NMC changes to fitness to practise function

Ensuring Patient Safety, Enabling Professionalism: analysis of consultation responses

Prepared for: Nursing & Midwifery Council

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Executive Summary

Introduction

The NMC's consultation on changes to fitness to practise function: Ensuring Patient Safety, Enabling Professionalism ran from 4 April to 8 June 2018. It targeted members of the professions, the public and NMC stakeholders. Respondents could comment on those parts of the consultation that were more relevant to their experience or to complete the consultation in full. The questions were arranged in five main categories, as follows:

- Part 1: Regulatory outcomes:
    - Public protection
    - Public confidence in the regulatory process
    - Regulatory outcomes
- Part 2: Achieving our regulatory outcomes
- Part 3: How we operate
- Part 4: Impact on equality, diversity and inclusion
- Part 5: About you

Regardless of the format in which respondents chose to submit their views they were asked to read the relevant associated consultation documents before beginning their response.

Respondent Profile

A total of 892 respondents answered some or all of the questions in the full consultation document. These included 83 organisations and 809 individuals.

All respondents were asked whether they were responding on their own behalf (as an individual) or on behalf of their organisation. However, 142 respondents did not reply to this question but, as none of these respondents indicated (through their text responses or other answers) that they were responding on behalf of an organisation, in agreement with the NMC these have been classified as individual respondents.

The breakdown of responses by sub-groups is provided in the table overleaf, based on those organisations and individuals who completed the 'about you' questions or provided information that allowed us to derive appropriate classifications.

	Number
Government departments or public bodies	8
Regulatory bodies	13
Professional organisations or trade unions	11
NHS employers of doctors, nurses or midwives	21
Independent sector employer of, or agency for, nurses and midwives	8
Education provider	2
Consumer or patient organisations	1
Charity / voluntary sector	9
Other organisations	6
Not stated	4
Total organisations	**83**
UK-registered nurses	498
UK-registered midwives	75
Student Nurses or Midwives	10
Other healthcare professionals	9
Educator	57
Members of the public, service user or carer	48
Other	71
Not stated	145
Total individuals[1]	**809**
Total Respondents	**892**

When we examine sub-group data across the agree / disagree questions, higher proportions of organisations who are NHS employers of doctors, nurses and midwives agreed at each question than other organisation sub-groups, although these differences are not statistically significant. While not consistent across all these questions, the views of regulators, and, to a lesser extent, the views of professional organisations or trade unions and those in the charity / voluntary sector tended to be

[1] This number does not add to 809 as respondents could choose more than one category

least positive. In general, across the consultation questions, higher proportions of females agreed than male, although these differences are often not statistically significant.

Main Findings: Regulatory Outcomes

Public protection

There was majority agreement that:

- Fitness to Practise should primarily be about managing the risk that a registrant poses to patients or members of the public in the future – 89% agreed.
- Fitness to Practise is not about punishing people for past events – 77%; 16% disagreed.
- The NMC will only take action to uphold public confidence when the conduct is so serious, that if they did not take action, the public wouldn't want to use the services of registrants – 74% agreed; 18% disagreed (24% disagreement among organisations).
- Some clinical conduct, such as deliberately covering up when things go wrong, seriously damages public trust in the professions and undermines patient safety (94% agreed).

Views were less supportive over removal from the register. While just over half (52%) of respondents agreed that in these types of cases, the registrant should be removed from the register, a significant minority disagreed (25% overall; 32% of organisations).

A number of key themes emerged in response to these questions. The context of any incident and the need to consider any mitigating circumstances such as the culture or culpability of an employer or a registrant's mental health were seen to be important factors. Allied to this, there were comments that risk should be managed rather than registrants being punished; and that registrants should be offered support and opportunities for remediation.

A need for a change from a 'blame' culture to an 'open' culture was outlined as necessary in order to ensure that registrants can admit mistakes, learn from these and demonstrate insight and remorse through remediation. While honesty was perceived to be important and something that should underpin the professions, there was a perception from some respondents that until there is an open culture, some registrants will not be honest in admitting mistakes.

Respondents noted the need to differentiate between what is deliberate or reckless behaviour and accidental behaviour. Additionally, there were comments of a need to consider whether behaviour is repeated or a one-off; while some behaviour might not be serious in nature, repeated behaviour can become cumulative and demonstrate that a registrant is not fit to practise; for this reason, the need to consider past practice was noted as relevant by some respondents. There were also requests for agreement and guidance on what constitutes serious conduct to allow for consistency across the professions.

There were requests for robust evidence and full investigation of all cases, with comments that a 'one size fits all' approach should not be adopted. While remediation may be the way forward for some

registrants, there was also a view that there will be instances where some form of sanction may be necessary.

While a change to an open culture was seen to be important, some respondents felt that the current fitness to practise process and the NMC are punitive in nature, and this can in turn reduce the numbers of registrants coming forward to admit to a mistake.

The importance of working with other organisations was outlined by some respondents, for example, working with employers to ensure the Duty of Candour is fully understood, or to support enforcement of any sanctions.

Public confidence in the regulatory process

There was majority agreement that cases should be resolved at an early stage in the process if a registrant has fully remediated their clinical failings, even where those clinical failings have led to serious patient harm – 82% agreed, 9% disagreed. A key theme emerging was reiteration of the need for registrants to demonstrate insight, remorse and undertake remediation to reduce any future risk and show that lessons have been learnt. That said, there was also a perception that it can be difficult to demonstrate remediation so there will need to be a comprehensive process of supervision or monitoring and assessment. Key advantages to this proposal were that it would speed up the fitness to practise process and reduce levels of stress on registrants.

65% of respondents were in agreement that every decision relating to a restriction being placed on a registrant's practice (including voluntary removal) should be published, with a key theme being the need for openness and transparency within the profession. However, respondents also noted the stress this places upon registrants and some noted their dislike of a culture of 'naming and shaming'. There were some requests to withhold some aspects of information from the public domain and some queries as to how data protection, employee legislation and the introduction of GDPR would impact on information being made publicly available.

Regulatory outcomes

There was majority agreement that fitness to practise should support a professional culture that values equality, diversity and inclusion and prioritises openness and learning in the interests of patient safety (regulatory outcome 1) – 95% agreed. Key themes emerging in response to this question echoed some seen at earlier questions, with references to the need for a learning culture or for openness and honesty within the professions. However, there were some concerns over implementation and the need to ensure this culture is consistent across employers.

There was majority support that fitness to practise should ensure that registrants are fit to practise safely and professionally (regulatory outcome 2) – 98% agreed. The key theme emerging at this question was the need to ensure that patient safety is the priority and focus. Other comments were that this would help to support public confidence and the reputation of the professions and that nurses

and midwives need to be professional and work to their professional standards. Once again, there was reference to the need for support, training and ongoing learning for registrants.

Views on the regulatory outcomes were that they are clear, concise, simple and straightforward, fair and represent the professions well. These were also felt to promote public safety.

Main Findings: Achieving our regulatory outcomes

There was majority support that employers are usually in the best position to resolve concerns immediately, and the NMC should only take regulatory action if the concern has already been raised with and investigated by the employer (where there is one), unless there is an immediate risk to patient safety – 75% agreed. However, while some respondents agreed that local resolution in the first instance is important and some noted that employers have the necessary background and knowledge to take on this responsibility, there were also some concerns about the impartiality of employers, their existing cultures and whether they have the processes in place to deal with poor practice. As such, there were some comments of the need for the NMC to undertake the roles of offering support and guidance or monitoring of cases.

There was a large majority support for the NMC to always take the context in which a patient safety incident occurs into account when deciding what regulatory action is appropriate – 94% agreed. Reference was made to a number of contributory factors including the workplace environment, processes and resourcing and workloads. Considering context would help to create a fair and proportionate environment.

A large majority of respondents agreed that the NMC should be exploring other ways to enable registrants to remediate at the earliest opportunity – 90% agreed. The key themes emerging related to the benefits of remediation and having a learning culture, with supervision and monitoring. That said, there were some qualifying comments that remediation needs to be rigorous, robust and long term, with support from employers to enable registrants to remediate.

A majority of respondents agreed that unless there is a serious dispute about the facts or disposal of a case, or a registrant has requested a hearing, all cases should be dealt with at a meeting – 79% agreed. Key comments were that this would enable quicker processing of cases and be less stressful for registrants. There were some calls for meetings to be structured properly, with full information being available. Those in disagreement with this proposal outlined concerns about a lack of fairness and openness at meetings, with comments that public scrutiny is vital or a full hearing is needed to enable a case to be properly judged by an independent panel.

Overall, views were largely positive about these proposals, with a number of consistent themes emerging.

Main Findings: How we operate

In terms of any other ways in which the NMC could give support to members of the public, or improve how it works with other organisations, including other regulators, a wide range of suggestions were made by relatively small proportions of respondents. Broadly speaking, these included being open and transparent, improving communication with various audiences, utilising a broad range of communication channels and working more closely with other organisations and regulators.

Main Findings: Impact on equality, diversity and inclusion

There was majority agreement that having a fitness to practise process that values equality, diversity and inclusion could result in fairer outcomes – 77% agreed (86% of organisations and 76% of individuals). That said, the key theme was that this is not a new proposal or that it should already happen. There was also a perception that this should not be required if the fitness to practise process is fair and transparent as these values are implicitly addressed within the process.

There was majority agreement that the NMC should support employers to incorporate the principles of equality, diversity and inclusion when considering making referrals – 83% agreed (organisations 92% and individuals 82%). Once again, there were some comments that this should already be part of employers' processes or already set out in employment legislation. Additionally, there was a perception that a registrant's background should be irrelevant as referrals should be based on unsafe or poor practice.

While just under half (45%) the respondents felt that the NMC's proposals would have mainly positive impacts on people who share these protected characteristics and only a very small proportion (5%) felt there would be mainly negative impacts, significant minorities felt there would be no impact (24%) or were unable to provide a response to this question (26%). Key advantages were that everyone would be treated equally or that this would be fair for those with protected characteristics, although there were some concerns over how this would be implemented or that this could offer the potential for abuse of the system.

In terms of how the NMC could amend the proposals to advance equality of opportunity and foster good relations between the groups, the key comment was that better or more communication is needed.

Introduction

Background

The NMC's consultation on Ensuring Patient Safety, Enabling Professionalism ran from 4 April until 8 June 2018[2]. It targeted nurses, midwives and those with a background in education or healthcare. Respondents were invited to comment on those parts of the consultation that were more relevant to their experience or to complete the consultation in full. The questions were arranged in five main categories, as follows:

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Respondent Profile

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The breakdown of responses by sub-groups is provided in the table overleaf, based on those organisations and individuals who completed the 'about you' questions or provided information that allowed us to derive appropriate classifications.

[2] The consultation period was originally scheduled to end on 30 May 2018, but was extended to allow time for respondents to take account of the Professional Standards Authority's Lessons Learned review published on 16 May 2018.

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[3] This number does not add to 809 as respondents could choose more than one category

Please state where your organisation mainly operates

	Number
Across the UK	25
Great Britain	1
England	25
Wales	11
Scotland	9
Northern Ireland	4
Other	4
Not stated	4
Total Respondents	**83**

Does your organisation officially represent the views of nurses/midwives and/or the public that share any of the following protected characteristics?

	Number
Disabled	28
Older	27
Pregnancy/maternity	26
Religion or belief	26
Ethnic minorities	25
Gender	25
Transgender	25
Younger	24
Lesbian, Gay and Bisexual	24
Not stated	52
Total Respondents	**83**

Methodology

Responses to the consultation were submitted online or by email or hard copy.

It should be borne in mind that the number responding at each question is rarely the same as the total number who responded to the consultation. This is because not all respondents addressed all questions; some commented only on those questions or sections of relevance to their organisation, sector or field of interest. The report indicates the number of respondents who commented at each question.

Some respondents did not use the consultation questionnaire and, instead, presented their views in a report or letter format. Wherever possible, we assigned relevant sections of these documents to the relevant questions in order that all comments on similar issues could be analysed together.

Most of the consultation questions contained closed, tick-boxes with options for 'agree', disagree' or 'don't know'. Where respondents did not follow the questions but mentioned clearly within their text that they agreed or disagreed with a point, these have been included in the relevant counts.

The project team examined all comments made by respondents at each open question and noted the range of issues mentioned in responses including reasons for opinions, specific examples or explanations, alternative suggestions or other related comments. Grouping these issues together into similar themes allowed the researchers to identify whether any particular theme was specific to any particular respondent group or groups. When looking at group differences however, it must be also borne in mind that where a specific opinion has been identified in relation to a particular group or groups, this does not indicate that other groups did not share this opinion, but rather that they simply did not comment on that particular point.

While the consultation gave all who wished to comment an opportunity to do so, given the self-selecting nature of this type of exercise, any figures quoted here cannot be extrapolated to a wider population outwith the respondent sample.

Differences in opinions between sub-groups

Throughout the main body of the report we have noted any important differences in opinions between sub-groups. We also comment on any recurring trends within the data, even where differences might not be statistically significant due to small sample sizes[4]. Some sub-groups are based on very small numbers of respondents; in these instances it has not been possible to statistically identify real differences.

Given that the end date of the consultation changed in the light of the Professional Standards Authority's Lessons Learned review, responses were examined to ascertain whether there were any differences in opinion between responses submitted prior to publication of the report, and responses

[4] Technically a real difference that would not, in statistical terms, be attributed to chance

submitted after the publication of the report. Where there are any statistically significant differences, these are reported at the relevant question.

When we examine sub-group data across the agree / disagree questions, higher proportions of organisations who are NHS employers of doctors, nurses and midwives agreed at each question than other organisation sub-groups, although these differences are not statistically significant. While not consistent across all these questions, the views of regulators, and, to a lesser extent, the views of professional organisations or trade unions and those in the charity / voluntary sector tended to be least positive. In general, across the consultation questions, higher proportions of females agreed than male, although these differences are often not statistically significant.

Regulatory Outcomes

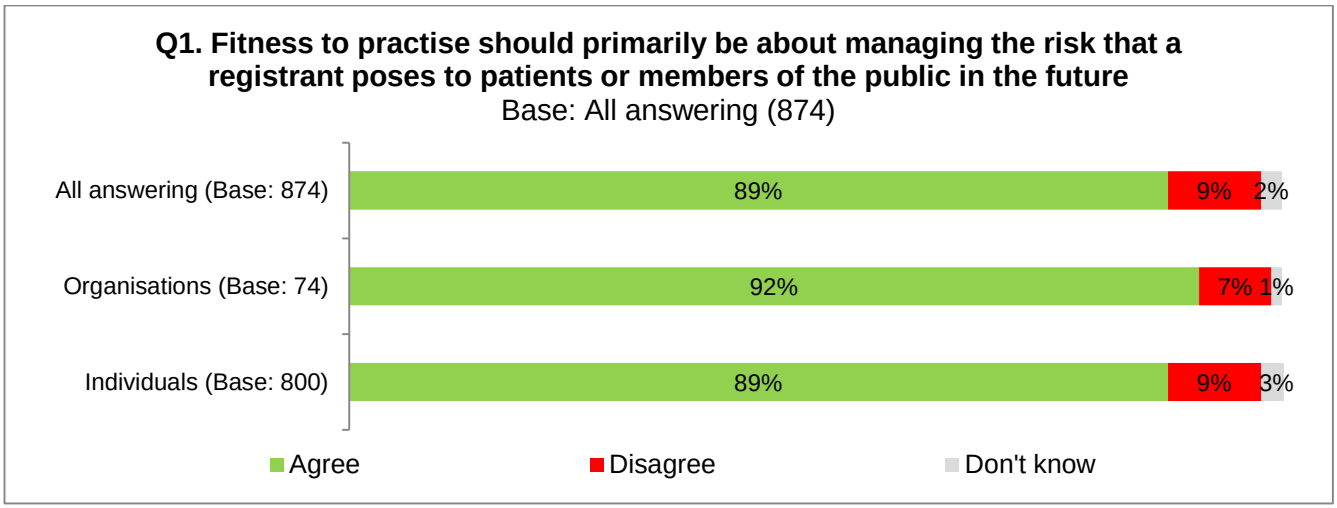
The Regulatory Outcomes section of the consultation (pages 12 to 19 of the consultation document) explains that the NMC's focus is on protecting the public; decisions on whether to take a case through the fitness to practise process are made on a case-by-case basis. This can lead to criticism that the process is inconsistent and the NMC proposes to reconsider how they undertake fitness to practise by refocusing on public protection.

Public protection

The consultation asked 5 questions about public protection. In each, as at most questions in the consultation, the NMC asked whether respondents agreed or disagreed with their conclusions or proposals.

Q1. We think that fitness to practise should primarily be about managing the risk that a registrant poses to patients or members of the public in the future. Do you agree?

As the chart below shows, 89% of respondents (92% of organisations and 89% of individuals) agreed that fitness to practise should primarily be about managing the risk that a registrant poses to patients or members of the public in the future. Higher proportions of females agreed than males and this difference is statistically significant (92% females compared to 83% males).



Respondents were invited to make additional comments and 384 chose to do so. The key theme emerging, cited by 32% of respondents was supportive of this proposal, with respondents agreeing that patient or public safety should always be the primary aim and that risk management is the right way to ensure a proportionate and fair approach. A fifth of respondents also provided more general comments in support of the risk management approach.

The context in which incidents happen is also clearly important, with 12% of respondents noting the need to consider any contributory factors such as a staffing levels or pressures in the system; this

theme was noted by higher proportions of respondents who disagreed with the proposal (22% of those who disagreed compared to 10% of those who agreed). As an organisation in the charity / voluntary sector commented,

> *"Fitness to practice definitely should be about managing the risk that a registrant poses to patients or members of the public, however we think that fitness practice should also be looking at the context in which registrants are practicing in to ensure that any mistakes made due to working in difficult environments can be learned from. We appreciate that nurses and midwives may practice poorly, due to their own choices, however we also need to consider where context/environment play a part in this and learn from this."*

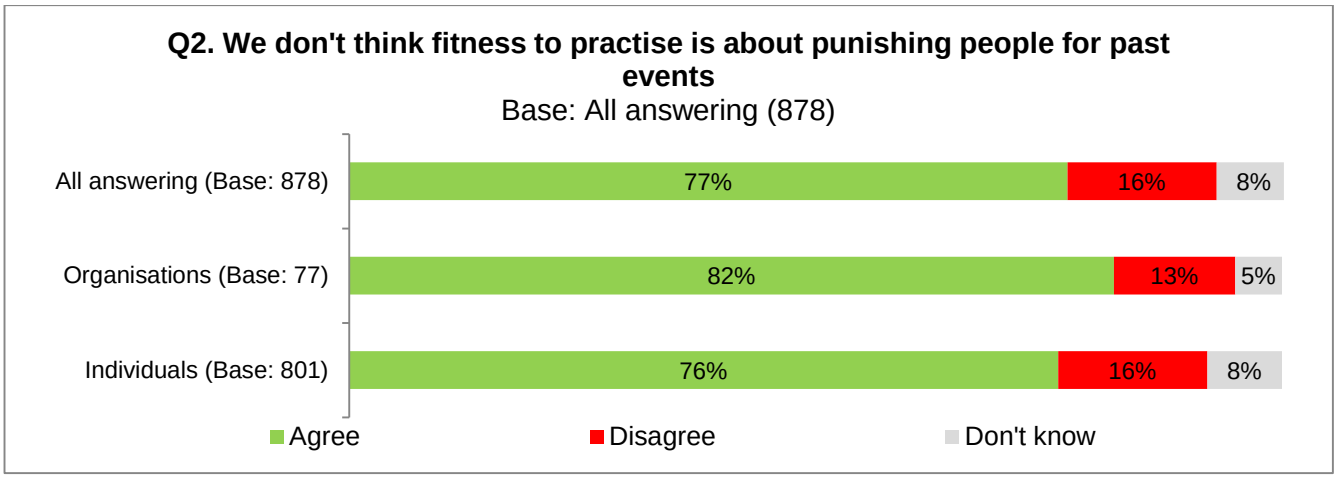
No other major themes emerged consistently, although a number of comments were each made by around 4% or 5% respondents. A number of these comments focused on the need for risk to be managed rather than for registrants to be 'punished' and the need for staff to be supported in safeguarding the health and wellbeing of patients and the general public, with some suggestions for training, support and mentoring to be offered to registrants to help mitigate any risk. Alongside suggestions for support for registrants, there were also some comments that registrants need opportunities for remediation so they can show adequate insight and reflection, thereby reducing the risk of reoccurrence; and on the need for an open culture so that registrants can learn from their mistakes or for mistakes to be used as learning opportunities by others.

There was also reference on the need to differentiate between deliberate or reckless behaviour and accidental error or to consider which behaviours are serious as opposed to those that do not present any risk to patients or the general public. Past practice was also deemed relevant, with some respondents suggesting there is a need to consider this. There were also some comments that employers should take responsibility for investigations in the first instance, although a few of these respondents noted the need for employers to have the necessary resources to be able to undertake their own investigations.

Q2. We don't think fitness to practise is about punishing people for past events. Do you agree?

As the chart overleaf shows, over three-quarters of respondents (77%) agreed that fitness to practise is not about punishing people for past events and this figure is slightly higher for organisations than individuals. Only 16% disagreed with this view.

In terms of sub-group data, higher proportions of non-Black and Minority Ethnic (BME) UK respondents agreed with this question and this difference is statistically significant (79% of non-BME UK respondents compared to 64% BME respondents).



Overall, 474 respondents went on to provide further commentary in support of their initial response. The key theme, cited by 20% of respondents was that registrants should be supported rather than punished and part of this support should be a culture of openness, so that individuals have opportunities to learn from their mistakes. Conversely, smaller proportions of respondents noted that sometimes some form of sanction will be necessary and that this can help to maintain confidence in the profession (13%) or that past events may indicate a pattern of negative behaviours which need to be considered (10%).

While there was general agreement with this proposal, small proportions of respondents (less than 10%) made reference to past practice, with comments that there may be occasions when it is necessary to consider past events, or that past events may have relevance to the current issue or that a past event that has had a negative impact upon safety or the quality of care should be considered.

Once again, small proportions of respondents (less than 10%) referred to remediation and mitigating circumstances. Some commented that learning may have already taken place as a result of a previous incident; and some noted that registrants need to be able to show that lessons have been learnt, for example, by demonstrating that they have reflected on their actions and can provide evidence of improved practice. Some respondents, referring to the context and mitigating circumstances of each incident, suggested that these need to be considered on a case-by-case basis.

Overall, a key differentiation for some respondents appears to be the extent to which behaviour is repeated and / or deliberate; or accidental, due to mitigating factors or a one-off accident after which registrants demonstrate remediation.

Negative perceptions of the punitive nature of the fitness to practise process or the NMC as an organisation were cited by around 7% of respondents. These comments came primarily from those who disagreed with the proposal. Their comments focused on the lengthy nature of the fitness to practise process, the punitive nature of fitness to practise which is perceived to adopt an assumption of guilt rather than innocence, or that the NMC is punitive rather than investigative and has a 'blame and shame' culture. A similar proportion of respondents also noted that if fitness to practise is

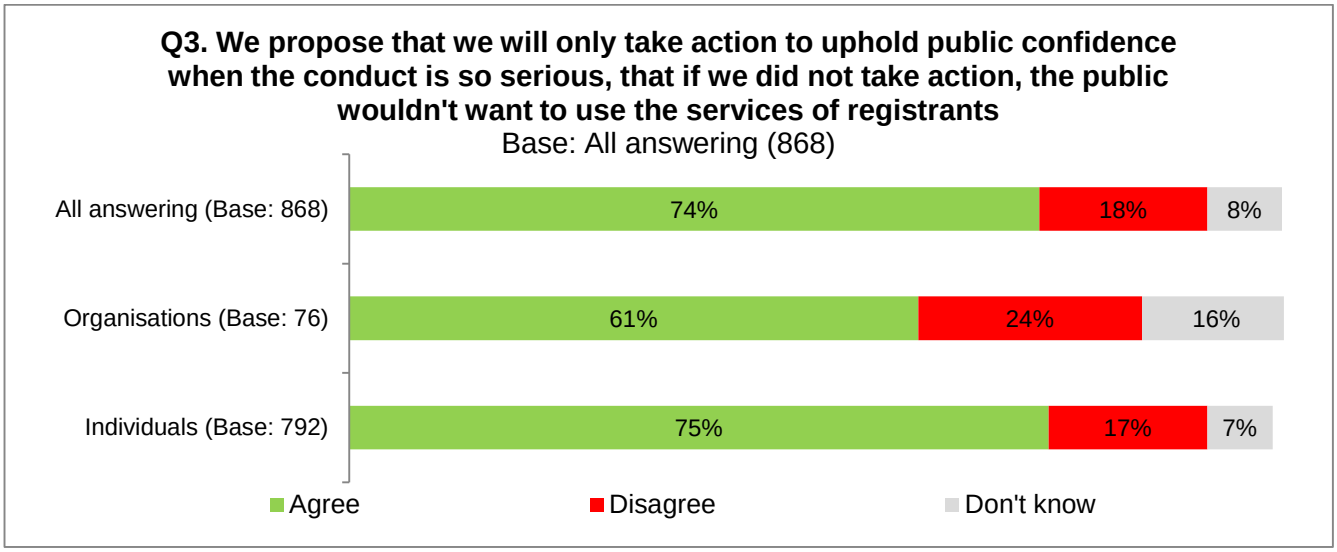
punitive in nature, registrants are less likely to be honest about their mistakes and that this encourages a blame culture.

As summarised by an NHS employer of nurses or midwives,

> *"Fitness to practise should focus on if a person is able and willing to learn from mistakes or omissions and should recognise that most incidents occur as part of a wider system, process or organisation. Punitive measures inhibit reporting, openness and growth within an individual and organisation which is at odds with our organisational aspiration and objectives of a Just and Learning culture."*

Q3. We propose that we will only take action to uphold public confidence when the conduct is so serious, that if we did not take action, the public wouldn't want to use the services of registrants. Do you agree?

As the following table shows, there was majority support for the proposal that NMC will only take action to uphold public confidence when the conduct is so serious, that if they did not take action, the public wouldn't want to use the services of registrants. Overall, almost three quarters of respondents agreed with this, although a lower proportion of organisations (61%) agreed, compared to 75% of individuals; and this difference is statistically significant.



Overall, 380 respondents provided additional commentary in relation to this proposal, with 11% of these respondents providing general comments in support of this proposal (e.g. 'this is common sense'). A smaller proportion (6%) emphasised the importance of public confidence in the profession.

The key theme emerging, from 18% of respondents, was a need for agreement and guidance on what constitutes serious conduct, with some queries as to who would determine what constitutes serious conduct. Smaller numbers of respondents also commented that this question was unclear and that better definitions and examples need to be provided to illustrate the proposal. There were also

requests from 4% of respondents for support and guidance to be provided specifically to registrants to indicate what is considered to be serious conduct.

Another key theme, cited by 13% of respondents, was that most cases brought to the NMC are serious and that if someone is referred to the MNC, it will be a serious issue and should be fully investigated. Allied to this, there were suggestions that the NMC needs to be seen to be taking action and that this proposal could suggest that poor practice is acceptable.

There were also some comments that minor issues can help to damage the reputation of the profession or that minor issues can become cumulative major issues; and that some less serious actions can be unsafe.

The ability of members of the public to be able to decide whether or not to use the services of a specific registrant was queried by 3%, and views on what constitutes a serious concern may differ significantly between the general public and organisations were noted by 1% of respondents.

Other tiny sub-themes, some of which echoed points made to earlier questions, included:

- Most mistakes are not malicious but due to other factors such as staff shortages.
- This proposal would reduce the time spent on issues that do not pose a risk to the public or that this allows time to be spent on issues that do present a risk.
- Fairness needs to be applied uniformly; openness and honesty are necessary.
- Some non-serious conduct can undermine public confidence.
- It is currently too easy for employers to refer individuals who have only committed minor misdemeanours.
- A need to consider the context; for example, the culture of an organisation.
- Support needs to be offered for minor offences.
- Registrants should be allowed to demonstrate insight.
- Intervention should be based on the seriousness of a matter rather than based on public confidence.
- Criticism of the fitness to practise process, or the NMC.
- A need to manage media concerns.

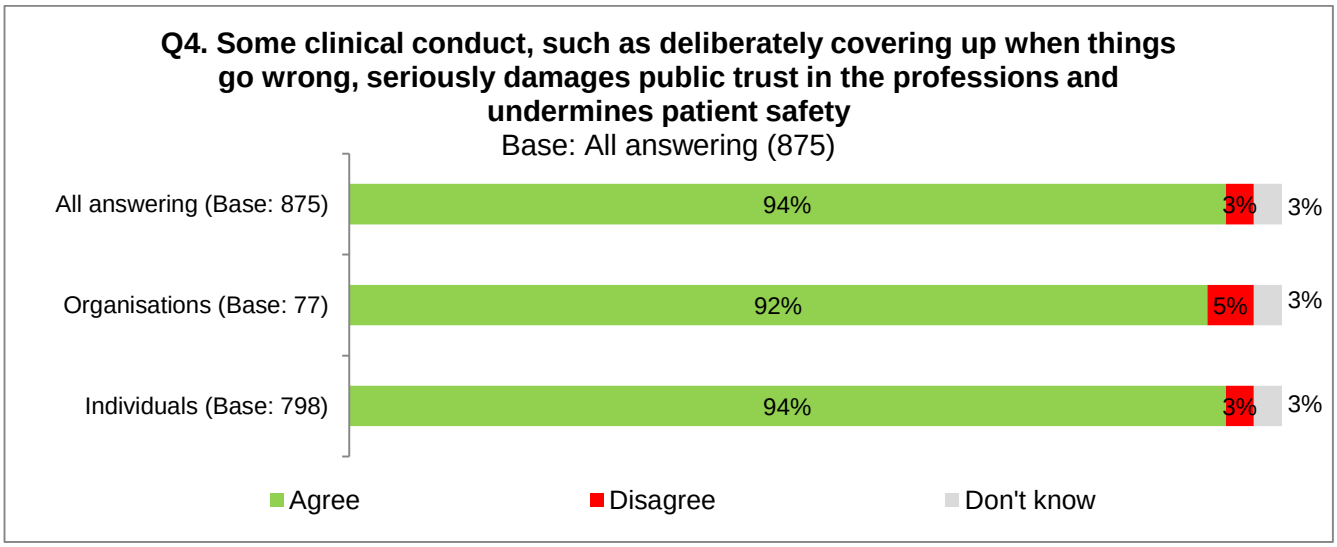
As noted by a regulatory organisation, this issue is complex and different circumstances may warrant different approaches,

> *"We think this is a complex area. The decision to take action in only these circumstances may unnecessarily restrict the NMC. There will be some circumstances where professional competency or misconduct is not easily understood by the public, or they do not have a full picture of the circumstances. In these circumstances, the NMC may need to act in the public interest. There can be a need to take action based on peer judgment, which requires knowledge and experience of the specialist professional practice and the circumstances of the specific case, as well as the need to take action to maintain public confidence more generally."*

Those who responded to the consultation prior to the publication of the Professional Standards Authority for Health and Social Care (PSA) report[5] were more supportive of this proposal than those who responded after (77% pre compared to 68% post).

Q4. Some clinical conduct, such as deliberately covering up when things go wrong, seriously damages public trust in the professions and undermines patient safety. Do you agree?

Almost all respondents (94%) agreed that some clinical conduct, such as deliberately covering up when things go wrong, seriously damages public trust in the professions and undermines patient safety.



349 respondents provided commentary in support of their initial response. A key theme, cited by 14% of respondents, was the need to consider the context and consider any mitigating factors such as coercion by managers or an individual's mental health. A similar proportion also referred to the need to consider the corporate culture and culpability of the employer organisation. Allied to this, there were comments from 12% of respondents of the need to have a 'no-blame' culture to encourage openness and honesty, rather than the blame culture which is perceived to exist in a number of organisations.

Another key theme related to honesty within the profession, with comments that trust is essential within the professions (15%), that honesty underpins practice (9%) and the need for nurses and midwives to act honestly (3%). Some respondents also referred to the Duty of Candour that should guide individuals working in the professions (8%). Conversely, smaller proportions of respondents noted that cover ups damage public trust and confidence (4%) or that it implies a lack of acceptance of responsibility and disregard for patient care (5%).

[5] "The Lessons Learned Review into the Nursing and Midwifery Council's handling of concerns about midwives' fitness to practise at the Furness General Hospital"

Once again, very small proportions of respondents referred to the need for remediation and insight and the need to share and learn from mistakes (4%), although small proportions of respondents commented on an increase in cover ups due to the punitive nature of fitness to practise (3%).

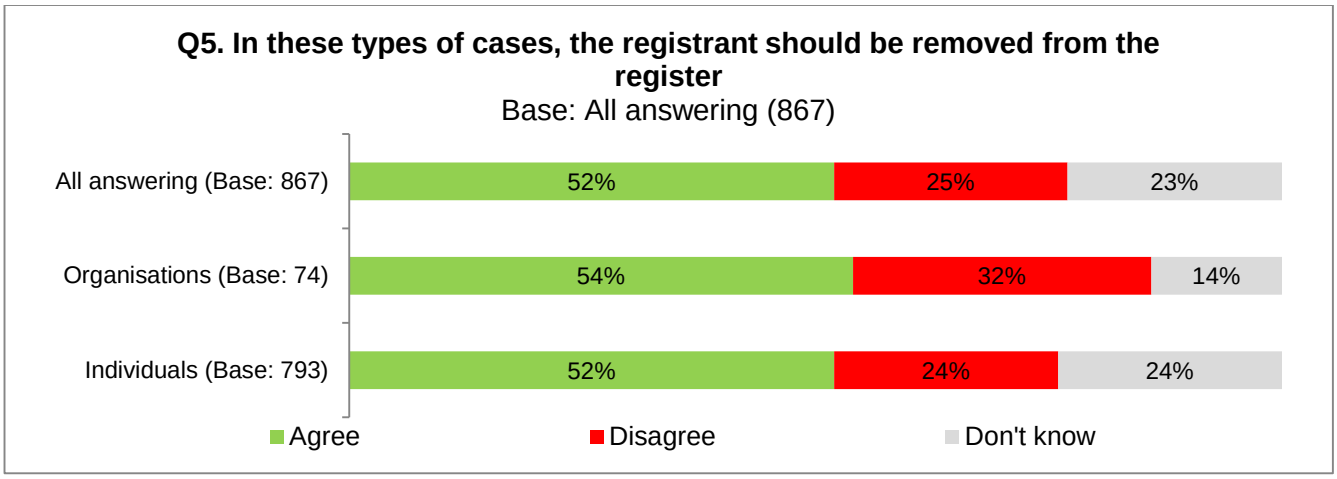
A similar proportion of respondents (4%) commented on the need to differentiate between a one-off incident and a planned and deliberate cover up, although a very small proportion of respondents felt that any attempt to conceal an incident should be treated as a serious misdemeanour (3%).

The issue of whistleblowing was cited by 3% of respondents, with comments that individuals are frightened to 'whistleblow' and that this should be facilitated more readily by organisations.

There were also a small number of suggestions of a need for the NMC to work with other organisations, for example, working with employer organisations to ensure the Duty of Candour is fully understood or to support enforcement of any sanctions; or to work with other regulators and statutory organisations to ensure consistency in the approach to fitness to practise.

Q5 In those types of cases, the registrant should be removed from the register. Do you agree?

Views on whether the registrant should be removed from the register in these types of cases were less positive. While just over half of respondents agreed with this proposal, around a quarter did not. The figure for those disagreeing was higher among organisations (32%) than individuals (24%). When sub-group data is examined, higher proportions of male respondents disagreed with this proposal than their female counterparts (33% male compared to 21% female); this is statistically significant.



Overall, 526 respondents provided additional commentary in support of their response; with 14% reiterating their support for the proposal, with comments such as 'this is the right thing to do' or that registrants need to be held to account.

The key theme emerging, cited by 33% of respondents was of a need to consider the context and any mitigating circumstances. Higher proportions of organisations (46%) referred to this than did

individuals (31%); and this difference is statistically significant. 11% of respondents referred to the need to have robust evidence and full investigation; considering factors such as whether the conduct demonstrated a repeated pattern of behaviour or a genuine fear of not being treated fairly. Workplace pressures and the corporate culture were referenced by 13% and 10% of respondents respectively, with reference to the corporate culture and whether registrants were under pressure from their employer; or the need for employers to offer an environment where registrants are encouraged to be open and honest.

A one size fits all approach was not seen to be appropriate by 6% of respondents, with comments on the need to consider each case on an individual basis (16%). Smaller proportions also noted that removal from the register should be dependent on the severity, risk and / or seriousness of the action (9%); that sanctions should be imposed on a proportionate basis (6%) or that removal from the register should be the last resort, perhaps in instances where no remorse is shown.

Other themes emerging from less than one in ten respondents echoed points made in response to earlier questions, with reference to removal from the register in instances where deliberate concealment reveals knowledge of an error, where cover up could lead to possible harm or simply in cases of serious harm. There was also reference of the need for registrants to show insight or remorse and to learn from their mistakes or for support, retraining and supervision or mentoring to be offered.

As summarised by an organisation within the NHS sector,

> *"Whilst we agree that in many cases this could be appropriate, there will always be cases where following careful assessment of the registrant's attitude and insight a less restrictive intervention would be required - and in rare cases it could even be concluded that no sanction at all might be appropriate."*

Public confidence in the regulatory process

The NMC wish to consider how fitness to practise can maintain the confidence established by their functions of registration, revalidation, education and standards in order to continue to ensure patient safety and enable professionalism.

They believe that the public can have confidence in the NMC as a regulator if they follow the Professional Standards Authority principles of good regulation:

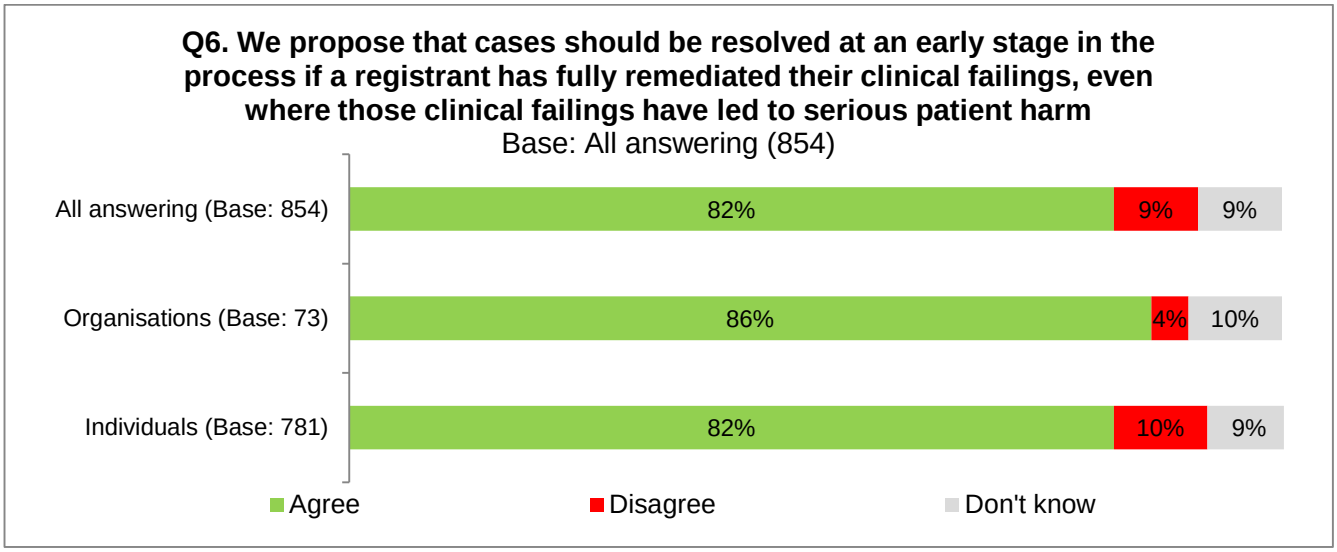
- Proportionate.
- Consistent.
- Targeted.
- Transparent.
- Accountable.
- Agile

The NMC can resolve cases at an early stage in the process by using their existing powers for case examiners to agree undertakings, issue warnings, or give advice if the registrant accepts the concerns. They can already ask the Fitness to Practise Committee to decide cases on paper at a private meeting without the parties attending and want to extend this to every case where the registrant does not disagree with the NMC's assessment of the case. They can remain transparent and accountable by publishing the panel's reasons and this will allow the public to see the concerns raised and how they have been dealt with.

At present the details of voluntary removal decisions that are granted by the Registrar before a hearing are not published. Under the new strategy, to be fully transparent and accountable, the NMC propose to publish all decisions to grant a registrant voluntary removal, taking out any private information, such as information about a health condition.

Q6. We propose that cases should be resolved at an early stage in the process if a registrant has fully remediated their clinical failings, even where those clinical failings have led to serious patient harm. Do you agree?

Over four in five respondents (82%) agreed with this proposal, and this figure was slightly higher among organisations (86%) than individuals (82%). Only one in ten or less respondents disagreed with this, although a similar proportion provided a 'don't know' response.



A total of 439 respondents opted to provide further commentary to this question, with 10% of these providing comments showing support of the proposal.

The key theme emerging to this question, from 24% of respondents, was reiteration of the need for registrants to demonstrate insight, remorse and remediation to reduce any future risk and to show that lessons have been learnt; this had the highest level of support from those who agreed with this proposal (30% compared to 5% who did not agree). That said, 9% of respondents commented that it can be difficult to demonstrate how a registrant has remediated and that there is a need for a

comprehensive process to assess remediation, although there were some queries as to who would determine the effectiveness of any remediation. Smaller proportions of respondents also noted that remediation should include a suitable period of supervision or monitoring of practice or that there may need to be some form of ongoing review, assessment or a monitored action plan. As an organisation in the professional organisation / trade union sector summarised,

> *"The remediation should be fully implemented and therefore should include a suitable period of supervision of practice. Some practice becomes habit and new habits take time to embed. This period of supervision should be noted on the Register for employers or potential employers to be aware."*

Just over one in ten respondents (13%) noted that this proposal would speed up the fitness to practise process and that early resolution is a benefit. Another benefit, cited by a smaller proportion (7%) of respondents, was that this would reduce the stress and anxiety felt by registrants and also the negative impact of a lengthy fitness to practise case.

5% of respondents commented on the importance of being able to demonstrate to the public that a robust investigation has taken place; a similar proportion noted that employer procedures need to be robust and equitable and supportive to registrants.

There is also a perception from a small proportion (5%) of respondents that if serious harm has taken place, the case should go to a hearing, that further sanctions may be required or that some cases will need a full enquiry.

Some comments echoed themes which emerged in earlier questions and were cited by around 5% of respondents. These included the need to consider:

- each incident on a case-by-case basis.
- the context and any mitigating factors.
- whether there is a pattern of behaviour.
- concerns over the potential for repeat behaviour in the future, that this would depend on the level of harm and that errors should be used as learning opportunities.

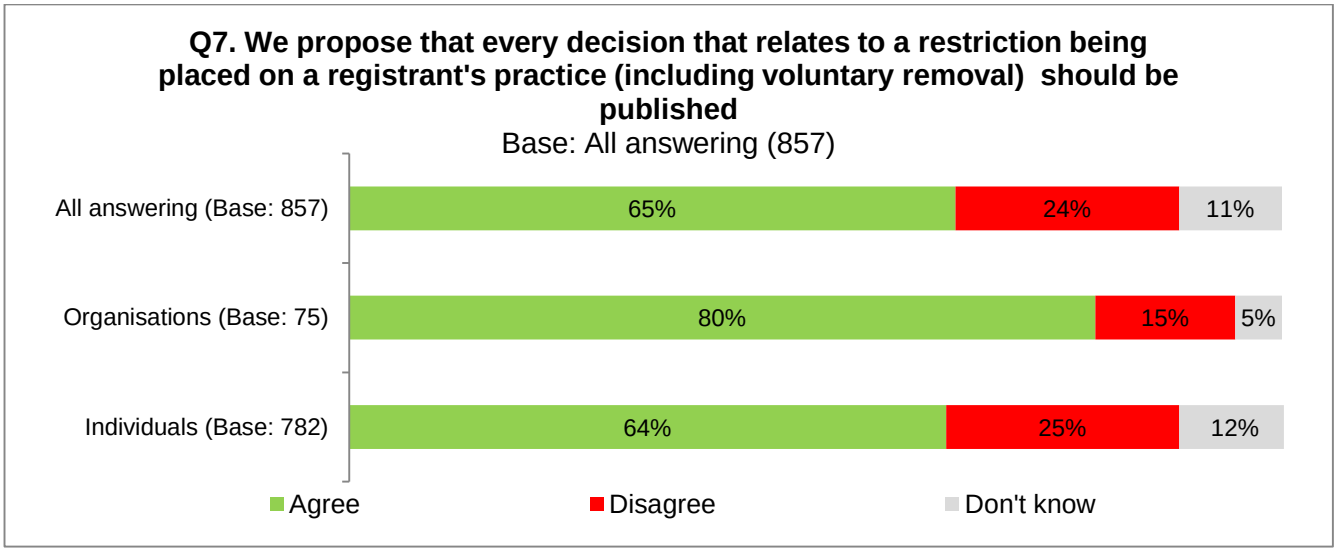
A small number of organisations noted concerns over what checks would be in place for a registrant who changes employers or how the NMC can regulate the workplace to ensure remediation is taking place and being effective. One organisation noted that clinical failings are likely to be easier to remediate than conduct failings.

Q7. We propose that every decision that relates to a restriction being placed on a registrant's practice (including voluntary removal) should be published. Do you agree?

While almost two-thirds (65%) of respondents were in agreement that every decision relating to a restriction being placed on a registrant's practice (including voluntary removal) should be published, a

higher proportion of organisations were supportive than individuals (cited by 80% of organisations compared to 64% of individuals). This difference is statistically significant.

In terms of other sub-group data, support for this proposal increases with the age of individuals, with 50% under 35 agreeing; this figure increases to 81% of those aged over 65. Respondents aged 44 or less were less positive than those aged 45+ and this difference is statistically significant (52% aged 44 and under, compared to 69% of those aged 45+). There is also a significant difference between those who responded to this survey prior and post the PSA report (63% prior compared to 71% post).



A total of 433 respondents opted to provide comments to this question. The key theme emerging, and cited by a quarter of respondents, was of a need for openness and transparency within the profession; a further 16% of respondents noted the need for honesty and openness, specifically in reference to the public having confidence and trust in the professions.

The impact of this on a registrant was referred to by 12% of respondents, with comments on the stress this can cause to a registrant or that it can damage a career. There were also comments from 8% of respondents that a culture of 'naming and shaming' is not helpful. One organisation also referred to the increased use of social media and the harm that public naming and shaming can have on registrants.

A small proportion of respondents (6%) noted that some aspects of information should be withheld from the public domain, with health conditions being most frequently cited; there was also reference to information being published at summary level only so as to keep all private information confidential.

Concerns over information being publicly available were clearly an issue, with 9% of respondents suggesting that access to the register should be limited to employers only, although a similar proportion felt that decisions should be published as potential employers need to know about any restrictions on a registrant's practice.

There were suggestions from very small proportions of respondents that voluntary removal should not be made public (5%) or that information should only be published for the duration of any restriction (3%).

Once again, there were a small proportion of suggestions for each case to be considered on an individual basis (7%).

One issue highlighted at this question related to data protection, with some queries as to whether the publication of this information sits well under human rights or privacy legislation, particularly with the introduction of GDPR in May 2018 (cited by 6% of respondents).

The two following quotations highlight two different sides of this approach; the first, from an organisation in the independent sector employer of, or agency for, nurses and midwives, was supportive of this approach and outlined a number of advantages; the second quote, from an education provider was not supportive of this approach and outlined the need to balance public interest against the interest of the registrant.

> *"This enables a wider learning across the UK. Learning from others mistakes / errors and incidents is one of the main principles of the Clinical Governance structure and can be a powerful training tool. It may also provide the Organisation with an opportunity to replicate certain restriction practises whilst the individual re-educates themselves; as an alternative to a referral to the NMC. This will again support the retention and motivation of the professional workforce."*

> *"Although transparency in publication is welcomed and desired in some cases, there needs to be a balance of what is in the public interest against the effects this may have upon the individual. Where there are health issues - particularly mental health issues that have led to a registrant requiring a restriction on their practice, public disclosure may lead to a further decline in their condition, therefore this could appear punitive and lead to further morbidity or mortality. This could have a lasting stigma and be detrimental to future employment opportunities."*

Regulatory outcomes

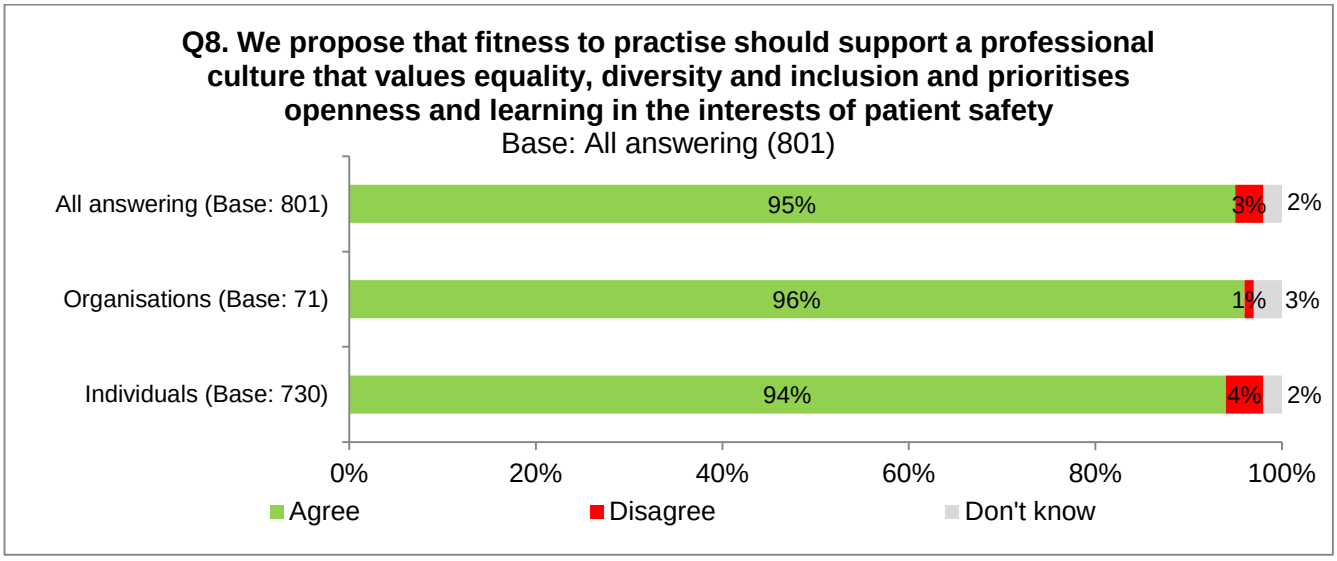
Regulatory outcome one: A professional culture that values equality, diversity and inclusion and prioritises openness and learning in the interests of patient safety.

The NMC think that fitness to practise should be about managing the risk that a registrant poses to patients or members of the public in the future. They do not feel that it is about punishing people for past events. They recognise that if people perceive there to be a culture of punishment in the profession, this could prevent an open, learning culture, lead to denial and cover-up and does not put patient safety first.

In order to solve a problem of 'blame culture' within healthcare, as well as overrepresentation of registrants from outside the EU and from black and minority ethnic (BME) backgrounds in fitness to practise proceedings, the NMC propose that fitness to practise should support a professional culture that values equality, diversity and inclusion and prioritises openness and learning in the interests of patient safety.

Q8. We propose that fitness to practise should support a professional culture that values equality, diversity and inclusion and prioritises openness and learning in the interests of patient safety. Do you think this is the right regulatory outcome?

Almost all respondents agreed with this proposal, with only 4% or less disagreeing.



Overall, 274 respondents opted to provide additional commentary in support of their response; the key theme being one of general support for the proposal. The single largest comment, cited by 26% of respondents was general support for the proposal and included comments such as 'this is the right thing to do'.

Other benefits cited by between 12% and 15% of respondents were that this approach prioritises the need for openness and honesty, that it prioritises patient safety or that it prioritises equality, diversity and inclusion. Smaller proportions also noted that this prioritises professionalism and standards or that this treats all registrants fairly.

The need for a learning culture was emphasised by 12% of respondents, a slightly smaller proportion (10%) commented that lessons need to be learnt from mistakes to help reduce reoccurrence of actions, and a small proportion (6%) commented that a blame culture is not suitable.

11% of respondents noted concerns about the implementation of this proposal and the ability of the NMC to move forward with this, with some citing queries as to how this would be monitored and 6% noted that this is not currently the reality in practice. A similar proportion noted the need to ensure

this professional culture is consistent across a wide range of sectors, including doctors, support workers, employers and regulators. As the following quotations demonstrate, there is a need for culture change and more clarity.

> *"However, it is unclear as to how this will be assessed and against what standards. How will the NMC ensure that the process is culturally sensitive? The NMC should set this out clearly." (Regulator)*

> *"Using FtP to support a more inclusive professional culture which prioritises openness and learning is a highly positive regulatory outcome, and we welcome the NMC's decision to undertake this kind of cultural shift. Changing mindsets and perceptions around FtP is likely to be a challenge, given how long our regulatory approach has leaned towards exacting punishment over entrenching learning, but this is a worthwhile goal and one we fully support." (Charity / voluntary sector)*

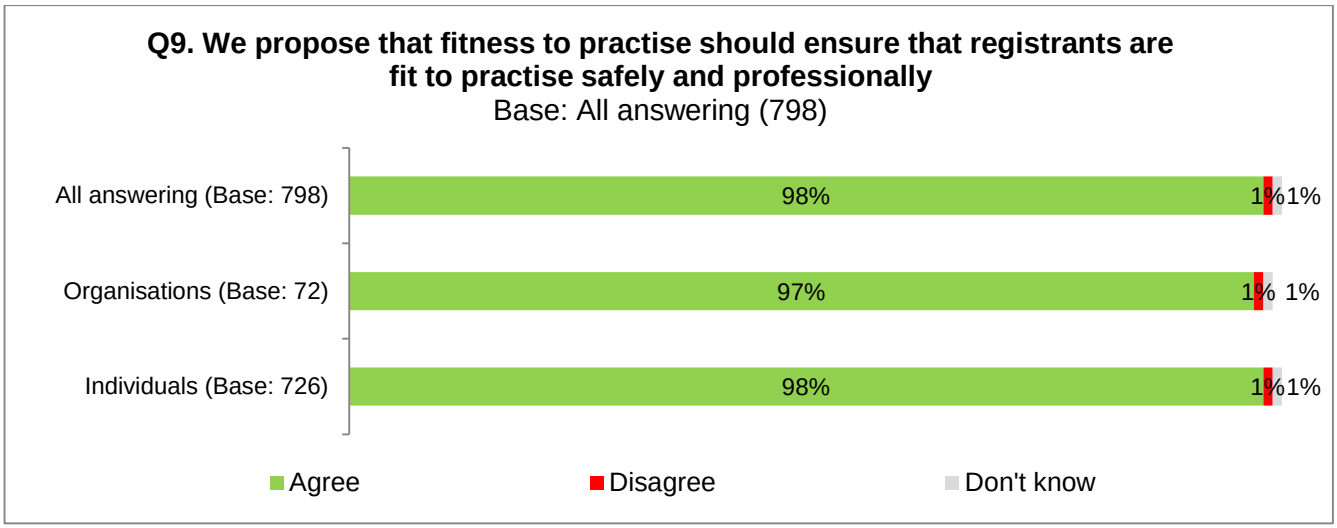
Regulatory outcomes

Regulatory outcome two: Registrants who are fit to practise safely and professionally.

The NMC feel that their processes focus on restricting a registrant's practice, are complex and take a long time. Many cases are resolved at full hearings which are adversarial in nature and can have a negative impact on people involved in the process. They wish to enable registrants to remediate regulatory concerns at the earliest opportunity and, if needed, reach an agreed position with the NMC as to how the concern should be dealt with. This means that they would only hold full hearings in exceptional circumstances and so there would be fewer cases going through the full fitness to practise process. The NMC wish to see those matters which do go through the full fitness to practise process dealt with in a way which prompts openness and remediation from the registrants and encourages engagement.

Q9. We propose that fitness to practise should ensure that registrants are fit to practise safely and professionally. Do you think this is the right regulatory outcome?

Almost all respondents agreed that this is the right regulatory outcome, with only 1% disagreeing across the overall sample.



Overall, 213 respondents opted to provide a response to this question, with the key response being one of support for the proposal (cited by 24%). Another key theme, cited by 16% of respondents was the need to ensure that patient safety is the priority and focus.

Other themes cited by around one in ten respondents focused on the support this gives to public confidence in nursing and midwifery and the reputation of the profession as a whole, and that nurses and registrants need to be professional and work to their professional standards.

Other themes cited by just under one in ten respondents included the need to ensure that registrants and employers have the necessary support, training, skills and ongoing learning to meet required levels of safe practice and professionalism, and the need for standardised approaches to measure outcomes, for example, improved quality assurance, formal recording and monitoring. A similar proportion questioned whether this is not already the case within the profession. As the following quote suggests, it could be useful to gather evidence which can be used.

> *"In the experience of ensuring that registrants are fit to practice safely and professionally, there may also be opportunity to collate and highlight evidence which may evidence external risks and trends in the sector which will impact on practice." (Other)*

Other themes cited by 5% or less of respondents included:

- A need to ensure registrants are willing to commit to good practice or undergo remediation and learn lessons from mistakes.
- Potential problems with implementation, for example, because of funding, lack of staff or long hours worked.
- A need to take circumstances such as stress levels, staffing levels, staff health and so on, into account.
- The need to speed up the fitness to practise process.

- The current revalidation process does not ensure that registrants are safe to practise safely and professionally.
- That this definition is too broad and general; that 'safe' and 'professional' could be open to personal interpretation.

As demonstrated in the following quotation, the way in which this is implemented will be important, as well as the need for guidance.

> *"The concept is correct but again it will depend on implementation and the content of any guidance that is to follow." (Professional organisation / trade union)*

Finally, in this section, respondents were asked:

Q10. Please tell us your views on our regulatory outcomes as we've set them out in this consultation.

Overall, 456 respondents provided commentary in response to this question, with the key theme, cited by a quarter of respondents, being agreement with the regulatory outcomes as they have been set out. Other comments from around 10% of respondents were that the outcomes are clear, concise, simple and straightforward, or that they are fair and represent the profession well. Smaller proportions also commented that they uphold the professional standards (6%), that they will help with patient and public confidence and trust (5%) and that they are comprehensive (2%).

The issue of public safety is clearly important, with 14% of respondents noting that these regulatory outcomes should promote public safety, or offering a proviso that public safety should be prioritised.

Other themes cited by around 5% or less of respondents included concerns over inequality, for example, that some ethnic groups are more likely to be referred to the fitness to practise process; or that some referrals can be vexatious in nature.

Other comments echoed a number of themes already cited at earlier questions. These included the need for support rather than to punish, that fitness to practise should not be a punitive approach, the need to know how outcomes will be measured and evidenced, and that fitness to practise proceedings should be resolved more speedily.

As the following quotation demonstrates, partnership will be important and there is a view that there is a need for outcome one to be aligned across the NHS.

> *"We think the regulatory outcomes detailed are ambitious but welcome. The difficulty with the proposals particularly outcome one is how that is aligned with the rest of the NHS, cultural change as described here will need to be owned by the wider NHS (and other care providers) not just the NMC. It also takes time, and the NMC will need to ensure that they still fulfil the requirement of public protection whilst making these important changes. Equally guidance for employers on the*

changed approach will be essential. That said they are both positive ambitions." (Independent sector employer of, or agency for, nurses and midwives)

Another organisation, agreeing with the regulatory outcomes pointed out the need to ensure that registrants are supported and are not fearful of their regulatory body.

"We agree with the proposed regulatory outcomes, recognising that we collectively have to work to support registrants in this new way of working. Professional regulation is about delivering safe and effective care through helping the registrant to be the best that they can be. If they are fearful of their regulator, we cannot achieve this." (NHS employer of nurses or midwives)

Achieving our regulatory outcomes

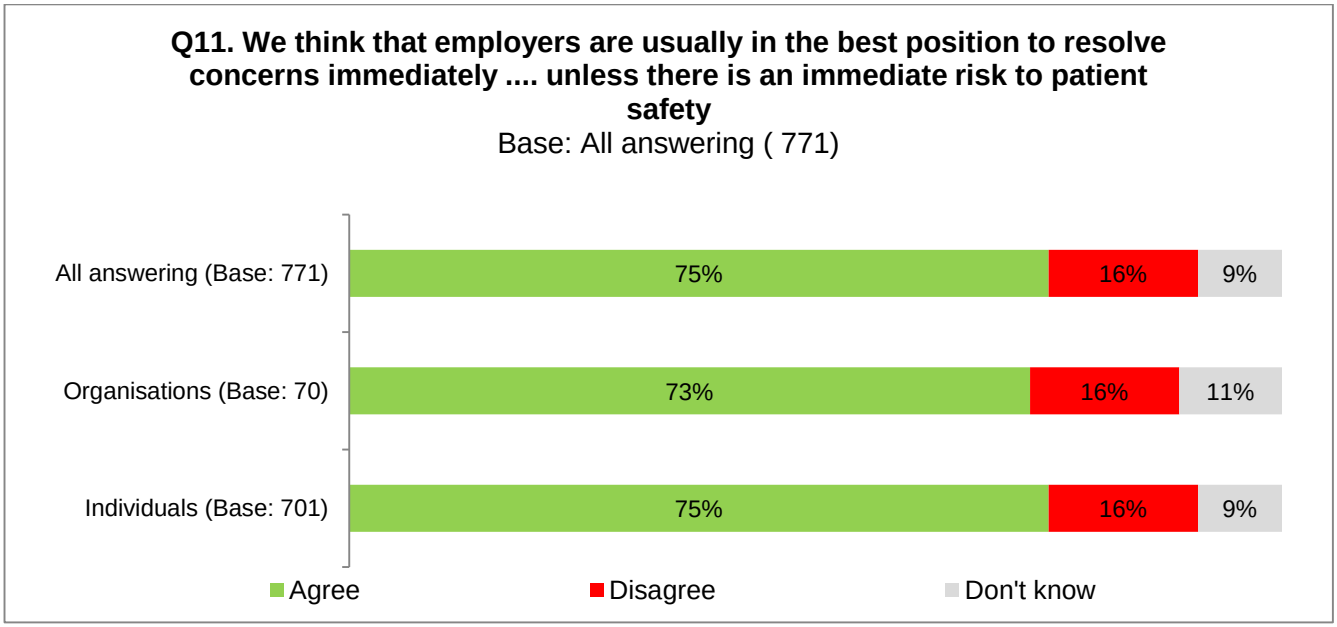
In the next section, on achieving their regulatory outcomes (pages 20 to 25 of the consultation document), the NMC have identified four different ways in which they can achieve regulatory outcomes using their current regulatory powers:

Prioritising effective local action by employers: The NMC intend to:

- ask employers to investigate locally first if the NMC receive a referral from a member of the public that the employer has not had a chance to look at first.
- set out very clearly for employers what the NMC expect from a referral.
- work with the NMC's Regulatory Intelligence Unit to collect information from the referrals they receive and use that information when they investigate concerns.

Q11. We think that employers are usually in the best position to resolve concerns immediately, and we should only take regulatory action if the concern has already been raised with and investigated by the employer (where there is one), unless there is an immediate risk to patient safety that we have to deal with. Do you agree?

Three-quarters (75%) of respondents agreed with this proposal, and less than one in five disagreed, although around 10% provided a 'don't know' response. In terms of sub-group data, female respondents were more positive (77%) than their male counterparts (67%) and this is statistically significant.



A total of 435 respondents provided further commentary in response to this question, with 9% noting their support for this proposal and a similar proportion (11%) agreeing that local resolution should be

explored in the first instance; smaller proportions also noted that employers need to take on more responsibility (5%), that they are in the best position to make judgements or that they have the relevant knowledge and background to take appropriate action (6%).

However, 20% of respondents noted concerns about the impartiality of some employers. Furthermore, a number of other themes, each cited by between 12% and 15% of respondents focused on concerns over employers. These included comments that employers need to have robust in-house policies, that some employers are fairer than others in dealing with cases, that employers' cultures need to be open and accountable, that some smaller employers might not be capable of discerning risk or having a capacity to deal with risk, or that some employers may have poor processes in place for dealing with poor practice. The role that the NMC plays in working with employers is highlighted in the following quote.

> *"Again the concept is a good one but [we are] concerned about how this will work in practice. In particular how the NMC will determine whether the employer is effectively managing the risk or requires support to do so." (Professional organisation / trade union)*

11% also noted concerns that poor quality staff may be able to 'slip through the net' if the NMC is not involved, for example, if they are self-employed or if they change jobs.

> *"I am not sure that all employers will take a responsible view and therefore some nurses who are not performing or pose a risk could slip through the net. For example an agency nurse makes a serious error, subsequently resigns from the agency and that agency does not follow up the necessary investigation/ disciplinary/remedial action as the nurse has already gone. Agency nurse joins another agency and they have no knowledge of the potential risk." (Independent sector employer of, or agency for, nurses and midwives)*

While overall support for this proposal was relatively high, respondents still perceived a role for the NMC in a number of instances, with some respondents noting a need for employers to be given guidance and support on how to resolve concerns and clarity regarding their responsibilities (13%), or for employers and managers to be monitored and audited by the NMC (14%). There were also some comments that the NMC will need to lead in some instances, for example, in cases where risk is high or where there are major concerns (9%); or that the NMC is better suited to handle cases or that NMC oversight is needed (7%).

Other themes cited by around 5% of respondents included:

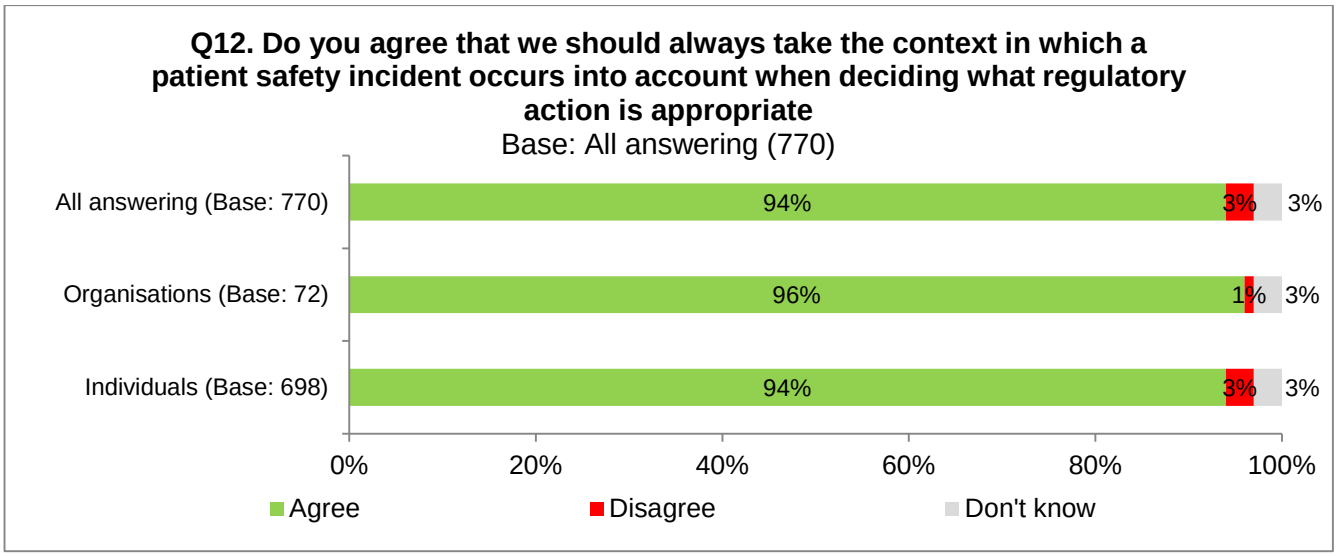
- Concerns about employers not being held to account.
- That the Employee Link Service would be helpful.
- Concerns that employers could use the NMC as a threat to employees.
- There needs to be recourse to the NMC or an independent investigation.

Taking the context into account: At present there is no consistent methodology for taking context into account. The NMC will:

- introduce guidance that sets out why context is relevant and how they will take it into account when they make decisions.
- introduce a tool to standardise the way they assess context, and build this into to their decision-making.
- share intelligence about context with employers and other regulators.

Q12. Do you agree that we should always take the context in which a patient safety incident occurs into account when deciding what regulatory action is appropriate?

There is almost universal agreement (94%) across respondents that the context should be taken into account, with only 3% of respondents disagreeing with this.



Overall, 350 respondents opted to provide additional commentary in support of their initial response to this question. Just over a quarter (27%) of these respondents noted their agreement with this proposal, 10% felt that there are often many factors involved in a patient safety incident and smaller numbers noted that context often contains mitigating factors or extenuating circumstances (5%) or that context is important for learning lessons (3%) or promoting standards and conduct (2%).

The workplace environment was cited as a contributory factor by a significant number of respondents, with 20% of respondents noting that the work environment and culture can be stressful and pressured, with heavy workloads and busy shifts; and a further 15% noted that the processes and resourcing also need to be examined, for example, looking for possible system failures; or that context is important in instances where the employer may be a contributory factor to the incident (15%). 12% of respondents also commented that staff / patient ratios need to be considered as there is often too few staff to manage workloads.

Other comments, cited by 15% of respondents were that the whole picture needs to be taken into account when considering a patient safety incident; or that context is needed for fairness and proportionality.

Further comments, made by less than 10% of respondents, included:

- Cases should be considered on their own merit as all incidents are different.
- Patient safety is the priority (and context can impact on this).
- Causes of incidents are often complex, and there is usually more than one person involved.
- A lack of context can result in registrants being sanctioned in some way or referred unnecessarily.

Very small proportions of respondents commented that context has limits as a mitigating factor and cannot be used in many incidents or that lower standards should not be accepted because of the context and that registrants should be accountable for their actions. There was also a request for an analysis tool or guidance to help standardise assessments of context to ensure consistency.

The following quotations demonstrate the views emerging in response to this question.

> *"Professionals practice within an organisation's systems and sometimes negative outcomes can result from system failure rather than the conduct or actions of an individual practitioner. Context is essential to providing proportionate approaches which support candour, openness and learning." (Regulator)*

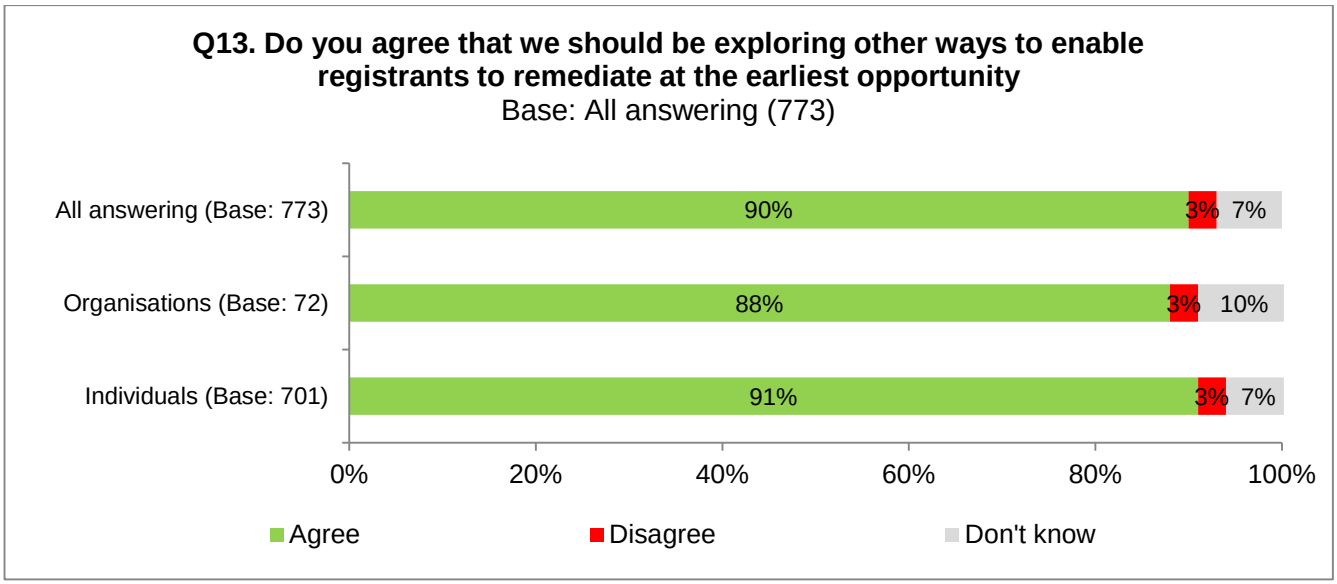
> *"We know of many instances where registrants have voiced concerns about safe practice which employers do not heed or make provision for. When things go wrong the employer then attempts to blame the registrant." (Charity / voluntary sector)*

Enabling registrants to remediate regulatory concerns at the earliest opportunity: By enabling registrants to remediate regulatory concerns at the earliest opportunity the NMC will:

- encourage early remediation by engaging more with the registrant at the beginning of the process.
- provide employers and registrants with guidance on remediation that is specific to the registrant.
- refer all non-remediable cases directly to the Fitness to Practise Committee.

Q13. Do you agree that we should be exploring other ways to enable registrants to remediate at the earliest opportunity?

As the following chart demonstrates, a large majority of respondents (90%) were in agreement that the NMC should be exploring other ways to enable registrants to remediate at the earliest opportunity. Only 3% disagreed with this, and 7% provided a 'don't know' response.



A total of 319 respondents opted to provide additional commentary. The key themes emerging related to the benefits of remediation, with 17% of respondents noting this will help to remedy problems and that everyone should be given the opportunity to correct, and learn from, their mistakes; 14% commented that early remediation is in everybody's interests. 10% of respondents referred to reflection, supervision and monitoring being a necessary element of the remediation process. Just under one in ten noted that it is important to get registrants back into practice as soon as possible; that this will help to retain nurses, which is perceived to be important, given the current shortage of nurses in the sector; that it would be good for patient safety; or that it is a better use of resources to remediate in preference to holding a lengthy fitness to practise case. As the following quotations highlight, it is important to offer registrants the opportunity to reflect and learn; this also enables the NMC to focus on more serious cases.

> *"Registrants should be provided with the opportunity to reflect upon and learn from the incident that has occurred. Enabling a registrant to understand what actions they may have taken to prevent the error from occurring will in most cases be a most effective learning tool. Instant dismissal from the role will reduce the ability to mitigate risks in future and may mean that the registrant does not have the opportunity to learn and share the learning from their mistakes." (Independent sector employer of, or agency for, nurses and midwives)*

> *"By engaging with registrants and employers early on and ensuring that an opportunity to remediate areas of weakness is provided at a local level, a more open, supportive and inclusive culture would be able to be established. Further, the NMC would be better placed to focus resources on more serious or sustained fitness to practise concerns. … careful assessment of an employer's ability/ willingness to investigate and support a registrant would be required." (Other)*

While respondents were generally supportive of this proposal, small proportions of respondents noted provisos in relation to the process; namely, that the remediation process needs to be long term, rigorous and robust (9%); or that training will help with remediation but that support will be needed to help bring about improvement (9%) or that the correct support needs to be available from employers to enable the registrant to remediate (8%).

There was some reference to the positive impact of remediation, providing that a registrant is keen to learn from their mistakes and that the remediation process is registrant-led (11%). There were also requests for clear guidance from the NMC, for example, what is suitable remediation, what training or CPD could be offered or what specific actions are needed for specific breaches of the code (9%).

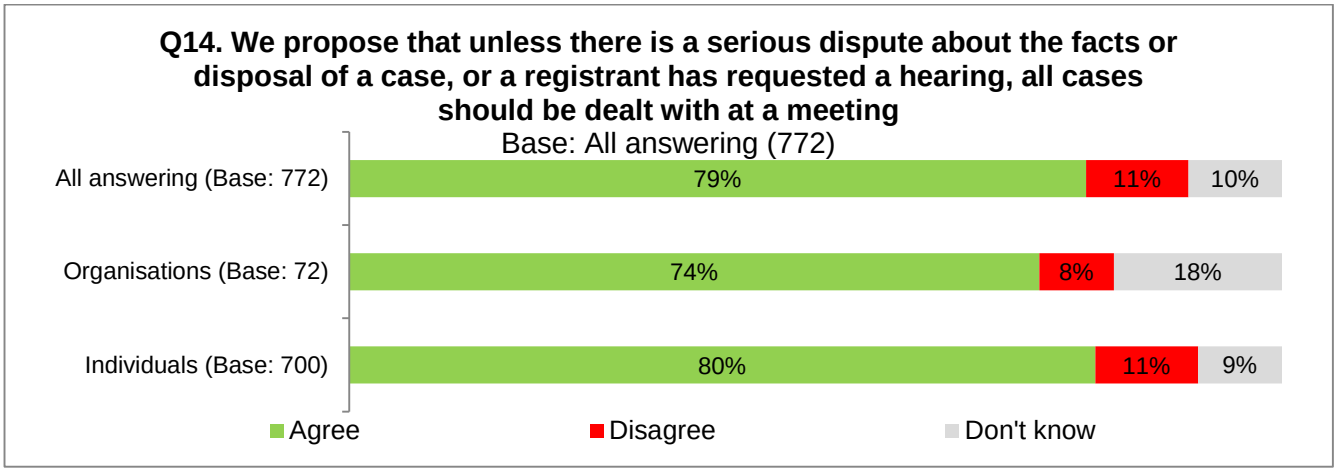
While many respondents were positive about the impact of remediation, small proportions of respondents noted that it depended on the severity of the incident (7%) or that some staff will not learn from their mistakes (3%).

Holding full hearings only in exceptional circumstances: The NMC intend to hold full hearings only in exceptional circumstances and will:

- as early as possible, produce a draft determination, including provisional findings on charges, impairment, and sanction.
- use hearings to adjudicate the outstanding matters in dispute.
- make more use of meetings, as opposed to full hearings, where issues are not in dispute or where the registrant is not engaging with them.

Q14. We propose that unless there is a serious dispute about the facts or disposal of a case, or a registrant has requested a hearing, all cases should be dealt with at a meeting. Do you agree?

There was majority support for this proposal, with just over three quarters (79%) of respondents agreeing and only 11% disagreeing. While only 10% provided a 'don't know' response, this was higher among organisations (18%) than individuals (9%).



A total of 328 respondents provided additional commentary in relation to this question. A number of these comments related to advantages associated with cases being dealt with at a meeting, with 19% of respondents noting that it would enable quicker processing of cases and 16% that it would be less stressful for registrants. Other advantages cited by less than one in ten respondents included that it would save money and reduce costs, that full hearings should be used only for the most serious cases, that it would encourage openness and transparency and that this is a more humane way to deal with a case.

Respondents outlined a few provisos in relation to this proposal, with just over one in ten asking for meetings to be structured properly and in a fair way so that all parties can put their case forward (12%), and smaller proportions noting that cases need to be fully investigated and full information is available at a meeting (both cited by 6%). There were also comments from 5% or less of respondents that findings need to be published, that meetings should only be held in instances where there is no dispute about the facts between the different parties and that meetings need to include support and advice for registrants or that registrants need to be properly represented.

Allied to these provisos, 12% of respondents requested more detail on what a meeting would entail, for example, the structure of the panel or the processes taken to reach a decision.

Small proportions of respondents – mostly those who disagreed with this proposal – outlined concerns about a lack of fairness and openness at these meetings, commenting that public scrutiny is vital and allows for transparency (cited by 10%); or that issues would not be explored in enough detail at a meeting and a full hearing is needed to enable the case to be properly judged by an independent panel (8%).

Additional examination of sub-group data shows that those who responded prior to publication of the PSA report (82%) were more supportive than those who responded after the report's publication (72%); this difference is statistically significant.

As the following quotations show, one regulator welcomed this proposal, although another noted that there may be circumstances where it will be necessary to hold a hearing.

> *"We welcome this proposal. When a registrant accepts the facts and a sanction we deal with the matter without holding a hearing, through the issuing of a notice of decision. We then publish the decision on our website in the same way as we publish hearing outcomes. Approximately 95 per cent of warnings/conditions and 40 per cent of removals from our register follow this acceptance process. Holding a hearing in these circumstances is disproportionate. It can have a negative impact on the worker and witnesses. It can also have a negative impact on services as they may need to find cover for staff." (Regulator)*

> *"While hearings can have the above function they also have a role in transparency of decision making and serving the public interest and there may be circumstances where such issues may result in needing to hold a hearing." (Regulator)*

Finally, in this section, respondents were asked:

Q15. Please tell us what you think about our proposals and if there are any other approaches we could take.

A total of 346 respondents opted to provide commentary in response to this question, and a wide range of comments emerged. The key theme, cited by 19% of respondents was agreement with the proposals. Other comments reiterated themes seen at earlier questions and were cited by only very small proportions of respondents. For example, these included comments:

- on the need for processes to be fair and transparent.
- that guidance, advice and support is needed for employers and registrants.
- that more clarity is needed in the new processes.
- on the need for fitness to practise hearings to be quicker.

How we operate

In the next section (pages 26 to 28 of the consultation document), the NMC have identified three areas where they can improve how they operate:

Managing public expectations and supporting vulnerable stakeholders better: setting up a public support service to anticipate and meet the needs of members of the public involved in cases. It will also support vulnerable people and the NMC will seek input from patient groups and other relevant stakeholders to inform the development of the service. In addition they will:

- introduce a strategy for proactively contacting members of the public at the point the NMC open an investigation.
- explain better how the process works and set expectations more effectively.
- improve how they communicate with members of the public.
- explain key decisions to members of the public who have an interest in the case and seek their input where appropriate.

Working effectively with regulators and other key stakeholders within clearly defined boundaries: The NMC intend to:

- define more clearly the routine interactions they expect to have, and the information they expect to share, with other organisations in the interests of public protection.
- refer concerns to other organisations where they are better placed to deal with them.
- explore opportunities for joint working where they are in the interests of public protection.

Continuously improving: Using a consistent quality improvement methodology and embedding it in the way the NMC design and run their processes and taking a more systematic view of process improvement. The NMC intend to:

- adopt a consistent quality improvement methodology and embed it in their management culture.
- review their processes to identify opportunities to improve quality and efficiency.
- develop an improvement plan that is in line with the NMC's organisation-wide plan to replace their information technology systems.

Q16. Tell us what you think about our proposals to improve our processes. Are there any other ways we could give more support to members of the public, or improve how we work with other organisations, including other regulators?

Overall, 406 respondents opted to provide comments in response to this question, the key theme being that there needs to be more support for registrants, albeit this was only cited by 11% of respondents. A wide range of suggestions were made for other ways in which the NMC could give

more support to members of the public or how it works with other organisations, although only very small proportions of respondents cited each.

In terms of **improving processes**, comments included:

- Being open / transparent.
- Ensuring processes are completed in a timely fashion.
- Having lay member involvement in cases.
- More nurses / registrants on panels.
- More encouragement for practice / standards improvement / learning from mistakes / training.
- Better communication.
- More local boards / local links / local hearings.
- Providing information that is easy to understand.
- More support for witnesses.
- Greater use of technology.
- Improved liaison with referral makers.
- More account of context / mitigating circumstances.
- Dealing with vexatious referrals.
- Obtaining feedback from registrants who have been through the fitness to practise process.
- Focussing on patient safety.
- Provide more information on the progress of individual cases.
- Better auditing / assessment / measurement / reviews of practice and remediation.
- More robust investigation into concerns.
- Better telephone help / call handling / advice service / confidential helpline.
- Offering a liaison service / contact person to families / employers.
- More education / training.

In terms of **support to the public**, comments included

- Being more open and transparent.
- Better publicity / communication / provision of information via internet, website or emails.
- Increase public awareness of the role of the NMC.
- Share the nursing code of conduct with the public.
- Provide a public advice service.
- Publish fitness to practise decisions.
- Manage expectations of the public.

In relation to **improving work with other organisations**, comments included:

- Investigate processes followed by other organisations, (for example, GMC or HCPC) and standardise or align with other regulators.
- Support / more work with voluntary professional nursing bodies.
- More networking / communication / interaction / sharing expertise / co-ordination with other regulators.
- Closer working with CQC.

- More work to build safer environments.
- Shared approaches to incidents involving more than one type of healthcare professional.
- Strengthened links with local providers and closer working with employers.

The following quotations illustrate support for various approaches that could be adopted.

> *"The proposals described to support and improve information available to the public are welcomed. Working with patient groups and relevant stakeholders offers the opportunity for the regulator to be more able to respond appropriately to public concerns. Working more closely with other regulators will help share learning across the professions and improve equality between the professions in relation to regulatory concerns." (NHS employer of nurses or midwives)*

> *"[We] would like to see continued, strengthen work through the MOU and sharing intelligence. Where guidance endorsed by NMC could impact individual registrants, it would be useful if the NMC took a facilitator role in ensuring all four parts of the United Kingdom agreed e.g. the recent 'Just Culture' guide the NMC endorsed with NHS England. The NMC should work with existing organisational providers who have expertise in this function as well as at what point will NMC withdraw support to service users and families. What is the exit strategy?" (Government or public body)*

> *"It would be helpful to have a transparent framework for both registrants and the public to handle expectations. In our experience some of the fear and anxiety and frustrations have been because registrants and the public have not understood the technical legal language that has traditionally been used." (NHS employer of nurses or midwives)*

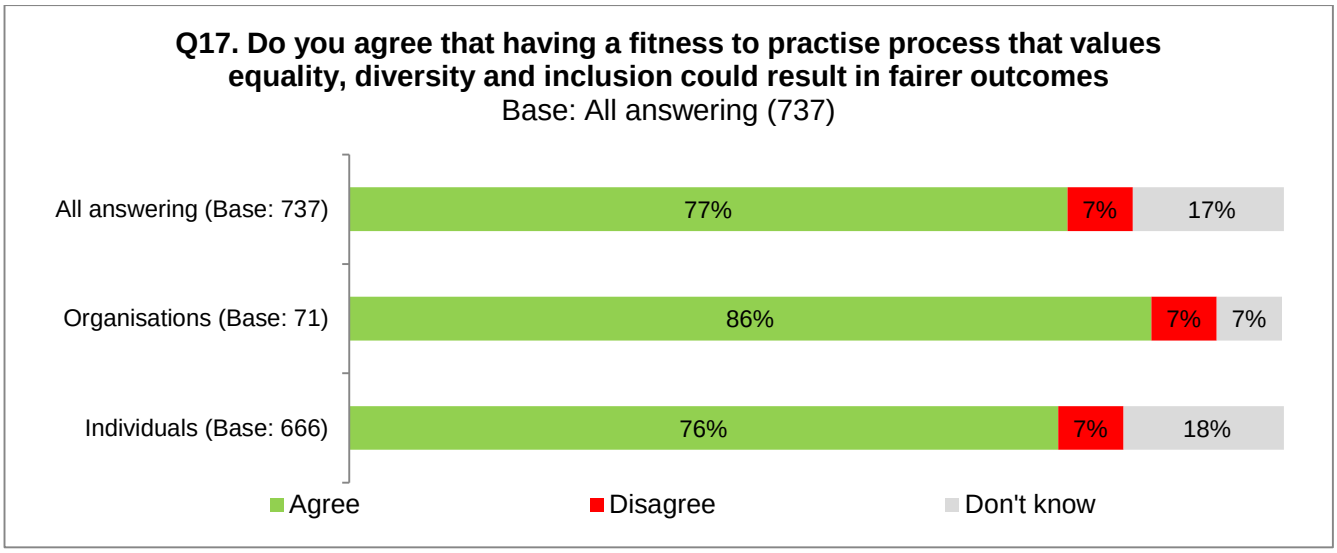
Equality and diversity and inclusion

The characteristics of individuals and organisations who responded to this consultation are detailed in an appendix.

In the equality, diversity and inclusion section (pages 29 to 30 of the consultation document), all respondents were reminded that the proposed changes should not create unlawful barriers or create disadvantage for diverse groups on the basis of: race, gender, disability, religion and belief, sexual orientation, age, gender reassignment, pregnancy/maternity or being in a marriage/civil-partnership. The consultation outlines that the desired regulatory outcomes include a professional culture that values equality, diversity and inclusion.

Q17. Do you agree that having a fitness to practise process that values equality, diversity and inclusion could result in fairer outcomes?

As the following chart demonstrates, just over three quarters (77%) of respondents agreed that having a fitness to practise process that values equality, diversity and inclusion could result in fairer outcomes. Slightly higher proportions of organisations agreed (86%) than individuals (76%).



A total of 259 respondents provided additional commentary, and the key theme, cited by 19% of respondents, was that this is not a new proposal and that it does, or should, happen already. A smaller proportion (12%) noted that overtly valuing equality, diversity and inclusion should not be required if the fitness to practise process is fair and transparent as these values are implicitly addressed within the process and that the same standards are required irrespective of a registrant's background; this comment was higher among those who disagreed with the proposal (39% of respondents who disagreed, compared to 1% who agreed).

14% of respondents provided general agreement to this proposal and a very small proportion of respondents (5%) concluded that the fitness to practise process will be equitable. A very small proportion (3%) also noted that there is an imbalance of BME referrals but felt this is due to public and employer perceptions rather than the fitness to practise process, and there is a need for cooperation from employers and the public to reduce this imbalance.

Very small proportions of respondents outlined some concerns, namely, that there is a risk that equality, diversity and inclusivity could be used to 'get off the hook' by registrants whose practice is unsafe or simply concerns as to how this would be implemented. A similar proportion of respondents requested further detail on this proposal.

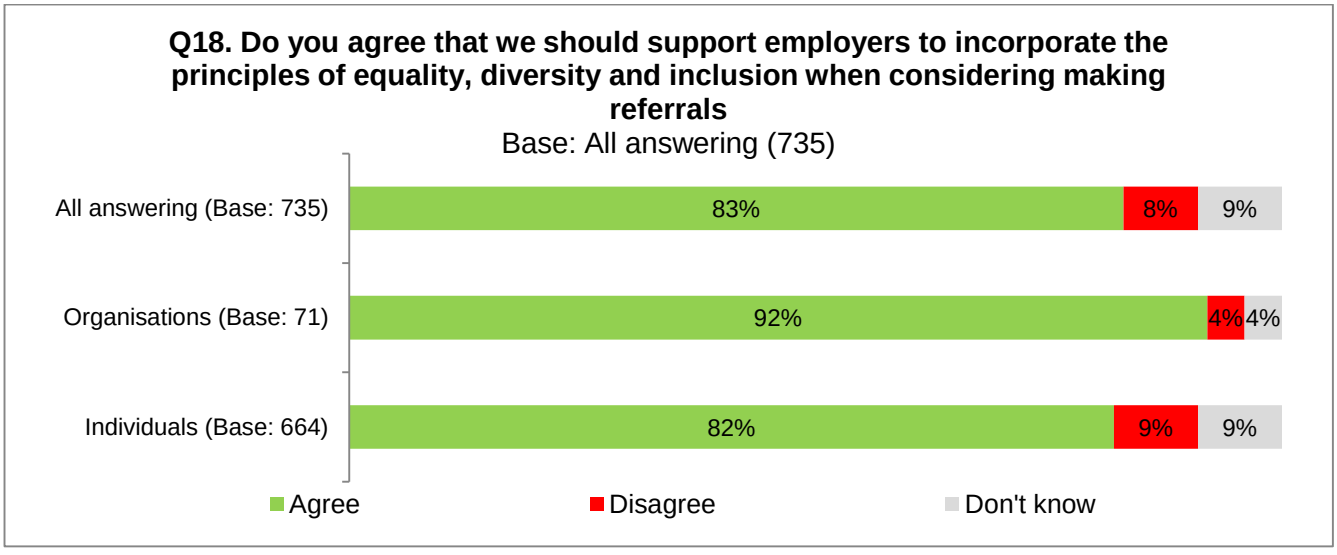
Typical comments in response to this question included,

> *"We agree - all FtP processes should be fair and equally applied - recognising and respecting diversity and inclusion." (Charity / voluntary sector)*

> *"This is the right thing to do but once stated it should be normal practice and not something that needs special consideration." (Professional organisation or trade union)*

Q18. Do you agree that we should support employers to incorporate the principles of equality, diversity and inclusion when considering making referrals?

A majority of respondents (83%) agreed that the NMC should support employers to incorporate the principles of equality, diversity and inclusion when considering making referrals, although higher levels of agreement came from organisations (92%) than individuals (82%). Less than one in ten disagreed with this proposal.



Overall, 230 respondents provided additional commentary in support of their response, with the key theme, cited by 15% of respondents, being one of general agreement with the proposal. Other comments echoed those seen at the previous question with small proportions of respondents noting that it should already be part of employers' processes or that this is already written within employment legislation.

10% of respondents noted that a registrant's background should be irrelevant to referrals as these should be dependent on unsafe or poor practice; and slightly fewer respondents (8%) noted concerns that this could lead to positive discrimination, for example, because of fears of accusations of racism. That said, a very small proportion (5%) of respondents felt that the number of BME referrals is disproportionate.

Other comments made by very small proportions of respondents included:

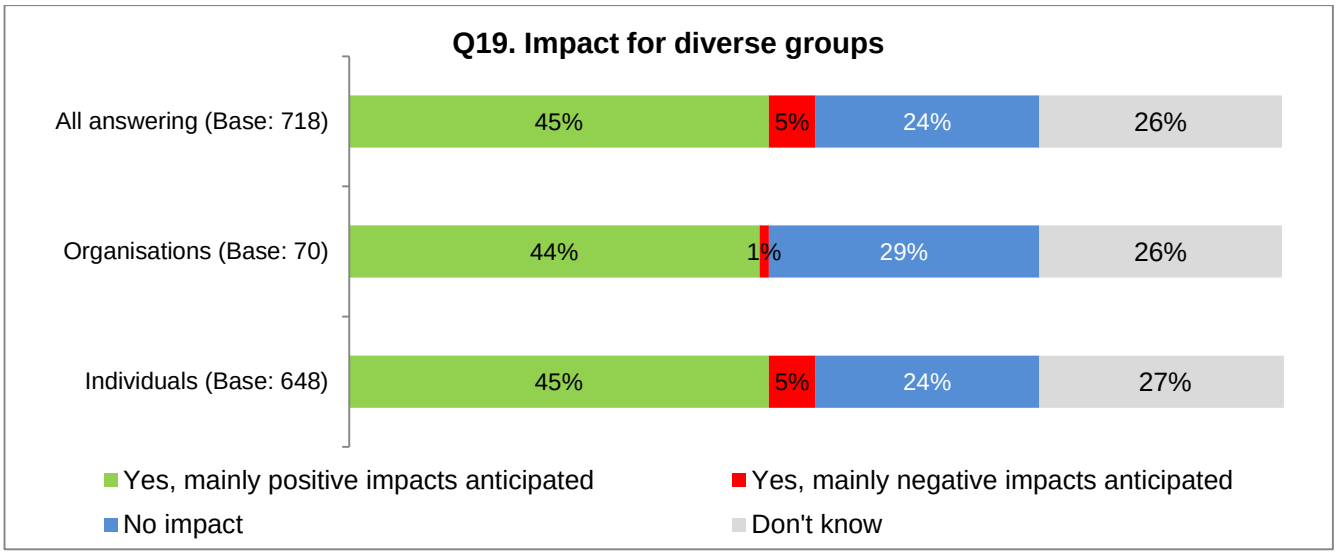
- Concerns over how this would be implemented.
- Suggestions that employers need to be subject to scrutiny to ensure they are applying these principles.
- Suggestions that employers need to be held to account and take responsibility.
- That it is not the role of the NMC to provide support to employers.

Q19. Will any of our proposals have a particular impact on people who share these protected characteristics (including nurses, midwives, patients and the public)?

The chart overleaf shows that just under half of respondents (45%) perceived these proposals to have mainly positive impacts, while only a very small proportion (5%) thought there will be mainly negative impacts. Significant minorities felt there will be no impact (24%) or were unable to provide a response (27%).

Sub-group data shows that higher proportions of female respondents (25%) felt there would be no impacts anticipated compared to male respondents (16%); and 8% of male respondents compared to 3% of female respondents felt there would be mainly negative impacts. These differences were statistically significant.

Furthermore, the sub-group data also shows that higher proportions of BME respondents (70%) felt there would be mainly positive impacts compared to non-BME respondents (45% of non-BME UK and 41% of non-BME other) and this difference is also statistically significant.



A total of 223 respondents gave detailed reasons for any expected impact, and a wide range of comments were made, each by only small proportions of respondents. Many of these points echoed those at the earlier questions. Key comments from those envisaging mainly positive impacts were that everyone will be treated equally or that it will be fairer for those with protected characteristics (4%), although a few respondents made the proviso that it will depend on how this is implemented (7%). As illustrated by the following quotations, there is a need to ensure that there is access to advice and ensuring systems are in place to allow individuals to raise concerns they may have, although there is also a need to ensure there are robust governance arrangements in place.

> *"As an organisation representing the interests of patients, our focus is from the patients' perspective. Some patients will be particularly vulnerable when it comes to reporting concerns or may face particular barriers in doing so. For example, people in long term care, people with learning difficulties, people with mental health problems, disadvantaged groups more generally. In all these cases, it is important that people have easy access to independent specialist advice to support them in reporting their concerns. For those in receipt of long term care, particularly those with additional vulnerabilities, reporting concerns to the employing organisation may be perceived as putting them at risk of repercussions and in turn preventing them from speaking out. The NMC needs recognise the importance of having systems in place that will ensure no one is prevented from being able to raise legitimate concerns with the NMC and that they can do so without fear of any form of retribution either by the registrant or the registrant's employer." (Consumer or patient organisation)*

> *"In principle [we] are in agreement with the proposed approach so long as the process does not swing too much in favour of the registrant and is supported by robust governance arrangements – ultimately the NMC exist to protect the public and the public need to have faith in the process in place to manage concerns about a registrants practice. (Professional organisation or trade union)*

The key comment made by respondents who felt there would mainly be negative impacts was concerns over registrants 'playing the equality card' or that this would offer the potential for abuse of the system (cited by 8%).

Q20: How can we amend the proposals to advance equality of opportunity and foster good relations between groups?

A total of 299 respondents provided comments to this question. The only comment made by more than 10% of respondents was that better or more communication is needed. Other comments were made by only very small proportions of respondents and echoed those outlined at Q16 [6]. General comments included the need for:

- More education / training.
- Ensure representation on panels from groups representing those with protected characteristics.
- More monitoring / auditing / reviewing of incidents.
- Need for equality of treatment for all registrants.
- Need for openness and transparency.
- Need for a fair and consistent approach.
- Use of clear and accessible language.

Some comments related to specific actions that the NMC needs to undertake and these included:

- The NMC needs to listen more to registrants or consult more widely.
- Publish the proposals more widely.
- More support to employers.
- Sharing of best practice.

[6] Tell us what you think about our proposals to improve our processes. Are there any other ways we could give more support to members of the public, or improve how we work with other organisations, including other regulators?

APPENDICES

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www.whyresearch.co.uk | +44(0)131 524 8171

Characteristics of Individual Respondents

Age

	Number
Under 25 years	2
25 – 34	61
35 – 44	127
45 – 54	235
55 – 64	176
65 and over	27
Not stated	181
Total Respondents	**809**

Working hours

	Number
Full time (30 or more hours per week)	492
Part time (below 30 hours per week)	126
Retired	16
Prefer not to say	29
Not stated	146
Total Respondents	**809**

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Gender

	Number
Female	507
Male	126
Prefer not to say	31
Not stated	145
Total Respondents	**809**

Has a disability or long term health condition.

	Number
No	531
Yes	73
Prefer not to say	60
Not stated	145
Total Respondents	**809**

Ethnicity

	Number
White: British, English, Northern Irish, Scottish or Welsh	501
White: Irish	20
White: Gypsy or Irish traveller	2
Any other white background	34
Mixed or multiple ethnic groups: White and Black Caribbean	6
Mixed or multiple ethnic groups: White and Black African	-
Mixed or multiple ethnic groups: White and Asian	2
Any other mixed or multiple ethnic background	1
Asian or Asian British: Indian	4
Asian or Asian British: Pakistani	2
Asian or Asian British: Bangladeshi	-
Asian or Asian British: Chinese	1
Any other Asian background	4
Black, African, Caribbean or black British: Caribbean	12
Black, African, Caribbean or black British: African	8
Any other ethnic group	7
Prefer not to say	59
Not stated	146
Total Respondents	**809**

Religion

	Number
Christian	327
No religion	229
Any other religion	14
Muslim	6
Buddhist	3
Hindu	3
Sikh	2
Jewish	1
Prefer not to say	78
Not stated	146
Total Respondents	**809**

Sexual orientation

	Number
Heterosexual or straight	503
Gay man	30
Bisexual	17
Gay woman or lesbian	12
Prefer not to say	101
Not stated	146
Total Respondents	**809**

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ORGANISATIONS PROVIDING A NAME[7]

Action against Medical Accidents
Betsi Cadwaladr University Health Board
Blake Morgan LLP
Bradford District Care Foundation Trust
Brighterkind
Buckinghamshire New University
Bupa UK
Cardiff & Vale UHB
Care Forum Wales
Care Quality Commission
Care UK
Central London Community Healthcare NHS Trust
Cheshire and Wirral Partnership NHS Foundation Trust
Department of Health Northern Ireland
DHSC independent sector nursing advisory forum
Diabetes UK
Estuary Housing Association
Faculty of Occupational Health Nursing
Gender Identity Research and Education Society
General Medical Council
General Pharmaceutical Council
Hampshire Hospitals Foundation Trust
Hays UK Ltd
HCA Healthcare UK
Heads of Midwifery Wales
Health and Care Professions Council (HCPC)
Health Education England
Healthcare Improvement Scotland
Hertfordshire Community NHS Trust
Hywel Dda University Health Board
Imperial College Healthcare Trust
Kings College Hospital NHS Foundation Trust
Lincolnshire Partnership NHS Foundation Trust
Mandala Mediation
Marie Curie
Mersey Care NHS Foundation Trust
Mind
NCT

[7] Organisations were asked to give their name and were also asked "Would you be happy for your comments in this consultation to be identified and attributed to your organisation in the reporting, or would you prefer that your response remains anonymous?" Not all respondents included an organisation name. No comments have been attributed to named organisations in this report.

News Media Association
NHS Education for Scotland
NHS Employers
NHS England
NHS Forth Valley
NHS Improvement (2 responses from different departments)
NHS Shetland
NHS Tayside
Nigerian Nurses Charitable Association UK
NMCWatch:registrants care
Northern Ireland Practice and Education Council (NIPEC)
Northern Ireland Social Care Council
Park House Court Ltd
Powys Teaching Health Board
Prime Life Ltd
Professional Standards Authority
Public Health England
Public Health Wales
Public Services Ombudsman for Wales
Regulation and Quality Improvement Authority
Richard Nelson LLP
Royal College of Midwives
Royal College of Nursing
Scottish Care
Scottish Government
Scottish Social Services Council
Sheffield Teaching Hospitals NHS Foundation Trust
Shelford Group
Social Care Wales
The Association of Radical Midwives
The Newcastle upon Tyne Hospitals NHS FT
The Care Inspectorate
UNISON
UNITE
University Hospital Southampton NHS FT
University of West London
Welsh Government

+ 7 organisations who did not provide a name

+ 809 individuals

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