

Response to NHS Confederation consultation on defining the role of integrated care systems in workforce development

1.0. OVERVIEW

- 1.1. We welcome the opportunity to communicate our position on workforce development, planning and supply in response to your consultation. Our response focusses on our proposals for a wider legal framework which is needed in order for clarity to be provided for local bodies related to their role in workforce planning.
- 1.2. We agree with the intent of many of the workforce planning activities which you have described in relation to ICSs. However, we are concerned that these responsibilities should not be held in isolation from a wider legal framework. We do not agree that ICSs should be the 'default level for future workforce decision-making in health and care'. It is our position that responsibility for workforce decision-making should be made clear at all levels of the health and care system. This would include specific functional roles for the Secretary of State, ALBs, ICSs, commissioners and all providers of publicly funded health and care services, regardless of sector. This must be addressed through primary legislation and relevant secondary legislative measures.
- 1.3. We agree with your statement that 'there is a need for greater clarity about the roles and functions of the various national workforce organisations'. However this clarity must lead to coordinated national planning with focus on supply, recruitment, retention and remuneration, as well as 'encouraging more strategic local planning'.
- 1.4. Delivering the NHS Long Term Plan will require robust, transparent mechanisms for finance and service planning and delivering quality services, nationally and locally. Workforce planning is a core component of service design and planning.
- 1.5. However, across the health and care system and at the various levels within this system, there is currently a lack of explicit clarity on roles, responsibilities and accountabilities related to the workforce. This has resulted in fragmented and incomplete approaches and also that workforce planning is often missing from wider strategies. Without clarity, services cannot be delivered safely or effectively. Although there is a need to embed culture change towards meaningful, credible and data-driven workforce planning within the system, there is a critical and urgent need to clarify roles and responsibilities.
- 1.6. NHS England and NHS Improvement have proposed some legislative changes. This legislative change provides the ideal opportunity to also explicitly set out roles, responsibilities and accountabilities related to staffing for safe and effective care across the system. Without this, it is likely that the nursing workforce crisis – and indeed across a range of professional groups - will continue to develop without clear action to enable sufficient workforce and without recourse to hold Government and the range of national, regional and local bodies to account for the supply, recruitment, retention and remuneration required to deliver safe and effective care.

Without intervention, existing workforce gaps will continue to negatively impact upon patient safety, care and outcomes.

- 1.7. The health and care service is currently being compromised due to insufficient numbers of staff. Introducing a clear legal framework for accountability would not further compromise the service, but would instead support the system to resolve these workforce issues.
- 1.8. Any expanded powers and autonomy for national, regional and local decision-makers must be balanced with greater accountability and transparency. This must be set out within a national accountability framework for workforce, codified in legislation. A comprehensive legal framework will also address accountability for resolving national issues which cannot be resolved by sub-national structures such as Sustainability and Transformation Partnerships (STPs) and Integrated Care Systems (ICSs), or locally by commissioners or providers.
- 1.9. Workforce accountabilities within Government and across health and care system bodies must therefore be supported by a robust legal framework. This will aid the integration of responsibilities into wider duties related to finance and service planning and quality service provision; in an explicit way, rather than continuing to accept the level of risk that is inherent with the current implicit and unclear approach. Taking action in this way will also provide a mechanism for holding all parts of the system to account for delivery of defined responsibilities and functions.
- 1.10. We call for a complete legal framework, supported by additional relevant policy and funding levers, which addresses the following five aspects of workforce:
 - Clear accountability - Specific duties for Government, national bodies, commissioners and providers to make sure there are enough registered nurses and nursing support staff, and other professional groups, to meet patients' needs
 - Right numbers & skills - Decisions regarding staffing levels for safe and effective care should be based on assessment of local needs, evidence, workforce planning tools, and the professional judgement of senior clinicians
 - Workforce strategy - A credible, fully funded strategy for tackling registered nurse and nursing support staff shortages and those in other professions, to meet the whole country's health and care needs
 - Transparent planning - Quality assurance of workforce planning within the system for the right numbers and skill mix of registered nurses and nursing support staff, alongside other parts of the workforce to deliver safe and effective services
 - Education - Government enabling education of enough nursing students, as well as investing in learning and development for existing staff, to equip the nursing workforce to meet patients' needs
- 1.11. Other professional bodies are supportive of this position. We note that the Royal College of Physicians stated in their response to the Health and Social Care Select Committee inquiry on the NHS legislative proposals that there should be 'a specific duty for the Secretary of State for Health and Social Care to ensure that there is

sufficient workforce to meet the needs of the population within health and care services, accompanied by clear roles and responsibilities for NHS arms-length bodies to enable a funded workforce strategy'. We welcome this position.

- 1.12. We also note that the Royal College of Psychiatrists stated in their response to the Health and Social Care Select Committee inquiry that they “support the proposal by the Royal College of Nursing to give greater legal clarity on where responsibility lies for ensuring the NHS has the workforce it needs”. We welcome this position.
- 1.13. Other stakeholders also recognise that the current structure for managing the supply of staff is not fit for purpose. The National Audit Office¹ have described it as ‘fragmented’ and warn that the approach risks incoherence. Their report describes that this fragmentation means national bodies do not have either the information they need to make decisions, or the power to implement them. The NAO sets out that national bodies are reliant upon coordinated efforts with those who have different priorities from them; so in reality there is no coordination.

2.0. ACCOUNTABILITY FOR WORKFORCE

- 2.1. The ultimate aim in clarifying accountability for workforce is to ensure all health and care services are of high quality, and equipped to provide safe and effective care for patient safety, experience and outcomes.
- 2.2. Our members are clear that the opportunity must be taken to address the existing legal and functional ambiguity with regards to workforce which has contributed to the existing and widely recognised crisis. Taking this positive action will allow for workforce planning to be integrated within wider service planning, with the specific focus required to ensure that services can be of high quality.
- 2.3. Existing levers, including the legal powers of the Secretary of State for Health and Care, and legal duties assigned to organisations, do not currently clearly set out responsibilities for workforce strategy, planning and development which are sufficiently explicit and aligned with each of their roles and functions.
- 2.4. At every level of decision making about the health and social care workforce, from Government across through to any local provider, any determination about registered nurse and nursing support staffing must be informed by; legislation, Nursing and Midwifery Council requirements, national, regional and local policy, research evidence, professional guidance, patient numbers, complexity and acuity, the care environment and professional judgement.
- 2.5. Financial resources and expenditure must be in place to fully fund and support the delivery of workforce plans and the provision of nurse staffing for safe and effective care. These requirements should be applied to workforce specifically, and then embedded into broader decision-making on service planning at national, regional and local levels. The current approach does not identify workforce requirements proactively, but allocates resource based on what remains when other decisions have been taken.

¹ National Audit Office (2016) *Managing the supply of NHS clinical staff in England*

- 2.6. This requirement has already been identified in different forms by devolved administrations in Wales and Scotland. In Northern Ireland progress has been challenging due to a lack of Government, however the *Delivering Care* policy sets out guidance for commissioners in relation to nurse staffing. The approach taken in *Delivering Care* focuses on the role of professional judgement. This advocates an evidence-based approach in response to local need. In England, devolved and fragmented structures of the commissioning, funding and delivery of health and care services create much room for ambiguity which is reflected in the actions of national and local players across health and care.
- 2.7. All decisions regarding staffing for safe and effective care, from national bodies through to local organisations, should be based on assessment of patient and population need, up to date evidence base, workforce planning tools, and the professional judgement of senior nurses. Health and care services should be understood and promoted as a safety critical industry, and the adequate provision of staffing recognised as a critical requirement for the delivery of safe and effective models of care.

Current system – fragmentation and a lack of clarity

- 2.8. The Secretary of State for Health and Social Care currently has a broad, existing duty to promote a comprehensive health service². This may be understood to implicitly include accountability for workforce supply, but is clearly open to interpretation. There is no specific legal duty for the Secretary for State to ensure that there is sufficient workforce to meet the needs of the population within health and care services, including taking appropriate action on supply, recruitment, retention and remuneration. This duty must be explicit and specific to workforce supply, so that it cannot be deprioritised without recourse.
- 2.9. The power to issue an annual mandate to the NHS is limited to setting objectives for the current functions of NHS England. As NHS England does not have any explicit legal duties related to the workforce, they would not be mandated to undertake objectives within this area. While it may be possible, in theory, for Government to address workforce shortages via service commissioning channels, this is tenuous, open to interpretation and to date has resulted in insufficient action which has not resolved the historical boom and bust approach that has been taken to these issues which fundamentally negatively impact on patient safety, experience and outcomes. This particular ambiguity has played out consistently over time.
- 2.10. This ambiguity has also been demonstrated through the development of the recent Long Term Plan, necessitating that Government to commission a system-led national workforce group to analyse the issues, and make recommendations back to Government. While we have welcomed this action, as a means of beginning to address these fundamental issues, we consider the development of an NHS delivery plan, which is fundamentally dependent on the securing of additional funding from Treasury, to be a demonstration that the current legal framework for accountability is not effective.

² Health and Social Care Act 2012, Part 1, Section 1.

- 2.11. The development of the Long Term Plan provides an example of the ambiguity and conflicting expectations playing out in practice. In her speech in June 2018, the Prime Minister said “Growing demand and increasing complexity have led to a shortfall in staff. So, our ten-year plan for the NHS must include a comprehensive plan for its workforce to ensure we have the right staff, in the right settings, and with the right skills to deliver world class care”. The Secretary of State for Health and Social Care also committed that the NHS Long Term Plan would address workforce supply issues. On publication, NHS England acknowledged the significant workforce supply issues, but confirmed that these requirements are additional to the service planning aligned with the existing financial settlement for the NHS. There is no guarantee that these services can be delivered safely or effectively to meet the growing health and care needs, and little accountability or recourse available.
- 2.12. A lack of accountability and responsibility for sufficient workforce has also led to an incomplete understanding articulation of credible levels of funding needed for supply. This means it is not considered appropriately in budgetary decisions. Workforce requirements for the long term must be properly assessed and funding requirements properly considered. These decisions should be based on evidence, demand and need. A failure to do this should not then result in attempts at trade-offs from within previously agreed health and care budgets, which we believe to be happening now as a result of workforce planning run separately from national health and care service planning. Investment in health and care workforce should be recognised and understood as fundamental to the delivery of service, with requirements baked in from the outset. Going forwards, the legal framework needs to support the system in securing adequate funding to deliver the comprehensive health and care service including robustly assessed workforce requirements.
- 2.13. Without clear national leadership, there has not been a credible conversation with the public about the need for additional investment in the health and care system in order to provide sufficient numbers of staff to deliver services safely and effectively. There are opportunities for this to be a positive conversation and opportunity; investing in the health and care workforce is key to keeping the population well and unlocking national productivity. This leads to a good return on investment.
- 2.14. There is a plethora of evidence linking staffing levels with service quality, safety and outcomes. Therefore, investment in the workforce is key to delivering quality services, and without it there are costs which arise. The World Bank³ sets this out clearly, stating that delivering care which is not of sufficient quality contributes to both the global disease burden and leads to unmet health needs. They identify that a lack of investment ‘exerts a substantial economic impact’ both in terms of lost productivity and in terms of correcting preventable complications of care and harm. It would be appropriate and reasonable for this to be the starting position of any decisions being considered by Government.

³ The World Bank, the World Health Organisation and the OECD (2019) *Delivering quality health services: a global imperative for universal health coverage*, p. 17
[\[http://documents.worldbank.org/curated/en/482771530290792652/pdf/127816-REVISED-quality-joint-publication-July2018-Complete-vignettes-ebook-L.pdf\]](http://documents.worldbank.org/curated/en/482771530290792652/pdf/127816-REVISED-quality-joint-publication-July2018-Complete-vignettes-ebook-L.pdf)

- 2.15. Recent court cases have also highlighted the breadth and lack of specificity in regard to the Secretary of State's duties related to the health service. A prominent example of the need for greater clarity regarding the Minister's responsibilities was the legal dispute between junior doctors in England and the Secretary of State regarding the introduction of new NHS contractual arrangements in 2016. In relation to the Secretary of State's duty to 'promote a comprehensive health service' (NHS Act 2006) the Judicial ruling stated that "it is difficult to contemplate a broader target duty".
- 2.16. Furthermore, this ruling highlighted that the Secretary of State's duty to protect the public (NHS Act 2006) is framed in terms of a broad objective of "protecting public health" and is a duty only to take such of the "steps" which the Secretary of State considered appropriate, thereby leaving "considerable leeway to the Minister as to ways and means."
- 2.17. This conclusion clearly supports the position that a lack of specific duties at this level gives too much room for interpretation in prioritising, or de-prioritising, workforce requirements.
- 2.18. Health Education England (HEE) is often referenced as the national body within the system responsible for workforce. HEE has some legal responsibilities, but they are not currently supported through sufficient legal powers to take action or invest to increase the national supply of registered nurses and nursing support staff, or other professional groups in order to meet the needs of the population within health and care services. HEE is therefore, unfortunately, limited to developing solutions within available resource which is clearly insufficient to meet need.
- 2.19. The only explicit legal reference to the requirement for sufficient numbers of staff is contained within the Health and Social Care Act Regulations, where the deployment of sufficient "suitably qualified, competent, skilled and experienced persons" is listed as a requirement condition for providers to fulfil their regulated activities duties. This duty is also set out within the NHS Standard Contract, meaning that the mechanism for holding providers to account is through contracts, rather than through a legal framework. It is our position that these duties (and others as described below) must be set out in law.
- 2.20. This issue is further complicated by the fact that providers have no power to increase the national workforce supply. Many are struggling to secure supply and recruit, remunerate and retain staff, without a credible national strategy in place which fully addresses these aspects. While local decision-makers may be held to account for local decisions on staffing for the provision of safe and effective services, they are unable to resolve national workforce shortages nor could it credibly be considered their responsibility.
- 2.21. In practice, the lack of clarity in terms of national accountability by Government and agencies means that workforce policy and funding decisions have become reactive, rather than proactive, and solutions are limited and piecemeal. Rather than the establishment of safe and effective models of care, followed by funding, the financial envelope is determining how the health and care transformation is translated into

action. This has led to a situation in which the system currently defaults to discussing how to 'fix the workforce gap' (100,000 vacant posts including 40,000 nurses). However, the overall size of the workforce is not based on an assessment of changing needs, and as such there can be no assurance that filling this gap would even be sufficient.

- 2.22. This has come about in part due to the lack of clear accountability for doing this. The crisis would not have come about to this extent if we had been able to hold individuals and organisations to account for clear responsibilities, and if everyone's roles were clear in relationship to supply, recruitment, retention and remuneration.

Introducing additional duties and accountability for workforce

- 2.23. We call for organisations to be granted the specific duties and legal powers to deliver relevant workforce contributions aligned with their role and function. Within Government, the Secretary of State for Health and Social Care should be explicitly accountable for the provision of workforce. Each player throughout the health and care system then needs a clearly defined role commensurate to the level and complexity of their responsibilities, so that they can be clear about their functional role in delivering sufficient registered nurses and nursing support staff, and other professions to meet population need, and ensuring those registered nurses and nursing support staff, and other professional groups are in the right place and the right time to deliver safe and effective care.

Government duties:

- 2.24. The Secretary of State for Health and Social Care should be accountable to Parliament for ensuring an adequate supply of staff to provide safe and effective care, with regard for the wider workforce needs across all publicly funded and commissioned health and social care. This duty should include accountability for ensuring a fully costed and funded national workforce strategy, based on the assessed needs of the population. This duty would help to prevent further workforce supply and development problems now and in the future.

Duties for NHS arms-length bodies:

- 2.25. National bodies such as NHS England, NHS Improvement and Health Education England (HEE), should hold clearly defined powers and duties related to the workforce, specific to their wider service and finance planning and delivery roles and responsibilities. For NHS England and NHS Improvement, this should include specific duties for workforce planning, and supporting the system to implement plans. For HEE, this should include a duty and specific functional powers to enable quality of education and training, supported by funding to deliver the level of provision set out by the Secretary of State for Health and Social Care and within a national workforce strategy.

Responsibilities for Integrated Care Systems:

- 2.26. Integrated Care Systems (ICS) provide a good opportunity for supporting and coordinating integrated service planning and should include workforce planning. They are well placed to understand local population need, understand the relevant workforce requirements, and communicate this to national bodies. This needs to be undertaken with sufficient levels of transparency and accountability.

Duties for Commissioners (CCGs and Local Authorities):

- 2.27. Commissioners should have a legal duty to understand local needs and plan services and workforce to meet this need. They should have responsibilities for delivering clear objectives as part of national workforce strategy. They should be accountable for enabling providers to deliver safe and effective services, and for escalating concerns about workforce and data gaps into the national system. We believe it necessary for these duties to be in place for both CCGs and Local Authorities to ensure that the health and care workforce receives the same level of priority, regardless of the commissioning arrangements. Without this equality between commissioners, activities taken at ICS level are likely to be inherently geared towards NHS services.

Provider duties:

- 2.28. Providers, who are also employers, of publicly funded health and social care services (regardless of sector) should held accountable for demonstrating their corporate accountability for decisions on workforce planning to deliver safe and effective services, underpinned by evidence. These decisions should ensure that vacant posts are recruited to, and that shifts are staffed according to patient need and acuity. Providers should be required to regularly publicly report on staffing levels and skill mix for the range of services they provide. Alongside this, there should be mechanisms for transparency within their decision-making to allow for robust scrutiny.

CONCLUSION

- 2.29. If all of these legal responsibilities were in place, within a complete legal framework, we believe that it is more likely that the health and care system would be much better equipped to work together to plan how the workforce can be grown and developed to deliver a comprehensive, quality care service to meet the needs of the population. Without these changes, the workforce crisis is likely to continue, with patients facing greater risk to their safety, experiences and outcomes.
- 2.30. It is clear that the ambitions of the Long Term Plan can be supported to be realised in part by resolving now who must be accountable and responsible for the actions we have described. It is critically important that Government and each player in the health and care system is fully clear on their workforce-related duties and

accountability so that all can be confident about meeting the health and care needs of the population, now and in the future.

- 2.31. All of these positions are directly drawn from the RCN's UK principles for legislation for staffing for safe and effective care, published in *Staffing for Safe and Effective Care: Nursing on the Brink*, published in May 2018⁴.

About the Royal College of Nursing

With a membership of around 435,000 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.

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⁴ Royal College of Nursing (2018) *Nursing on the Brink*.