

Royal College of Nursing submission to Human Rights (Joint Committee) - Human Rights at Work inquiry

With a membership of half a million 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 United Kingdom and the largest professional union of nursing staff in the world.

1. Introduction

- 1.1. The Royal College of Nursing (RCN) and its members have long been involved in human rights activities, both nationally and internationally. The RCN is committed to supporting and advocating for human rights due to the positive and practical difference they make to people, patients and nursing.
- 1.2. The RCN members understand that their primary purpose as caregivers is to uphold the human rights of their patients. The RCN is also aware of international human rights agreements and their relevance to patients and the nursing staff who care for them.
- 1.3. The universal protections guaranteed by the European Convention on Human Rights must be adhered to by the UK. The protection of those rights are key to ensuring the health of nursing staff, and effective delivery of safe nursing care. The RCN believes that a human rights-based approach is essential, both in developing health policies and services and in individual practice.
- 1.4. The International Council of Nurses, of which the RCN is a member, states that nurses have a particular obligation to “safeguard and actively promote people’s health rights at all times and in all places”.¹ Nursing staff in England have consistently upheld patients’ rights – however, current pressures on the health and care system stemming from a deepening workforce crisis, indicates a disregard for the human rights of nursing staff in the NHS and independent sector by the UK Government.
- 1.5. A recent comprehensive review by the Kings Fund of the evidence on supporting nurses and midwives to deliver high quality care² found the key drivers of nursing attrition to be; staff shortages resulting in pressures, workload and work schedules, pay, support during education and on entry into the nursing workforce, bullying, harassment and discrimination experienced in the workplace. The consequences of these experiences are early retirement, reduced ability, and intention to quit.³

2. Freedom of association and the right to strike

- 2.1. In December 2022, the RCN organised industrial action for the first time in its 106-year history in Great Britain and in February 2023 our members took part in the largest strike in the history of the NHS. The College’s standing orders, referenced in our Royal Charter, require that we only authorise any form of industrial action if satisfied that such action will not be detrimental to the

¹ International Council of Nurses (2011), [ICN Position statement on nurses and human rights, Geneva: ICN.](#)

² The King’s Fund (2020), [The courage of compassion: Supporting nurses and midwives to deliver high-quality care.](#)

³ The Royal College of Nursing (2023), [Valuing Nursing in the UK](#)

wellbeing or interests of patients or clients. For nursing staff, strike action is always a last resort.

- 2.2. The United Kingdom has some of the strictest anti-trade union law in Europe. The present UK Government has already passed the Lobbying and Trade Union Administration Act 2014, the Trade Union Act 2016 and introduced regulations allowing employers to employ agency workers to break strikes. The RCN believes that this represents a sustained attack on the basic civil right for working people to withdraw their labour.
- 2.3. Trade union members in the UK are predominantly women; this is especially true in nursing. Black British workers are also more likely to be trade union members. As such, efforts to silence the voice of trade union members risk exacerbating existing societal and institutional structural inequalities. These infringements on trade union rights therefore have implications that relate to both Article 11 and Article 14 of the ECHR.
- 2.4. The RCN is particularly concerned by the Strikes (Minimum Service Levels) Bill, which represents an additional erosion of the right to strike. Section 240 of the Trade Union and Labour Relations (Consolidation) Act 1992 already makes it an offence to take industrial action in the knowledge or belief that human life will be endangered, or serious bodily injury caused. As such, this Bill is entirely unnecessary.

3. Inequalities concerns

- 3.1. Nursing is predominately a female workforce (89%)⁴– and any change to worker’s rights would have a disproportionate impact on female workers ability to organise in defence of terms and conditions or improving pay, terms and conditions. Consideration needs to be given on the composition of the nursing workforce.⁵
- 3.2. The RCN’s own research in 2019 of Office for National Statistics (ONS) Surveys and RCN Employment Surveys found a substantial gender pay gap exists among all health care professionals (nurses, doctors, managers, and allied health professionals) – with women receiving an average of 30% less than men per week, or 16% less per hour because of two factors: men working on average more hours than women and sex discrimination.⁶
- 3.3. A range of factors have contributed to continuing low pay and poor working conditions within the nursing profession. While the effect of gender on pay is not direct, it is necessary to understand the critical role that gender plays in suppressing wages.
 - 3.3.1. For nursing in particular, gendered notions fail to match the reality of a complex profession defined by technical, emotional, and cognitive skills of the highest level coupled with out-of-date pay schemes that fail to recognise that factor level descriptors have failed to keep pace in

⁴ The Nursing and Midwifery Council (2022) [The NMC register mid-year update](#)

⁵ The Nursing and Midwifery Council (2022) [The NMC register mid-year update](#)

⁶ The Royal College of Nursing (2019), [RCN Employment Survey 2019](#)

delineating weighting of nursing roles and continue to keep pay low across the profession compared to similar, predominately male, professions. These perceptions were shattered during the pandemic as people saw the realities and complexities of modern nursing, yet this fundamentally unfair pay imbalance persists.

3.3.2. Women in Global Health estimated in 2022 that there are six million women working in underpaid or unpaid health roles across the world, effectively subsidising poorly planned formal, funded health services.⁷

3.3.3. Staff from minority backgrounds are significantly under-represented at very senior management level, including executive director and chief executive roles.⁸ At these senior levels there are higher numbers of staff who are male, White and non-disabled, typically aged 45-64.⁹

4. Retained EU Law (REUL) Bill

- 4.1. The RCN is concerned by the sweeping powers the REUL Bill would provide Ministers, with little or no parliamentary scrutiny and oversight in identifying which existing EU-derived laws will be maintained or subject to removal by 21 December 2023. This was also identified by the House of Lords Delegated Powers Committee as a key concern in its report on the Bill, adding the proposed legislation is 'sufficiently lacking in substance not even to be described as "skeletal".¹⁰
- 4.2. We have identified several existing workers' rights that are linked to EU law that Government Ministers have yet to confirm their intention to revoke, replace, or amend. These include Working Time Regulations 1998 which provide workers with breaks during shifts and between shifts which is crucial for nursing professionals and for patient safety. Additionally, the equal treatment for agency workers through equal pay and paid annual leave through the Agency Worker Regulations 2010 and for part time workers through the Part-time Workers (Prevention of Less Favourable Treatment Regulations) 2000. Finally, the Maternity and Parental Leave etc. Regulations 1999 provide key protections for maternity, paternity, and adoption leave.
- 4.3. The uncertainty caused by this lack of clarification risks undermining the UK as a place of work for international nurses, as well as causing uncertainty for the existing nursing workforce in the UK. At the second reading of the Bill in the House of Lords, the Minister, reasserted the Government's commitment to maintaining existing employment rights, however, there has not been sufficient explanation from the Government about how employment rights underpinned by EU law will be maintained.
- 4.4. The Bill also risks undermining existing health and safety laws, including the Management of Health and Safety at Work Regulations 1999, whereby employers are required to suitably manage the health and safety of employees and to assess and control the risk of significant harm occurring in the workplace. Also, the Workplace (Health, Safety and Welfare) Regulations 1992, which

⁷ Women in Global Health (2022), [Subsidizing global health: Women's unpaid work in health systems](#)

⁸ The King's Fund (2020), [Workforce race inequalities and inclusion in NHS providers](#)

⁹ Nursing and Midwifery Council (2020) [Research into NMC processes and people's protected characteristics](#)

¹⁰ House of Lords (2023), Delegated Powers and Regulatory Reform Committee, Twenty Fifth Report, [Retained EU Law \(Revocation and Reform\) Bill](#)

concern a wide range of basic health, safety and welfare issues. The nursing workforce is exposed to many health and safety risks in the workplace, including, but not limited to, work-related stress, violence and aggression and musculoskeletal disorders.

4.5. We are also concerned about the Bill's impact on existing equalities laws, including the Equality Act 2010 and existing protections of workers' rights which protect workers with protected characteristics from discrimination and unfair treatment. The UK Government's Equality Impact Assessment (EIA) concludes that 'The measures in the Bill do not constitute direct discrimination'¹¹. However, the EIA adds, 'there is a possibility that the removal of the principle of supremacy of EU law and the sunset of EU-derived legislation may lead to a lowering of protection against discrimination'. The reassurances provided by the Government have been weak and still leave ambiguity over crucial equalities protections; Parliamentarians should take steps to request ongoing impact assessments as further legislation is identified.

5. Migrant workers

- 5.1. One in five (19%) of the UK's nursing workforce are trained internationally¹². Actions taken by employers in the health and care sector have the potential to have a disproportionate impact on migrant workers under the health and care visa, as their residency in the UK is conditional on their employment. Migrant workers can be particularly vulnerable to human rights abuses for a number of reasons.
- 5.2. For migrant workers employed in the UK under work-based immigration routes, such as the Health and Care Worker Visa, their residency in the UK is dependent on sponsorship by an eligible employer. This can mean that there is a power imbalance between the migrant worker and their sponsor, the Migration Advisory Committee notes that this is particularly true for migrants who are reliant on their employer for housing.¹³
- 5.3. The RCN is concerned by reports from internationally educated members working in the independent sector, that their contracts contain excessive repayment clauses and identifies a significant risk as the potential for staff to be coerced to remain in exploitative working conditions. These repayment fees, reported to be as high as £14,000, stipulate that a worker must pay a fee if they leave their contract before an agreed period – in some cases as high as five years of employment.¹⁴ In many cases members report that employers make attempts to intimidate them into paying these fees, for example through threats of deportation and referrals to the Nursing and Midwifery Council. The RCN believes this to be extremely problematic from a human rights perspective.
- 5.4. The Health and Social Care Committee highlights that whilst the use of repayment clauses is not unlawful, the use of such clauses should be considered

¹¹ UK Government (2022), [Equality Impact Assessment from the Cabinet Office](#)

¹² The Nursing and Midwifery Council (2022), [Registration data reports](#)

¹³ Migration Advisory Committee (2022), [Adult social care and immigration](#)

¹⁴ Health and Social Care Committee (2022) [Workforce: recruitment, training and retention in health and social care - Health and Social Care Committee](#)

in the context of worsening exploitation of international staff in the social care sector.¹⁵

¹⁵ Ibid