

## **NMC response to the Home Office consultation on ‘Introducing mandatory reporting for female genital mutilation’**

### **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.

### **General Comments**

- 2 We believe that female genital mutilation (FGM) is an abhorrent form of child abuse and unequivocally support the Government’s ongoing efforts to prevent and put an end to this practice. We welcome the opportunity to comment on the Government’s proposals to implement mandatory reporting. There are a number of areas requiring further clarification which we have raised in this response. We would also appreciate the opportunity to feedback on any legislative drafting of the proposed duty.
- 3 We welcome the wider package of measures the Government is taking to tackle FGM as we agree there is no single solution to this complex and challenging issue. We consider more evidence is needed before a fully informed decision can be made about the introduction of a mandatory reporting duty.
- 4 While we acknowledge that this proposal is part of efforts to increase the number of referrals of FGM cases from health and other professionals, introducing mandatory reporting requirements is a significant step and will have profound implications. As noted in paragraph 1.15 in the consultation, there are significant risks associated with implementing such a system. We would ask for further clarification around how these risks will be mitigated. We stand ready to advise the Government on the implications arising from these proposals from the perspective of professional regulation.
- 5 Concerns about the risks of significant unintended consequences of introducing any form of mandatory reporting have previously led the Government to adopt a more circumspect position. We are aware that the Government has considered, and rejected, mandatory reporting on prior occasions<sup>1</sup>. The consultation now appears to consider moving in such a direction in relation to other forms of abuse

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<sup>1</sup> See Government’s response to the Home Affairs Select Committee report into ‘Child sexual exploitation and the response to localised grooming’ available at: <http://www.parliament.uk/documents/commons-committees/home-affairs/Cm-8705-Government-Response.pdf>

subject to further consultation. Rather than proceeding with a mandatory approach for FGM in isolation, we believe that the Government should carefully examine the merits of a mandatory system in the round, focusing on child and vulnerable adult abuse more widely. This should help avoid discrepancies in approach and different standards of obligation and sanctions being placed on professionals in relation to different kinds of abuse without a clear rationale for such variation.

### **Scope of the proposed duty**

- 6 We understand that the proposal is for the duty to be targeted at under-18s and to introduce reporting requirements in relation to 'known' cases of FGM, which are defined either through visual confirmation or disclosure by the victim.
- 7 This is intended to introduce an element of proportionality in relation to what would fall under the duty. However, we would raise a question about the link between making the existing multi-agency guidelines statutory and the proposed mandatory duty, and how this may impact on reporting behavior. We are mindful that this could inadvertently result in bringing all the options (such as reporting across the entire spectrum of FGM cases and in women of all ages) within the scope of the duty. This could thus undermine the intention of purposely constructing the duty more narrowly.
- 8 If mandatory reporting is introduced, there also needs to be clarity on the timescales for reporting if FGM is observed or disclosed to a professional. The consultation importantly highlights situations when it may be more important for the reporting to be done as soon as it is reasonable to do so rather than as promptly as possible – for example, where there is a risk of a girl of 16 who disclosed FGM being deterred from accessing timely care during her pregnancy. This raises the question as to whether any duty should be qualified by a specific time period given that there needs to be discretion to defer reporting so as to take account of circumstances of each case.
- 9 We would be keen to explore further the assumption that reports should be made to the police. When a referral is made it is important that this results in an appropriate response. It seems possible that in some situations this route may be counter-productive, such as for example if FGM occurred before the legal framework was enacted specifically to make it a criminal offence if the procedure is undertaken abroad.
- 10 Some of these concerns are indicative of the underlying difficulties arising from the fact that mandatory reporting, even in a limited way, is a relatively blunt tool. We would have reservations about reporting driven by process rather than focusing on the needs of girls or young women who have undergone FGM.
- 11 In constructing any new duty, care will be needed to ensure that nurses, midwives and other mandated professionals are able to maintain their professional discretion so that they can take account of individual circumstances. We would welcome further clarification on the Government's intentions to ensure that a mandatory approach will not have the effect of diminishing individual professional discretion and in particular the current professional duty to put the interests of their patients and service users first.

## Sanctions attached to failing to report

- 12 It is important to consider any proposals for sanctions to be imposed in the event of failing to report against the existing mechanisms to hold professionals to account. Nurses and midwives are required to put the care of people in their care first under the Code<sup>2</sup> to which they must adhere. There is also a requirement for nurses and midwives to uphold other national standards as well as the Code. This would include the existing multi-agency guidelines around FGM and we believe the proposal in the consultation to put these guidelines on a statutory footing will reinforce the link across with our Code.
- 13 Where it is evident that there has been a failure to act in line with the standards set out in the Code on the part of a registered nurse or midwife, the NMC can pursue an investigation through our fitness to practice proceedings. This can ultimately lead to a nurses and midwives being struck off and unable to practise in the future. Other groups of registered healthcare professionals undergo similar processes in respect of their own regulatory bodies.
- 14 The consultation puts forward two options in relation to sanctions to be imposed where it is discovered that mandated professionals have failed to report FGM cases: DBS barring or action by professional regulators. We believe that there are issues with each approach that need further consideration.

### *DBS barring*

- 15 The first approach involves being liable to be placed on the barred list by the DBS, which would allow consistent action to be taken across all professional groups which fall within the remit of the duty. This has the advantage of creating uniformity in how the duty would work across professional boundaries.
- 16 Consideration should be given to the fact that a decision to bar by the DBS may be wider in scope than action taken by a professional regulator. The processes of professional regulators, including the NMC, cover people on their register working within their respective profession and therefore can only address risks to public safety within that context.
- 17 However, our main concern in relation to the use of DBS barring as the appropriate sanction for such a duty is around proportionality. A relevant factor to consider will be the nature of other barring offences which involve serious sex offences or causing deliberate harm that clearly indicate unsuitability to work with vulnerable groups. It is unclear to us whether failure to report can be held on the same par with such other types of offences that can lead to a barring decision.
- 18 We are also interested in understanding the process for sharing information with professional regulators, such as the NMC, to allow any related regulatory action to be taken. In certain circumstances, we may be required to impose interim restrictions so that the public is protected while any investigation carried out by the DBS is progressing.

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<sup>2</sup> NMC (2010) The Code: Standards of conduct, performance and ethics for nurses and midwives, available at <http://www.nmc-uk.org/documents/standards/the-code-a4-20100406.pdf>

### *Action by professional regulators*

- 19 In the context of regulation of healthcare professionals, the nine existing regulators have broadly comparable set of sanctions that can be imposed as a result of fitness to practice proceedings. This would allow the NMC and the other healthcare regulators to take action to protect the public where it is evidence there has been a failure to report incidents of FGM, as they could do at present.
- 20 As noted in the consultation, we recognise however that one possible weakness is that given the proposed duty will apply to other professional disciplines, there may be an issue around variation in the range of sanctions available.
- 21 We believe a better way to encourage consistency would be through providing guidance to our fitness to practise panels on FGM issues to ensure they take proper account of whether professionals have failed to report such cases appropriately. This would mean adopting a similar approach to that which we and other professional healthcare regulators have taken in relation to promoting the duty of candour, thus avoiding adding another provision which could have unintended consequences.
- 22 Given our existing powers, if the current FGM guidelines were to be made statutory as it is proposed, we are not clear what further benefit would be gained from the Government introducing a mandatory reporting duty.
- 23 In addition, an important thread running through these proposals is the need to reduce the possibility of a high number of inappropriate referrals overwhelming those responsible for enforcing the duty. The proposed duty will have implications for the NMC and in particular our fitness to practice proceedings, as we may be likely to need to respond to a higher number of allegations. Mandatory reporting, and the publicity associated with its introduction, has the potential to increase awareness, both within mandated professional groups and within the wider public, but the test of any new duty will be in the quality of any allegations that come to the regulator's attention.