

NMC response to the Professional Standards Authority's 'Call for Views on Right-touch regulation: Reviewing its impact, currency, and key concepts'

Introduction

- 1 The Nursing and Midwifery Council (NMC) is the statutory regulator for nurses and midwives in the UK. We exist to:
 - 1.1 protect the health and wellbeing of the public;
 - 1.2 set standards of education, training, conduct and performance so that nurses and midwives can deliver high quality healthcare consistently throughout their careers; and,
 - 1.3 ensure that nurses and midwives keep their skills and knowledge up to date and uphold our professional standards.
- 2 We hold the register of those who have qualified and meet those standards. If an allegation is made that a registered nurse or midwife is not fit to practise, we have a duty to investigate that allegation and, where necessary, take action to safeguard the public.

General Comments

- 3 We welcome the opportunity to contribute to this review of *Right-touch regulation*.
- 4 The NMC is generally supportive of *Right-touch regulation* which we consider to be based on sound principles. *Right-touch regulation* complements our evidenced based approach to policy-making and informs our regulatory work.
- 5 We look forward to seeing how a refined and updated '*right-touch*' approach will translate into the Professional Standards Authority's approach to its work, including for example, the revised performance review and audit processes.
- 6 While we recognise that risk is a key component of *Right-touch regulation*, we believe that approaching regulation purely in these terms has its limitations. There is a live debate about the extent of regulators' role in enhancing professionalism which need not be rehearsed here. We believe that professionalism on the part of our registrants can be a force for good in the service of our primary purpose of public protection. We also believe that there are ways of regulating that have regard for professionalism and ways of regulating that dampen or extinguish the exercise of responsible professional judgment. It follows that one of the assessments we should make of our interventions is: will this encourage greater professionalism on the part of registrants?

The impact of the environment on assessments of risk

- 7 We agree that the primary consideration for a regulator developing new forms of regulation is risk, and that public protection and the specific risk to be mitigated should be the first thing considered. The *Right-touch regulation* tree at the end of the document rightly focuses on this important principle. Experience since publication of *Right-touch regulation* suggests that the original approach somewhat underplays the political environment in which regulators are making judgments about risk. As has been seen, this can have a significant impact on the calibration of 'right-touch', particularly with regard to public confidence. For example, we would suggest that the events at Mid Staffordshire, Winterbourne View have shown that regulatory frameworks which were previously considered effective may now be insufficient and would fail to command public confidence.
- 8 We support the suggestion of an additional principle of agility in regulation, to encourage regulators to adapt and change their approach to best protect the public. This has underpinned our pursuit of new legislation. In our view, the focus should be on providing greater clarity around the required regulatory outcomes but with less prescription of the means.

No more bowling alone: effective public protection between regulators

- 9 *Right-touch regulation* is of its time in focusing on decision making on the part of individual regulators. This review provides the opportunity to consider whether it provides an adequate frame for assessing decisions about whether the public interest resides in taking unilateral or multilateral action, or whether a particular risk should be dealt with by another regulator. Regulators' effectiveness in this territory is increasingly important. The PSA is well placed to promote effective inter-regulatory working by giving it better coverage within the *Right-touch regulation* framework.

Concluding remarks

- 10 We believe that *Right-touch regulation* continues to provide a useful policy tool in the development of regulatory approaches. As indicated we would suggest that whilst there are one or two areas in which it might be strengthened, we do not consider that wholesale change is needed.