

16 June 2016

HPCPC response to Department of Health consultation: ‘The Nursing and Midwifery Council – amendments to modernise midwifery regulation and improve the effectiveness and efficiency of fitness to practise processes’.

1. Introduction

- 1.1 We welcome the opportunity to respond to the Department of Health’s consultation on proposed amendments to the Nursing and Midwifery Order 2001.
- 1.2 We are a statutory regulator of 16 health, social work, and psychological professions. We maintain a register of professionals; set standards for entry to our register; approve education and training programmes for registration; and deal with concerns where a professional may not be fit to practise. Our main role is to protect the health and wellbeing of those who use or need to use our registrants’ services.
- 1.3 We have set out below our general comments on the consultation proposals and our responses to the specific consultation questions.

2. General Comments

- 2.1 The consultation document proposes a series of reforms to the Nursing and Midwifery Council’s (NMC’s) legislation related to how it handles fitness to practise cases.
- 2.2 We see no reason why such changes could not also be made to the Health and Social Work Professions Order 2001. The provisions of the Nursing and Midwifery Order 2001 with respect to fitness to practise are almost identical to those in our legislation. We would like these changes to realise the same benefits outlined in the consultation document.
- 2.3 We are also seeking the following changes to our legislation.
 - Removal of the need for Council members to Chair registration appeal panels (to be replaced by partners).
 - Clarification of the law on striking off in cases where a registrant has been continuously suspended or subject to conditions of practice for more than two years (in line with a previous amendment to the Nursing and Midwifery Order 2001).

- An amendment to correct an error in our legislation which specifies that Northern Ireland qualified barristers can be appointed as legal assessors, but which does not specify Northern Ireland qualified solicitors.

3. Our responses to specific questions

Removal of statutory midwife supervision

Q1. Do you agree that this additional tier of statutory supervision for midwives should be removed?

- 3.1 Yes.
- 3.2 We agree with the principle of separation between supervision and regulation. We are supportive of midwives, and other health and care professionals, having access to good sources of structured clinical supervision and peer review but this need not be put on a statutory footing.

The Midwifery Committee

Q2. Do you agree that the current requirement in the NMC's legislation for a statutory Midwifery Committee should be removed?

- 3.3 Yes.
- 3.4 We agree that there is no benefit or justification for the statutory requirement for a midwifery committee. As the consultation document notes, this will not prevent the NMC from engaging with midwives via committees, working groups and other means as necessary.

Warnings, advice and undertakings

Q3. 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?

- 3.5 Yes.
- 3.6 We agree – this would be consistent with similar provisions in the legislation of other regulators, for example, the General Medical Council (GMC). In our fitness to practise process, we already issue 'learning points' to registrants in cases where there is a realistic prospect of proving the case but not of establishing that fitness to practise is impaired. This is similar to the proposal for the proposed power to issue 'advice'.
- 3.7 We would like consideration to be given to also amending our legislation.
- 3.8 Public understanding of the outcomes of fitness to practise processes is crucial. The Professional Standards Authority (PSA; then the CHRE) has previously undertaken work looking at the nomenclature of sanctions across

the regulators. We consider that 'warning' is sufficiently clear and sufficiently distinguishable from the formal sanction of 'caution' which results from an NMC (or HCPC) hearing. However, we also consider that variation in terminology in this area across the regulators is unhelpful and that consistency should be borne in mind in future legislative reform.

Q4. 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?

3.9 Yes.

3.10 We agree that undertakings have the potential to avoid unnecessary referral of some cases to a final hearing – those cases which are very likely to result in the imposition of a conditions of practice order. We consider that, with the caveat as described that such undertakings will be published, the same level of public protection is secured.

3.11 We would like consideration to be given to also amending our legislation.

Single fitness to practise committee

Q5. 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?

3.12 Yes.

3.13 We agree that merging the two practice committees into a single fitness to practise committee will improve the fitness to practise process by allowing concerns to be dealt with 'in the round', avoiding unnecessary delays and ensuring consistency and fairness.

3.14 We would like consideration to be given to also amending our legislation.

Q6. 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?

3.15 Yes.

3.16 We agree with removing this provision which creates unnecessary bureaucracy. The NMC (and the HCPC) should be free to recruit and train the number of panel members necessary to deal with the number and types of cases they consider, unfettered by arbitrary limits in rules. The Practice Committees only meet as panels to consider cases; they do not have any strategy or policy function for which limiting numbers is helpful.

3.17 We would like consideration to be given to also amending our legislation.

Location of hearings

Q7. 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?

3.18 Yes.

3.19 We agree with all the reasons given for removing the statutory requirement. Whilst we support the important principle of UK-wide regulation, there are occasions where the prescription that hearings must be held in the country of the registrant’s residence causes unintended consequences.

3.20 The consultation document notes that guidance will be put in place to ensure that the discretion to hold hearings in the ‘most convenient and cost effective location for all those involved’ is exercised. This is crucial – it may not be possible for a hearing to be held in the location which is convenient for everyone. Factors that the regulator will need to consider include the personal circumstances of the registrant; the personal circumstances of the witnesses to a case including their vulnerability; the number and location of witnesses, including the impact the hearing may have if witnesses come from a single organisation; and the financial implications.

3.21 We would like consideration to be given to also amending our legislation.

Interim order reviews

Q8. Do you agree that all interim order reviews, including those where the court has granted an extension, should be held at six month intervals?

3.22 Yes.

3.23 We consider that this proposal would reduce bureaucracy, whilst ensuring appropriate oversight of interim orders.

3.24 We would like consideration to be given to also amending our legislation.

Interim order appeals

Q9. Do you agree that the court should have additional powers to replace an interim suspension order with an interim conditions of practice order (or vice versa)?

3.25 Yes.

3.26 We agree that this will close a public protection gap.

3.27 We would like consideration to be given to also amending our legislation.

Substantive order reviews

Q10. 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?

3.28 Yes.

3.29 We agree that there are some cases where a review of a suspension or conditions of practice order may not fulfil any useful purpose. Panels should have the discretion to direct whether the order needs to be reviewed prior to its expiration. In practice, if such a change were made to our legislation, we consider that in almost all conditions of practice cases a review hearing is likely to be necessary and in many suspension order cases. We agree that guidance for panels will be crucial to ensure consistency and fairness. This change is also consistent with the practice of other regulators.

3.30 We would like consideration to be given to also amending our legislation.

Notice requirements

Q11. Do you agree that the requirement to notify specified persons, including governments of the four countries, where an allegation is referred to a Practice Committee panel for a hearing should be removed?

3.31 Yes.

3.32 We agree that it is unnecessary for this to be specified in legislation. However, we find this requirement straight forward to administer. We send an alerts email to the notified persons and to others who ask to be notified of information about fitness to practise referrals and sanctions which are in the public domain.

3.33 We would like consideration to be given to also amending our legislation.