

07 June 2018

## **Health and Care Professions Council response to NMC consultation 'Ensuring patient safety, enabling professionalism'**

### **1. About us**

We welcome the opportunity to respond to this consultation.

The Health and Care Professions Council (HCPC) is a statutory regulator of health, social work and psychological professions governed by the Health and Social Work Professions Order 2001. We regulate the members of 16 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 role is to protect the public.

### **2. Response to the consultation questions**

**Q1 – We think that fitness to practise should primarily be about managing the risk that a registrant poses to patients or members of the public in the future. Do you agree?**

Don't know.

We're supportive of a measured approach in addressing concerns raised, however we are unclear where the dividing line will be between cases regarding managing the risk a registrant poses to patients or members of the public, and cases concerning the promotion and maintenance of standards and public confidence.

The latter cases may still have an impact on public protection. For example, poorly maintained standards could ultimately result in lack of confidence in regulation and contribute to an overall reduction in engagement with fitness to practise or health services, which increases risk to the public. Without an investigation into a concern it is unclear how the NMC will make the assessment as to whether a case is linked to public protection over maintaining standards / public confidence.

In addition, the NMC states 'we can best reduce patient risk by ensuring that we've the correct standards in place'. We believe there needs to be clarity regarding how these decisions will be made. If at present there are standards which the NMC considers should not, on their own, justify fitness to practise action, then these standards may not be fit for purpose.

**Q2 – We don't think fitness to practise is about punishing people for past events. Do you agree?**

Agree.

We support the points raised in the consultation document. However there needs to be a fine balance – disengaged complainants in the long run can result in a lack of engagement and trust in the profession and therefore pose a long-term risk to the public.

**Q3 – We propose that we will only take action to uphold public confidence when the conduct is so serious, that if we did not take action, the public wouldn't want to use the services of registrants. Do you agree?**

Don't know.

We are supportive of the principle behind this proposal but are unclear how the NMC would differentiate between cases that are this serious and cases that are not.

**Q4- Some clinical conduct, such as deliberately covering up when things go wrong, seriously damages public trust in the professions and undermines public safety. Do you agree?**

Agree.

Deliberately covering up when things go wrong demonstrates a lack of insight and fails to recognise the impact of the potential harm caused. This in turn increases the risk of repetition, putting the public at risk.

**Q5 – In those types of cases, the registrant should be removed from the register. Do you agree?**

Disagree.

We believe that, in isolation, it is hard to say what sanction should be given in a particular case and therefore would be cautious about singling out a particular behaviour and suggesting that a particular course of action should always be taken when present in a case. It is important to adequately investigate and ensure accountability, taking account of all aggravating and mitigating factors.

**Q6- We propose that cases could be resolved at an early stage in the process if a registrant has fully remediated their clinical failings, even where those clinical failings have led to serious patient harm. Do you agree?**

Don't know.

We support the principle of ensuring the approach to fitness to practise is proportionate and demonstrates the best use of resources and powers. However, it is vital that issues such as the need to demonstrate insight are adequately addressed. A registrant's agreement (or absence of a disagreement with the regulator) regarding a particular sanction does not mean that they have demonstrated insight into their actions or

remorse. Without ensuring a registrant has demonstrated insight, this could ultimately mean the public is put at risk.

**Q7- We propose that every decision that relates to a restriction being placed on a registrant's practice (including voluntary removal) should be published. Do you agree?**

Agree.

Such reporting would go some way to addressing concerns around registrants voluntarily accepting sanctions or removal in order to avoid accountability as this will be in the public domain. However the NMC needs to ensure that the public are aware of this and can access such decisions freely.

Any reporting will need to be proportionate, and the NMC may wish to consider not publishing certain information if there is a reasonable request from an interested party.

**Q8 – We propose that fitness to practise should support a professional culture that values equality, diversity and inclusion and prioritises openness and learning in the interests of patient safety. Do you think it is the right regulatory outcome?**

Agree.

We are very supportive of this. However we are unclear how NMC propose to achieve this outcome and would welcome further detail.

**Q9 – We propose that fitness to practise should ensure that registrants are fit to practise safely and professionally. Do you think this is the right regulatory outcome?**

Agree.

We support the principle of this outcome, but are unclear about the detail. Ensuring a registrant is fit to practise may require a full hearing so that the NMC can adequately investigate any concerns, as well as listen to witnesses and enable the registrant to demonstrate insight. It is unclear at this stage how the NMC will draw the line between cases which require a full hearing and cases which will not.

**Q10 – Please tell us your views on our regulatory outcomes as we've set them out in this consultation.**

We believe that the principles behind these proposals are good, but that the consultation document lacks the detail required to assess whether or not this will be effective.

**Q11 – We think that employers are usually in the best position to resolve concerns immediately, and we should only take regulatory action if the concern has already been raised with and investigated by the employer (where there is one), unless there is an immediate risk to patient safety that we have to deal with. Do you agree?**

Don't know.

Whilst most employers are well equipped to manage concerns raised, particularly in relation to professional competence, there may be occasions where this is not the case. Whilst we agree that it is helpful to allow local investigations to progress before commencing regulatory investigations, sometimes this might not be appropriate. For example, where local systems have failed to address concerns, or where public confidence could be damaged if the regulator were not to commence an investigation.

It would also be important for the regulator to consider whether any further action, above and beyond that which the employer takes, is required to ensure the registrant is not able to simply avoid sanctions by moving to a different employer. This approach would be vital to ensuring public safety is maintained.

**Q12 – Do you agree that we should always take the context in which a patient safety incident occurs into account when deciding what regulatory action is appropriate?**

Agree.

Context is important, and therefore we support the principle of this proposal. However, there needs to be a balance in the interests of public protection and therefore cases should not slip through the net simply because of a wider system issue where there were nonetheless failings by an individual registrant.

As a professional regulator, we would expect the NMC to focus on individual failures and consider what a particular registrant could do differently, whilst more systematic problems will need to be addressed by organisations such as CQC.

**Q13 – Do you agree that we should be exploring other ways to enable registrants to remediate at the earliest opportunity?**

Disagree.

We are concerned that prompted remediation does not necessarily show insight or remorse and therefore fails to address risk to the public. We are supportive of the principle of ensuring remediation and resolution at the earliest opportunity, but this needs to be genuine and not replace proper investigation or prevent concerns from being addressed.

**Q14 – We propose that unless there is a serious dispute about the facts or disposal of a case, or a registrant has requested a hearing, all cases should be dealt with at a meeting. Do you agree?**

Disagree.

We are concerned that emphasis on agreement does not necessarily address insight or remorse. In some cases it will also be important for proceedings to take place in public, to assure public confidence in the regulator.

**Q15 – Please tell us what you think about our proposals and if there are any other approaches we could take.**

No further comments.

**Q16 – Tell us what you think about our proposals to improve our processes. Are there any other ways we could give more support to members of the public, or improve how we work with other organisations, including other regulators?**

We are supportive of the proposals and would welcome further engagement with the NMC in the interest of public protection.

We consider that supporting the public through the fitness to practise process is essential to ensure greater engagement and understanding of the regulator's role. This should, in turn, minimise the risk of reduced engagement in light of the proposed changes.

**Q17 – Do you agree that having a fitness to practise process that values equality, diversity and inclusion could result in fairer outcomes?**

Agree.

These values help make the fitness to practise process more accessible and fair and ensures that decisions reflect societal views and are reasonable and non-discriminatory.

**Q18 – Do you agree that we should support employers to incorporate the principles of equality, diversity and inclusion when considering making referrals?**

Agree.

EDI needs to be valued at all stages of the fitness to practise process, including the making of referrals.

**Q19- Will any of these proposals have a particular impact on people who share these protected characteristics (including nurses, midwives, patients and the public)?**

Don't know.

The consultation document does not provide enough detail about the implementation of these proposals for us to be able to answer this.

**Q20 – How can we amend the proposals to advance equality of opportunity and foster good relations between groups?**

One way of achieving this could be through the provision of EDI training to those responsible at all levels for making fitness to practise decisions. This training could include, amongst other matters, ways to ensure decision-makers are mindful of any cultural impacts (such as how this may impact the way a registrant engages with an investigation into conduct and any hearing, or how they frame an apology).