical involvement

The RCN is in favour of the principle of involving clinicians in the running of the NHS. However, it has become increasingly apparent that this is not being implemented to a satisfactory degree. Local implementation is not delivering genuine engagement with clinicians.

The RCN campaigned long and hard to see nurses gain a greater involvement in the commissioning process. As a result, the Government introduced an amendment that would see nurses appointed to the boards of Clinical Commissioning Groups (CCGs). However, it appears that this is not being implemented properly on the ground and guidance from the Government has been lacking to ensure that this is acted upon by pathfinder commissioning groups.

Research carried out by the RCN shows that in too many situations, nurses are either not being appointed to CCG boards, or where they are, they are not nurses with the appropriate commissioning skill sets. In May 2011, out of 162 pathfinders contacted, less than one in three confirmed they had appointed a nurse to their board. When this research was revisited in autumn of last year the situation remained largely unchanged. Nursing involvement at all levels of the commissioning framework is vital to ensure comprehensive, holistic care services are provided for NHS patients.

National pay, terms and conditions

The RCN has long been committed to the process of nationally agreed pay, terms and conditions. Agenda for Change has been good for employers, staff and patients – it ensures that staff don’t leave from one hospital to go to another that pays a better wage, meaning that hospitals that can’t afford good salaries aren’t left without the appropriate staff.
The implications of the Bill for NHS staff terms and conditions and employment relations are substantial. The encouragement of NHS organisations, and particularly Foundation Trusts in England, to determine their own pay and reward structures (outside of the freedoms negotiated in Agenda for Change) will be highly damaging to recruitment and retention of staff.

The RCN is concerned that such a move will lead to the ratcheting up or down of pay rates, with NHS organisations competing against each other for staff. While Agenda for Change delivers an equality-proofed pay and grading scheme, the development of a plethora of local schemes could undermine the stability produced by the current system and lead to a surge of equal pay litigation cases and challenges to workplace relations. It would also have an effect on pay negotiations in the devolved administrations. In addition, the Chancellor of the Exchequer, in his Autumn Statement announced a commitment to local pay bargaining. The RCN cannot support such a move.

**Conclusion**

The RCN has engaged with the Government at every stage of the NHS reforms since the White Paper and had remained hopeful that a pragmatic approach of engagement was the best option to represent RCN members. The RCN has clearly and consistently set out which areas of the Bill must be changed, not as a matter of self interest, but to guarantee patient care and to retain the NHS as a national institution providing high quality care, free at the point of need.

The RCN has stated that halting the legislation now would be less damaging than continuing forward. Proceeding with the legislation will create a set of circumstances that will not only destabilise the NHS, but put it in a position of risk where untested polices cannot be reversed. The Bill will result in a significant imbalance between public and private sectors and competition and collaboration, the effects of which risk seriously undermining NHS principles and cost effectiveness. The Bill takes the NHS to a point of no return in opening up health services to unfettered market forces.

However, due to the Government’s refusal to concede on sufficient points, the RCN finds itself with no other option than to adopt a position of outright opposition to the Health and Social Care Bill.

*The Royal College of Nursing*

*February 2012*

With a membership of over 410,000 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.