The Nursing and Midwifery Council - amendments to modernise midwifery regulation and improve the effectiveness and efficiency of fitness to practise processes

Response Form
Instructions for responding to the consultation

The Department of Health wants your views on the proposals to make changes to the Nursing and Midwifery Council’s governing legislation through changes to the Nursing and Midwifery Order 2001. These proposed address three objectives:

1. **Remove statutory midwifery supervision provisions**
   The NMC has a clear regulatory framework which applies to the two distinct professions that it regulates — nurses and midwives. In all key respects this framework applies to both professions in the same way. In addition to this main regulatory framework, for historical reasons, midwives have been subject to an additional tier of local regulation. It has become increasingly clear over recent years that this additional tier is unnecessary (as midwives are no more inherently dangerous or risky practitioners than doctors, nurses or healthcare professionals).

   The Parliamentary and Health Service Ombudsman (PHSO) and a Department of Health investigation led by Dr Bill Kirkup both produced reports following failings in midwifery care at Morecambe Bay University Hospitals NHS Foundation Trust that were critical of the additional tier of midwifery regulation. In addition the NMC commissioned the King’s Fund to undertake an independent review of midwifery regulation which supported these criticisms and endorsed the call for urgent change. The King’s Fund supported the PHSO recommendation that the supervision and regulation of midwives should be separated and the NMC as the regulator should be in direct control of all regulatory activity. This recommendation was accepted by the NMC Council and supported by the Kirkup report. The Secretary of State for Health has accepted the recommendations of the Kirkup Report in full and committed to bringing forward proposals to amend the NMC’s legislation.

   The proposed changes will result in clear separation of the roles and purpose of the supervision and regulation of midwives.

2. **Abolishing the statutory Midwifery Committee.**
   Although the NMC regulates two professions, nurses and midwives, the NMC is required by its legislation to have a statutory midwifery committee to advise the NMC Council on matters relating to midwifery - it has no similar requirement to have a statutory nursing committee. Furthermore, none of the other healthcare professional regulators have a comparable statutory committee. The government has a policy objective to streamline and rationalise regulatory legislation. Therefore it is considered that it would be appropriate to make this proposed statutory change now at the same time as making changes to modernise midwifery regulation.

3. **Make some improvements and efficiencies to the NMC’s fitness to practise processes.**
   These proposals will include giving Case Examiners and the Investigating Committee power to agree undertakings and issue warnings and advice with registrants at the end of the investigation stage of the Fitness to Practise process.

   The response form below can be used to help you give your views on these proposals.

You can find out more and respond to this consultation at:
The closing date for responses is 17 June 2016. Responses received after this date may not be read.

Consultation responses should be returned via email to: HRDLearning@dh.gsi.gov.uk

Or if you would prefer to send your response by post:

**NMC S60 Consultation**
Professional Standards Branch, Room 2N09
Quality Division, Strategy and External Relations Directorate
Department of Health
Quarry House
Quarry Hill
Leeds
LS2 7UE
What we will do next

We will read and consider all responses and publish a response to the consultation. The Government response will set out how comments and views shaped the final decisions. A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the GOV.UK website (www.gov.uk/dh).
Your details

Please supply details of who has supplied this response.

Name: Alison Green

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Contact email address: AGreen@gmc-uk.org

Please indicate whether you are:

A member of the public
A nurse
A midwife
Another healthcare professional
A representative of a professional or regulatory body X
Other

If Other, please specify:

Are you responding as an individual or on behalf of an organisation?

Individual
Organisation X
What is your organisation? (if relevant)

General Medical Council

What is your position or job title within the organisation? (if relevant)

Fitness to practise policy officer

If you are an employer/member of an organisation please indicate the size of your organisation:

1-4
5-99
100 or more X

In which country do you currently reside?

England
Scotland
Wales
Northern Ireland
Other
Consultation questions

Question 1: Do you agree that this additional tier of regulation for midwives should be removed?

Yes  ( x )   No  (  )

Comments

Yes, we agree. We support the public protection elements of separate regulatory and supervisory functions, and recognise the importance of consistency across healthcare professionals.

Question 2: Do you agree that the current requirement in the NMC's legislation for a statutory Midwifery Committee should be removed?

Yes  ( x )   No  (  )

Comments

Yes, we agree. We support the separation of governance from operational decisions and the removal of the Committee would bring consistency with the regulation of other healthcare professionals. We support continued midwifery representation through the senior midwifery adviser and the establishment of the non-statutory Midwifery Panel.

It’s unclear whether the composition of the NMC’s Council includes a requirement to have a midwife member. You may want to consider whether regulations should mandate representation from both professions which are registered on the NMC’s Council alongside lay members.

Question 3: Do you agree that, when the Investigating Committee or the Case Examiners determine that there is no case to answer but there are some concerns as to past practice or conduct, the Investigating Committee and case examiners should have the power to issue a warning or advice to a nurse or midwife?

Yes  ( x )   No  (  )
Comments

Yes, we agree that the Investigating Committee and case examiners should have the power to issue a warning or advice in these circumstances. We give warnings to doctors who have made a significant departure from the principles set out in our guidance *Good medical practice*, but where the concerns are not so serious that their fitness to practise medicine is impaired. We believe that a warning sends a message to the doctor and the wider medical profession that standards must be maintained and conduct must not be repeated.

As part of a public consultation on our sanctions guidance in 2014, we asked for comments on our current system of warnings. Over two thirds of respondents agreed that warnings provide an effective means of dealing with lower level concerns that involve a departure from *Good medical practice*. However, there are concerns that the length of time for which our warnings are published (5 years), and the fact that they are indefinitely disclosed to employers, has resulted in warnings being perceived as a more stringent regulatory action than was intended. In the context of wider reforms to our publication and disclosure policy, we are currently considering changes to our warnings system to reduce the length of time for which they are published and disclosed.

Lower level concerns can be an indicator of future problems, and prompt, proportionate action in the form of issuing advice could prevent more serious problems developing. In response to our consultation on warnings in 2014, respondents supported a wider range of tools for the regulator to respond to lower level concerns in a measured way that does not disproportionately impact on the registrant's career. There was also strong support for an escalation principle so that such lower level responses could lead to more serious action if a registrant failed to reflect on their conduct and the concerns were repeated.

Question 4: Do you agree that, where the Investigating Committee or the case examiners determine that there is a case to answer in respect of an allegation, the Investigating Committee and the case examiners should have the power to agree undertakings with a nurse or midwife?

Yes  (x)   No  ( )

Comments

Yes we agree. Undertakings provide a targeted and proportionate method of addressing fitness to practise concerns, and our recent review of the impact of our procedures on vulnerable doctors, overseen by mental health expert, Professor Louis Appleby, has highlighted the importance of being able to resolve concerns by consent where possible.
Our guidance for decision makers outlines the key criteria we consider when deciding whether undertakings are appropriate. They are: undertakings are not appropriate if it is likely a tribunal would erase the doctor; undertakings must be workable, measurable, and proportionate and offer sufficient safeguards to protect the public; and undertakings are appropriate where there is reason to believe the doctor will comply with them. We have recently conducted research on the impact of restrictions on a doctor’s practice including undertakings (see the relevant webpage for more details) which found that doctors with undertakings were more likely to remediate in cases where they accepted the justification for the proposed sanction and they could work together with their employers to access the support they need. We agree that undertakings agreed with a registrant should be published, with the exception of those solely related to health. We currently publish a list of non-confidential undertakings on our online register. However, following public consultation last year, our Council have agreed that we should, alongside the undertakings, publish a brief explanatory summary of the concerns raised and decision reached. This is to provide greater transparency for those consulting the online register, in order to help maintain confidence in the profession and its regulator. We plan to introduce this change in early 2017.

Question 5: Do you agree that the Conduct and Competence Committee and Health Committee should be replaced by a single Fitness to Practise Committee which will deal with allegations of impairment of fitness to practise on all grounds?

Yes ( x )   No (   )

Comments

Yes, we support the model proposed. It is important that the process enables all concerns about a registrant to be reviewed in the round. That said, we acknowledge that cases involving a doctor’s health may need sensitive handling. We have recently worked with Professor Louis Appleby, a leading mental health expert, to review our approach to cases involving health and will be introducing a new approach to handling these cases to reduce the stress on the doctor’s involved. More detail of this work, including a summary of our draft proposals can be found on our website here.

Question 6: Do you agree that the requirement for the NMC to specify in rules the size of its Practice Committees is unnecessary and should be removed?

Yes ( x )   No (   )
Comments

Yes, we agree that explicit specification of the size of Committees is unnecessary and unhelpful and restricts flexibility to respond to workload.

Question 7: Do you agree that the statutory requirement regarding the location of preliminary meetings and hearings of Practice Committees and hearings of appeals against the Registrar's decisions should be removed providing flexibility to hold these hearings in the most convenient location for all parties?

Yes  ( x )   No  (  )

Comments

The proposal appears to have the potential to lead to representations before every hearing as to where the most convenient location might be. The MPTS has all hearings in Manchester other than in exceptional circumstances.

Question 8: Do you agree that all interim order reviews, including those where the court has granted an extension, should be held at six month intervals?

Yes  ( x )   No  (  )

Comments

MPTS reviews are routine at 6 months and following court direction at 3 months. There is also provision to ask for an early review.
Question 9: Do you agree that the court should have additional powers to replace an interim suspension order with an interim order conditions of practice order (or vice versa)?

Yes  (  )   No  (  )

Comments

Question 10: Do you agree that it is not necessary for the Practice Committee panel to review all conditions of practice or suspension orders but instead should have the discretion to direct whether an order needs to be reviewed before the expiry of that order?

Yes  ( x )   No  (  )

Comments

Yes, we support the principle of panels having the discretion to direct whether or not a review of a substantive order is necessary in all the circumstances of a case, provided the regulator retains the power to review a substantive order of its own volition.

Question 11: Do you agree that the requirement to notify specified persons, including governments of the four countries, when an allegation is referred to a Practice Committee panel for a hearing should be removed?

Yes  ( x )   No  (  )

Comments
Question 12: Will the proposed changes affect the costs or administrative burden on your organisation or those you represent, by way of:

- An increase □
- A decrease □
- Stay the same □
- Unsure □

Please explain your answer.

Not applicable

Question 13: Do you think that any of the proposals would help achieve any of the following aims:

- eliminating discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010?
- advancing equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it?
- fostering good relations between persons who share a relevant protected characteristic and persons who do not share it?

If yes, could the proposals be changed so that they are more effective in doing so?
We consider the proposal to remove the additional tier of local regulation for midwives is a positive one and does support the duty by taking another step towards eliminating discrimination.

As indicated at question 5, we agree with the proposal to move to the model of a single Fitness to Practise Committee. However, as this could, potentially, lead to the loss of specialised understanding of physical disability and mental ill health issues affecting nurses and midwives, it is important that the new combined panel properly understand the implications of the Equality Act 2010 when considering physical and mental ill-health.

If not, please explain what effect you think the proposals will have and whether you think the proposals should be changed so that they would help achieve those aims?

Question 14: Do you have any comments on the draft Order.

Yes ( ) No ( )

Comments
Confidentiality of information

If you would like any part of the content of your response (as distinct from your identity) to be kept confidential, you may say so in a covering letter. We would ask you to indicate clearly which part(s) of your response are to be kept confidential. We will endeavour to give effect to your request but as a public body subject to the provisions of the Freedom of Information legislation, we cannot guarantee confidentiality.

We manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter. Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and, in most circumstances this will mean that your personal data will not be disclosed to third parties.