Written evidence submitted by the Royal College of Nursing (MHB0087)

1. About the Royal College of Nursing:

1.1. 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 body and trade union of nursing staff in the world. RCN members work in a variety of hospital and community settings across health and social care. 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.

2. Introduction

2.1. The RCN broadly welcomes the publication of the Draft Mental Health Bill. As the main professional group implementing and delivering care under the Mental Health Act. Alongside patients and service users', it is vital that the voice of nursing staff is heard throughout any legislative changes to the existing Act.

2.2. As set out in our response to the Department for Health and Social Care's White Paper on Reforming the Mental Health Act, putting patients at the centre of decisions about their own care, promoting choice, equality and personal-recovery must be applied to all healthcare, social care and forensic settings[1].

2.3. Our response to the Joint Committee has been informed by our previous engagement work with our members on our White Paper submission[2], alongside an engagement session held with members in August 2022 and collaboration from a range of RCN staff who have direct experience of delivering mental health services to patients.

2.4. Following the announcement of the new Prime Minister in September 2022 and subsequent Ministerial changes at DHSC, we strongly encourage Ministers to proceed with legislative proposals to reform the Mental Health Act and deliver the UK Government's 2017 and 2019 manifesto commitments[3].

---

[1] RCN (2021), Consultation response: Reforming the Mental Health Act: https://www.rcn.org.uk/About-us/Our-Influencing-work/Policy-briefings/cpc-009-21

[2] Ibid

[3] Conservative Party (2017): Conservative Party Manifesto 2017:

2.5. The RCN has answered the questions listed by the Joint Committee which best reflect the expertise of our members and the role of nursing within mental health services, and we look forward to engaging with Parliamentarians as part of this important inquiry.

3. **Does the draft Bill strike the right balance between increasing patient autonomy and ensuring the safety of patients and others? How is that balance likely to be applied in practice?**

3.1. Any new mental health legislation faces an inherent tension between patient safety and patient autonomy. The provisions in this draft Bill shift the balance toward patient independence, which is a positive change.

3.2. The draft Bill strengthens the statutory weight of patient rights concerning care planning and refusal of treatment. We support the criteria for detention being a last resort when all other options have been considered.

3.3. This draft Bill contains provisions that will ensure that patients have more control over their care and treatment. In most cases, clinicians can only administer compulsory treatment if there is a solid reason to do so. This change will shift the balance of autonomy toward the patient and provide more opportunities for co-production between the individual and the clinicians involved in their care. Our view is that this will be beneficial for patient outcomes.

3.4. The provisions in clause 3 relate to the level of risk that would lead to a detention. We support this direction and have confidence that this is within the principle of 'least restriction'. In addition, clinicians will also now have a test relating to the 'nature, degree, and likelihood of the harm, which will further aid decision-making about detention. This approach should l reduce unnecessary detentions, putting more weight on individual autonomy and choice.

4. **How far does the draft Bill deliver on the principles set out in the 2018 Independent Review? Does it reflect developments since? Is the Government right not to include the principles in the draft Bill?**

---

https://ucrel.lancs.ac.uk/wmatrix/ukmanifestos2017/localpdf/Conservatives.pdf

4.1. While we are supportive of the principles, and recognise the importance of accountability against the principles, it is the RCN's view this level of detail is better suited in statutory guidance and not primary legislation. This is because, any such values-based principals would require extensive conceptualisation to be effectively understood, regulated and legally challenged or defended in law. The RCN supports shifting towards a statutory right to a care and treatment plan. Mental health nurses report that individuals can often lose hope when their route to discharge is unclear, so the inclusion of a road map in their care plan is positive.

4.2. Research from Mind demonstrates that individuals with mental health conditions have been adversely affected by the pandemic[4]. This includes increased severity of conditions and negative coping mechanisms. The Government should act quickly to pass this Bill into law, to ensure that there is no further deterioration in the nation's mental health.

4.3. The RCN takes the view that decisions about the health and care service should be based on a robust assessment of population needs, now and in the future. This will allow decision-makers to determine the appropriate levels of provision, staffing and funding to prevent needs from being left unmet.

4.4. We are pleased to see the replacement of the Nearest Relative system with the Nominated Person system. This is another element of reform which will give individuals more autonomy over their care. The expansion of the role is also positive, with nominated persons being consulted about care plans, transfers and extensions of detention. We agree that these powers should be limited in relation to Part 3 patients. However, although we recognise this is a welcomed change, precautions need to be taken to ensure that nominated persons for young people and vulnerable adults do not inadvertently put them at an increased risk from perpetrators. Safeguarding is everyone's business and those applying the legislation must have the authority to challenge or question situations where the nominated person poses a potential risk of criminality or abuse[5].

[4] Mind (2021) Coronavirus: the consequences for mental health: the-consequences-of-coronavirus-for-mental-health-final-report.pdf (mind.org.uk)

[5] Safeguarding | Clinical | Royal College of Nursing (rcn.org.uk)

4.5. The RCN is supportive of provisions in the draft Bill that shortens the period a patient may be kept in detention for treatment. We agree with the draft bill's proposed increase of occurrence for the review and assessment of patients detained under Section 3.

4.6. We support the intention to add greater scrutiny to decisions made about someone's care. This will be accompanied by expanded access to independent tribunals. We are confident that this will lead to fairer decisions being made.

4.7. The RCN is supportive in principle of proposals to increase the frequency of referral to tribunals, however, adequate nursing workforce will be required to attend to the increased rate of tribunal occurrence. Given workforce shortages, nursing staff may be unable to attend tribunals. Increased frequency of tribunals many also effect the clinical care of other patients, if the nurse is absent and adequate cover is unavailable.

4.8. The RCN is supportive in principle of the statutory 28-day limit within which patients must be transferred from prison to hospital for treatment. We recognise that this is to ensure that there are no delays in accessing treatment. In addition, we note that the revised Bill promotes and facilitates multi-agency working throughout the 28-day period. However, we have concerns about the practical application of this limit. One of the reasons that there are delays in transfers presently is due to increased demand and workforce shortages in mental health services. Unless there is further investment in mental health service capacity and an expanded workforce, we believe these delays will continue. There is an 'exceptional circumstances' clause outlined in the Bill, which can mean that this 28-day timeframe can be adjusted, meaning this may be used inappropriately where beds and staffing to facilitate the transfer is unavailable.

5. **To what extent will the draft Bill reduce inequalities in people's experiences of the Mental Health Act, especially those experienced by ethnic minority communities and in particular of Black African and Caribbean heritage? What more could it do?**

5.1. There are very concerning statistics regarding specific communities. For example, Black people are four times more likely to be detained under the MHA and twice as

likely to be arrested under Section 136. Black people are put on Community Treatment Orders (CTO) eight times more frequently than White people[6].

5.2. The overuse of restrictive interventions for some ethnic minority populations, specifically Black men, has remained unaddressed in the legislation. Services are not seen as accessible to all communities. Many Black men find their first interaction with services via the police during a crisis[7].

5.3. Culturally sensitive care is necessary when caring for individuals from diverse backgrounds with a range of traditions, languages, faiths and cultural norms around mental wellness and ill health. It is important to avoid the 'one size fits all' approach. New and evolving approaches to transcultural care must be adopted in the code of practice to meet the varying needs of individuals from culturally diverse backgrounds.

5.4. In addressing the disproportionate use of the MHA on certain ethnic minority populations, the legislation must set out the need for mandatory training for all staff working under the MHA. It is imperative that staff receive high-quality, evidence-based training on human rights and equalities issues in the context of the MHA. Training must include the impact of systemic, institutional and interpersonal forms of racism and discrimination. Training must also incorporate how to demonstrably identify and tackle all forms of bias that impact on the delivery of services, as well as the outcomes and experiences of patients and carers. Monitoring of this training should be included in Care Quality Commission inspection guidance under regulations 18(2)(a)23 and 10(2)(c)24.

5.5. People of ethnic minority groups are significantly overrepresented in terms of the number of people detained under the MHA, and yet underrepresented within the statutory MHA roles (i.e. Approved Mental Health Professionals and Multi-Professional Approved (AC) and Responsible Clinician (RC)). More must be done to develop a clear and flexible career pathway/programme for nurse AC/RC. It is imperative that the workforce is representative at every level and layer of the people we care for, which will help to turn the tide in terms of organisational

[6] Mind (2019) Discrimination in mental health services: https://www.mind.org.uk/news-campaigns/legal-news/legal-newsletter-june-2019/discrimination-in-mental-health-services/

[7] Centre for Mental Health (2020), Racial disparity in mental health: challenging false narratives: https://www.centreformentalhealth.org.uk/racial-disparity-mental-health-challenging-false-narratives

culture. This representation must also be extended to the new mental health advocacy roles.

5.6. There should be a statutory requirement for all mental health services to report on their duties as set out in the Public Sector Equality Duty, linked to objectives reflecting the Patient and Carer Race Equality Framework.

5.7. While we do not expect the Act itself to detail specific inequality-reducing measures, we expect the Government to issue statutory guidance to all providers. This guidance must be applicable in all health and social care settings, with staff provided with the necessary training. To address the racial inequalities that are borne out under the existing MHA, all staff members should also receive mandatory, evidence-based training on human rights and equalities issues.

5.8. There is widespread evidence that CTOs are resource intensive and do not deliver on their intended effect of reducing admission and preventing relapse, rather they are applied in a discriminatory way (with Black people far more likely to be recipients of CTOs than White people). The RCN has for this reason, repeatedly recommended the abolition of CTOs. The Bill has kept CTOs in place with changes intended to improve the equity of their application.

5.9. The 2006 review of mental health nursing called for the profession to be culturally and ethnically representative of local populations. Despite the increase in diversity of the mental health nursing workforce the makeup of postholders in leadership roles across mental health services is less diverse. . Although more applicable to policy and implementation, our members expressed strong support for the Bill to support inclusive clinical leadership pathways for qualified professionals from ethnic minority communities.

6. **What are your views on the changes to how the Act applies to autistic people and those with learning disabilities?**

6.1. The RCN is concerned that the Mental Health Act is being used to treat individuals with autism and learning disabilities due to a lack of appropriate alternative services. While we are supportive of the direction in the draft Bill, we have concerns about the provision of community services and the nursing staff required to deliver them. Evidence shows that secure units are often faced with shortages of learning

disability nurses. In some situations, they are replaced by mental health nurses who have different skillsets[8].

6.2. The number of learning disability nurses on the Nursing and Midwifery Council (NMC) register in England has been declining in recent years. There are currently 13,203 learning disability nurses on the register, a decline of 2% (-317) in the last year alone[9]. Whilst the register data gives an indication of the potential workforce in this field, not all of those on the register will currently be working in nursing, or within the field they are registered under. Further to this, data on where learning disability nurses are working is limited, particularly outside of the NHS. The latest workforce statistics published by NHS Digital show that there are currently 3,037 full time equivalent (FTE) learning disability nurses working in the NHS in England. This number has declined over the last year (-3%) and most significantly since the workforce publication began (-45% since 2009)[10]. NHS Digital experimental statistics on the independent healthcare provider workforce[11] and workforce estimates from Skills for Care[12] are the only data sources for the workforce outside of the NHS, though both datasets have many caveats, mainly that they do not cover the whole of the workforce in these sectors, where workforce data reporting is not mandatory. In the absence of robust system data, these sources give an indication of the learning disability nurse workforce in independent healthcare providers and adult social care in England, reporting that there are 75 and 1,100 learning disability nurses in these sectors respectively.

6.3. Diagnosing mental illness in people with learning disabilities is also challenging. Between 25% and 40% of people with learning disabilities have a co-existing mental illness[13]. Appropriate community provision of services and nurses required to

---

[8] Healthcare Safety Investigation Branch (2022): Medicine omissions in learning disability secure units: https://www.hsib.org.uk/investigations-and-reports/medicine-omissions-in-learning-disability-secure-units/

[9] Nursing & Midwifery Council (2022): Annual data report: https://www.nmc.org.uk/about-us/reports-and-accounts/registration-statistics/

[10] NHS Digital (2022) NHS Workforce Statistics – May 2022: https://digital.nhs.uk/data-and-information/publications/statistical/nhs-workforce-statistics

[11] NHS Digital (2022) Independent Healthcare Provider Workforce Statistics – March 2022 https://digital.nhs.uk/data-and-information/publications/statistical/independent-healthcare-provider-workforce-statistics

[12] Skills for Care (2021) Registered nurses in adult social care https://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/publications/Topics/Nurses-in-social-care.aspx

[13] Foundation for People With Learning Disabilities (2022): Learning disability statistics: mental health problems: https://www.learningdisabilities.org.uk/learning-disabilities/help-information/learning-disability-

deliver them are essential in identifying individuals who need mental health support. However, Learning Disability Intensive Support Teams are not available in every area and most do not have 24/7 availability.

6.4. Adult social care is already over-stretched and under-funded, leaving needs unmet. The nursing workforce in social care has dropped significantly over the last 10 years. Workforce estimates from Skills for Care report that in 2021/22 there are 32,000 registered nurse jobs in adult social care in England, a decrease of 2,000 (-6%) jobs in the last year, and of 19,000 (-37%) since 2012/13[14]. Further, the vacancy rates[15] and turnover rates[16] of registered nurses are the highest of any staff group, currently at 15% and 38% respectively. Without additional funding to expand capacity and workforce in social care, there is a risk that the support people with learning disabilities need will not be available. This may mean that, despite the intentions of this draft Bill, individuals with learning disabilities will continue to be treated in hospital settings.

6.5. We urge the Government to allocate significant additional funding to support the implementation of this new mental health legislation. This must be based upon a robust assessment of population needs and include additional funding for expansion of the mental health, learning disability and social care nursing workforce.

7. **What do you think the impact of the proposals will be on the workforce within community mental health services and multidisciplinary working practices both in inpatient and community services?**

7.1. Community mental health services have been significantly underfunded for decades. There is patchy provision and gaps in the service. This means that people may not be able to access the care and support they need. We have concerns that

---

statistics-/187699

[14] Skills for Care (2021) Registered nurses in adult social care https://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/publications/Topics/Nurses-in-social-care.aspx

[15] Skills for Care (2022): Vacancy information – monthly tracking: https://www.skillsforcare.org.uk/adult-social-care-workforce-data/Workforce-intelligence/publications/Topics/COVID-19/Vacancy-information-monthly-tracking.aspx

[16] Skills for Care (2021): The state of the adult social care sector and workforce in England: https://www.skillsforcare.org.uk/Adult-Social-Care-Workforce-Data/Workforce-intelligence/publications/national-information/The-state-of-the-adult-social-care-sector-and-workforce-in-England.aspx

additional focus and direction towards community services may not be matched by availability of service provision or staff.

7.2. NHS Digital data provides an indication of the trends within the community nursing workforce. The number of community mental health nurses has increased by 2% (+418) in the last year, and by 29% since 2009 when the workforce publication began. However, this dataset also shows particularly concerning decreases in other areas of community nursing. Community learning disability nurses have increased slightly by 1% (+18) in the last year, however, have decreased by 29% (-754) since 2009 when the workforce publication began[17]. This is against a backdrop of severe pressures on the system. NHS Providers carried out a survey in 2018 of all NHS trusts that provide a substantial amount of community services[18]. They found that nearly six in ten trusts, who responded, said their local community service provision were not able to meet the current demand for adult community services. Whilst a third of trusts also reported inability to meet current demand for children/young people's services provided by health visitors and school nursing, and a similar proportion of trusts unable to meet the demand for specialist long-term condition nursing (relating to heart failure, diabetes, cancer, etc.).

7.3. For community services that support autistic people and people with a learning disability, there will be a need for additional training in recognising and diagnosing mental health needs. There must be a recognition of the training and funding requirements in community services, including social care, in particular to support in managing high-risk situations where there is currently a limited legal framework to support an intervention.

8. **What changes and additional support do you think will be needed to help professionals and the third sector implement the proposals effectively? Will additional staffing and resources be required?**

8.1. This draft Bill outlines significant changes which will necessitate additional time and training for staff. Therefore, Government should ensure that services have

[17] NHS Digital (2022) NHS Workforce Statistics – May 2022: https://digital.nhs.uk/data-and-information/publications/statistical/nhs-workforce-statistics

[18] NHS Providers (2018) The State of the Provider Sector: Community services: taking centre stage (nhsproviders.org)

additional funding for training and implementation, including protected time for staff to access training and support in order to understand these changes.

8.2. To ensure the principles of this legislation are adopted, there is a need for additional community provision, particularly in learning disability, mental health, children and young people's services, and community services. These services are critical to early intervention and supporting people to live well outside hospital settings. Government should expand the workforce and capacity of these services if it is to deliver on the ambitions of these proposals.

8.3. The RCN continues to call for the Secretary of State for Health and Social Care to hold explicit legal accountability for an independently verified assessment of population demand and health inequalities, to calculate the projected required workforce supply (including numbers, skills and mix of health and care staff) for the next five, ten and twenty years. The Secretary of State for Health and Social Care should also hold explicit legal accountability for a fully-funded, Government led workforce plan which would ensure that the nursing workforce has the right numbers of staff, with the right skills – including across all pay bands and levels – in the right places, to ensure staffing for safe and effective care.

8.4. Ensuring that there is strong nursing leadership in place across health and care structures and organisations is also 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. The nursing professional has a fundamental role in the design, commissioning and delivery of health and care – as well as driving health policy, and leading transformation in both models of care and services. Their broad and deep insight into the patient journey and client needs must inform commissioning and decision-making processes.

8.5. It is also critical that local Directors of Public Health have a consistent and clear role in Integrated Care Boards (ICBs) and that the ICBs and Integrated Care Providers to ensure that relevant prevention mental health services are based on the risk factors in each area to address need. The ICS/ICB must have a clear strategy for scrutiny of care pathway plans, which consider the potential unintended consequences where pathways are amended, or where different providers are bought in. It is essential

that KPIs are in place to ensure the mental health outcomes for the population and or individual patients are maintained and improved by any changes.

9. **How far will the draft Bill allow patients to have a greater say in their care, with access to appropriate support and avenues for appeal?**

9.1. While the RCN supports the shift towards patient autonomy, the Bill should also mandate additional training for nursing staff to better facilitate this. In April 2022 Health Education England published[19] recommendations after a wide-ranging review of the mental health nursing workforce and identified Continuing Professional Development (CPD) as essential for the growth of the profession, identifying the need for mental health nurses to both have the time to carry out CPD and access to relevant high-quality evidence based training.

9.2. However, investment in higher nursing education has never been sufficient or aligned with the ambitions of the health and care service in England and is yet to recover from the 2015 Spending Review which cut 60% of the Health Education England (HEE) budget for CPD for nurses (from £205 million in 2015/16 to £83.49 million in 2017/18)[20].

9.3. The result is that nursing staff often must fund their own professional development and undertake this it in their own time. The RCN believes that the UK Government must go further and develop a strategic approach to the levels of CPD required and fully fund it accordingly.

10. **Are there any additions you would like to see to the draft Bill?**

10.1. The RCN is clear that many of the reforms set out by the draft Bill will not achieve their intended aims unless accompanied by significant investment in the nursing workforce.

---

[19] Health Education England (2022) Commitment and Growth: Advancing Mental Health Nursing Now for the Future https://www.hee.nhs.uk/sites/default/files/documents/Commitment%20and%20Growth%20Advancing%20Mental%20Health%20Nursing%20Now%20and%20for%20the%20Future.pdf

[20] HM Treasury (2015) https://www.gov.uk/government/topical-events/autumn-statement-and-spending-review-2015

10.2. Mental health and learning disability services are already struggling to cope with chronic staffing shortages and a high turnover of staff because of pressurised working environments.

10.3. The RCN has provided clinical expertise to the *No Time To Wait* campaign[21] and supports its calls to have a mental health nurse attached to every GP surgery in England, specifically at an advanced level of practice.

10.4. An advanced mental health nurse practitioner not only offers a high-level of clinical expertise but provides the leadership skills to support and develop the knowledge of colleagues on mental health care, while identifying and responding to the needs of local populations[22].

10.5. The RCN is aware that low levels of staff, unstable teams and poor working conditions can lead to poor practice. Low staffing levels have been shown to increase the occurrence of restrictive practices, whilst negatively affecting patient outcomes. Addressing the nursing workforce crisis is a priority for creating the conditions for good care to take place, and safe and effective staffing must be made part of the Bill.

10.6. The draft Bill does not refer to the health and care workforce provisions required to enact changes in the Bill. With increasing numbers of people requiring mental health care and treatment, it is vital that the NHS is equipped with the right numbers of nurses, with the right skills, in the right places, to provide the best care and treatment.

10.7. NHS vacancy data for England (2021/22 Q4) shows a 16.8% average vacancy rate for registered nurses in the mental health sector[23]. This rate is higher than the average for all other nursing sectors included in this data (acute, ambulance, community, specialist), and higher than the overall registered nurse vacancy rate for England, which is currently at 10.0%[24].This high vacancy rate suggests that mental health care

---

[21] No Time To Wait (2022): About the campaign: https://www.notimetowait.co.uk/

[22] Mental Health Practice (2021): Mental health nursing in primary care: could you take an advanced role at a GP surgery? https://dev.rcni.com/mental-health-practice/careers/career-advice/mental-health-nursing-primary-care-could-you-take-advanced-role-a-gp-surgery-172996

[23] NHS Digital (2022): NHS Vacancy Statistics England April 2015 – June 2022 Experimental Statistics: https://digital.nhs.uk/data-and-information/publications/statistical/nhs-vacancies-survey

[24] Ibid.

and treatment services are not equipped with the staffing levels required to provide safe and effective care.

10.8. The RCN is clear that to address the recruitment and retention crisis facing the mental health, learning disability and children and young people's nursing workforce, the UK Government's approach to long-term workforce planning must shift to a more sustainable, demand led model based on a fully funded Government led workforce strategy covering each country in the UK – including England. Any health and care workforce strategy must take specific steps to ensure that increases in the overall nursing supply result in an expansion in the numbers of nursing staff working in mental health settings and includes a fair pay rise for all nursing staff. The RCN is clear that any strategy must be based on an independently verified assessment of population and workforce needs.

10.9. The Final report of the Independent Review of the Mental Health Act highlighted that "LGBTQ+ patients also reported being stigmatised and not having their needs addressed"[25]. Discrimination was also reported for asylum seekers and refugees as well as Gypsy, Roma and traveller communities. In the context of the proposed reform, we note that there is little recognition of the mental health needs of Eastern European communities alongside perinatal mental health issues, referenced specifically here because at times not recognised. Changes to the MHA must tackle disparities in the mental health that disproportionally impact particular communities, including in action, investment and research. It must also not specifically cause further inequalities between groups of displaced people in practice.

October 2022

[25] Independent Review of the Mental Health Act (2018): Modernising the Mental Health Act: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778897/Modernising_the_Mental_Health_Act_-_increasing_choice__reducing_compulsion.pdf