

Consultation on the Professional Standards Authority's requirements for 2015-16 in respect of its regulatory and standards functions: Response of the Nursing and Midwifery Council

Introduction

- 1 Thank you for the opportunity to comment on the Authority's funding requirement for 2015-2016. The Authority's consultation document and this response has been discussed by the Council.
- 2 Regulators and the Authority share a common agenda in helping to protect the public. In doing so we seek to apply the principles of 'Right Touch Regulation' and this approach has informed our consideration of the Authority's proposals. Our responses to the specific questions posed in the consultation document are set out at the end.
- 3 We recognise that this is the first such consultation following introduction of the new legal requirement on the nine health care regulators to fund the Authority's oversight activities. We understand there will be a further consultation later in this financial year on the funding requirement for 2016-2017 and annual consultation exercises thereafter. We have therefore taken the opportunity to comment on our expectations in relation to future such consultations.

General comments

- 4 The NMC's regulatory functions are funded almost exclusively from the registration fees paid by individual nurses and midwives. Due to the decision to apportion the fees based on registrant numbers alone, the NMC will bear the largest share of the costs of funding the Authority's oversight activities. Accordingly, these costs are in effect being met by the registration fees paid by nurses and midwives. This is an important factor to be borne in mind in determining funding requirements and consequent fees levied by the Authority.
- 5 As the Authority is aware, we took the very difficult decision in 2014 to raise the registration fee in order to continue to meet the costs necessary to fund our regulatory activity. This was despite a wide ranging programme of efficiency savings being undertaken, especially in Fitness to Practise. The NMC has chosen to absorb the cost of the fees to be paid to the Authority this year, partly due to having so recently increased fees paid by nurses and midwives, but our ability to do so in future years without impacting on our capacity to deliver our regulatory functions cannot be assumed.
- 6 We note that the Authority's funding requirement for the period 2015-2016 represents an increase of 25 percent on its budget for 2014-2015. Given such a significant increase, we would expect to see more clarity around how the costs of

the oversight activities have been derived, steps taken to identify efficiencies and fuller justification of the reasons for this proposed increase.

- 7 In particular, we are concerned that the consultation suggests an expectation that workload, and consequently costs, will continue to rise. Such an approach is not, in our view, sustainable. Affordability should therefore be a key consideration for the Authority as it is for the NMC's Council, supported by effective governance mechanisms to ensure that the costs of oversight activities do not escalate, and are controlled. We would therefore urge the Authority to review available internal resources and consider whether existing processes can be operated more efficiently, and whether planned changes can be delivered without the need for further expansion.
- 8 In particular, bearing in mind the current consultation on the review of the regulator's performance review process, we would expect more transparency around the additional costs envisaged as a result of the changes to the review process. As a guiding principle, we would suggest that any changes to the performance review process should as a minimum be cost neutral or lead to reduced costs, unless there is demonstrable evidence that this will add to public protection. Regulators such as the NMC undergo close scrutiny when proposing to amend or increase fees. It is fully expected that the Authority will meet the same level of transparency and accountability.

NMC responses to the Authority's consultation questions

Question 1: Are there any activities we should be undertaking that have not been detailed?

No.

Question 2: Are there any activities we propose that should be removed?

A significant driver in terms of workload and costs cited by the Authority in the consultation proposals relates to Section 29 cases. We note that there is no statutory obligation on the Authority to review every final fitness to practise decision as is current practice. We would suggest that there is scope within the legislation for the Authority to review how it exercises this function to adopt a more targeted, risk based approach, in line with right touch principles. We are willing to work with the Authority, in collaboration with other regulators, to devise a more focused and proportionate approach which ensures that public protection remains the foremost priority.

We would also suggest that Authority should, similarly, adopt a more right touch based approach to the generation of 'learning points' since the increase in case meetings and appeals suggests that this has yet to prove an effective or efficient way of improving the quality of decisions. Likewise, we would be happy to work with the Authority and other regulators to identify how learning can best be identified and good practice shared.

Question 3: Do you think that our proposals for our work in 2015-16 are reasonable?

We will be responding separately to the Authority's consultation on the revision of the performance review process. We note that the new process is intended to result in a more targeted, risk based approach; we would therefore expect the new process to lead to a reduced rather than an increased funding requirement.

There are a number of areas within the consultation document where there appears to be an assumption made that any changes will generate an increased workload for the Authority. An example of this relates to the 'Impact of new legislation' section in relation to the introduction of new EU legislation for language controls and the European Professional Card. There is currently no evidence that these changes will result in an increased number of fitness to practise cases leading to reviews by the Authority. We would therefore caution strongly against the inclusion of speculative new work activities within these assumptions.

An appropriate guiding principle should be that any changes or new initiatives should be absorbed within existing funding levels through identification of efficiencies; discontinuing activities which do not demonstrably add to public protection; or through working with the regulators to find creative or collaborative solutions.

Question 4: Do you think our assumptions regarding the number of Section 29 cases are sound?

See above. We would suggest that the continuing increase in fitness to practise referrals to regulators should not automatically lead to an increase in Section 29 appeals, and that any assumptions to the opposite should be avoided.

Question 5: Do you think our approach regarding cost recoveries is sound?

Yes.

Question 6: Do you think our approach to borrowing and reserves is appropriate at this point in time?

We would not support the Authority seeking to borrow or otherwise incur a deficit since this could effectively undermine or negate the determination of a funding requirement and consequent fees. We do not support the Authority beginning to develop reserves until the issue of liability for Corporation Tax is resolved and urge that this matter continue to be pursued rigorously. We would expect Government to provide the Authority with a working level of reserves as part of the transfer to a new funding basis.