

Freedom to Speak Up Review: Response of the Nursing and Midwifery Council

- 1 The Nursing and Midwifery Council (NMC) is the nursing and midwifery regulator for England, Wales, Scotland and Northern Ireland. Our statutory responsibilities are set down in The Nursing and Midwifery Order 2001.¹ We:
 - 1.1 exist to protect the health and wellbeing of the public;
 - 1.2 hold the register of all registered nurses and midwives who are able to practise in the UK;
 - 1.3 set the standards of education, training and conduct and practice so that nurses and midwives can consistently deliver high quality healthcare;
 - 1.4 ensure that nurses and midwives keep their skills and knowledge up to date and uphold our professional standards; and
 - 1.5 have clear and transparent processes to investigate nurses and midwives who fall short of our standards.
- 2 We welcome the opportunity to respond to the *Freedom to Speak Up* review being undertaken by Sir Robert Francis QC. This response sets out how we have been improving our processes and guidance to support patients, the public, and nurses and midwives in raising concerns and making referrals to the NMC.

Introduction

- 3 Through our Code², guidance and materials for patients and the public we actively encourage the raising of concerns both locally and with us if registrants, patients and the public they feel that they have experienced or witnessed poor care. Our Code requires that all nurses and midwives place the interests of patients above all else.
- 4 We recognise that the NMC has a role to play in a number of different ways, and that our standards and information can guide and empower individuals to challenge poor care, whether they be a nurse, midwife, patient or member of the public. This is the case not only in the occasions when an individual is compelled to whistleblow, but as importantly at the other end of the spectrum, where poor care and related issues can be raised and challenged and resolved at an early stage. It is important to provide registrants, patients and the public with the tools to challenge and raise concerns so that they can be resolved and do not have to progress to the extent that individuals feel compelled to whistleblow. Nevertheless, as recent history has shown, whistleblowing is sometimes required. In such

¹ SI 2002/253 as amended. <http://www.nmc-uk.org/About-us/legislation/Our-Orders-and-Rules/>

² The Code: Standards of conduct, performance and ethics for nurses and midwives, (NMC, 2008).
<http://www.nmc-uk.org/Publications/Standards/The-code/Introduction/>

instances it is important that whistleblowers are supported and encouraged to be part of a solution, and not penalised or discriminated against.

Review of the Code

- 5 We are aware that raising concerns about colleagues can be a challenging and stressful process. We are also aware that individuals may feel that they will be victimised or pressurised if they raise a concern about a fellow colleague. However, nurses and midwives have a clear professional duty to report instances of poor or unacceptable care. Our current Code contains clear requirements in relation to raising concerns and emphasises that the health and wellbeing of the patients in a nurse or midwife's care must always be their most paramount concern.
- 6 The draft revised Code strengthens and builds on these requirements and clearly sets out that nurses and midwives must raise concerns, and must not obstruct those who wish to raise concerns. It is clear that individuals must act without delay if they believe that they, a colleague or anyone else may be putting someone at risk or not acting within the requirements of the Code. It is also intended that the new Code will provide clear links to our raising concerns guidance and state that nurses have a professional duty to abide by this guidance.
- 7 The revised Code also makes clear that nurses or midwives with management or leadership responsibilities must ensure that those they are responsible for are:
 - 7.1 enabled and supported to comply with the Code at all times;
 - 7.2 have the knowledge, skills and competence for safe practice; and
 - 7.3 understand how to raise any concerns linked to potential or actual breaches of the Code.
- 8 The revised Code will be launched from early 2015 and will be used to support the new Revalidation process for nurses and midwives from the end of 2015.

Raising Concerns

- 9 We published a revised and updated version of our Raising Concerns guidance for nurses and midwives in September 2013³. The updated guidance was launched by Helene Donnelly, ambassador for cultural change at Staffordshire and Stoke-on-Trent Partnership NHS trust, drawing on her own experience in raising concerns. We sent all Directors of Nursing and Heads of Midwifery copies of the guidance. The guidance clearly states that speaking up on behalf of people in their care is a core professional responsibility of a nurse or midwife.
- 10 Individuals may raise concerns or whistleblow directly to us. The guidance outlines that:

³ Raising Concerns: Guidance for nurses and midwives, (NMC, 2013). <http://www.nmc-uk.org/Documents/NMC-Publications/NMC-Raising-and-escalating-concerns.pdf>

- 10.1 A nurse or midwife may contact us about a workplace concern. Our contact centre staff will use our raising concerns guidance and encourage the caller to raise the concerns locally if possible, help them if they wish to make a referral to the NMC about another nurse or midwife, or tell them how to contact the appropriate system regulator.
 - 10.2 A student nurse or midwife might raise a concern about a clinical placement. We require providers of nursing and midwifery education to know how to respond when a student raises a concern, to assess and mitigate any risks to placement students, and notify us of patient safety risks in placement settings.
 - 10.3 A nurse or midwife may claim they have been referred to us because they have raised a concern in the workplace. If this happens at the outset of a case, our fitness to practise investigations team will investigate this claim and consider whether this means further cases need to be opened. If it arises at a later stage (such as in a hearing) the panel will weigh the evidence and may wish to explore why this has arisen at the later stages in the process.
- 11 The raising concerns guidance advises nurses and midwives wanting confidential support to contact their professional body, trade union, or Public Concern at Work, and outlines the most effective routes through which they can raise concerns. We have promoted this to nurses and midwives through our website, e-newsletters and twitter account. The web page linking to the raising concerns guidance has to date had over 21,000 unique page views, whilst the YouTube video of Helene Donnelly launching the guidance has been viewed over 4,300 times. The guidance document also received our first Crystal Mark from the Plain English campaign.
 - 12 In May 2014 we launched a public-facing information leaflet⁴ to inform patients and the public how they can raise concerns about nurses and midwives. This guidance has also received a Crystal Mark from the Plain English Campaign. The guidance advises firstly raising the concern locally, shares sources of advice about raising concerns and making complaints (such as from a Citizens Advice Bureau). It also invites the public to contact us if they feel a nurse or midwife has not provided safe care or acted professionally, and explains what the NMC will do following a concern being raised. This leaflet was produced in consultation with our patient and public engagement forum and is available to download from our website. It has been welcomed by patient and consumer rights organisations who are helping us to promote it through their networks.
 - 13 We pledged support for the NHS Employers 'Speaking Up Charter', launched in October 2012.
 - 14 In addition the launch of the publications mentioned above we have established relationships with patient representative groups, patient advocacy groups, health charities, patient advice and liaison services, hospital complaints teams and organisations such as Citizens Advice and statutory patient/public groups including

⁴ Raising concerns about nurses or midwives, (NMC, 2014). <http://www.nmc-uk.org/Documents/NMC-Publications/Raising-concerns-about-nurses-or-midwives.pdf>

Healthwatch England, the Patient and Client Council (NI), and community health councils in Wales.

- 15 We have been undertaking a full review of our website with the aim of making it more user friendly and to provide detailed information on how to raise a concern about a nurse or midwife.

Whistleblowing

- 16 We strive to treat all referrers fairly, including whistleblowers. If a whistleblower informed us they were being mistreated or victimised because they had raised concerns, we would take this seriously and open new cases where there was evidence against individuals. For example, if a nurse or midwife against whom an allegation had been made was found to be attempting to put undue pressure on colleagues, we would investigate this further and add further charges if appropriate. We would also work with other professional regulators and with system regulators on this as required, if it was alleged that a whistleblower was discriminated against or pressurised by someone not on our register.
- 17 We manage calls that raise concerns or involve whistle-blowing through our contact centre. Our staff can use our raising concerns guidance in order to manage such contact. Callers often wish to remain anonymous and ask for advice, perhaps because they are worried about repercussions. However we would not dismiss allegations or whistleblowing purely because they are anonymous.
- 18 We are holding a roundtable on whistleblowing, memoranda of understanding, and information sharing in the spring. We have also offered to host a listening event with Patients First to discuss the experiences of people who have raised concerns and “blown the whistle” to the NMC. One of the issues that has been raised recently is the experience of minority groups of raising concerns, particularly whether they face discrimination or victimisation on raising concerns or even find themselves subject to a referral to the NMC. We would be very interested in the evidence relating to this.
- 19 We also intend to publish a position statement and policy on whistleblowing in the near future.

Whistleblowing policy of the NMC as an employer

- 20 The NMC has an internal policy on the raising of concerns and whistleblowing, which forms a part of our internal governance procedures. We have a framework in place to manage and investigate any concerns that are raised by staff, and procedures in place to support staff in such a process. In this way we apply the same requirements that we require of nurses and midwives to ourselves.
- 21 As an employer we subscribe to Public Concern at Work, as a support mechanism for our staff, and have signed up to this organisation’s ‘*First 100*’ campaign.

Witness Experience and Fitness to Practice Processes

- 22 It is vitally important that we provide excellent customer service and user experience in managing referrals and liaising with registrants, witnesses and other

participants. For this reason we continually keep our screening and investigation processes under review to ensure that they are proportionate and of a high quality.

- 23 As part of our fitness to practise process individuals may be required to give evidence as witnesses. It is important that witnesses feel supported and comfortable when taking part in the process. We have recently reviewed the witness experience component of our processes and made a number of improvements to this.

Working Relationships

- 24 One of the most important and effective ways that we can protect the public is through working with other professional and systems regulators and with other public agencies and organisations. To this end, we are working to establish or improve memoranda of understanding with a number of different regulators and organisations. The NMC and the Care Quality Commission (CQC) signed a Memorandum of Understanding (MoU) in December 2013 and has recently finalised a Joint Working Protocol with CQC, providing guidance to staff on how and when to share information.
- 25 We are refreshing MoUs that we already hold with other organisations and have commenced discussions with regulators about implementing an MoU where there is currently not one in place.
- 26 We have approached systems regulators in Northern Ireland, Scotland and Wales seeking to implement MoUs, in addition to education regulators in all four countries. We are currently working with Health Education England and the Trust Development Authority, with MoUs close to being finalised with these organisations.
- 27 The NMC and the Disclosure and Barring Service (DBS) have also recently signed a MoU, which will provide the basis for sharing information between the two organisations. This will be beneficial in terms of the NMC being able to supply data to the DBS following FTP cases.
- 28 These new memoranda and closer relationships with other regulators will enable us to better protect the public through using data and intelligence to act more swiftly and intelligently.

Further information

- 29 We stand ready to provide further information if required by the review team. For further information please contact:

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