

Response of the Nursing and Midwifery Council to the Department of Health consultation on a *New criminal offence of ill-treatment or wilful neglect*

Introduction

- 1 The Nursing and Midwifery Council (NMC) is the regulator for nursing and midwifery in the UK. We exist to safeguard the health and wellbeing of the public. We set standards of education, training, conduct and performance for nurses and midwives, and hold the register of those who have qualified and meet those standards. We have clear and transparent processes to investigate and deal with nurses and midwives who fall short of our standards.

Scope of Offence

NHS or Wider

- 2 The NMC regulates all nurses and midwives in the United Kingdom, across both the public and private healthcare providers. We agree with the approach that any offence for ill-treatment or wilful neglect should cover all formal adult health and social care settings in both public and private sectors.
- 3 Our Code promotes consistency across all sectors and roles which nurses and midwives undertake, with a clear emphasis on the duty of nurses and midwives to treat all patients with compassion and care. This includes working with others to “protect and promote the health and wellbeing of those in your care, their families and carers, and the wider community”.
- 4 By applying the new offence across all sectors it will be consistent and equitable for all patients, providing greater patient protection. If the scope were to be any narrower, this would not align with the remit of the duties and standards imposed by the professional regulators which apply across all settings.

Children

- 5 As stated above, the NMC regulates all nurses and midwives in the UK, including those who treat children in a variety of settings. We once again stress that consistency in the application of a new offence is key to providing the greatest benefits for patient protection.

Formal Service Provision

- 6 Our Code states that nurses and midwives must always act with compassion and care, including acting as advocates for patients and particularly taking due steps for protecting persons who may be at risk of neglect or abuse and challenging any unacceptable attitudes and behaviours.

- 7 Nurses and midwives are held accountable for their actions in their role, regardless of whether it is a formal or informal setting. However, we cannot comment on whether the criminal offence should be limited in this way.

Elements of the Offence

Conduct or outcomes

- 8 The NMC agrees that the offence should focus solely on conduct, as it will promote an environment of zero tolerance for poor conduct and greater compassion for healthcare professionals. The NMC Code focuses entirely on the conduct of nurses and midwives, encouraging compassion, understanding and empathy for patients. Therefore if the offence were solely focused on conduct then it would be consistent with how the NMC approaches such matters.

Describing the offence for organisations

Organisations

- 9 As the NMC does not regulate organisations we do not have any comments to make in response to this question.

Other Issues

Penalties

- 10 Regarding the penalties for individuals and organisations convicted of this offence we do not have any comments to make in response to these specific questions as criminal penalties are outside the remit of the NMC.
- 11 We would however wish to raise the issue here, which is expanded on below, of the need to consider the impact of the criminal process on any related regulatory action. The outcome of a criminal investigation, and in particular the proposed penalties may not satisfy the wider need for public protection so regulatory action may still be needed.

Matters for prosecutorial discretion

- 12 The NMC supports this proposal.

Equality Issues

- 13 By introducing this offence, all patients will have access to the same protection afforded under the Mental Health Act 2005.

Comments on the Impact Assessment

- 14 We do not consider that the Impact Assessment attached to the consultation fully takes into account the impact of these proposals on regulatory activity.
- 15 We acknowledge that the potential benefit of the introduction of this offence is that, in the event of a conviction, the investigation undertaken by the NMC may be shortened, allowing us to progress these cases at the conclusion of criminal

proceedings quicker than is currently possible if we were responsible for the whole process. This will also have a follow on effect of reducing the time it takes for us to complete our substantive hearing process as we will be dealing with a conviction and not a misconduct case.

- 16 However, the NMC does have some concerns about the impact on our Fitness to Practice (FtP) proceedings of all the cases which may be captured by this new offence. Where a lengthy investigation has concluded that a registrant is not guilty of a criminal offence, this does not necessarily mean that there will not be other professional issues for which a registrant will be required to answer and which the NMC will need to investigate. Preliminary analysis indicates there may be significant delay in our proceedings due to these cases being investigated and a decision by the authorities on whether to prosecute being awaited. In the event of a prosecution not being proceeded with, or a conviction not being secured, the effect is likely to be a significant delay on the progress of any related NMC case, which in turn, may have an impact on patient safety and on the registrant involved.
- 17 In order to address the most immediate patient safety concerns raised by these proposals, requirements need to be put in place for the release of relevant information by the police or prosecuting authorities to regulators at the earliest stage to enable interim orders to be sought to protect the wider public whilst the criminal investigation is ongoing.
- 18 A number of issues have been identified which may impact on the NMC, including the breadth and interpretation of the new offence. For example, anything with a clinical context, where there is some alleged harm, could be captured by the new offence (e.g. bed sores, management failings, etc), even to the point of inappropriate relationships where there is an alleged detrimental impact on the service user.
- 19 The impact is most likely to be felt at the screening stage of our FtP proceedings, increasing the number of cases being considered by the NMC and requiring staff resources to be appropriately reorganised to handle the increase while we await the outcome of criminal proceedings.
- 20 Finally, we would like to raise the issue of self-incrimination in relation to criminal proceedings and the possible impact that this new offence may have on the duties on registrants to co-operate with inquiries into incidents of harm.

Further information

- 21 For further information, please contact Samuel Blake, Senior Policy Officer, at sam.blake@nmc-uk.org or on 020 7681 5983.