Royal College of Nursing

Royal College of Nursing response to NHS England consultation on the draft Code of governance for NHS provider trusts

With a membership of close to 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 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.

RCN responses to consultation questions

1. Trust governance and accountability within Integrated Care Systems

1.1. As set out in the RCN's Nursing Workforce Standards,[i] the nursing workforce is the most important factor in the provision of safe, effective, high quality compassionate care in a timely, cost-effective, and sustainable manner. The RCN view is that any national code setting out a framework for governance for the NHS should be used to ensure that clinical leaders are accountable for the delivery of safe and effective care within their trusts.

1.2. The RCN recognises that the draft Code of governance (hereon referred to as the Code) for NHS provider trusts, in paragraph 2.3, sets out the requirement for the boards' annual reports to explain the board's activities and any action taken, and the trust's approach to investing in, rewarding, and promoting the wellbeing of its workforce. In paragraph 1.6 the code also refers to the need for the board of directors to ensure that workforce policies and practices are consistent with the trust's values and support its long-term sustainability. The RCN believes that these two paragraphs in the Code could be strengthened, to include a greater explicit focus on the collective role of any boards in ensuring its workforce is equipped to provide staffing for safe and effective care. The RCN's Nursing Workforce Standards set out what must happen within workplaces to ensure the delivery of safe and effective patient care,[ii] and the Code should be strengthened through cross-referencing and inclusion of the components of the RCN Nursing Workforce Standards. Clinical leaders hold an important role in workforce planning, and trust boards hold ultimate responsibility for organisations providing health and care services.[iii]

1.3. Wellbeing of the health and care workforce is vital, including for workforce retention, so a focus on promoting this is important, particularly at a time when health and care services are facing a nursing recruitment and retention crisis. However, the RCN does not believe that paragraph 2.3 of the Code provides enough detail on actionable measures the board can put in place to promote and ensure retention of its workforce. To deliver safe and effective care, services must have the right numbers of people, with the right skills, in the right place and board assurance processes should reflect this requirement.

Royal College of Nursing

1.4. The RCN recommends that the Code is revised to include clear board accountability for ensuring the trust is providing safe and effective care, which adequately meets the needs of the trust's user population whilst protecting the wellbeing of the workforce. The Board has a responsibility to ensure that trusts provide a safe environment for staff to operate effectively, this includes mentally, physically, and psychologically, in line with the Health and Safety at Work Act 1974.[iv] There is also a need for clarity within the Code about the Board's responsibility to protect staff from third-party discrimination.

1.5. Ensuring that registered nurse staffing levels are sustainable must be a priority for all boards, as inadequate nurse staffing levels compromise the safety and quality of care that patients receive.[v] Executive nurse leaders hold a transformational role and must be able to use their influence on at board level to guide nursing priorities for their organisation – including staffing for safe and effective care.[vi]

2. Principles and provisions in Section C: Composition, succession and evaluation

2.1. The RCN believes that there should be a strong focus on equality, diversity and inclusion (EDI) across all NHS trust governance processes and ways of working. The RCN supports the principles set out in the Code that encourage appointments to boards to promote diversity. However, the RCN is concerned about the limited references to EDI in the Code overall, and particularly the lack of reference to relevant equality legislation, and Boards' responsibilities to deliver on the Public Sector Equality Duties required by the Equality Act 2010,[vii] or the Equality Delivery System III (EDSIII)[viii] or the Workforce Race Equality Standards around inclusive leadership. All of these aspects must underpin NHS provider trust governance. As the Messenger Review into Health and Social Care Leadership recently highlighted, there needs to be a "step-change in the way the principles of EDI are embedded as the personal responsibility of every leader and every member of staff."[ix] This too should be clearly reflected within the Code.

2.2. The RCN believes that alongside a focus on increasing diversity, the Code should also include a stronger focus on promoting and fostering inclusion within governance structures of provider trusts, with a clear focus on anti-discrimination and anti-racism, building on work already underway in NHS England & Improvement (NHSE/I).

2.3. The nursing workforce is diverse,[x] and cares for an increasingly diverse population. Yet nursing remains a highly gendered profession, with associated biases in the workplace – approximately 90% of the nursing workforce is female, but not enough leadership positions in health are held by nursing staff or women. Furthermore, health and care services remain woefully unrepresentative, when viewed through the lens of ethnic minority representation at senior levels within organisations. It is deeply concerning that across the 231 NHS trusts in England, there were only eight ethnic minority chief

nurses comprising 3.5% of the total number of senior nursing leaders.[xi] Challenging and changing this must be central to a structured and long-term programme of activity designed to deliver systemic change which is embedded within governance structures. There should be a focus within and across NHS provider trusts, including at board level, on improving the rate of increase in the progression of ethnic minority nursing staff throughout leadership levels, underpinned by comprehensive and continuous equality impact assessments to reduce risk of unfair discrimination.

2.4. The RCN is concerned that NHS Trusts are currently not making the best use of "Positive Action Programmes" which is permitted by the Equality Act 2010. This is different to "Positive Discrimination" which is unlawful under the same act. For NHS England to move into a space of anti-racism and anti-discrimination, the RCN would hope to see NHSE/I do more in working to ensure that employers understand the difference between positive action programmes and positive discrimination.

2.5. The RCN is also concerned that not enough opportunities are being created for ethnically diverse people employed in lower Agenda for Change (AfC) banded roles to be actively supported to develop into, and attain, senior leadership positions. Staff from ethnic minority backgrounds must have the same access as their White peers to projects, programmes of work, secondment opportunities or interim roles, to improve their visibility within organisations, develop their leadership skills and expand their professional portfolios. Initiatives to improve the diversity of people in leadership positions must be holistic and consider opportunities throughout the careers of all nursing staff.

2.6. The RCN is particularly concerned that despite numerous initiatives and attempts to support the NHS to be more inclusive of people from ethnic minorities, there remains very limited accountability for those who might fail to achieve this. The lack of explicit accountability at both UK Government, national and regional levels means there is no joined-up approach to addressing systemic issues nor are there consequences for providers who fail to act.

Nursing leadership at board level

2.7. Ensuring that there is strong registered nurse leadership in place across health and care structures and organisations is vital: registered nurse expertise is critical to ensuring decisions are made in the best interests of patients, and robust nursing leadership at board level is vital for ensuring effective and appropriate oversight of quality and safety. Registered nurses make up 49.3% of all professionally qualified clinical staff in the NHS in England,[xii] and are the largest body of safety critical professionals practising in every health and care setting. In representative volume terms the case is clear, but just as importantly, if not more, registered nurses lead, innovate and deliver the largest proportion of care within the system, and their leadership brings critical expertise into any Board. Their broad and deep insight into the patient journey and client needs

Royal College of Nursing

must inform commissioning and decision-making processes. Lastly, in a complex, ever-changing healthcare system, it is vital to have senior and experienced nurse leaders on Boards, holding equity and parity with senior medical leaders. This makes it even more important to have strong and consistent nursing leadership representation across all NHS trusts.

2.8. Throughout the passage of the Health and Care Bill, the RCN called for the Bill to include an executive Director of Nursing (registered nurse) role in the minimum core membership of Integrated Care Boards (ICBs). This would be aligned with the recommended minimum requirements for ICB membership set out in NHS England and NHS Improvement's design framework for Integrated Care Systems,[xiii] which includes a Director of Nursing to be included in ICB membership. It also would have maintained, in statutory requirements, the precedent that was set within the statutory regulations of the Health and Social Care Act (2012) which mandated that nurses would be part of the Clinical Commissioning Group (CCG) governing body.[xiv]

2.9. The RCN is concerned that the Health and Care Act 2022 does not include this requirement and continues to advocate for registered nurse representation on ICBs. It is vital that nursing leadership at NHS trust level has a clear line of accountability to the ICBs with registered nurse leadership represented at all levels of the system and across all bodies.

2.10. In some health and care organisations, the Director of Nursing can lack full budget-holding power and operational authority, facing pressure within corporate Board decision-making to act based on finance, as opposed to what provides for patient safety. The RCN position is that executive nurse directors within NHS trust board governance structures are accountable for the provision of nursing expertise and advice within strategic and operational decision-making; corporate health and care Board governance structures are therefore accountable for acting – or not - on that advice.[xv]

2.11. Despite having accountability for safe and effective nursing care in services, registered nurse leaders are all too often dealing with significant system issues, including shortages and budget constraints, without having the right tools and resources to address the challenges they face. This context, and indeed the consequences and outcomes executive registered nurse leaders are often faced with, presents incredibly challenging circumstances to nursing staff in less senior roles who observe and work within these conditions. It is vital that executive registered nurse leaders are equipped with the authority and resources to deliver, as well as the sharing of Board level accountability in transparent and meaningful ways. The Code provides an opportunity to clarify the scope of accountability of board members, and to ensure that governance arrangements support board members to have the appropriate level of authority and resources to fulfil their responsibilities.

Royal College of Nursing

2.12. In paragraph 1.2 of Section C of the Code it states that "*Consideration should be given to the length of service of the board of directors as a whole and membership regularly refreshed.*" The RCN notes that further detail about how this would work in practice and what framework and/or criteria would be used to underpin these decisions is needed. This is important to avoid any potential for the removal of board members for unfair or unethical reasons, for example for those perceived to be too challenging.

2.13. Paragraph 4.5 of Section C of the Code states that "*There should be a formal and rigorous annual evaluation of the performance of the board of directors, its committees, the chair and individual directors. For NHS foundation trusts, the council of governors should take the lead on agreeing a process for the evaluation of the chair and non-executive directors.*" The RCN suggests that this process could be broadened, to support boards in evaluation as to how effectively they also consider strategic factors such as system pressures and workforce shortages within their governance processes.

3. Ensuring effective working relationships between trust boards and the wider system architecture, including Integrated Care Boards

3.1. There must be close links between NHS trusts and the wider partners within the ICSs, including specific alignment between NHS providers and the local authorities' public health teams, to establish shared understanding, usage and action on data on local population needs and issues.

3.2. Registered nurse leadership is vital across all levels of the health and care system, including at trust board and ICB level. Furthermore, it is important that the diverse nursing workforce working across the full range of health and care services is fully represented at executive decision-making levels. Registered nurse leaders must be in place across the system influencing and informing senior decision-making processes, strategy, and direction in response to nursing workforce needs.

For further information, please contact:
Rosalind Stainton, RCN Policy Adviser, rosalind.stainton@rcn.org.uk

---

[i] RCN (2021) Nursing Workforce Standards RCN Nursing Workforce Standards, 2021
[ii] Ibid

Royal College of Nursing

[iii] Ibid
[iv] Health and Safety at Work etc. Act 1974 (legislation.gov.uk)
[v] RCN: 10 Unsustainable Pressures on the Health and Care System in England
[vi] RCN (2021) Nursing Workforce Standards RCN Nursing Workforce Standards, 2021
[vii] Equality Act 2010 (legislation.gov.uk)
[viii] NHS England » Equality Delivery System
[ix] DHSC (2022) Independent report Leadership for a collaborative and inclusive future Leadership for a collaborative and inclusive future - GOV.UK (www.gov.uk) Published 8 June 2022
[x] NMC (2022) The NMC Register 1 April 2021 – 31 March 2022 https://www.nmc.org.uk/globalassets/sitedocuments/data-reports/march-2022/nmc-register-march-2022.pdf
[xi] Just 3.5% of NHS trust chief nurses are from a BME background, data reveals - Healthcare Leader Healthcare Leader (healthcareleadernews.com)
[xii] NHS Digital NHS Workforce Statistics - October 2021 (Including selected provisional statistics for November 2021) - NHS Digital x
[xiii] NHS England and NHS Improvement (2021) Integrated Care Systems: design framework Version 1, June 2021 Report template - NHSI website (england.nhs.uk)
[xiv] NHS Commissioning Board (2012) 'Clinical commissioning group governing body members: Role outlines, attributes and skills' October 2012 Clinical member (GP or other healthcare professional from a constituent practice) (england.nhs.uk)
[xv] RCN (2021) Nursing Workforce Standards RCN Nursing Workforce Standards, 2021