

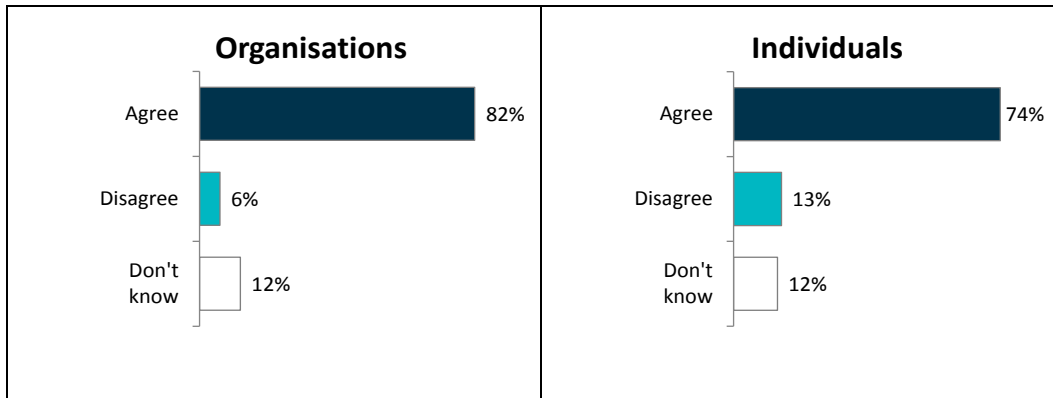
**NMC Consultation
report
Modernising
Fitness to Practise**

NMC Consultation report – *Modernising Fitness to Practise*

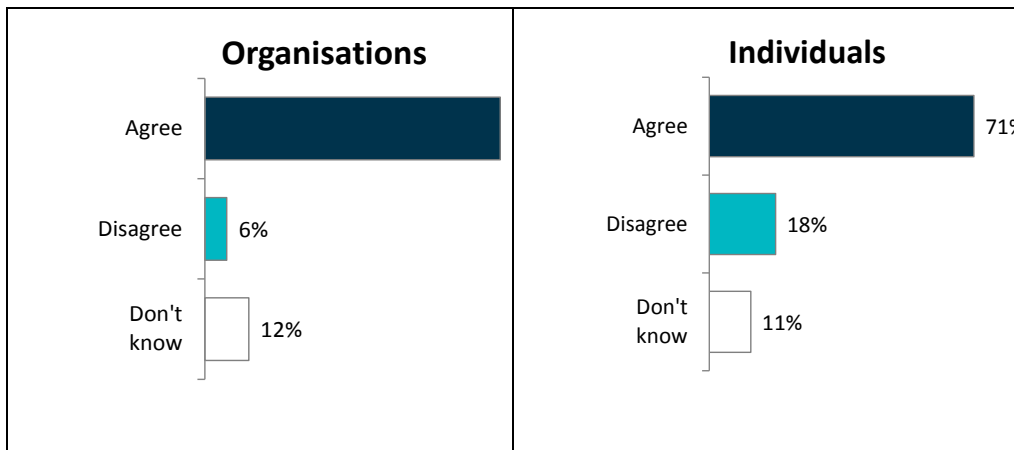
Executive summary

- 1 The Nursing and Midwifery Council (NMC) is the professional regulator for nurses and midwives practising in the UK. We exist to protect the public. We do this by holding and controlling access to the register of qualified nurses and midwives and setting standards of education, training, conduct and performance. If an allegation is made that a registered nurse or midwife is not fit to practise, we also have a duty to investigate and, where necessary, take action to protect the public.
- 2 Following a consultation in 2016, the Department of Health has put proposals before Parliament to update and improve our legislation. These changes will give us more flexibility when investigating concerns about the fitness to practise of nurses and midwives. The way these changes will work in practice will be set out in our Rules. Between 25 October and 19 December 2016, we held a consultation on changes to the Rules.
- 3 We proposed measures to allow Case Examiners to give advice, issue warnings, and recommend undertakings. We also proposed measures to ensure that decisions made under these new powers could be subject to review in certain scenarios. The ability to review is already in place for those cases where no case to answer decisions are made in our existing fitness to practise proceedings.
- 4 In response to our consultation we received 132 responses, 91 from individuals and 41 from organisations. Of the individuals who responded, 93% identified themselves as being on our register as nurses or midwives, and 74% as currently practising in the UK. The weight of the responses we received was very firmly supportive of our proposals.
- 5 We have set out a snapshot of the responses on some of the key issues in the table below. Further detail on how organisations and individuals responded to our consultation questions is produced at the end of this report.

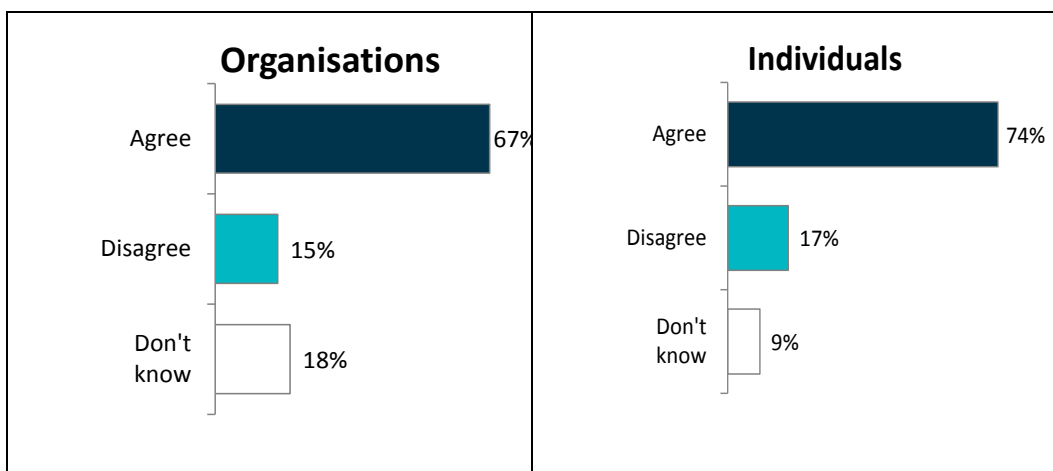
Q.1: Do you agree with our approach as to when Case Examiners should recommend undertakings?



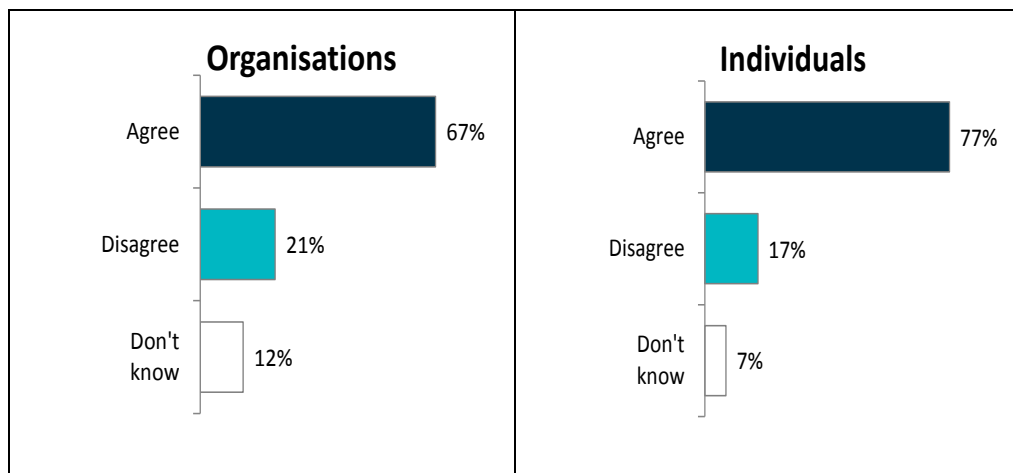
Q.3: Do you agree with our approach to publishing undertakings?



Q.4. Do you agree with our proposals that warnings may be issued where the past concerns are serious, but the nurse or midwife has demonstrated full remediation and does not pose a current risk to patients?



Q.5. Do you agree with our approach to publishing the content of warnings?



- 6 We welcome the support for these proposals, which we expect to have a considerable impact in making our fitness to practise process more flexible and proportionate. The proposed changes will also allow us to better focus resource on cases which involve the greatest risk to the public.
- 7 Having reviewed and considered the consultation responses and any evidence presented to us, we intend to proceed with the proposals as consulted upon.
- 8 We recognise that we received a small number of concerns on the detail of our proposals, especially from organisations representing the nurses and midwives on our register. We are committed to engaging with stakeholders on these points prior to the legislation coming into force and this will include seeking their views as we develop detailed guidance on the changes.

Introduction

- 9 On 21 April 2016¹ the Department of Health consulted on proposals to improve certain approaches within our fitness to practise function by providing us with new regulatory powers. The Department of Health published their consultation report on 11 January 2017. Their report concluded that they would bring the proposed powers, as consulted upon, before Parliament for approval.
- 10 From 25 October to 19 December 2016 we ran a public consultation called Modernising Fitness to Practise². It set out proposals for how we could use the powers consulted upon by the Department of Health. This report sets out the responses we received to our consultation, our conclusions, and the next steps. It excludes responses that were out of scope of our consultation.
- 11 Our consultation proposed measures to allow Case Examiners to give advice, issue warnings, and recommend undertakings, in addition to their existing powers to make case to answer decisions on behalf of the Investigating Committee. It also proposed measures to ensure that decisions made by Case Examiners using these new powers could be subject to review in certain scenarios. This is already the case with no case to answer decisions in our fitness to practise proceedings. In addition, it proposed transitional arrangements for how the new measures would come into effect.
- 12 We thank everyone who took the opportunity to respond and in doing so helped shape our approach to modernising fitness to practise.

Undertakings

- 13 We proposed that Case Examiners would have the option to be able to recommend undertakings for a nurse or midwife where their practice is a current risk to patients, but where this risk can be managed and addressed with appropriate restrictions. Undertakings would only be available:
 - 13.1 after the investigation stage where Case Examiners had found there is a case to answer
 - 13.2 where the nurse or midwife accepted the incidents of concern occurred
 - 13.3 where the nurse or midwife agrees that they need to address aspects of their practice to ensure patient safety.
- 14 Where agreed, undertakings would prevent a case going onwards for a hearing. They would not be available as an option where there is a real prospect of a panel imposing a striking-off order.
- 15 Where undertakings are recommended, we would write to the nurse or midwife inviting them to agree to comply with the undertakings within 28 days. Where they

¹ <https://www.gov.uk/government/consultations/changes-to-nursing-and-midwifery-council-governing-legislation>

² <https://www.nmc.org.uk/globalassets/sitedocuments/consultations/2016/s60-ftp-consultation-rules-oct2016.pdf>

are not agreed the matter would progress to a hearing. Where agreed, a dedicated review team would monitor the nurse or midwife's compliance and present their findings to Case Examiners who may lift or vary (with the nurse or midwife's agreement) the undertakings. In cases of non-compliance, the Case Examiners may refer the matter for a full hearing. Appropriate details of active undertakings such as the statement of regulatory concern, and the steps the nurse or midwife is required to take, would appear on our public register, unless the case was about to the nurse or midwife's health.

Supportive responses

- 16 82% of organisations and 74% of individuals agreed that Case Examiners should recommend undertakings.
- 17 91% of organisations and 92% of individuals agreed Case Examiners should be able to send an allegation for a hearing where undertakings are not complied with.
- 18 82% of organisations and 71% of individuals agreed with our approach to publishing undertakings.
- 19 Those respondents stated that proposals would:
 - 19.1 lead to quicker processing of less serious cases
 - 19.2 be a more proportionate approach that would help to protect the public
 - 19.3 deliver a more efficient use of resources for the NMC and all other parties
 - 19.4 reduce stress on nurses and midwives
 - 19.5 increase transparency and accountability from the public and for employers.
- 20 Respondents also felt that where a nurse or midwife failed to comply with undertakings it was appropriate that this should lead to a hearing as this would show a lack of continuing patient concern and ability or willingness to improve. Hearings following non-compliance would provide incentive to comply and ensure appropriate regulatory action could be taken to protect the public.

Unsupportive, neutral or other responses

- 21 6% of organisations and 13% of individuals disagreed with our approach for when Case Examiners should recommend undertakings, while 12% of organisations and individuals were unsure.
- 22 6% of organisations and 3% of individuals disagreed that Case Examiners should be able to send an allegation for a hearing where undertakings are not complied with, while 3% of organisations and 4% of individuals were unsure.
- 23 6% of organisations and 18% of individuals disagreed with our approach to publishing undertakings, while 12% of organisations and 11% of individuals were unsure.

- 24 Those respondents stated that:
- 24.1 there should be clear guidance, definitions and operational processes for Case Examiners, referrers, nurses and midwives and organisations in order to be consistent and effective. And that guidance should include:
- 24.1.1 the types of undertakings available, how they compare to conditions of practice and the thresholds for disposal options.
- 24.1.2 details of how compliance should be monitored, and whether the nurse or midwife could inform the NMC when they felt they had completed their undertakings.
- 25 We agree that guidance should follow any change to our legislation. We have stated during our consultation process that we will work with stakeholders to develop detailed guidance should the proposals be taken forward.
- 26 Some key differences between undertakings and conditions of practice are that undertakings are agreed, while conditions of practice are imposed. We also intend to use undertakings as a way of enabling a nurse or midwife to return to unrestricted, safe practice as soon as they have demonstrated that they do not pose any further risk to patients. We see undertakings as operating more flexibly than conditions of practice, which are ordered to be in place for a set period of time.
- 27 One response noted that the Professional Standards Authority (PSA) could not appeal this type of decision under their legal powers, which they felt represented a risk to public protection. The same point was made for each of the disposals proposed.
- 28 Our proposals include the scope to monitor compliance with undertakings and where appropriate review and vary undertakings for less serious cases involving clinical matters which can be effectively managed through agreed actions. A review can be called by any party to the proceedings or another party. This ensures that there are safeguards in place to assess and mitigate against any risk to the public. Current legal powers for the PSA would remain unchanged in the most serious cases, which would continue to be heard before a practice committee.
- 29 Another respondent questioned whether it was fair or proportionate to publish details of undertakings on our register, and whether it would breach confidentiality. Our proposed approach to the publication of undertakings would be an extension of how we currently publish details of restrictions on nurses' or midwives' practice rights. Publication of restrictions on practice on a public register is fundamental to ensuring that our fitness to practise process is able to protect patients and other members of the public. It is an established approach which is also taken by a range of independent regulators to ensure transparency and public protection, and is in line with data protection requirements.
- 30 One respondent stated that there should be an opportunity to explain non-compliance as there may be mitigating circumstances. We agree, and the

opportunity to explain non-compliance would form a part of any monitoring for compliance that we undertook. If Case Examiners or the Registrar were considering whether they needed to suggest varying the undertakings, or they needed to refer the case on for a hearing, the nurse or midwife would have the opportunity to explain non-compliance in any representations they may choose to make at that stage. They would have a further opportunity to make such representations if the matter was to be referred to the fitness to practise Committee.

- 31 Another response stated that a failure to comply with undertakings should not result in an additional fitness to practise charge of non-compliance. We are clear that failure to observe undertakings would be a failure to comply with actions agreed with us as the regulator to address public protection concerns. Therefore, it is important that the fitness to practise Committee should be able to consider a specific charge of non-compliance in order to safeguard our ability to protect patients from the harm can be caused by any clinical failings on the part of nurses or midwives.

Conclusion

- 32 Having reviewed and considered the consultation responses and any evidence presented to us, we intend to proceed with our proposals as consulted upon.

Warnings

- 33 We proposed that where a nurse or midwife's *past* conduct represented a serious breach of professional standards and the Code, but based on clear evidence they do not present a *current* risk to patients, then the most serious sanctions available to us may not be appropriate. In such cases, we proposed that Case Examiners would have the option to find no case to answer, but be able to issue a warning to the nurse or midwife in order to signal our concern over past conduct.
- 34 We proposed that this option would only be available after the completion of the investigation stage, and where the nurse or midwife accepts the concern about their past practice. A nurse or midwife would have the opportunity to make representations to the Case Examiners about whether they felt a warning was appropriate. Warnings and appropriate details of the regulatory concern would be recorded on our public register for a period of 12 months. We proposed that Case Examiners may take warnings into account in any future referrals we receive about the nurse or midwife for a period of three years.

Supportive responses

- 35 67% of organisations and 74% of individuals agreed with our proposals for when a warning could be issued.
- 36 67% of organisations and 77% of individuals agreed with our proposed approach to publishing the content of warnings.
- 37 Those respondents stated that:

- 37.1 the proposals for warnings would lead to the quicker processing of less serious cases allowing more serious cases to be dealt with more quickly
- 37.2 unnecessary hearings would be prevented, meaning a more proportionate approach and a better use of resources
- 37.3 proposals would help to protect the public and would give the nurse or midwife the opportunity to learn from their mistakes
- 37.4 it was crucial that the nurse or midwife agrees with the allegation as this was a key means of showing insight and being able to develop good practice
- 37.5 publication of warnings would assist employers in identifying patterns in practice and tailoring development and support
- 37.6 proposals would increase transparency and accountability from the public and for employers
- 37.7 proposals would help maintain public confidence in the profession, helping the profession to uphold the professional standards in the Code.

Unsupportive, neutral or other responses

- 38 15% of organisations and 17% of individuals disagreed with our proposals for when a warning could be issued while 18% of organisations and 9% of individuals were unsure.
- 39 21% of organisations and 17% of individuals disagreed with our proposed approach to publishing the content of warnings, while 12% of organisations and 7% of individuals were unsure.
- 40 Those respondents stated that:
 - 40.1 warnings as a regulatory sanction must be consensual between the regulator and registrant. Paragraph 8.65 of the 2014 Law Commission report *Regulation of Health Care Professionals*³ was cited in support of their concerns
 - 40.2 the proposed approach avoids the safeguard of a panel hearing and that the NMC was proposing the approach to avoid a case going to a hearing where it has already been regarded by Case Examiners as no case to answer and it being confirmed as such without any sanction.
- 41 The main theme of disagreement relating to our proposals for warnings is around the ability for the NMC to impose a warning on the nurse or midwife as a regulatory outcome, without their agreement to that warning being issued and published against their registration.

³ Page 139 - http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc345_regulation_of_healthcare_professionals.pdf

- 42 Similar points about the PSA's legal powers to appeal, the fairness of publishing that a sanction had been issued, and the need for guidance were made for warnings as they were for undertakings. Our assessments set out above therefore also equally apply here.
- 43 We do not believe that it is proportionate to hold hearings on a matter where Case Examiners have already found there is no case to answer, which must happen before a warning could be issued. However, there are cases where it is proportionate to take regulatory action where there is no current risk to patients, but a past concern represented a significant departure from the Code which needs to be accepted by the registrant and recognised by the regulator. For example, this would allow us to better and more proportionately address public interest concerns where there is a need to protect the reputation of the professions, or uphold standards, but where there is no current impairment of clinical practice.
- 44 Warnings therefore represent a more proportionate and effective means of promoting and maintaining confidence in the professions, and proper professional standards and conduct, in line with our overarching objectives.⁴ We have finite resources which mean we need to demonstrate value for money to the public and the nurses and midwives on our register; these proposals would allow us to target our resources effectively to achieve this and best protect the public.
- 45 We also believe that the proposals would be a more proportionate means of achieving the current outcome of many substantive hearings where a finding of impairment is made against the nurse or midwife, even though they present no current risk to patients. These findings are often needed to protect the public interest by declaring and upholding standards or protecting the reputation of the professions. Often these cases end in a caution order of between one and five years being imposed. If warnings were available where nurses and midwives indicated at an earlier stage in our process that they accepted our regulatory concern and provided good evidence of insight and of putting problems in their practice right, then a referral to a full public hearing may not be necessary.
- 46 In a case of this nature, a warning would operate to protect the public interest by marking the past conduct as unacceptable. We therefore consider that these more proportionate proposals are in the interests of the public and their protection, and are in the interests of the small percentage of nurses and midwives on our register whose fitness to practise we have to investigate.
- 47 We would also note that the Law Commission paragraph cited by some respondents is based on a model where details of the warning are published for 5 years, rather than the 12 months we propose. We do not, therefore, agree that the cited paragraph's concerns can necessarily apply because of the significant difference in how our proposed system would operate. The paragraph is about having the safeguard of requesting a hearing in the absence of agreement. More recently, the government response to the Law Commission Report covered the power to issue warnings at the end of an investigation. It did not highlight any recommendation that warnings should be consensual or that there was a need for a hearing as an appropriate safeguard. Their view on safeguards on all decisions

⁴ <http://www.legislation.gov.uk/ukpga/2015/28/contents>

at the end of an investigation (other than decisions to refer for full hearing) was to make them subject to Registrar review.⁵

- 48 We recognise that there are valid concerns regarding the level of understanding of nurses or midwives as to what happens at the end of the investigation and that this may impact on their ability to properly engage with the fitness to practise process. In order to underline our commitment to ensuring that nurses and midwives are able to make informed representations at the end of the investigation we intend to amend our fitness to practise Rules to require us to tell every nurse or midwife what options are available to the Case Examiners and request representations.

Conclusion

- 49 Having reviewed and considered the consultation responses and any evidence presented to us, and subject to the amendment to the FtP Rules described above at paragraph 48, we intend to proceed with our proposals as consulted upon.

Advice

- 50 We proposed that where Case Examiners decide there is no case to answer, they may have the option to give written advice to the nurse or midwife when closing the case. The advice would be issued privately to the nurse or midwife only. However, we would inform the person who referred the case to us, that the case was closed with advice. Advice would not be an available option where the nurse or midwife disputed the incident which caused us concern. We proposed that Case Examiners may take advice into account in any future referrals the nurse or midwife is involved in for a period of three years.

Supportive responses

- 51 79% of both organisations and individuals agreed with our proposals on when Case Examiners may give advice.
- 52 Those respondents felt that:
- 52.1 the proposals would lead to quicker processing of less serious cases and that they were a more proportionate approach
 - 52.2 advice would better provide the opportunity for registrants to learn from their mistakes, so the proposals should be seen as a supportive measure
 - 52.3 the proposals would help to support nurses and midwives to uphold the professional standards within the Code.

Unsupportive, neutral or other responses

- 53 18% of organisations and 9% of individuals disagreed with our proposals on when Case Examiners may give advice, while 3% of organisations and 12% of individuals were unsure.

⁵ Page. 62, paragraph 5.28 - <http://qna.files.parliament.uk/ws-attachments/176610/original/Government's%20response%20to%20Law%20Commission%20report.pdf>

- 54 Similar points on PSA legal powers to appeal, the fairness of publicly confirming that advice had been given to a nurse or midwife, and the need for guidance were made for advice as they were for undertakings and warnings. Our assessments set out above therefore also equally apply here, although we emphasise that we do not propose to publish any advice that is given privately to the nurse or midwife, only the fact that advice has been given.
- 55 One response proposed that the contents of advice could be shared with employers to enable them to provide tailored workplace support. Cases of this nature would not be a significant public protection risk, so we do not believe that doing so would be justified, and would not be proportionate or fair to the registrant.

Conclusion

- 56 Having reviewed and considered the consultation responses and any evidence presented to us, we intend to proceed with our proposals as consulted upon.

Reviewing Case Examiner Decisions

- 57 We proposed that a decision by Case Examiners to give advice or issue a warning (both meaning a finding of no case to answer has been made) will be a reviewable decision. A review would only be possible where evidence suggests the decision was materially flawed, or new information has become available which could have led to a different decision, and a review is necessary to prevent injustice to the nurse or midwife, or is in the public interest. This would extend the existing review provisions to the proposed new outcomes, but introduce the new factor of 'preventing injustice to a nurse or midwife'. This would act as a safeguard to allow nurses and midwives to challenge decisions to issue warnings or give advice.
- 58 Our guidance will make clear that we will inform a nurse or midwife of a decision which affects their entry in the register (such as a warning) seven days before it becomes part of their register entry.
- 59 We proposed that the current 12 month time limit for reviewing other no case to answer decisions should apply, as should the Registrar's review powers (that is, to confirm no case to answer, refer back to Case Examiners to reconsider, or substitute the finding for another that was available to the Case Examiners).

Supportive responses

- 60 88% of organisations and 87% of individuals agreed that the Registrar should also be able to review decisions to give advice, issue warnings, and recommend or lift undertakings using the existing principles for reviewing Case Examiner decisions.
- 61 100% of organisations and 90% of individuals agreed that 'preventing injustice to a nurse or midwife' should become a new factor for reviewing Case Examiner decisions.
- 62 Those respondents stated that:

- 62.1 the review process for all Case Examiner decisions was essential to ensure scrutiny, proportionality, fairness, integrity and consistency within the system. This would also help protect the public and maintain public confidence, especially if more serious information came to light
- 62.2 the proposals would help ensure fairness more swiftly for the nurse or midwife if further evidence comes to light showing they had no case to answer or were not at fault
- 62.3 the 12 month review period was appropriate.

Unsupportive, neutral or other responses

- 63 6% of organisations and 8% of individuals disagreed that the Registrar should also be able to review decisions to give advice, issue warnings, and recommend or lift undertakings using the existing principles for reviewing Case Examiner Decisions.
- 64 6% of both organisations and individuals were unsure. 0% of organisations and 4% of individuals disagreed that 'preventing injustice to a nurse or midwife' should become a new factor for reviewing Case Examiner Decisions, while 0% of organisations and 6% of individuals were unsure.
- 65 The points set out earlier in this document in relation to the need for guidance and that the PSA cannot appeal the proposed sanctions that could be subject to review were again made here. We would respond in a similar way to these points as we have done above. We note that there is already detailed guidance in place for reviewing Case Examiner decisions. We acknowledge that this guidance would need to be updated to in the light of there being extended powers to review.
- 66 A small number of respondents stated that the only appeal route for a Registrar review is a judicial review, and that warnings would have long expired before a judicial review could be completed. It was argued that the current review route is not clear, open or transparent, and so is not appropriate.
- 67 No substantive evidence was presented in support of these views. It is not our experience of the new review system that a Registrar review takes over 12 months to complete. In a small number of cases a final decision by the Registrar of no case to answer decisions has taken a number of months where further investigation work has been required, but the vast majority of reviews are completed within a matter of weeks. The application of the existing Registrar review process to the proposed new Case Examiner outcomes would be swifter and more accessible than a judicial review, and would not incur the same, typically substantial, associated costs to all parties, so is more proportionate. The proposed inclusion of a new factor of 'preventing injustice to a nurse or midwife' would add a further safeguard and make the process even more accessible. Under our proposed review powers we would prioritise reviews of a decision to use one of the new Case Examiner disposal powers.

- 68 We introduced current arrangements for reviewing Case Examiner decisions when Case Examiners were themselves introduced, in part for this purpose.⁶ Over half of respondents supported the current reviewing arrangements when introduced.⁷ Both the current and draft legislation set out the approach to Registrar reviews, and identify appropriate safeguards. None of the evidence submitted suggests that a different approach to reviewing Case Examiner decisions is merited.

Conclusion

- 69 Having reviewed and considered the consultation responses and any evidence presented to us, we intend to proceed with our proposals as consulted upon.

Transitional arrangements

- 70 We proposed that the changes set out should take effect for all new and existing cases progressing through our fitness to practise process from the date the legislation comes into force, except for where a hearing has already started and the charges have been read out. Hearings where the charges have been read out, but have not concluded on the date the new legislation come into force, would continue to be considered under the current legislation.

Consultation responses

- 71 94% of organisations and 79% of individuals agreed with our proposed transitional provisions.
- 72 6% of organisations and 9% of individuals disagreed with our proposed transitional provisions, while 0% of organisations and 12% of individuals were unsure.
- 73 Supportive responses stated that the transitional proposals seemed sensible, pragmatic, robust and proportionate, and that they would help to expedite the resolution of cases in a more proportionate way. We welcome this feedback and the strong level of support.
- 74 Other responses stated that we would need to make sure that those awaiting hearings when the new Rules take effect are not disadvantaged.

Conclusion

- 75 Having reviewed and considered the consultation responses and any evidence presented to us, we intend to proceed with our proposals as consulted upon.

Draft legislation

- 76 In our consultation, respondents were invited to comment on or evidence any suggestions for the legal drafting presented. The majority of respondents provided no comments on the draft legislation consulted upon. No views or evidence of note further to any of the points set out above were provided. We therefore do not

⁶ www.nmc.org.uk/globalassets/sitedocuments/consultations/2014/nmc-ftp-and-registration-rule-changes--draft-consultation-document.pdf

⁷ www.nmc.org.uk/globalassets/sitedocuments/consultations/2014/nmc-conclusions-document---v-07.pdf

consider that any of the responses raise matters which would cause us to change or abandon the amendments we seek to our legislation. Subject to the amendment suggested at paragraph 48 above, and minor drafting amendments following further review by the Department of Health's legal team, we propose to implement the legal drafting as consulted upon to give effect to the approaches set out in our consultation.

Equality

- 77 We have completed an Equality Assessment for our proposals, to assess against the potential impacts on the protected characteristics as defined in the Equalities Act 2010. In addition, in our consultation respondents were invited to comment on or evidence any equality impacts the proposed changes may have.
- 78 Approximately half of all responses received stated they did not believe our proposals would have any impact on those with a protected characteristic. A third stated that they did not know. Of the other comments received, respondents stated that the more proportionate proposals set out would positively affect BME and male nurses and midwives, and nurses and midwives over 50, all of which were overrepresented in referrals compared to the percentage of our register they account for. NMC data and studies from other organisations were cited in support of this.
- 79 Other respondents suggested phasing in the proposals to allow the chance to monitor and identify any differential impacts in partnership with the professional bodies/unions. Another believed that those with the protected characteristics of sex or pregnancy/maternity could be adversely affected by our proposals for warnings, referencing that most doctors are male and that warnings given by the GMC are consensual.
- 80 Objective oversight by an independent regulator is a key principle of modern regulation post-Shipman. Responsibility for monitoring and compliance therefore has to rest with us. However, if others undertook any such activities and shared them with us, we would welcome that information and consider the findings. We will continue to monitor the equality implications of our approaches and take any appropriate actions.
- 81 A number of respondents expressed equalities concerns about the power to issue warnings. For the warnings approach we have proposed, there would be no finding of impairment as is the case for doctors. However, our proposal for warnings would only show for 12 months on our register, not 5 years as is the case for doctors. This is therefore beneficial to the nurse or midwife, and proportionate to the regulatory concern in our case. As most of our registrants are women, and our data⁸ shows overrepresentation amongst certain groups in our fitness to practise process compared to the percentage of the register they account for, then these groups would likely experience the most benefit from our proposed more proportionate approaches. The approaches we have proposed

⁸ Pages 25-36 -

https://www.nmc.org.uk/globalassets/sitedocuments/annual_reports_and_accounts/equality-and-diversity-report-2015-16.pdf

also represent a proportionate means of achieving a legitimate aim: public protection.

- 82 Our analysis therefore does not suggest any adverse impacts on the protected characteristics from the proposals.

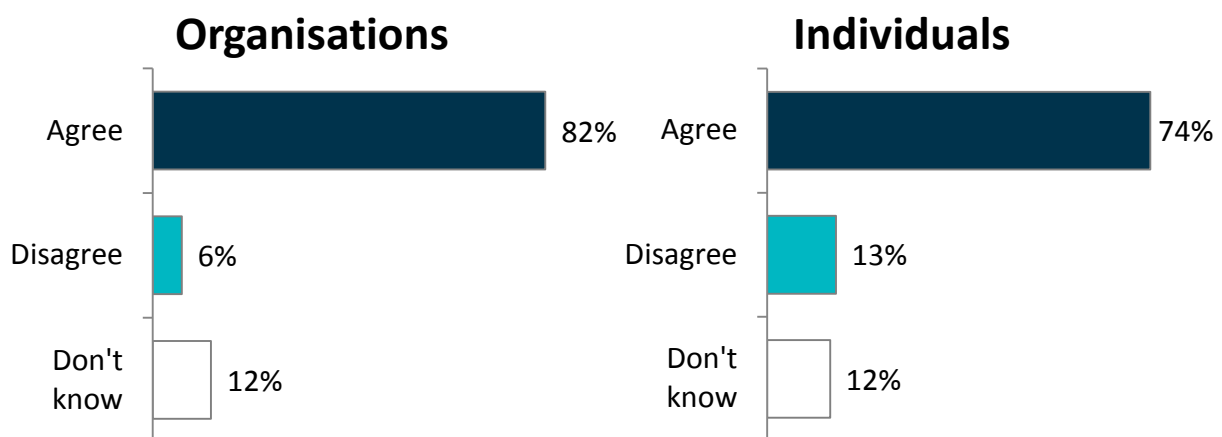
Conclusion and next steps

- 83 We have decided to implement our proposals as consulted upon. The proposals have received a high level of support from organisations and individuals. There has been no evidence submitted to us that would suggest another course of action is required. The expected result would be to help modernise our fitness to practise functions so they are more effective and efficient, while ensuring the public is protected.
- 84 Our Council has approved these conclusions on 29 March 2017.
- 85 We will bring the legislation before parliament for approval. Subject to a successful Parliamentary process we anticipate that our proposals will take effect from 31 July 2017.

Responses to the consultation questions

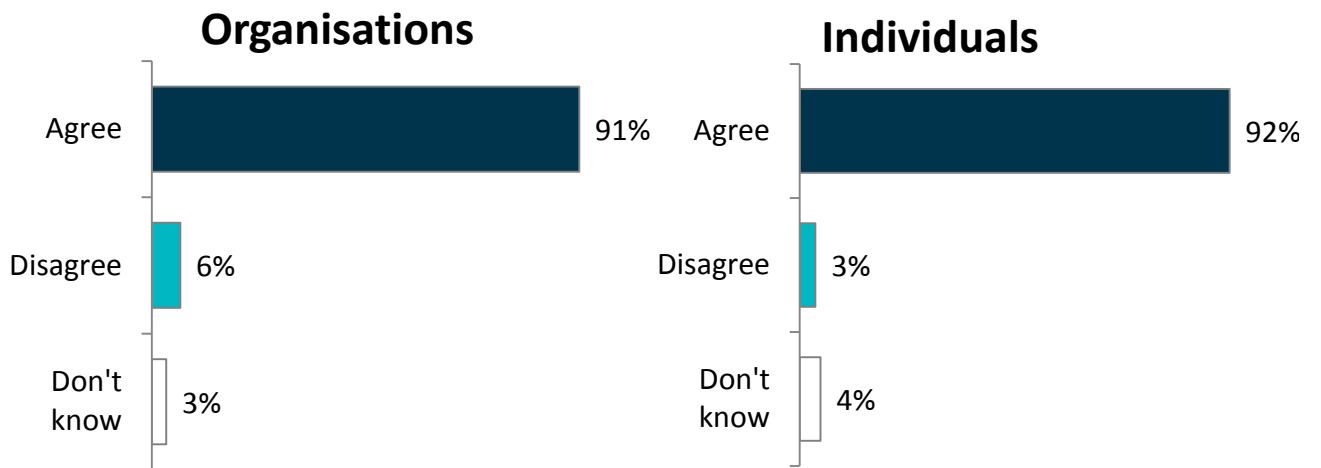
A. Undertakings

Q.1: Do you agree with our approach as to when Case Examiners should recommend undertakings?



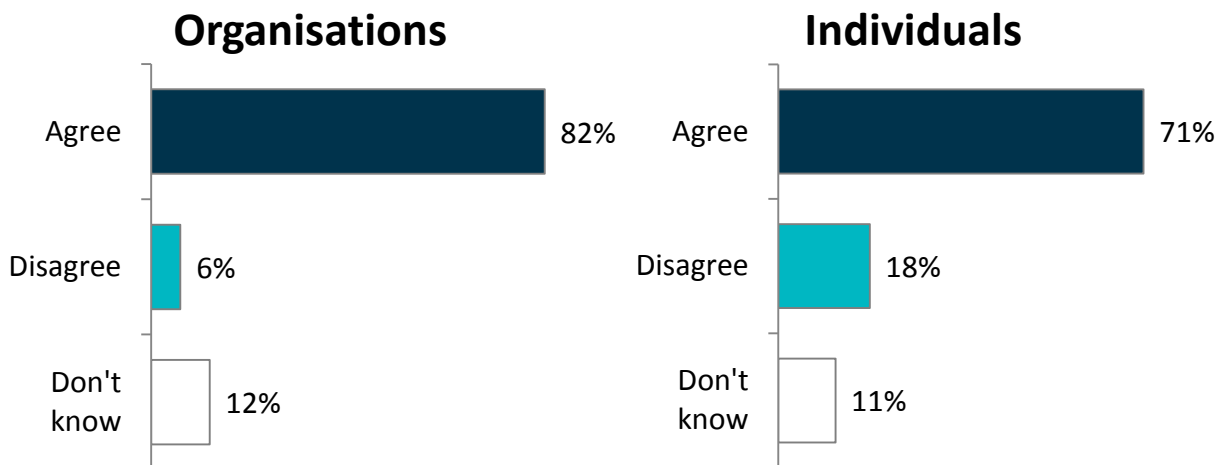
Failure to observe undertakings

Q.2: Do you agree that where a nurse or midwife fails to comply with undertakings, Case Examiners should be able to send the original allegation for a hearing?



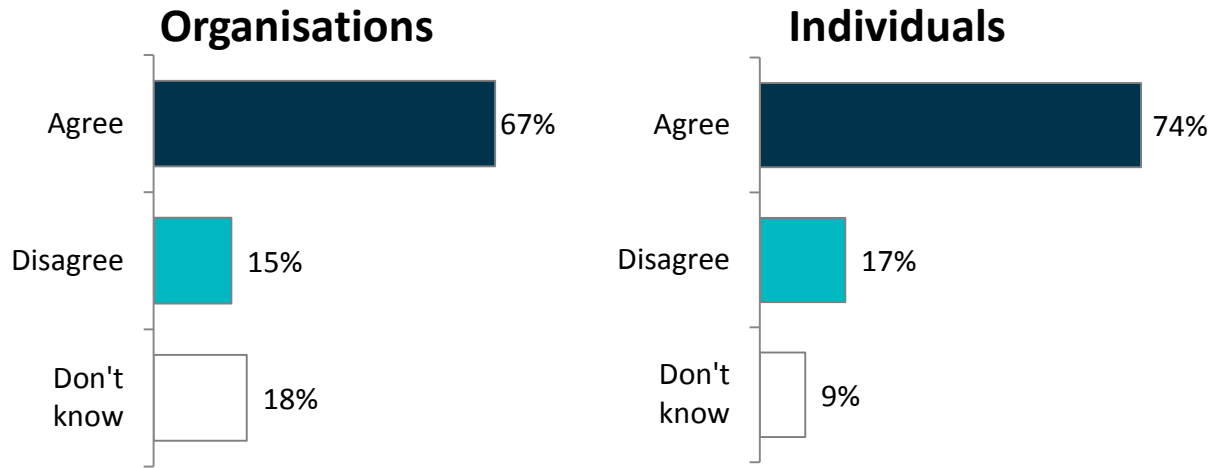
Publication of undertakings

Q.3: Do you agree with our approach to publishing undertakings?



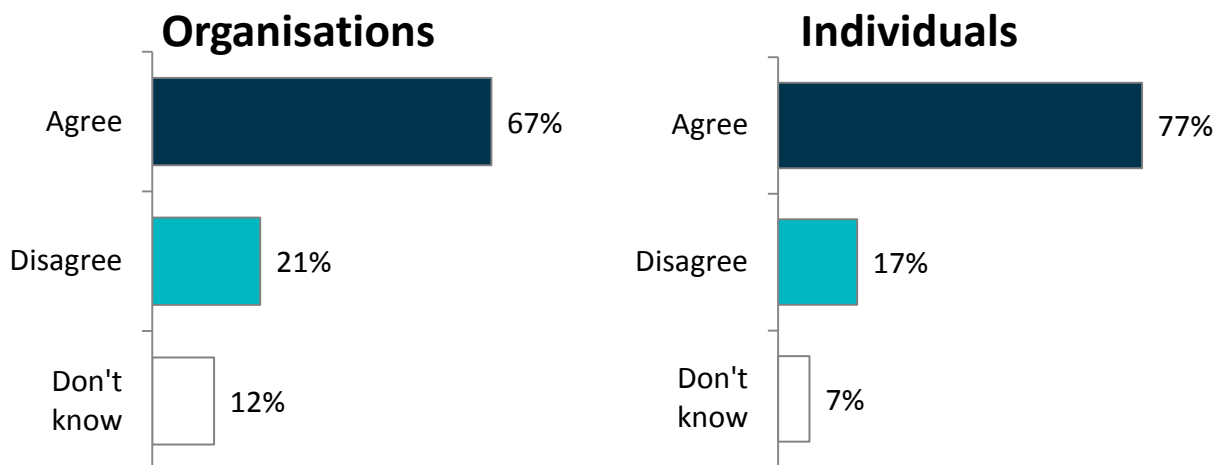
B. Warnings

Q.4. Do you agree with our proposals that warnings may be issued where the past concerns are serious, but the nurse or midwife has demonstrated full remediation and does not pose a current risk to patients?



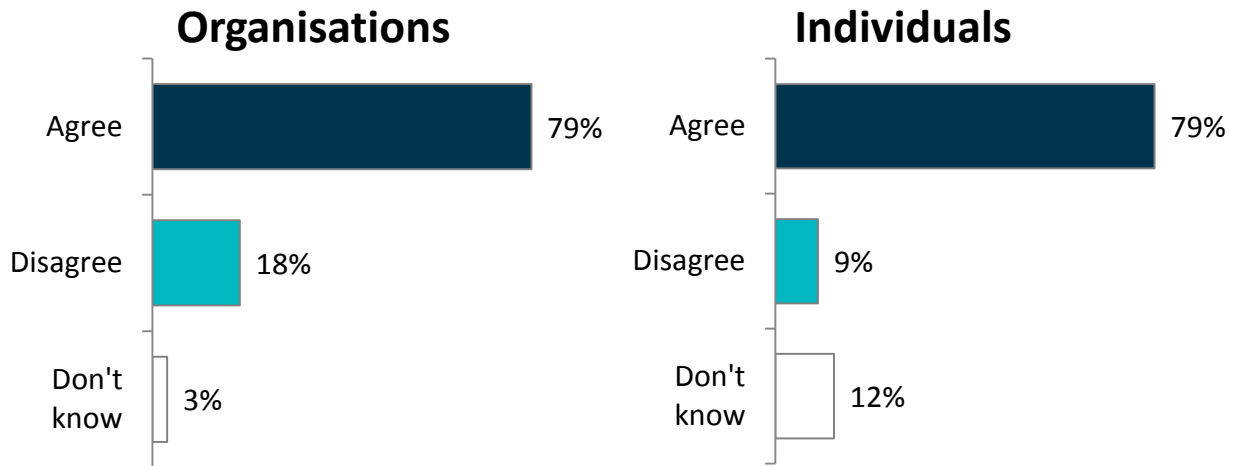
Publication of warnings

Q.5. Do you agree with our approach to publishing the content of warnings?



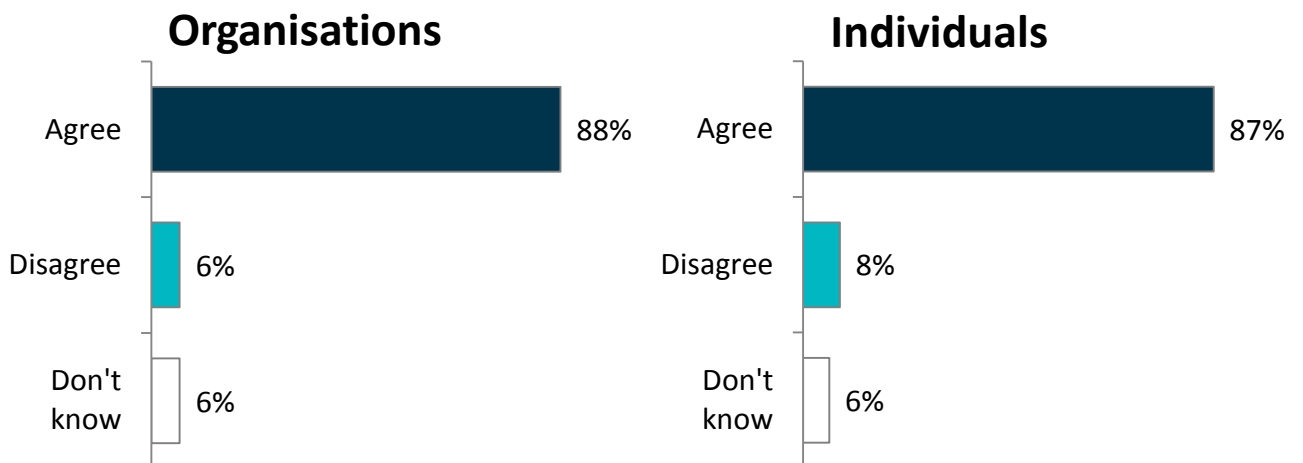
C. Advice

Q.6: Do you agree with our proposals on when Case Examiners may give advice?

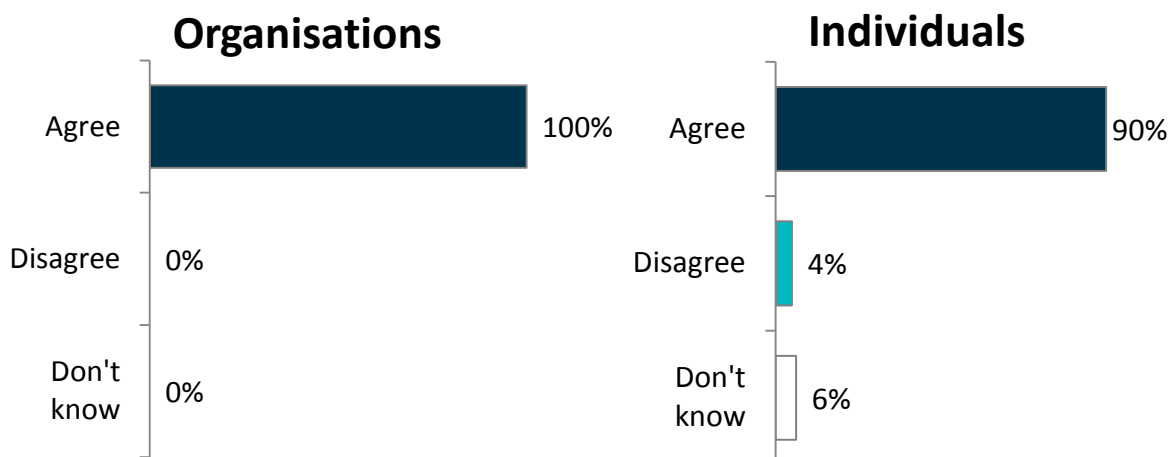


D. Reviewing Case Examiner decisions

Q.7: Currently, decisions that a nurse or midwife has no case to answer can be reviewed by the Registrar if they were materially flawed, or new information has become available which could have led to a different decision, and a review is in the public interest. Do you agree that the Registrar should also be able to review decisions to give advice, issue warnings, and recommend or lift undertakings, using these principles?

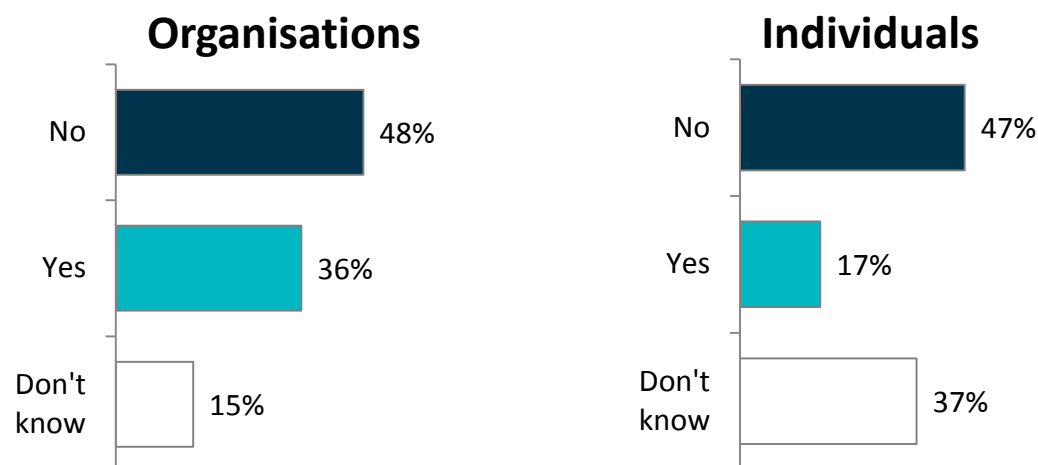


Q.8: Where a Case Examiner decision is materially flawed, or new information which could change the decision has become available, do you agree that in addition to a new decision being in the public interest, 'preventing injustice to a nurse or midwife' should become a new factor which would point towards a new decision being made?



E. Equality and Diversity

Q.9: Will any of these proposals have a particular impact on people who share these protected characteristics (including nurses, midwives, patients and the public)? If yes, would this impact have a positive or negative effect?

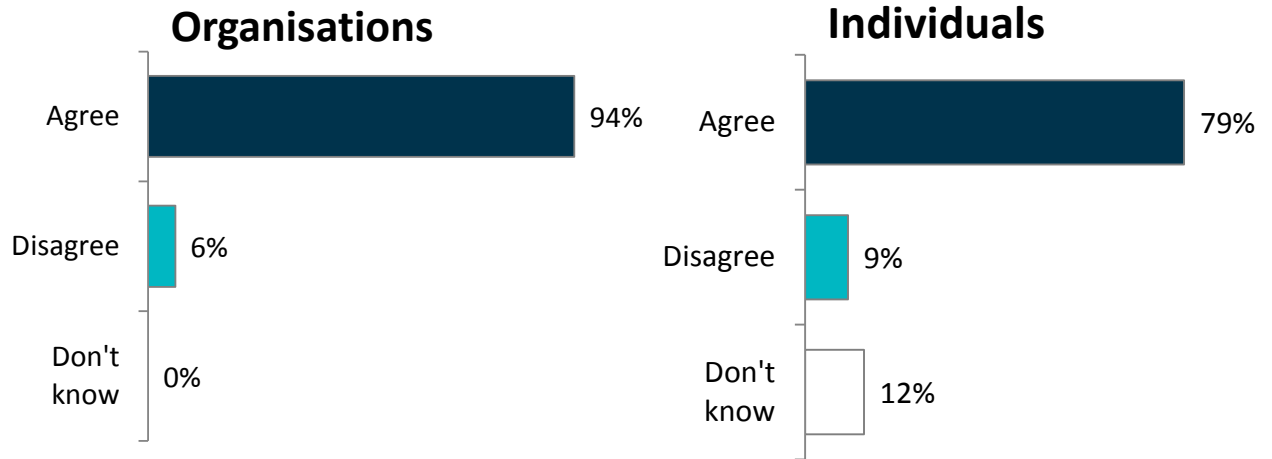


Q.10: How can we amend the proposals to advance equality of opportunity and foster good relations between groups?

[Qualitative responses]

F. Transitional provisions

Q.11: Do you agree with our proposed transitional provisions?



G. Draft Rules

Q.12: Do you have any comments on the draft Rules?

[Qualitative responses]