



Equality Bill

Royal College of Nursing Public Bill Committee Stage Briefing

With a membership of almost 400,000 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.

Introduction

The RCN widely welcomes the content of the Equality Bill and recognises the necessity of enshrining all nine current pieces of equality legislation into one comprehensive, streamlined Bill. The RCN is hopeful that the Bill, once in force, will advance the protection of employees and service users against discrimination across a much wider field than previous legislation has achieved. However, there remain areas of concern.

This briefing will highlight key areas of the Bill which the RCN welcomes, areas which the RCN feels may be counter productive and those which need to go further if they are to achieve real, tangible outcomes.

Part 1 – Socio-economic inequalities

Clause 1 – Public sector duty regarding socio-economic inequalities

The Bill states that a new ‘equality duty’ be placed upon public sector bodies, of which Primary Care Trusts (PCTs) and the National Health Service (NHS) are included. The duty will require public bodies to take into account discrepancies, such as health inequalities and the postcode lottery, during day-to-day work and also whilst planning and developing new healthcare strategies. This may involve, for example, targeting a geographical region which is known to have poorer healthcare outcomes. The RCN has long recognised the significance of healthcare inequalities and is pleased to see this duty being further recognised by Government and enshrined in legislation.

Whilst we welcome this clause it is vital that it is stressed to public sector healthcare providers that this should have no affect on the level of care which healthcare workers can provide and the standard of care that should be available to all sections of society.

Part 2 – Equality: key concepts

Chapter 1 – Protected characteristics

During the Government’s consultation around the Equality Bill the RCN submitted to the consultation document *A Framework for Fairness: Proposals for a Single Equality Bill for Great*

Britain. In this submission the RCN called for increased harmonisation and recognition of different aspects of discrimination such as gender reassignment, pregnancy and maternity. The Bill would appear to now to encompass this and as such the RCN welcomes this section.

Part 5 – Work

Clause 66 – Exclusion of sex discrimination provisions and Part 9 – Enforcement – Clause 125

The RCN welcomes both of these clauses to the extent that they provide a further option for women who are being discriminated against in terms of pay but have no direct peers with whom to compare themselves. The RCN agrees that there should be provision to allow Employment Tribunals to accept comparisons with hypothetical male employees, particularly given the extent of occupational segregation in the workforce.

Clause 73 – Gender pay gap information

This clause states that public bodies with over 150 employees and private sector employers of over 250 staff must publish and report on the difference in pay between men and women in their workforce. The RCN welcomes the direction taken by the Government on to the issue of the gender pay gap. *Agenda for Change (AfC)* job evaluation and pay scales, effective in the NHS, have gone a long way to rectifying pay inequalities in the NHS, and making the pay and benefits system more transparent and the NHS more accountable. However, this is not the case for healthcare staff employed in the private sector and general practice. These staff are employed in, for example, doctors' surgeries, private nursing homes and private hospitals. Here the gender pay gap remains a significant problem.

With well over a third of all nursing staff employed in the private sector the RCN is concerned that the measures set out in the Bill do not extend far enough. Approximately 50% of all private healthcare employers employ less than 250 staff, consequently, this measure will have no effect upon them, leaving the gender pay gap in these areas unchecked. The RCN is disappointed that such a high threshold was decided upon and also that it will not be enforceable for four years until 2013. The RCN feels that these measures are inadequate to fully combat the gender pay gap and should be extended to cover all employers.

Part 9 – Enforcement

Clause 118 – Remedies: general

The Bill puts in place powers for employment tribunals to not only make a judgement over an individual case, but if appropriate, to recommend further action by the employer respondent to prevent future claims of discrimination by other workers. The RCN believes this is a positive move and welcomes this clause. However, appropriate measures must also be put in place to ensure that organisations are monitored and do take on board the Employment Tribunals recommendations and implement the changes that are demanded.

Part 11 – Advancement of equality

Clause 143 – Public sector equality duty

In the RCN's submission to the Government's consultation on the Equality Bill we called for a wide set of 'protected characteristics' within the Bill to encompass all fields of potential discrimination. The RCN also called for a single public sector duty which public authorities should use as a foundation for taking action to promote equality and good actions. This duty would assist public authorities in knowing more about the outcomes which they are striving for. The duty must be expressed in plain English and communicated as widely as possible to service providers, employers

and the general public so they can see the practical advantages of it. The RCN is very pleased to see that this has been accepted by the Government.

Clause 152 – Positive action: general

Clause 153 – Positive action: recruitment and promotion

The RCN supports the use of positive action in recruitment and promotion, and recognises this measure as a necessity to ensure that workforces can become as representative as is possible. The RCN welcomes this development particularly given the significant under-representation of certain disadvantaged groups in health service management and senior positions. It is obviously important that the best candidate for each vacancy is appointed and the RCN is pleased to see enshrined in this legislation that positive action is only to be taken where two candidates are of equal merit.

Other concerns

Equality Representatives

In 2007, the RCN successfully launched its *Diversity Champions* programme at its annual Congress. Since that time many members of the *Diversity Champions* group have carried out excellent work and the RCN, alongside many other trade union bodies, would like to see their role formalised.

As such the RCN was disappointed to see that the Bill does not include legislation to form a statutory recognition of trade union Equality Representatives. The RCN believes that if the Government is serious about trying to eradicate discrimination from society and the workplace, then recognised trade union Equality Representatives are a necessity. Research carried out by the RCN in 2008 found that black and minority ethnic (BME) members placed support for formalising the role of RCN Diversity Champions into accredited Equality Representatives in their top ten priorities for the RCN.

Equality Representatives would, amongst other things, fulfil the vital role of mediator between the employee and employer in any disputes which may arise. This in turn would encourage many more individuals to come forward with cases of discrimination and harassment where previously this would have gone unreported and unnoticed. These reps would also provide an equality lens to workplace practices and raise issues related to equality and diversity, particularly with respect to seeking partnership-based solutions alongside stewards, health and safety and learning reps. They could also improve the business benefits associated with equal opportunities policies by providing a focal point for dialogue and improving decision-making.

Cost

The Government has already indicated that implementation of this legislation will come at a substantial cost to the employer whether they are a public sector employer or private sector; although this will be much larger in the private sector. It is vital to the RCN and its members that this cost has no knock-on affect to the level of patient care provided and staffing levels. The Government must guarantee that future NHS budgets will reflect any increase in costs resulting from this legislation and will not be drawn from current allocated funds.

May 2009

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