



Royal College of Nursing
Shaping nursing since 1916

Royal College of Nursing submission to the Business, Energy and Industrial Strategy Committee inquiry on the future world of work and rights of workers

Key summary

1. It is essential that there are enough nurses with the right skills, in the right places, and at the right time in order to deliver high quality patient care. Given the current nursing workforce shortage, the health and social care sector is dependent on the contribution of agency nurses to provide high-quality and safe care to patients. Against this backdrop, we have seen an increase in the number of nurses choosing to work in agency settings. This is due to enhanced flexibility over shift patterns as well as an economic reality as nurses seek to restore the drop in their take home pay due to pay restraints on nurses pay since 2011^{1,2}.
2. We are concerned with reports from our members working as agency nurses about poor employment practices by host employers, their lack of rights at work compared to permanent employees and in extreme case, being exploited. We believe the balance is in the employers favour at the expense of agency workers and therefore, we are calling for this to be addressed to ensure that nurses maintain the employment rights they are entitled to rather than being forced into sham arrangements that are not to their benefit. Therefore, we encourage the Committee to consider the following three key areas:

Streamline the definition of 'worker' across employment law legislation

3. There is anomaly across existing employment law as the definition in the Equality Act 2010 is wider than that provided for in the Employment Rights Act 1996, the National Minimum Wage Act 1998 and the Working Time Regulations 1998 etc. This is currently providing unnecessary confusion.
4. To address this, we are calling for the extended definition of worker in the Equality Act 2010 to be adopted in respect of all employment law legislation.

Strengthen protection for agency workers and promote and incentivise the adoption of good practice

5. We believe there is a lack of employment support and protection for agency workers and our members have reported a number of worrying issues regarding workplace safety and inappropriate employment practices.
6. We believe there is a need for the Health and Safety Executive to raise awareness amongst host employers so that they are fully aware of their duties to protect the health safety of agency staff under relevant health and safety regulations.

¹ Royal College of Nursing, *Evidence to the NHS Pay Review Body 2017-18*, September 2016. Available [here](#).

² Royal College of Nursing and HCL Nursing, *Agency nursing under the microscope: understanding flexibility in the NHS*, September 2016. Available [here](#).

Re-balance the rights of agency workers to ensure parity of entitlements

7. The Agency Workers Regulations 2010 do not provide sufficient safeguards and support for agency workers as they have to work for 12 weeks before they achieve parity with fellow employees.
8. We are calling for the source and beneficiary (i.e. agency and end user) to both take responsibility to ensure that agency workers have the same rights as employees and are treated equally.

Additional information

A streamlined the definition of ‘worker’ across all employment legislation

9. We would suggest the extended definition is adopted in respect of all employment law legislation. There is confusion regarding who is properly to be considered a worker, employee or self-employed in the current employment legislation. There is significant disparity between what is covered across a number of Acts.
10. For example, the definition of worker in the Employment Rights Act 1996 is as follows: “*worker means an individual who has entered into or works under – (a) a contract of employment, or (b) any other contract, whether express or implied whether oral or in writing whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer or of any profession or business undertaking carried on by the individual*”³. However, in the Equality Act 2010, employment is defined as: “*employment under a contract of employment, a contract of apprenticeship or a contract to personally do work*”⁴.
11. Therefore the definition in the Equality Act 2010 is wider than that provided for in the Employment Rights Act 1996, the National Minimum Wage Act 1998 and the Working Time Regulations 1998 and we would suggest that extended definition is adopted in respect of all employment law legislation.

Strengthen protection for agency workers and promoting good practice

12. We believe more support is needed to elevate the rights and entitlements of agency workers so that it applies to anyone working for another, except for the genuinely self-employed. Currently, we believe there is an imbalance in employers’ favour, and the lack of employment support, rights and entitlements is undermining their role and in some extreme cases, agency nurses feel they are being exploited. For example, the rights for workers are a minimum and employers can oust those rights by using faux self-employed contractor contracts in order to avoid paying holiday pay, sick pay etc.
13. Our members working as agency workers have reported a number of worrying issues regarding workplace safety and employment practice including the following:
 - Instances where agency workers have been subjected to disrespectful behaviours by managers or other substantive staff. For example, being ostracised or being referred to as ‘the agency worker’ rather than by name;
 - Poor induction processes. In some instances agency workers report not being shown fire exits or other safety procedures;

³ United Kingdom Act of Parliament, *Employment Rights Act 1996: section 230*, 1996.

⁴ United Kingdom Act of Parliament, *Equality Act 2010: section 83*, 2010

- Failure to identify and manage health and safety risks to pregnant agency workers and a failure to carry out risk assessments for those workers;
- Instances where agency workers are being discouraged from reporting concerns about safety or are reluctant to do so as that may impact on opportunities to return back to the environment where they have raised concerns;
- Lack of support from agencies when nursing staff are deemed to have made a mistake at work and there's a potential for disciplinary action;
- Lack of support from agencies when agency workers are black listed from certain Trusts through no fault of their own and are then left without an income;
- Agencies requiring nurses to provide their own indemnity insurance. We know employers are passing on the cost to agency nurses when in fact they (or the end user) should be responsible for providing indemnity cover. This additional cost undermines agency nurses take home pay⁵.

14. Moreover, we have concerns about compliance with the Working Time Regulations 1998 and the practical problems with application in relation to agency workers. Good employment agencies monitor and control working hours and would not put someone on back to back shifts e.g. coming off a night onto a day. There is a need for agencies and host employers to co-operate on working time arrangements. We appreciate that there is also a requirement on the individual (particularly if they are a registrant) to ensure safety is not compromised through working excessive hours of their own violation.

Promoting good practice

15. We work closely with the Recruitment and Employment Confederation (REC) to support the development of the highest standards and promote good practice in the health sector. Members are bound by the REC code of conduct to conduct their businesses ethically, to the highest standards and to promote good practice, and we welcome this as an approach to mirror.

16. We believe there is a need for the Health and Safety Executive to raise awareness amongst host employers so that they are fully aware of their duties to protect the health safety of agency staff under relevant health and safety regulations. This would help to address variation in standards across sectors and help embed health and safety practices to the benefit of agency workers.

17. Furthermore, healthcare organisations must ensure support is available for agency staff when raising concerns, and put in place appropriate mechanisms to ensure they will not be victimised for raising concerns, particularly if they relate to patient safety.

Re-balance the rights and entitlements for agency workers

18. There is support in the form of the Agency Workers Regulations 2010 but it is not enough, as agency workers have to work for 12 weeks before they achieve parity with fellow employees. As stated above, employers are seeking to avoid those responsibilities by designating workers as self-employed contractors when they are not.

19. In relation to agency workers, the source and beneficiary should both in equal measure ensure that agency workers have the same rights as employees and are treated equally.

⁵ Royal College of Nursing, Healthy Workplace Toolkit Focus Group Meeting with Recruitment and Employment Confederation Members, 31 October 2016.

20. For those genuinely in business on their own account, and free to work for different clients and customers, there should be a difference in treatment in comparison to employees who are at the behest of their employers and in a subordinate and dependent position. The self-employed should make provision for their own holidays and periods of maternity leave whereas employees are not able to do so and must rely on their employers. Similarly, workers are subordinate and financially dependent on those that engage them and they too should have the same benefit entitlements as employees.

The role of trade unions

21. Trade Unions have a crucial role in supporting and protecting agency and self-employed workers' rights and entitlements. They provide guidance and advice on employment issues as well workplace support and they offer these groups of workers a safe space to come and discuss issues of concern, including serious cases of perceived exploitation.

22. Our membership includes nurses who describe themselves as 'self-employed' and this includes agency nurses, bank nurses and others in atypical employment situations. For agency and bank nurses we offer employment relations advice and support. This includes personal representation if required plus support at disciplinary and grievance processes and any investigations by the nursing regulator the Nursing and Midwifery Council (NMC). Those nurses who are 'self-employed' and also employ other staff can be supported as individual nurses but not as 'employers' of other staff. We are clear to these members that their individual membership does not and cannot extend to advising them on how they can manage their business.

About the Royal College of Nursing

The RCN is the voice of nursing across the UK and the largest professional union of nursing staff in the world, representing over 450,000 nurses, health care assistants, midwives and nursing students.

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