RCN response to Balance of Competencies survey on employment and social affairs

About the Royal College of Nursing

With a membership of over 410,000 registered nurses, midwives, health visitors, nursing students, and health care assistants, 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.

Introduction

The RCN welcomes the opportunity to feed into a review on social and employment issues. We are aware that BIS itself has acknowledged that this particular review is 'more controversial' given the wide-ranging views on competence in the area of employment and social affairs. We hope that despite being controversial, this review will follow the same approach of other balance of competencies reviews and ensure that there is an informed and objective discussion about the impact of EU social and employment policy, programmes and legislation on the UK.

Some of the issues that we raise in this response have already been captured in our response to the balance of competencies review of health[1]. However we believe that the impact on the working conditions of nursing staff are a crucial element of the wider debate on the importance of European employment and social affairs competence and it is therefore important for evidence to be captured in this particular review as well as in the health review.

Finally, the RCN has sought to answer those questions that are of direct relevance to it and therefore not all questions within the call for evidence will be addressed.

The argument for social and employment competence

Q1 To what extent is EU action in this area necessary for the operation of the single market?

As set out in our answer to question two of this survey, the RCN believes that the social and employment goals of the EU, enshrined by the Lisbon Treaty, are a fundamental function in their own right. The RCN does not therefore agree with the potential underlying assumption in the question that any EU action in the field of social and employment affairs must be **necessary** for the operation of the single market.

---

1 http://www.rcn.org.uk/__data/assets/pdf_file/0004/507541/92.12_RCN_response_DHEU_competences_FINAL.pdf

However the RCN also believes that a key element of the operation of the single market is ensuring the freedom of movement of labour in a fully functioning European labour market. EU action in social and employment issues has played a central role in facilitating freedom of movement. A strengthened European role in adopting health and safety at work measures has facilitated the freedom of movement of nurses and other health care professionals by ensuring that health professionals are able to work in other member states supported by similar levels of health and safety protection at work, creating a level playing field. This also benefits employers who are able to invest in and create jobs in EU member states with comparable employment and health safety legislation provision, rather than adapting different approaches in each member state and which in turn is good for the wider European economy.

Q2 To what extent are social and employment goals a desirable function of the EU in their own right?

The RCN sees the social and employment goals of the EU as a desirable and indeed integral function in their own right but equally as a key conduit for the functioning of many other areas of EU policy, including freedom of movement. The Lisbon Treaty, which the UK is signed up to, clearly states that 'In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health'. [2] EU action in social and employment issues is therefore an intrinsic element of the objectives and function of the EU. The RCN fully supports this position which should be maintained.

The RCN has strongly supported the provision of decent standards of employment and working conditions across the EU as a contributor to economic prosperity and health and wellbeing. The European Commission estimates that the health and social care sector represents on average about 10 per cent of employment in each member state, so this contribution is not insignificant. [3] The RCN would not to want to see a weakening of the EU's functions in continuing to uphold these standards or a repealing of existing social provisions, including social dialogue, in the hospital and health care sector.

The working conditions of nursing staff and others in the health service are also closely linked to the patient experience and patient safety. There is evidence to demonstrate the link between the employment environment for NHS staff including nurses and health care assistants and the quality of patient care. By engaging staff in decision making and providing good working conditions this in turn drives up improved quality of care. Some of this evidence has come from research undertaken

[2] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:0042:0133:EN:PDF
[3] Commission staff working document, Investing in Health, February 2013 http://ec.europa.eu/health/strategy/docs/swd_investing_in_health.pdf

collaboratively across Europe and funded through the EU's research and development framework programme[4]. At a time when the nursing workforce is ageing, and demands on the health sector are increasing, the RCN sees a strong role for the EU in initiatives that invest in the health and wellbeing of the workforce as part of plans to improve recruitment and retention of nursing and other health care staff , for example through social dialogue negotiations. The RCN also supports greater collaboration and sharing of best practice on workforce planning given the new health care challenges facing all EU member states. This is all possible under the current competences.

In summary the social and employment goals for the EU are good for both staff and patients and have been important in improving patient safety and quality of care.

Q3 What domestic legislation would the UK need in the absence of EU legislation?

The 'six pack', the set of EU health and safety directives introduced as UK legislation in 1992 provide an important risk-based framework to address specific issues affecting the nursing workforce such as the risk of back and musculoskeletal disorders to broader psychosocial risks including stress and violence. The six pack would need to become domestic legislation if we are to succeed in preventing the main causes of work-related absence in the nursing workforce: namely, stress and musculoskeletal disorders.

Furthermore, the framework provides important safeguards for patients not covered by existing domestic regulations. For example, the Lifting Operations and Lifting Equipment Regulations 1992 introduce specific requirements to maintain equipment used to move and handle patients. Not only is this safer for patients, but in relation to nursing staff, our experience in relation to personal injury claims from our members is that European legislation relating to manual handling has coincided with a significant reduction in back injuries.

An important element of the 'six pack' of directives is the pregnant workers directive which was incorporated into the 'six pack'. This directive protects the health and safety of women in the workplace when pregnant or after they have recently given birth and women who are breastfeeding, and is a measure that the RCN has always fully supported. Again provisions would need to be made for pregnant workers in the UK if European legislation was removed.

The Working Time Directive, introduced in 1998 as the Working Time Regulations also provide important protections for both the nursing workforce and patients. Long working hours and lack of restorative breaks on and between shifts can lead to fatigue and ill health. In health care fatigue-related incidents can impact significantly on patient safety, for example increased drug errors. As the delivery of health care moves even more to 24-hour care, seven days a week, it is essential that legal controls on working hours remain in place.

[4] Results of RN4CAST research 2012 http://www.bmj.com/content/344/bmj.e1717

The RCN believes that health and safety legislation needs to be accompanied by a robust and proactive inspection regime and that EU health and safety legislation could play a more significant role in bringing down workplace deaths, injuries and ill health if effectively enforced. We are concerned about the UK Government's current approach to health and safety inspections, focusing on a narrow range of high risk activities which exclude health care.[i]

Impact on the national interest

Q4 What evidence is there that EU action in social policy advantages the UK?

There are a number of specific issues where EU action in social and employment issues has a positive impact on UK nurses.

The area of competence relating to social and employment policy has been significant for nursing staff and the health sector and, in particular, rules surrounding information and consultation on collective redundancies and safeguarding employment rights in the event of transfers of undertakings. An increasing proportion of UK employment law originates from the EU and provides important protections for nurses and health care assistants.

The NHS has seen significant changes in recent years, which has led to a growth in independent providers of publicly funded health services as well as the transfer of staff working in public health in England from the NHS to local government. It is important that nurses and other staff who continue to ensure continuity of care and service provision during these reforms are not disadvantaged in terms of working conditions and employment benefits if their employer changes. The EU's TUPE legislation has been a cornerstone in providing legal protection to staff when such reconfigurations take place.

In addition to the general cross-industry negotiations which led to agreements and legislation on part-time work, agency workers and fixed term contracts, and third party violence at work, there have also been sectoral negotiations between employers and trade unions in the hospital and health care sector since 2006.

These have led to a European code of conduct on cross-border ethical recruitment of health workers[5], a framework for action on recruitment and retention[6], and most recently the RCN played a major role in negotiating a framework agreement between EPSU and European health care employers (HOSPEEM) on the prevention of sharps injuries to health care workers[7]. The social partners agreed this should be

[5] http://www.epsu.org/a/3715

[6] http://www.epsu.org/IMG/pdf/12.17_R_R_Final_EN_signed.pdf

[7] EC Directive 2010/32/EU Implementing the Framework Agreement on prevention from sharps injuries in the hospital and healthcare sector concluded by HOSPEEM and EPSU. Luxemburg: EC.

implemented through European legislation. Additionally in December of last year, the social partners have also agreed a shared set of guidelines on an ageing health workforce[8].

Going forward, EPSU and HOPSEEM are likely to agree a new three-year work programme shortly which will look to bring forward concrete deliverables in relation to improving the occupational health of health workers, youth employment and improving recruitment and retention within the health workforce sector. These are all issues that impact directly on the UK health workforce and in turn on the quality of care that patients in the UK receive. By exchanging good practice, recognising the challenges facing the EU health workforce and producing clear proposals to take forward work in these areas, the UK health workforce will benefit from shared expertise and a collective understanding of health workforce issues going forward.

Future options and challenges

Q8 How might the UK benefit from the EU taking more action in social policy?

The social dialogue process between health employees (EPSU) and health employers (HOPSEEM) has identified a number of key challenges facing the EU health workforce. These include:

- the health workforce itself is ageing, with insufficient new recruits to replace those that are retiring
- problems of retention due to demanding working conditions, limited career opportunities and non-competitive remuneration in some health occupations in a number of countries
- demand for new or regularly updated skills and competences due to an increased use of new technologies and new care patterns to cope with chronic conditions of a growing number elderly, and
- patients expecting and demanding higher quality service, more involvement in decision making about the health services that they get and a greater emphasis on preventative care.

These are challenges that all EU member states face including the UK. It is unlikely that any member state can solve these issues without learning from each other and sharing ideas and experience.

While the social dialogue process in the hospital sector is an important element of tackling these issues, it does have certain limits and therefore there is a need for concerted action across all health sectors to tackle key employment and workforce

[8] http://www.epsu.org/a/10056

issues in health. This can be achieved by facilitating mechanisms that allow for sharing best practice and further research, and through non-legislative mechanisms such as the open method of co-ordination and joint actions. These can encourage greater cooperation on the social and employment challenges impacting on nursing staff, underpinned by existing and future EU legislation.

The EU health workforce action plan[9], consisting of a number of joint actions, is a good example of a non-legislative, member state led initiative which is focusing on sharing best practice and exchanging information on the issues facing the EU health workforce. The UK plays a key role in this work, including leading a joint action work package on horizon scanning. These joint action initiatives provide a good foundation for tackling European-wide employment and social affairs issues for nurses and other health professionals

A further specific example of how the UK could benefit from further EU action in social policy is in relation to EU health and safety legislation. The RCN strongly supports a renewed EU occupational health and safety strategy to set a framework for member states to follow after the original plan came to an end in 2012.

The original communication 'underlined the major contribution that investing in a high-quality work environment can make to fostering economic growth, boosting productivity and creating employment'[10]. The RCN would strongly support a further strategy which reinforces the EU framework by focusing on the challenges facing specific sectors and which identifies solutions to those challenges through the social dialogue mechanisms. EU social partners should play an important role in informing the strategy and developing and supporting initiatives and policies resulting from the strategic themes.

Q10 How could action in social policy be undertaken differently? For example, are there ways of improving how EU legislation is made, such as through greater adherence to the principles of subsidiarity and proportionality or the ways social partners are engaged?

The introduction of the EU social dialogue has given employer and trade union representatives the opportunity to negotiate European agreements directly with each other, which can subsequently be turned into EU legislation. It also means the social partners are consulted on any social and employment proposals the Commission is considering. This has been extended to the hospital sector where social dialogue takes place. The RCN pushed for the UK to sign up to the Social Chapter[11] and has actively contributed to social dialogue negotiations through its European alliance, the European Federation of Public Service Unions (EPSU).

One of the few areas where the social dialogue process has led to a specific

[9] http://ec.europa.eu/dgs/health_consumer/dyna/enews/enews.cfm?al_id=1247
[10] https://osha.europa.eu/en/teaser/health-and-safety-at-work-commission-opens-public-consultation-on-future-eu-policy-framework
[11] http://www.europarl.europa.eu/hearings/19951018/igc/doc70_en.htm

framework agreement has been in relation to the sharps injury directive. This is an excellent example of employers and trade unions working in partnership to create a workable legislative solution to a recognised workplace hazard which if not managed correctly, has a financial impact on the employer and the State as well as causing significant distress and life-threatening disease to staff. It is also an excellent example of how the social dialogue process can work well.

Where it works well social dialogue has the potential to deliver comprehensive solutions to a number of important social and employment issues. It also facilitates a greater understanding of the positions of each of the actors within the social dialogue process and can lead to innovative approaches as it has done for the sharps injury directive. The UK should emphasise the importance of the EU taking forward further reviews of the lessons that could be learned from where the social dialogue process has worked well, which includes within the hospital sector and to share those lessons in other social dialogue arenas and consider extending social dialogue to other health settings such as primary care. Equally consideration should be given to expanding the number of joint action between member states on issues impacting on the European health workforce.

Conclusion

In summary the RCN believes that:

- A separate social dimension to Europe is a necessary and fundamental element of the effective functioning of the European Union and is of direct benefit to the UK in its own right.

- Patients and the health workforce in the UK, including the nursing workforce, benefit from the protection provided by EU legislation in relation to health and safety legislation.

- The current balance of competencies in relation to employment and social affairs between the EU and the UK is broadly correct.

- Social dialogue in the acute health sector has led to tangible improvements in the health and safety of the health workforce. Both the social dialogue process and the wider information sharing processes (such as joint actions) on employment and social affairs issues is of benefit to the UK health workforce and should be extended.

Royal College of Nursing
January 2014