

Health & Social Services Committee

HSS(2)-08-05(p.1b)

Date: Wednesday 22 June 2005

Venue: Committee Room 2, National Assembly for Wales

Title: Training and Development of Midwives - Evidence from the Royal College of Midwives

The Royal College of Midwives recognises the importance of training and development of midwives in order to secure the workforce that will be required in the future. With this in mind the College currently works in partnership with the WAG in order to ensure that adequate training places are available in the right places so that cohorts are both attractive and viable. The three-year training course has now become the most popular method of training but this also highlights areas of concern for the College. The first issue is that there must be sufficient training places available to make the course a viable one. If the numbers allocated to a course are too small then it is extremely difficult for the Universities to run that course.

All student midwives who undertake the three-year training programme are currently eligible for a bursary. It is therefore imperative to bring to the Committee's attention the findings of the recent EAT ruling in relation to a case involving three of our members;

Fletcher, Parkes and Wilkinson v Blackpool Fylde & Wyre NHS Hospitals and Secretary of State for Health (now the NHS Pensions agency/Student Grants Unit).

This case was brought because two of the Applicants' bursaries were stopped while they were absent by reason of pregnancy/childbirth. The other had been unable to afford to take the period of maternity absence that she would have liked and her health required,

The EAT (Cox J presiding) held:

The bursary was a "working condition" within the meaning of Article 5 of the Equal Treatment Directive, and the Applicants' claims were within the scope of the Directive. Section 14 of the Sex Discrimination Act must be construed so as to be consistent with the United Kingdom's obligations under the Directive to protect against discrimination pregnant vocational trainees in the working environment undertaking the same shifts, on the same wards and in the same working conditions as their qualified colleagues. Having correctly identified the Applicants' claims, the Tribunal led themselves into error in mis-characterising the Applicants' claims as claims for full pay or maternity pay and in erroneously applying case law concerning entitlements for women on maternity leave provided for in national legislation. Further, the Respondents' contention that the Applicants were claiming more than they would have been entitled to if they had been workers was not correct.

The policy considerations underpinning the protection for pregnant women workers in the Equal Treatment Directive and the Pregnancy Workers' Directive apply equally to vocational trainees. Termination of the bursary was effectively caused by the Applicants' pregnancies and was discriminatory. The Respondents should have exercised the discretion afforded to them under the scheme, applying the principles established in European case law, which provide that the application of the same rule to different situations, and the application of a different rule in comparable circumstances, is discriminatory.

The Tribunal erred in finding there was no detriment suffered by the Applicants. There was ample material before them to establish a detriment, and if the Tribunal had correctly applied the test for establishing detriment the decision could only have been in the Applicants' favour. The Respondents therefore unlawfully discriminated against the Applicants. Case remitted to the Tribunal to determine remedy.

It is important to point out that the EAT noted in its judgement that there was no policy in operation in relation to the provision of bursaries to trainees who were absent by reason of pregnancy or childbirth. In order to ensure the lawful operation of the bursary scheme in the future it is therefore imperative that there is policy guidance forthwith stating that the discretion contained in paragraphs 20(2) and 22(5) of the scheme should be exercised so that trainees who are absent by reason of pregnancy or childbirth continue to receive payments during their absence. It should also be made clear that, in light of the EAT's judgement, subjecting student midwives to any detriment during the course of their training by reason of pregnancy or childbirth will amount to unlawful discrimination under section 14 of the Sex Discrimination Act.

Midwife Prescribing

The RCM is delighted by the growth in the provision of midwifery led care in Wales. Midwife led Birth Centres have proved to be a safe and effective way of improving access to and choice of care for women. In line with the strategic objective set out in Realising the Potential Delivering the Future in Wales, Briefing paper 4, to increase the home birth rate by 10% the rate continues to increase at a steady rate. However this has also highlighted a problem for midwives who are the lead professionals for low risk women. Whilst it is possible for midwives to supply and administer some medicines it is not currently possible for them to all that are necessary. For example midwives can supply and administer pain relief such as Pethidine but not an antiemetic such as Stemetil. To try to address this issue a baseline review of current medications supplied and administered by midwives in integrated care environments has been undertaken. A project group of which the RCM is a member is currently working to identify those medications which need to be added to the current exemptions identified within the POM Order 1997 S.1.1830, Article 11 thus allowing registered midwives to provide essential care during pregnancy and childbirth for women who choose midwifery led care

Statutory Supervision

Since the announcement in November 2004 concerning Health Professions Wales the RCM has been keen to ensure that the Local Supervising Authority for Midwives in Wales will be transferred to an appropriate body. This is a statutory function and therefore careful consideration must be given as to its future. Supervision is in place in order to provide public protection. Therefore it is of great concern to the RCM that the LSA remains independent without the risk of any conflict of interest. The RCM is pleased to be a part of the consultation process and currently sits on the Project Board, Project Team, Legal work stream sub group and the HR work stream sub group. We have also been able to utilise our extensive networks within the midwifery, including the Heads of Midwifery Advisory Group, The Heads of Midwifery Education Advisory Group and the Consultant Midwives Group, in order to ensure that we can adequately reflect the views of midwives in Wales.

Agenda for Change

The RCM continues to take a partnership approach to these negotiations and has seats on the A4C Project Board, Implementation group, KSF and Communication and Training sub groups. Progress in matching and assimilating Midwives continues to progress with two Trusts in Wales intending to pay midwives this month at the Agenda for Change rates and back pay next month. Also of note is the progress on developing KSF outlines, which is occurring in the majority of Trusts.

The proposal for All Wales remuneration for Supervisors of Midwives has been submitted to A4C Implementation Group and will be considered at Human Resource Directors Wales in the near future. The RCM considers that an all Wales agreement is the only way forward to provide adequate remuneration for this essential role for which many supervisors currently have little or no recognition.

The RCM is concerned that Heads of Midwifery are not being recognised as the professional and managerial leads of the service with direct access to Trust Boards when appropriate. Early indications in Wales suggest that not only is this not happening but that these posts are in fact being downgraded (this may not be the case). The RCM is monitoring the situation carefully advising Trust Boards accordingly.

Service Reconfiguration

The RCM is always available to participate and advice of service reconfiguration and modernization. We were disappointed that in a recent management reconfiguration we were not formally approached and although we have now contributed we remain concerned that Heads of Midwifery posts are not being recognized as the professional and managerial leads for maternity services.

When service reconfiguration involves more than one Trust the impact on services across Wales must be considered. The RCM is participating in one such review and is working closely with the regional Nurses to ensure all options are professionally considered.

We are aware that the Neonatal services review is nearing completion and welcome the service

modernization we anticipate it will bring however we are disappointed that our professional advice has not been sought. The potential withdrawal of Neonatal services from an area has implications for Midwifery services as does the expansion of services. The RCM has offered its services even at the late date to ensure that the needs of women are considered in service modernization.

Recruitment and Retention

Apart from those Trust along the M4 corridor the RCM has been more concerned with the retention of midwives rather than recruitment. We are mindful that this picture may change and to ensure all parties are involved we have recently held a partnership event including Heads of Midwifery, Heads of Midwifery Education, Stewards and Human Resource Managers from every Trust and LHB in Wales. We anticipate that an all Wales Recruitment and retention strategy for midwives will evolve from the second of these days.