

Nursing and Midwifery Council (NMC) response to the ‘Reporting and acting on child abuse and neglect’ consultation

- 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.
- 2 We welcome the opportunity to respond to this consultation which seeks views on two potential new legal duties focused on reporting and acting on child abuse and neglect. Given our role as a professional regulator, our response should be considered in the context in which nurses and midwives are likely to be among the mandated professional groups to be covered by either of the new legal duties under consideration. We do not have views on the desirability or otherwise of any organisational level duties.
- 3 Below, we have not addressed each of the questions in the consultation in detail, but have included comments on specific aspects of the proposals which have particular relevance to the NMC.

General comments

- 4 We support the Government’s strategy to better tackle child abuse and strengthen the current child protection system through pursuing a holistic package of reforms as outlined in the first part of the consultation. We also welcome the recognition in the consultation that failings can have multiple causes and that mandatory reporting should not be regarded as the single solution to a complex issue.
- 5 The consultation has a wide scope and covers a spectrum of approaches in which a mandatory duty to report or act in relation to child abuse and neglect could be designed, ranging from the very narrow to the very broad. Existing mandatory models differ in significant ways between jurisdictions, for instance in relation to which professions or organisations the duties apply to, what degree of knowledge of abuse is needed to trigger such duties, what reporting mechanisms are used or what sanctions are attached to failures to comply.
- 6 In our response to the Government’s consultation last year about the introduction of mandatory reporting for FGM, we highlighted the need to carefully examine the merits of implementing a mandatory system in the round focusing on all forms of child abuse¹. In that response, we emphasised the need for responses to FGM to be consistent with how other forms of abuse are treated. Therefore, we welcome

¹ NMC (2015), NMC response to the Home Office consultation on Introducing mandatory reporting for female genital mutilation: <https://www.nmc.org.uk/globalassets/sitedocuments/consultations/nmc-responses/2015/nmc-response-to-the-home-office-consultation-on-introducing-mandatory-reporting-duty-for-fgm-cases.pdf>

the approach taken by the Government in consulting on the merits of a broader application of mandatory approaches that cover all forms of child abuse.

- 7 However, we are mindful of the short period of time that mandatory reporting has been in place in relation to FGM within the UK context. With this in mind, we would urge caution about proposals to introduce a mandatory duty to report or act on other forms of child abuse before the FGM duty is sufficiently embedded so that its impact can be robustly evaluated. We would welcome further clarity about the Government's plans to undertake an assessment of the impact of the FGM duty and particularly how the proposals in this consultation will be revised in light of any emerging findings.
- 8 Should the Government commit to widening the remit of mandatory duties in the future, it will be essential to clarify how any new legal duties would interact with the existing FGM mandatory reporting duty. The consultation leaves open the possibility that any new legal duties may either replace or operate alongside the current FGM duty. We believe that the latter scenario would create a complex suite of mandatory reporting duties, which would be undesirable and give rise to significant confusion among professionals.
- 9 We strongly urge the Government to avoid having two different systems and processes that would operate in parallel. It would be far from ideal for health professionals to be required to report 'known' cases of FGM to the police under the existing FGM duty, while at the same time other types of FGM cases (for example, 'suspected' or 'at risk' cases) and other forms of child abuse would be caught by a wider mandatory duty, with potentially a different reporting route or of a different nature altogether.

Mandatory reporting – the evidence and case for change

- 10 We believe that the consultation's supporting annexes provide a good appraisal of existing literature and analysis of international evidence from other countries where mandatory reporting has been introduced. They do however highlight the lack conclusive evidence to support the implementation of mandatory reporting or a duty to act on child abuse within the UK.
- 11 The consultation also rightly points out the difficulties involved in disentangling the effects of a legislative duty from other factors that impact on professionals' behaviour and the influence of broader features of child protection systems within which such legislation operates, which makes it challenging to draw definitive conclusions from the experience in other jurisdictions.
- 12 The consultation provides a balanced view of the potential merits as well as several of the risks and unintended consequences that the introduction of a mandatory duty to report or take action may pose. We believe the risks are significant, not least the potential of overburdening child protection systems without any corresponding improvement in child protection outcomes. Based on the overview of the evidence presented in the annexes to the consultation, we are not convinced that the potential benefits outweigh the problems which have been identified in relation to mandatory reporting.

Scope of the proposed mandatory duties to report or act in relation to child abuse

- 13 The definition and scope of any new legislative duties need to be carefully considered and take account of the professional standards that health professionals, including nurses and midwives, already have to comply with.
- 14 Our Code² – which sets out the core professional standards expected of all registered nurses and midwives – makes clear that we expect registered nurses and midwives to report and take action if they have concerns about the safety and welfare of children. Specifically the Code states that nurses and midwives must:
 - 14.1 Act in the best interests of people at all times
 - 14.2 Raise concerns immediately if you believe a person is vulnerable or at risk and needs extra support and protection
 - 14.3 Take all reasonable steps to protect people who are vulnerable or at risk from harm, neglect or abuse
 - 14.4 Have knowledge of and keep to the relevant laws and policies about protecting and caring for vulnerable people
- 15 In addition, nurses and midwives must work not only within the Code but also comply with other national standards and guidelines. This includes following the statutory guidance set out in ‘Working Together to Safeguard Children’³ which the consultation makes reference to. Departure from the Code or other existing statutory frameworks can put a nurse or midwife’s registration at risk.
- 16 As we indicated in our response to the FGM duty, we have concerns about the fundamental premise upon which mandatory duties are based. As noted above, one of the core principles in our Code is that a registered nurse or midwife’s primary concern must be the best interests of their patients. Nurses and midwives must be able to use their professional judgment and discretion to decide the best course of action for the child involved, yet we are concerned that a mandatory duty fundamentally conflicts with this. Mandatory reporting, by its very nature, will always be a relatively blunt tool that leaves little room for any element of professional judgment.
- 17 There are a range of key differences between a mandatory reporting duty and a duty to act as outlined in the table on page 17 of the consultation. Our position is that of the two proposed duties, the duty to act (which could involve but is not limited to reporting) is more consistent with our professional standards and allows greater scope to place the child’s best interests at the centre of decision-making by professionals. We believe that the duty to act is more suitable as it enables professionals to take into account the particular circumstances and interests of the child involved in determining the appropriate course of action.
- 18 More fundamentally however, since a duty to act is by all intents and purposes already contained in the professional standards we set, we believe further thought

² NMC (2015), The Code – Professional standards of practice and behaviour for nurses and midwives, <https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf>

³ Department for Education (2015), Working together to safeguard children statutory guidance, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf

needs to be given to the added value that putting this on a statutory basis is intended to bring.

- 19 Lastly, we would like to stress that different factors may be relevant in relation to the extension of any mandatory duties to vulnerable adults. Therefore, should the Government be considering moving in this direction in the future, we believe this should be subject to a separate consultation exercise.

Sanctions attached to failing to report or take action

- 20 Whatever the scope of the proposed duties, a further consideration relates to the associated sanctions that will be imposed for breach of either duty. The consultation discusses different tiers of sanctions, including those arising from existing professional regulatory processes.
- 21 As set out in our governing legislation – the Nursing and Midwifery Order 2001⁴ – we operate a fitness to practise process which allows us to investigate and take action where a concern has been raised that a registered nurse or midwife has not met our standards for safe and effective practice. The purpose of any action we take is to protect the public by helping to make sure nurses and midwives on our register provide safe care and to uphold public confidence. The outcome of our fitness to practise process can be to suspend the nurse or midwife’s right to practise, or to restrict their practice, for example by requiring them to work under supervision.
- 22 Discussion in different parts of the consultation refers to regulatory sanctions applied by professional regulators such as the NMC as ‘disciplinary’ in nature. This is not a term we would use as it is important to maintain the distinction between regulatory and employer sanctions.
- 23 We are keen to stress that our processes are focused on assessing whether a nurse or midwife’s fitness to practise is impaired. We have a range of sanctions available to us which allows for an element of proportionality. If a finding of impaired fitness to practise was made, the appropriate level of a sanction would depend on several factors. Failure to report child abuse might indicate misconduct on the part of a nurse or midwife but would not necessarily result in a sanction if their fitness to practise was not deemed to be impaired. The level of sanction would be dependent on the specifics of the case. For instance, there may have been extenuating circumstances, or it may have been a one-time failure where the professional has demonstrated insight into what went wrong and is unlikely to make the same mistake again.
- 24 There must be consideration of proportionality when deciding what sanctions should attach to the duties. We would urge particular caution before considering the route of introducing criminal sanctions or barring which could be seen as an overly punitive approach.

⁴ Nursing and Midwifery Order 2001 (SI 2002/253),
<https://www.nmc.org.uk/globalassets/sitedocuments/legislation/the-nursing-and-midwifery-order-2001-consolidated-text.pdf>

- 25 The introduction of a new criminal offence would have implications for the NMC as a statutory regulator. If a registered nurse or midwife is subject to criminal proceedings, then questions will also be raised about their fitness to practise and we would expect them to be referred to the NMC. We acknowledge that one potential benefit arising from the introduction of this offence is that, in the event of a criminal conviction, the level of investigation required within our Fitness to Practise (FtP) directorate would be reduced, meaning that the FtP case could be dealt with quicker and with less resource.
- 26 It is imperative to be aware that criminal proceedings and action by a professional regulator fulfill different objectives. The outcome of a criminal investigation may not satisfy the wider need for public protection so regulatory action may still be needed. We do have some concerns about the impact on our proceedings caused by cases which may be captured by a new offence. Where a criminal investigation has concluded that a nurse or midwife is not guilty of a criminal offence, this does not necessarily mean that there will not be other professional issues raised in relation to the nurse or midwife, which we will need to investigate. We consider that there may be significant delay on our proceedings due to the amount of time required by the authorities to investigate these cases and take a decision on whether to prosecute. It should be noted that such delays may well have an impact on patient safety. However, if criminal sanctions are deemed appropriate, we would welcome further engagement with the Government given the link across with our fitness to practise proceedings.