

Terms of reference for independent investigations into whistleblowing concerns

Background and Purpose

1. Concerns have been raised with the NMC about our culture, our handling of issues of racism, sexism and domestic abuse within fitness to practise cases, including how transparent we are and the ability of our employees to speak up without fear. In addition, it is said that leaders and managers' focus on the backlog of cases has meant that the NMC has failed to fully investigate cases, address discriminatory application of policies, and led to speedy but poor quality work.
2. Specific concerns have been raised in relation to the approach we have taken in some fitness to practise cases involving discrimination, sexual misconduct, domestic abuse and safeguarding. There are also concerns about how our culture is impacting our approach to the above, and about how we have responded when concerns were raised about our approach to fitness to practise cases and wider cultural issues at the NMC. These concerns have been detailed in press articles and raised as whistleblowing concerns with us.
3. We are committed to these concerns being fully investigated. This is an important learning exercise for the NMC and is part of our adoption of a just culture approach in line with our duty of care policies. By just culture we mean, supporting a culture of fairness, openness and learning in the NMC by supporting our people to feel confident to speak up when things go wrong, rather than fearing blame or detriment, and ensuring that we can explain to stakeholders what has happened and why. Whatever the findings, we are committed to learning from them.

4. Our aim is to have a culture which is open and transparent, and aligns with our stated values of kindness, fairness, ambition and collaboration. The NMC takes its commitment to Equality, diversity and inclusion (EDI) seriously and it should be at the heart of everything we do. We want colleagues to be comfortable speaking up, to be receptive to feedback and to support the NMC (individually and collectively) to learn and improve where possible.

5. In parallel with the investigations described in these terms of reference, the NMC has established a People and Culture Advisory Group, whose remit is to provide insights, advice and challenge to the delivery of an independent investigation into culture at the NMC, so that recommendations can be identified and taken forward to improve. This is expected to have four broad stages:
 - 5.1.1. Establishment of the group and its terms of reference.
 - 5.1.2. Appointment of an independent investigator and agreed terms of reference for an investigation into and report on concerns about the NMC's culture.
 - 5.1.3. Delivery of the investigation and report into concerns of culture at the NMC.
 - 5.1.4. Communication and implementation of recommendations and evaluation.

6. The relationship between the investigations described in these terms of reference and the work to investigate wider cultural issues at the NMC is set out below.

7. You are asked to investigate, report and provide recommendations on the following:
 - 7.1. Whether the whistleblowing concerns raised about fitness to practise casework are wholly or partially substantiated, indicate that our approach and decision-making are insufficient to protect the public and whether we are failing to comply with our legal obligations. You should specifically consider if this is because we are failing to understand, identify or act upon issues relating to discrimination, safeguarding or domestic abuse.

7.2. Whether there are shortcomings in our guidance, training and anything else you consider to be relevant on the issues highlighted above. If so, please identify any potential solutions so that we can take steps to address the gaps.

7.3. Whether there is evidence that the NMC's culture as set out in the whistleblowing concerns (the values, policies, procedures, practice and behaviours experienced by colleagues) has adversely impacted on our handling of these cases, identifying any issues that need to be considered in the People and Culture investigation. Please note that as stated above, the People and Culture investigation will be looking into wider cultural issues at the NMC and is governed by separate terms of reference.

7.4. How we have handled and responded to the whistleblowing concerns raised, bearing in mind our obligations (including our regulatory, charitable and wider legal obligations) and duty of care to the general public, our professionals, people raising concerns, NMC employees and associates and NMC's Council.

Scope of investigation

8. Below are the specific terms of reference for each of the investigations that we have asked you to undertake.

Fitness to practise casework:

9. The scope of this investigation is as follows:

9.1. To consider the specific cases raised through whistleblowing concerns, articles reported in the press and raised subsequently by NMC colleagues and panel members and identify if decisions and outcomes at each stage of the case sufficiently protect the public, including wider public interest issues concerning discrimination and safeguarding and whether we are operating in a person-centred way.

9.2. In relation to 9.1, to consider:

- 9.2.1. Whether these cases demonstrate sufficient understanding, awareness and cultural competence regarding issues related to discrimination and safeguarding issues within our fitness to practise casework. If not, the extent to which this is due to gaps in our guidance or training and anything else you consider to be relevant. Please identify any specific gaps and how we can learn and make improvements.
- 9.2.2. Whether there is any evidence that organisational culture and behaviours have impacted on the handling and the outcomes of these cases. If so, please identify these so that these can be considered as part of the People and Culture investigation.
- 9.2.3. Whether there are themes and learning and any good practice for our regulatory case work, policy, guidance and training. If so, please identify these so that we can learn and improve.
- 9.3. To consider whether the work we are doing to improve the way we handle cases relating to sexual misconduct, safeguarding, domestic abuse and discrimination is sufficient to address any shortcomings identified and to reflect the public interest issues in these areas, making appropriate recommendations on any further work we can do.
- 9.4. In reviewing the cases, please consider our obligations under our Order and Rules, our charitable objectives and any wider legal obligations (such as those under the Equality, Human Rights Acts, or relevant safeguarding legislation) together with any relevant caselaw. Please also refer to the PSA Standards of Good Regulation.
- 9.5. Please prepare a report of your findings that can be published in a form which aligns with our values, duty of care and any wider obligations towards any individuals involved in the cases or wider work. Prior to publication of your report, you will share a draft copy of the report with the NMC. Our comments will be restricted to the following: factual inaccuracies, identifying missing information or gaps, ensuring that we meet our data protection and UK GDPR obligations of those involved and that the report aligns with our values.

Handling of whistleblowing concerns

10. The scope of this investigation is as follows:

- 10.1 To consider the NMC's response to the whistleblowing concerns when raised by the whistleblower including whether they were treated fairly, we followed our processes and practice for similar whistleblowing cases and HR casework, the seriousness with which the concerns were treated and the appropriateness of any actions taken in light of the NMC's obligations (including our regulatory, charitable and wider legal obligations) and duty of care towards people raising concerns, members of the public, professionals on our register, NMC employees and associates and the NMC's Council.
- 10.2 To consider in light of 10.1 how the NMC managed and balanced its duties and responsibilities and whether it acted fairly and reasonably and in line with its commitments to equality, diversity and inclusion, whistleblowing, duty of care and reasonable adjustments policies and guidance and any other policy you consider to be relevant. Please identify if there are any areas for learning and improvement.
- 10.3 To consider best practice in the handling of whistleblowing concerns and whether there is any learning for the NMC arising from this case. This includes considering whether our whistleblowing and grievance policies, processes and practices are sufficiently distinct and also provide suitable avenues for people to raise concerns.
- 10.4 To consider the flow of information about the whistleblowing concerns raised, including whether we adhered to our privacy and data sharing responsibilities, when sharing the whistleblower's identity with key operational staff and the extent to which their ability to perform their role would have been hindered if this level of detail had not been shared. To also assess whether the flow of information within the Executive and between the Executive and with Council enabled appropriate challenge and provided assurance on the NMC's handling of whistleblowing concerns in line with our regulatory, charitable and wider legal obligations.

- 10.5 To review and recommend any areas for improvement in relation to the NMC's non-contractual payments policies, process and guidance.
- 10.6 Where there is any evidence or an absence of evidence that organisational culture or behaviours have impacted on our handling of the whistleblowing concerns, please share any relevant findings about NMC's culture so that these can be considered as part of the People and Culture investigation.
- 10.7 In line with our duty of care and obligations (including our regulatory, charitable and wider legal obligations) towards people raising concerns, members of public, professionals on our register, NMC employees and associates and the NMC's Council, please provide:
- 10.7.1 Recommendations for any organisational learning and improvement, including in relation to any policies, process or guidance. The recommendations will be published.
- 10.7.2 A confidential report detailing the extent to which the NMC responded appropriately to the specific whistleblowing concerns when raised. This report will not be published as it will contain information that could enable the whistleblower to be identified by colleagues within the organisation and we have a duty to protect the whistleblower's confidentiality.

Your role

11. Your role in relation to the investigation, consideration of the issues and reporting will be to:
- 11.1. Take an independent, evidence-based and impartial approach.
- 11.2. Report as appropriate on scope, approach and direction of the investigation, including any key lines of inquiry. We are aware that as your investigations progress you may need to add additional elements to the scope. Before any amendments are made, this needs to be agreed with the NMC's Executive Board and Council.

The Executive Board and Council will consider the views of the People and Culture Advisory Group when deciding whether to agree the scope.

- 11.3. Identify and request the information you require to complete your investigation.
- 11.4. Report to the PSA on emerging themes that would benefit further consideration as part of the PSA's review of the NMC's performance. Please bear this in mind when reviewing the cases we have asked you to look at.
- 11.5. As appropriate, periodically share your draft findings and insights with the NMC's People and Culture Advisory Group and with the expert appointed by the NMC to report on and investigate wider issues relating to NMC's workplace culture. You should also be receptive to the updates on their work, which will support a better understanding of the issues being uncovered.
- 11.6. Provide appropriate progress reports, including your findings and insights, to the NMC's Executive Board and Council and deliver your reports in line with agreed deadlines.
- 11.7. Throughout the investigation and in your reports, take into account our duty of care and obligations (including our regulatory, charitable and wider legal obligations) towards people raising concerns, members of the public, professionals on our register, NMC employees and associates and the NMC's Council.
- 11.8. Engage with all participants in line with our values of fairness, kindness, ambition and collaboration, working with us to ensure that participants in the investigations are provided with appropriate support and information to encourage them to take part in the investigations.
- 11.9. Adopt a person-centred approach, by which we mean understanding individuals' needs, adapting how we work with people to meet their needs, and ensuring that everything you do is underpinned by empathy and respect.

11.10. Ensure when reviewing the fitness to practise case work, that we are continuing to meet our overarching objective of protecting the public and appropriately reflecting public interest issues, in particular those relating to discrimination, safeguarding and domestic abuse.

11.11. Take into account the expert opinion of an independent clinical adviser or advisers on the cases shared.

Relationship between investigations in scope of this Terms of Reference and the investigations into People and Culture and the work of the People and Culture Advisory Group

12. Agendas and minutes of the People and Culture Advisory Group meetings will be shared with you. The purpose of this will be to inform your work on these investigations.

13. We ask that you periodically share any relevant insights about the NMC's wider workplace culture with the Advisory Group and/or independent expert which the NMC intends to engage to investigate concerns about the NMC's wider cultural workplace issues. As you take forward your investigation, we ask that you take into account any relevant insights or findings from the Investigation into People and Culture. This will support a better overall understanding of the issues. Please let us know when you wish to attend meetings of the Advisory Group and/or to meet with the independent expert in order to exchange insights.

Engagement of participants

14. This is an important learning exercise for the NMC. It is important that it is not seen as, and is not, a disciplinary investigation. Participation is voluntary, although all participants will be encouraged to take part. We will offer appropriate support to all NMC participants, through our HR teams and managers. We will engage with UNISON and staff networks to ensure that we have appropriate support in place.

15. Throughout this investigation, the NMC will seek to ensure that we live our values of kindness, fairness, ambition and collaboration, and that we fulfil our duty of care to and wider obligations towards people raising concerns, members of the public, professionals on our register and NMC employees and associates.

Information sharing and confidentiality

16. You will explain to all individuals who are participating that it may not be possible to maintain confidentiality and in those instances you will explain to the participants why it is not possible to maintain confidentiality. At all times, you will support the NMC in ensuring that it meets its obligations under UK GDPR and acts in line with its data handling policies and guidance.

Further information

17. If individuals would like to contact Ijeoma Omambala KC with any further information that you consider to be pertinent to this investigation you can contact Ijeoma directly via omambala@oldsquare.co.uk.

Additional information

Ijeoma Omambala KC

Ijeoma is a barrister who specialises in employment law, professional regulation and public law. She has particular expertise in discrimination and whistleblowing claims. She is currently a member of the EHRC preferred counsel panel.

Appointed to silk in 2020 she is also a fee paid Judge, an accredited mediator and an independent board member of the Advice, Conciliation and Arbitration Service (“ACAS”) of England and Wales.